

THE ELECTRONIC COMMUNICATIONS ACT, 2013

(Act No. 9 of 2013)

• Act • Subsidiary Legislation •

ACT

Date of commencement: 31st July, 2013.

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An Act to provide a framework for the further development of electronic communications networks and services in Swaziland.

PART I
PRELIMINARY

1. Short title and commencement.

This Act may be cited as the Electronic Communications Act, 2013, and shall come into force on a date to be determined by the Minister by notice in the *Gazette*.

2. Application.

(1) This Act applies to the regulation of electronic communications and matters related to electronic communications.

(2) This Act does not apply to the content of messages transmitted through an electronic communications network.

(3) This Act is without prejudice to the operation of any other law regulating content in electronic communications.

3. Interpretation.

In this Act, unless the context otherwise requires —

“access” means the making available of facilities or services, to another licensee, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, and includes —

- (a) access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means;
- (b) access to the local loop and to facilities and services necessary to provide services over the local loop;
- (c) access to physical infrastructure including buildings, ducts and masts;
- (d) access to relevant software systems including operational support systems;
- (e) access to number translation or systems offering equivalent functionality;
- (f) access to fixed and mobile networks, in particular for roaming;
- (g) access to conditional access systems for digital television services; and
- (h) access to virtual network services;

“Appeals Board” means the Communications Appeals Board established under the Swaziland Communications Commission Act, 2010;

“associated facilities” means facilities associated with an electronic communications network or an electronic communications service which enable or support the provision of services through that network or service, and includes conditional access systems and electronic program guides;

“authorization” means a licence or individual right of use that a person may hold or be granted under any law which the Commission is entitled to administer.

“backbone infrastructure” means the underlying high speed transport nodes of a multilevel distributed network, providing connectivity of communication services for the rest of the networks, and may consist of gateways packet, message, or circuit switched and are nationally, regionally and internationally connected by radio, satellite and fibre”.

“cable television networks” means a mainly wire-based or optical fibre-based infrastructure established primarily for the delivery or distribution of radio or television broadcast to the public;

- "closed user group" means a group of persons who have common business or other common economic or social interest, other than the provision of a public electronic communications service;
- "Commission" means the Swaziland Communications Commission established under the Swaziland Communications Commission Act, 2010;
- "conditional access system" means a technical measure or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;
- "decision" has the meaning assigned to it in the Swaziland Communications Commission Act, 2010;
- "dominant position" means a position of economic strength enjoyed by a licensee either individually or jointly with others affording the licensee the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;
- "electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical fibre or by other electromagnetic means, including satellite networks, fixed (circuit-switched and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
- "electronic communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excludes services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; but does not include information society services, as defined in the Swaziland Communications Commission Act, 2010, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;
- "end-user" means a person who has contracted for, or who requests, a communications service.
- "equipment" includes any equipment or machinery;
- "interconnection" means the physical and logical linking of public communications networks used by the same or a different licensee in order to allow the users of one licensee to communicate with users of the same or another licensee, or to access services provided by another licensee;
- "international gateway operator" means a person providing or licensed to provide a public electronic communications network which includes an international connection;
- "last mile services" means the final leg of delivery connectivity from a communications providers to a customer usually a distance of up to 10km.
- "licence" means authorization or licence or individual right of use that a person may hold or be grant under any law which the Commission is entitled to administer;
- "licensee" means a person licensed to provide a public communications network or service or an associated facility in accordance with this Act;
- "local loop" means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;
- "Minister" means, the Minister responsible for communications, and "Ministry" has a corresponding meaning;

“network termination point” means the physical point at which an end-user is provided with access to a public communications network; and in the case of networks involving switching or routing, the network termination point is identified by means of a specific network address, which may be linked to an end-user number or name;

“private electronic communications network” means an electronic communications network used for the provision of electronic communications services to one person or the employees of that person or among persons under common ownership or the employees of those persons;

“private electronic communications service” means electronic communications services provided exclusively for transmission and reception by one person or the employees of that person or among persons under common ownership or control or the employees of those persons;

“provision of an electronic communications network” means the establishment, operation, control or making available of such a network;

“public electronic communications network” means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;

“public electronic communications service” means publicly available electronic communications services;

“public pay telephone” means a telephone available to the general public, for the use of which the means of payment may include coins or credit or debit cards or pre-payment cards, including cards for use with dialing codes;

“public telephone network” means an electronic communications network which is used to provide publicly available telephone services, and which supports the transfer between network termination points of speech communications, and also other forms of communication, such as facsimile and data;

“publicly available electronic communications service” means an electronic communications service available to the public;

“publicly available telephone service” means a service available to the public for originating and receiving national and international calls;

“satellite earth station network” means a configuration of two or more earth stations which interoperate by means of a satellite;

“universal services” means the minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price as may be defined under regulations made under this Act;

“value added services” means —

- (a) the manipulation of the format, content, code, protocol, or other aspect of information transmitted via electronic communications by a user;
- (b) the provision of information to a user, including the restructuring of information transmitted by a user; or
- (c) the offering of stored information for interaction by a subscriber,

but are not electronic communications.

4. Functions of Commission in respect of public communications networks and services.

(1) The Commission shall regulate electronic communications under this Act and enforce this Act.

— (2) In the regulation of electronic communications, the Commission shall ensure

- (a) the provision of a wide range of public electronic communications networks and services;
- (b) as far as practicable, access to a person to install or operate an electronic communications network or to provide an electronic communications service in compliance with this Act.

(3) The Commission may establish ownership limitations in order to ensure sufficient numbers of unaffiliated market participants, and may take appropriate actions and measures to ensure the participation of unaffiliated market participants in the event of market failure.

PART II FUNCTIONS OF THE MINISTER

5. Functions of Minister.

— The functions of the Minister in relation to the electronic communications sector are

- (a) to define the general national strategy for the electronic communications sector, including plans for the development and expansion of the sector;
- (b) to define and monitor the policy related to the promotion of universal access and universal service for the purpose of expanding the scope of coverage of electronic communications in such a way as to meet the requirements of economic and social development in Swaziland;
- (c) to monitor the implementation of the international treaties in the electronic communications and information technology sectors, to which Swaziland is a party;
- (d) to safeguard the interests of Swaziland with respect to other countries, regional and international organizations, unions, and commissions concerned with electronic communications;
- (e) in cooperation with the Commission, other Ministries, and concerned parties, to supervise the representation of Swaziland in other countries, at regional and international organizations, unions, and commissions concerned with electronic communications;
- (f) to promote the advancement of research and development in the areas of electronic communications and to encourage the setting of advanced education and training programmes in electronic communications; and
- (g) upon recommendation of the Commission, or on the initiative of the Minister, to cause the preparation of draft policies, draft laws and regulations on a matter relating to electronic communications.

