THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2026

A Bill for

AN ACT of Parliament to amend the Kenya Information and Communications Act, (Cap. 411A) and for connected purposes

ENACTED by the Parliament of Kenya as follows—

Short title.	**1.** This Act may be cited as the Kenya Information and Communications (Amendment) Act, 2026.
Amendment of the long title of Cap. 411A.	**2.** The Kenya Information and Communications Act, in this Act referred to as the "principal Act", is amended in the long title—
	(a) by deleting the words "Communications Commission of Kenya" and substituting therefor the words "Communications Authority of Kenya"; and
	(b) by deleting the words "provide for the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication Corporation to the Commission, the Telkom Kenya Limited and the Postal Corporation of Kenya".
Amendment of section 2 of Cap. 411A.	**3.** Section 2 of the principal Act is amended—
	(a) by deleting the definition of "Commission";
	(b) by deleting the definition of "former Commission";
	(c) by deleting the definition of "Media Council";
	(d) by deleting the definition of "private broadcaster";

	(e) by deleting the definition of "registration agent";
	(f) in the definition of "e-Government services", by deleting the words "local authority" and substituting therefor the words "county government";
	(g) in the definition of "post", in paragraph (ii), by inserting the words "and courier" immediately after the words "articles by post";
	(h) in the definition of "community broadcasting service", by inserting the following new paragraph immediately after paragraph (d)—
	(da) is independent of control by government, commercial institutions and political interests;
	(i) in the definition of "courier services", by inserting the words "parcels and consignments" at the end of the definition;
	(j) by deleting the definition of "dominant telecommunications service provider" and substituting therefor the following new definition—
Cap. 504.	"dominant licensee" means a licensee determined to be dominant pursuant to the criteria set out in sections 4 and 23 of the Competition Act;
	(k) by deleting the definition of "public broadcaster" and substituting therefor the following new definition—
	"public broadcaster" means a licensee designated as the public broadcaster under section 46E; and
	(l) by inserting the following new definitions in the proper alphabetical sequence—
	"commercial broadcaster" means a person licensed by the Authority under this Act to provide commercial broadcasting services;
	"licensee" means a person who holds a licence granted under this Act.

General amendment of Cap. 411A.	**4.** The principal Act is amended by deleting the word "Commission" wherever it appears and substituting therefor the word "Authority".	
Amendment of section 7 of Cap. 411A.	**5.** Section 7 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (g)—	
	(h) waive fees, subject to the approval of the National Treasury.	
Insertion of new section 11A in Cap. 411A.	**6.** The principal Act is amended by inserting the following new section immediately after section 11—	
	Corporation Secretary.	**12.** (1) The Board shall appoint a Corporation Secretary who shall be the secretary to the Board. (2) A person appointed or designated under (1) shall be a certified public secretary.
Amendment of section 19 of Cap. 411A.	**12.** Section 19 of the principal Act is amended in subsection (2), by deleting paragraph (g).	
Amendment of section 22 of Cap. 411A.	**13.** Section 22 of the principal Act is amended in subsection (1) by deleting the word "three" and substituting therefor the word "six".	
Amendment of section 23 of Cap. 411A.	**14.** Section 23 of the principal Act is amended in subsection (1), by deleting the words ", public payphone and directory information".	
Amendment of section 24 of Cap. 411A.	**15.** Section 24 of the principal Act is amended in subsection (2) by deleting the words "one million shillings" appearing immediately after the words "shall be liable on conviction to a fine not exceeding" and substituting therefor the words "five million shillings".	

Amendment of section 25A of Cap. 411A.	**16.** Section 25A of the principal Act is amended—
	(a) in subsection (2), by deleting the words "Subject to subsection (3),"; and
	(b) by deleting subsections (3), (4) and (5).
Amendment of section 27 of Cap. 411A.	**17.** Section 27 of the principal Act is amended in subsection (4), by deleting the words "three hundred thousand shillings" appearing immediately after the words "shall be liable on conviction to a fine not exceeding" and substituting therefor the words "one million shillings".
Amendment of section 27A of Cap. 411A.	**18.** Section 27A of the principal Act is amended—
	(a) in subsection (1), by deleting the words "sells a SIM-card" appearing in the opening statement and substituting therefor the words "registers a subscriber"; and
	(b) in subsection (2), by deleting paragraph (a).
Repeal of section 27B of Cap. 411A.	**19.** The principal Act is amended by repealing section 27B.
Amendment of section 27D of Cap. 411A.	**20.** Section 27D of the principal Act is amended—
	(a) in the marginal note, by deleting the expression "SIM-card" and substituting therefor the word "Subscriber"; and
	(b) in paragraphs (a), (b) and (e), by deleting the expression "SIM-card" and substituting therefor the word "subscriber".
Amendment of section 28	**21.** Section 28 of the principal Act is amended by deleting the words "one million shillings" appearing immediately after the words "shall be liable on conviction to

of Cap. 411A.	a fine not exceeding" and substituting therefor the words "five million shillings".	
Repeal of section 29 of Cap. 411A.	**22.** The principal Act is amended by repealing section 29.	
Amendment of section 34 of Cap. 411A.	**23.** Section 34 of the principal Act is amended in subsection (3) by deleting the words "one million shillings" appearing immediately after the words "shall, on conviction, be liable to a fine not exceeding" and substituting therefor the words "five million shillings".	
Insertion of a new sub-Part in Cap. 411A.	**24.** The principal Act is amended by inserting the following new sub-Part immediately after section 34—	
	Electronic Communications Equipment Type Approval	
	Standardization of electronic communications equipment and systems.	**34A.** (1) The Authority shall ensure that all electronic communications equipment and systems comply with the established and applicable information and communication technology standards.
		(2) Without prejudice to the generality of subsection (1), the Authority shall—
		(a) establish the relevant and applicable standards for the various categories of electronic communications equipment and systems; and
		(b) apply the established standards in determining the conformity and interoperability of electronic communications equipment and systems.
	Regulations on type approval.	**34B.** The Cabinet Secretary may, in consultation with the Authority, make regulations for the type approval of electronic communications equipment, including the procedure, fees and conditions for type approval.

Amendment of section 35 of Cap. 411A.	**25.** Section 35 of the principal Act is amended in subsection (1) by deleting the words "subject to subsection (2)".
Amendment of section 37 of Cap. 411A.	**26.** Section 37 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—
	(4) The Authority may, in addition to a licence granted under this section, grant an authorization for scientific research, trials or experimentation for new and emerging technologies and services, on such terms and conditions as the Authority may specify.
Amendment of section 41 of Cap. 411A.	**27.** Section 41 of the principal Act is amended in subsection (5), by deleting the words "five hundred thousand shillings" appearing immediately after the words "shall be liable on conviction to a fine not exceeding" and substituting therefor the words "three million shillings".
Amendment of section 45 of Cap. 411A.	**28.** Section 45 of the principal Act is amended by deleting the words "one million shillings" appearing immediately after the words "shall be liable on conviction to a fine not exceeding" and substituting therefor the words "five million shillings".
Amendment of section 46A of Cap. 411A.	**29.** Section 46A of the principal Act is amended—
	(a) by deleting paragraph (h); and
	(b) in paragraph (i), by deleting the word "media" and substituting therefor the word "broadcasting".
Amendment of section 46B of Cap. 411A.	**30.** Section 46B of the principal Act is amended—
	(a) in subsection (1)(b), by deleting the word "private" and substituting therefor the word "commercial"; and

	(b) by deleting subsection (2) and substituting therefor the following new subsection—	
	(2) Subject to this Act, broadcasting service licences shall be categorized in the manner prescribed by regulations made under this Act.	
Amendment of section 46C of Cap. 411A.	**31.** Section 46C of the principal Act is amended—	
	(a) in subsection (2), by deleting the words "one million shillings" appearing immediately after the words "shall, on conviction, be liable to a fine not exceeding" and substituting therefor the words "five million shillings"; and	
	(b) in subsection (3), by deleting paragraph (b).	
Repeal and replacement of section 46E of Cap. 411A.	**32.** The principal Act is amended by repealing section 46E and substituting therefor the following new section—	
	Designation of the public broadcaster.	46E. The Authority may, by notice in the Gazette, designate a licensee to be the public broadcaster.
Amendment of section 46G of Cap. 411A.	**33.** Section 46G of the principal Act is amended—	
	(a) in the marginal note, by deleting the word "Private" and substituting therefor the word "Commercial"; and	
	(b) in subsection (1), by deleting the word "private" and substituting therefor the word "commercial".	
Repeal of section 46H of Cap. 411A.	**34.** The principal Act is amended by repealing section 46H.	

Amendment of section 46I of Cap. 411A.	**35.** Section 46I of the principal Act is amended in subsection (2)—
	(a) by deleting paragraph (a) and substituting therefor the following new paragraph—
	(a) any audio or audio-visual content has been submitted under any law for classification and rating and approved for exhibition, airing or streaming; or
	(b) in paragraph (b), by deleting the words "by the Kenya Film Censorship Board established".
Amendment of section 46N of Cap. 411A.	**36.** Section 46N of the principal Act is amended in subsection (2) by deleting the words "one million shillings" appearing immediately after the words "shall, on conviction, be liable to a fine not exceeding" and substituting therefor the words "five million shillings".
Amendment of section 46O of Cap. 411A.	**37.** Section 46O of the principal Act is amended in subsection (2)(a), by deleting the words "as a common carrier".
Amendment of section 46Q of Cap. 411A.	**38.** Section 46Q of the principal Act is amended in subsection (3) by deleting the words "one million shillings" appearing immediately after the words "shall, on conviction, be liable to a fine not exceeding" and substituting therefor the words "five million shillings".
Repeal of section 46R of Cap. 411A.	**39.** The principal Act is amended by repealing section 46R.
Amendment of section 47 of Cap. 411A.	**40.** Section 47 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—
	(1A) The functions of the Authority set out in subsection (1) shall apply, with the necessary modifications, to the regulation of courier services.

