

INFORMATION AND COMMUNICATIONS BILL, 2008

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INFORMATION AND COMMUNICATIONS BILL, 2008

A BILL ENTITLED

AN ACT to provide for the re-structuring, development, and regulation of the information and communications sectors in The Gambia and for matters connected therewith.

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ENACTED by the President and the National Assembly.

CHAPTER I – PRELIMINARY

Short title **1.** This Act may be cited as the information and communications Act, 2008.

Interpretation **2.** In this Act, unless the context otherwise requires-

“access” means the making available of facilities or services of any operator under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing information and communications services, including access to-

- (a) network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (and includes access to the local loop and to facilities and services necessary to provide services over the local loop);
- (b) physical infrastructure including, buildings, cable engineering networks, ducts and masts and poles;
- (c) relevant software systems, including operational support systems;

- (d) number translation facilities or to systems offering equivalent functionality;
- (e) fixed and mobile networks, in particular for roaming;
- (f) conditional access systems for digital television services; and
- (g) access to virtual network services;

“allocation” means the entry in the Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more terrestrial or space radio communication services or the radio astronomy service under specified conditions and applies to the frequency band concerned;

“alternative infrastructures” means any installation or a set of installations that allow or contribute to allow either the transmission or to the transmission and the routing of the information and communications signals;

“alternative infrastructure operators” means entities owning infrastructures or rights that may, without undertaking any public information and communications network operator’s activities as defined by present Act, support or contribute to the support of information and communications networks;

“apparatus” means an equipment, instrument, or any other object, for use in the provision or in the reception of information and communications services, and includes a fitting to or accessory of the equipment, instrument or object;

“assignment” means an assignment by the Authority of rights to use specified spectrum;

“associated facilities” means those facilities associated with an information and communications network or an information and communications services which enable or support the provision of services via that network or service, including

conditional access systems and electronic programme guides;

“authorization” means an individual licence, class licence or permit issued under this Act which grants a set of rights and obligations to an entity, and grants an entity the right to-

- (a) install and operate information and communications systems; or
- (b) provide information and communications services and includes individual licence as defined in Part III of this Chapter;

“authorized provider” means a person who holds a valid authorisation to operate an information and communications system or provide an information and communications service under this Act;

“Authority” means The Gambia Public Utilities Regulatory Authority established under The Gambia Public Utilities Regulatory Authority Act, 2001 or any other regulatory authority to which the Government has given the responsibility for the regulation of information and communications services, information and communications networks, associated facilities and associated services;

“Board” means the Board of the Authority;

"broadcaster" means the natural or legal person who has editorial responsibility for the composition of television programme services for reception by the general public and transmits them, or has them transmitted, complete and unchanged, by a third party;

“broadcasting” means the transmission of programmes, whether or not encrypted, by radio waves or other means of communication, including terrestrial antennae, information and communications networks or satellite in coded or not coded form, aimed for reception by the public, with the aid of any equipment or apparatus;

“broadcasting apparatus” means an apparatus used for broadcasting, but does not include a private radio receiving set or a private television receiver;

“broadcasting service” means a service which provides regular broadcasting;

“class licence” means a general authorization granted by the Authority to any legal entity meeting the applicable conditions appended to it and which obligates the legal entity in question to-

- (a) obtain an explicit decision from the Authority before exercising rights deriving from the authorization; and
- (b) communicate information about the service concerned as necessary to assure proper compliance with the applicable conditions appended thereto in accordance with current regulations;

“closed user group” means a group of mobile telephone subscribers who can only make calls and receive calls, excluding short messaging service, from members within the group;

“Code of Conduct”, in relation to broadcasting, means the Code of Conduct established by the Authority under section 228;

“commercial activities connected with information and communications” means-

- (a) the provision of information and communications service;
- (b) the supply or export of information and communications apparatus; or
- (c) the production or acquisition of the information and communications apparatus for supply or export;

"consumer" means any natural person who uses or requests a publicly available information and

communications service for non-professional purposes;

“convey” includes transmit and transport and “conveyance” shall be construed accordingly;

“customer premises equipment” means equipment on the premises of a person not being an information and communications licensee, which is used to originate, route or terminate information and communications services;

“declaration” means an act of registration of information and communications activities with the Authority by a network operator or service provider which, under the terms of this Act, does not require the operator or provider to obtain an explicit decision from the Authority prior to commencing the operation of the network or provision of the service, but grants the entity a permit providing registration;

“Department of State” means the Department of State responsible for information and communications;

“domain name” means an alphanumeric designation that is registered or assigned in respect of an electronic address or other resource on the Internet;

“domain name system” means a system to translate domain names into Internet Protocol addresses or other information;

“electromagnetic system” means a system by which messages or sound or light or visual images may be transmitted by-

- (a) wire activated by electricity;
- (b) radio waves or any other electromagnetic energy;
- (c) optical energy; or
- (d) a combination of any two or more of those systems;

“encrypted” means treated electronically or otherwise so as to prevent intelligible reception in the absence of the means of decryption;

"end-user" means a user not providing public communications networks or publicly available information and communications services;

“force majeure” includes-

- (a) an act of God, riot or civil commotion;
- (b) a strike, lock-out or other industrial disturbance;
- (c) a war, blockade or an insurrection;
- (d) an earthquake, hurricane, a flood, a fire or an explosion;
- (e) an outbreak of pestilence or epidemic;
- (f) Government rationing of electricity or other wartime or emergency control imposed by Government; and
- (g) an embargo or trade restriction;

“frequency” means the number of complete cycles per second of a wave of electromagnetic energy;

“Fund” means the Universal Service Fund that may be established under section 117;

“individual licence” means an authorization which is granted to a legal entity by the Secretary of State and which grants the entity specific rights or imposes specific obligations which are in addition to the rights and obligations attached to general authorizations or class licences and which obligates the legal entity in question to-

- (a) obtain an explicit decision from the Secretary of State before exercising rights deriving from such document; and

(b) communicate information about the service concerned.

“information and communications” means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination of them by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct;

“information and communications network identifier” means the addressing facilities identifying information and communications network points, including network termination points, or terminal equipment connected to an information and communications network in order to direct information specifically to the information and communications network points or the relevant terminal equipment or to identify the sender of information;

“information and communications network or system” 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 or by other electro-magnetic means, including satellite networks, fixed (circuit 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;

“information and communications services” means a service normally provided for remuneration which consists of the conveyance of signals on information and communications networks, including information and communications services and transmission services in networks used for broadcasting as well as services providing or exercising editorial control over content transmitted using information and communications networks;

“general authorization” means a permit granted by the national regulatory authority to any legal entity meeting the applicable conditions appended to it and which obligates the legal entity in question to-

- (a) obtain an explicit decision from the authority before exercising rights deriving from such document; and
- (b) communicate information about the service concerned as necessary to assure proper compliance with the applicable conditions appended to the authorisation in accordance with current regulations;

“harmful interference” means interference which-

- (a) endangers the functioning of a radio navigation service or of other safety services; or
- (b) otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable regulations;

"illicit device" means any equipment, software, or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service without the authorisation of the service provider;

“information society services” means services provided for remuneration, at a distance, with electronic means and on individual request of the recipient of the service and include, in particular, the sales of goods and services, services of access to information or advertising over the Internet and access to public communications network services, transmission of data, or storing the recipient’s data in the public communications network;

“interconnection” means the physical and logical linking of public information and communications systems and services used by the same or a different authorized provider, implemented between

public network operators in order to allow-

- (a) subscribers of one authorized provider to-
 - (i) communicate with users of the same or another undertaking, or
 - (ii) to access services provided by another undertaking; and
- (b) services may be provided by the parties involved or other parties who have access to the network to provide services;

“interoperability of networks and terminal equipment” means the ability of equipment to function, first, with the network, and, second, with other terminal equipment that can be used to access the same service;

“licensee” means a person who owns, operates or provides an Information and Communications network or electronic communications service under a licence granted under this Act;

“mass communications network” means a public information and communications network primarily used for broadcasting whereby television and radio programmes or other material is transmitted in identical form to all recipients;

“message” means any communication sent, received, or made, by information and communications, or given to any person, to be sent by electronic communications or to be delivered;

“National Numbering Plan” means the numbering plan prepared and managed by the Authority for use in connection with the supply of information and communications services in The Gambia;

“network controller” means the owner or operator of the network into which access is sought;

“network facilities” means any element or combination of elements of physical infrastructure

used principally for, or in connection with, the provision of information and communications services and includes an information and communications network, conditional access systems and electronic programme guides, but does not include customer equipment;

“network termination point” means the physical point at which a subscriber 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 a subscriber number or name;

“number” means a series of digits indicating an electronic communication network termination point, comprising the information necessary in order to route calls to that termination point;

“number portability” means the ability of users of an information and communications service to retain existing information and communications numbers without any impairment of quality, reliability or convenience when changing from one information and communications service licensee to another;

“open network provisions or architecture” means the harmonized conditions of communications system, including technical interfaces, access to frequencies tariff principles that allow efficient access to public information and communications systems;

“operator” means a person who owns, operates or provides a regulated information and communications system or information and communications service;

“operator having significant market power” means a legal entity which, either on its own or in conjunction with other legal entities, holds a position equivalent to a dominant position, that is, a company which has a significant capacity to act in a manner independent of its competitors, its customers and ultimately consumers;

“prescribed” means set out in this Act or by regulations made under this Act;

“private communications service” means an information and communications service provided by an authorized provider for-

- (a) its own use over a private information and communications system; or
- (b) the use of third parties,

within an identifiable, wholly self-contained private information and communications system which does not inter-connect with a public information and communications system;

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

“public telephone network” means an information and communications network which-

- (a) is used to provide publicly available telephone services; and
- (b) supports the transfer between network termination points of speech communications, and also other forms of communication, such as facsimile and data;

“publicly available telephone service” means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and where relevant, includes one or more of the following services-

- (a) the provision of operator assistance, directory enquiry services, directories,
- (b) the provision of public pay phones;

- (c) the provision of service under special terms;
- (d) the provision of special facilities for customers with disabilities or with special social needs; or
- (e) the provision of non-geographic services;

“radio communication” means any emission, broadcasting, transmission or reception of radio waves specifically for communication purposes

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“Regulatory Authority Act” means The Gambia Public Utilities Regulatory Authority Act, 2001;

“Secretary of State” means the Secretary of State responsible for information and communications;

“ service provider” means an operator;

“subscriber” means a person who is a party to a contract with a provider of a publicly available information and communications service or the beneficiary of the provisions of tariffs, including prices, terms and conditions of service, filed by an operator as required by the Authority, for the supply of the service;

“transmission” includes emission, switching and reception;

“transport” includes conveyance;

“Union” means the International Telecommunications Union;

“universal access obligation” means the obligation to-

- (a) provide basic telephone services for social reason at an affordable price or free of charge to statutorily designated persons pursuant to rules and regulations made by the Authority; or
- (b) contribute to the Fund;

“universal service” means a defined minimum set of services of specified quality which is available to all users independent of their geographical location, and in the light of specific national conditions, at an affordable price;

“user” means a person who uses, or requests, a publicly available information and communications service, and includes a subscriber.

