
**THE INFORMATION AND COMMUNICATION
TECHNOLOGIES, ACT**

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GOVERNMENT OF ZAMBIA

ACT

No. 15 of 2009

Date of Assent: 26th August, 2009

An Act to continue the existence of the Communications Authority and re-name it as the Zambia Information and Communication Technology Authority; provide for the regulation of information and communication technology; facilitate access to information and communication technologies; protect the rights and interests of service providers and consumers; repeal the Telecommunications Act, 1994, and the Radiocommunications Act, 1994; and provide for matters connected with or incidental to the foregoing.

[28th August, 2009

ENACTED by the Parliament of Zambia.

PART I

PRELIMINARY

1. This Act may be cited as the Information and Communication Technologies Act, 2009, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

2. (1) In this Act, unless the context otherwise requires—

“aircraft station” has the meaning assigned to it in the Second Schedule;

“amateur radio station” has the meaning assigned to it in the Second Schedule;

“Authority” means the Zambia Information and Communication Technology Authority referred to under section four;

“Board” means the Board of the Authority constituted under paragraph 1 of the First Schedule;

“broadcaster” means a person licenced to operate a broadcasting service under the Independent Broadcasting Authority Act;

Enactment

Short title and commencement

Interpretation

Act No. 17
of 2002

Cap. 388

- “certificate of competence” means a certificate issued under section *thirty-five*;
- “Chairperson” means the person appointed as such under paragraph 1 of the First Schedule;
- “class assignment” means the declaration referred to in subsection (4) of section *thirty*;
- “class licence” means the licence referred to under subsection (2) of section *ten*;
- “Code of Conduct” means the Code of Conduct for licencees referred to under section *sixty-nine*;
- “co location” means the accommodation of two or more switches, antennae or other electronic communications network equipment in or on a single building, tower or other structure;
- “company” has the meaning assigned to it in the Companies Act;
- “Convention” means the International Telecommunications Convention signed in Nairobi on 6th November, 1982, or any other Convention on, or relating to, telecommunication, to which the Government of the Republic of Zambia is a party;
- “consumer” means a person to whom an electronic communications service is rendered, and includes any person who purchases electronic communications products otherwise than for the purpose of re-sale, but does not include a person who purchases any electronic communications products for the purpose of using them in the production and manufacture of any other goods or articles for sale;
- “customer equipment” means equipment, cabling, hardware and software, employed on the customer side of the network boundary;
- “dealer” means a person who carries on a trade, business or industry in which transmitting stations or their component parts are assembled, manufactured, imported, bought, sold or exchanged or offered or exposed for sale or exchange;
- “diffusion service” means—
- (a) the dissemination by means of wires or wirelessly otherwise than within the precincts of a single private residence, of the whole or any part of a broadcasting service; or

(b) the dissemination of music or speech by means of wires or wirelessly connecting two or more loudspeakers which—

- (i) are installed in a specific building or within the precincts of a specified building; or
- (ii) are permanently fixed, otherwise than within a single specified building, in a motor vehicle, aircraft, ship or railway train, for purposes not ancillary or incidental to or connected with any exhibition, performance, including a performance by a circus, contest, game or sport, such as—
 - (A) the running of any horse race;
 - (B) the holding of any concert or the production of any play, opera, ballet, pageant or the like;
 - (C) the showing of cinematograph film; or
 - (D) the holding of any agricultural, horticultural, industrial or commercial show or any dance, cabaret, garden party, fete, fair, gymkhana or the like; and

“diffuse” shall be construed accordingly;

“Director-General” means the person appointed as such under paragraph 8 of the First Schedule;

“distress call” means a radiocommunication concerning safety of life on land, at sea or in the air;

“dominant position” means a position of economic strength enjoyed by a licensee which enables the licensee to prevent effective competition maintained in the market by affording the licensee the power to behave, to an appreciable extent, independently of the licensee’s competitors and consumers;

“electronic communication” means a transfer of signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or in part by radio, electro-magnetic, photo electronic or photo optical system, but does not include—

- (a) any wire or direct oral communication;
- (b) any communication made through a tone only paging device;
- (c) any communication from a tracking device; or

(d) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

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

“electronic communications market” means an area of activity identified by the Authority, as constituting a single market within the information and communication technology sector;

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

“electronic communications service” means a service provided by means of one or more electronic communications networks;

“exempt service” means a service for which there is no licencing or authorisation required to commence business;

“Fund” means the Universal Access and Service Fund established under section *seventy*;

“Fund Manager” means the person appointed to administer the Fund under subsection (1) of section *seventy-one*;

“generating apparatus” means apparatus—
(a) generating or designed to generate; or
(b) liable to generate fortuitously;

Hertizan waves of frequency or kind prescribed by regulation;

“harmful interference” means radiation, conduction or any other electro-magnetic effect which—

(a) prevents or impedes, or persistently or repeatedly interrupts, a radiocommunication service carried out in accordance with the provisions of this Act or of the Convention; and

(b) is not caused by the operation of a transmitting station in accordance with the provisions of this Act;

- “Hertzian waves” means electro-magnetic waves of frequency not less than ten Hertz and not more than three million megaHertz;
- “individual assignment” means the declaration made by the Authority under section *fifty-four*;
- “individual licence” means the licence referred to under paragraph (a) of subsection (2) of section *ten*;
- “information and communication technology” means the application of modern communications and computing technologies to the creation, management and use of information through the utilisation of hardware, software, networks, and media for the collection, storage, processing, transmission and presentation of information and related services;
- “interconnection” means the physical or logical linking of one electronic communications network to another for the purpose of allowing the persons using one of them to be able to—
- (a) communicate with persons using the other electronic communications network; or
 - (b) make use of services provided by means of the other electronic communications network;
- “licensee” means a holder of a network licence, service licence, class licence or individual licence;
- “mobile station” has the meaning assigned to it in the Second Schedule;
- “network boundary” means the first equipment socket in a private residence, the main distribution frame in a building, or the point at which an electronic communications network receives electronic communications from, or send electronic communications to, a consumer;
- “network licence” means the licence referred to in paragraph (a) of subsection (1) of section *ten*;
- “network service” means a service for the carrying of information, in the form of speech or other sound, data, text or images, by means of guided or unguided electro-magnetic energy, but does not include services provided solely on the consumer side of the network boundary;
- “physical co-location” means a type of co-location where a licensee controlling a building, tower or other structure in, or on which, another licensee’s switches, antennae or other electronic communications network equipment are accommodated, and allows the other licensee to operate the switches, antennae or other electronic communications network equipment;

“private land” means land other than public land;

“public land” means any land owned or held by, or under the control or management of, a Government ministry, institution or department, a chief or a local authority;

“radio apparatus” means—

(a) an instrument, pole, mast, standard, wire, cable, thing or means whatsoever designed, constructed or adapted for use in connection with, or for the purpose of, conveying electrical energy to, a radio station; or

(b) any electronic communications apparatus which is capable of transmitting or receiving any signal by radio, excluding subscriber equipment if such equipment is used solely for that purpose;

“radio station” means a receiving station or a transmitting station, or a receiving and transmitting station;

“radiocommunication” means the transmission and reception of sounds, graphic images or impulses, wholly or partly, by means of Hertzian waves;

“radiocommunication service” means a service whose primary activity is the transmission or reception of radiocommunications;

“receiving station” means apparatus designed, constructed or adapted for use for the reception of radiocommunications;

“Register” means the Register kept pursuant to section *twenty-six*;

“repealed Acts” means the Telecommunications Act, 1994, and the Radiocommunications Act, 1994;

“reserved services” means the services declared as such by the Minister under section *twenty-two*;

“scarce resources” means resources that are limited, or any frequency spectrum, numbers and electronic addresses;

“sector” in relation to information and communication technology, means the sector in which employers and employees are associated for the carrying on of the marketing, manufacturing, assembling, servicing, installing, maintaining or repairing systems, software, equipment, machines, devices and apparatus, whether utilising manual,

- photographic, optical, mechanical, electrical, electro-static or electronic principles or a combination of such principles, that are primarily intended for the recording, processing, monitoring or transmission of voice, data, image or text or any combination thereof, for use in accounting, calculating, data processing, data transmission, duplicating, text processing, document reproduction, document transmission, record keeping and record retrieval, broadcasting or transmission for entertainment or information purposes of voice, image, text or any combination thereof or the provision of services relating to the foregoing activities;
- “service licence” means the licence referred to in paragraph (b) of subsection (1) of section *ten*;
- “ship station” has the meaning assigned to it in the Second Schedule;
- “telecommunications officer” means a person appointed as such under section *seventy-six*;
- “temporary licence” means the licence referred to under section *thirty*;
- “transmitting station” means apparatus, other than generating apparatus, designed, constructed or adapted for use, for the transmission or emission of radiocommunications;
- “Tribunal” means the Appeals Tribunal established under section *seventy-four*;
- “Vice-Chairperson” means the person elected as such under paragraph 1 of the First Schedule;
- “virtual co-location” means a type of co location where a licensee controlling the building, tower or other structure in, or on which, another licensee’s switches, antennae or other electronic communications network equipment are accommodated, operates those switches, antennae or other electronic communications network equipment on behalf of the other licensee;
- “universal access” means access by all citizens of Zambia to information and communications technology services;

- (2) For purposes of this Act, "access" includes access to—
- (a) network elements and associated facilities;
 - (b) physical infrastructure, including buildings, ducts and masts;
 - (c) relevant software systems, including operational support systems;
 - (d) number systems or systems offering equivalent functionality;
 - (e) fixed and mobile networks, in particular roaming;
 - (f) conditional access systems for digital television services; and
 - (g) virtual network services.

Supremacy
of Act
Cap. 1

3. Subject to the Constitution, where there is any inconsistency between the provisions of this Act and the provisions of any other written law relating to the regulation of information and communication technologies, the provisions of this Act shall prevail to the extent of the inconsistency.

PART II

THE ZAMBIA INFORMATION AND COMMUNICATION TECHNOLOGY AUTHORITY

Continuation
and renaming
of
Authority
Cap 469

4. (1) The Communications Authority established under the repealed Act shall continue to exist as if established under this Act and is for purposes of this Act hereby re-named the Zambia Information and Communications Technology Authority.

(2) The Authority shall be a body corporate with a common seal, capable of suing and of being sued and, subject to the provisions of this Act, capable of performing all such acts and things as a body corporate may, by law, do or perform.

(3) The provisions of the First Schedule apply to the Authority.

Autonomy
of Authority

5. Except as otherwise provided in this Act, the Authority shall be an autonomous body and shall not be subject to the direction of any other person or authority.

Functions of
Authority

6. (1) The Authority shall regulate the provision of electronic communication services and products and monitor the performance of the sector, including the levels of investment and the availability, quality, cost and standards of the electronic communication services.