6. Coordination with other entities in sector.

In carrying out the functions referred to in section 5, the Minister —

- (a) may request input from and coordinate with other Ministries, the Commission, and other stakeholders, as appropriate; and
- (b) shall notify the Commission of the Government policy that is to apply in relation to the sector and shall ensure that the policies are implemented,

PART III LICENSING OF ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

7. Requirement for operation of public and private electronic communications networks and services.

(1) Subject to subsection (2), a person shall not operate a public electronic communications network or provide a public electronic communications service in Swaziland or between a place in Swaziland and any other place, except in accordance with a licence issued by the Commission under this Act.

(2) Notwithstanding subsection (1), the Commission may recommend regulations to the Minister exempting a person from the requirement of holding a licence, as required by subsection (1), for the operation or provision of certain public electronic networks or services.

8. Requirements for operating an electronic communications network used solely to provide private electronic communications services or closed user group services and value added services.

(1) A person operating an electronic communications network used solely to provide private electronic communications services or closed user group services and value added services, the list of which shall be determined by the Commission —

- (a) is not required to obtain a licence in accordance with this Act, except where the Commission determines that the circumstances require the licensing of that electronic communications network;
- (b) shall obtain a frequency licence if the network of that person provides a radio communication service or uses radio frequency spectrum;
- (c) shall not use that network for resale, and shall not transfer, assign or sublet the rights of that person to that network, or cede with control of that network;
- (d) shall obtain a licence in accordance with this Part if that person intends to operate a public electronic communications network or to provide a public electronic communications service; and
- (e) is not restricted to carrying voice only or data only or to any other such use.

(2) Notwithstanding any other provision of this Act, the Commission may require that a person or class of persons operating a specific type of electronic communications network or providing a specific type of electronic communications service that is exempted from obtaining a licence under regulations referred to in section 7(2) or of subsection (1)(a) of this section, shall furnish the Commission with the details of the provision of that electronic communications network or service within one month of commencing operations.

9. Categories of electronic communications licences.

(1) The Commission may issue electronic communications licences under two categories, namely —

- (a) general licences; and
- (b) individual licences.

(2) The provision of a public voice telephony service, and the operation of a television network, may only be authorised under an individual licence.

10. Application for a general licence.

(1) The Commission shall issue a decision, to be published on the website of the Commission and in the *Gazette*, specifying —

- (a) the procedure by which a person wishing to operate an electronic communications network or to provide an electronic communications service requiring a general licence may apply to the Commission;

- (b) the information which should be provided to the Commission at the time of the initial application or a subsequently application for a licence; and
- (c) the administrative fee payable.

(2) In establishing licensing procedures and evaluating applications, the Commission shall act timeously in an open, transparent and non-discriminatory manner.

(3) Subject to subsection (4), a person providing the necessary proof that such person meets the conditions established and published by the Commission in the decision referred to in subsection (1) shall qualify to obtain a general licence.

(4) The Commission may reject the application for a general licence if —

- (a) the information submitted is not complete or if that information is not submitted in strict compliance with the requirements set out in the decision issued under subsection (1) or with this Act;
- (b) the information provided is discovered to be false or inaccurate;
- (c) the applicant has an outstanding licence fee or any other outstanding amounts due to the Commission;
- (d) the previous licence of an applicant had been revoked or suspended, even outside Swaziland; or
- (e) the Commission suspects that the applicant or a person directly involved in the business of the applicant may reasonably pose a threat to public trust, public security or public order.

(5) The Commission shall complete an evaluation of an application for a general licence within four weeks from the date of submission of the application to the Commission.

(6) The applicant shall submit any information requested by the Commission during the evaluation process, relating to the application for a general licence, and failure to do so within three months from the date of request shall result in a rejection of the application.

(7) The Commission shall, before completing an evaluation of an application for a general licence, publish a non-confidential version of the proposed licence for consultation in accordance with section 32 of the Swaziland Communications Commission Act, 2010, and shall consider representations made to the Commission concerning the draft.

(8) The Commission shall, after completion of an evaluation of an application for a general licence, inform the applicant whether the application was accepted or not, and in the case of a rejection, shall give the applicant reasons for that decision.

(9) Where the Commission accepts an application for a general licence, and upon payment, by the applicant, of the appropriate licence fee, the Commission shall publish the final version of the licence on the website of the Commission and in the *Gazette*, and the final version shall come into effect within thirty days of publication.

(10) A person aggrieved by a decision of the Commission may have recourse to the measures provided for under section 44 of the Swaziland Communications Commission Act, 2010.

(11) A person operating or providing an electronic communications network or service without a licence issued under this section shall be liable to a fine of two thousand (E2,000) emalangeni for every day during which that person continues to operate or provide and electronic communications network or service.

11. Application for an individual licence.

(1) The Commission shall issue a decision, to be published on the website of the Commission and in the *Gazette*, specifying —

- (a) the kinds of individual licences which may be applied for;
- (b) the procedure by which a person wishing to obtain a particular individual licence may apply to the Commission;
- (c) the information which shall be provided to the Commission at the time of the initial application or a subsequent application for a licence;
- (d) the criteria according to which each application for an individual licence shall be determined;
- (e) the administrative fee payable for each application for an individual licence; and
- (f) whether or not the issue of an individual licence is in the public interest.

(2) In establishing licensing procedures and evaluating applications for an individual licence, the Commission shall act in an open, transparent and non-discriminatory manner.

(3) The Commission may, in the discretion of the Commission, grant or reject an application for an individual licence taking into consideration —

- (a) the market for the licence being requested;
- (b) the published criteria by which the licence shall be issued; and
- (c) whether or not the issue of the licence is in the public interest.

(4) The Commission may reject the application if —

- (a) the information submitted is not complete or if the information is not submitted in strict compliance with the requirements set out in the decision issued under subsection (1) or with this Act;
- (b) the information provided is discovered to be false or inaccurate;
- (c) the applicant has an outstanding licence fee or any other outstanding amounts due to the Commission;
- (d) the previous licence of the applicant had been revoked or suspended, even outside Swaziland; or
- (e) the Commission suspects that the applicant or a person directly involved in the business of the applicant may reasonably pose a threat to public trust, public security or public order.

(5) The Commission shall complete an evaluation of the registration of an individual licence within six months from the date of submission of the application.

(6) An applicant shall submit any information requested by the Commission during the evaluation process, relating to the registration of an individual licence, and failure to do so within three months from the date of request shall result in a rejection of the application.

(7) Where the individual licence to be issued is to be limited in number, the Commission —

- (a) shall publish a consultative document providing a detailed explanation of the reasons for the proposed limitation and consider representations made to the Commission on the matter; and
- (b) may make use of competitive or comparative selection procedures.

(8) The Commission shall prescribe rules and procedures that shall ensure that only *bona fide* bidders participate in bidding.

(9) The Commission shall, before completing an evaluation, publish a non-confidential version of the proposed licence for consultation in accordance with section

32 of the Swaziland Communications Commission Act, 2010, and shall consider representations made to the Commission concerning the draft.