Scope of this Act

3. (1) This Act applies to all information and communications services and systems as defined in this Act, other than those specially exempted under this Act.

(2) This Act does not apply to information and communications equipment (particularly radio systems and information and communications terminal equipment) manufactured and used exclusively for national defence purposes, the use of those frequencies shall be defined in accordance with the definitions in this Act.

Consultation of stakeholders

4. (1) Except in relation to-

- (a) any complaint or dispute being dealt with in accordance with this Act;
- (b) the exercise of any enforcement powers of the Authority under this Act; or
- (c) cases where the Authority considers that there is an urgent need to act in order to safeguard competition and protect the interests of users in accordance with the law,

the Authority shall, where it intends to take a decision in accordance with this Act which has a significant impact on a market for information and communications networks or services, make available to interested parties a statement of the proposed decision and give the interested parties the opportunity to comment on the proposed decision within a period of sixty days, or as otherwise determined, depending on the circumstances.

(2) The Authority shall-

- (a) publish its consultation procedures which may include open meetings; and
- (b) establish a single information point through which all current consultations can be accessed.

(3) The results of any consultations under this section shall be made publicly available by the Authority through such means as it considers appropriate in the circumstances, except in the case of any information which the Authority considers to be confidential.

(4) Where the Authority decides to hold a public meeting, it shall-

- (a) give to the Secretary of State and to each other party interested in an application or a regulation pending before the Authority not later than thirty days prior notice of the meeting;
- (b) publish the notice in the *Gazette* and in at least two newspapers of wide circulation in The Gambia to maximise the opportunity for the attendance and participation in the meetings by members of the public who-
 - (i) are or may become subscribers of information and communications services, or
 - (ii) are otherwise interested in the purpose of the meeting.

Keeping of records

5. (1) The Authority shall keep records and store documentation, as required, containing data on-

- (a) operators and service providers, including broadcasting service providers;

- (b) users of assigned radio frequencies;
- (c) users of assigned numbers;
- (d) reference interconnection offers;
- (e) interconnection contracts established by operators having significant market power within the respective relevant markets on the basis of approved reference interconnection offers;
- (f) calculations of costs for universal service provision; and
- (g) such other data as the Authority may determine.

(2) The Authority may also obtain data listed in this subsection (1) from other Government institutions and through direct computer or electronic links.

(3) The Authority shall retain the data provided for under this section-

- (a) for as long as the information and communications operator or provider-
 - (i) provides public communication services,
 - (ii) has the right to use the radio frequency spectrum or the number, pursuant to this Act, and
- (b) in the form of an archive for additional five years after the retention under paragraph (a).

CHAPTER II – REGULATION OF INFORMATION AND COMMUNICATIONS SERVICES AND SYSTEMS

PART I - FUNCTIONS OF THE SECRETARY OF STATE, THE DEPARTMENT OF STATE AND THE AUTHORITY

Principles

6. (1) The Government shall-

- (a) guarantee the independence of the competent authorities with respect to all organizations providing networks, equipment or services in the information and communications sector; or otherwise active in the sector and
- (b) ensure complete and effective separation of the regulatory function from the activities associated with ownership or control.

(2) The Government shall ensure that all policy and regulatory functions for the sector are performed by the respective policy and regulatory bodies independent, proportionate, impartial and transparent manner with a view to achieving the following objectives-

- (a) adopting of the principle that policy and regulation should be technology-neutral, and therefore a prohibition against granting unjustified advantage to any particular technology without prejudice to the adoption of suitable measures for the promotion of specific services, where the measures are necessary for the pursuit of the regulatory objectives stipulated in this Act; and
- (b) promoting the creation of an open and competitive market in a non-discriminatory and transparent manner for communication networks and services, to ensure-
 - (i) full respect for the interests of users, as regards choice, price, quality and returns,

- (ii) the prevention of any distortion and restriction of competition in the information and communications sector, with due allowance for ongoing transitional regimes,
- (iii) encouragement of rational investment in the infrastructure,
- (iv) efficiency in the allocation and assignment of limited resources.

(3) The Government shall take the necessary steps to guarantee the independence and transparency of policy and regulatory authorities through-

- (a) clear, precise terms of reference for the authorities and decision making bodies in the sector as defined in this Act;
- (b) the creation of transparency mechanisms and the distribution of procedures for consultation with the sector players, giving interested parties an opportunity to bring forward their observations on proposed measures within a reasonable timeframe;
- (c) publication of annual reports of activities; and
- (d) the publication of all major decisions of Authority in the *Gazette* or in an official publication of the Authority or by any other relevant means.

(4) The competent authorities responsible for policy and for regulating issues in the field of information and communications determined in this Act are-

- (a) the Secretary of State competent for issues in the information and communications sectors, supported by the Department of State; and
- (b) the Authority.

7. (1) The Secretary of State shall-

- (a) develop, in consultation with the Department of State and the Authority, review, and submit to Government, for approval information and communications policies consistent with the purposes of this Act;
- (b) prepare and submit to Government for approval legislation in the information and communications sectors in consultation with the Department of State and the Authority;
- (c) develop a universal service policy in consultation with the Department of State and the Authority and submit it to the Government for approval;
- (d) be responsible for international representation of the Gambia with the technical support of the Department of State and the Authority, as appropriate in matters of international information and communications and the information society, including international, regional and bilateral frequency coordination, and negotiate and sign bilateral and international agreements in the field of information and communications and information society on behalf of the Government of the Gambia; and
- (e) determine policy relating to the management of the country code top level domain name, in consultation with the Department of State and the Authority.

(2) The Secretary of State shall also, except otherwise provided in this Act-

- (a) issue licences under this Act pursuant to the recommendation of the Authority based on a clear and transparent application and evaluation process; and

- (b) allocate the frequency spectrum in consultation with the Frequency Allocation Advisory Committee.

(3) The Secretary of State shall constitute a Frequency Allocation Advisory Committee, consisting of such members of the Department of State and the Authority and other members, as he or she may consider necessary, to advise him or her in the allocation of frequency spectrum.

Functions of
the Depart-
ment of State

8. The Department of State shall-

- (a) prepare the general policy of the information and communications sectors in The Gambia in consultation with the Authority and other stakeholders in the sectors as provided for in this Act, including a biennial national strategic plan for the sector in accordance with the policy which shall-
 - (i) encourage investment, on a competitive basis, in the information and communications sectors in The Gambia,
 - (ii) create an atmosphere for the provision of services to users at just, reasonable and affordable prices, in accordance with the latest technological developments in the sectors; and
 - (iii) aim at strengthening the competitive position of The Gambia internationally in the areas of information and communications technology;
- (b) prepare draft legislation for submission to the Secretary of State in the information and communications sectors, in consultation with the Authority and after consultation with stakeholders in accordance with this Act;
- (c) prepare a universal service policy for submission to the Secretary of State, in cooperation with the Authority and after consultation of other stakeholders and follow

up the development of the policy for the purpose of expanding the scope of coverage of information and communications services, both horizontally and vertically, to meet the requirements of economic and social development in The Gambia;

- (d) follow up the implementation of The Gambia's commitments in international treaties in the information and communications and information technology sectors;
- (e) coordinate the representation of The Gambia with States, and regional and international organizations, unions, and commissions concerned with information and communications, and, in collaboration with the Authority, the Secretary of State, and other stakeholders, safeguard The Gambia's interest before those bodies;
- (f) implement information and communications policies and plans in relation to the development of information and communications and in the interest of the creation and development of the information society, in particular by-
 - (i) encouraging the setting of advanced education and training programmes in information and communications, including the use of the Internet, electronic commerce, and electronic transactions
 - (ii) promoting public awareness of the importance of the role of information and communications to the overall economic and social development and advancement of The Gambia, and
 - (iii) promoting the advancement of research and development in the areas of information and communications and information technology;

- (g) provide the necessary facilities to allow the Authority and designated members of the Armed Forces and security services to prepare-
 - (i) the National Plan for Frequency Assignment and the National Register of Frequencies, and
 - (ii) procedures for the coordination among the members so as to ensure the optimal use of the radio frequencies and prevent harmful interference between frequencies assigned for civilian and military uses; and
- (h) collect relevant information from the Authority and other Government Departments or private entities to enable the Department of State to accomplish its functions.

Functions of
the Authority

9. (1) The Authority shall regulate the information and communications sector based on the fundamental principles of this Act with the objectives of-

- (a) ensuring the separation of regulatory and operational functions in the information and communications sector in The Gambia;
- (b) fostering transparency and non-discrimination and protecting effective competition and a fair and efficient market between the organizations involved in the information and communications industry, duly taking into account the public interest and preventing distortion and restriction of competition in the information and communications sectors;
- (c) ensuring that there are provided in The Gambia, except where the provision is impracticable, such information and communications services as will satisfy all reasonable demands for them, including, in particular, emergency services, public pay telephone services, and directory information services;

- (d) without prejudice to the generality of paragraph (a), ensuring to the greatest extent possible that the information and communications services are available and affordable to the persons who need them;
- (e) promoting the interests of consumers, purchasers and other users in The Gambia, including, in particular, those who are disabled or of pensionable age, with regard to prices charged for, and the quality and variety of, information and communications services provided and information and communications apparatus supplied;
- (f) promoting open network provision and effective competition among licensees in The Gambia;
- (g) promoting efficiency and economy on the part of licensees;
- (h) promoting research into and the development and use of new techniques and technologies by licensees;
- (i) encouraging major subscribers of information and communications services whose places of business are outside The Gambia to establish places of business in The Gambia;
- (j) promoting the provision of international transmission services through The Gambia;
- (k) encouraging persons producing information and communications apparatus to set up production facilities in The Gambia and compete effectively in the supply of the apparatus both inside and outside The Gambia. and
- (l) promoting processes of public consultation and manifestation of interest, with regard to the introduction of new services or technologies.