(2) Without limiting the generality of subsection (1), the Authority shall—

- (a) implement and administer the licencing and assignment schemes provided for under this Act, including setting standards for the sector;
- (b) provide for national frequency and numbering plans and facilitate the efficient use and allocation of numbers and frequencies;
- (c) promote and facilitate the provision, in urban and rural areas, of such information and electronic communication services that meets all reasonable demand including, in particular, emergency services, directory information services and maritime services;
- (d) approve the sites at which all transmitting stations, other than aircraft stations, mobile stations or ship stations, are to be established and at which all radio station apparatus used in connection with the transmitting station is to be erected;
- (e) disseminate information and promote the participation of the public in the provision of electronic communications services;
- (f) promote the interests of consumers, purchasers and other users of information and electronic communications services, including, in particular, persons with disabilities and the aged in respect of the accessibility, quality and variety of the services and equipment;
- (g) promote competition among persons engaged in commercial activities relating to, or in connection with, the provision of information and communication technology and efficiency and economy on the part of persons so engaged;
- (h) promote research, development and the use of new and appropriate technologies in the sector and promote the manufacturing and production of relevant apparatus;
- (i) attract and encourage local and foreign investment in information and communication technology and promote the provision of international transit services;
- (j) administer the country code top level domain and electronic addresses;
- (k) allocate the frequency on which all radio transmitting stations and apparatus shall be worked;
- (l) approve—
 - (i) the mode of transmission to be adopted in connection with all transmitting stations and the power to be radiated therefrom;
 - (ii) the classes, types and standards of transmitting stations and the radio station apparatus to be

- (iii) the classes, types and standards of receiving stations and radio and other apparatus to be used in connection with diffusion services; and
- (m) perform any other functions as are necessary or incidental to the performance of its functions under this Act.

(3) The Minister may give to the Authority such general directives with respect to the carrying out of its functions under this Act as the Minister considers necessary or expedient and the Authority shall give effect to the directives.

(4) The Authority is hereby authorised to undertake and carry on any works or activities that, for persons other than the Authority, would by virtue of this Act require a licence.

(5) The Authority may perform such other functions and exercise such powers as are conferred on it by, or under, any other law.

(6) In exercising the powers conferred upon it under this Act, the Authority shall have regard to the provisions of the Convention.

Authority to
issue
guidelines

7. (1) In the exercise of its functions under this Act, the Authority may make such guidelines as are necessary for the better carrying out of the provisions this Act.

(2) The Authority shall publish all the guidelines issued under this Act in a daily newspaper of general circulation in Zambia, and the guidelines shall not take effect until they are so published.

(3) The guidelines issued by the Authority under this Act shall bind all persons regulated under this Act.

Competition
in sector

8. The Authority shall consult the Zambia Competition Commission on any matter relating to competition in the sector.

PART III

LICENCING OF ELECTRONIC COMMUNICATIONS OTHER THAN RADIOCOMMUNICATIONS

Prohibition
of operation
of network
or provision
of service
without
licence

9. (1) A person shall not operate an electronic communications network or provide an electronic communications service without a licence issued under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

10. (1) The Authority shall issue the following licences for purposes of this Act: Licences

- (a) a network licence, to allow the holder thereof to construct, own or make available an electronic communications network, or to provide a network service; and
- (b) a service licence, to allow the holder thereof to provide one or more electronic communications services.

(2) The Authority shall, in respect of each of the licences referred to in subsection (1), issue the following classes of licence:

- (a) individual licence; and
- (b) class licence;

11. (1) A person intending to operate a network or provide a service under this Act shall apply for an individual licence or a class licence in the prescribed manner upon payment of the prescribed fee. Application
for licence

(2) The Authority shall, within sixty days of receipt of an application, grant or reject the application.

(3) Where the Authority fails to make a decision within the period referred to under subsection (2), except as otherwise provided under this Act, the application shall be deemed to have been granted.

(4) The Authority shall, where it rejects an application for a licence, inform the applicant accordingly and give the reasons therefor.

(5) The Authority may request for further particulars or information in respect of an application.

12. (1) The Authority shall issue a licence under this Act, if— Issue of
licence

- (a) the application is in accordance with the provisions of this Act; and
- (b) the applicant is financially and technically capable of meeting the applicant's obligations and the terms and conditions of the licence.

(2) The Authority shall communicate its decision in respect of an application for a licence to the applicant, in writing, within fourteen days of such decision.

13. (1) A licence issued under section *twelve* shall— Conditions
of licence

- (a) contain the terms and conditions of the licence; and
- (b) be valid for such period as may be prescribed.

(2) The terms and conditions referred to under subsection (1) may relate to the rights and obligations in respect of interconnection access and facility sharing.

Variation of
licence

14. (1) A licensee may, at any time during the validity of the licence, apply to the Authority for variation of the terms and conditions of the licence or any matter relating to the licence.

(2) The Authority shall consider the application referred to in subsection (1) and may grant or reject the application, and shall give reasons to the applicant where it rejects the application.

(3) The Authority may vary the terms and conditions of a licence where—

- (a) the variation is necessary in the public interest; or
- (b) the variation is necessary to address the concerns of the members of the public or consumers.

(4) The Authority shall, before making any variation of the terms and conditions of a licence under this section, give notice to the licensee—

(a) stating that it proposes to make variations in the manner specified in the notice; and

(b) specifying the time, not being less than thirty days from the date of service of the notice on the licensee, within which written representation in respect of the proposed variation may be made to the Authority by the licensee.

Surrender of
licence

15. (1) Where a licensee decides not to continue with any undertaking to which the licence relates, the licensee shall notify the Authority in writing and shall agree with the Authority on the terms and conditions of the surrender of the licence, with particular reference to anything done or any benefit obtained under the licence.

(2) Where a licence is surrendered under sub section (1), the licence shall lapse, and subject to section *eighteen*, be cancelled and the licensee shall cease to be entitled to any benefits obtainable under the licence.

Transfer of
licence

16. (1) A licensee shall not transfer, cede, pledge, assign or otherwise dispose of, or encumber, a licence without the prior approval of the Authority.

(2) An application for approval to transfer a licence shall be made to the Authority and the Authority may, within thirty days of receipt of the application—

- (a) approve the application on such terms and conditions as it may determine; or
- (b) reject the application in accordance with the provisions of this Act.

17. (1) The Authority may, upon application by a licensee, amend the licence where—

Amendment
of licence

- (a) some other person has succeeded to the interest in the licence belonging to the licensee, by substituting for the name of the licensee, the name of the successor; or
- (b) the name of the licensee has changed, by substituting the name so changed.

(2) The Authority shall, before amending a licence under subsection (1), notify the public in a daily newspaper of general circulation in Zambia.

(3) No compensation is payable by the Authority to a licensee for any amendment to a licence under this section.

18. (1) Subject to the other provisions of this Act, the Authority may suspend or cancel a licence if the holder—

Suspension or
cancellation
of licence

- (a) obtained the licence by fraud or submission of false information or statements;
- (b) contravenes this Act, any other written law relating to the licence or any terms and conditions of the licence;
- (c) fails to comply with a decision or guidelines made by the Authority;
- (d) enters into receivership or liquidation or takes any action for voluntary winding up or dissolution;
- (e) enters into any scheme of arrangement, other than for the purpose of reconstruction or amalgamation, upon terms and within such period as may previously have been approved in writing by the Authority;
- (f) is the subject of any order that is made by a court or tribunal for its compulsory winding up or dissolution;
- (g) has ceased to fulfil the eligibility requirements under this Act; or
- (h) the suspension or cancellation is in the public interest.

(2) The Authority shall, before suspending or cancelling a licence in accordance with sub section (1), give written notice to the holder thereof of its intention to suspend or cancel the licence and shall—

- (a) give the reasons for the intended suspension or cancellation; and
- (b) require the holder to show cause, within a period of not more than thirty days, why the licence should not be suspended or cancelled.

(3) The Authority shall not suspend or cancel a licence under this section if the licensee takes remedial measures to the satisfaction of the Authority within the period referred to in subsection (2).

(4) The Authority shall, in making its final determination on the suspension or cancellation of a licence, consider the submissions made by the licensee under subsection (2).

(5) The Authority may suspend or cancel a licence if the holder after being notified under sub section (2) fails to show cause or does not take any remedial measures, to the satisfaction of the Authority, within the time specified in that sub section.

(6) A licensee shall, where the licence is suspended, cease to be entitled to the rights and benefits conferred under this Act for the period of the suspension of the licence.

(7) Where a licence is cancelled, the holder of the licence shall cease to be entitled to the rights and benefits conferred under this Act, with effect from the date of such cancellation and shall return the licence to the Authority.

(8) The Authority shall, where it suspends or cancels a licence under this section, publish the suspension or cancellation, as the case may be, in a daily newspaper of general circulation in Zambia.

Renewal of
licence

19. (1) A licensee may, not less than three months before the expiry of a licence, apply for the renewal of the licence in the prescribed manner and form, upon payment of the prescribed fee.

... .. makes an application

provisions of this Act, the terms and conditions of the licence, the guidelines issued by the Authority or any other relevant law.

20. (1) The Authority may, by declaration—

(a) exempt a person or class of persons, for a limited or unlimited period of time, from the requirement to hold an individual licence or a class licence under this Part; or

(b) specify activities for which an electronic communications licence shall not be required.

(2) The Authority may, where it issues a declaration under subsection (1), reverse its decision if the licencing of an exempt person or class of persons, or exempt activities, becomes necessary for the purposes of this Act.

(3) The Authority shall, where it reverses its decision under subsection (2), notify in the prescribed manner and form, the affected persons, and give the reasons for the reversal before effecting the reversal.

21. Nothing in this Act shall be construed as exempting any person undertaking an activity that is exempt from any licencing requirements under this Act from complying with the other provisions and requirements of this Act.

22. The Minister may, by statutory instrument, declare certain services as reserved services where the Minister considers it necessary to do so, having regard to the strategic and policy considerations related to providing the service.

23. (1) A holder of an individual licence shall provide the following essential electronic communications services twenty four hours a day, seven days a week, at the prescribed level of quality, without discrimination:

Exemption of specific persons, activities, etc.

Obligations of persons undertaking exempt activities

Reserved services

Provision of essential services

to enable a

(d) such other services as the Minister may determine, in consultation with the Authority.

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

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

- (a) emergency service;
- (b) operator assistance for remedying faults; and
- (c) directory assistance services.

Change of
control of
licensee

24. (1) A licensee shall, in the prescribed manner and form, notify the Authority of any direct or indirect changes to its shareholding.

(2) A licensee shall obtain the Authority's prior written consent for—

- (a) any transfer of shares which would result in the direct or indirect ownership of more than twenty-five per centum of the issued voting share capital of the licensee; or
- (b) any change in the ownership of the licensee's issued voting share capital that results in a change in the composition of one quarter of the licensee's board of directors.

Necessity for
scarce
resources
assignment

25. Nothing in this Part shall be construed as permitting a licensee to commence its activities contrary to any provision of this Act relating to the requirement to obtain rights of use for scarce resources in accordance with Part VI.

Register

26. (1) The Authority shall keep and maintain a Register under this Act, in which the Authority shall enter—

- (a) the names and other details relating to the licences;
- (b) information relating to applications rejected by the Authority and the reasons therefor; or
- (c) any other information that the Authority considers necessary for purposes of this Act.

