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An Act of Parliament to provide for the establishment of the Communications Commission of Kenya, to provide for the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication Corporation to the Commission, the Telkom Kenya Limited and the Postal Corporation of Kenya, and for connected purposes

ENACTED by the Parliament of Kenya as follows:-

PART I - PRELIMINARY

Short title and Commencement.	1.	This Act may be cited as the Kenya Communications Act, 1998 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.
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Interpretation.	2. (1)	In this Act unless, the context otherwise requires -
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"Board" means the Board of Directors constituted under section 6;

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

"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;

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

"equipment" includes any appliance, apparatus or accessory used or intended to be used for postal 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 prepayment of postage and includes any meter or meters and any franking or date-stamping die incidental thereto;

"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;

"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;

"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;

"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;

"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 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.

"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;

"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 sub-paragraphs (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;

"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.

PART II - COMMUNICATIONS COMMISSION OF KENYA

Establishment
or Commission.

3. (1) There is hereby established a Commission to be known as the Communications Commission of Kenya.
- (2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of -
- (a) suing and being sued;

- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
 - (c) borrowing or lending money; and
 - (d) doing or performing all such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.
- 4. The Headquarters of the Commission shall be in Nairobi. Headquarters.
- 5. (1) The object and purpose for which the Commission is established shall be to licence and regulate telecommunication, radio-communication and postal services in accordance with the provisions of this Act. Object and purpose of the Commission.
 - (2) The Commission shall have all powers necessary for the performance of its functions under this Act.
 - (3) The Commission may enter into association with such other bodies or organisations within or outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established.
 - (4) The Commission shall, in the performance of its functions under this Act have regard to -
 - (a) any policy guidelines of a general nature relating to the provisions of this Act notified to it by the Minister and published in the Gazette;
 - (b) Kenya's obligations under any international treaty or agreement relating to the provisions of telecommunication, radio and postal services.

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

Board of
Directors.

6. 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 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) the Permanent Secretary in the ministry for the time being responsible for information and broadcasting or his representative; and
- (g) at least five other persons, not being public officers, appointed by the Minister by virtue of their knowledge or experience in matters relating to postal services, telecommunications, radio communications, commerce or related consumer

interests and the Minister shall have due regard to registered societies representing such interests in exercising his powers under this paragraph.

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 - Powers of the Board.

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

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

9. The Board may, by resolution either generally or in any Delegation by

- the Board. particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Commission the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.
- Remuneration of Board members. **10.** The Board, in consultation with the Minister, shall pay to members of the Board such remuneration, fees or allowances for expenses as it may determine.
- The Director-General. **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.
- Secretary to the Board. **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.
- Staff of the Commission. **13.** The Board may appoint such officers or servants as are necessary for the proper discharge of the functions of the Commission under this Act or any other written law, upon such terms and conditions of service as the Board may determine.
- The common seal of the Commission. **14. (1)** The common seal of the Commission shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

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

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

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

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

- Financial year. 18. The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.
- Annual estimates. 19. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.
- (2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year concerned, and in particular shall provide -
- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Commission and the members of the Board;
 - (b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Commission;
 - (c) for the proper maintenance of the buildings and grounds of the Commission;
 - (d) for the proper maintenance, repair and replacement of the equipment and other movable property of the Commission;
 - (e) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may deem fit.
 - (f) for the payment of the salaries, allowances and other charges in respect of the staff of the National Communications Secretariat

established under section 84, and such other expenses of the Secretariat as may be approved by the Minister from time to time; and

- (g) for the payment of salaries, allowances and other charges in respect of the staff of the Tribunal and such other expenses of the Tribunal as may be approved by the Minister from time to time.

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

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

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

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

Accounts
and audit.

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

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

- (3) The accounts of the Commission shall be audited by the Auditor-General (Corporations) or by an auditor appointed by the Board with the written approval of the Auditor-General (Corporations).
- (4) The appointment of an auditor shall not be terminated by the Board without the prior written consent of the Auditor-General (Corporations).
- (5) The Auditor-General (Corporations) may give general or special directions to an auditor appointed under subsection (3) and the auditor shall comply with those directions.
- (6) An auditor appointed under subsection (3) shall report directly to the Auditor-General (Corporations) on any matter relating to the directions given under sub-section (5) of this section.
- (7) Within a period of six months after the end of the financial year, the Auditor-General (Corporations) shall report on the examination and audit of the accounts of the Commission to the Board and to the Minister, and in the case of an auditor appointed under subsection (3), the auditor shall transmit a copy to the report to the Auditor-General (Corporations).
- (8) Nothing in this Act shall be construed to prohibit the Auditor-General (Corporations) from carrying out an inspection of the Commission's accounts or records whenever it appears to him desirable and the Auditor-General (Corporations) shall carry out such an inspection at least once every six months.
- (9) Notwithstanding anything in this Act, the Auditor-General (Corporations) may transmit to the Minister a special report on any matters incidental to his powers under this Act, and section 19 (3) and (4) of the Exchequer and Audit Act shall, *mutatis mutandis*,

apply to any report made under this section.

Cap.412

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

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

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

Investment
of funds.

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

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

Annual Report.

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

PART III - TELECOMMUNICATION SERVICES

23. (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.

Provision of
telecommu-
nication
services.

(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;

Requirement
of licence.

24. (1) No person shall -

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

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

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

1998

Kenya Communications

No. 2

Telecom-
munication
Licences.

- 25.(1) The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licences under this section authorising all persons, whether of a specified class or any particular person to -
- (a) operate telecommunication systems; or
 - (b) provide telecommunication services,
- of such description as may be specified in the licence.
- (2) A licence granted under subsection (2) (a) may authorise-
- (a) the provision, by means of any telecommunication system to which the licence relates, of any telecommunication services of a description specified in the licence; and
 - (b) the connection to any telecommunication system to which the licence relates of -
 - (i) any other telecommunication systems of a description specified in the licence; and
 - (ii) any telecommunication apparatus of a description specified in the licence.
- (3) A licence granted under this section may include conditions requiring the licensee -
- (a) to provide the telecommunication services specified in the licence or of a description so specified;
 - (b) to interconnect to the telecommunication system to which the licence relates, or to permit the connection to such system, of such other

telecommunication systems and apparatus as are specified in the licence or are of a description so specified, either without charge or subject to a reasonable charge to be determined in accordance with the method specified in the licence;

- (c) to permit the provision by means of the telecommunication system or telecommunication apparatus connected thereto of such services as are specified or of a description so specified;
 - (d) to pay such fees as the Commission may prescribe; and
 - (e) to fulfil such other conditions as the Commission may prescribe.
- (4) A licence granted under this section shall, unless earlier revoked in accordance with any term in that regard contained in the licence, continue in force for such period as may be specified in the licence.
- (5) The Commission may, renew, vary, modify or revoke any licence granted under this Act in accordance with the provisions of this Act.