(2) Within the context of the objectives defined subsection (1), the Authority shall-

- (a) advise the Secretary of State on policy formulation and development strategies for the information and communications sectors;
- (b) develop regulations for adoption by the Secretary of State in the information and communications sectors, after consultation of stakeholders in accordance with this Act;
- (c) adopt guidelines relating to the regime of activities for the different operators active in the information and communications sector, and ensure effective competition, with technology-neutral regulation wherever possible; and in particular regulate matters relating to information and communications services and networks, including-
 - (i) interconnection of networks, collocation of facilities, carrier pre-selection, access to networks, rights of way, the transmission or reception of satellite signals,
 - (ii) the maintenance of and publication, and access to any information how-ever so described,
 - (iii) universal service,
 - (v) any matter concerning numbers including number port ability, numbering plan and number allocation,
 - (vi) the obligations of an undertaking having significant market power,
 - (vii) competition and consumer protection rules, billing procedures and billing accuracy,

- (viii) emergency services and directory services;
- (d) process licence applications and prepare and carry out licensing procedures by competitive process, and make licensing recommendations based on such procedures to the Secretary of State;
- (e) prepare and update, for approval by the Secretary of State, the texts for the licensing terms and conditions that lay down the rights and obligations applicable to any licence;
- (f) process applications and grant authorizations for information and communications activities, requiring authorization and prepare the associated documents, including the terms and conditions for authorization;
- (g) issue permits for activities subject to a requirement for declaration;
- (h) issue mandatory specifications and approvals for terminal equipment and verifying conformity;
- (i) monitor compliance with existing regulations and terms of licences, authorizations and permits granted in the information and communications sectors, and for that purpose, receive and study all information and documentation required from the operators of information and communication networks and services under the terms of their licences and terms of reference, and request any additional information that may be needed;
- (j) monitor economic and technical aspects of the information and communications sector in accordance with normal practice and internationally recognized protocol, taking into account technology convergence in the information and communications sector as well as the development of new information

and communication technologies and developing measures to stimulate and facilitate investment in the information and communications sectors;

- (k) determine quality of service and other performance and technical standards relating to the provision of information and communications services, and monitor compliance with those standards and enforce them for those services and for the connection of user equipment to communication networks;
- (l) monitor and submit reports to the Secretary of State on the sector, such as, the performance of the public operators, the quality of consumer services, and consumer satisfaction, measured according to existing international codes of practice;
- (m) deal with all questions relating to the protection of the interests of consumers, which include defining complaint processing procedures to be implemented by operators or service providers, managing a suitable system for receiving consumer complaints, the conduct of investigations concerning information and communications services, and submission of those complaints;
- (n) enforce obligations of public information and communications operators and service providers to ensure that adequate, high-quality, affordable services meeting the various needs of the consumers are being delivered;
- (o) elaborate and, if necessary, revise the accounting requirements specific for the sector and tariff principles to be used by operators and service providers;
- (p) regulate tariffs chargeable for the provision of publicly available telephony services, or any other service provided in a market that is not

competitive or in which competition is restricted;

- (q) regulate the protection and security of data;
- (r) regulate any matter relating to the administration, management and assignment of radio frequency spectrum, in conformity with domestic and international requirements pursuant to any relevant treaties, protocols or conventions to which The Gambia is signatory including-
 - (i) the preparation of the National Frequency Plan,
 - (ii) the administration and assignment of radio frequency bands,
 - (iii) the transfer of rights to use radio frequency spectrum as well as the procedure to be followed, and
 - (iv) the monitoring of usage conditions;
- (s) allocate numbering resources and manage the numbering plan;
- (t) implement the policy on domain name management, including regulating the registration, administration and management of domain names;
- (u) examine, monitor and enforce the implementation of interconnection and network access conditions;
- (v) implement the universal service policy;
- (w) provide support to the Secretary of State on international representation, and in particular-
 - (i) cooperate with foreign regulatory authorities governing information and communications activities' and participate, within

the scope of its competence, in the work of international organisations and regional institutions, committees and groups the activities of which are related to information and communications, radio equipment and terminal equipment, electromagnetic compatibility and radio spectrum management appointing, where appropriate, experts to participate in relevant committees and groups, and

- (ii) pursue international coordination of radio frequencies (channels) and international protection of radio stations (radio frequencies);
- (x) determine a code of practice for Gambian licensees in their dealing with international and correspondent licensees and regulate international accounting rates and practices only as required to avoid anti-competitive practices but not so as to inhibit the advancement of technology and the growth of competition;
- (y) regulate the procedure for the resolution of disputes between information and communications network operators or service providers and the relationship between the Authority and other public authorities responsible for the resolution of disputes; and
- (z) perform any other functions assigned to it under this Act.

PART II - AUTHORISATION OF INFORMATION AND COMMUNICATIONS SYSTEMS AND SERVICES

Licensing of information and communications services, systems and apparatus

- 10. (1)** Subject to the other provisions of this Act, a person shall not-
- (a) establish, install, operate or maintain an information or communications system; or
 - (b) provide an information and communications service or install information or

communications apparatus,

in The Gambia without an authorization issued for that purpose in accordance with this Act and any other relevant legislation.

(2) The Secretary of State shall on the recommendation of the Authority, approve the classification of activities in the information and communications sectors into three categories requiring different levels of regulatory intervention authorizing information and communications market entry, namely-

- (a) individual licence;
- (b) general authorization or class licence;
- (c) declaration leading to issuance of a permit.

(3) Notwithstanding the provisions of subsection (2), in order to promote the development of the information and communications sector in the region and to allow more choice to consumers, the Secretary of State shall, on consultation with the Authority, decide that certain activities, services or networks should be exempt from the obligation to hold an individual licence and be subject to the authorization, declaration or even the open entry regime.

(4) Without prejudice to subsection (3), where the provision of an information and communications network or service is not yet covered by a licence or general authorization and where that network or service cannot be provided without an authorization, the Secretary of State shall, no later than six weeks after having been notified of the request-

- (a) adopt provisional market entry conditions allowing the company to commence providing the service; or
- (b) deny the request, providing the company concerned with the reasons for the decision.

(5) Where provisional market entry conditions have been adopted pursuant to subsection (4), the Secretary of State shall adopt, as soon as possible, definitive conditions governing the issue of a licence for the network or service, or agree that the network or service be provided without authorization, or provide the reasons for refusal to do either.

(6) An authorisation under subsection (2)-

(a) does not relieve the person from the requirement of any other licence, permit or other authorisation, or from any obligation arising from any other law;

(b) is subject to the access and interconnection provisions and obligations of Part VI of this chapter.

Private net-
works

11. (1) Private networks may be established and operated by any individual or legal entity, subject to obtaining an authorization referred to in section 10, issued by the Authority.

(2) The Authority shall specify, case by case, the conditions under which private networks may be connected to a public information and communications network, but shall in no case permit the exchange of communications between persons or entities other than those for whom the use of the network is reserved.

(3) Notwithstanding the provisions of subsection (1) a private information and communications system belonging to The Gambia Armed Forces, security agency, or the police, is exempt from regulation under this Act if it remains a private information and communications system and does not connect with or into a public information and communications system.

(4) The allocation and assignment of private information and communications system referred to in subsection (3) shall be regulated by the Secretary of State.

(5) The Authority shall monitor the use of frequencies by all private networks and enforce compliance with the relevant regulations.

Alternative infrastructure

12. (1) Operators of alternative infrastructures may lease or cede to a public network operator or to an applicant for a licence within the framework of an invitation to tender, whilst respecting laws and regulations relating to the occupation of the public domain, any excess capacity which they possess after having deployed the infrastructures intended for their own needs rights-of-way they possess.

(2) Any transfer or leasing agreement of alternative networks must be communicated to the Authority for information.

Exclusivity

13. Except where a licence had been issued and exclusivity rights vested in a licensee prior to the enactment of this Act, the Secretary of State shall not include in a licence or the terms of a licence an exclusivity period or monopoly to the licence.

Exclusive licence for rural telephony service

14. (1) Notwithstanding the provisions of section 12-

- (a) the Secretary of State may issue an exclusive licence for the provision of a telephony service in a rural area that did not have that service at the time of the submission of an application for a licence or the initiation of an invitation to tender; and
- (b) the Authority may require interconnection for the service.

(2) A licence issued under this section shall be limited to the provision of telephony service in a village of five thousand or fewer permanent residents with an information and communication service penetration rate of one per cent or less.

Licence and other fees

15. (1) The Secretary of State may, from time to time, in consultation with the Authority, approve the level of licence and frequency fees payable in respect of licences or any other authorisation under this Act.

(2) Fees shall be paid in full before any authorisation is granted, or numbers, or frequencies, assigned as follows-

- (a) application fees shall be paid directly to the Authority;
- (b) initial and annual fees for licences and frequency shall be paid to The Gambia Revenue Authority;
- (c) numbering and naming fees shall be paid to the Authority;
- (d) annual and regulatory fees shall be paid to the Authority; and
- (e) type approval and renewal fees to the Authority.

(3) Any charges or fees referred to this Act shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives as set out in this Act.

(4) Where a licence requires that payment of a licence or an annual regulatory fee be based on a percentage of a licensee's gross annual revenues, the base for calculating a licensee's gross annual revenues shall include-

- (a) payments from subscribers and other users; and
- (b) other customer accounts.

(5) The Authority shall set out a uniform schedule of application fees for each particular licence under this Act, taking into account the cost and time required by the Authority to research, process and grant or deny applications.

Administrative
charges and
regulatory
fees

16. (1) Regulatory fees imposed by the Authority under section 11 shall be aimed at covering-

- (a) the administrative costs of regulating the information and communication sector and shall in total cover only the administrative costs which will be incurred in the management, control of the sector and enforcement of obligations of authorized network operators and service providers;
- (b) costs for international cooperation, harmonization and standardization, market analysis, monitoring compliance and other market control; and
- (c) costs for any regulatory work involving compliance with this Act or any other law and the preparation and enforcement of any decisions issued by or under this Act, or under any regional or international directives, decisions or Acts.

(2) The Authority shall, in relation to the imposition of regulatory fees provided for under this Act, publish an annual overview of its administrative costs and of the total sum of charges collected.