(10) The Commission shall, after completion of an evaluation of an application for an individual licence, inform the applicant whether the application was accepted or not, and in the case of a rejection, shall give the applicant reasons for that decision.

(11) Where the Commission accepts an application for an individual licence, and upon payment, by the applicant, of the appropriate licence fee, the Commission shall publish the final version of the licence on the website of the Commission and in the *Gazette*, and the final version shall come into effect within thirty days of publication.

(12) A person aggrieved by a decision of the Commission may have recourse to the measures provided for under section 44 of the Swaziland Communications Commission Act, 2010.

(13) A person operating or providing an electronic communications network or service without a licence issued under this section shall be liable to a fine of two thousand (E2,000)emalangeneni for every day during which that person continues to operate or provide an electronic communications network or service.

12. Amendment of electronic communications licence.

(1) A licence may be amended —

- (a) by the written agreement of the parties;
- (b) by the Commission, where the occurrence of an event that cannot be controlled (force majeure), national security considerations, changes in national legislation or the implementation of international obligations require amendment; or
- (c) where the Commission, taking into account the public interest, considers the amendment necessary to achieve the objectives of this Act.

(2) Before amending a licence under subsection (1), the Commission shall give the licensee notice in writing of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect, and shall give the licensee the opportunity to make submissions within the timescales, not being less than one month, which the Commission may specify.

(3) The submissions referred to in subsection (2) may include proposed alternatives to the amendment.

(4) Notwithstanding subsections (2) and (3), the Commission may cause the immediate amendment of a licence where there is, or is likely to be, a risk to national security, or where immediate amendment is essential to the public interest.

(5) A person aggrieved by a decision of the Commission may have recourse to the measures established under section 44 of the Swaziland Communications Commission Act, 2010.

13. Monitoring and enforcement of electronic communications licences.

(1) The Commission shall ensure that electronic communications networks and services are provided in accordance with —

- (a) the terms and conditions of the relevant licence;
- (b) this Act or other law which the Commission is entitled to administer; and
- (c) a decision issued by the Commission.

(2) The Commission shall investigate a suspected breach of a term or condition of a licence or suspected breach of a decision in accordance with section 36 of the Swaziland Communications Commission Act, 2010 and may subsequently take such action as the Commission considers appropriate in accordance with section 43 of that Act.

PART IV
RIGHTS AND OBLIGATIONS OF LICENSEES

14. Rights pertaining to licensee.

A licensee is entitled to —

- (a) provide the electronic communications networks or services as described in the licence of that licensee;
- (b) negotiate and obtain interconnection to and where applicable, access from, another licensee authorised to provide a publicly available electronic communications network;
- (c) have the application of that licensee for the necessary rights of use of radio frequencies or numbers considered;
- (d) request the Commission to issue a standardised declaration to facilitate the exercise of rights to install facilities and rights of interconnection;
- (e) have the application of that licensee for the necessary rights to install facilities considered; and
- (f) be given an opportunity by the Commission to be designated to carry out universal service obligations.

15. Obligations pertaining to licensee.

A licensee shall —

- (a) comply with this Act and all national laws and all decisions of the Commission, unless specifically exempted by the Commission;
- (b) comply with the conditions listed in the licence of that licensee;
- (c) pay to the Commission charges due in accordance with this Act, with any other relevant law, or as stipulated in the licence document;
- (d) comply with a request for information that the Commission may make in accordance with this Act or the Swaziland Communications Commission Act, 2010, in the form, and within the time limits, specified by the Commission;
- (e) submit to the Commission a copy of the annual report of the licensee for each financial year;
- (f) comply with such relevant compulsory standards as may be established from time to time, for the provision of services, technical interfaces, or network functions;
- (g) comply with notices or guidelines that the Commission may issue with respect to standards and relevant voluntary standards that may be adopted by internationally recognised standardisation bodies;
- (h) comply with radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) or such other appropriate standards as may be specified by law or by the Commission;
- (i) comply with decisions issued by the Commission in relation to electromagnetic radiation and harmful interference and ensure that the network and all services at all times comply with the technical and performance standards generally accepted by the industry or as may be prescribed by the Commission or accepted by the Commission as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields;

- (j) comply with all requirements related to legal interception as may be established under this Act or a decision of the Commission;
- (k) refrain from transferring, assigning or selling a licence granted to the licensee under this Act or cede control in the operations of the licence or merge with another person or licensee without prior approval in writing of the Commission; and
- (l) comply with a decision issued by the Commission and make arrangements for the provision or rapid restoration of communication services in the event of, or during a major disaster in order to ensure communications between emergency services and the competent authorities and broadcasts to the general public.

16. Additional obligations pertaining to licensee holding licence for provision of publicly available electronic communications networks.

In addition to the obligations provided for under section 15, a licensee holding a licence for the provision of a publicly available electronic communications network shall —

- (a) negotiate and grant interconnection to the network of that licensee under reasonable terms when requested to do so by another licensee holding a licence for the provision of a publicly available electronic communications network;
- (b) ensure that the capacity, quantity and features of the network are sufficient for providing and maintaining an efficient communications network;
- (c) ensure that the network is sufficient for and compatible with such international electronic communications services as the Commission may specify;
- (d) ensure the security of the network and an extension of that network;
- (e) ensure that the network is capable of providing calling-line identification facilities as specified by the Commission; and
- (f) ensure that the network does not cause harmful interference with the lawful use or operation of an electronic communications network or services.

17. Additional obligations pertaining to licensee holding licence for provision of publicly available electronic communications services.

In addition to the obligations established under sections 15 and 16, a licensee holding a licence for the provision of publicly available electronic communications services shall —

- (a) provide such services efficiently, complying with the standards for quality generally accepted in the industry or as may be specified by the Commission;
- (b) notify the Commission and publish by notice in the media when the services are to be interrupted for the installation or repair or the changing of apparatus;
- (c) establish an efficient mechanism for receiving complaints and repairing failures in the networks of that licensee and in the services provided;
- (d) provide an end-user subscribing to services with a written contract containing the specifications, terms and conditions of the service and shall provide those services to end-users in accordance with that contract; and

- (e) ensure that a change to the terms and conditions of the service is subjected to the prior approval of the Commission, and implemented subject to conditions laid down by the Commission.

18. Obligations pertaining to licensee holding licence for provision of publicly available telephony services.

In addition to the obligations provided for under sections 15 and 17, a licensee holding a licence for the provision of publicly available telephony services shall —

- (a) ensure that the service is capable of originating and receiving national and international calls;
- (b) ensure that the service is capable of giving end-users access to emergency services through a number in a national or international telephone numbering plan; and
- (c) abide by number portability obligations as may be specified by the Commission.