Enforcement
of licence
conditions.

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

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

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

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

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

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

General
regulations for
telecommuni-
cation services.

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

- (a) the running of telecommunication systems;
- (b) the privacy of telecommunication;
- (c) the provision of telecommunication services pursuant to the provisions of section 23 and in particular, the manner in which such services shall be offered and performed, the issue of licences and the payment of fees in respect thereof, and such other matters as it deems fit;
- (d) the period during which and conditions subject to which messages and papers relating to telecom-

munication services belonging to, or in the custody of telecommunication operators shall be preserved;

- (e) the issue, variation and withdrawal of approvals in respect of contractors for relevant operations in connection with any telecommunication system and the maintenance of registers of such contractors;
 - (f) fees and other charges for any matter permitted or matters required to be done under this Act in relation to telecommunication services;
 - (g) the form of any licence, notice, approval, certificate, authority or other written document required or permitted to be issued by or submitted to the Commission in relation to telecommunication services.
- (3) Regulations under this section may make different provisions with respect to different classes or descriptions of telecommunication systems, apparatus or services.
- (4) Any person who contravenes any regulation made under this section commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Offences Relating to Telecommunication Services

Obtaining service
dishonestly.

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

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29. A person who by means of a licensed telecommunication system - Improper use of system.
- (a) sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
 - (b) sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person
- commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both.
30. A person engaged in the running of a licensed telecommunication system who, otherwise than in the course of his duty, intentionally modifies or interferes with the contents of a message sent by means of that system, commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both. Modification etc., of messages.
31. A licensed telecommunication operator who otherwise than in the course of his business- Interception and disclosure.
- (a) intercepts a message sent through a licensed telecommunication system; or
 - (b) discloses to any person the contents of a message intercepted under paragraph (a); or
 - (c) discloses to any person the contents of any statement or account specifying the telecommunication services provided by means of that statement or account,

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

Tampering
with telecom-
munication
plant.

32. A person who, with intent to -

- (a) prevent or obstruct the transmission or to delay any message; or
- (b) intercept or acquaint himself with the contents of any message; or
- (c) commit mischief,

damages, removes, tampers with, touches or in any way whatsoever interferes with any telecommunication apparatus or telecommunication line, post or other thing whatsoever, being part of or used in or about any licensed telecommunication system or in the use thereof, 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 three years, or to both.

Trespass and
wilful
obstruction
of telecom-
munication
officer.

33. Any person who -

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

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

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

- 34. (1) A person who, while not holding a valid licence under section 25, runs a telecommunication system or provides a telecommunication service, commits an offence. Prohibition of
unlicensed
telecommuni-
cation
system.
- (2) Any person who runs a telecommunication system in accordance with a licence granted under section 25 of this Act shall commit an offence if -
 - (a) that person provides telecommunication services which are not of a description specified in the licence; or
 - (b) there is connected to the licensed system, any telecommunication system or, as the case may be, any telecommunication apparatus which is not of a description so specified in the licence.
- (3) A person convicted of an offence under this section shall, on conviction be liable to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

PART IV - RADIO COMMUNICATION

- 35. (1) Subject to subsection (2), no person shall, establish or use any radio communication station or apparatus except in accordance with the terms of a licence granted under section 36. Licensing
requirements.
- (2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction

to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both.

Radio
communication
licence.

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

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

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

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

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

Licences for
scientific or
research use.

37. (1) Where an application for the grant or renewal of a radio communication licence is made to the Commission by any person, and the Commission is satisfied that the purpose of the licence is to enable the applicant to

conduct experiments in radio communications for the purpose of scientific research, the Commission shall subject to subsection (2) not refuse to grant or renew the licence, and shall not revoke the licence when granted and no sum shall be payable under any regulations in respect of such licence except the fee for the grant or the renewal thereof.

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

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

Regulations on
radio
communication.

- (a) the fees or sums to be paid by a person to whom a radio-communication licence is granted on the grant or renewal of such licence and the conditions on which any such licence may be granted, renewed or revoked;
- (b) anything which may or may not be done in connection with the use of any radio

communication station or apparatus and in particular, requiring the use of any such station or apparatus to cease on the demand in that behalf by any authorised employee of the Commission;

- (c) imposing on the person to whom a radio communication licence is granted with respect to any radio communication station or apparatus, or who is in possession or control of any radio communication station or apparatus, obligations as to permitting and facilitating the inspection of such station or apparatus, as to the conditions in which the radio station or apparatus is kept and, in the case of a station or apparatus for the establishment, installation or use of which a licence is necessary, as to the production of the licence or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations;
- (d) where sums are or may become due from the person to whom a radio communication licence is granted after the grant or renewal thereof, requiring that person to keep and produce such accounts and records as may be specified in the regulations;
- (e) requiring the person to whom a radio communication licence authorising the establishment or use of a station has been granted, to exhibit at the station such notices as may be specified in the regulations;
- (f) regulating the use on board any vessel or aircraft, other than a vessel or aircraft registered or licenced in Kenya, within the limits of Kenya and territorial waters adjacent thereto, of radio communication apparatus on board such vessel or aircraft;

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

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

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

Regulations
for radiation
of electro-
magnetic
energy.

39. (1) The Minister in consultation with the Commission may make regulations for the following purposes -
- (a) for prescribing the requirements to be complied with in the use of any apparatus to which this section applies;
 - (b) for prescribing the requirements to be complied with in the case of any apparatus to which this section applies if the apparatus is to be sold or offered or advertised for sale otherwise than for export, or let or hire or offered or advertised for letting or hire by any person who in the course of business manufactures, assembles or imports such apparatus.
- (2) Regulations made under subsection (1) shall make provisions to ensure that the use of the apparatus does not cause undue interference with radio communication and may in particular include -
- (a) requirements as to the maximum intensity of electromagnetic energy of any specified frequencies which may be emitted in any direction from the apparatus while it is in use; and
 - (b) in the case of any apparatus, the power for which is supplied from electric supply lines, requirements as to maximum electro-magnetic energy of any specified frequencies which may be injected into those lines by the apparatus, and different requirements may be prescribed for different circumstances and in relation to different classes or descriptions of apparatus, different districts or places and different times of use.
- (3) The apparatus to which this section applies shall be such apparatus, other than radio communication apparatus, as

may be specified in the regulations, being apparatus generating or designed to generate or liable to generate fortuitously electro-magnetic energy at frequencies of not more than three million megahertz per second and references in this subsection to apparatus include references to any form of electric supply line.