(3) The Authority shall, in the case of administrative charges and regulatory fees imposed on an annual basis, make appropriate repayments or compensation in the case of overcharging, or impose additional charges in the case of undercharging of a person to whom a charge is imposed in the light of any difference between the total sum of regulatory fees collected and regulatory costs incurred.

Application
procedures

17. (1) An application for an authorisation under this Act shall be in accordance with the procedures set out in the Regulatory Authority Act, this Act and regulations made under them.

(2) Licences shall be granted according to open, non-discriminatory and transparent procedures, and, for the purpose, all candidates shall be subject to the same procedures unless there is an objective reason for subjecting them to different treatment.

Applications requiring the allocation of frequencies

18. An operator or applicant requiring the allocation of frequencies shall, if-

- (a) practicable, incorporate its request for specific allocation of the frequencies required in its application to provide information and communications services or establish an information and communications system;
- (b) not practicable or if requested by the Authority, apply separately for a frequency authorization and in the application, refer to the information and communications service or system, to which the frequencies relate.

Publication of information on application procedures

19. (1) Notwithstanding the provisions of section 17, the Authority shall ensure that information on application procedures and information to be submitted by applicants is published in such a way as to make it readily available to interested parties, including at least two newspapers with wide circulation in The Gambia and the *Gazette*.

(2) Notwithstanding the provisions of section 17, the Authority shall ensure that the following information is published and made available to the public-

- (a) all criteria for the issue of licences, general authorizations and declarations;
- (b) the period of time normally required to reach a decision concerning a request for a licence or general authorization and;
- (c) the terms and conditions governing activities subject to individual licences, general authorizations, declarations or open entry.

Publication of applications for licences

20. (1) On receipt of an application for a licence under this Act, the Authority shall ensure that the application is published in such manner as may determine, including at least two newspapers with wide circulation in The Gambia, giving such details as appropriate and in accordance with confi-

denial requirements to enable a person wishing to comment or object to do so.

(2) A comment or objection shall be submitted to the Authority in accordance with the procedures prescribed by regulations made under this Act.

Application
evaluation
process

21. (1) The Authority shall evaluate the application together with any comments, objections and responses and conduct any investigations and require any information it deems necessary to enable it to take a decision which best serves the public interest.

(2) The Authority shall, within four months from the date of submission of an application for an individual licence, complete its evaluation and render a written statement advising the Secretary of State to grant or deny the application.

(3) The Authority shall, within one month from the date of submission of an application for a class licence, complete its evaluation and grant or deny the application.

(4) The Authority shall, in the case of a denial, include in the statement the reasons for the denial.

(5) The Authority may, with the approval of the Secretary of State, by regulations, set out the conditions under which the period specified in subsections (2) and (3) may be extended, but shall not, in any case, extend the evaluation period beyond two months.

Reasons for
denial

22. (1) Without prejudice to section 23, any company providing the information that may be required from it to prove that it meets the conditions established and published by the Authority in conformity with the relevant provisions of this Act shall qualify to obtain an individual or class licence.

(2) If a company seeking to obtain an individual licence or class licence fails to provide the required information under subsection (1), the Authority may recommend to the Secretary of State to refuse to

grant the individual licence.

(3) In addition to the provisions of subsection (2), the Authority shall recommend to the Secretary of State to refuse to grant an individual licence to install or operate a information and communi-cations system or to provide a information and communications service, if-

- (a) it is contrary to the provisions of this Act or any other law, or with any international commitment undertaken or in the process of being undertaken by The Gambia;
- (b) it poses a danger or nuisance to the public or damage to any property, or obstructs or interferes with any lawfully operated information and communications system or service;
- (c) there are reasonable grounds to believe that the applicant is not a fit and proper person to hold the licence applied for based on proof that a particular applicants' authorization or licence has been sus-pended or revoked, even outside The Gambia; or
- (d) there is adequate evidence that demon-strates that the applicant is not in a position, because of the financial and other specific circumstances of the applicant, to comply with the provisions of this Act, the Regulatory Authority Act or any regulations made under it or with the conditions of the licence if granted.

(4) The Secretary of State shall, in denying an application, furnish through the Authority to the applicant in writing the reasons to support his or her decision.

(5) The applicant may apply to the Secretary of State for a review of his or her decision under this section.

Limit on
number of
licences

23. (1)The Secretary of State shall only limit the number of individual licences, for any category of

information and communications service and for the establishment or operation of information and communications networks or systems, to the extent required to guarantee the efficient use of the radio-frequency spectrum or for the time required to allow sufficient numbers to be allocated.

(2) Where the Secretary of State intends to limit the number of individual licences granted in conformity with subsection (1), he or she shall-

- (a) give due consideration to the necessity to maximize advantages for users and facilitate the development of competition;
- (b) give interested parties the opportunity to express their opinion on any planned limitation;
- (c) consult the Authority prior to reaching a decision;
- (d) publish the decision to limit the number of individual licences and the justification of the decision;
- (e) regularly re-examine the limit imposed;
- (f) launch a public tender for the issue of licences.

(3) Where the number of licences is limited, the Secretary of State, in consultation with the Authority, shall establish in terms of reference for each call for tender for an individual licence-

- (a) the conditions for the establishment of the network;
- (b) the conditions for the provision of the service;
- (c) the coverage area of the service and implementation schedule;

- (d) the radio frequencies and blocks of numbers allocated along with rights of way on public domain;
- (e) the minimum professional and technical qualifications together with the financial guarantees required of applicants;
- (f) the conditions for operating the service, including those relating to the provision of universal service and the principle of equality of treatment of users;
- (g) arrangements for payment of the fees;
- (h) the duration of the licence's validity and conditions for its renewal, and
- (i) the criteria for the selection of the winner.

(4) The call for tender shall establish the conditions of access and interconnection to public information and communication networks as well as the conditions for leasing components of those networks as required for the establishment of the new network or for provision of the service covered by the call for tender and the licence, in that case, carries with it the right of access to interconnection or the leasing required.

(5) The bid shall be awarded to the applicant whose offer is deemed to be the best vis-à-vis all requirements in the terms of reference.

(6) The decision on the bid and the process and evaluation shall be published in a public report.

Non-trans-
ferability of
licences

24. (1) An individual or class licence shall not be transferred or assigned by a licensee without a prior written notice to the Authority and, thereafter, the prior consent in writing of the Authority granted under section 25 of the Regulatory Authority Act.

(2) The Authority may refuse a transfer with reasons provided in writing if the transfer is not in the public interest.

(3) Where the licensee is a body corporate or other legal person, a change in ownership of the licence of fifty *per cent* or more, or a change in the control of management is considered to be a transfer of the licence, and shall be subject to the prior consent of the Authority.

(4) The Authority shall consult the Secretary of State before granting or refusing approval or giving consent, as the case may be, under this section.

Term and
renewal of
licences

25. (1) Unless sooner terminated as specified in the Regulatory Authority Act and this Act, any relevant law or otherwise stated in the licence, an individual or class licence granted pursuant to this Act shall be for such period as is specified in it and may be renewed.

(2) An application for the renewal of a licence shall be made to the Authority-

- (a) in the case of a licence that has a term of ten years or more, not later than twelve months before the expiration of the licence; and
- (b) in any other case, not later than six months before the expiration of the licence being renewed.

(3) A licensee who fails to apply to renew its licence or whose application for renewal is rejected by the Authority shall, immediately on the expiration of the term of the licence, cease to operate the information and communications system or provide the information and communications service for which the licence was granted.

Modification
of licences

26. (1) Subject to this Act and any regulations made under it, the Secretary of State shall, on the advice of the Authority, modify a licence granted under this Act if the modification is permissible under the terms of the licence or is required in the public interest.

(2) The Secretary of State shall not modify a licence unless it has given at least ninety working days

written notice to the licensee of the modification-

- (a) stating that the Secretary of State proposes to make the modification; and
- (b) setting out the reasons for the modification.

(3) The notice shall also be published in the manner specified by the licence.

(4) The Authority shall in all cases consider any representation or objection that is made to it as a result of the notice before making the modification.

Revocation
and suspension
of
licences

27. (1) The Secretary of State may, on the advice of the Authority, revoke any authorization issued under this Act, either in whole or in part, for any of the following reasons-

- (a) if the authorization was granted on the basis of information which was incomplete, misleading, incorrect in any material respect or against public interest;
- (b) if the authorized provider fails to act on the licence by failing to provide the authorized information and communications service or install the authorized information and communications system for a period exceeding eighteen months from the date of issuance of the authorization or where the period was extended in the authorization, at the expiration of that period;
- (c) if the information and communications service or system once commercially launched is suspended, without a *force majeure*, for a consecutive period exceeding three months, unless the Authority extends the period for a good and valid reason;
- (d) if the authorized provider fails to remedy a material or repeated breach in accordance with section 29 and applicable regulations;
or

(e) the happening of any event or circumstance which, in accordance with the terms of the authorization or with any regulations made under this Act, authorizes the Secretary of State to revoke the authorization.

(2) The revocation of an authorization does not relieve the authorized provider of any liability arising from anything done prior to the revocation.

(3) The Secretary of State may suspend an authorization , where he or she is satisfied that-

(a) the holder has failed to start operations within six months of the issue of the authorization or within such additional period as may be allowed by the Secretary of State;

(b) the licensee has ceased his or her operation under the authorization;

(c) the holder has given the Authority information which is false or misleading in a material particular;

(d) the holder has failed to comply with the terms of its licence or any other provisions specified in this Act;

(e) it is in the public interest to do so.

(4) A decision taken under subsection (3) shall-

(a) be notified in writing to the licensee; and

(b) have effect for not more than thirty days.

Termination of
authorisation

28. A licence granted pursuant this Act shall terminate, and cease to be valid, in whole or in part, as the case may require, on-

(a) the expiration of the term specified in the licence, if not otherwise renewed pursuant to section 25;

- (b) the happening of an event or circumstance which according to the terms of the licence causes it to terminate;
- (c) a renunciation of the licence by the operator;
- (d) the revocation of the licence;
- (e) the insolvency, liquidation or bankruptcy of the licensee, or an assignment for the benefit of creditors; or
- (f) the licence being cancelled or revoked under section 29 or 31, as the case may be.

PART III- TERMS AND CONDITIONS OF INFORMATION AND COMMUNICATIONS LICENCES

Principles of licence conditions

29. A condition imposed with regard to the operation of electronic communication networks or the provision of electronic communication services must be non discriminatory, proportionate, and transparent and must be justified in relation to the targeted network or service.