19. Additional obligations pertaining to licensee holding licence for provision of international gateway.

An international gateway operator shall at all times —

- (a) adopt appropriate measures to safeguard the integrity and resiliency of the network elements utilised to provide international connectivity; and
- (b) secure the availability of capacity, or have in place alternative measures, sufficient to ensure an adequate level of uninterrupted international connectivity.

20. Decisions, guidelines and regulations of Commission relating to rights and obligations of licensee.

The Commission may issue decisions, guidelines or recommend regulations to the Minister in relation to the rights or obligations provided for in sections 15 to 19, making further specifications to those rights and obligations.

21. Breach of obligations of licensee.

Failure by a licensee to comply with a condition relevant to that licensee as provided for in sections 15 to 19, or a decision of the Commission relating to that condition, shall constitute a contravention of this Act and shall be investigated in accordance with section 36 of the Swaziland Communications Commission Act, 2010, and sanctioned in accordance with section 42 of that Act.

PART V LICENSEES HOLDING A DOMINANT POSITION ON THE MARKET

22. Obligations of dominant licensees.

In addition to the obligations provided for under Part IV, a licensee holding a dominant position on the relevant market may be subjected to specific regulatory obligations arising out of the nature of the dominant position of that licensee, as provided for under this Part.

23. Market definition, analysis and determination of dominance.

(1) The Commission shall, in accordance with the principles of competition law, periodically define relevant markets appropriate to national circumstances, in particular relevant geographic markets, and the Commission shall carry out an analysis of those markets.

(2) Where the Commission determines that a market is effectively competitive, it shall not impose or maintain the regulatory obligations provided for in this Part.

(3) Where the Commission determines that a relevant market is not effectively competitive, the Commission shall identify and designate licensees with a dominant position in that market and shall impose upon those licensees the appropriate regulatory obligations provided for in sections 24 to 28.

- (4) An obligation imposed by the Commission under this Part shall be —
- (a) based on the nature of the problem identified;
 - (b) objective, transparent, proportionate and non-discriminatory; and
 - (c) implemented in accordance with the consultation procedure provided for under section 32 of the Swaziland Communications Commission Act, 2010.

24. Obligation of access to and use of specific network facilities.

(1) The Commission may, in accordance with section 23, impose obligations on licensees to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in particular, in situations where the Commission considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the interest of the end-user.

- (2) Operators may be required, among other things —
- (a) to interconnect networks or network facilities;
 - (b) to give third parties access to specified network elements or facilities, including unbundled access to the local loop;
 - (c) to negotiate in good faith with other licensees requesting access;
 - (d) not to withdraw access to facilities already granted;
 - (e) to provide specified services on a wholesale basis for resale by third parties;
 - (f) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
 - (g) to provide co-location or other forms of facility sharing, including duct, building or mast sharing;
 - (h) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks; and
 - (i) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services.

(3) The Commission may attach conditions covering fairness, reasonableness and timeliness to an obligation imposed under subsections (1) and (2).

(4) When considering whether to impose the obligations referred to in subsections (1) and (2), the Commission shall, in particular, take into account the following factors —

- (a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;
- (b) the feasibility of providing the access proposed, in relation to the capacity available;

- (c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;
- (d) the need to safeguard competition in the long term; and
- (e) where appropriate, relevant intellectual property rights.

25. Obligation of non-discrimination.

(1) The Commission may, in accordance with section 23, impose obligations of non-discrimination, in relation to interconnection or access.

(2) Obligations of non-discrimination shall ensure, in particular, that the licensee —

- (a) applies equivalent conditions in equivalent circumstances to other licensees providing equivalent services; and
- (b) provides services and information to others under the same conditions and of the same quality as the licensee provides for the services of the licensee, or those of the subsidiaries or partners of the licensee.

26. Obligation of transparency.

(1) The Commission may, in accordance with section 23, impose obligations for transparency in relation to interconnection or access, requiring licensees to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

(2) The Commission may, in particular where a licensee has obligations of non-discrimination in accordance with section 25, require that licensee to publish a reference offer, which shall be sufficiently unbundled to ensure that other licensees are not required to pay for facilities which are not necessary for the services requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices.

(3) In addition to what is provided for under subsection (2), the Commission shall impose changes to reference offers to give effect to the obligations imposed under this Act.

(4) The Commission may specify the precise information to be made available under subsection (2), the level of detail required and the manner of publication of the information.

27. Obligation of accounting separation.

(1) The Commission may, in accordance with section 23, impose obligations for accounting separation in relation to specified activities related to interconnection or access.

(2) Without prejudice to the generality of subsection (1), the Commission may require a vertically integrated company to make transparent the wholesale prices and the internal transfer prices of the Commission, especially to ensure compliance where there is a requirement for non-discrimination under section 25 or, where necessary, to prevent unfair cross-subsidy and, where the Commission does so, the Commission may specify the format and accounting methodology to be used.

(3) In accordance with the procedure established in section 39 of the Swaziland Communications Commission Act, 2010, the Commission may require that accounting records, including data on revenues received from third parties, are provided on request, in order to facilitate the verification of compliance with obligations of transparency and non-discrimination.

(4) Subject to the protection of the confidentiality of information which the Commission considers confidential, the Commission may publish information obtained by the Commission under subsection (3) to the extent that the Commission considers that such information would contribute to an open and competitive market.

28. Obligation of cost orientation and price controls.

(1) The Commission may, in accordance with section 23, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection or access, in situations where a market analysis indicates that a lack of effective competition means that the licensee concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users.

(2) When considering the imposition of obligations under subsection (1) the Commission shall take into account the investment made by the licensee in electronic communications networks or services or associated facilities which the Commission considers relevant and shall allow the licensee a reasonable rate of return on adequate capital employed, taking into account the risks involved.

(3) The Commission shall ensure that a cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and to maximise consumer benefits, and, in order to achieve this, the Commission may also take account of prices available in comparable competitive markets.

(4) Where a licensee has an obligation regarding the cost orientation of the prices of that licensee, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment, shall lie with the licensee concerned.

(5) For the purpose of calculating the cost of efficient provision of services, the Commission may use cost accounting methods independent of those used by the licensee, and the Commission may require a licensee to provide full justification for the prices of that licensee and may, where appropriate, require prices to be adjusted.

(6) The Commission shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs.

(7) Compliance with the cost accounting system shall, at the choice of the Commission, be verified by the Commission, or by a suitably qualified independent body approved by the Commission.

(8) The Commission shall cause to be published annually a statement concerning compliance with a cost accounting system imposed under this section.

PART VI UNIVERSAL SERVICE OBLIGATIONS

29. Availability of universal service.

(1) The Commission, in consultation with the Minister, shall develop annual objectives with the purpose of ensuring that the services mentioned in section 30 are made available, at the quality specified, to all end-users in Swaziland including those with disabilities, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

(2) The Commission shall determine the most efficient and appropriate approach for ensuring the implementation of universal service as provided for in subsection (1).