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

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

Regulations
with respect
to resistance
to interference.

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

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

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

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

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

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

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

Enforcement
of regulations
as to use of
apparatus.

41. (1) If the Commission is of the opinion -

- (a) that any apparatus does not comply with the requirements applicable to it under regulations made for the purpose under subsection (1) of section 40; or
- (b) that either:-
- (i) the use of the apparatus is likely to cause undue interference with any radio communication used for the purpose of any safety of life service or for any purpose on which the safety of any

person or of any vessel, aircraft or vehicle may depend; or

- (ii) the use of the apparatus has caused or is causing undue interference with any other radio communication apparatus in circumstances where all reasonable steps to minimise interference have been taken in relation to the situation or apparatus receiving such radio-communication,

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

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

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

Provided that where a notice under this section has the effect of imposing any additional restrictions on the use of the apparatus, the provisions of subsection (1) relating to the coming into force of the notice shall apply

in relation to the subsequent notice as if it had been a notice served under subsection (1).

- (3) Where a notice has been given under subsection (1), any person having possession of, or any interest in, the apparatus to which the notice relates may, at any time, whether before or after the date fixed by such notice, by notice in writing served on the Commission, show reasons why the apparatus in question complies with the requirements applicable to it under the regulations and if the Commission is satisfied that-
- (a) the apparatus in question so complies, it shall revoke the notice; or
 - (b) the said requirements ought to be relaxed in relation to the apparatus, may revoke the notice or vary it in such manner as the Commission may deem fit:

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

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

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

42. (1) In any proceedings arising from the provisions of this Part - Onus of proof.

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

43. (1) If the Commission is of the opinion that any radio communication apparatus does not comply with the requirements applicable to it under regulations made under section 40, the Commission may serve on any person who has manufactured, assembled or imported such apparatus in the course of business, a notice in writing prohibiting him from selling that apparatus or offering or advertising it for sale or letting it on hire or offering or advertising it for letting on hire. Enforcement
of regulations
as to sales, etc.
by manufacturers
and others.

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

Unlawfully
sending of
misleading
messages, etc.

44. Any person who-

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

station or radio communication apparatus by him or by any other person acting on his behalf,

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

45. Any person who uses any station or apparatus for interfering with any radio communication commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding one year or to both. Deliberate interference with radio-communication.
46. (1) The provisions relating to radio communication shall apply - Extent of the application of provisions relating to radio communication.
- (a) to all radio communication stations and radio communication apparatus in or over, or for the time being in or over Kenya or the territorial waters adjacent thereto; and
 - (b) subject to any limitations which the Commission may, by regulations, determine, to all radio communication stations and radio communication apparatus which is released from within Kenya or its territorial waters, or from any vessel or aircraft which is registered in Kenya.
- (2) Without prejudice to the liability of any other person, in the event of the contravention of the provisions of subsection (1) or of any regulations or orders made thereunder, occurring in relation to any radio-communication station or radio communication apparatus on board or released from any vessel or aircraft, the captain or the person, for the time being, in charge of the vessel or aircraft commits an offence under this Act:

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

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

PART V - POSTAL SERVICES

Functions of the
Commission in
relation to
postal services.

- 47.(1) The functions of the Commission in relation to postal services shall be to-
- (a) ensure that there are provided throughout Kenya good and sufficient postal and other related services, on such terms as the Commission may deem expedient;
 - (b) ensure that the public post licensee is able to provide postal services at rates consistent with efficient and continuous service and financing viability;
 - (c) promote development of postal systems and services in accordance with recognised international standards, practices and public demand;
 - (d) exercise licensing and regulatory functions in respect of postal systems and services in Kenya in accordance with this Act;
 - (e) regulate the fixing of rates of postage and other fees or sums to be charged in respect of postal

articles weighing not more than three hundred and fifty grams;

- (f) regulate the issuance of postage stamps including definitive, commemorative and special issues of postage stamps and any other philatelic items;
 - (g) ensure the terms and conditions stated in any licence granted under section 51 are complied with;
 - (h) promote competition in the provision of postal services;
 - (i) ensure that reasonable demands for postal services are satisfied;
 - (j) promote and encourage the expansion of postal services in Kenya; and
 - (k) further the advancement of technology relating to the post and postal services.
- (2) In discharging the functions and duties under subsection (1), the Commission shall have regard to:
- (a) efficiency and economy;
 - (b) fostering the development and expansion of postal services in Kenya in collaboration with other countries and international organisations;
 - (c) the maintenance of effective competition between persons providing or interested in providing postal services;
 - (d) the promotion of measures for the safety of life through communications;

- (e) the provision of postal service rates consistent with efficient service and the necessity for maintaining financial viability; and
- (f) the promotion and development of standards in the field of postal systems and services.

Exclusive right
to provide
certain postal
services.

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.

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

Requirement
of licence.

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

- (3) In this section, "person" means a natural or a corporate person, a firm, government, state or state agency, any association or partnership.

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

Designation
of public
postal licensee.

postal articles being conveyed, within the system of a public postal licensee as he may think fit.

Licence to
provide postal
services.

- 51.** (1) The Commission may, upon application in the prescribed manner and subject to the conditions specified in section 52 or such other conditions as the Commission may deem necessary, grant a licence in the prescribed form authorising any person to operate or to provide postal services in accordance with the provisions of this Act.
- (2) A licence granted under this section shall unless earlier revoked in accordance with any term specified therein, continue in force for such period as may be specified therein.
- (3) Subject to the provisions of this Act, the Commission may renew or revoke a licence issued under this section or vary or modify any conditions attached thereto.

Conditions
of licence.

- 52.** Every licensee shall be required to observe the following conditions-
- (a) to provide courier services to any person, who requests for such services where available;
 - (b) to notify the Commission forthwith of the current tariffs charged for postal services and changes to the tariffs for each different type of postal service provided to each location within thirty days of such changes;
 - (c) to display prominently at each premises from which it conducts its business, current tariffs for each postal service to various destinations;
 - (d) to comply with all applicable and relevant laws, rules and regulations including, but not limited to the law relating to customs and imports and exports with regard to receipt and dispatch of postal articles to and from Kenya;

- (e) to furnish the Commission with a copy of its latest audited annual accounts and financial statements of the business with the application for renewal of its licence;
- (f) if the licensee is a company with a share capital, to provide documentary evidence of current status of shareholding together with the applicant for renewal of its licence;
- (g) where the licensee intends to enter into any association, contract or arrangement with a third party, to provide postal services which only the licensee is permitted under its licence to provide, to seek approval from the Commission before entering into such association, contract or arrangement;
- (h) to exercise its rights and powers and perform its duties and obligations under the licence in such manner as is consistent with the agreements or treaties to which Kenya is a party;
- (i) not to enter into any arrangement with any person running an international postal service on terms and conditions which the Commission deems to be unfavourable to the national interest.