Amendment of section 48 of Cap. 411A.	**41.** Section 48 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—
	(1) The Authority may, by notice in the Gazette, specify areas of exclusivity for a public postal licensee to enable it to provide universal postal services effectively.
Amendment of section 49 of Cap. 411A.	**42.** Section 49 of the principal Act is amended—
	(a) in subsection (1), by inserting the words "and courier" immediately after the word "postal"; and
	(b) in subsection (2), by deleting the words "three hundred thousand shillings" and substituting therefor the words "one million shillings".
Amendment of section 51 of Cap. 411A.	**43.** Section 51 of the principal Act is amended in subsection (1), by inserting the words "and courier" immediately after the word "postal".
Amendment of section 52 of Cap. 411A.	**44.** Section 52 of the principal Act is amended in paragraphs (b), (c), (g) and (i), by inserting the words "and courier" immediately after the word "postal".
Amendment of section 67 of Cap. 411A.	**45.** Section 67 of the principal Act is amended by deleting the words "two hundred thousand shillings" and substituting therefor the words "one million shillings".
Amendment of section 71 of Cap. 411A.	**46.** Section 71 of the principal Act is amended by deleting the words "three hundred thousand shillings" and substituting therefor the words "one million shillings".
Amendment of section 75 of Cap. 411A.	**47.** Section 75 of the principal Act is amended by deleting the words "three hundred thousand shillings" and substituting therefor the words "one million shillings".

Amendment of section 76 of Cap. 411A.	**48.** Section 76 of the principal Act is amended by deleting the words "five hundred thousand shillings" and substituting therefor the words "one million shillings".
Amendment of section 81 of Cap. 411A.	**49.** Section 81 of the principal Act is amended by inserting the words "such terms and conditions and" immediately after the words "and subject to".
Amendment of section 83A of Cap. 411A.	**50.** Section 83A of the principal Act is amended in subsection (1), by deleting the words "then if the licensee fails to remedy the contravention within the prescribed period without reasonable cause, such a licensee shall be liable to a penalty of five hundred thousand shillings up to a maximum of zero decimal two per centum of the annual gross turnover of the offending licensee in the preceding year for every year or part thereof in which the offence is continuing and such penalty shall be debt owed to the Commission and recoverable summarily" and substituting therefor the words "if the licensee fails to remedy the contravention within the stipulated period, the Authority may, having regard to the gravity of the contravention and after giving the licensee an opportunity to be heard—
	(a) suspend the licence or service, as the case may be;
	(b) revoke the licence; or
	(c) impose a penalty of twenty thousand shillings up to a maximum of zero decimal two per centum of the annual gross turnover of the offending licensee in the preceding year for every year or part thereof in which the contravention is continuing, and such penalty shall be a debt owed to the Authority and recoverable summarily.
Amendment of section 83D of Cap. 411A.	**51.** Section 83D of the principal Act is amended in subsection (2) by deleting the words "three hundred thousand shillings" and substituting therefor the words "one million shillings".
Repeal of section 83Y	**52.** The principal Act is amended by repealing section 83Y.

of Cap. 411A.	
Repeal of section 84D of Cap. 411A.	**53.** The principal Act is amended by repealing section 84D.
Amendment of section 84W of Cap. 411A.	**54.** Section 84W of the principal Act is amended—
	(a) in subsection (2), by deleting paragraph (g) and substituting therefor the following new paragraph—
	(g) remedies relating to competition issues; and
	(b) in subsections (3) and (4), by deleting the words "telecommunication service provider" and substituting therefor the word "licensee".
Amendment of section 84 of Cap. 411A.	**55.** Section 84 of the principal Act is amended in subsection (2) by deleting the word "communication" and substituting therefor the words "information and communications technologies".
Amendment of section 85 of Cap. 411A.	**56.** Section 85 of the principal Act is amended in subsection (3) by deleting the words "local authority" and substituting therefor the words "county government".
Amendment of section 85A of Cap. 411A.	**57.** Section 85A of the principal Act is amended—
	(a) in subsection (1), by deleting the word "co-location" and substituting therefor the words "infrastructure sharing"; and
	(b) in subsection (2), by deleting the word "co-location" and substituting therefor the words "infrastructure sharing".
Insertion of new section	**58.** The principal Act is amended by inserting the following new section immediately after section 85A—

85B in Cap. 411A.		
	ICT infrastructure mapping.	85B. (1) The Authority may establish and maintain a national ICT infrastructure information system for the mapping of existing and planned telecommunications infrastructure.
		(2) A licensee shall provide to the Authority, in the licensee's compliance returns, such information relating to the licensee's existing or planned telecommunications infrastructure as the Authority may reasonably require for the performance of its functions under this Act.
	Cap. 411C.	(3) Information maintained under this section shall be classified, and made accessible, at such levels as the Authority may determine, subject to the Data Protection Act.
		(4) A licensee who fails to provide information required under this section within the prescribed period, provides information that is false, misleading or materially incomplete, or fails to update the information as prescribed, is liable to an administrative penalty not exceeding zero decimal five per centum of the annual gross turnover of the licensee in the preceding year.
Insertion of new section 85C in Cap. 411A.	**59.** The principal Act is amended by inserting the following new section immediately after section 85A—	
	Digital platforms.	**85B.** (1) In this section—
		"digital platform" means an online environment that facilitates interactions, transactions and content sharing among users;

		"provider" means a person who operates a digital platform; and
		"user" means a person in Kenya who uses a digital platform.
		(2) This section applies to a provider established in Kenya or delivering services to users in Kenya.
		(3) The functions of the Authority under this section shall be to—
		(a) receive and facilitate the resolution of user complaints;
		(b) maintain a register of digital platforms; and
		(c) monitor the compliance of providers with the obligations under subsection (5).
		(4) A provider shall notify the Authority of the provider's particulars and the nature of the services offered.
		(5) A provider shall—
		(a) ensure the availability and safety of the provider's service to users;
		(b) publish and publicize the policies, terms and conditions governing the use of the provider's services by users;
		(c) establish a complaint redress mechanism;
		(d) report to the Authority any unlawful activity and the steps taken to remedy the situation; and
		(e) comply with the relevant laws of Kenya.
Amendment of section 86	**60.** Section 86 of the principal Act is amended by deleting the words "local authority" wherever they appear and substituting therefor the words "county government".	

of Cap. 411A.		
Amendment of section 87 of Cap. 411A.	**61.** Section 87 of the principal Act is amended—	
	(a) in subsection (1), by deleting the words "Commissioner for Lands" wherever they appear and substituting therefor the words "National Land Commission";	
	(b) by deleting subsection (2) and substituting therefor the following new subsection—	
Cap. 280.	(2) The provisions of the Land Act shall apply to the compulsory acquisition of land under this section.	
	(c) by deleting subsection (3).	
Amendment of section 89 of Cap. 411A.	**62.** Section 89 of the principal Act is amended—	
	(a) by inserting the following new subsection immediately after subsection (1)—	
	(1A) Without prejudice to the generality of subsection (1), the provisions of the law relating to applications for and the obtaining of search warrants in criminal proceedings shall apply, so far as may be practicable, in obtaining and executing a search warrant under this section.	
	(b) in subsection (4), by deleting the words "five hundred thousand shillings" and substituting therefor the words "one million shillings".	
Insertion of new section 96A in Cap. 411A.	**63.** The principal Act is amended by inserting the following new section immediately after section 96—	
	General penalty.	96A. A person who commits an offence under this Act for which no penalty is specifically provided is liable

		on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.
Amendment of section 102 of Cap. 411A.	**64.** Section 102 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—	
		(2) The Judicial Service Commission shall appoint the chairperson and the members of the Tribunal.
Amendment of section 102A of Cap. 411A.	**65.** Section 102A of the principal Act is amended—	
	(a) by deleting subsection (1) and substituting therefor the following new subsection—	
	(1) A person aggrieved by an act, omission or decision of a licensee may lodge a complaint with the Authority.	
	(b) by deleting the word "Tribunal" wherever it appears in the section and substituting therefor the word "Authority";	
	(c) by deleting subsection (8) and substituting therefor the following new subsection—	
	(8) Upon hearing a complaint under this section, the Authority may—	
		(a) direct the licensee to remedy the breach complained of;
		(b) dismiss the complaint;
		(c) carry out further investigations;
		(d) issue compliance orders; or
		(e) impose administrative sanctions.
Amendment of section 102B of Cap. 411A.	**66.** Section 102B of the principal Act is amended by deleting the word "Tribunal" wherever it appears and substituting therefor the word "Authority".	

Amendment of section 102C of Cap. 411A.	**67.** Section 102C of the principal Act is amended—	
	(a) in subsection (3), by deleting the words "or the Media Council Act"; and	
	(b) in subsection (6), by deleting the words "the Media Council Act".	
Repeal of section 102E of Cap. 411A.	**68.** The principal Act is amended by repealing section 102E.	
Amendment of section 102F of Cap. 411A.	**69.** Section 102F of the principal Act is amended—	
	(a) by deleting subsection (1) and substituting therefor the following new subsection—	
	(1) Unless otherwise expressly provided in this Act or any other law, a person aggrieved by a decision of the Authority under this Act may appeal to the Tribunal in accordance with the rules made under section 102.	
	(b) in subsection (2), by deleting the words "Media Council Act and Media Council" wherever they appear; and	
	(c) in subsection (3)(b), by deleting the words "the Media Council or".	
Amendment of section 102K of Cap. 411A.	**70.** Section 102K(4)(b) of the principal Act is amended by deleting the proviso.	
Insertion of new section 106 in Cap. 411A.	**71.** The principal Act is amended by inserting the following new section immediately after section 105—	
	Regulations.	**106.** (1) The Cabinet Secretary may, in consultation with the Authority, make

		regulations generally for the better carrying into effect of the provisions of this Act.
		(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations for—
		(a) the administration of telecommunications resources;
		(b) consumer protection;
		(c) dispute resolution; and
		(d) digital platforms, including the matters referred to in section 85C.
		(3) For the purposes of Article 94(6) of the Constitution—
		(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for the better carrying into effect of the provisions of this Act and to enable the Authority to discharge its functions more effectively;
		(b) the authority of the Cabinet Secretary to make regulations under this Act is limited to bringing into effect the provisions of this Act and fulfilling the objectives specified in this section; and
		(c) the principles and standards applicable to regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.
Repeal of the Fifth Schedule.	**72.** The principal Act is amended by deleting the Fifth Schedule.	

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Kenya Information and Communications Act (Cap. 411A) to align the Act with the Constitution, give full effect to the re-designation of the sector regulator as the Communications Authority of Kenya and update the legal framework governing telecommunications, radio communication, broadcasting, postal and courier services, electronic transactions and digital platforms.