Procedures governing licences

30. (1) The procedures by which information and communications licences are governed are-

- (a) this Act, and any other regulation issued by the Authority;
- (b) sector policies; and
- (c) prevailing market conditions.

(2) An authorized entity shall, in addition to complying with the provisions of this Act, regulations made under this Act and the terms and conditions of the licence, abide by any directive issued by the Authority for the purpose of-

- (a) ensuring that the capacity, quantity and features of the system are sufficient for providing and maintaining an efficient

information and communications system or service;

- (b) ensuring that the system is sufficient for and compatible with such international information and communications services as the Authority may specify;
- (c) making provision for the security of the system and of any of its extension; and
- (d) ensuring the implementation of open network architecture or provisions.

(3) The Authority shall regularly review and refine the general regime for the regulation of the information and communications sector to ensure its sufficiency and completeness, taking into consideration market trends and developments.

(4) Information and communications licensees are subject to the regulatory regime to the same extent that it applies to all public information and communications operators authorized to provide public information and communications networks and services in The Gambia.

Applicability of licence conditions

31. (1) The holders of authorisations shall have a set of basic rights and obligations, and those rights and obligations shall be applicable to all operators or service providers holding an authorisation, but, the ability of authorized entities to avail themselves of those rights may be conditional on their being able to meet physical or technical requirements.

(2) Certain conditions shall be applicable only if the licensee has a significant market power further to a decision taken by the Authority as provided for by this Act, and where the Authority intends to make a finding of dominance, statutory consultation process, as provided for in this Act shall be followed.

(3) Certain conditions in regard to environmental, town planning and regional development considerations may be applicable to authorized entities and in particular conditions relating to the

granting of access to public or private property and to the collocation or sharing of facilities.

(4) Where operators wish to have access to scarce resources, such as, radio frequency spectrum, numbers or land, the Authority shall, subject to consultation with the Secretary of State, retain the right to put in place additional conditions and those conditions that relate to scarce resources shall be activated where an operator gains access to the resources.

(5) Conditions attached to information and communications licences are without prejudice to-

- (a) any other legal condition not specific to the information and communications sectors; and
- (b) measures taken by Government pursuant to public interest requirements recognized under any legislation and regulations, and relating, in particular, to public morality, public safety and security, including criminal investigations, and public order.

Licence
conditions

32. (1) Without limiting the general nature of conditions that may be attached to an information and communications licence pursuant to the regulation this Act and other legislation in force, conditions which may be attached to an information and communications licence shall relate to-

- (a) conditions aimed at ensuring compliance with relevant essential requirements;
- (b) conditions relating to the provision of information reasonably requested with a view to verifying compliance with applicable conditions and for statistical purposes;
- (c) accessibility to end users of numbers in the national numbering plan;
- (d) payment of fees;

- (e) conditions relating to the protection of users and subscribers, particularly in regard to-
 - (i) standard contracts concluded with subscribers,
 - (ii) detailed and accurate invoicing, and
 - (iii) the availability of a dispute resolution procedure;
- (f) the publication of service access conditions, including tariffs, quality and availability, and adequate notification whenever such conditions are amended;
- (g) specific rules concerning personal data and privacy protection;
- (h) specific rules and conditions relating to consumer protection;
- (i) restrictions in regard to the transmission of illegal content and of harmful content relating to internet and television broadcasting activities;
- (j) conditions aimed at preventing anti-competitive behaviour in information and communications markets, and in particular measures designed to ensure that tariffs are not discriminatory and do not distort competition;
- (k) communication of information contained in customer databases for the purpose of providing universal directory services;
- (l) provision of emergency services;
- (m) special arrangements for users with disabilities;
- (n) conditions pertaining to the access obligations applicable to companies providing information and communications networks or

services and network interconnection and service interoperability;

- (o) conditions relating to the registration of Subscriber Identity Module Cards by service providers;
- (p) conditions aimed at facilitating legal interception by competent national authorities;
- (q) terms of use during major disasters to ensure communications between emergency services, the authorities and public broadcasting services; and
- (r) measures aimed at limiting exposure of the public to electromagnetic fields generated by electronic communication networks,

Specific conditions

33. (1) Notwithstanding the provisions of this section, specific conditions may be attached to information and communications licences as regards the regulation of market power, the use of scarce resources, including radio frequency spectrum, numbers and rights of way, or the provision of broadcasting services.

(2) Notwithstanding the provisions of this Act, conditions which may be applied to operators having significant market power as defined in section and determined by the Authority following the procedures determined in this Act, include the obligation to-

- (a) relinquish access rights to a mobile network to service operators;
- (b) lease out part of a local loop and equipment facilities;
- (c) rent a leased line;
- (d) lease out an antenna site and part of a cable duct;
- (e) publish delivery terms and tariff information;

- (f) lease out part of a terrestrial mass communications / broadcasting network;
 - (g) organize national and/or international roaming;
 - (h) use cost-oriented pricing based on cost calculations;
 - (i) provide pre-selection for international calls in a mobile network;
 - (j) use appropriate methodology of cost-accounting;
 - (k) keep separate accounts on its activities;
 - (l) interconnect an information and communications network to another information and communications network; and
 - (m) provide universal service.
- (3) Specific conditions relating to the allocation of numbers that may be attached to licences where justified and with due respect for the principle of proportionality include-
- (a) designation of the service for which the number is used, including any requirements in regard to the provision of that service;
 - (b) effective and efficient use of numbers;
 - (c) requirements in regard to number portability;
 - (d) obligation to provide subscribers listed in public directories with information;
 - (e) transfer of usage rights at the initiative of the rights-holder, and conditions applicable to the transfer;
 - (f) charges for usage rights; and

(g) obligations under relevant international agreements relating to number usage.

(4) Specific conditions relating to the use and effective management of radio-frequency spectrum that may be attached to information and communications licences where justified and with due respect for the principle of proportionality, include-

- (a) designation of the service or type of network or technology for which spectrum usage rights have been granted, including, where applicable, exclusive use of a frequency for the transmission of content or specific audiovisual services;
- (b) effective and efficient use of frequencies, including, where appropriate, requirements in regard to coverage;
- (c) technical and operational conditions necessary to avoid harmful interference and limit exposure of the public to electromagnetic fields, where those conditions differ from those laid down in this Act;
- (d) transfer of radio-frequency spectrum usage rights at the initiative of the rights-holder, and conditions applicable to the transfer;
- (e) fees for the use spectrum;
- (f) commitments made during the competitive or comparative selection process by the company having obtained usage rights; and
- (g) obligations under relevant international agreements relating to frequency usage.

Emergency
service
obligation

34. (1) An operator of public information and communications system or service shall-

- (a) make available to its subscribers free access to an emergency police, fire service,

and medical number, preferably of three digits; and

- (b) publish the number continuously in its invoices, in its advertisements, on its premises, and, in the *Gazette*, within one month of its availability.

(2) The operator shall coordinate the number with the agency of the Government of The Gambia responsible for the maintenance of personnel who route emergency police, fire service and medical calls.

Services for the disabled

35. An operator of a public telecommunications system or service which installs or operates pay public telephones, shall ensure that the pay public telephones have facilities for audio assistance for the hearing impaired and dialling assistance for the visually impaired.

Rights of licensees

36. Licensees which provide publicly available information and communications networks and services shall enjoy the right-

- (a) to negotiate interconnection with, and obtain access or interconnection from other providers of publicly available communications networks and services, under the conditions of and in accordance with this Act; and
- (b) the opportunity to be designated as a provider of certain elements of universal service or to cover different parts of The Gambia in accordance with the provisions of this Act.

Rights to use land

37. (1) Licensees providing publicly available information and communications networks are ensured have the right to-

- (a) request, pursuant to general law, the expropriation and the constitution of public easements indispensable to the installation, protection and maintenance of the respective systems, equipment and further resources; and

- (b) use the public domain, in conditions of equality, for the implanting, crossing or passing over necessary for the installation of systems, equipment and further resources.

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(2) Subject to any permission required under the State Land Act, 1991 and any law regulating the control and development of land, licensees providing information and communications networks and services available to the public-

- (a) may cut or remove any tree or its branch which is in contact with any apparatus, post or works erected, placed or constructed; and
- (b) are ensured the right to request the use of the public domain as necessary for the installation of systems, equipment and further resources.

(3) If publicly accessible information and communications services cannot be provided by installing information and communications infrastructure on public land or by way of sharing existing information and communications facilities, and no agreement has been concluded between the public utility or the owner, (manager or user) of the private property and the service provider, in accordance with the procedure, laid down in this section, the electronic communication infrastructure may be installed primarily in the facilities of the public utility, or secondarily, on the private land referred to in this section as “the affected property”.

(4) At the request of the licensee, the Authority may adopt a decision concerning an easement or other right of use, restricting the use of the affected property by its owner due to public interest in publicly accessible information and communications services provided that the licensee proves that-

- (a) it has exerted its best reasonable efforts to come to an agreement with the owner of the affected property;

(b) the installation of the information and communications infrastructure on public land or by way of sharing existing information and communications facilities or in the case of private property, in the facilities owned by other public utilities, is not practicable due to reasons of environmental protection, public health, public safety, construction issues, or the special features of the information and communications network.

(5) The request submitted pursuant to subsection (4) may also be evaluated in the course of the individual licensing procedures for the carrier licences.

(6) The Authority shall notify the owner of the affected property of the commencement of the procedure.

(7) The procedures for granting the rights referred to in this section shall be transparent, publicly available and applied without discrimination and without delay and the attached conditions to those rights shall follow the principles of transparency and non-discrimination.

(8) The official decision shall specify-

(a) the restriction required in the interest of the publicly accessible information and communications service;

(b) the content of the easement or other right of use, especially, the right of the authorized representative of the information and communications service provider to enter the affected property for the inspection, maintenance and required emergency repair of the information and communications structure and equipment;

(c) the location and method of installation of the information and communications structure; and

- (d) the technical parameters of the information and communications equipment that may be installed in the information and communications structure, as well as the relevant limit values stipulated by legal regulations pertaining to environmental protection, public health, public safety and construction.

Sharing of property and facilities

38. (1) Licensees shall promote among themselves the conclusion of agreements aimed at sharing property or facilities, either installed or to be installed, which agreements shall be notified to the Authority.

(2) Where there are no viable alternatives to the installation of new infrastructure due to environmental protection, public health, public security, cultural heritage, country planning and town and country landscapes preservation, without prejudice to the powers of local authorities, the Authority may, following a consultation period of interested parties, determine the sharing of facilities, including ducts, masts and other installations in the property, whether or not their owners are undertakings providing information and communications networks and services.