General Provisions Relating to Postal Services

- 53. The public postal licensee shall have exclusive rights to issue postage stamps and provide private letter boxes subject to such conditions as the Commission may specify. Postage Stamps and postal charges.
- 54.(1) The person to whom any postal article is tendered for delivery on which postage or any other charge is due Addressee may be liable for

postage, etc.

shall be liable to pay such postage or other charge unless-

- (a) he refuses to accept delivery of such postal article; or
 - (b) having accepted delivery of such postal article, he forthwith returns it unopened.
- (2) If any postal article appears, to the satisfaction of the licensee, to have been maliciously sent for the purpose of annoying the addressee, he may remit the postage or other charge due from the addressee.
- (3) If any postal article which the postage or any other charge is due is refused or returned unopened by the addressee, or if the addressee is dead or cannot be found, the sender shall be liable to pay the postage or other charge due thereon.

Postal articles
not to be opened.

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

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

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

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

56. (1) On the declaration of any public emergency or in the interest of public safety or tranquillity, the Minister responsible for internal security may, by in order in class or description of postal articles in the course of transmission by post within Kenya shall be intercepted or detained or shall be delivered to any officer mentioned in the order in the service of the Government, or shall be disposed of in such manner as the Minister directs.

Interception
of postal
articles in
public
emergency, etc.

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

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

Article or material
injurious to persons.

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

58. No person shall send by post -

Prohibited
materials.

- (a) any indecent or obscene printing, photograph, lithograph, engraving, book or card or any other indecent or obscene article;
- (b) any postal article having thereon, or on the cover thereof, any words or designs of an indecent,

obscene, scurrilous, threatening or grossly offensive character;

- (c) any postal article bearing any fictitious stamp or purporting to be prepaid with any postage stamp which has previously been used in payment of any stamp duty;
- (d) any other article which the Commission may by regulation prohibit.

Regulations
prohibiting
injurious articles.

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

Material sent in
contravention of
this Act.

- 60. (1)** Where any postal article sent by post is reasonably suspected by the public postal licensee or other person licensed to provide postal services under this Act to have been sent in contravention of this Act or of any of the regulations made thereunder, or of any other written law, the public postal licensee or such other person shall immediately inform the Commission and hand over such postal article to the Commission or any person authorised in writing by the Commission.
- (2) On receiving the aforesaid information, an authorised officer shall detain such postal article for opening and examination.
- (3) Subject to the provisions of this Act, if any postal article opened or examined under this section is found to be in contravention or to have been posted in contravention of this Act, or of any regulations made thereunder, or of any other written law, such postal article shall be dealt with in accordance with regulations made under section 66.

- (4) Notwithstanding any provisions of any written law to the contrary, if any postal article opened under this Act is found to be in contravention of any law relating to customs, it shall be handed over to the customs authority to be dealt with in accordance with such law.
 - (5) The detention, destruction or disposal under this Act of a postal article or its contents shall not relieve any person sending or delivering it, from liability for any offence under this Act or under any other written law.
61. (1) If any licensee under this Part has reason to believe that any postal article contains anything in respect of which an offence is being or has been committed, or is being attempted to be committed, such licensee may require, by notice in writing, the attendance, at a specified post office and time, of the addressee of such postal article or of some agent deputed in writing by such addressee and of a police officer, and such postal article shall then be opened by the addressee or his agent in the presence of an authorised employee and of the police officer.
- Power to deal
with postal
articles
containing
anything
in respect of
which an
offence is
committed.
- (2) If the addressee or his agent fails to attend in pursuance of the notice under subsection (1) or refuses to open the article, it shall be opened by the authorised employee of the licensee in the presence of the police officer.
 - (3) Where the postal article has been opened under this section, it shall be delivered to the addressee unless the police officer states that it is required for the purpose of any legal proceedings, in which event it shall be delivered to the police officer on his signing a receipt therefor.
 - (4) Where the licensee is requested by the Commissioner of Police to exercise its powers under this section, it shall do so and thereupon the notice referred to in subsection (1) shall be issued.

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Withholding
postal articles
until postage,
etc. is paid.

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

Postal
financial
services.

- 63.** (1) The Commission shall allow the public postal licensee to carry out postal financial services on its own account.
- (2) For the purposes of this section, "postal financial services" include money orders, postal orders, postal drafts, postal cheques, postal traveller's cheques, giro, cash-on-delivery, collection of bills, savings service, subscription to newspapers and periodicals or any other form of financial service as the Commission may prescribe.

Refund of
wrong
payment of
money order.

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

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

Proof of
return, of
postal articles.

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

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

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

Regulations
for postal
services.

- (a) the disposal of undelivered postal articles;
- (b) the licensing and use of franking machines for pre-payment of postage and the use of postal franks;
- (c) specifying the conditions for the perforation or defacement of postage stamps and the conditions on which postage stamps may be accepted or refused in payment of postage or other charges;

- (d) specifying the conditions on which compensation may be paid for the loss of or damage to any postal article;
- (e) specifying the conditions for the registration and insurance of postal articles;
- (f) specifying the conditions for the issue and payment of money orders at post offices;
- (g) specifying the conditions subject to which any postal article in the course of transmission by post may be redelivered to the sender without reference to the consent of the addressee; and
- (h) specifying the conditions for the acceptance of cash-on-delivery postal articles.

Offences Relating to Postal Services

Operating
without a
valid licence.