(3) The Minister shall, on the recommendation of the Commission, appoint a committee consisting of not less than five and not more than seven members to implement the universal service and access obligations provided for in section 30.

(4) There shall be paid to the members of the committee appointed under subsection (3), from the Universal Service Obligations Fund, such remuneration as the Board may determine in respect of the services of those members as members of the committee.

(5) For the purposes of subsection (4), "Universal Service Obligations Fund" means the Fund established under the Joint Venture Agreement Between the Mobile Telecommunications Network Ltd and The Swaziland Posts and Telecommunications Corporation, signed in 1998.

30. Elements constituting universal service.

- (1) The services to be made available in accordance with section 29 are —
- (a) the provision of a connection to the public telephone network at a fixed location, at an affordable price, upon request, which connection must be capable of allowing end-users to make and receive local and international calls, facsimile communications, and data communications, at data rates that are sufficient to permit functional internet access, taking into account prevailing technologies used by the majority of subscribers, and technological feasibility;
 - (b) the provision of a comprehensive directory of subscribers in a form approved by the Commission, whether printed or electronic or both, as the Commission may determine, and updated at least once in each year;
 - (c) the provision of a comprehensive telephone directory enquiry service;
 - (d) the provision of public pay telephones sufficient to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones, the accessibility of those telephones to disabled users and the quality of service; and
 - (e) the introduction of specific measures for disabled users and low income users.

(2) The Commission may issue decisions, guidelines or recommend regulations to the Minister in relation to a right or obligation provided for in this Act, including provisions regarding the tariffs and quality of the services mentioned in subsection (1), making further specifications to those tariffs and quality of the services.

31. Designated licensee.

(1) Where the services mentioned in section 30 are not already being provided commercially at the quality specified and at affordable prices, to all end-users within Swaziland, the Commission may designate one or more licensees for such period as the Commission may specify, to provide the services mentioned in section 30, so that the whole of Swaziland can be covered.

(2) The Commission may designate different licensees or sets of licensees to provide different elements of universal service or to cover different parts of Swaziland.

(3) In designating a licensee under subsections (1) and (2), the Commission shall adopt an efficient, objective, transparent and non-discriminatory designation procedure whereby no licensee is excluded beforehand from being designated.

(4) The designation procedure adopted under subsection (3) shall ensure that the universal service obligations are provided in a cost-effective manner.

32. Funding of universal service.

(1) The Commission shall estimate the cost of achieving the funding of the universal service, update the cost estimates annually and report the findings of the Commission to the Minister.

(2) The Commission shall consider a request made by a designated licensee to receive funding for the net costs of meeting the obligation for which the licensee is designated.

(3) In dealing with a case under subsection (1), the Commission shall determine whether the provision of the service by the designated licensee making the

request is imposing an unfair burden on such licensee, and shall accordingly amend or retain the obligations of the licensee.

(4) The Commission may make it a condition of a grant of a licence that every provider of public electronic communications services shall contribute to a universal access fund.

(5) The proceeds of the universal access fund referred to in subsection (4) shall be used for the development and expansion of electronic communications networks and services in areas where there are no services and to provide access to the widest number of users including those with disabilities.

33. Provision for coordination with Rural Access Fund.

In the event that the Government of Swaziland decides to establish a donor-supported Rural Access Fund (RAF), providing grant support to co-fund priority investments increasing the access of the rural population to basic infrastructure services, such as electricity and electronic communications, the Minister, in consultation with the Commission, shall develop a policy for the manner in which the funds from the Rural Access Fund are to be used in conjunction with the connection targets fixed in the tariff approval procedures.

PART VII RADIO FREQUENCY MANAGEMENT

34. Frequency management.

(1) The Commission shall be responsible for managing the efficient and effective use of radio frequency spectrum, including spectrum and orbital locations used by satellite services, and in doing so shall —

- (a) after consultation with all major stakeholders including the sound and television broadcasting industries in accordance with section 32 of the Swaziland Communications Commission Act, recommend a national frequency allocation plan which may be revised periodically, as necessary;
- (b) assign radio frequency spectrum or groups of radio frequency spectrum in accordance with the national frequency plan and with publicly available national policies;
- (c) monitor the use of the radio frequency spectrum for purposes of eliminating harmful interference, ensuring efficient usage, planning of radio frequency spectrum allocation and radio frequency spectrum assignment, and for making spectrum-occupancy related information available to the industry and consumers;
- (d) in collaboration with the Minister, make and publicise decisions necessary for the management and the use of the radio frequency spectrum;
- (e) in collaboration with the Minister, prescribe fees for the use of the radio frequency spectrum;
- (f) in the allocation and assignment of radio frequency spectrum, give due regard to the requirements of safety and emergency services;
- (g) where necessary, specify compatibility standards for the interoperability of radio frequency equipment and ensure that the standards are adhered to; and
- (h) represent the country in international for a on matters regarding radio frequency spectrum management.

(2) In carrying out the functions of the Commission under subsection (1), the Commission shall take into account international agreements, treaties and conventions to which Swaziland is a party, as well as frequency allocation plans adopted by countries within the region.

- (3) The Commission shall allocate and assign radio frequency spectrum to —
 - (a) persons possessing a licence to provide electronic communications, radio and broadcasting networks, or services;
 - (b) government departments; and
 - (c) private and amateur wireless operations licensees.
- (4) The Commission shall, where necessary —
 - (a) allocate certain frequencies for use by government entities in furtherance of the public interest;
 - (b) inhibit or obstruct the use of other non-designated radio frequencies, on a temporary basis, for use by government entities.

35. Requirement for radio frequency spectrum licence.

(1) With the exception of broadcast receivers, a person shall not use a radio frequency spectrum that has not specifically been allocated to that person through a licence issued by the Commission in accordance with the national radio frequency plan.

(2) The Commission may grant or refuse an application for a radio frequency spectrum licence based on applicable policies and regulations.

(3) Upon granting a radio frequency spectrum licence, the Commission shall cause to be published in the *Gazette* a notice to that effect.

(4) The terms of a radio frequency spectrum licence shall be made available for public scrutiny at the office of the Commission and may be reproduced by the Commission, at the request of a member of the public, on payment of the specified fee.

(5) The Commission may, for the purpose of assigning radio frequency spectrum, use competitive bidding procedures if the Commission determines that it would be in the public interest where —

- (a) a licence is to be granted to a new applicant; or
- (b) competing and mutually exclusive applications have been filed by qualified applicants.

(6) The Commission shall prescribe rules and procedures that shall ensure that only *bona fide* bidders participate in bidding.

(7) Where an application for a frequency spectrum licence is rejected, the Commission shall notify the applicant in writing, giving reasons for the refusal.

(8) Where it appears to the Commission that the frequency spectrum licence contains information relating to national security or other international obligations, the Commission shall withhold that information from public scrutiny.