(2) The Register referred to in sub section (1), shall be kept at such places as the Authority may determine, and shall be open to inspection by the public at such times and on such conditions, including the payment of fees for inspection, as may be determined by the Authority.

PART IV

LICENCING OF RADIOCOMMUNICATION SERVICES

27. (1) This Part applies to radiocommunications.

Application of
Part

(2) In this Part, "licensee" means a holder of a licence under this Part.

(3) The provisions of this Part and of the Convention shall not apply to the Zambia Police Force or the Defence Force except in so far as they relate to—

- (a) the establishment of transmitting stations and the erection of radio station apparatus at permanent sites;
- (b) the allocation of frequencies by the Authority;
- (c) migration from existing frequency bands following frequency spectrum band re-planning by the Authority;
- (d) the approval of the Authority of the mode of transmission to be used in connection with radio transmitting stations and the power to be radiated therefrom;
- (e) the prevention of harmful interference;
- (f) distress calls, messages and signals; and
- (g) the manner of carrying on radiocommunication services governed by the provisions of the Convention.

28. (1) Except as otherwise provided under this Part, a person shall not establish and operate a radio station or provide a radiocommunication service without a licence.

Prohibition
of operating
radio station,
etc. without
licence

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

29. (1) A person intending to establish and operate a radio station or to provide a radiocommunication service shall apply to the Authority for a licence in the prescribed manner and form upon payment of the prescribed fee.

Application
for licence

(2) The Authority shall, within sixty days of receipt of an application, grant or reject an application.

(3) The Authority shall, where it rejects an application, give the applicant the reasons for the rejection.

(4) The Authority may request for further particulars or information in relation to an application, and where it does so, the period referred to in subsection (2) shall commence from the date of the submission of the additional information.

Licence

30. (1) The Authority shall issue a licence if the application meets the requirements of this Act.

(2) A licence under this section, other than a temporary licence under subsection (3), authorises the licensee to establish and operate one or more radio stations at such places as may be specified in the licence, and to provide a radiocommunication service by means of the station or stations in accordance with the provisions of this Act and the conditions of the licence.

(3) The Authority may, with or without charge, issue a temporary licence authorising a person to be in possession of, and to operate, a radio station in accordance with this Act for a limited period and on such other conditions as are attached to the licence.

(4) The Authority may issue a declaration, known as a class assignment, granting a class of persons, subject to certain conditions, the right to use frequency bands or numbers.

Conditions
of licence

31. (1) A licence shall be subject to such conditions as the Authority may specify in the licence and to such other conditions as the Minister may, on the advice of the Authority, prescribe by statutory instrument.

(2) Without limiting the generality of subsection (1), the conditions of a licence may—

- (a) specify the site or sites at which any radio station or radio stations to be operated under the licence are to be located and regulate the manner of their installation;
- (b) specify the kind and class of radio station authorised and regulate the type and standard of radio station apparatus to be used in the radio station;
- (c) specify the frequency at which transmissions from any radio station are to be made and the mode of effecting the transmissions;
- (d) require the payment to the Authority of annual or other periodic licence fees;
- (e) require the licensee or any other person concerned in providing any service authorised by the licence to furnish to the Authority such documents, accounts, returns,

estimates and other information as the Authority considers necessary for the purposes of this Act;

- (f) require the licensee to refer specified matters to the Authority for determination;
- (g) require the licensee to comply with directions given by the Authority in relation to specified matters;
- (h) provide for the settlement of disputes arising in connection with the terms and conditions of, or otherwise concerning, the licence; and
- (i) require the payment of fines and penalties by the licensee for breaches of any specified terms and conditions of the licence.

(3) It shall be deemed to be a condition of every licence that the licensee shall comply with the provisions of the Convention, to the extent that it applies to the licensee's activities.

32. A licence remains in force for the period specified in the licence, unless sooner revoked or suspended.

Duration of
licence

33. (1) A licensee may, not less than three months before the expiry of a licence, apply for the renewal of the licence in the prescribed manner upon payment of the prescribed fee.

Renewal of
licence

(2) The Authority may, upon application by a licensee, renew a licence or a temporary licence on such terms and conditions as it may determine.

34. A licence shall not be bought, sold, leased, mortgaged or charged, or in any manner assigned, demised or encumbered.

Licences not
transferable

35. (1) A person may apply to the Authority for a certificate of competence to operate an amateur radio station in the prescribed manner upon payment of the prescribed fee.

Certificate of
competence to
operate
amateur radio
station

(2) The Authority may issue a certificate of competence to a person who holds the qualifications and experience, prescribed by regulation, as necessary for operating an amateur radio station.

36. (1) A person who, without a licence—

Unauthorised
activities

- (a) operates a radio station of a kind specified in the Second Schedule or has possession or control of such a radio station; or
- (b) not being a broadcaster, operates a radio station of a kind other than a kind specified in the Second Schedule, or has possession or control of such a radio station; or
- (c) provides a radiocommunication service;

commits an offence.

(2) A person who, without a certificate of competence, operates an amateur radio station, or has possession or control of such a radio station, commits an offence.

(3) A person convicted of an offence under this section is liable to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Suspension
or revocation
of licence or
certificate

37. (1) The Authority may suspend or revoke a licence or certificate of competence if the holder thereof is in default.

(2) For the purposes of this section, a licensee or a person who holds a certificate of competence is in default if the licensee or person—

(a) has contravened—

(i) the conditions of the licence or certificate;

(ii) any provision of the guidelines issued by the Authority; or

(iii) any provision of this Act; or

(b) has been the subject of such complaints by the public as, in the opinion of the Authority, warrants action under this section.

(3) Where a licensee or a holder of a certificate of competence is in default, the Authority may—

(a) by notice in writing to the holder of the licence or certificate, suspend the licence or certificate for a period not exceeding twelve months;

(b) by notice in writing, revoke the licence or certificate; or

(c) refuse to renew the licence or certificate on its expiry.

(4) Without limiting the generality of subsection (3), the Authority may revoke or refuse to renew a licence on the ground that—

(a) the radio station in respect of which the licence was issued, or the radio station apparatus used in connection therewith—

(i) interferes with the operation of a radio station or the carrying on of any established radiocommunication or telephone or telegraph services; or

(ii) is likely to interfere with established radio station apparatus or other equipment, circuits, wires or the like; or

(b) radiocommunication services established by the Authority or a licensee after the date of issue of the licence are available to the licensee and provide an adequate means of communication for the licensee's purposes.

(4) Where a licence is revoked, the person in possession or control of a radio station to which the licence relates, shall dispose of the radio station within such period as the Authority may direct.

(6) A licence or certificate shall not be cancelled, nor shall its renewal be refused, without giving the holder thereof a reasonable opportunity to be heard.

38. (1) A person who desires to construct a railway or works for the supply of light, heat or power by means of electricity shall—

Notice to be
given of certain
works

(a) give one month's notice in writing to the Authority of the intention to commence the construction of the railway or works and cause a copy of that notice to be published in the *Gazette* and in one daily newspaper of general circulation in Zambia; and

(b) furnish the Authority with a plan of the proposed railway or works, together with particulars showing the manner and position in which the railway or works are to be constructed and operated and any further information that the Authority may require.

(2) Where it appears to the Authority that—

(a) the operation of, or the equipment to be used in connection with, a railway or works referred to in subsection (1) is likely to interfere with the operation or maintenance of a radio station or radio station apparatus or the carrying on of a licenced radiocommunication service; or

(b) the operation or maintenance of a radio station or radio station apparatus of a licensee, or a radiocommunication service carried on by a licensee, is being interfered with by the construction or operation of the equipment used in connection with—

(i) a railway or works referred to in subsection (1);
or

(ii) any railway, works or other operations whatsoever;

the Authority shall, in writing, notify the person constructing or operating the railway or works, of the action which the person shall take to remedy or prevent the interference.

(3) A person who proceeds with the construction of the equipment of a railway or works, or continues to operate a railway or works after the issuance of the notice by the Authority under subsection (2) without complying with the terms of the notice, shall be liable—

(a) to a penalty, recoverable by the Authority by action in a court, of twenty thousand penalty units for each day that the person fails to comply with the terms of the notice; and

(b) for any loss or damage caused to the operation or maintenance of a radio station or radio station apparatus by that person's failure to comply with the terms of the notice.

(4) Nothing in this section limits or affects the rights or remedies of any licensee or other person against a person on whom this section imposes any duty.

PART V
ECONOMIC REGULATION

Definition

39. In this Part, "licensee" means a holder of a network licence or service licence, or both.

Relevant
markets and
dominant
market
players

40. (1) The Authority shall, not later than 31st December of each year, determine and publish in the *Gazette* a list for the following calendar year of—

(a) all retail and wholesale electronic communications markets that the Authority determines warrant the regulatory control provided for in this Part; and

(b) licensees considered to hold, for each electronic communications market identified under paragraph (a), a dominant position.

(2) Any determination under subsection (1) shall be the final decision of the Authority.

(3) The Authority shall consider a licensee as holding a dominant position in the electronic communications market in accordance with such guidelines as the Authority may issue pursuant to subsection (4).

(4) The Authority shall publish in a daily newspaper of general circulation in Zambia the guidelines on the definition of an electronic communications market and of the determination of a licensee that holds a dominant position in the market.

(5) The Authority shall, in the preparation of a list under subsection (1), take into account the guidelines referred to under subsection (4).

(6) The Authority may, by notice published in the *Gazette*, upon giving notice for a period of thirty days, modify for the remainder of the relevant calendar year, the list published under sub section (1).

41. (1) A licensee may, and where solicited in writing by another licensee shall, negotiate, in good faith, for the purposes of enabling the provision of electronic communications services to the public, an agreement for interconnection, in respect of electronic communications networks.

Interconnection

(2) A licensee may, where the licensees referred to under subsection (1) fail to reach agreement within the prescribed period from the date of receipt of a written request, refer the matter to the Authority for determination.

(3) Where a licensee refers a matter to the Authority under subsection (2), the Authority shall order the licensees who failed to reach an agreement to interconnect their electronic communications networks on such terms and conditions as the Authority may determine.

(4) The Authority may, where the dispute referred to in subsection (2) is not referred to the Authority within the prescribed period, determine the dispute.