67. A person who otherwise than in accordance with the terms of a valid licence issued under section 51 -
- (a) conveys any letter or postal article;
 - (b) performs any service incidental to conveying, any letter or postal article;
 - (c) delivers or tenders in order to be sent otherwise than in accordance with the terms of a valid licence, any letter or postal article as aforesaid; or
 - (d) makes a collection of letters or postal articles for the purpose of sending them;

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

68. A person who places in or against any letter box provided by the public postal licensee for the reception of postal articles any fire, match or light, or any explosive, dangerous, filthy, noxious, or deleterious substance or any fluid, or commits a nuisance in or against any such letter box, or does anything likely to injure any such letter box or its appurtenances or contents, commits an offence and shall, be liable on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both .
- Damaging
letter box.
69. A person who, without the authority of the public postal licensee, affixes any placard, advertisement, notice, document, board or other thing in or on, or paints tar, or in any way disfigures any post office, commits an offence and shall, be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.
- Affixing
materials on
post office.
70. A person who, being an employee of the public postal licensee or being employed in connection with postal services-
- Unlawful
opening or
delivery, etc.
of postal
articles by
employees of
licensee.
- (a) opens or permits to be opened any postal article otherwise than in accordance with the provisions of this Act;
 - (b) knowingly reveals, discloses or in any way makes known the contents of, or any information in relation to, any postal article opened under the authority of this Act, otherwise than in accordance with the law;
 - (c) knowingly destroys, detains or secretes any mail-bag or postal article otherwise than in accordance with this Act;

- (d) knowingly permits any unauthorised person to interfere in any way with any mail bag or postal article; or
- (e) fraudulently or with intent to deceive prepares, alters, secretes or destroys any document used for the purposes of postal services,

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

Transmitting
offensive
material by
post.

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

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

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

- (a) opens any postal article otherwise than in accordance with this Act.
- (b) interferes in any way with any mailbag or postal article opened under the authority of this Act, otherwise than in accordance with the law;
- (c) fraudulently puts, alters, removes or erases any official mark on a postal article;

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

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

73. Any person who -

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

Using of
fictitious
stamps.

in imitation of one issued under the authority of the public postal licensee;

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

Use of certain words.

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

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

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

Transmitting prohibited articles by post.

75. Any person who -

- (a) sends by post any postal article which is prohibited from being so transmitted under any regulations made under this Act;
- (b) sends by post, otherwise than in accordance with any regulations made under this Act, any postal article containing any noxious, explosive or

dangerous substance which would be likely to damage any other postal article;

- (c) subscribes on the outside of any postal article, or makes in any declaration relating to a postal article, any statement which he knows or has reason to believe to be false, or which he does not believe to be true, in relation to the contents or value thereof; or
- (d) with intent to defeat the course of justice sends by post any postal article containing anything with respect to which, or in connection with which any offence, to his knowledge, has been or is being committed,

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

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

Interfering
with postal
installation.

PART VI - LICENSING PROCEDURE

- 77.(1) Every application for a licence under this Act shall be in the prescribed form addressed to the Commission and shall be accompanied by such fee as may be prescribed.
- (2) The Commission may, with respect to any application, require the applicant to supply such additional information as it may consider necessary in considering the application.

Application
for licence.

Notice of
licence.

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

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

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

Grant of
licence.

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

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

Duration of
licence.

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

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

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

82. (1) Subject to the provisions of this Act, the Commission may, from time to time, modify any conditions attached to a licence under this Act. Modification of conditions of licence.
- (2) Subject to subsection (4), before making any modifications under this section, the Commission shall give notice in writing and by publication in the Gazette to the licensee -
- (a) stating that it proposes to make the modification and setting out the effects of such modification;
 - (b) giving reasons for the modification; and
 - (c) specifying the time (not being less than sixty days from the date of publication of the notice) within which any written objections or representations may be made by the licensee or by any interested party with respect to the proposed modifications.
- (3) The Commission shall cause every notice given under subsection (2) to be published in the Gazette.
- (4) Notwithstanding the provisions of subsection (2), where a modification under this section is intended to remedy or prevent matters which operate or are likely to operate against the public interest, the Commission may proceed to make the proposed modification and shall inform the telecommunication operator in writing of the said modification and the reasons therefor.

- (5) A licensee aggrieved by the decision of the Commission under this section may appeal to the Tribunal within fifteen days from the date of receipt of the notice under subsection (2) and the Tribunal may stay the modification pending its decision on the appeal.
- (6) The Tribunal shall, within fifteen days of every decision of an appeal under this section, cause the decision and the reasons therefor to be published in the Gazette.

Register of
licences.

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

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

Provided that a person who is -

- (a) a member of the police force or a public officer acting in the course of duty; or
- (b) authorised in writing by the Board,

may inspect the register without payment of any fee.

PART VII - MISCELLANEOUS PROVISIONS

National
Communication
Secretariat.

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

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

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

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

Power of
operator
to use land.

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

- (a) put up any posts, which may be required for support of any telecommunication lines;
- (b) fasten or attach to any tree growing, on that land a bracket or other support for the line;

- (c) cut down any tree or branch which is likely to injure, impede or interfere with any telecommunication lines; or
 - (d) perform any activities necessary for the purpose of establishing, constructing, repairing, improving, examining, altering or removing any telecommunication apparatus or radio-communication apparatus, or for performing any other activities in accordance with the provisions of this Act.
- (3) Notwithstanding any agreement under subsection (1) a telecommunication operator shall not, except with the consent of the owner or occupier of the land -
- (a) acquire any right other than that of user of such land under, over, along, across, in or upon which any telecommunication apparatus or radio communication apparatus is placed and only for such purposes as the parties have agreed;
 - (b) exercise those powers in respect of any land vested in or under the control of a local authority, except in accordance with a procedure set out in section 86.
- (4) A telecommunication operator shall ensure that as little damage as possible is caused to the land and to the environment by reason of the exercise of the powers conferred by this section and shall pay fair and adequate compensation to the owner or occupier of the land for any damage or loss sustained by reason thereof.
- (5) Any dispute arising between an operator and the owner or occupier of any land with respect to the provisions of this section may be referred to the Tribunal for adjudication within thirty days of the dispute.

Commission intends to enter any land under the control of a local authority or other public body, the telecommunication operator shall seek the consent of the local authority or public body stating the nature and extent of the acts to be done. for using public land.

- (2) The local authority or other public body may, upon request under subsection (1), permit the telecommunication operator to exercise any or all of the powers under section 85 (2), subject to such conditions, including the payment of any fee for the use of the property, the time or mode of execution of any works, or for any other related activity undertaken by the telecommunication operator under the section as may be agreed between the telecommunication operator and the authority.
 - (3) An operator dissatisfied with the terms or conditions imposed by the local authority under subsection (1), may apply to the Commission for the review of such terms or conditions.
 - (4) A person aggrieved by the decision of the Commission under subsection (3) may appeal to the Tribunal within thirty days of such decision.
- 87.(1)** Where, upon application by a telecommunication operator the Commission considers that it is necessary land, for the purpose of providing telecommunication services to the public, the Commission may apply to the Commissioner of Lands to acquire the land on behalf of the telecommunication operator. Compulsory purchase of land.
- (2) Upon application by the Commission under subsection (1), the Commissioner of Lands may, if satisfied that it is in the public interest to do so, acquire the land in accordance with the provisions of the Land Acquisition Act.
- Cap.301.