The Bill seeks, in particular, to—

(a) replace references to the Communications Commission of Kenya with references to the Communications Authority of Kenya and delete spent and obsolete provisions, including the transitional provisions in the Fifth Schedule;

(b) strengthen the corporate governance of the Authority by providing for the office, qualifications and functions of the Corporation Secretary;

(c) provide for standards for, and the type approval of, electronic communications equipment and systems;

(d) enable the Authority to grant authorizations for scientific research, trials and experimentation in respect of new and emerging technologies and services;

(e) extend the regulatory framework for postal services to courier services;

(f) reclassify broadcasting services into public, commercial and community broadcasting, provide for the designation of the public broadcaster by the Authority and provide for the categorization of broadcasting service licences by regulations;

(g) reform the subscriber registration framework so that registration obligations attach to the subscriber rather than to the SIM-card;

(h) provide for infrastructure sharing, a national ICT infrastructure mapping system and the regulation of digital platforms;

(i) review the penalties under the Act, provide for graduated enforcement measures for breach of licence conditions and introduce a general penalty;

(j) restructure the dispute resolution framework by vesting the hearing of complaints against licensees in the Authority, providing for appeals from decisions of the Authority to the Tribunal and for the appointment of the chairperson and members of the Tribunal by the Judicial Service Commission, and decoupling the Act from the Media Council Act (Cap. 411B);

(k) give legislative effect to the decision of the High Court in **Geoffrey Andare v Attorney General & 2 others** [2016] eKLR by repealing section 29 of the Act; and

(l) provide for a general power of the Cabinet Secretary to make regulations under the Act.

In particular—

Clause 1 provides for the short title of the Bill.

Clause 2 seeks to amend the long title of the principal Act by substituting the reference to the Communications Commission of Kenya with a reference to the Communications Authority of Kenya, and by deleting the spent reference to the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication Corporation.

Clause 3 seeks to amend section 2 of the principal Act, which is the interpretation section, to—

(a) delete the definitions of "Commission", "former Commission", "Media Council", "private broadcaster" and "registration agent", which are rendered unnecessary by the amendments proposed in the Bill;

(b) substitute the words "county government" for the words "local authority" in the definition of "e-Government services", in keeping with the system of devolved government under Chapter Eleven of the Constitution;

(c) extend the definitions of "post" and "courier services" to cover courier services, parcels and consignments;

(d) require a community broadcasting service to be independent of control by government, commercial institutions and political interests, in keeping with Article 34 of the Constitution;

(e) substitute the definition of "dominant telecommunications service provider" with a definition of "dominant licensee", so that the criteria for dominance under sections 4 and 23 of the Competition Act (Cap. 504) apply to all licensees;

(f) redefine "public broadcaster" as a licensee designated as such under the proposed section 46E; and

(g) introduce new definitions of "commercial broadcaster" and "licensee".

Clause 4 seeks to make a general amendment to the principal Act by substituting the word "Authority" for the word "Commission" wherever it appears, so as to harmonise the Act with the re-designation of the regulator as the Communications Authority of Kenya.

Clause 5 seeks to amend section 7 of the principal Act to empower the Board to waive fees, subject to the approval of the National Treasury, so that any waiver of revenue due to the Authority is subject to the principles of public finance under Chapter Twelve of the Constitution.

Clause 6 seeks to insert a new section 11A in the principal Act to provide for the appointment and role of the Corporation Secretary by the Board.

Clause 7 seeks to amend section 19(2) of the principal Act by deleting paragraph (g), which requires the annual estimates of the Authority to provide for the salaries, allowances and other expenses of the staff of the Tribunal. The amendment secures the financial independence of the Tribunal from the Authority, whose decisions the Tribunal hears on appeal.

Clause 8 seeks to amend section 22(1) of the principal Act to extend the period within which the Board is required to prepare and submit its annual report to the Cabinet Secretary from three months to six months after the end of each financial year.

Clause 9 seeks to amend section 23(1) of the principal Act by deleting the reference to public payphone and directory information services, being legacy services that are no longer of regulatory significance.

Clause 10 seeks to amend section 24(2) of the principal Act to increase the maximum fine for operating a telecommunication system or providing telecommunication services without a licence from one million shillings to five million shillings.

Clause 11 seeks to amend section 25A of the principal Act by deleting subsections (3), (4) and (5), which permit spectrum licence fees exceeding one billion shillings to be paid in instalments over a period of up to ten years, and by making a consequential amendment to subsection (2). The effect of the amendment is that every applicant shall pay the prescribed licence fees in full before the grant of a licence.

Clause 12 seeks to amend section 27(4) of the principal Act to increase the maximum fine for contravening regulations made under that section from three hundred thousand shillings to one million shillings.

Clauses 13, 14 and 15 seek to amend the subscriber registration framework. **Clause 13** seeks to amend section 27A of the principal Act so that the obligation of a telecommunications operator to obtain the particulars of a person attaches to the registration of a subscriber rather than to the sale of a SIM-card, thereby accommodating embedded SIMs and other digital identifiers, and to delete subsection (2)(a) on the registration of existing subscribers, which is spent. **Clause 14** seeks to repeal section 27B of the principal Act on registration agents, consequent upon the deletion of the definition of "registration agent". **Clause 15** seeks to amend section 27D of the principal Act, including its marginal note, by substituting the word "subscriber" for the expression "SIM-card", so that the regulations under that section relate to subscriber registration.

Clause 16 seeks to amend section 28 of the principal Act to increase the maximum fine for dishonestly obtaining a telecommunication service from one million shillings to five million shillings.

Clause 17 seeks to repeal section 29 of the principal Act on the improper use of a licensed telecommunication system. The High Court, in **Geoffrey Andare v Attorney General & 2 others** [2016] eKLR (Petition No. 149 of

2015), declared section 29 unconstitutional on the ground that it unjustifiably limited the freedom of expression guaranteed under Article 33 of the Constitution. The repeal gives legislative effect to that decision.

Clause 18 seeks to amend section 34(3) of the principal Act to increase the maximum fine for running an unlicensed telecommunication system, or providing services or connecting apparatus not specified in a licence, from one million shillings to five million shillings.

Clause 19 seeks to insert a new sub-Part titled "Electronic Communications Equipment Type Approval" immediately after section 34 of the principal Act. The proposed section 34A requires the Authority to ensure that all electronic communications equipment and systems comply with the applicable information and communication technology standards and, for that purpose, to establish standards for the various categories of equipment and systems and apply those standards in determining conformity and interoperability. The proposed section 34B empowers the Cabinet Secretary, in consultation with the Authority, to make regulations on type approval, including the procedure, fees and conditions for type approval. The sub-Part is intended to curb the use of substandard, counterfeit or harmful equipment and to safeguard consumer safety and network integrity.

Clause 20 seeks to amend section 35(1) of the principal Act by deleting the words "subject to subsection (2)", since subsection (2) is a penalty provision and does not qualify the prohibition in subsection (1).

Clause 21 seeks to amend section 37 of the principal Act by inserting a new subsection (4) to empower the Authority to grant, in addition to a licence, an authorization for scientific research, trials or experimentation for new and emerging technologies and services, on such terms and conditions as the Authority may specify. The amendment is intended to support innovation in a controlled regulatory environment.

Clause 22 seeks to amend section 41(5) of the principal Act to increase the maximum fine for using apparatus in contravention of a notice of the Authority from five hundred thousand shillings to three million shillings.

Clause 23 seeks to amend section 45 of the principal Act to increase the maximum fine for deliberate interference with radio communication from one million shillings to five million shillings.

Clauses 24 to 34 seek to amend Part IVA of the principal Act on broadcasting services, as follows—

(a) **clause 24** seeks to amend section 46A of the principal Act by deleting paragraph (h), which relates to the administration of the broadcasting content aspect of the Act, and by substituting the word "broadcasting" for the word "media" in paragraph (i), so as to confine the standard-setting mandate of the Authority to broadcasting;

(b) **clause 25** seeks to amend section 46B of the principal Act by substituting the word "commercial" for the word "private" in subsection (1)(b), and by substituting subsection (2) with a provision that broadcasting service licences shall be categorized in the manner prescribed by regulations, so as to accommodate evolving broadcasting models;

(c) **clause 26** seeks to amend section 46C of the principal Act to increase the maximum fine under subsection (2) for providing broadcasting services without a licence from one million shillings to five million shillings, and to delete subsection (3)(b), which allows a licence to include a condition requiring the licensee to commit a minimum amount of time to locally produced programmes or to pay into a fund for the Kenyan production industry. The obligation to broadcast a prescribed percentage of Kenyan programmes is retained under section 46I(3);

(d) **clause 27** seeks to repeal section 46E of the principal Act, which designates the Kenya Broadcasting Corporation as the public broadcaster, and to replace it with a new section empowering the Authority, by notice in the Gazette, to designate a licensee to be the public broadcaster;

(e) **clause 28** seeks to amend section 46G of the principal Act, including its marginal note, by substituting the word "commercial" for the

word “private”, so as to align the Act with the classification of broadcasting into public, commercial and community broadcasting;

(f) **clause 29** seeks to repeal section 46H of the principal Act, which empowers the Authority to set standards for the time and manner of programmes and to prescribe a programming code, consequent upon the deletion of section 46A(h);

(g) **clause 30** seeks to amend section 46I(2) of the principal Act to extend the restriction on broadcasting unapproved material from cinematograph films to any audio or audio-visual content submitted under any law for classification and rating and approved for exhibition, airing or streaming, and to delete the reference to the Kenya Film Censorship Board;

(h) **clauses 31 and 33** seek to amend sections 46N(2) and 46Q(3) of the principal Act, respectively, to increase the maximum fines for providing signal distribution services without a licence and for broadcasting offences from one million shillings to five million shillings;

(i) **clause 32** seeks to amend section 46O(2)(a) of the principal Act by deleting the words “as a common carrier”, being obsolete terminology; and

(j) **clause 34** seeks to repeal section 46R of the principal Act, which gives effect to the transitional provisions in the Fifth Schedule on broadcasting permits issued before the commencement of the Act, which are spent.

Clauses 35 to 43 seek to amend Part V of the principal Act on postal and courier services, as follows—

(a) **clause 35** seeks to amend section 47 of the principal Act by inserting a new subsection (1A) to provide that the functions of the Authority in relation to postal services shall apply, with the necessary modifications, to the regulation of courier services;

(b) **clause 36** seeks to amend section 48 of the principal Act by substituting subsection (1), which empowers the Authority to grant the public postal licensee the exclusive right to provide private letter

boxes or bags and postal services, with a provision empowering the Authority, by notice in the Gazette, to specify areas of exclusivity for a public postal licensee to enable it to provide universal postal services effectively;

(c) **clause 37** seeks to amend section 49 of the principal Act by extending the licensing requirement in subsection (1) to courier services and by increasing the maximum fine under subsection (2) from three hundred thousand shillings to one million shillings;

(d) **clauses 38 and 39** seek to amend section 51(1) and paragraphs (b), (c), (g) and (i) of section 52 of the principal Act, respectively, by inserting the words "and courier" immediately after the word "postal", so as to ensure regulatory parity between postal and courier licensees; and

(e) **clauses 40, 41, 42 and 43** seek to amend sections 67, 71, 75 and 76 of the principal Act, respectively, to increase the maximum fines for the postal offences under those sections, which currently range from two hundred thousand shillings to five hundred thousand shillings, to one million shillings in each case.