(5) A licensee that, for the calendar year in question holds a dominant position in an interconnection market in accordance with this Act, shall for the purpose of providing electronic communications services to the public, in relation to the interconnection market—

(a) offer interconnection to other licensees on the terms specified in a reference interconnection offer—

(i) submitted for the approval of the Authority, within such period as may be prescribed, from the date of publication in the *Gazette* of the licensee's status as a licensee holding a dominant position;

(ii) subject to such amendments as the Authority considers appropriate; and

(iii) published, in a format readily accessible to other licensees, within such period as may be prescribed from the date of receiving the approval;

- (b) ensure that the reference interconnection offer, and its terms and conditions, and the subsequent provision of interconnection is fair and non discriminatory and—
- (i) the interconnection fees are cost oriented and transparent;
 - (ii) the interconnection points are made accessible on a transparent basis at any technically feasible point in the network; and
 - (iii) the terms and conditions determined by the Authority at the time of the offer are incorporated within the reference interconnection offer;
- (c) provide interconnection and ancillary information to other licensees under the same conditions, and of the same quality, as the licensee provides for the licensee's own services or those of its subsidiaries, affiliates or agreements; and
- (d) maintain the licensee's accounts in a manner that enables the Authority to verify the licensee's compliance with paragraph (b).
- (6) A licensee shall maintain a separate account for interconnection and any other business activities sufficiently detailed to allow the Authority to identify all elements of revenue and costs, together with the basis of their calculation.
- (7) An interconnection agreement resulting from the signature of a reference interconnection offer, shall be in writing, in English and shall not pose an unnecessary risk—
- (a) in the event of catastrophic networkbreakdown or in exceptional cases of *force majeure* such as extreme weather, earthquakes, flood, lightning or fire, to the maintenance of—
 - (i) an electronic communications network used for the provision of electronic communications services to the public; or
 - (ii) an electronic communications service provided to the public;

- (b) to the integrity of an electronic communications network used for the provision of electronic communications services to the public;
- (c) to the inter-operability of electronic communications services; or
- (d) to the protection of personal data, the confidentiality of information processed, transmitted or stored, or the protection of privacy.

(8) An interconnection agreement shall not be implemented without the prior written approval of the Authority:

Provided that the Authority shall only withhold the approval where it considers that the interconnection agreement does not meet the essential requirements specified in this section.

(9) The Authority shall make a decision on an interconnection agreement within sixty days of the submission of the agreement by the parties.

(10) The Authority shall, where it does not give its approval to the interconnection agreement, give the reasons for the decision.

(11) The parties to an interconnection agreement may, where the Authority rejects the agreement, re submit a modified version of the agreement within such period as may be prescribed.

(12) Where the Authority fails to issue a written decision within sixty days of receiving an interconnection agreement, the failure to respond shall be treated as an approval of the interconnection agreement.

(13) Any information obtained by any party to an interconnection agreement as a result of the negotiation referred to in subsection (1) and which was, at the time it was obtained—

- (a) previously not known to the party obtaining it; and
- (b) not publicly available;

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

42. The Authority shall maintain a register of all interconnection agreements, which shall—

Register of
interconnection
agreement

- (a) contain the terms and conditions of each interconnection agreement; and
- (b) be open to public inspection on such terms and conditions as the Authority may determine.

Access
agreements

43. (1) A licensee may, for the purpose of providing electronic communications services to the public, negotiate in good faith, an agreement for access to any element of the electronic communications network elements of the licensee that appear in the list referred to in section *forty-one*, and, where requested in writing by another licensee, shall, for the purpose of enabling the provision of electronic communications services to the public, negotiate an agreement for access to the electronic communications network.

(2) Where the parties referred to in subsection (1) fail to reach agreement within the prescribed period, any party may refer the matter to the Authority for determination.

(3) The Authority shall, where a licensee refers a matter to it under subsection (2), order the licensee to whom a request is made pursuant to subsection (1), to allow access to that licensee's electronic communications network, on such terms and conditions as the Authority may determine.

(4) A licensee that, for the calendar year in question, holds a dominant position in an electronic communications market in accordance with this Act, shall for the purpose of providing electronic communications services to the public, in relation to the electronic communications market, offer access to requesting licensees—

- (a) on reasonable and non discriminatory terms and conditions, in particular in respect of the price; and
- (b) of the same technical quality as the technical quality provided on the licensee's own electronic communications network or, for the licensee's own electronic communications services.

(5) An access agreement shall be in writing and shall be filed with the Authority.

(6) The Minister may, by statutory instrument, prescribe matters and other particulars for inclusion in access agreements.

(7) The Authority shall maintain a register of all access agreements, that—

- (a) shall, without revealing the terms and conditions of the agreement, contain—
 - (i) the names of the parties to the agreement;
 - (ii) a general description of the matters governed by the agreement; and
 - (iii) the date of the agreement; and
- (b) shall be open to public inspection, on such terms and conditions as the Authority may determine.

44. (1) A licensee who has the right under this Act to install facilities on, over or under public or private land, or to use private property, shall, where requested in writing by another licensee for the purpose of providing electronic communications services to the public, negotiate an agreement for co location with that other licensee.

Co-location

(2) Where the parties referred to under subsection (1), fail to reach agreement within the prescribed period, either party may refer the matter to the Authority for determination.

(3) The Authority shall, where a matter is referred to it under subsection (2), order the parties to undertake co location on such terms as it may determine.

(4) Notwithstanding subsection (1), a licensee may reject a request to negotiate an agreement for co-location where—

- (a) the space available is insufficient to accommodate the physical co-location requested and virtual co location is not reasonably feasible;
- (b) the co-location requested is likely to lead to harmful interference; or
- (c) viable alternatives to co-location are open to the requesting party and have not been reasonably explored.

(5) A licensee shall make a refusal to negotiate an agreement for co location in writing and shall set forth clearly and in sufficient detail the reasons relied upon:

Provided that such refusal shall be approved by the Authority.

(6) A co-location agreement shall be in writing in the English language.

(7) A co-location agreement shall not be implemented unless it is filed with the Authority and the consultation process on the agreement is completed in accordance with the requirements of this Act.

(8) The Authority shall maintain a register of all co-location agreements that—

(a) shall, without revealing the terms and conditions of the agreement, contain—

- (i) the names of the parties to the agreement;
- (ii) a general description of the matter governed by the agreement; and
- (iii) the date of the agreement; and

(b) shall be open to public inspection, on such terms and conditions as the Authority may determine.

(9) Any information obtained by either party to a co location agreement as a result of the negotiation referred to in subsection (1), and which was, at the time it was obtained—

- (a) previously not known to the party obtaining it; and
- (b) not publicly available;

shall, where the information remains publicly unavailable, be used only for the purposes for which it was supplied.

(10) A third party resident in, and any public authority having control over, any area in which co-location is proposed shall —

- (a) be informed of the filing with the Authority of any relevant co location agreement by publication in a daily newspaper of general circulating in the area at the expense of the parties to the co-location agreement; and
- (b) be afforded an opportunity to make submissions to the Authority in respect of the proposed co-location.

(11) The Authority shall give consideration to any submissions it may receive under subsection (10) and may, where it is satisfied that there is a risk of serious harm to the interests of the public regarding public safety and quality of life, order the parties not to undertake the proposed co-location or to modify or cease the co-location.

45. (1) The parties to an agreement shall, where interconnection, access or co-location is established before the execution of an interconnection, access or co-location agreement, within sixty days of the establishment, agree on interim interconnection, access or co-location charges for a specified period until the interconnection, access or co-location agreement becomes effective.

Interim
arrangements for
interconnection,
access or co-
location

(2) Where the parties fail to agree within the sixty day period referred to under subsection (1), such charges as the Authority may determine shall apply.

(3) Where an interconnection, access or co-location agreement comes into effect, it shall be deemed to have applied from the date the interconnection, access or co-location was established.

(4) The parties shall, where subsection (3) applies, adjust retroactively any charges previously agreed or imposed by the Authority and thereafter effect payments in accordance with the provisions of the interconnection, access or co-location agreement.

46. Any requests or refusals for interconnection, access or co-location shall be made in writing, sent by registered post and copied to the Authority.

Authority
to be copied

47. (1) Subject to the other provisions of this Act, a licensee may set and revise tariffs in relation to electronic communications services.

Tariffs for
services to
public

(2) A licensee shall, in setting any tariffs under subsection (1), observe the following principles:

- (a) tariffs shall be transparent and non discriminatory, and be based on the cost of providing the service;
- (b) cross subsidies shall be eliminated; and
- (c) tariffs shall not contain discounts that unreasonably prejudice the competitive opportunities of other licensees providing electronic communications services to the public.

(3) A licensee shall submit to the Authority for approval, the tariffs the licensee intends to charge including the justification, prior to their introduction.

(4) The Authority shall approve or reject the proposed tariffs within thirty days of receipt:

Provided that the Authority shall, where it rejects any tariffs proposed by a licensee, give the licensee the reasons for the rejection.

(5) A licensee shall, upon approval of the tariffs by the Authority—

(a) publish the tariffs at the licensee's own expense in at least two daily news-papers of general circulation in Zambia at least seven days prior to their introduction; and

(b) provide all its electronic communications services in accordance with the tariffs approved by the Authority.

(6) A licensee shall not alter or vary any tariffs without the prior written approval of the Authority.

(7) The Authority shall maintain a register of approved tariffs which shall be open for public inspection on such terms and conditions as the Authority may determine.

(8) The Authority may carry out reviews of the tariffs so as to ensure that the tariffs conform to the provisions of this section.

(9) A licensee shall, in relation to the electronic communications services provided to the public, provide detailed billing information to enable the consumers to verify whether or not they have been billed correctly.

Tariffs for
services
offered by
licensee
holding
dominant
position

48. (1) A licensee that holds a dominant position in a retail electronic communications market shall, in relation to the electronic communications market—

(a) submit to the Authority for its prior approval, the tariffs it intends to charge to the public for each electronic communications service, together with a detailed justification for the tariffs; and

(b) shall not apply the tariffs until the tariffs are approved by the Authority in accordance with subsection (2).

(2) Subject to subsection (4), the Authority shall issue a written decision approving or disapproving the tariffs submitted under subsection (1), together with the reasons for the decision, within thirty days of the receipt of the submission for approval.

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

- (a) comply with the principles stipulated under section *fifty*;
- (b) are cost oriented; and
- (c) meet such other criteria as the Authority may consider relevant for purposes of this Act.

(4) The Authority may request for additional information from a licensee and, where it does so, the period referred to under paragraph (a) of subsection (2) shall commence from the date of the submission of the additional information.

49. (1) The Authority may forbear from applying to a licensee or a class of licensees, in any or all of the licensees or their geographic markets, any provision of this Part, where the Authority considers that—

Forbearance

- (a) application of the provision is not necessary for the protection of consumers or the promotion of competition amongst licensees; and
- (b) forbearance from applying the provision is consistent with the objects of this Act.

(2) The Authority shall, where it decides to forbear from applying any provision, immediately, publish a notice of forbearance in the *Gazette*, setting out the details of, and the reasons for, the decision, and inviting interested parties to make submissions in relation to that decision within a period specified in that notice, but in any event, not shorter than thirty days from the date of publication of the notice.

(3) The Authority shall, before issuing its final decision take into account any representation that it receives in accordance with subsection (2).

50. (1) A holder of an individual licence shall not impose any tariff or charge for the provision of any service unless the Authority approves the tariff rates and charges in accordance with the provisions of this Part.

Approval of
tariffs and
charges of
holders of
individual
licences

(2) A holder of an individual license shall only provide services at the tariff rates and charges approved by the Authority.

(3) A holder of an individual license shall publish the tariff rates charged to customers for any service and any variations thereto, as may be approved by the Authority.