(9) A frequency spectrum allocation shall be consistent with the national radio frequency plan recommended by the Commission and approved by the Minister, and shall confer the right on the licensee to use a certain frequency band or bands subject to such conditions as may be set out in the frequency spectrum licence.

(10) Subject to the other provisions of this section, the Commission shall determine all frequency allocations on a non-discriminatory basis.

36. Obligations with respect to frequency authorisations.

- (1) Every holder of a frequency licence shall —
 - (a) pay the fees specified by the Commission for the use of the radio frequency spectrum as stated in the licence;

- (b) only use the authorised radio frequency spectrum band specified in the licence and strictly adhere to the service or type of network or technology for which the licence has been granted;
- (c) not transfer the right to use the radio frequency spectrum without the prior written approval of the Commission;
- (d) upon request made by the Minister, and subject to the relevant law, collaborate with the Government in matters of national security; and
- (e) strictly adhere to all the conditions in the radio frequency spectrum licence and all other laws or decisions of the Commission.

(2) A person owning or holding a significant interest in the holder of a frequency spectrum licence shall not sell, transfer, charge or otherwise dispose of the interest of that person in that holder of a frequency spectrum licence, or a part of the interest of that person, unless the prior written approval of the Commission has been obtained.

(3) A holder of a frequency spectrum licence shall not, unless the prior written approval of the Commission has been obtained —

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2);
- (b) issue or allot a share or cause, permit or acquiesce in any other reorganisation of the share capital of that holder that results in —
 - (i) a person acquiring a significant interest in that holder; or
 - (ii) a person who already owns or holds a significant interest in the holder, increasing or decreasing the size of that interest.

(4) The approval of the Commission required under subsections (1), (2) and (3) shall not be unreasonably withheld.

37. Amendment of a frequency licence.

(1) A frequency licence may be amended —

- (a) by the written agreement of the parties;
- (b) by the Commission, where the occurrence of an event that cannot be controlled (*force majeure*), national security considerations, changes in national legislation or the implementation of international obligations require amendment; or
- (c) where the Commission, taking into account the public interest, otherwise considers amendment necessary to achieve the objectives of this Act.

(2) Before amending a frequency licence, the Commission shall give the licensee notice in writing of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect, and shall give the licensee the opportunity to make submissions within the time limits, not being less than one month, which the Commission may specify.

(3) The submissions referred to in subsection (2) may include proposed alternatives to the amendment.

(4) Notwithstanding subsections (2) and (3), the Commission may cause the immediate amendment of a frequency licence where there is, or is likely to be, a risk to national security, or where immediate amendment is essential to the public interest.

(5) A person dissatisfied with a decision of the Commission may have recourse to the measures established under section 44 of the Swaziland Communications Commission Act, 2010.

38. Monitoring and enforcement of frequency spectrum licences.

(1) The Commission shall ensure that radio frequency spectrum is used in accordance with —

- (a) the terms and conditions of the relevant licence;
- (b) this Act or other law which the Commission is entitled to administer; and
- (c) a decision issued by the Commission.

(2) The Commission shall investigate a suspected breach of the terms and conditions, law or decision referred to in subsection (1), in accordance with section 36 of the Swaziland Communications Commission Act, 2010, and may subsequently take such action as the Commission considers appropriate in accordance with section 42 of that Act.

PART VIII MANAGEMENT OF NUMBERS

39. National numbering plan and allocation of numbers.

(1) The Commission shall establish and manage the national numbering plan for electronic communications services, and shall control the assignment of all national numbering resources, and shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services.

(2) The Commission shall grant rights of use for numbers and number ranges according to procedures that are objective, transparent and non-discriminatory.

(3) In developing the numbering plan referred to in subsection (1), the Commission shall preserve, to the extent feasible, the assignment of numbers made before the commencement of this Act.

(4) The Commission may attach conditions to rights of use for numbers to ensure efficient and effective management of all numbering resources.

(5) The conditions referred to in subsection (4) may include, but are not limited to, procedures by which providers of electronic communications services may assign or re-assign numbers to users.

(6) The Commission shall prescribe fees for the use of the numbers under this Part.

(7) The Commission shall, subject only to a limitation that may be specified by the Minister on grounds of national security, periodically publish the main elements of the national numbering plan and subsequent additions or amendments to that plan in the *Gazette*.

PART IX REGULATION OF EQUIPMENT

40. Regulation of electronic communications equipment.

(1) The Commission shall adopt technical standards through regulations prescribed by the Minister on the recommendation of the Commission, which regulations shall be made applicable to all electronic communications equipment and customer premises equipment in order to avoid harm which may be caused by that equipment to electronic communications networks or services, public health, safety or the environment.

(2) The Commission shall ensure that the regulation of equipment and standards that the Commission may adopt shall be only the minimum standards necessary to ensure the safe and efficient provision of electronic communications networks and services.

(3) In recommending the standards under this Part, the Commission shall take into account standards enacted by countries within the region and, where feasible,

coordinate with such countries in the setting of standards through participation in international standards-setting bodies, or through consideration of the policies adopted by industry standards-setting organisations.

(4) The Commission may recommend regulations to the Minister specifying type approval for all electronic communications equipment used for providing an electronic communications service, for operating or connecting to an electronic communications system, or for terminal equipment.

(5) A person licensed to provide an electronic communications network or service, or who supplies electronic communications equipment, shall not use or supply an electronic communications equipment that does not comply with the technical standards prescribed by the Commission.

(6) The Commission shall investigate a suspected breach of subsection (5) in accordance with section 36 of the Swaziland Communications Commission Act, and may subsequently take such action as Commission considers appropriate in accordance with section 42 of that Act.

41. Regulation of radio communications equipment.

(1) A person shall not make, buy, sell or control any equipment for radio communications, or an apparatus intended to be used as a component part of that equipment, without a licence issued for that purpose by the Commission.

(2) A person shall not sell or give an apparatus referred to in subsection (1) to a person who has not obtained a licence as required by subsection (1).

(3) The Commission may recommend regulations to the Minister exempting the operation or provision of certain public electronic communications networks or services from the requirement of holding a licence referred to in subsection (1).

(4) A licence granted under this section may be issued subject to such terms, conditions and limitations as the Commission may consider appropriate, including in particular limitations as to the equipment which may be installed or used under that licence and the places where, the purposes for which, the circumstances in which and the persons by whom the equipment may be used.

(5) A licence granted under this section may be revoked, or the terms, conditions or limitations in that licence varied by notice in writing by the Commission served on the holder of the licence or by a general notice, applicable to licences of the class to which the licence in question belongs, published in the *Gazette*.

(6) The Commission may prescribe the fees to be paid for a licence issued under this section, which fees shall be included in the licence and published in the *Gazette*.