Clause 44 seeks to amend section 81 of the principal Act to provide that a licence may be renewed subject to such terms and conditions as the Authority may impose, in addition to the payment of the prescribed fee.

Clause 45 seeks to amend section 83A(1) of the principal Act to replace the uniform financial penalty for failure to remedy a contravention with a graduated enforcement framework. Where a licensee fails to remedy a contravention within the stipulated period, the Authority may, having regard to the gravity of the contravention and after affording the licensee an opportunity to be heard, suspend the licence or service, revoke the licence or impose a penalty of twenty thousand shillings up to a maximum of zero decimal two per centum of the annual gross turnover of the licensee in the preceding year, for every year or part thereof in which the contravention continues. The penalty is a debt owed to the Authority and is recoverable summarily. The amendment secures proportionate sanctions in keeping with the right to fair administrative action under Article 47 of the Constitution.

Clause 46 seeks to amend section 83D(2) of the principal Act to increase the maximum fine for operating an electronic certification system or administering a .ke sub-domain without a licence from three hundred thousand shillings to one million shillings.

Clauses 47 and 48 seek to repeal sections 83Y and 84D of the principal Act, which create the offences of damaging or denying access to a computer system and publishing obscene information in electronic form, respectively. Cybercrime offences are now provided for under the Computer Misuse and Cybercrimes Act (Cap. 79C).

Clause 49 seeks to amend section 84W of the principal Act by substituting paragraph (g) of subsection (2), which relates to account separation, with a provision on remedies relating to competition issues, and by substituting the word "licensee" for the words "telecommunication service provider" in subsections (3) and (4), so as to extend the competition provisions on dominance to all categories of licensees.

Clause 50 seeks to amend section 84(2) of the principal Act by substituting the words "information and communications technologies" for the word "communication", so that the National Communication Secretariat advises the Government on information and communications technologies policy.

Clause 51 seeks to amend section 85(3) of the principal Act by substituting the words "county government" for the words "local authority".

Clause 52 seeks to amend section 85A of the principal Act by substituting the words "infrastructure sharing" for the word "co-location" in subsections (1) and (2), so as to extend the provision beyond co-location to the sharing of ducts, towers, poles and other infrastructure.

Clause 53 seeks to insert a new section 85B in the principal Act to empower the Authority to establish and maintain a national ICT infrastructure information system for the mapping of existing and planned telecommunications infrastructure. A licensee is required to provide infrastructure information in its compliance returns. The information is to be classified and made accessible at the levels determined by the Authority, subject to the Data Protection Act (Cap. 411C). A licensee that fails to provide or update the information, or provides false, misleading or

materially incomplete information, is liable to an administrative penalty not exceeding zero decimal five per centum of its annual gross turnover in the preceding year.

Clause 54 seeks to insert a new section 85C in the principal Act to provide for the regulation of digital platforms. The proposed section—

(a) defines "digital platform", "provider" and "user";

(b) applies to a provider established in Kenya or delivering services to users in Kenya;

(c) mandates the Authority to receive and facilitate the resolution of user complaints, maintain a register of digital platforms and monitor the compliance of providers;

(d) requires a provider to notify the Authority of its particulars and the nature of the services it offers; and

(e) requires a provider to ensure the availability and safety of its service, publish the policies, terms and conditions governing the use of its service, establish a complaint redress mechanism, report unlawful activity and the remedial steps taken, and comply with the relevant laws of Kenya.

The proposed section is intended to protect users in Kenya, enhance online safety and ensure that providers delivering services to users in Kenya are accountable under Kenyan law.

Clause 55 seeks to amend section 86 of the principal Act by substituting the words "county government" for the words "local authority" wherever they appear.

Clause 56 seeks to amend section 87 of the principal Act on the compulsory acquisition of land by substituting the National Land Commission for the Commissioner of Lands, by providing that the Land Act (Cap. 280) shall apply to the compulsory acquisition of land under that section in place of the repealed Land Acquisition Act, and by deleting subsection (3), so as to align the section with Articles 40 and 67 of the Constitution.

Clause 57 seeks to amend section 89 of the principal Act by inserting a new subsection (1A) to apply the law relating to the application for and execution of search warrants in criminal proceedings to search warrants issued under that section, and by increasing the maximum fine under subsection (4) from five hundred thousand shillings to one million shillings.

Clause 58 seeks to insert a new section 96A in the principal Act to provide a general penalty. A person who commits an offence under the Act for which no penalty is specifically provided is liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

Clauses 59 to 65 seek to restructure the dispute resolution framework under the principal Act, as follows—

(a) **clause 59** seeks to amend section 102 of the principal Act by substituting subsection (2) with a provision that the Judicial Service Commission shall appoint the chairperson and the members of the Tribunal, in place of the selection process conducted by a selection panel convened by the Cabinet Secretary;

(b) **clause 60** seeks to amend section 102A of the principal Act to provide that a person aggrieved by an act, omission or decision of a licensee may lodge a complaint with the Authority, to substitute the word "Authority" for the word "Tribunal" throughout the section and to empower the Authority, upon hearing a complaint, to direct the licensee to remedy the breach, dismiss the complaint, carry out further investigations, issue compliance orders or impose administrative sanctions;

(c) **clause 61** seeks to amend section 102B of the principal Act by substituting the word "Authority" for the word "Tribunal" wherever it appears, so that the procedure upon complaint applies to complaints lodged with the Authority;

(d) **clause 62** seeks to amend section 102C of the principal Act by deleting the references to the Media Council Act in subsections (3) and (6);

(e) **clause 63** seeks to repeal section 102E of the principal Act, which empowers the Tribunal to make orders against journalists and media enterprises upon hearing a complaint;

(f) **clause 64** seeks to amend section 102F of the principal Act to provide that, unless otherwise expressly provided in the Act or any other law, a person aggrieved by a decision of the Authority may appeal to the Tribunal in accordance with the rules made under section 102, and to delete the references to the Media Council Act and the Media Council in subsections (2) and (3)(b); and

(g) **clause 65** seeks to amend section 102K(4)(b) of the principal Act by deleting the proviso, which relates to authorizations for the search of premises and has no bearing on the appointment of members of the Universal Service Advisory Council.

The amendments separate the complaints-handling function of the Authority from the appellate function of the Tribunal, decouple the Act from the complaints framework under the Media Council Act and secure the independence of the Tribunal.

Clause 66 seeks to insert a new section 106 in the principal Act to empower the Cabinet Secretary, in consultation with the Authority, to make regulations generally for the better carrying into effect of the provisions of the Act, including regulations on the administration of telecommunications resources, consumer protection, dispute resolution and digital platforms. The proposed section sets out the purpose and objective of the delegation, the limits of the delegated authority and the applicable principles and standards, as required by Article 94(6) of the Constitution.

Clause 67 seeks to delete the Fifth Schedule to the principal Act, which contains spent transitional provisions on broadcasting permits and on the administration of the .ke domain name space issued or undertaken before the commencement of the Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary responsible for matters relating to information, communications and

technology to make regulations, in consultation with the Authority, on the type approval of electronic communications equipment under the proposed section 34B (clause 19), and generally for the better carrying into effect of the provisions of the Act under the proposed section 106 (clause 66), including regulations on the categorization of broadcasting service licences under section 46B(2) (clause 25). The purpose and objective of the delegation, the limits of the delegated authority and the applicable principles and standards are set out in the proposed section 106(3), in accordance with Article 94(6) of the Constitution. Statutory instruments made under the Act will be subject to the Statutory Instruments Act (Cap. 2A).

The Bill does not limit any fundamental right or freedom under Chapter Four of the Constitution. The Bill advances the freedom of expression under Article 33 of the Constitution by repealing section 29 of the Act (clause 17), the freedom of the media under Article 34 by securing the independence of community broadcasting services (clause 3), the right to privacy under Article 31 by subjecting infrastructure information to the Data Protection Act (clause 53) and search warrants to the safeguards of the criminal law (clause 57), consumer rights under Article 46 (clauses 54 and 60), and the rights to fair administrative action and to a fair hearing under Articles 47 and 50 by requiring that a licensee be heard before an enforcement measure is taken and by providing for appeals to an independent Tribunal (clauses 45, 59 and 64).

Statement on how the Bill concerns county governments

The Bill does not concern county governments within the meaning of Article 110(1) of the Constitution. The Bill relates to telecommunications, postal services and broadcasting, which are functions of the national government under paragraph 18 of Part 1 of the Fourth Schedule to the Constitution. The substitution of references to "local authority" with references to "county government" in clauses 3, 51 and 55 is consequential upon the abolition of local authorities, and does not confer, alter or affect any function or power of a county government under Part 2 of the Fourth Schedule.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution. The Bill does not impose, vary or abolish any tax, impose any charge on a public fund, appropriate or provide for the withdrawal of public money, or deal with the raising or guaranteeing of any loan. The cost of implementing the Bill will be met from the resources of the Communications Authority of Kenya under the Act.

Dated the ……, 2026.

WILLIAM KABOGO GITAU,
Cabinet Secretary for Information, Communications and the Digital Economy.

The long title to Cap. 411A which it is proposed to be amended—

An Act of Parliament to provide for the establishment of the Communications Commission of Kenya, to facilitate the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and electronic commerce, to provide for the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication Corporation to the Commission, the Telcom Kenya Limited and the Postal Corporation of Kenya, and for connected purposes

Section 2 of Cap. 411A which it is proposed to be amended—

Interpretation.