(4) The tariff rates established by a holder of an individual licence under subsection (1) shall be based on such conditions as the Authority may determine in accordance with the following principles:

- (a) tariff rates shall be structured and levels set to attract investments into the communications industry;
- (b) tariff rates shall take into account the regulations and recommendations of the international conventions to which Zambia is a party; and
- (c) all services shall be priced, rated, billed and denominated in the local currency of the Republic.

Tariff rates
and
regulations

51. (1) The Minister may, by statutory instrument, make regulations on the determination and publication of tariff rates for respective services provided by the licensees under this Act.

(2) The regulations under subsection (1) may include

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

Penalty for
using
unapproved
tariffs,
charges, etc.

52. A licensee who exceeds the tariff rates or charges approved by the Authority for the provision of any service or who imposes any unauthorised tariff or charge, commits an offence and is liable, upon conviction, to a fine not exceeding two million penalty units.

PART VI

TECHNICAL REGULATION

Prohibition
of using
frequency
bands, etc.
without
assignment

53. A person who uses one or more frequency bands and electronic addresses or numbers without an individual assignment commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Spectrum
and
number
assignment

54. (1) The Authority may, by declaration, designate the bands of frequency spectrum and numbers to be used for a class assignment and that may be used without an assignment

(2) A person intending to undertake an activity covered by a class assignment shall, prior to undertaking such activity, apply to the Authority in the prescribed manner and form upon payment of the prescribed fee.

(3) The Authority shall, in any case not expressly covered by the declaration referred to under subsection (1), assign frequency spectrum and numbers individually—

(a) in accordance with the national frequency and national numbering plan; and

(b) in a transparent and non discriminatory manner.

(4) A person intending to undertake an activity covered by an individual assignment shall, prior to undertaking the activity, apply for the assignment in the prescribed manner upon payment of the prescribed fee.

(5) Subject to subsection (7), the Authority shall issue an individual assignment to an applicant who is financially and technically capable of meeting the legal obligations and complying with the terms and conditions of the individual assignment.

(6) Where the Authority considers, after having regard to—

(a) the availability of any given frequency band or number, or block thereof; and

(b) the actual or likely demand for that frequency band or number, or block thereof; that the frequency band or number, or block thereof, should be subject to a restricted granting procedure, the Authority shall not assign that frequency band or number, or block thereof, except in accordance with a restricted granting procedure determined by the Authority in a declaration.

(7) The choice of successful applicants by the Authority under this section shall be based on objective criteria made known in advance to all the applicants.

(8) The Authority shall determine the standard assignment conditions for individual assignments of frequency or numbers and the class assignments of frequency or numbers.

(9) The Authority may, in respect of an individual assignment of frequency or numbers, determine the terms and conditions, including the period of the assignment and the area for which the assignment is valid.

(10) Where applicable, an assignment issued under this section shall be issued at the same time as an associated electronic communications license.

Numbering
plan

55. (1) The Minister may, in consultation with the Authority, by statutory instrument, make regulations prescribing a numbering plan for the efficient use and allocation of numbers and to accommodate the varied protocols used and services provided by licensees under this Act.

(2) A numbering plan shall consist of a scheme of identification so as to ensure that electronic communications are correctly and efficiently directed to the point of reception for which they are intended.

(3) Subject to subsection (8), the Authority shall, in preparing a numbering plan, take account of existing numbering plans or schemes.

(4) The numbering plan referred to under subsection (1) shall be non discriminatory.

(5) The Authority shall maintain and manage a record of the status of all number ranges, codes and blocks of numbers comprising the plan in a central numbering database system.

(6) A holder of an individual licence in respect of a service licence and a holder of an individual licence in respect of a network licence, shall submit to the Authority information on all numbers, including numbers of pre paid subscribers allocated in terms of the licence.

(7) The Authority may amend or update a numbering plan as the Authority considers necessary and the licensee shall bear the costs of such amendment or update.

(8) Regulations made under subsection (1) shall include matters relating to

- (a) the fees payable by licensees for the allocation of numbers;
- (b) the conditions under which a licensee may be required to surrender unused numbers to the Authority for re-allocation;
- (c) the allocation of responsibility between holders of service licences and network licences for the implementation of the numbering plan and number portability to—
 - (i) ensure effective functionality;
 - (ii) ensure access and routing within electronic communications networks; and

- (iii) allow licensees to assign numbers to subscribers in an efficient manner without unreasonable delay or disruption of service;
- (d) the protection of consumers including disclosure of consumer rights relating to—
 - (i) numbers; and
 - (ii) the process and procedures to be followed for resolving subscriber complaints and affording subscribers remedies in the form of discounts and credits when a holder of a network licence or service licence fails to meet the holder's obligations under this section; and
- (e) a framework, including a schedule for transforming the numbering plan to a non geographic numbering system taking into account similar non geographic numbering plans adopted in other jurisdictions and implementation of electronic numbering, allowing the inter operation between telephone numbers and the internet domain name system.

56. (1) Notwithstanding the other provisions of this Part, an assignment shall not be required under this Part for any activities listed as exempt in a declaration issued by the Authority.

Assignment
exemption

(2) The Authority may, by declaration published in the *Gazette*, exempt a person or class of persons from the requirement to hold an individual assignment or a class assignment under this Part.

57. (1) The Minister may, by statutory instrument, and in consultation with the Authority, determine—

Assignment
fees

- (a) the one off fees payable for the filing of class assignment registration forms and individual assignment application forms;
- (b) the one off fees payable for the actual assigning of frequency spectrum, electronic addresses or numbers;
- (c) the annual fees payable for the monitoring of the licensee's compliance with the conditions attached to the class or individual assignment; and
- (d) the exemption, from the payment of assignment fees, by persons engaged in activities declared under section *fifty-six*.

Renewal of
assignment

(2) Where the Authority applies a restricted granting procedure, it shall determine the fee payable for the actual assigning of frequency spectrum, electronic addresses or numbers in accordance with the declaration issued under section *fifty-four*.

58. (1) A holder of an individual assignment shall, not less than thirty days before the expiry of the individual licence, apply for renewal of the licence in the prescribed manner and form.

(2) The Authority shall, where an application for renewal of an individual assignment is made under subsection (1), except where it considers that the frequency band, electronic addresses or number should be subject to a restricted granting procedure, renew the individual assignment for such term as the Authority may determine, where the assignee—

(a) continues to fulfil the eligibility

requirements under this Act;

(b) continues to be financially and technically capable of meeting the assignee's statutory and regulatory obligations and the obligations in the individual assignment; and

(c) has not, during the term of the assignment, committed a breach of the provisions of the individual assignment.

(3) A holder of a class assignment shall, in order to remain eligible to undertake activities covered by the class assignment, fourteen days prior to each anniversary of the date on which the holder filed the application with the Authority, submit an updated version of the appropriate class assignment registration form.

(4) A person who does not comply with subsection (3) shall be de registered by the Authority in respect of the class assignment and shall immediately cease to undertake any activities authorised under the class assignment.

Modification,
suspension
and
withdrawal
of individual
assignments

59. (1) The Authority may modify the special terms and conditions of an individual assignment, including the specific frequency bands, electronic addresses or numbers assigned, and may suspend or withdraw an individual assignment.

(2) The Authority shall not exercise any power referred to under subsection (1), unless the Authority notifies the holder of the individual assignment in the prescribed manner and form, giving the holder the reasons therefor and an opportunity to make representations on the matter to the Authority.

(3) The Authority may exercise the powers conferred under subsection (1) where—

- (a) the holder of an individual assignment fails to make proper and efficient use of the frequency bands, electronic addresses or numbers assigned to the holder;
- (b) the holder of an individual assignment fails to comply with the provisions of this Act or the terms and conditions of the individual assignment;
- (c) the holder of an individual assignment contravenes the provisions of any written law relevant to the individual assignment;
- (d) the holder of an individual assignment fails to comply with any directive, declaration or other guidelines made by the Authority;
- (e) the holder of an individual assignment has ceased, however briefly, to fulfil the eligibility requirements under this Act; or
- (f) the Authority has reasonable grounds to believe that it is in the public interest that it exercises the powers.

(4) The Authority shall, before effecting a modification, suspension or withdrawal under this section give notice to the assignee—

- (a) stating that it proposes to act in the manner specified in the notice; and
- (b) specifying the time, not being less than thirty days from the date of service of the notice on the assignee within which written representation in respect of the proposed actions may be made.

(5) The Authority shall, upon receipt of any representation referred to in subsection (4), consider the representation and may—

- (a) reject the representation;
- (b) amend the proposed actions in accordance with the representation or otherwise; or
- (c) direct the assignee to effect, within such time as the Authority may specify, the proposed actions specified in the notice or such actions as subsequently amended by the Authority.

Modification,
suspension
and
withdrawal of
class
assignment

60. (1) The Authority may, upon giving thirty days notice—
- (a) promulgate a new class assignment; and
 - (b) after having solicited and duly considered representations from the assignees concerned, modify or repeal an existing class assignment.

(2) No compensation is payable for any promulgation, modification or repeal made pursuant to subsection (1).

(3) The Authority may, upon giving notice in the prescribed manner and form, and after giving an assignee an opportunity to be heard, de register any person subject to a class assignment where—

- (a) the person commits a material breach of the terms and conditions of the class assignment or fails to comply with the provisions of this Act or the terms and conditions of the class assignment;
- (b) the person contravenes the provisions of any written law relevant to the class assignment;
- (c) the person fails to comply with any declaration, direction or other guideline, made by the Authority; or
- (d) the person ceases, however briefly, to fulfil the eligibility requirements of this Act.

(4) A person who is de registered under subsection (3) shall immediately lose all the rights covered by the class assignment.

(5) No compensation is payable for any de registration made under subsection (3).

Rights of
transfer of
frequency
band, etc.

61. A person to whom frequency bands, electronic addresses or numbers have been assigned, shall not transfer the rights to use such frequency band, electronic addresses or numbers to any third party, whether for remuneration or otherwise, except with the prior written consent of the Authority and on such terms and conditions as the Authority may determine.

Access to
public land
for provision
of electronic
communications
service

62. (1) A holder of a network licence may, for the purposes of enabling the provision of any electronic communications service to the public—

- (a) enter upon any public land and survey the land or any portion of it; or
- (b) enter upon any public land in order to construct, erect, place, maintain, examine, alter or remove any line, pole or radio link installation which is, either the property of the holder of the network licence or is under the control of the holder:

Provided that the licensee shall not interfere unduly with the use and enjoyment of the public property.

(2) Where a holder of a network licence causes any significant damage to land or property by reason of the exercise of the powers conferred under this section, the owner or occupier of the land may receive compensation for it from the holder of the network licence in accordance with the relevant law.

63. (1) Where, for the purpose of the provision of any electronic communications service to the public, a holder of a network licence requires to enter upon private land, or to effect the acquisition of private property or an interest in private property, and no reasonable alternatives to the entry or acquisition exist, the holder of the network licence—

Access to private land and acquisition of private property

(a) shall obtain the consent of the land or property owner to the entry onto the land or acquisition of the property or property interest; and

(b) shall provide notice of the proposed entry or acquisition to the owner of the land or property, and other land or property owners who could reasonably be expected to be affected by the proposed entry or acquisition, and seek their written consent.