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

Powers on
occurrence
of emergency.

88. (1) On the declaration of any public emergency or in the interest of public safety and tranquillity, the Minister for the time being responsible for internal security may, by order in writing, direct any officer duly authorised in that behalf, to take temporary possession of any telecommunication apparatus or any radio communication station or apparatus within Kenya, and -

- (a) in the case of radio communication, that any communication or class of communication shall or shall not be emitted from any radio communication station or apparatus taken under this section; or
 - (b) in the case of telecommunication, that any communication within Kenya from any person or class of persons relating to any particular subject shall be intercepted and disclosed to such person as may be specified in the direction; or
 - (c) in the case of postal services, that any postal article or class or description of postal article in the course of transmission by post within Kenya shall be intercepted or detained or shall be delivered to any officer mentioned in the order or shall be disposed of in such manner as the Minister may direct.
- (2) A certificate signed by the Minister for the time being responsible for internal security shall be conclusive proof of the existence of a public emergency, or that any act done under subsection (1) was done in the public safety or tranquillity.

- (3) A telecommunication apparatus constructed, maintained or operated by any person within Kenya or any postal article which is seized by any officer duly authorised under subsection (1) (a) shall be returned to the telecommunication operator at the end of the emergency or where such apparatus or article is not returned, full compensation in respect thereof, to be determined by the Minister, shall be paid to the owner.
- (4) A person aggrieved by a decision of the Minister under subsection (3) as to the compensation payable in respect of anything seized under this section may appeal to the High Court within fourteen days of such decision.

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

Entry and
search of
premises, etc.

- (2) If a court is satisfied that -
 - (a) it is necessary to enter any specified premises, vessel, aircraft or vehicle, for the purpose of obtaining such information which will enable the Commission to gather necessary evidence in accordance with the provision of subsection (1);

- (b) access to such premises, vessel, aircraft or vehicle for the purpose of obtaining such evidence as aforesaid has, within seven days before the date of the application to the court, been sought by a person duly authorised in that behalf by the Commission and has been denied,

the court may grant written authorisation under its hand and seal empowering any person or persons authorised in that behalf by the Commission and named in the authorisation, with any police officer, to enter and search the premises or as the case may be, the vessel, aircraft or vehicle with a view to discovering whether any station, apparatus, article or thing as aforesaid is situate thereon, and to examine and test it with a view to obtaining such information as aforesaid:

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

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

- (3) Where under this section a person is authorised to examine and test any telecommunication system or telecommunication apparatus or radio-communication apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft or vehicle, to give such authorised person such assistance as he may reasonably require in the examination or testing of such station or such apparatus.
- (4) Any person who -
- (a) obstructs any authorised person in the exercise of the powers conferred on him under this section; or
 - (b) fails or refuses to give to any such authorised person any assistance which he is, under this section, under a duty to give to him; or
 - (c) discloses, otherwise than for the purpose of this Act or any report of proceedings thereunder, any information by means of the exercise of powers under this Act, being information with regard to any manufacturing process or trade secret,
- commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years or to both.
- (5) For purposes of this section "court" means a Resident Magistrate's Court.

90.(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

Seizure of
apparatus,
article or
other property.

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 him to have been used in connection with or to be evidence of the Commission of any such offence.

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

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- (4) Any person who intentionally obstructs the authorised person in the exercise of the power conferred on him under this section (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.

Forfeiture of
property
used in
commission
of offence.

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

the offence was committed, to be forfeited to the Commission :

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

- (2) The court by which any such apparatus, article or property is ordered to be forfeited under this section may also order the person, by whom the offence giving rise to the forfeiture was committed, not to dispose of that apparatus, article or property except by delivering it to the Commission within such period as the court may deem fit.
 - (3) If a person against whom an order is made under subsection (2) contravenes that order or fails to deliver such apparatus, article or property to the Commission as required, he shall be guilty of a further offence which, for the purpose of determining the appropriate penalty shall be treated as an offence under the same provision as the offence for which the forfeiture was ordered.
- 92.(1) Any property seized by a person authorised by a warrant under section 89 may be detained -
- (a) until the end of the period of six months from the date of the seizure; or
 - (b) if proceedings in respect of an offence involving that property are instituted within that period, until the conclusion of those proceedings, or such shorter period as the court may order.
- (2) After the end of the period for which its detention is authorised by virtue of subsection (1) above, any such property which:

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

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

- (4) The Commission shall take reasonable steps to deliver the property to the person who, in the opinion of the Commission, is the owner of that property and such owner shall indemnify the Commission against any claims that may arise under sub-section (5).
- (5) Where the property remains in the possession of the Commission after the end of the period of one year immediately following the end of the period for which its detention is authorised under subsection (1), the Commission may dispose of it in such manner as it thinks fit.
- (6) The delivery of the property in accordance with subsection (3) to any person appearing to the Commission to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of that property.

General
restrictions
on disclosure
of information.

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.

94.(1) Subject to subsection (7), any person who establishes or operates, under any written law or otherwise, any undertaking for the supply of electricity (in this section referred to as "the undertaker") or any person who constructs, equips or operates a railway by means of electricity (in this section referred to as "the railway operator") shall, at least one month before erecting, placing or altering the position of any line or wire for the transmission of such electricity, forward to the telecommunication operator within the area within which such work is to be executed, or to the public postal licensee where any post office or other property is likely to be affected a notice in writing of his intention to execute such work together with a plan of the proposed work, and the undertaker or the railway operator shall also give to the telecommunication operator, or as the

Powers in
relation to
electricity
undertakers,
etc.

case may be, the public postal licensee all such other information as he may require in order to determine whether such work is likely to interfere unduly with any telecommunication or postal services.

- (2) Where an undertaker has given notice in writing in accordance with subsection (1), the telecommunication operator, or as the case may be, the public postal licensee within one month of the receipt of such notice, shall inform the undertaker in writing that the proposed work has either been approved or that, in accordance with subsection (3), certain requirements are considered necessary to be effected or that the matter referred to in the notice is receiving attention, and in the event of no such notification in writing being so given, the position of any electric supply line specified in the notice given in accordance with subsection (1) shall, for the purposes of this Act, be deemed to have been approved in writing.
- (3) If the telecommunication operator, or as the case may be, the public postal licensee considers that any such work is likely to interfere unduly with any telecommunication or postal services provided by or under the authority of the Commission, he may inform the undertaker or the railway operator of any requirements he may consider necessary to be effected by the undertaker or the railway operator in order to remove or lessen such anticipated interference, and in so doing he shall have regard not only to the interests of such telecommunication or postal services, but also to the interests of all persons supplied or who may be supplied with electricity by the undertaker and of all persons using the facilities provided by the railway operator.
- (4) If the undertaker or the railway operator does not agree to effect such requirements, or any altered requirements communicated to him under subsection (3) the matter shall be referred to the Minister for the time being responsible for public lands, and the undertaker or the

railway operator shall not proceed with the execution of such work until that Minister has given his decision thereon.