(3) Determinations issued pursuant to the subsection (2) may include rules for apportioning costs.

(4) In the event of sharing, the Authority may define measures that place restrictions on the operation of the facilities to be installed, namely, a limit on the maximum levels of transmission power.

Compensation

39. (1) With the exception of State-owned public areas and the owner of the information and communications structure affected by the shared use of facilities, the owner of the affected property-

- (a) is entitled to a compensation corresponding to the extent of the restriction; and
- (b) may also exercise his or her rights under civil law.

(2) After the completion of the construction, the licensee installing the information and communications structure shall restore the original condition of the environment, and the owner of the other public utility facility, private property or municipal property used for the installation of the information and communications structure may agree with the contractor in an improved restoration of the area.

(3) The information and communications structure shall be installed on the affected property so that it interferes with the exercise of the owners of adjoining properties to the least possible extent, within the limit values stipulated by legal regulations pertaining to environmental protection, public health, public safety and construction, as allowed by the circumstances.

(4) Any dispute concerning the amount and application of compensation under subsection (1) shall be determined by the Authority whose determination on the matter shall be final.

(5) The right granted for the use of the public domain under may not be extinguished prior to the expiry of the period for which the right was granted, except where justified and without prejudice to applicable provisions in respect of compensation.

Enforcement of conditions

40. (1) The conditions of information and communications authorisations shall be enforceable and clear on the rights and obligations of the holder.

(2) Each authorisation shall include provisions to facilitate enforcement processes and access, when deemed necessary, to the licence or licensee's documents, provided that privacy and confidentiality are respected.

Monitoring of licence compliance

41. (1) A licensee shall allow the Authority, and every person authorized by it, including an inspector, such access to any premises, installation, files, accounting records and other repository of information under the control of the licensee as may be reasonably required by the Authority to-

- (a) carry out its responsibilities under this Act; and
- (b) ensure compliance with the provisions of this Act, regulations made under it and the terms of the licence.

(2) The Authority shall, with a written notice to the Secretary of State, give a licensee fifteen days notice of its intention to act under this section, giving reasons for the request.

(3) Subsection does not apply-

- (a) where the access to an installation is urgently necessary to prevent or remove an interference with an information and communications service or system or damage to persons or property; or
- (b) if in the opinion of the Authority, the access is required to investigate a complaint that has been reasonably verified by the Authority.

Provision of information

42. Electronic communication networks operators and electronic communication service providers are obliged to make available to the Authority all information, including financial data, which are necessary for the Authority and the Department of State to exercise their respective competences, including, without any limitation-

- (a) description of functional and technical parameters of public information and communications networks services, the manner of their realization, provision of compatible interfaces and applicable electro-magnetic compatibility and their influence on the safety of people and environment; environment;
- (b) payment of fees;
- (c) compliance with the provisions of this Acts, and any regulations or provisions adopted pursuant to it,

- (d) compliance with decisions where:
 - (i) a complaint has been received,
 - (ii) the Authority has a reason to believe that the provisions of this Act have been violated, or
 - (iii) the Authority conducts an investigation regarding the compliance of operators of the electronic networks and providers of the information and communications services in accordance with this Act; and
- (e) assessment of request for granting rights to use scarce resources pursuant to this Act.

Confidential
information

43. (1) Where an operator wishes the Authority to treat as confidential any information provided by the operator on the grounds that-

- (a) it contains information revealing the commercial strategy of the operator; or
- (b) the disclosure of the information would unduly interfere with the right to privacy of the operator, it shall submit the information under seal and request the Authority to treat it as confidential.

(2) The Authority shall comply with a request under subsection (1) unless it considers the confidentiality requested to be impracticable in the light of the requirements and the fundamental principles of this Act or any regulations made under it or in violation of any other law, in which case, the information requested and the reasons for requesting the information, together with the reasons for claiming confidentiality, shall be submitted to the Board for final decision.

(3) The Authority or Government shall not disclose the content of the information unless or until confidentiality is denied, and applicable administrative appeal process is exhausted with the same result.

Sanctions

44. (1) The Authority shall undertake, when deemed necessary, reasonable and appropriate methods to enforce the terms and conditions of a licensee's activities in accordance with procedures set out in this Act, the Regulatory Authority Act, any relevant law and regulations made under them.

(2) The Authority may apply sanctions, including, in the following cases of infringements:

- (a) non-compliance with provisions of legal regulations, regulatory decisions, notifications, regulatory licences, or standard contract conditions;
- (b) illegal use of radio frequency spectrum, or if used without authorization or in contradiction with a licence;
- (c) placing electronic communication equipment or any other electric devices causing interference or any other side effects on the market, or their distribution or operation in violation of regulations;
- (d) failure to comply with any notification requirement; and
- (e) failure to comply or inadequate compliance with disclosure obligations.

(3) If a service provider refuses to comply with the Authority's notice, the Authority has powers to take the following measures in accordance with this Act and specific other legislation-

- (a) order the undertaking to pay the costs of the proceeding if found guilty in an official supervisory proceeding the Authority has conducted;
- (b) impose a fine in an amount prescribed by this Act;

- (c) order the information and communications operator or service provider to disclose the information prescribed by the Authority;
- (d) take the measures described in section 27;
- (e) order the service provider to credit or repay extra charges where it fails to comply with the obligations; or
- (f) apply other sanctions prescribed by regulations.

(4) The Authority shall give the licensee concerned a reasonable notice of its intent to act and a reasonable opportunity to respond and, except in the case of repeated breaches by a licensee, in which case, the Authority may immediately take the appropriate measures, the Authority shall allow reasonable period prescribed by regulations for the licensee to remedy the breach.

(5) If the licensee remedies the breach within the time prescribed by regulations, the Authority shall record the remedy and permit the licensee to continue operating but the Authority may within two months from its initial intervention revoke or modify its decision as it deems it appropriate and shall give reasons for its decision.

(6) In the event of any serious or repeated violation of obligations, if the sanctions under this Article did not achieve sufficient results, the Authority shall notify the Secretary of State of the violation and the Secretary of State-

- (a) shall suspend or prohibit the related information and communications activities; or
- (b) may suspend or withdraw the individual information and communications or radio communications licences.

(7) The Authority shall publish its decisions and may publish them regardless of any request filed for the judicial review of the decision.

(8) Where an appeal has been lodged against a decision that has already been published, it too shall be published together with the ruling adopted in the judicial review proceeding.

Harmful
interference

45. (1) Where there is harmful interference between an information and communications system using radio frequencies and another Information and Communications system, the Authority may take immediate action, including the giving of directives to remedy the breach.

(2) A licensee affected by subsection (1) shall be given twenty-one days opportunity to state its views and propose remedies to the harmful interference, before the Authority takes a final decision.

PART V – ENSURING FAIR COMPETITION

Fair com-
petition
No. 4 of 2007

46. (1) Notwithstanding the Competition Act, 2007, but without prejudice to section 13 of the Regulatory Authority Act, the Secretary of State and the Authority shall, in the performance of their duties under this Act and regulations made under it, promote, develop and enforce fair competition and equality of treatment among all licensees in any business or service relating to telecommunication information and communications.

(2) An act of unfair competition includes-

- (a) an abuse by a licensee, either independently or with others, of a significant market power which unfairly excludes or limits competition between the licensee and any other person;
- (b) entering into an agreement or engaging in a concerted practice with any other party, which unfairly prevents, restricts or distorts competition;
- (c) the perpetuation of anti-competitive changes in the market structure in and, in particular, anti-competitive mergers and acquisitions in the communications sector; and

- (d) any other practice or act which is prohibited under any other written law.

47. (1) The Authority is charged with defining the relevant markets of products and services within the information and communications sectors, including the relevant geographic markets, in accordance with the principles of this Act, as well as with carrying out an analysis of such relevant markets.

(2) The Authority has the right to conduct a market analysis-

- (a) at the request of interested undertakings;
- (b) at the request of state or municipal institutions; or
- (c) at its own initiative.

(3) The Authority also has the right to complete only parts of the market analysis procedure where it considers for justified reasons that it is not feasible to complete the whole procedure.

(4) The Authority shall seek to complete the market analysis within the shortest period of time possible, and later four months after the decision initiate a market analysis, but the Authority may a resourced decision extend this period but not for more than three times and by extend not more than three months each time.

(5) The market analysis shall be completed by a decision of the Authority and shall indicate the results of every completed stage of the market analysis.

(6) The Authority shall make publicly available the list of relevant markets for which undertakings having significant market power as defined in subsection (1) have been identified and the list of undertakings having significant market power as well as the obligations imposed on them.

(7) The analysis of the market shall be reviewed if a new definition of the markets is established or where the Authority deems that there are grounds for the review.

Relevant
markets

48. (1) Within the scope of market analysis, the Authority shall determine whether or not a relevant market is effectively competitive, for the purposes of imposing, maintaining, amending or suppressing obligations set forth in the present Act

(2) The Authority shall determine the relevant markets by-

- (a) collecting information about each identified market so as to measure the extent of “significant market power;
- (b) consulting the concerned information and communications market players regarding market relevance for the purpose of analyzing those markets;
- (c) seeking the advice of the Competition Commission established under the Competition Act 2007;
- (d) defining the criteria to measure the significant market power; and
- (e) consulting with the concerned the information and communications market players about obligations to be imposed on operators having for each relevant market.

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(3) When conducting a market analysis, deciding whether an undertaking has significant market power and imposing obligations on undertakings having significant market power, the Authority shall-

- (a) take account of the relevant provisions of international treaties and agreements; and
- (b) ensure, within the scope of its competence, compliance with and implementation of those treaties and agreements in The Gambia.

(4) Where the Authority determines that a relevant market is not effectively competitive, it shall identify undertakings having significant market power in that market and impose appropriate and specific regulatory obligations, or maintain or amend the obligations where they already exist.

(5) If the analysis shows the market to be competitive, the Authority shall abolish any existing obligations.

Determination
of significant
market power

49. (1) For the purposes of this Act, an undertaking is deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is, a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and consumers.

(2) The Authority may consider that two or more undertakings have joint significant market power if, even in the absence of structural or other links between them, they operate in a market whose structure is considered to be conducive to coordinated effects.