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

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

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

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

(a) is uniquely linked to the signatory;

(b) is capable of identifying the signatory:

(c) it is created using means that the signatory can maintain under his sole control; and

(d) it is linked to the data to which it relates in such a manner that any subsequent change to the data is detectable;

"agreement" includes decisions or practices;

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

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

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

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

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

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

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for information, communication and technology;

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

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

"Commission" means the Communications Authority of Kenya;

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

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

(a) is fully controlled by a non-profit entity and carried on for nonprofitable purposes;

(b) serves a particular community;

(c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and

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

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

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

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

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

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

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

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

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

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

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

"dominant telecommunications service provider" means a licensee determined to be a dominant telecommunications service provider pursuant to the criteria set out in sections 4 and 23 of the Competition Act (Cap. 504);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"information and communication technologies" means technologies employed in collecting, storing,

using or sending out information and include those involving the use of computers or any telecommunication system;

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

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

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

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

"licence" means any licence issued under this Act;

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

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

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

"Media Council" means the Media Council of Kenya established under the Media Council Act (Cap. 411B);

"modification" means a modification of the contents of any computer system by the operation of any function

of that computer system or any other computer system as a result of which-

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

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

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

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

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

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

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

"post"—

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

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

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

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

"postage stamp" means any label or stamp for denoting any postage or other sum payable in respect of

a postal article, and includes an adhesive postage stamp or a stamp printed, impressed or otherwise indicated on a postal article, whether issued by the Government of Kenya or any other country;

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

"postal service" means any service by post;

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

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

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

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

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

"public broadcaster" means the Kenya Broadcasting Corporation established by the Kenya Broadcasting Corporation Act (Cap. 221);

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

"public postal licensee" means the Postal Corporation of Kenya established under the Postal Corporation of Kenya Act (Cap. 411);

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

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

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

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

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

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

"registration agent" means a person contracted or otherwise engaged by a telecommunications operator to carry out registration of SIM-cards;

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

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

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

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

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

"SIM-card" means the Subscriber Identity Module which is an independent electronically-activated device designed for use in conjunction with a telecommunication apparatus to enable the user of the telecommunication apparatus to transmit and receive indirect communications by providing access to telecommunication systems and enabling such telecommunication systems to identify the particular Subscriber Identity Module and its installed information;

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

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

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

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

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

"telecommunication service" means any of the following—

(i) a service consisting of the conveyance by means of a telecommunication system of anything falling within subparagraphs (i) to (v) in the definition of "telecommunication system";

(ii) a service consisting of the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system; or

(iii) a directory information service, being a service consisting of the provision by means of a telecommunication system of directory information for the purposes of facilitating the use of a service falling within subparagraph (i) above and provided by means of that system;

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

(i) speech, music and other sounds;

(ii) visual images;

(iii) data;

(iv) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sound, visual images or data; or

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

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

"vandalize" means to commit an act of vandalism;

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

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

(3) In this Act—

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

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

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

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

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

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

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

(iii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee; or

(iv) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee;

(v) an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business; and

(vi) the provisions of subparagraph (v) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under subparagraphs (ii) or (iii).

Section 7 of Cap. 411A which it is proposed to be amended—

Powers of the Board.

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

(a) manage, control and administer the assets of the Commission in such manner and for such

purposes as best promote the purposes for which the Commission is established;

(b) receive any gifts, grants, donations or endowments made to the Commission or any other monies in respect of the Commission and make disbursements therefrom in accordance with the provisions of this Act;

(c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Commission;

(d) open a banking account or banking accounts for the funds of the Commission;

(e) invest any monies of the Commission not immediately required for the purposes of this Act in the manner provided in section 21;

(f) establish a broadcasting standards committee and such other committees as may be necessary to carry out its functions; and

(g) co-opt persons whose skills and expertise may be necessary for the functions of the Authority:

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

Section 19 of Cap. 411A which it is proposed to be amended—

Annual estimates.

19. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year concerned, and in particular shall provide—

(a) for the payment of the salaries, allowances and other charges in respect of the staff of the Commission and the members of the Board;

(b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Commission;

(c) for the proper maintenance of the buildings and grounds of the Commission;

(d) for the proper maintenance, repair and replacement of the equipment and other movable property of the Commission;

(e) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may deem fit;

(f) for the payment of the salaries, allowances and other charges in respect of the staff of the National Communications Secretariat established under section 84, and such other expenses of the Secretariat as may be approved by the Cabinet Secretary from time to time; and

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

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

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

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

Section 22 of Cap. 411A which it is proposed to be amended—

Annual report.

22. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the

Cabinet Secretary a report of the operations of the Board for the immediately preceding year.

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

Section 23 of Cap. 411A which it is proposed to be amended—

Provision of telecommunication services.

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

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

(a) protect the interests of all users of telecommunication services in Kenya with respect to the prices charged for and the quality and variety of such services;

(b) maintain and promote effective competition between persons engaged in commercial activities connected with telecommunication services in Kenya in order to ensure efficiency and economy in the provision of such services and to promote research and development in relation thereto;

(c) encourage private investment in the telecommunication sector;

(d) enable persons providing telecommunication services or producing telecommunication apparatus in Kenya to compete effectively in the provision of such services or apparatus outside Kenya;

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

(ee) ensure processing of personal data of subscribers is in accordance with principles

set out under the Data Protection Act (Cap. 411C).

Section 24 of Cap. 411A which it is proposed to be amended—

Requirement of licence.

24. (1) No person shall—

(a) operate a telecommunication system; or

(b) provide any telecommunication services,

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

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

Section 25A of Cap. 411A which it is proposed to be amended—

Payment of licence fees.

25A. (1) The Authority may prescribe fees payable for a licence issued under this Part.

(2) Subject to subsection (3), an applicant shall pay the prescribed fees in full before the grant of a licence.

(3) The Authority may permit the payment of spectrum license fees in equal instalments over a period not exceeding ten years if—

(a) the fees exceed one billion shillings;

(b) the applicant is a Kenyan citizen or an entity in which Kenyan citizens own at least fifty-one per cent shares; and

(c) the applicant undertakes to construct at least five hundred base transceiver stations across the country within three years of the grant of the licence.

(4) A person granted a licence subject to the conditions under subsection (3) shall be liable to pay the prescribed licence fee in full if they—

(a) cease to be a Kenyan citizen or an entity in which Kenyan citizens own at least fifty-one per cent shares; or

(b) propose a transfer or assignment of the licence to a non-citizen or an entity in which Kenyan citizens do not own at least fifty-one per cent shares.

(5) The Authority shall revoke a licence granted subject to the conditions under subsection (3) if the licensee fails to meet the requirement under paragraph (3)(c).

Section 27 of Cap. 411A which it is proposed to be amended—

General regulations for telecommunication services.

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

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary in consultation with the Commission may make regulations with respect to—

(a) the running of telecommunication systems;

(b) the privacy of telecommunication;

(c) the provision of telecommunication services pursuant to the provisions of section 23 and in particular, the manner in which such services shall be offered and performed, the issue of licences and the payment of fees in respect thereof, and such other matters as it deems fit;

(d) the period during which and conditions subject to which messages and papers relating to telecommunication services belonging to, or in the custody of telecommunication operators shall be preserved;

(e) the issue, variation and withdrawal of approvals in respect of contractors for relevant operations in connection with any telecommunication system and the maintenance of registers of such contractors;

(f) fees and other charges for any matter permitted or matters required to be done under this Act in relation to telecommunication services;

(g) the form of any licence, notice, approval, certificate, authority or other written document required or permitted to be issued by or submitted to the Commission in relation to telecommunication services;

(gg) the registration of telecommunication subscribers;

(h) the registration of subscribers to telecommunication services.

(3) Regulations under this section may make different provisions with respect to different classes or descriptions of telecommunication systems, apparatus or services.

(4) Any person who contravenes any regulation made under this section commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 27A of Cap. 411A which it is proposed to be amended—

Duties of telecommunications operators.

27A. (1) Before a telecommunications operator sells a SIM- card or otherwise provides telecommunication services to a person, it shall obtain—

(a) from natural persons, the person's full name, identity card number, date of birth, gender, physical and postal address;

(b) from corporate persons or statutory bodies, official name, postal and physical address, particulars of registration, incorporation, enabling legislation or Gazette notice, as the case may be; and

(c) such other information as may be prescribed from time to time.

(2) A telecommunication operator shall ensure that—

(a) existing subscribers register their SIM-cards within such time period as may be prescribed;

(b) proper physical or electronic records are kept of the information referred to in subsection (1) and any change in such information;

(c) the registration details of a subscriber are kept in a secure and confidential manner, and shall not be disclosed without the written consent of the subscriber.

(3) Notwithstanding the provisions of subsection (2)(c), a telecommunications operator may disclose the registration particulars of a subscriber—

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

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

(c) for the purpose of any civil proceedings under the Act.

(3A) Subject to subsection (3B), a telecommunication operator shall, before levying or allowing to be levied, any specific charge relating to a premium rate service provided to a subscriber, disclose the fact, amount, and frequency of the charge to the subscriber.

(3B) Subsection (3A) shall not apply to services rendered by a telecommunications operator on behalf of a public body.

(4) Any telecommunications operator who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five million shillings.

Section 27B of Cap. 411A which it is proposed to be repealed—

Registration by agents.

27B. (1) A telecommunications operator may contract or otherwise engage a registration agent for purposes of registering existing or new subscribers.

(2) A registration agent shall—

(a) ensure that proper registration of the subscriber is conducted prior to the selling of a SIM-card;

(b) provide all records of registration to the telecommunications operator within such time after registration as may be prescribed;

(c) ensure that the registration details of a subscriber are kept in a secure and confidential manner and are not disclosed to any other person;

(3) A telecommunications operator shall keep a record of its registration agents and such record shall be made available to the Authority at such time and in such manner as may be prescribed.

(4) A registration agent shall not hawk SIM-cards and shall ensure that they are sold and registered in a formal retail outlet.

(5) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding twelve months, or both.

Section 27D of Cap. 411A which it is proposed to be amended—

Regulations on SIM-card Registration.

27D. The Cabinet Secretary, in consultation with the Authority may make regulations with respect to—

(a) procedure for SIM-card registration;

(b) timelines for SIM-card registration, storage and retention of subscriber records;

(c) confidentiality and disclosure of subscriber information;

(d) registration of minors;

(e) transfer of SIM-cards;

(f) registration particulars;

(g) suspension and deactivation of SIM-cards; and

(h) any other matter that may be prescribed under this sub-Part.

Section 28 of Cap. 411A which it is proposed to be amended—

Obtaining service dishonestly.

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

Section 29 of Cap. 411A which it is proposed to be repealed—

Improper use of system.

29. A person who by means of a licensed telecommunication system—

(a) sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person,

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

Section 34 of Cap. 411A which it is proposed to be amended—

Prohibition of unlicensed telecommunication system.

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

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

(a) that person provides telecommunication services which are not of a description specified in the licence; or

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

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

Section 35 of Cap. 411A which it is proposed to be amended—

Licensing requirements.

35. (1) Subject to subsection (2), no person shall, establish or use any radio communication station or apparatus except in accordance with the terms of a licence granted under section 36.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 37 of Cap. 411A which it is proposed to be amended—

Licences for scientific or research use.