- (5) Where any matter has been referred to the Minister for the time being responsible for public lands under this section, that Minister may appoint any person or committee to investigate the matter and to report thereon to him.
- (6) After consideration of the report of any such person or committee, the Minister responsible for public lands may, after giving the parties reasonable opportunity of being heard, give such decision as he may think fit, and may specify what requirements, if any, the undertaker or the railway operator shall comply with in executing any such work and any such decision shall be final;
- (7) The Commission may, by notice in the Gazette, specify general requirements to be observed by any undertaker or railway operator when erecting, placing or altering the position of any electric supply line, and in any such notice the Commission may provide that it shall not be necessary:
 - (a) for any undertaker or railway operator effecting any specified class of work; or
 - (b) for any specified class of undertaker or railway operator, to give to the telecommunication operator, or the public postal licensee notice referred to in sub-section (1) if, in effecting any work, any such undertaker or railway operator proposes to comply with such general requirements.
95. Where any person erects any building or structure which is likely to cause interference with the telecommunication, or radio communication or postal services, the

Structures likely
to interfere with
telecommunication

or postal services.

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

Offences by
companies.

- 96.(1) Where any offence under this Act has been committed by a company or body corporate, every person who at the time of the commission of the offence was a director, general manager, company secretary or other similar officer of such company or body corporate, or was purporting to act in any such capacity, shall be deemed also to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.
- (2) Where a person is convicted of an offence under this Act in relation to the unlawful use of any telecommunication system or radio communication apparatus, or to the use of any apparatus or property for the purpose of interfering with any telecommunication, radio communication or postal services, the court may, in addition to any other penalty, order all or any of the apparatus or property with which the offence was committed to be forfeited to the Commission.
- (3) Where the affairs of the company or body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in

connection with his functions of management as if he were a director of that Company or body corporate.

- 97.(1) Where any employee of the Commission dies or leaves the service of the Commission and at the time of such death or termination of service any premises of the Commission were occupied by him or any property of the Commission was in his possession, it shall be the duty of such employee or, in the event of his death, of the person in whose possession such property may be or who may be occupying such premises, as soon as practicable, to deliver such property to the Commission or to vacate such premises. Property of the Commission in the custody of employee.
- (2) If any property or premises to which subsection (1) refers, is not delivered to the Commission or vacated, the Director General shall give notice in writing to the person appearing to him to be in possession of such property or in occupation of such premises to deliver to the Commission such property or vacate such premises within such time as may be specified in the notice and if such property is not so delivered or such premises are not so vacated within such time, the Director General may, without prejudice to any other means of recovery, apply to a Resident Magistrate for an order empowering a police officer to enter and search any house or building where such property is believed to be and to deliver such property, if found, to the Commission or, as the case may require, to evict from such premises any person found therein.
98. Where any action or other legal proceeding is commenced against the Commission for any act done in pursuance or execution, or intended execution of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect - Limitation.

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

Restriction on
execution
against property
of Commission.

99. Notwithstanding anything to the contrary in any law -

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

Service of
notice etc.
on Director
General.

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

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

101. Any notice or other document required or authorised under this Act to be served on any person by the Commission or the Director General or any employee may be served - Service of notice etc., by Director General.

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

102.(1) There shall be established an Appeals Tribunal for the purpose of arbitrating in cases where disputes arise between the parties under this Act which shall consist of- Establishment and constitution of Appeals Tribunal.

- (a) a chairman who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of not less than seven years standing and entitled to practice before any of the courts of Kenya; and
- (b) 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.

- (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.

Repeal of
Cap 411
and savings.

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 Telecommunications 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.

FIRST SCHEDULE

(s.8)

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

- Tenure of office. **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.

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

2. A member other than the chairman or an ex-officio member may -

Vacation of
office.

- (a) at any time resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member -
 - (i) has been absent from three consecutive meetings of the Board without the permission from chairman; or
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
 - (iii) is convicted of an offence involving dishonesty or fraud ; or
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) fails to comply with the provisions of this Act relating to disclosure; or

- (vii) is engaged in a communications organisation which operates on telecommunication system or provides telecommunication services or is engaged in the manufacture or distribution of telecommunication equipment in Kenya as an owner, shareholder, partner or otherwise, whether directly or indirectly.

Meetings.

3. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding the provisions of subparagraph (1), the chairman may call a special meeting at any time where he deems it expedient for the transaction of the business of the Board.
- (3) The members of the Board shall, at the first meeting of the Board, elect from amongst their number, a vice-chairman and an honorary treasurer.
- (4) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (5) The quorum for the conduct of the business of the Board shall be seven members excluding the chief executive officer.
- (6) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairman shall preside and, in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

- (7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.
 - (8) Subject to paragraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
 - (9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.
4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Disclosure
of interest.

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

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

- The common seal. 5. The affixing of the common seal of the Board shall be authenticated by the signatures of the chairman and the chief executive officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the chief executive officer.

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

- Minutes. 6. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.

SECOND SCHEDULE

(s. 102)

MEETINGS AND PROCEDURE OF THE APPEALS TRIBUNAL

- Appointment of Members. 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.
- Resignation. 2. Any member may at any time by notice in writing to the Minister resign his office.
- Vacation of Office of Member. 3.(1) If a member of the Tribunal becomes a member of the Board or, in the case of a member other than the chairman is appointed to the service of the Government or the Commission his office shall become vacant.