(7) The Commission shall investigate a suspected breach of subsections (1) and (2), or a breach of a condition in a licence issued under this section, in accordance with section 36 of the Swaziland Communications Commission Act, 2010, and may subsequently take such action as the Commission considers appropriate in accordance with section 42 of that Act.

42. Enforcement of regulations on use of apparatus.

(1) Subject to subsection (2), if the Commission is of the opinion that an apparatus does not comply with the requirements applicable to that apparatus under regulations made for the purpose specified in section 90(1)(a) of the Swaziland Posts and Telecommunications Act, 1983, and that —

- (a) the use of the apparatus is likely to cause undue interference with a radio communication used for the purpose of a safety of life service or for a purpose on which the safety of a person or of a vessel, aircraft or vehicle may depend; or
- (c) the use of apparatus has caused or is causing undue interference with other radio communication under circumstances where all reasonable

steps to minimise interference have been taken in relation to the situation or apparatus receiving such radio communication,

the Commission 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 twenty-eight days from the date of the service of the notice, the apparatus shall not be used, whether by the person to whom that 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.

(2) Notwithstanding subsection (1) —

- (a) if, before the date fixed by the notice, a notice is given under subsection (5) requiring the Commission to refer the matter to the Appeals Board, the notice of the Commission shall not operate until the termination of the proceedings before the Appeals Board, and a notice given under this subsection by the Commission, other than a notice to which paragraph (b) applies, shall be framed accordingly; and
- (b) if the Commission is satisfied that the use of the apparatus in question is likely to cause undue interference with a radio communication used for the purpose of a safety of life service or for a purpose on which the safety of a person or of a vessel, aircraft or vehicle may depend the date to be fixed by the notice may be the date of the service of the notice and paragraph (a) shall not apply.

(3) Subject to subsection (4), 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.

(4) Notwithstanding subsection (3), where a notice under this section has the effect of imposing additional restrictions on the use of the apparatus, the provisions of subsection (2) relating to the coming into force of a notice shall apply in relation to the notice as if it had been a notice served under that subsection.

(5) Where notice has been given under subsection (1), a person having possession of or an interest in the apparatus to which the notice relates may, at any time, whether before or after the date fixed by that notice, by notice in writing served on the Commission, require the Commission to refer the matter to the Appeals Board, and the Commission, unless the Commission revokes the notice given under subsection (1) or modifies the notice to the satisfaction of that person, shall refer the matter to the Appeals Board.

(6) Where, under subsection (5), the Commission is required to refer the matter referred to in that subsection to the Appeals Board, subsection (5) shall apply in relation to a notice under subsection (2)(a) which has been varied by a subsequent notice as that notice applies in relation to a notice which has not been varied.

(7) Subject to subsection (8), where a matter is referred to the Appeals Board in terms of subsection (6), the Appeals Board shall hear the Commission and the person at whose instance the reference was made and any other person appearing to be interested who desires to be heard and has, in accordance with rules regulating the procedure of the Appeals Board, been accepted as a party to the reference and if the Appeals Board is satisfied that the —

- (a) apparatus in question complies with the requirements applicable to that apparatus under the regulations, the Appeals Board shall direct the Commission to revoke the notice; or
- (b) requirements referred to in paragraph (a) ought properly to be relaxed in relation to the apparatus, may direct the Commission to revoke the notice or to vary the notice in such manner as may be specified in the direction, and the Commission shall revoke or vary the notice accordingly.

(8) Notwithstanding subsection (7), the making by the Appeals Board of a direction under that subsection, or the refusal by the Board to make that direction, shall not, where there has been a material change of circumstances, prevent a person mentioned in subsection (5) from giving a further notice under that subsection and

shall not in a like case prevent the Commission from giving a further notice under subsection (1) or (3).

(9) A direction given under subsection (7) may be absolute or may be conditional on such steps being taken in relation to the apparatus being made to comply with such requirements as may be specified in the direction.

(10) A question as to whether or not the steps referred to in subsection (9) have been taken or whether or not the apparatus referred to in that subsection has been made to comply with the requirements referred to in that subsection shall, on the application of the Commission or of a person having possession of or an interest in the apparatus, be determined by the Appeals Board.

43. Enforcement of regulations as to sales, etc. by manufacturers and others.

(1) If the Commission is of the opinion that an apparatus does not comply with the requirements applicable to that apparatus under regulations made for the purpose specified in section 90(1)(b) of the Swaziland Posts and Telecommunications Act, 1983, the Commission may serve on a person who has manufactured, assembled or imported that apparatus in the course of business a notice in writing prohibiting that person from selling the apparatus otherwise than for export or offering or advertising that apparatus for sale otherwise than for export or letting that apparatus on hire or offering or advertising that apparatus for letting on hire.

(2) Where a notice has been served under subsection (1), the person on whom the notice has been served may, by notice in writing served on the Commission, require the Commission to refer the matter to the Appeals Board, and the Commission, unless the Commission revokes that notice, shall refer the matter to the Appeals Board.

(3) Upon referring a matter to the Appeals Board under subsection (2), the Appeals Board shall hear the Commission and the person at whose instance the reference was made and any other person appearing to the Appeals Board to be interested who desires to be heard and has, in accordance with rules regulating the procedure of the Appeals Board, been accepted as a party to the reference; and, if the Appeals Board is satisfied that the apparatus in question complies with the requirements applicable to that apparatus under the regulations, shall direct the Commission to revoke the notice, and the Commission shall revoke the notice.

(4) Notwithstanding subsection (3), the making by the Appeals Board of a direction under that subsection shall not, where the apparatus is subsequently altered, prevent the Commission from serving a fresh notice under subsection (1) with respect to the apparatus; and the refusal by the Appeals Board to make a direction under that subsection shall not, where the apparatus is subsequently altered, prevent the Commission from revoking the notice, or the person on whom the notice was served from giving a further notice under subsection (2).

44. Unlawfully sending misleading or other messages, etc.

A person who —

- (a) contravenes an order made under section 88(1)(b) of the Swaziland Posts and Telecommunications Corporation Act, 1983;
- (b) by means of radio communication, sends or attempts to send a message which to the knowledge of that person is false or misleading and is to the knowledge of that person likely to prejudice the efficiency of a safety of life service or endanger the safety of a person, or of a vessel, aircraft or vehicle, and, in particular, a message which to the knowledge of that person falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance; or
- (c) otherwise than under the authority of the Commission either —
 - (i) uses a radio communication apparatus with intent to obtain information as to the contents, sender or addressee of a message,

whether sent by means of radio communication or not, which neither the person using the apparatus nor the person on whose behalf the person using the apparatus is acting is authorised by the Commission to receive; or

- (ii) except in the course of legal proceedings or for the purpose of a report on those legal proceedings, discloses information as to the contents, sender or addressee of a message referred to in subparagraph (1), being information which would not have come to the knowledge of that person but for the use of radio communication apparatus by that person or by another person;

commits an offence and is, on conviction, liable to a fine not exceeding five thousand (E5,000) emalangeneni or to imprisonment for a term not exceeding six months, or to both.