37. (1) Where an application for the grant or renewal of a radio communication licence is made to the Commission by any person, and the Commission is satisfied that the purpose of the licence is to enable the applicant to conduct experiments in radio communications for the purpose of scientific research, the Commission shall subject to subsection (2) not refuse to grant or renew the licence, and shall not revoke the licence when granted and no sum shall be payable under any regulations in respect of such licence except the fee for the grant or the renewal thereof.

(2) Nothing in subsection (1) shall prevent the Commission from refusing to grant or renew, or from revoking, a radio communication licence if the applicant has, whether before or after the grant or last renewal of

the licence, been convicted of any offence under this Act, whether in relation to any radio communication apparatus covered by such licence or any other radio communication apparatus, or has been convicted of using any apparatus for the purpose of interfering with any radio communication.

(3) Nothing in subsection (1) shall limit the discretion of the Commission as to the conditions which it attaches to any radio communication licence or its power to vary the conditions of any such licence.

Section 41 of Cap. 411A which it is proposed to be amended—

Enforcement of regulations as to use of apparatus.

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

(a) that any apparatus does not comply with the requirements applicable to it under regulations made for the purpose under subsection (1) of section 40; or

(b) that either—

(i) the use of the apparatus is likely to cause undue interference with any radio communication used for the purpose of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or

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

it may serve on the person in whose possession the apparatus is, a notice in writing requiring that, after a date fixed by the notice, not being less than thirty days from the date of service thereof, the apparatus shall not be

used, whether by the person to whom the notice is given or otherwise, or shall only be used in such manner, at such times and in such circumstances as may be specified in the notice:

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

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

Provided that where a notice under this section has the effect of imposing any additional restrictions on the use of the apparatus, the provisions of subsection (1) relating to the coming into force of the notice shall apply in relation to the subsequent notice as if it had been a notice served under subsection (1).

(3) Where a notice has been given under subsection (1), any person having possession of, or any interest in, the apparatus to which the notice relates may, at any time, whether before or after the date fixed by such notice, by notice in writing served on the Commission, show reasons why the apparatus in question complies with the requirements applicable to it under the regulations and if the Commission is satisfied that—

(a) the apparatus in question so complies, it shall revoke the notice; or

(b) the said requirements ought to be relaxed in relation to the apparatus, may revoke the notice or vary it in such manner as the Commission may deem fit:

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

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

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

Section 45 of Cap. 411A which it is proposed to be amended—

Deliberate interference with radio communication.

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

Section 46A of Cap. 411A which it is proposed to be amended—

Functions of the Commission in relation to broadcasting services.

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

(a) promote and facilitate the development, in keeping with the public interest of a diverse range of broadcasting services in Kenya;

(b) facilitate and encourage the development of Kenyan programmes;

(c) promote the observance at all times of public interest obligations in all broadcasting categories;

(d) promote diversity and plurality of views for a competitive marketplace of ideas;

(e) ensure the provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services;

(f) protect the right to privacy of all persons;

(g) carry out such other functions as are necessary or expedient for the discharge of all or any of the functions conferred upon it under this Act;

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

(i) developing media standards; and

(j) regulating and monitoring compliance with those standards.

Section 46B of Cap. 411A which it is proposed to be amended—

Classification of Broadcasting Services.

46B. (1) Broadcasting services shall be classified for specified areas according to the following service categories—

(a) public broadcasting;

(b) private broadcasting;

(c) community broadcasting.

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

(a) free-to-air radio;

(b) free-to-air television;

(c) subscription radio;

(d) subscription television:

(e) subscription management;

(f) any other class of licence as may be determined in accordance with the Regulations.

Section 46C of Cap. 411A which it is proposed to be amended—

Requirement of a Broadcasting Licence.

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

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

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

(a) broadcast in such areas and within such geographical limits as the Commission may prescribe;

(b) commit a minimum amount of time as may be prescribed, in its programme schedule to locally produced programmes, or, in the alternative, pay such amount of money as may be prescribed, into a Fund to assist the development of the Kenyan production industry;

(c) pay such fees as the Commission may prescribe; and

(d) fulfil such other conditions as the Commission may require.

Section 46E of Cap. 411A which it is proposed to be repealed and replaced—

Public broadcasting services.

46E. The Kenya Broadcasting Corporation established under section 3 of the Kenya Broadcasting Corporation Act (Cap. 221) is hereby designated as the public broadcaster and shall provide public broadcasting services.

Section 46G of Cap. 411A which it is proposed to be amended—

Private Broadcasting Services.

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

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

(a) provide coverage in such areas as may be specified by the Commission;

(b) in the case of television, include drama, documentaries and children's programmes that reflect Kenyan themes.

Section 46H of Cap. 411A which it is proposed to be repealed—

Commission to prescribe programme code.

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

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

(a) prescribe a programming code;

(b) review the programming code at least once every two years;

(c) prescribe a watershed period programming when large numbers of children are likely to be watching or listening to programmes; and

(d) ensure compliance with the programming code prescribed under this section:

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

Section 46I of Cap. 411A which it is proposed to be amended—

Responsibilities of broadcasters.

46I. (1) All licensed broadcasters shall—

(a) provide responsible and responsive programming that caters for the varied needs

and susceptibilities of different sections of the Kenyan community;

(b) ensure that Kenyan identity is developed and maintained in programmes;

(c) observe standards of good taste and decency;

(d) gather and present news and information accurately and impartially;

(e) when controversial or contentious issues of public interest are discussed, make reasonable efforts to present alternative points of view either in the same programme or in other programmes within the period of current interest;

(f) respect the right to privacy of individuals;

(g) respect copyright and neighbouring rights in respect of any work or material;

(h) keep a program log or machine readable record of its programming for a period of one year after the date of broadcasting;

(i) ensure that advertisements, either in terms of content, tone or treatment are not deceptive or are not repugnant to good taste;

(j) ensure that derogatory remarks based on ethnicity, race, creed, colour and sex are not broadcast.

(2) Where—

(a) any cinematograph film has been submitted under any law for classification or censorship and approved for exhibition; and

(b) where approval of the film for exhibition has been denied or has been given subject to excisions, no broadcaster shall—

(i) in the case of any film in respect of which such approval has been denied, broadcast the film or any part thereof; or

(ii) in the case of any film that has been approved for exhibition subject to excisions therefrom, broadcast that film

or any part thereof if the film or, as the case may be, that part thereof includes any part of the film required to be excised,

except with the consent of and subject to any conditions given by the Kenya Film Censorship Board established under the Films and Stage Plays Act (Cap. 222).

(3) A broadcaster licensed to distribute radio or television programme shall broadcast on radio or television such percentage of Kenyan programmes as shall be prescribed by the Authority.

Section 46N of Cap. 411A which it is proposed to be amended—

Requirement for a licence for signal distribution.

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

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or both.

Section 46O of Cap. 411A which it is proposed to be amended—

Signal Distribution services.

46O. (1) The Commission may upon an application in the prescribed manner and subject to such conditions as it may deem necessary, grant a licence authorizing any person or persons to provide signal distribution services.

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

(a) provide signal distribution services as a common carrier to broadcasting licensees;

(b) provide services promptly upon request, in an equitable, reasonable non-preferential and nondiscriminatory manner;

(c) provide capability for a diversity of broadcast services and content;

(d) provide an open network that is interoperable with other signal distribution networks; and

(e) comply with any other conditions that the Commission may determine.

(3) A signal distribution licensee utilizing the radio frequency resource may be required by the Commission to comply with conditions as to the nature and location of transmitters and their transmission characteristics.

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

Section 46Q of Cap. 411A which it is proposed to be amended—

Offences relating to broadcasting services.

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

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

(a) that person provides a broadcasting service which is not of a description specified in the licence;

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

(c) that person broadcasts in contravention of the Act or the licence conditions.

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

Section 46R of Cap. 411A which it is proposed to be repealed—

Transitional provisions.

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

Section 47 of Cap. 411A which it is proposed to be amended—

Functions of the Commission in relation to postal services.

47. (1) The functions of the Commission in relation to postal services shall be to—

(a) ensure that there are provided throughout Kenya good and sufficient postal and other related services, on such terms as the Commission may deem expedient;

(b) ensure that the public post licensee is able to provide postal services at rates consistent with efficient and continuous service and financing viability;

(c) promote development of postal systems and services in accordance with recognised international standards, practices and public demand;

(d) exercise licensing and regulatory functions in respect of postal systems and services in Kenya in accordance with this Act;

(e) regulate the fixing of rates of postage and other fees or sums to be charged in respect of postal articles weighing not more than three hundred and fifty grams;

(f) regulate the issuance of postage stamps including definitive, commemorative and special issues of postage stamps and any other philatelic items;

(g) ensure the terms and conditions stated in any licence granted under section 51 are complied with;

(h) promote competition in the provision of postal services;

(i) ensure that reasonable demands for postal services are satisfied;

(j) promote and encourage the expansion of postal services in Kenya; and

(k) further the advancement of technology relating to the post and postal services.

(2) In discharging the functions and duties under subsection (1), the Commission shall have regard to—

(a) efficiency and economy;

(b) fostering the development and expansion of postal services in Kenya in collaboration with other countries and international organisations;

(c) the maintenance of effective competition between persons providing or interested in providing postal services;

(d) the promotion of measures for the safety of life through communications;

(e) the provision of postal service rates consistent with efficient service and the necessity for maintaining financial viability; and

(f) the promotion and development of standards in the field of postal systems and services.

Section 48 of Cap. 411A which it is proposed to be amended—

Exclusive right to provide certain postal services.

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

(a) letters weighing more than three hundred and fifty grams;

(b) trade announcements, circulars, printed extracts from newspapers or advertisements not addressed to any particular person;

(c) letters delivered by an employee of the sender;

(d) letters delivered by a messenger employed by the sender especially for the purpose, not being a person employed or engaged in the

course of his business or employment in delivering or procuring the delivery of letters;

(e) letters concerning goods sent with the goods and delivered therewith;

(f) letters carried to or from a post office;

(g) letters carried in accordance with an agreement entered with the public postal licensee;

(h) transfers between document exchanges;

(i) letters carried to the premises of a provider of electronic mail services for the purposes of being transmitted as electronic mail, or letters carried from the premises of such a person after having been transmitted;

(j) letters carried privately and delivered without hire, reward or other profit;

(k) letters carried and delivered personally by the sender; and

(l) letters, postcards, aerogrammes of three hundred and fifty grams or less in weight, if a charge of at least five times the basic charge of the public postal licensee letter rate for that class of item is made in respect of receiving, collecting, sending, despatching and delivery.

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

Section 49 of Cap. 411A which it is proposed to be amended—

Requirement of licence.

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

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

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

Section 51 of Cap. 411A which it is proposed to be amended—

Licence to provide postal services.