- (2) The chairman or a member of the Tribunal may be removed from office by the Minister if he is -
- (a) unable to discharge the functions of his office by reason of mental or physical infirmity; or
 - (b) an undischarged bankrupt; or
 - (c) convicted of an offence involving fraud or dishonesty; or
 - (d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings.
4. If any member of the Tribunal has any interest in any particular proceedings before the Tribunal he shall so inform the Minister and the Minister may, after considering that interest, appoint another member in his place for the purpose of the particular proceedings. Disclosure of interests.
5. Where the office of any member becomes vacant, whether by death or otherwise, the Minister may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the appointment. Vacancy .
6. In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Minister may appoint a temporary member for the purposes of those proceedings. Temporary members.
7. The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto. Majority decisions.
8. The Tribunal shall have the powers of the High Court- Powers.
- (a) to administer oaths to the parties and witnesses to the proceedings;

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- (b) to summon witnesses and to require the production of documents;
- (c) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to:-
 - (i) the protection of the members of the Tribunal from suit;
 - (ii) the form of summonses to witnesses;
 - (iii) the giving or fabricating of false evidence;
 - (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
 - (v) the appearance of advocates;

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

- Venue. **9.** The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.
- Rules. **10.** Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure.
- Proof of documents. **11.** A document purporting to be a copy of any order of the Tribunal, and certified by the Chairman to be a true copy thereof, shall in any legal proceedings be prima facie evidence of the order.

THIRD SCHEDULE

(s. 103)

TRANSITIONAL PROVISIONS

1. In this Part, unless the context requires otherwise; Interpretation.

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

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

“Corporation” means the Postal Corporation of Kenya established by the Postal Corporation of Kenya Act, 1998;

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

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

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

“vesting day” means the day specified by the Minister for Finance under paragraphs 5 of this Schedule.
2. Notwithstanding the repeal of the Kenya Posts and Telecommunications Act, all licences granted by the former Corporation shall be deemed to be granted by the Commission under the corresponding provisions of this Act and shall remain in force until they are revoked in accordance Licenses
granted former
Corporation.

with any terms in that regard set out in the licence and replaced by licences granted under this Act.

- Winding up of former Corporation. 3. The Board of Directors of the former Corporation shall remain in office for the purpose of winding up the affairs of the former Corporation:

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

- Cessation of exclusive privilege. Cap. 411. 4. The exclusive privilege conferred upon the former Corporation by the Kenya Posts and Telecommunications Corporation Act (now repealed) with respect to providing -

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

shall lapse upon the commencement of this provision.

- Transfer of assets and liabilities of the former Corporation. 5.(1) The Minister for Finance may by notice in the Gazette, specify the date or dates and the manner in which the assets and liabilities of the former Corporation shall be transferred to and vested in -

- (a) the Commission, in respect of assets and liabilities relating to regulatory services;
- (b) the Company, in respect of assets and liabilities relating to telecommunication services; and
- (c) the Corporation, in respect of assets and liabilities

relating to postal services.

- (2) References in this Schedule to assets and liabilities of the former Corporation shall be references to all such assets and liabilities, whether or not capable of being transferred or assigned by the former Corporation.
- (3) A notice under subsection (1) shall specify the assets and liabilities of the former Corporation which are to be transferred to the Commission, the Company, or the Corporation, as the case may be.
- (4) If, on the vesting day, any suit, appeal, arbitration or other proceedings of whatever nature and wheresoever instituted in relation to the business of the former Corporation which is by virtue of this section, transferred to the Commission, Company, or, the Corporation, as the case may be, shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer of the business of the former Corporation or of anything contained in this Act, and any suit, appeal arbitration or other proceedings shall be continued, and enforced by or against the Commission, Company or, the Corporation, as the case may be.
- (5) In the case of assets and liabilities arising under any loans which vest in the Commission, the Company or the Corporation, as the case may be on the vesting day, the Commission, the Company or the Corporation as the case may be, may enter into such arrangements or agreements over such rights and liabilities with the Government or any other third party.
- (6) Any assets and liabilities of the former Corporation which are not to be vested either in the Commission, the Company or the Corporation as the case may be, shall be disposed of in such manner as the Minister for Finance shall determine.

Transfer of
other Assets.

6.(1) The Minister for Finance may, by order published in the Gazette, from time to time, provide that any property registered in the name of the Cable and Wireless Company, (Kenya), the East African External Telecommunication Company, the Post Master General, or the East African Posts and Telecommunication Corporation, companies incorporated under the Companies Act, which had not been transferred to the former Corporation, shall on the date mentioned in the order, be deemed to have been transferred to and registered in the name of the Commission, the Company, or the Corporation, as the case may be.

Cap.486.

(2) Except as otherwise provided in this Act, any agreement made, transaction effected or other thing done by, to or in relation to the former Corporation which is in force or effective immediately before the vesting day shall have effect as from that day as if made, effected or done by, to or in relation to the Commission, the Company or the Corporation as the case may be, were the same person, in law, as the former Corporation, and accordingly, references to the former Corporation-

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument; and
- (b) in any other document whatsoever (other than an enactment) relating to or affecting any asset or liability of the former Corporation which vests by virtue of paragraph 5 of this Schedule in the Commission, the Company or the Corporation, as the case may be, shall be taken with effect from the vesting date as referring to the Commission, the Company or the Corporation, as the case may be.

Employees.

7. (1) Every person who at the commencement of this Act is an employee of the former Corporation, not being under notice of dismissal or resignation, shall on the vesting day, become an employee of the Commission, the Company or,

the Corporation, as the case may be, as may be respectively specified by the Minister on the same or improved terms and conditions of service.

(2) Where on the vesting day -

- (a) any disciplinary proceedings against any employee of the former Corporation, are in the course of being heard or instituted, or have been heard or investigated by the former Corporation but no order or decision has been made thereon; or
- (b) any such employee is interdicted or suspended, the Commission, Company, the Corporation, as the case may be, shall-
 - (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
 - (ii) in the case of paragraph (b), deal with such employee in such manner as it thinks appropriate having regard to the offence committed by him, including the completion of disciplinary proceedings making of an order or the rendering of a decision, as the case may be, as if such disciplinary proceedings have been commenced by the Commission, the Company, or the Corporation, as the case may be.

(3) Where on the vesting day, any penalty (other than dismissal) has been imposed on any employee of the former Corporation pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be, serviced by such employee, he shall on his transfer to the Commission, the Company, or, the Corporation, as the case may be, under subsection (1) serve or continue to serve such penalty to its full term as if it had been imposed by

the Commission, the Company or, the Corporation as the case may be.

Pensions.

8. Where any person whose services are transferred to the Commission, the Company, or the Corporation, as the case may be, is on the vesting day, a member of any statutory or voluntary pension scheme or provident fund he shall, for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds as if he had not been so transferred, and for purposes of the regulations governing those schemes or funds his service with the Commission, the Company or the Corporation, as the case may be, shall be deemed to be service in the former Corporation.

Former
employees.

9. The Commission, the Company or the Corporation, as the case may be, , shall continue to be liable to former employees of the former Corporation, who have retired on the vesting day for such pension benefits payable as they are entitled to under the regulations of those pension schemes.
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