(3) The Authority shall, in its assessment, use criteria based on specific market characteristics, in particular in terms of market concentration and transparency, giving weight, to the following factors-

- (a) fully developed market;
- (b) stagnant or moderate growth on the demand side;
- (c) low elasticity of demand;
- (d) homogeneous products;
- (e) similar cost structures;
- (f) similar market shares;

- (g) lack of technical innovation or fully developed technology;
- (h) absence of excess capacity;
- (i) high barriers to entry;
- (j) lack of countervailing buying power;
- (k) lack of potential competition;
- (l) various kinds of informal or other links between the undertakings concerned;
- (m) retaliatory mechanisms; and
- (n) lack or reduced scope for price competition.

(4) Where an undertaking has significant market power in a specific market, it may also be deemed to have significant market power in an adjacent market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.

Imposition of obligations on undertakings having significant market power

50. (1) The Authority has the right to impose obligations on undertakings having significant market power on the relevant market, taking account of their appropriateness in each specific case and setting the starting moment in time for the fulfillment of those obligations.

(2) The obligations imposed on undertakings by the Authority must be reasonable, based on the nature of the problem identified, proportionate and justified in the light of the principles and objectives of the regulation of information and communications activities.

(3) Where it is established on the basis of a relevant market analysis that the market characteristics do not justify the imposition of obligations referred to in this section or that there are no undertakings having significant market power in the market, the Authority shall-

- (a) not impose, in accordance with the procedure and conditions set out in this Act, the obligations referred to in this Act; and
- (b) withdraw the obligations, if any, imposed on the undertakings having significant market power.

(4) When withdrawing obligations, the Authority may, by a reasoned decision, set the final date for their implementation.

(5) After having conducted a repeated market analysis, the Authority may amend the imposed obligations by applying the necessary changes according to the provisions of this section concerning the imposition of obligations.

Cost
accounting
obligation

51. (1) The Authority shall require operators having significant market power to establish cost accounting for the purposes of regulation.

(2) Cost accounting must show separate accounts, in accordance with international best practices.

(3) Costs relating to regulated and non-regulated activities are kept separate.

(4) Cost accounting must be by activity-based costing.

(3) The cost accounting system must be audited annually by an independent body appointed by the Authority, the costs of the audit to be borne by the operator having significant market power which allow the Authority to publish a cost nomenclature prior to submission of the reference interconnection offer for approval.

(4) Pending the implementation of cost accounting, the interconnection rates shall be calculated on the basis of the following recommendations-

- (a) using a regional benchmark;

- (b) using an existing cost calculation tool;
- (c) using, for an initial period of three years, a top-down model based on forward-looking historical costs, before moving to a model based on a long-run incremental costs, which gives the operator with a an incentive for greater efficiency;
- (d) using marketing data for setting the appropriate rate of return based on the cost of capital;
- (e) using the hybrid capital asset pricing model incorporating the country risk and correction coefficient for calculating the cost of equity,

Local loop unbundling

52. The Authority shall ensure that-

- (a) new entrants are authorized to access the local loop on the basis of a pre-established schedule;
- (b) new entrants commit, in their respective proposals, to install some minimum infrastructure capacity, whereas operators having significant market power commit to provide access to copper pairs to the new entrant as well as the possibility of co-location on its premises in order to facilitate unbundling;
- (c) the unbundling offer, including the list of services offered at the request of the authority, shall be approved by the Authority;
- (d) the new entrant has access to the information needed for unbundling purposes and the information related to unbundling is exchanged electronically between operators and competitors ;
- (e) a schedule for unbundling established with a view to liberalization of fixed communications, privileging unbundling with shared line access initially; and

- (f) guidelines are provided on use of the “scissors test” in order to compare retail prices and unbundling.

Carrier selection

53. (1) The Authority shall ensure that carrier selection is introduced in the call-by-call form, as a minimum, in order to establish effective competition and allow consumers to choose their local-loop operator freely and have access to the services of an alternative operator.

(2) The selection possibility shall be offered by all operators having significant market power who must be invited to undertake the technical changes that are necessary to adapt their automatic exchanges so as to be able to offer, in the initial phase, call-by-call selection service which shall be included in the reference interconnect offer.

(3) The Authority shall assign prefixes to operators who fall within the category of carriers and take decisions on-

- (a) type of carrier selection;
- (b) operators eligible to act as carriers;
- (c) operators subject to the obligation to offer carrier selection;
- (d) types of calls carried;
- (e) problems involved in carrier selection such as invoicing and calling line identification; and
- (f) unfair competition issues, such as, "slamming".

Infrastructure sharing

54. (1) The Authority shall encourage infrastructure sharing and ensure that sharing between the operators of public communication networks takes place under conditions of fairness, non-discrimination and equality of access.

(2) The Authority, in consultation with other stakeholders, shall elaborate a procedure for handling relations between the operators of public networks in the matter of the conditions and the sharing of infrastructure, in particular lead-times and access to the information needed to put it into place.

(3) The Authority shall encourage infrastructure sharing between the operator concerning, in particular, posts, ducts and elevated points to be made available mutually on a commercial basis, where there is limited access to posts, ducts and elevated points resources through natural or structural obstacles.

(4) The Authority shall-

(a) encourage access to alternative infrastructure on the basis of commercial negotiations, in order to foster and entrench competition as rapidly as possible; and

(b) ensure that the access is provided under conditions of fairness, non-discrimination and equality of access.

Number
portability

55. (1) The Authority shall conduct market studies to assess consumers' portability needs and identify what categories of consumers are likely to request a portability service.

(2) Where a need has been clearly identified, the regulations shall be made to allow consumers to keep their telephone numbers when they change operators.

(3) The Authority shall-

(a) ensure that dialogue takes place between the market players and the Authority, and that the numbering plan is also revised so as to adapt it to the requirements of number portability;

(b) establish tariff and technical conditions; and

- (c) provide information on national roaming contracts, in consultation with the market players.

International
roaming

56. The Authority shall-

- (a) ensure the widest possible compatibility between mobile systems in terms of roaming, and take it into consideration when awarding mobile licences;
- (b) study roaming prices charged in the region;
- (c) consult with the market players concerned with a view to arriving at reasonable tariffs to allow the greatest possible number of roaming users in the region to utilize the networks under the best price and quality conditions;
- (d) identify operators engaged in applying prohibitive prices;
- (e) consult with the Competition Commission;
- (f) allow prepaid subscribers to use roaming at reasonable tariffs;
- (g) inform customers about roaming charges in a clear, detailed and transparent manner;
and
- (h) draw the necessary conclusions from international practice.

Fixed-to-
mobile call
termination

57. The Authority shall examine-

- (a) interconnection and call termination charges on mobile and fixed networks;
- (b) charges and tariff structures, retail and interconnection prices and the sharing of revenues between originating and terminating operators for fixed-to-mobile calls;

- (c) possible adjustments to the tariff structures of retail and interconnection prices;
- (d) the relevance of the interconnection market;
- (e) the relevance of the mobile termination market;
- (f) the identification of operators having significant market power in those markets and implementation of the necessary measures, to promote smooth development of the information and communications and the process of liberalization of the fixed network in particular.

Evolution of the regulatory framework to promote the development of the internet

58. The Authority shall ensure that-

- (a) through unbundling, operators are able to offer "triple play" type services (high-speed internet, voice and television);
- (b) all the alternative operators' equipment necessary for the implementation of local loop access can be co-located;
- (c) activities which will promote development of the wholesale market and hence rapid expansion of the internet in The Gambia are encouraged;
- (d) prior to the liberalization of fixed services, negotiations are held with the incumbent operator on the inclusion of standard offers, namely, flat-rate access, via non-geographical free phone numbers, access via non-geographical paying numbers.

PART VI - ACCESS AND INTERCONNECTION

Right to Inter-connection

59. (1) A licensee has the right and, when requested by another licensee, the obligation, to negotiate the interconnection of its information and communications system or service, with the information and communications system or service of another licensee, in objective, transparent and non-

discriminatory conditions, in order to provide end-to-end connectivity and inter-operation ability of services for all customers at fair and reasonable prices.

(2) The request for interconnection shall not be refused if it is reasonable in terms of the requesting licensee's requirements on one hand and the operator's capacity to meet it on the other.

(3) A refusal to interconnect shall be substantiated and notified to the requesting licences and to the Authority.

(4) Notwithstanding the terms and conditions of an interconnection agreement, a party to the interconnection contract shall not at any time and in any circumstance disconnect or discontinue interconnection to an interconnecting party without the prior written approval of the Authority.

(5) Except where prohibited by the interconnecting operator's licence or by this Act, a network controller shall allow an interconnecting operator to route calls within The Gambia or to international destinations.

Principle

60. An interconnection agreement shall not, directly or indirectly-

- (a) preclude or frustrate the exercise by any person of the rights or privileges afforded under a licence, this Act and regulations made under this Act;
- (b) impose any penalty, obligation or disadvantage on any person for exercising a right under a licence, this Act and the regulations made under this Act;
- (c) prohibit a person from providing an interconnected service which that person is able lawfully to provide; or
- (d) frustrate the provision by a person of an information and communications system or service that the person is able to provide lawfully.

Terms and conditions of interconnection agreements

61. (1) The terms and conditions of an interconnection agreement shall promote increased public and efficient use of information and communications systems and services and facilities.

(2) An interconnection agreement shall facilitate end-to-end connectivity by ensuring that a call originated on the information and communications system of an interconnecting operator can be terminated at any point on the information and communications system of the network controller on non-discriminatory basis.

(3) The transmission of calls across and within information and communications systems shall be seamless to both the calling and called parties.

(4) The procedure for forecasting, ordering and provisioning interconnection shall be efficient and occur within a reasonable time frame.

(5) The facilities or systems used for inter-connection shall be provided in sufficient capacity to enable the efficient transfer of signals between interconnected telecommunication systems.

(6) A service acquired as part of an interconnection facility may be used for any lawful purpose.

Non-Discrimination

62. (1) Interconnection shall be provided on a non-discriminatory basis in similar conditions and for similar circumstances.

(2) A network controller shall ensure that-

(a) the rates charged do not vary on the basis of the class of customers to be served;

(b) it provides an interconnecting operator with interconnection facilities and information under the same conditions and in the same quality that it affords to its own subsidiaries, affiliates, or other similarly situated information and communications service providers;

- (c) it avails to an interconnecting operator all necessary information and specifications related to interconnection; and
- (d) customers of an interconnecting operator receive treatment that is no less favorable than the treatment which it affords to its own customers or the customers of its subsidiaries, affiliates, or other similarly situated information and communications service providers.