51. (1) The Commission may, upon application in the prescribed manner and subject to the conditions specified in section 52 or such other conditions as the Commission may deem necessary, grant a licence in the prescribed form authorising any person to operate or to provide postal services in accordance with the provisions of this Act.

(2) A licence granted under this section shall unless earlier revoked in accordance with any term specified therein, continue in force for such period as may be specified therein.

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

Section 52 of Cap. 411A which it is proposed to be amended—

Conditions of licence.

52. Every licensee shall be required to observe the following conditions—

(a) to provide courier services to any person, who requests for such services where available;

(b) to notify the Commission forthwith of the current tariffs charged for postal services and changes to the tariffs for each different type of postal service provided to each location within thirty days of such changes;

(c) to display prominently at each premises from which it conducts its business, current tariffs for each postal service to various destinations;

(d) to comply with all applicable and relevant laws, rules and regulations including, but not limited to the law relating to customs and imports and exports with regard to receipt and dispatch of postal articles to and from Kenya;

(e) to furnish the Commission with a copy of its latest audited annual accounts and financial statements of the business with the application for renewal of its licence;

(f) if the licensee is a company with a share capital, to provide documentary evidence of current status of shareholding together with the applicant for renewal of its licence;

(g) where the licensee intends to enter into any association, contract or arrangement with a third party, to provide postal services which only the licensee is permitted under its licence to provide, to seek approval from the Commission before entering into such association, contract or arrangement;

(h) to exercise its rights and powers and perform its duties and obligations under the licence in such manner as is consistent with the agreements or treaties to which Kenya is a party;

(i) not to enter into any arrangement with any person running an international postal service on terms and conditions which the Commission deems to be unfavourable to the national interest.

Section 67 of Cap. 411A which it is proposed to be amended—

Operating without a valid licence.

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

(a) conveys any letter or postal article;

(b) performs any service incidental to conveying, any letter or postal article;

(c) delivers or tenders in order to be sent otherwise than in accordance with the terms of a valid licence any letter or postal article as aforesaid; or

(d) makes a collection of letters or postal articles for the purpose of sending them;

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

Section 71 of Cap. 411A which it is proposed to be amended—

Transmitting offensive material by post.

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

Section 75 of Cap. 411A which it is proposed to be amended—

Transmitting prohibited articles by post.

75. Any person who—

(a) sends by post any postal article which is prohibited from being so transmitted under any regulations made under this Act;

(b) sends by post, otherwise than in accordance with any regulations made under this Act, any postal article containing any noxious, explosive or dangerous substance which would be likely to damage any other postal article;

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

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

commits an offence and shall, be liable on conviction to a fine not exceeding three hundred thousand shillings or

to imprisonment for a term not exceeding three years, or to both.

Section 76 of Cap. 411A which it is proposed to be amended—

Interfering with postal installation.

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

Section 81 of Cap. 411A which it is proposed to be amended—

Renewal of licence.

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

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

Section 83A of Cap. 411A which it is proposed to be amended—

Enforcement of licence conditions.

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

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

(b) notifies the licensee in writing, specifying the acts or omissions which, in its opinion constitute or would constitute contravention of the Act or the licence;

(c) requires the licensee to remedy the contravention within such period as the Commission may specify in the notice,

then if the licensee fails to remedy the contravention within the prescribed period without reasonable cause, such a licensee shall be liable to a penalty of five hundred thousand shillings up to a maximum of zero decimal two

per centum of the annual gross turnover of the offending licensee in the preceding year for every year or part thereof in which the offence is continuing and such penalty shall be debt owed to the Commission and recoverable summarily.

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

Section 83D of Cap. 411A which it is proposed to be amended—

Requirement for a licence.

83D. (1) No person shall—

(a) operate an electronic certification system; or

(b) update a repository or administer a subdomain in the Kenya country top level domain (.ke ccTLD),

except in accordance with a licence granted under this Act.

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

Section 83Y of Cap. 411A which it is proposed to be repealed—

Damaging or denying access to computer system.

83Y. Any person who without lawful authority or lawful excuse does an act which causes directly or indirectly—

(a) a degradation, failure, interruption or obstruction of the operation of a computer system; or

(b) a denial of access to, or impairment of any program or data stored in, the computer system,

shall commit an offence and shall, on conviction be liable to a fine not exceeding two hundred thousand shillings

and or imprisonment for a term not exceeding two years or both.

Section 84D of Cap. 411A which it is proposed to be repealed—

Publishing of obscene information in electronic form.

84D. Any person who publishes or transmits or causes to be published in electronic form, any material which is lascivious or appeals to the prurient interest and its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein, shall on conviction be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years, or both.

Section 84W of Cap. 411A which it is proposed to be amended—

Regulations on competition issues.

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

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

(a) access, including rules of interconnection, by licensees under this Act and their subscribers to each other's network;

(b) the procedure of handling alleged breaches of fair competition;

(c) investigation of a licensee under this Act alleged to have committed acts or omissions in breach of fair competition;

(d) access to information from any licensee with regard to facilitating investigations on alleged breaches of fair competition;

(e) steps to be taken in order to remedy the breach;

(f) definition of market segments;

(g) account separation.

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

(4) The Commission may, in consultation with the Competition Authority and after due process declare a person or institution, by notice in the Gazette, to be a "dominant telecommunications Service provider" for the purposes of this Act.

(5) In making a declaration under subsection (4), the Commission shall in consultation with the Competition Authority consider—

(a) the market share of the telecommunications service provider being at least twenty five per cent of the total revenue of the entire telecommunications market;

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

(c) any other consideration the Authority may determine.

(d) deleted by Act No. 41A of 2013, s. 33.

Section 84 of Cap. 411A which it is proposed to be amended—

National Communication Secretariat.

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

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

(a) promotes the benefits of technological development to all users of postal and telecommunication facilities;

(b) fosters national safety and security, economic prosperity and the delivery of critical social services through posts and telecommunications;

(c) facilitates and contributes to the full development of competition and efficiency in the provision of services both within and outside Kenya; and

(d) fosters full and efficient use of telecommunication resources including effective use of the radio spectrum by the Government in a manner which encourages the most beneficial use thereof in the public interest.

Section 85 of Cap. 411A which it is proposed to be amended—

Power of operator to use land.

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

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

(a) put up any posts, which may be required for support of any telecommunication lines;

(b) fasten or attach to any tree growing on that land a bracket or other support for the line;

(c) cut down any tree or branch which is likely to injure, impede or interfere with any telecommunication lines; or

(d) perform any activities necessary for the purpose of establishing, constructing, repairing, improving, examining, altering or removing any telecommunication apparatus or radio communication apparatus, or for performing any other activities in accordance with the provisions of this Act.

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

(a) acquire any right other than that of user of such land under, over, along, across, in or upon which any telecommunication apparatus or radio communication apparatus is placed and only for such purposes as the parties have agreed;

(b) exercise those powers in respect of any land vested in or under the control of a local authority, except in accordance with a procedure set out in section 86.

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

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

Section 85A of Cap. 411A which it is proposed to be amended—

Co-location.

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

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

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

Section 86 of Cap. 411A which it is proposed to be amended—

Procedure for using public land.

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

(2) The local authority or other public body may, upon request under subsection (1), permit the telecommunication operator to exercise any or all of the powers under section 85(2), subject to such conditions, including the payment of any fee for the use of the property, the time or mode of execution of any works, or for any other related activity undertaken by the telecommunication operator under the section as may be agreed between the telecommunication operator and the authority.

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

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

Section 87 of Cap. 411A which it is proposed to be amended—

Compulsory purchase of land.

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

acquire the land on behalf of the telecommunication operator.

(2) Upon application by the Commission under subsection (1), the Commissioner of Lands may, if satisfied that it is in the public interest to do so, acquire the land in accordance with the provisions of the Land Acquisition Act (Cap. 301).

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

Section 89 of Cap. 411A which it is proposed to be amended—

Entry and search of premises, etc.

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

(2) If a court is satisfied that—

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

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

that behalf by the Commission and has been denied,

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

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

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

(ii) it is shown to the court that not less than seven days' notice of the demand for access was served on the owner or occupier of the premises, or the person in possession or in charge of the vessel, aircraft or vehicle, and that the demand was made at a reasonable hour and was unreasonably denied.

(3) Where under this section a person is authorised to examine and test any telecommunication system or telecommunication apparatus or radio-communication apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft or vehicle, to give such authorised person such assistance as he may reasonably require in the examination or testing of such station or such apparatus.

(4) Any person who—

(a) obstructs any authorised person in the exercise of the powers conferred on him under this section; or

(b) fails or refuses to give to any such authorised person any assistance which he is, under this section, under a duty to give to him; or

(c) discloses, otherwise than for the purpose of this Act or any report of proceedings thereunder, any information by means of the exercise of powers under this Act, being information with regard to any manufacturing process or trade secret,

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

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

Section 102 of Cap. 411A which it is proposed to be amended—

Establishment of the Communications and Multimedia Appeals Tribunal.

102. (1) There is established a Tribunal to be known as the Communications and Multimedia Appeals Tribunal (hereinafter referred to as "the Tribunal") which shall consist of not more than seven members, as follows—

(a) a Chairperson nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the High Court of Kenya and who shall also possess experience in communication policy and law;

(b) at least four persons possessing knowledge and experience in media, telecommunication, postal, courier systems, radio communications, information technology or business practice and finance, and who are not in the employment of the Government, the Media Council or the Authority.

(2) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office

of a member of the Tribunal, the Cabinet Secretary shall—

(a) by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Tribunal, and invite applications from qualified persons; and

(b) convene a selection panel for the purpose of selecting suitable candidates for appointment as members of the Tribunal.

(3) The selection panel referred to under subsection (2) shall comprise of persons drawn from the following organisations—

(a) Media Council of Kenya;

(b) Kenya Private Sector Alliance;

(c) Law Society of Kenya;

(d) Institute of Engineers of Kenya;

(e) Public Relations Society of Kenya;

(f) Kenya National Union of Teachers;

(g) Consumers Federation of Kenya; and

(h) The Ministry responsible for matters relating to media.

(4) At its first meeting, the selection panel shall appoint a Chairperson and a vice-Chairperson who shall be of opposite gender.

(5) An application in respect of a vacancy declared under subsection (2) shall be forwarded to the selection panel within seven days of the publication of the notice.

(6) The selection panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions under this section.

(7) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the panel in the Gazette and in at least two daily newspapers of national circulation, within seven days

from the expiry of the deadline of receipt of applications under subsection (5).