(2) Where the land or property owner and a holder of a network licence cannot agree, the holder of a network licence may apply to the relevant authority having jurisdiction over the private land or property in order to request that the authority orders the proposed entry or undertakes the proposed acquisition under the applicable laws.

(3) Where any significant damage to land or property is caused by reason of the exercise of the powers conferred by this section, the owner or occupier of the land may receive compensation for it from the holder of a network licence in accordance with the applicable law.

64. (1) The Authority shall be responsible for the establishment and publication of technical standards relating to all electronic communications equipment intended to be used in Zambia.

Technical standards for electronic communications apparatus

(2) In establishing the standards referred to under subsection (1), the Authority shall—

(a) seek submissions from the public, in particular those persons likely to be most affected by the publication of the standards; and

(b) take account of any relevant standards prescribed by international organisations including the Union.

(3) An importer or supplier of any electronic equipment shall register the original equipment manufacturer's identification with the Authority in the prescribed manner and form upon payment of the prescribed fee.

(4) The Authority may, with the approval of the Minister, appoint agents to undertake the registration on behalf of the Authority.

(5) An importer or supplier of any mobile device shall register the device's international mobile equipment identification number with the Authority in the prescribed manner.

(6) A person who contravenes subsection (3) or (5) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

(7) The Minister may, in consultation with the Authority, by statutory instrument, prescribe the registration fees for the equipment referred to in subsections (3) and (5).

(8) The Authority shall disconnect or disable any device or electronic equipment or apparatus that is not approved or registered in accordance with the provisions of this Act.

(9) The Minister may, in consultation with the Authority, by statutory instrument, make regulations for the registration of electronic equipment including mobile devices and subscriber identification modules, for the purpose of quality assurance and tracking of such equipment.

(10) Without derogating from subsection (9), regulations may provide for—

(a) the obligations of licensees;

(b) the identification and disabling of any unregistered equipment or equipment irregularly obtained or used on the licensee's network; and

(c) the relevant personal particulars of a person coming on to the licensee's network.

(11) Within ninety days of the commencement of this Act or such period as the Minister may prescribe—

(a) all importers, suppliers, owners and users of electronic equipment and apparatus shall register their equipment and apparatus with the Authority; and

(b) all licensees offering mobile phone services shall register the phones on their network with the Authority.

65. (1) The Minister may, by statutory instrument, in consultation with the Authority and the Zambia Bureau of Standards, prescribe standards for the performance and operation of any equipment or electronic communications apparatus, including radiocommunication equipment.

Standards
for
performance
and
operation of
equipment
or electronic
communications
apparatus

(2) The standards referred to under subsection (1) shall aim at—

(a) protecting the integrity of the electronic communications network;

(b) ensuring the proper functioning of connected equipment or electronic communications facilities;

(c) ensuring inter-operability, inter-connectability and harmonisation;

(d) avoiding harmful interference with the electronic communications network; and

(e) protecting public safety and health.

(3) The regulations made under sub-section (1) may, for the purposes of this section and without publishing the text of the technical standard, incorporate any technical standard by reference to—

(a) the number, title and year of issue of the technical standard; or

(b) any other particulars by which the particular standard can be identified.

(4) Any technical standard incorporated in the manner referred to under subsection (3) shall be treated as a regulation to the extent that the technical standard is not contrary to the regulations.

(5) Where any technical standard is, at any time after its incorporation under subsection (3), amended or substituted by a competent national body, the regulation under which the technical standard was incorporated shall, unless otherwise stated therein, be treated as referring to the technical standard as so amended or substituted, as the case may be.

(6) The Authority shall keep the text of each technical standard incorporated in the regulations under subsection (3) and any amendment or substitution of the text.

(7) The text of each incorporated technical standard shall be open to inspection by the public during the normal office hours of the Authority.

(8) The Authority may, at the request of any person and on payment of such fee as may be prescribed, furnish the person with a copy of the text.

Type
approval of
equipment

66. (1) A person shall not use, supply, sell, offer for sale or lease or hire any type of electronic communications equipment or electronic communications apparatus, including radio-communications equipment, used or to be used in connection with the provision of electronic communications, unless the equipment, electronic communications apparatus or radio communications equipment has, subject to subsection (3), been approved by the Authority.

(2) The Authority shall determine—

(a) the types of equipment, electronic communications apparatus, including radiocommunication equipment, the use of which does not require approval, where the equipment, electronic communications facilities and radio apparatus has been approved for use by any other competent standards body and the equipment complies with type approval standards determined by the Authority; and

(b) the circumstances under which the use of equipment, electronic communications apparatus, including radiocommunication equipment and subscriber equipment does not require approval, including uses for research and development, demonstrations of prototypes and testing.

(3) Subject to applicable procedures and fees, the Authority shall conduct type approval tests, and issue type approval certificates, in respect of electronic communications equipment.

(4) The Authority shall, in conducting type approval of equipment, comply with the technical standards formulated by the Authority under this Part.

PART VII

CONSUMER AFFAIRS

67. (1) All service providers shall, in respect of their specific services—

Quality of
service

- (a) meet such minimum standards of quality of service as the Authority may specify and publish;
- (b) deal reasonably with consumers; and
- (c) address consumer complaints;

in accordance with the guidelines issued by the Authority under this Act.

(2) A person who contravenes paragraph (a) of subsection (1) commits an offence and is liable, upon conviction, to a fine of four million penalty units and to four hundred thousand penalty units for each day during which the offence continues.

(3) A court may, in addition to any penalty that may be imposed under subsection (2), revoke the licence of the service provider.

68. (1) The Authority shall establish guidelines for the making, receipt and handling of complaints of consumers regarding the provision of services regulated under this Act.

Guidelines for
handling
complaints

(2) The guidelines issued under subsection (1) shall be binding on licensees and persons exempt from holding licences under this Act.

(3) The guidelines issued by the Authority under subsection (1) may include procedures for—

- (a) meeting consumer needs and requirements;
- (b) the handling of consumer complaints and disputes, including an inexpensive arbitration process, other than resolution of matters in the courts;
- (c) the compensation of consumers in the event of a breach of the Code of Conduct;
- (d) the protection of consumer information;
- (e) the provision of information to consumers regarding services, rates and performance;

- (f) the provisioning and fault repair of services;
- (g) the advertising or representation of services;
- (h) consumer charging, billing, collection and credit practices; and
- (i) any other matter relating to the provision of services under this Act.

(4) The Authority may resolve any complaints from consumers in relation to matters of service provision and consumer protection including the quality of service or the failure by a licensee to comply with consumer protection guidelines issued by the Authority under this Act.

Code of
Conduct for
licensees

69. (1) The Authority shall prepare a code of conduct for licensees and persons exempt from holding licenses under this Act.

(2) The code of conduct referred to under subsection (1) shall include the following:

- (a) the provision of information to consumers regarding services, rates and performance;
- (b) the provisioning and fault repair of services;
- (c) the advertising or representation of services;
- (d) the provision of, and access to, network services by persons with disabilities;
- (e) consumer charging, billing, collection and credit practices; and
- (f) any other matter relating to the provision of services under this Act.

(3) The Authority shall publish the code of conduct in a daily newspaper of general circulation in Zambia for public information.

(4) The code of conduct referred to in this section shall be effective from the date of its publication under subsection (3).

PART VIII

UNIVERSAL ACCESS AND SERVICE

70. (1) There is hereby established the Universal Access and Service Fund which shall be used for the financing of universal access and service.

Universal
Access and
Service Fund

(2) The Authority shall determine a system to promote the widespread availability and usage of electronic communications networks and services throughout Zambia by encouraging the installation of electronic communications networks and the provision of electronic communications services in un-served or under-served areas and communities.

(3) A determination by the Authority under subsection (1) shall include definitions of 'un-served areas', 'under-served areas' and 'under-served communities', and in determining such definitions, the Authority shall have regard to—

- (a) the level of competition in particular areas or places;
- (b) the availability of services in particular areas or places;
- (c) the availability of services to any group;
- (d) the commercial viability of installation of electronic communications networks or providing electronic communications services in particular areas or places; and
- (e) any barriers to the use of available services.

(4) The Minister may, on the recommendation of the Authority, make regulations on universal access or service, which regulations may include—

- (a) the nature and status of the Fund;
- (b) the sources of funding and the manner in which the Fund will be paid;
- (c) the internal organisation of the Fund and its relation with other entities;
- (d) the activities that the Fund shall finance and the manner in which such financing shall occur;
- (e) the annual contributions payable by any licensee to the Fund, that shall not exceed the amount prescribed by the Minister, in consultation with the Authority; and

(f) any other matter necessary for the efficient operation, administration and management of the Fund.

Administration
and
management
of Fund

71. (1) The Fund shall be managed and administered by a Fund Manager appointed the Authority.

(2) The Fund shall become operational not later than six months after the coming into force of this Act.

(3) The Fund Manager shall each year publish details of the activities of the Fund within three months of the end of the financial year of the Authority.

(4) The Minister shall cause an annual statement of the income and expenditure of the Fund to be prepared and laid before the National Assembly.

Annual
report

72. The Authority shall publish in the print and electronic media within three months of the end of each financial year, details of the contributions to, and allocations from the Fund.

PART IX

DISPUTES, REVIEWS AND APPEALS

Appeals

73. (1) A person who is aggrieved with any decision of the Authority may appeal to the Tribunal within thirty days of such decision.

(2) A person who is aggrieved with the decision of the Tribunal may appeal to the High Court within thirty days of the Tribunal's decision.

Appeals
Tribunal

74. (1) Subject to subsection (2), the Minister shall for the purpose of hearing and determining an appeal under this Act, appoint a Tribunal consisting of three members of whom—

(a) one member, who shall be the Chairperson, shall be a legal practitioner of not less than ten years legal experience; and

(b) two other members who shall be experts, with not less than five years experience and knowledge, in matters relevant to this Act.

(2) The Minister shall not appoint the Tribunal unless the appellant deposits with the Minister such sum, as the Minister considers will be sufficient to pay the costs, including the allowances payable to the members of the Tribunal, likely to be incurred in connection with the appeal.

(3) The powers, rights and privileges of the Tribunal shall be the same as those conferred upon commissioners by the Inquiries Act, and the provisions of that Act shall apply in relation to the hearing and determination of an appeal by the Tribunal under this section and to a person summoned to give evidence before the Tribunal.

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(4) The Minister shall, on the determination of an appeal, refund to the appellant the sum deposited by the appellant under subsection (2) less the amount of the costs, if any, payable by the appellant under subsection (5).

(5) If an appeal is dismissed, the Tribunal may order the appellant to pay to the Authority the costs incurred by the Authority in connection with the appeal.

(6) If an appeal is allowed, the Tribunal may order the Authority to pay to the appellant the costs incurred by the appellant in connection with the appeal.

(7) The Tribunal shall, within fourteen days of determining an appeal, inform the appellant and the Authority in writing of its decision and the reasons therefor.