45. Use or sale, etc. of apparatus in contravention of notice.

A person who —

- (a) knowing that a notice of the Commission under section 42 is in force with respect to an apparatus, uses that apparatus or causes or permits that apparatus to be used in contravention of the notice; or
- (b) having been served with a notice under section 43(1), contravenes that notice prior to a revocation of that notice by the Commission,

commits an offence and is, on conviction, liable to a fine not exceeding two hundred (E200.00) emalangeneni or to imprisonment for a term not exceeding six months or to both.

46. Interference with radio communication.

(1) A person who uses an apparatus for the purpose of interfering with a radio communication commits an offence and is, on conviction, liable to a fine not exceeding two hundred (E200.00) emalangeneni or to imprisonment for a term not exceeding six months.

(2) This section applies whether or not the apparatus in question is radio communication apparatus or apparatus to which a provision of sections 86, 87, 88, 93, 94 and 95 of the Swaziland Posts and Telecommunications Act, 1983, sections 55 and 56 of the Swaziland Communications Commission Act, 2010, or sections 42 or 43 of this Act, apply, and whether or not a notice under section 91 or 92 has been given with respect to the apparatus or, if given, has been varied or revoked.

PART X

ACCESS TO AND USE OF PUBLIC AND PRIVATE PROPERTY

47. Access to and use of public property.

(1) Subject to the other provisions of this section, a licensee providing an electronic communications network or service to the public may place cables and wires, or carry out other works either below, above or by the side of a public property, including Swazi Nation Land, and may dig, construct or maintain on that public property or Swazi National Land trenches, pits, poles, stays, brackets and all other accessories essential to the proper working of the electronic communications systems, except that in doing so there shall not be undue interference with the use and enjoyment of that public property.

(2) For the purposes of this section, 'public property' includes roads, streets, road reserves, buildings, railways, footpaths, water ways and lands reserved for public purposes.

(3) Before carrying out any of the works mentioned in subsection (2), a licensee shall obtain the necessary approval from the relevant authority having jurisdiction over those works.

(4) Where approval is denied or where no authority is charged with authorising the carrying out of any works referred to in subsection (1), a licensee shall appeal to the Minister responsible for land.

(5) The Commission shall consult with the Minister responsible for land to establish procedures regarding the terms and conditions necessary for approval to use public property, including, but not limited to, the use of conduits, towers and other structures as may be in existence and such terms and conditions shall include consideration for the reinstatement of lands to be returned to the original condition.

(6) The procedures referred to in subsection (5) shall be fair, reasonable and non-discriminatory.

(7) When establishing the procedures referred to in subsection (5), the Minister responsible for land shall consider the following factors —

- (a) the efficient and economic use of public resources;
- (b) the security of officials and operations that take place on that property;
- (c) public safety and convenience;
- (d) the economic, social and aesthetic benefits of the proposed use of the land; and
- (e) compliance with applicable environmental laws and policies.

(8) A public electronic communications service provider shall not convey or in any way transfer public land or right of way to public land, including Swazi Nation Land, without the prior written approval of the Minister responsible for lands.

(9) This section also applies to approvals of conveyances or transfers of public land by the Minister responsible for land.

48. Use of private property.

(1) Where the acquisition or use of a private property by a licensee is reasonably required for the purposes of providing an electronic communications network or service to the public and no reasonable alternatives to that acquisition or use exist, the licensee shall —

- (a) provide notice of the proposed acquisition or use to the owner of the property and other property owners who reasonably could be expected to be affected by the proposed acquisition, and seek their written comments on the proposed acquisition; and
- (b) obtain the consent of the owner of the property to the acquisition or use of that property.

(2) Where the owner of the private property refuses to consent to the use or acquisition of the property by a licensee or refuses to agree to the terms of purchase or use, the licensee may apply to the relevant authority having jurisdiction over those matters, to intervene as the licensee considers appropriate, either by causing that authority to acquire the property under applicable expropriation laws, or by enforcing the use of the property under other applicable laws.

(3) In reviewing the application, the relevant authority may impose terms and conditions on the licensee that may include just and reasonable compensation, under the applicable laws, for the acquisition or use of the property and for damage or loss that the owner may sustain under that acquisition or use.

(4) The licensee shall indemnify the relevant authority against all the costs of acquisition of the property under expropriation laws or other costs incurred to enforce

usage of that property, including amounts payable to the owner of the property to be acquired or used.

PART XI TRANSITIONAL AND GENERAL PROVISIONS

49. Regulations.

The Minister may, by notice in the *Gazette*, make regulations for the better carrying out of the provisions of this Act.

50. Prior licences and other persons providing electronic communications networks and services.

(1) The Commission shall issue new licences to existing licensees lawfully providing electronic communications networks or services consistent with the provisions of this Act immediately before the date of coming into force of this Act, except that all material terms of the previous licence shall be conformed to this Act.

(2) The new licences referred to in subsection (1) shall be issued within ninety days after the coming into force of this Act, and existing licensees shall continue to provide services under the prior licence until the date of renewal of their licence.

51. Other persons providing electronic communications networks and services.

(1) A person providing electronic communications services for which there was no requirement to be licensed before the commencement of this Act, and which services are required to be licensed under this Act, shall apply for a licence within thirty days after the date of coming into force of this Act.

(2) A person referred to in subsection (1) shall continue to provide services pending the determination of the application by the Commission.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine of two thousand (E2,000) emalangeneni for each day during which the contravention continues.

52. Pending applications.

(1) An application for a licence pending before the coming into force of this Act shall be transferred to the Commission for determination in accordance with this Act.

(2) An applicant whose application is transferred to the Commission under subsection (1) shall be afforded an opportunity to amend the application to conform to this Act.

PART XII AMENDMENTS

53. Amendment of Swaziland Posts and Telecommunications Corporation Act.

The Swaziland Posts and Telecommunications Corporation Act, 1983, is amended by —

(a) substituting, for section 59, the following new section —

(1) "From the date of coming into force of the Swaziland Communications Commission Act, 2010, the Corporation shall have the exclusive right of establishing, constructing, maintaining and operating the national telecommunications backbone infrastructure within Swaziland.

- (2) From the date of coming into force of the Swaziland Communications Commission Act, 2010, all other licensed operators and services shall have the right to establish the last mile interconnection to the national backbone infrastructure at interconnection rates that are subject to the regulatory control of the Commission.
 - (3) For a period of three years from the date of coming into force of the Swaziland Communications Commission Act, 2010, the Corporation shall continue to provide the last mile services like all other licensed operators.
 - (4) After three years of coming into force of this Act, the Corporation shall establish a subsidiary telecommunications service company that shall be afforded the same interconnection conditions and rates like all other licensed service operators.”; and
- (b) deleting sections 91, 92, 96, 97 and 98.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