(8) The selection panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of short listed applicants under subsection (7).

(9) After carrying out the interviews, the selection panel shall select three persons qualified to be appointed as members of the Tribunal, for each vacant position, and forward the names to the Cabinet Secretary.

(10) The Cabinet Secretary, shall, within seven days of receipt of the names, by notice in the Gazette, appoint a member or members to the Tribunal.

(11) Upon receipt of the notice of rejection under subsection (11), the selection panel shall submit fresh nominations and the procedure set out under this section shall, with necessary modifications, apply.

(12) Despite the foregoing provisions of this section, the Cabinet Secretary may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.

(13) In selecting, nominating, approving or appointing the members of the Tribunal, the selection panel and the Cabinet Secretary shall—

(a) ensure that the nominees to the Tribunal reflect the interests of all sections of the society;

(b) ensure equal opportunities for persons with disabilities and other marginalized groups; and

(c) ensure that not more than two-thirds of the members shall be of the same gender.

(14) The selection panel shall stand dissolved upon the appointment of the members of the Tribunal.

(15) The members of the Tribunal shall hold office for a period of three years, but shall be eligible for reappointment for one further term for a period not exceeding three years.

(16) The office of a member of the Tribunal shall become vacant—

(a) at the expiration of three years from the date of appointment;

(b) if the member accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him or her ineligible, for appointment to the office of a member of the Tribunal;

(c) if he or she is removed from the membership of the Tribunal by the Cabinet Secretary on the recommendation of a tribunal set up for that purpose under subsection (17); and

(d) if he or she resigns the office of member of the Tribunal.

(17) A person desiring the removal of a member of the Tribunal on the ground specified in subsection (16)(c) may present a complaint under oath to the Cabinet Secretary setting out the alleged facts constituting that ground.

(18) The Cabinet Secretary shall consider the complaint and, if satisfied that it discloses a ground under subsection (16)(c)—

(a) may suspend the member pending the outcome of the complaint; and

(b) shall appoint a tribunal in accordance with subsection (19).

(19) The tribunal appointed under subsection (18) shall consist of—

(a) a person who holds or has held office as a Judge of a superior court, who shall be the Chairperson;

(b) at least two persons who are qualified to be appointed as Judge of the High Court; and

(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(20) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the Cabinet Secretary, who shall act in accordance with the recommendation within thirty days.

Section 102A of Cap. 411A which it is proposed to be amended—

Complaints.

102A. (1) A person aggrieved by—

(a) any publication by or conduct of a journalist or media enterprise;

(b) anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise; or

(c) any action taken, any omission made or any decision made by any person under this Act,

may make a written complaint to the Tribunal setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(2) A complaint under this section may be made—

(a) orally, either in person or by any form of electronic communication; or

(b) in writing, setting out the ground for the complaint, nature of the injury or damage suffered and the remedy sought.

(3) Where complaints are oral, the Tribunal may require them to be reduced in writing within seven days, unless it is satisfied there are good reasons for not doing so.

(4) A complainant shall disclose to the Tribunal—

(a) the complainant's name and address; and

(b) other information relating to the complainant's identity that the Tribunal may reasonably require.

(5) Despite subsection (4), the Tribunal may—

(a) keep information provided by a complainant confidential if there are special circumstances

to do so, or the Tribunal considers it is in the complainant's interests to do so; or

(b) accept an anonymous complaint concerning an issue of public interest or where no clearly identifiable person or group is affected.

(6) The Tribunal may require a complainant to provide more information about the complaint within such reasonable time as the Tribunal may determine.

(7) The Tribunal may, at any time, require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration.

(8) Without prejudice to the functions of the Authority or the Media Council, the Authority or the Council may take up a complaint on its own initiative, and forward the same to the Tribunal for determination where in its opinion the complaint has public interest implications.

Section 102B of Cap. 411A which it is proposed to be amended—

Procedure upon complaint.

102B. (1) Upon receipt of a complaint, the Tribunal shall notify, in writing, the party against whom the complaint has been made, within fourteen-days of receipt of the complaint, stating the nature of the complaint, the breach, act or omission complained of and the date on which the matter shall be considered by the Tribunal.

(2) The notice referred to in subsection (1) shall require the person against whom the complaint is made to respond to the complaint in writing or appear before it at the hearing of the complaint.

(3) After considering each party's submissions, the Tribunal shall then conduct a preliminary assessment to determine the admissibility or otherwise of the complaint lodged within fourteen days.

(4) The Tribunal or any of its panels may, after conducting a preliminary assessment of a complaint, and being of the opinion that the complaint is devoid of merit or substance, dismiss such complaint and give reasons thereto.

(5) A party may, within fourteen days from the date of dismissal, apply for review or variation of the Tribunal's decision under subsection (4).

Section 102C of Cap. 411A which it is proposed to be amended—

Proceedings by the Tribunal.

102C. (1) The Tribunal shall sit at such times and in such places as it may appoint.

(2) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(3) For purposes of hearing and determining any cause or matter under this Act or the Media Council Act (Cap. 411B), the chairperson and four members of the Tribunal shall form a quorum.

(4) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

(5) Any person who is a party to proceedings before the Tribunal may appear in person or be represented by an Advocate before the Tribunal.

(6) Except as expressly provided in this Act, the Media Council Act (Cap. 411B), or any regulations made thereunder, the Tribunal shall regulate its own procedure.

Section 102E of Cap. 411A which it is proposed to be repealed—

Decisions of the Tribunal.

102E. (1) The Tribunal may, after hearing the parties to a complaint—

(a) order the offending party to publish an apology and correction in such manner as the Tribunal may specify;

(b) order the return, repair, or replacement of any equipment or material confiscated or destroyed;

(c) make any directive and declaration on freedom of expression;

(d) issue a public reprimand of the journalist or media enterprise involved;

(e) order the offending editor of the broadcast, print or on-line material to publish the Tribunal's decision, in such manner as the Tribunal may specify;

(f) impose a fine of not more than twenty million shillings on any respondent media enterprise and a fine of not more than five hundred thousand shillings on any journalist adjudged to have violated this Act;

(g) in its reasons for its findings, record a criticism of the conduct of the complainant in relation of the complaint, where such criticism, is in its view, warranted;

(h) recommend the suspension or removal from the register of the journalist involved;

(i) make any supplementary or ancillary orders or directions that it may consider necessary for carrying into effect orders or directives made.

(2) The Tribunal may make any or a combination of the orders set out in subsection (1).

Section 102F of Cap. 411A which it is proposed to be amended—

Appeals to the Tribunal.

102F. (1) Unless otherwise expressly provided in this Act, the Media Council Act (Cap. 411B) or any other law, where this Act or the Media Council Act (Cap. 411B), empowers the Media Council or the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(2) Any person who is aggrieved by an action or decision of the Media Council, the Authority or a person licensed under this Act, may within sixty days after the occurrence of the event or the making of the decision, against which he is dissatisfied, make a claim or appeal to the Tribunal.

(3) Upon any appeal, the Tribunal may—

(a) confirm, set aside or vary the order or decision in question;

(b) exercise any of the powers which could have been exercised by the Media Council or the Authority in the proceedings in connection with which the appeal is brought; or

(c) make such other order, including an order for costs, as it may consider necessary.

Section 102K of Cap. 411A which it is proposed to be amended—

Universal Service Advisory Council.

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

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

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

(a) have knowledge or experience in broadcasting, telecommunication, postal systems, information technology or finance or any other relavant field;

(b) have satisfied the Cabinet Secretary that they are unlikely to have a conflict of interest under this Act and will not have any financial or other interest which will be likely prejudicially affect the carrying out of any functions under this Part;

Provided that an authorization shall not be issued under this subsection unless it is shown to the court that the Commission is satisfied that there are reasonable grounds for believing that the use of the station or apparatus in question is likely to cause undue interference with any radiocommunication used for the purposes of any safety-of life-service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or

(5) The Universal Service Advisory Council shall—

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

(b) perform any other functions as the Board, may from time to time assign.

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

(7) Within, fourteen days of the occurrence of a vacancy in the office of chairperson or member, the Public Service Commission shall, by notice in the Gazette and on the official website of the Public Service Commission, declare vacancies in the Council, and invite applications from qualified persons.

(8) An application in respect of a vacancy declared under subsection (7) shall be forwarded to the Public Service Commission within seven days of the publication of the notice and may be made by—

(a) any qualified person; or

(b) any person, organisation or group of persons proposing the nomination of any qualified person.

(9) The Public Service Commission shall consider the applications, shortlist and publish the names and qualifications of all the applicants and shortlisted applicants in the Gazette and on the official website of the Commission, within seven days from the expiry of the deadline of receipt of applications under subsection (8).

(10) The Public Service Commission shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under subsection (9).

(11) Upon carrying out the interviews, the Public Service Commission shall select three persons qualified to be appointed as chairperson and sixteen persons qualified to be appointed as members of the Council, and shall forward the names to the Cabinet Secretary.

(12) The Cabinet Secretary shall, within fourteen days of receipt of the names under subsection (11), appoint the chairperson and the members of the Council.

(13) In selecting, shortlisting and appointing the chairperson and members of the Council, the Cabinet Secretary shall—

(a) ensure that the appointees to the Council reflect the interests of all sections of the society;

(b) ensure equal opportunities for persons with disabilities and other marginalised groups; and

(c) ensure that not more than two-thirds of the members are of the same gender.

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

The Fifth Schedule to Cap. 411A which it is proposed to be deleted—

FIFTH SCHEDULE (s. 46R)

TRANSITIONAL PROVISIONS

Interpretation.

1. In this Schedule, unless the context requires otherwise, "broadcasting permits" means any authority given prior to the commencement of this Act by the Cabinet Secretary in charge of broadcasting authorizing any person to undertake broadcasting services.

Broadcasting permits granted by the Cabinet Secretary.

2. The Commission shall respect and uphold the vested rights and interests of parties holding broadcasting permits issued by the Cabinet Secretary prior to the commencement of this Act;

Provided that—

(a) such parties shall be granted a period not exceeding one year or such longer period and subject to such terms and conditions as the Cabinet Secretary may by notice in the Gazette, specify during which they may continue to operate in accordance with their existing permits; and

(b) before the expiry of the one year or such longer period as aforesaid period, such parties shall apply to the Commission to be licensed under this Act.

Domain administrators.

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

(a) such parties shall be granted a period not exceeding twelve months during which they may continue to coperate in respect of their existing delegated sub-domains; and

(b) before the expiry of the one year or such longer period as the Cabinet Secretary may, by notice in the Gazette, specify period, such parties shall apply to the Commission to be licensed under this Act.