75. (1) The provisions of this section shall apply—

Licensee
disputes

(a) where there is a dispute between licensees as to the implementation, interpretation or performance of their obligations under this Act or any agreement between the licensees; and

(b) subject to any terms agreed to by the licensees in the relevant agreement.

(2) The licensees shall attempt in good faith to resolve their disputes in accordance with the dispute resolution provisions that are provided for in the respective agreements.

(3) Where the licensees are unable to resolve any dispute in accordance with subsection (2), they may agree to mediation, arbitration, or seek relief from a court of competent jurisdiction.

(4) Where the licensees are unable to resolve any dispute in accordance with subsection (2) or are unable to agree on whether to mediate, arbitrate or litigate in accordance with subsection (3), they, or any one of them, may refer the dispute to the Authority for determination.

(5) Where the licensees are unable to resolve a dispute in accordance with subsection (2) or are unable to agree on whether to mediate, arbitrate or litigate in accordance with subsection (3) and such matter is referred to the Authority for resolution, the Authority shall investigate the dispute and within thirty days of the filing of the dispute, determine as to -

(a) whether the parties have fulfilled their obligations under subsection (2); and

(b) if the parties have fulfilled their obligations, whether the dispute will be heard by the Authority.

(6) The Authority shall determine a dispute provided for in subsection (5) in accordance with the dispute resolution procedures stipulated in the guidelines issued by the Authority.

(7) Arbitration under this section shall be done in accordance with the Arbitration Act, 2000.

Act No. 19
of 2000

PART X

ENFORCEMENT AND OFFENCES

Telecommunication
officers

76. (1) In order to ensure compliance with the provisions of this Act and the terms and conditions of any licence or assignment, the Authority shall carry out inspections and may appoint such telecommunications officers as may be necessary for that purpose.

(2) A telecommunications officer shall be provided with a certificate of appointment which shall be *prima facie* evidence of the telecommunications officer's appointment as such.

(3) Any telecommunications officer or police officer carrying out any functions under this Act shall on demand by any person who is affected by the telecommunications officer's exercise of power, produce for inspection the certificate referred to in subsection (2).

(4) A telecommunications officer shall have the power, on production of the certificate of appointment issued under subsection (2), to demand the production of, and to inspect or make copies of a licence or assignment issued under this Act, or any agreement concluded, or accounts kept, pursuant to the provisions of this Act.

(5) A telecommunications officer may, upon probable cause shown on oath to a magistrate court, obtain a warrant to enter upon and search or examine the premises prescribed in the warrant in order to ascertain whether any offence is being or has

been committed in such premises and shall have the power to make such examination, inspection and inquiry and do such things as the telecommunications officer may consider necessary for ascertaining whether or not the provisions of this Act are being complied with.

(6) Where a telecommunications officer or police officer, as the case may be, is satisfied that a person does not have a valid licence or assignment or is falsely holding out as a holder of a valid licence or assignment, the telecommunications officer or police officer may serve on that person a notice in the prescribed form.

(7) All books, records and documents required to be kept by a licensee shall be open to inspection at all reasonable times by a telecommunications officer or police officer, as the case may be.

(8) A telecommunications officer or police officer may seize—

(a) any electronic communications apparatus which the telecommunications officer or police officer has reasonable cause to believe is being used by, or is in the possession of, or under the control of, a person in contravention of this Act; and

(b) any book, record or document which the telecommunications officer or police officer has reasonable cause to suspect will afford evidence of the commission of an offence under this Act.

(9) A telecommunications officer may order a person to cease using, pending inquiry by the Authority, any electronic communications apparatus which in the telecommunications officer's opinion, is being operated otherwise than in accordance with this Act or the terms and conditions of a licence.

(10) A person who obstructs or hinders a telecommunications officer or police officer in the exercise of any powers under this Act or who neglects or fails to comply with an order commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

77. (1) A person who wilfully removes, destroys or damages any installation, software, hardware or plant used for electronic communications services commits an offence and is liable, upon conviction, to imprisonment for a term not less than fifteen years, but not exceeding twenty years.

Security of
electronic
communications
installation or
plant

- (2) A person who and without lawful authority —
- (a) causes an electronic communications network or service to perform any function for the purpose of securing access to any program or data held in that electronic communications network or electronic communications service or any other electronic communications network or electronic communications service;
 - (b) causes an electronic communications network or service to perform any function for the purpose of securing access to any program or data held in that electronic communications network or electronic communications service or any other electronic communications network or electronic communications service with intent to commit or facilitate the commission of an offence involving property, fraud, dishonesty or which causes bodily harm;
 - (c) does a direct or indirect act which the person knows will cause unauthorised modification of any program or data held in an electronic communications network or electronic communications service or any other electronic communications network or electronic communications service;
 - (d) secures access to an electronic communications network or electronic communications service, or obstructs or intercepts or causes to be intercepted directly or indirectly any function of an electronic communications network or electronic communications service;
 - (e) discloses any password, access code or other means of gaining access to any electronic communications network or electronic communications service; or
 - (f) with requisite knowledge and intent engages in conduct which causes an electronic communications network or electronic communications service to cease to function permanently or temporarily;

commits an offence and is liable, upon conviction, to a fine not exceeding two million penalty units or to imprisonment for a period not exceeding fifteen years, or to both.

(3) A person who removes, destroys or damages, whether wilfully, negligently, accidentally or otherwise, the installation or plant used for electronic communications services shall, in addition to any penalty for which the person is liable for an offence under this Act, be liable to pay compensation for the damage done and the compensation shall be recoverable by civil action or suit before any court of competent jurisdiction.

78. A person who contravenes or fails to comply with a provision of this Act for which a penalty is not provided commits an offence and is liable, upon conviction, for each such breach, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

General
penalty

79. (1) A person who contravenes or fails to comply with a provision of a guideline or decision issued by the Authority under this Act, commits an offence and is liable, upon conviction, for each such breach, to a fine not exceeding seventy thousand penalty units or to imprisonment for a period not exceeding six months, or to both, and forty thousand penalty units for each day of continued default.

Failure to
comply with
guidelines,
terms or
conditions of
licence, etc

(2) Any person who contravenes or fails to comply with any term or condition of an individual licence or assignment commits an offence and is liable, upon conviction, to a fine not exceeding seventy thousand penalty units for each such breach, and in default, a payment of forty thousand penalty units for each day of continued default.

80. A person who interferes with the programming of a mobile telephone handset, including modifying its International Mobile Equipment Identification Number, commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Interference
with
programming
of mobile
device

81. (1) A person employed in connection with radiocommunication service who—

Unauthorised
disclosure of
radiocommu-
nication
message

(a) unlawfully discloses the contents or existence of any radiocommunication message that is not of a public character; or

(b) makes use, for that person's own purposes, of any knowledge that the person acquires, in the course of that person's duties, of the contents of a radiocommunication message;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(2) A person who reproduces or divulges the contents or substance of a radiocommunication transmission not intended to

be received by that person, whether received voluntarily or involuntarily, to another person or uses it for any purpose whatsoever commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) For the purposes of subsection (1), disclosure is lawful only if it is compellable under any law or given for purposes of the administration of justice.

Furnishing
of false
information,
etc.

82. A person who

- (a) fails or refuses to furnish a return or to supply information in the manner and in the time prescribed under this Act or furnishes a false or misleading return;
- (b) fails or refuses, without reasonable cause, to give information to, or gives false or misleading information to, a telecommunications officer or a police officer in response to a requirement under this Act; and
- (c) for the purpose of obtaining, whether for that person or any other person, the issue of a licence or certificate under this Act, makes a declaration or statement which the person knows to be false in any material particular or does not believe to be true or knowingly makes use of a declaration, statement or document containing the same;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Unauthorised
interference
with
apparatus,
etc.

83. A person who—

- (a) without the permission of the licensee or a telecommunications officer having authority to grant such permission, enters any part of a licensed radio station which is not open to members of the public; or
- (b) interferes with, hinders or impedes in any way the establishment, erection, alteration, maintenance or inspection of a radio station or radio station apparatus;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(2) A person who contravenes paragraph (a) of subsection (1) and who fails to leave a radio station immediately on being required to do so by the person in charge of the station, or by a telecommunications officer, may be removed by the person in charge or a telecommunications officer, and a police officer shall, on being requested to do so by the person in charge or by a telecommunications officer, remove or assist in the removal of the person.

84. On the conviction of a person for an offence involving the unlawful possession or use of a radio station or any radio station apparatus, the court convicting the accused person may, on the application of the prosecutor and in addition to any penalty which it may impose, order the forfeiture to the State of the radio station or apparatus in connection with, or by means of which, the offence was committed, unless it is proved to the satisfaction of the court that the radio station or apparatus is not the property of the accused person and that the owner was unable to prevent its unlawful use by the accused person when the offence was committed.

Forfeiture of
equipment

85. A person who uses any electronic communications apparatus, radio apparatus or radio station for the purposes of an offence against public order or against morality, contrary to the provisions of the Penal Code, commits an offence and is liable, upon conviction, to the penalties provided for those offences in that Act.

Use of
equipment in
commission
of offence
Cap. 87

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

Penalty for
abetting or
attempting to
commit
offences

87. Where an offence under this Act is committed by a body corporate or an unincorporate body, a person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or unincorporate body or was purporting to act in such capacity shall, as well as such body corporate or unincorporate body, be deemed to have committed that offence unless the person proves that the offence was committed without that person's consent or connivance and that the person exercised all due diligence to prevent the commission of the offence as the person ought to have exercised, having regard to the nature of that person's functions in that capacity and to all the circumstances.

Offences by
body
corporate or
unincorporate
body

Power of
Director-
General to
compound
certain
offences

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

Offences
cognizable
Cap.88

89. An offence under this Act shall be deemed to be a cognizable offence for the purposes of the Criminal Procedure Code.

PART XI

GENERAL PROVISIONS

Information to
be furnished to
Authority

90. (1) The Authority may request any licensee to furnish within such period as the Authority may determine such documents and other information as the Authority may require for the better carrying out of its functions under this Act.

(2) A person who fails to furnish information in accordance with subsection (1) commits an offence and is liable, upon conviction; to a fine not exceeding eighty thousand penalty units or to imprisonment for a period not exceeding three months, or to both.

Regulations

91. (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) The Minister may, by statutory instrument, amend the Schedules to this Act.

Repeal of
Cap. 469
and Cap.
169

92. The Telecommunications Act, 1994 and the Radio Communications Act, 1994 are hereby repealed.

FIRST SCHEDULE

(Section 4)

ADMINISTRATION OF AUTHORITY

PART I

THE BOARD OF THE AUTHORITY

1. (1) There is hereby constituted the Board of the Authority which shall be the governing body of the Authority and shall exercise and perform the powers and functions of the Authority.

Board of
Authority

(2) The Board shall consist of the following nine members appointed by the Minister:

- (a) one representative each from the Ministries responsible for information and communications technology and home affairs;
- (b) one member from an agency responsible for national security;
- (c) a representative of the Attorney General;
- (d) one person nominated by the National Farmers Union;
- (e) one person nominated by the Zambia Consumers Protection Association;
- (f) one person nominated by the Law Association of Zambia;
- (g) one person nominated by the Engineering Institution of Zambia;
- (h) one person nominated by a trade union representing staff employed by the Company; and
- (i) one other person appointed by the Minister.

(3) The Minister shall, on receiving the names of the proposed representatives under subsection (2), consider the nominations and may reject any nomination:

Provided that where the Minister rejects any proposed representative, the Minister shall direct the organisation or institution which proposed the representative to avail the Minister with the name of another representative.

(4) The Director General of the Authority shall be an *ex-officio* member of the Board and the Secretary to the board.

(5) A person shall not be nominated or appointed as a member of the Board if that person—

- (a) has been convicted of an offence under any law;
- (b) is a Member of Parliament or an officer or employee of a local authority;
- (c) is an office bearer or employee of a political party;
- (d) has a direct or indirect financial interest in the sector; or
- (e) is an immediate family member of a person referred to in paragraphs (c) and (d).

(6) The Minister shall appoint the Chairperson and the Vice-Chairperson from among the members.

Seal of
Authority

2. (1) The seal of the Authority shall be such device as may be determined by the Authority and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Authority by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) Any document purporting to be a document under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be executed or issued, as the case may be, without any further proof, unless the contrary is proved.

Tenure of office
and vacancy

3. (1) Subject to the other provisions of this Act, a member of the Board shall hold office for a period of three years from the date of appointment and may be re-appointed for a further like period.

(2) Subject to the other provisions of this Part, a member shall, on the expiration of the period for which the member is appointed, continue to hold office until another member is appointed to succeed that member.

(3) The office of a member becomes vacant—

- (a) upon the member's death;
- (b) if the member is adjudged bankrupt;
- (c) if the member is absent from three consecutive meetings of the Board of which the member has had notice, without the prior approval of the Board;
- (d) upon the expiry of one month's notice of the member's intention to resign from office, given by the member in writing to the Board;
- (e) if the member becomes mentally or physically incapable of performing the duties of a member of the Board;
- (f) if the member is renamed by the Minister;
- (g) if the member ceases to be a member of the organisation which nominated the member; or
- (h) if the member is convicted of an offence under this Act or any other law.

(4) A member may resign from office by giving not less than one month's notice in writing to the Minister.

(5) The Minister shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.

4. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

Proceedings of
Board

(2) The Board shall meet for the transaction of business, at least once in every three months at such places and times as the Board may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairperson and shall be called by the chairperson if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.

(4) The quorum at a meeting of the Board shall be five.

(5) There shall preside at any meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; and

(c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of votes of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(7) Where a member is for any reason unable to attend any meeting of the Board, the member may, in writing, nominate another person from the same organisation to attend such meeting in that member's stead and such person shall be deemed to be a member for the purpose of that meeting.

(8) The Board may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of any committee established by the Board.

5. (1) The Board may, for the purpose of performing its functions under this Act, constitute any committee and delegate to any such committee such of its functions as it thinks fit.

Committees of
Board

(2) The Board may appoint as members of a committee constituted under sub-paragraph (1), persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) A committee of the Board may regulate its own procedure.

6. There shall be paid to members of the Board or any committee of the Board such allowances as the Board may, with the approval of the Minister, determine.

Allowances of
members

Disclosure of
interest

7. (1) If a member or person is present at a meeting of the Board or a committee of the Board at which any matter, in which that person or any member of the person's immediate family, is directly or indirectly interested in a private capacity, is the subject of consideration, that person or member shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not, take part in any consideration or discussion of, or vote on any question relating to, that matter.

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

Director-
General and
other staff

8. (1) The Board shall appoint a suitably qualified and experienced person as Director-General of the Authority who shall be the chief executive officer of the Board and who, subject to the general or special direction of the Board, shall be responsible for the carrying out of the provisions of this Act, and shall be responsible for the administration of the Act.

(2) The Board shall, with the approval of the Minister, determine the terms and conditions of service of the Director-General.

(3) The Board may appoint, on such terms and conditions as the Board may determine, with the approval of the Minister, such other staff as it considers necessary for the performance of its functions under this Act

Prohibition of
publication
of, or
disclosure of
information to
unauthorised
persons

9. (1) A person shall not, without the consent in writing given by or on behalf of the Board, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes sub-paragraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity of
members and
staff of
Board

10. An action or other proceeding shall not lie or be instituted against a member of the Board or a committee of the Board, or a member of staff of the Authority, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act.

PART II FINANCIAL PROVISIONS .

Funds of
Authority

1. (1) The funds of the Authority shall consist of such moneys as may—

(a) be appropriated to the Authority by Parliament for the purposes of the Authority;

(b) be paid to the Authority by way of fees, loans, grants or donations; and

(c) otherwise vest in or accrue to the Authority.

- (2) The Authority may—
- (a) subject to the approval of the Minister, accept moneys by way of grants or donations from any source within or outside Zambia;
 - (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions; and
 - (c) charge and collect fees for services provided by the Authority.
- (3) There shall be paid from the funds of the Authority—
- (a) salaries, allowances, loans, gratuities and pensions of the staff of the Authority and other payments for the recruitment and retention of the staff;
 - (b) such reasonable travelling, subsistence and other allowances for members of the Board or any committee of the Board when engaged on the business of the Authority at such rates as the Board may, with the approval of the Minister, determine; and
 - (c) any other expenses incurred by the Board in the performance of the Board's functions under this Act.
- (4) The Board may, with the approval of the Minister, invest in such manner as it considers appropriate such funds of the Authority as it does not immediately require for the discharge of its functions.

2. The financial year of the Authority shall be the period of twelve months ending on 31st March of each year.

Financial year

3. (1) The Authority shall cause to be kept proper books of account and other records relating to its accounts.

Accounts

(2) The accounts of the Authority shall be audited annually by independent auditors appointed by the Authority with the approval of the Auditor-General.

(3) The auditor's fees shall be paid by the—

4. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Authority shall submit to the Minister a report concerning its activities during the financial year.

Annual
report

(2) The report referred to in subparagraph (1), shall include information on the financial affairs of the Authority and there shall be appended to the report—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Sections 2 and 36)

CLASSIFICATION OF RADIO STATIONS

- “aeronautical station” means a radio station used for the purpose of carrying on a radiocommunication service with and for the benefit of aircraft;
- “aircraft station” means a radio station which is automated or continuously subject to human control which is installed in an aircraft;
- “amateur station” means a radio station worked by a person interested in the technique of radiocommunications solely with a personal aim and without pecuniary interest;
- “base station” means a radio station established on land and used for the purpose of carrying a radiocommunication service with mobile stations;
- “coast station” means a radio station established on land and used for the purpose of carrying on a radiocommunication service with and for the benefit of ship stations;
- “fixed station” means a radio station used for the purpose of carrying on radiocommunication service between specified points;
- “meteorological aids station” means a radio station used for the purpose of transmitting special signals intended solely for meteorological and hydrological observations and exploration;
- “mobile station” means a radio station capable of use whilst in motion or during halts at unspecified points, but does not include an aircraft or ship station;
- “model control station” means a station used for the purpose of controlling models;
- “press station” means a radio receiving station used for the purpose of receiving news broadcast from recognised press agencies;
- “private experimental station” means a radio station utilising Hertzian waves in experiments with a view to the development of the science and technique of radiocommunication, but does not include an amateur station;
- “radio control station” means a radio station used for the purpose of controlling mechanism or other apparatus which is not installed in a model;
- “radiolocation station” means a radio station used for the purpose of—
- (a) determining the relative direction, position or motion of an object; or
 - (b) the detection of an object by means of the constant velocity or rectilinear propagation characteristics of Hertzian waves;
- “ship station” means a radio station installed in a vessel which is not permanently moored;
- “special service station” means a radio receiving station used exclusively for the purposes of receiving time signals, notices to navigators, epidemiological and medical advice and like services of general utility; and
- “standard frequency station” means a radio transmitting station used for the purpose of transmitting standard and specified frequencies of known high accuracy intended for general reception.

THIRD SCHEDULE

(Section 4)

TRANSITIONAL PROVISIONS

1. (1) Subject to the provisions of this section, all licences issued under the repealed Acts shall remain in force in accordance with the terms and conditions of such licences.

Licensee
migration
Cap. 469
Cap. 169

(2) The Authority shall, not later than sixty days from the commencement of this Act, publish or cause to be published in the print and electronic media, the standard terms and conditions for individual, class, network and service licences.

(3) As soon as reasonably practicable, but not later than six months from the commencement of this Act, the Authority shall issue one or more licences and, where applicable, one or more assignments, to any person who, at the commencement of this Act, holds a valid licence issued under the repealed Acts.

Cap. 469
Cap. 169

(4) The terms and conditions of any licence or assignment issued by the Authority shall—

- (a) include the terms and conditions published pursuant to subsection (2);
- (b) be of the same duration as the unexpired portion of the previous licence;
- (c) contain fee payment obligations no less favourable than those provided for in the previous licence; and
- (d) not derogate from the allocations and rights to radio frequency or numbers provided for in the previous licence.

(5) At a date six months from the commencement date of this Act, licences issued under the repealed Acts, shall cease to be valid and enforceable and the licence holder shall not have any right to compensation in this regard.

Cap. 469
Cap. 169

2. The Board of the Authority appointed under the repealed Acts shall continue in operation for a period of three months from the commencement of this Act after which the Minister shall appoint new members in accordance with the provisions of this Act.

Continuation
of Board
Cap. 469
Cap. 169

3. (1) For the avoidance of doubt, a person who, before the commencement of this Act, was an officer or employee of the Authority, shall continue to be an officer or employee of the Authority, as the case may be, as if appointed or employed under this Act.

Staff of
Authority

(2) The service of the persons referred to, in subparagraph (1) shall be treated as continuous service.

(3) Nothing in this Act, affects the rights and liabilities of any person employed or appointed by the Authority before the commencement of this Act.

Transfer of
assets and
liabilities

4. (1) On or after the commencement of this Act, there shall be transferred to, vest in and subsist against the Authority by virtue of this Act and without further assurance, all assets, rights and obligations which immediately before that date were the assets, rights, liabilities and obligations of the Communications Authority.

(2) Subject to subparagraph (1), every deed, bond and agreement, other than an agreement for personnel service, to which the Communications Authority was a party immediately before the commencement of this Act whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if—

- (a) the Authority had been party to it;
- (b) for any reference to the Communications Authority there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Authority; or
- (c) for any reference to any officer of the Communications Authority, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Authority as the Authority shall designate.

(3) Where under this Act, any assets, rights, liabilities and obligations of the Communications Authority are deemed to be transferred to the Authority in respect of which transfer a written law provides for registration, the Authority shall make an application in writing to the appropriate registration authority for registration of the transfer.

(4) The registration authority, referred to in subparagraph (1), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

Legal
proceedings

5. (1) Any legal proceedings or application of the Communications Authority pending immediately before the commencement of this Act by or against the Communications Authority may be continued by or against the Authority.

(2) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Communications Authority, may be instituted by or against the Authority.