Legal regime of interconnection agreement

63. (1) Interconnection shall be the subject of a private legal agreement, commonly called the interconnection contract, between the two parties in question.

(2) The interconnection agreement shall specify, subject to this Act the technical and financial conditions pertaining to the interconnection and on signature, shall be registered with the Authority.

(3) Notwithstanding the provisions of subsections (1) and (2), the Authority may intervene and make binding rulings at its instance or at the instance of either or both parties to the interconnection agreement if-

- (a) the Authority determines that the contract or any of its provision is inconsistent with the provisions of this Act or regulations made under this Act;
- (b) the parties fail to reach a consensus on specific issues or a delay in reaching a consensus; or
- (c) the Authority considers it in the public interest for it to so intervene at its own instance and without any invitation from either or both parties to the inter-connection contract.

(4) The parties shall furnish the Authority with any additional information that the Authority may require in respect of an interconnection agreement.

(5) The Authority may, on evaluating the terms and conditions and the charges set out in the interconnection agreement require the parties to revise the contract if, in the Authority's opinion, the agreement is inconsistent with, this Act, regulations made under this Act, the interconnection guidelines, or the integrity of the public network.

Good faith negotiations

64. (1) The parties to an interconnection agreement shall negotiate in good faith and use their reasonable endeavors to resolve disputes as to the form and subject of an interconnection contract.

(2) A network controller shall-

- (a) provide network information to an interconnecting operator on receipt of a written request; and
- (b) give an interconnecting operator's request for interconnection reasonable priority in his or her dealing with customer orders.

(3) Interconnecting operators obtaining information from other operators prior to, during, or following, the access or interconnection agreement negotiation process shall-

- (a) use that information solely for the purposes foreseen when it was communicated; and
- (b) respect the confidentiality of information transmitted or retained.

(4) Any information received under subsection (3) shall not be communicated to other parties, in particular, other services, subsidiaries or partners for which they could constitute a competitive advantage.

Content of interconnection agreements

65. (1) Notwithstanding the provisions of section 63 (1), interconnection agreements shall be in writing and contain the following minimal elements:

- (a) the date of entry into force, duration and arrangements for the modification, termination and renewal of the agreement;

- (b) notification procedures and the contact details of the authorized representatives of each party for each field of competence;
- (c) the scope and specification of interconnection;
- (d) a description of the services provided by each party and of access to all ancillary or supplementary services or access to and use of premises or land necessary to support interconnection;
- (e) maintenance of end-to-end quality of service and other service levels;
- (f) charges for interconnection on an incremental cost basis;
- (g) billing and settlement procedures;
- (h) ordering, forecasting, provisioning and testing procedures;
- (i) points of interconnection or co-location;
- (j) the amount of, or the forecast procedures to be used to determine, interconnection capacity to be provided;
- (k) transmission of call line identity;
- (l) provisions for network information on an open network architecture basis;
- (m) provisions for information regarding system modernization or rationalization;
- (n) technical specifications and standards;
- (o) inter-operability testing, traffic management and measurement, and system maintenance;
- (p) information handling and confidentiality provisions;

- (q) duration for and renegotiation of the agreement;
- (r) formation of appropriate working groups to discuss matters relating to interconnection and to resolve any disputes;
- (s) rules for compensation in the case of failure by one of the parties; and
- (t) dispute settlement procedures with mention, in the case of failure of negotiations between the parties, of mandatory recourse to the Authority.

(2) In the absence of a reference interconnection offer or for services not appearing in the reference interconnection offer, the applicable tariffs shall appear in an annex to the interconnection contract.

Interconnection charges

66. (1) Interconnection rates shall be-

- (a) charged for each type of information and communications service and system for which interconnection is provided; and
- (b) computed, taking into account only those costs directly related to interconnection.

(2) Interconnection charges shall be structured to match the pattern of underlying costs incurred, and to distinguish and separately price-

- (a) fixed charges for the establishment and implementation of physical interconnection;
- (b) periodic rental charges for use of facilities, equipment and resources including inter-connect and switching capacity; and
- (c) variable charges for information and communications services and supplementary services.

(3) Interconnection charges shall-

- (a) be objective and sufficiently unbundled so that the interconnecting operator does not pay charges that are not directly related to incremental costs of the network controller in providing the interconnection;
- (b) be independently verifiable, fair and properly derived from underlying costs, built up from the cost of separately identifiable network elements; and
- (c) not be designed to facilitate cross-subsidies by a network controller of its network or other services.

(4) Interconnection charges shall not exceed the retail charges for the provision of the equivalent services or facilities to be provided by the interconnection.

(5) An interconnecting operator may acquire services from a network controller at any retail price offered by the network controller, without prejudice to any right to acquire those same or similar services under an interconnection contract.

Technical standards

67. (1) An interconnecting agreement shall provide for adequate capacity and service levels and reasonable remedies for any failure to meet those capacities and service levels.

(2) The parties to an interconnection agreement shall comply with all the relevant standards of the Union and such other technical standards as the Authority may, from time to time, impose.

Calling line identity

68. (1) A calling line identity and all the necessary signaling data shall be passed between interconnecting parties in accordance with standards issued by the Authority.

(2) A dispute in connection with the collection and delivery of calling line identity shall be submitted to the Authority for determination.

Points of interconnection

69. (1) A point of interconnection shall be established and maintained at any technically feasible point as agreed by the parties and the quality of apparatus and facilities shall not prejudice the interconnecting operator.

(2) An interconnecting operator shall provide sufficient details to the network controller relating to point of interconnection to-

- (a) enable the network controller to assess the system conditioning that may be required; and
- (b) estimate the costs of establishing the points of interconnection.

(3) A point of interconnection shall be established as soon as practicable following a request, but, in any case, not later than the period specified in the agreement from the date of the request.

(4) A network controller is responsible for the cost of-

- (a) building and maintaining its ports, data fill and switching capacity to support the interconnection; and
- (b) transport of all material from its origination to points of interconnection.

(5) Where parties providing interconnect services to each other are information and communications system providers, they may mutually agree on the point of interconnection and share the costs of establishing the point of interconnection.

Requests for new forms of interconnection

70. (1) A request by an interconnecting operator for a new form of interconnection shall be in writing and provide the network controller with information about the form of interconnection, the approximate date the interconnection is required and an estimate of the capacity required.

(2) The interconnecting operator shall forward a copy of the request for interconnection to the Authority.

(3) The network controller shall, within fifteen days of receipt of the request for interconnection, inform the interconnecting operator in writing-

(a) of its ability to supply the form of interconnection requested and its schedule of supply; and

(b) whether it is able to do so within the time frame requested by the interconnection operator.

(4) If a dispute in negotiations arises, either the network controller or the interconnection operator may request the Authority's assistance in resolving the dispute through mediation.

(5) The Authority shall resolve disputes brought to it within one hundred and twenty days of its receipt of the referral or of receipt of information requested from the parties following the referral.

(6) The network controller shall, where it has informed the interconnecting operator that it is able to provide interconnection, ensure that the system conditioning and provisioning procedures required to provide the interconnection are undertaken within forty-five days from the date of notification.

(7) A network controller shall provide ninety days written notice to an interconnecting operator of any planned changes to its information and communications system that may have material impact on the interconnecting operator.

Confidentiality
of information

71. (1) A party who receives information in relation to interconnection from another party that is designated by the party as confidential shall keep the information confidential and may disclose it only to-

(a) employees, agents, or advisers, who need to have that information for the purpose of the provision of or advising on interconnection;

- (b) persons to whom the disclosure is authorized by that other party, where the disclosure is authorized or required by law; and
- (c) the Authority.

(2) A confidential information related to-

- (a) interconnection of a party received by another party; or
- (b) business information generated by the information and communications system of a party as a result of interconnection, shall be used solely for the purpose of providing interconnection, and shall not be disclosed to any person involved in the development or provision of retail services of the other party or its subsidiaries or affiliates.

(3) The confidentiality provision of an interconnection agreement shall not prevent or frustrate the public disclosure by the Authority of a provision of the agreement in the public interest.

Review of
interconnec-
tion agree-
ments

72. (1) The Authority may review all interconnection agreements entered into or proposed to be entered into between authorized providers.

(2) The Authority may require information from either the interconnecting operator or from the network controller, or from both of them.

(3) The Authority shall, in reviewing interconnection agreements, ensure that-

- (a) the agreements comply with the applicable regulatory and legal texts, in particular those provisions relating to interconnection and the terms of reference of operators; and
- (b) the provisions of the agreement and contain no discriminatory measures liable to advantage or disadvantage one of the parties vis-à-vis other operators or service providers.

(4) Notwithstanding the provisions of subsection (2), the Authority shall in particular take into account-

- (a) the need to ensure satisfactory end-to-end information and communications services for users;
- (b) the objective of stimulating a competitive market;
- (c) the need to promote co-operation with counterparts in other countries;
- (d) the principles of non-discrimination, including equal access and proportionality;
- (e) the need to maintain and develop universal access;
- (f) the need to ensure fair and incremental cost oriented access charges; and
- (g) the dominance of the operator requesting interconnection from whom interconnection is requested.

Modification
of intercon-
nection agree-
ments

73. (1) When indispensable in order to guarantee fair competition, non-discrimination between operators and the interoperability of networks and services, the Authority may request the parties to modify the interconnection agreement.

(2) In the case of a request for modification, the Authority shall send the parties concerned its requests for modification, duly substantiated.

(3) The parties concerned have a period of one month, as from the date of the request for modification, to amend the interconnection agreement.

(4) The Authority may, on its own or at the request of one of the parties, set a deadline for signature of the agreement, after which they must intervene to bring the negotiations to a conclusion so that

negotiations do not become a barrier to the entry of new operators.

(5) Operators who so request under subsection (4) shall be allowed to consult, in the offices of the Authority, in the manner that the Authority shall decide and respecting normal business confidentiality, the interconnection agreements concluded by operators.

(6) Where the Authority considers it urgent to take action to safeguard competition and protect users' interests, it may request that interconnection between the two networks be provided immediately, pending conclusion of the agreement.

(7) Where the Authority has not formulated a request for modification within three months as from receipt of the interconnection agreement, requests for modification shall cover only those amendments aimed at guaranteeing that each party receives no worse treatment in terms of non-discrimination as compared to those offered in more recent agreements signed by the other party.

Reference
interconnec
tion offer

74. (1) The Authority shall publish a clear and transparent procedure governing approval of the reference interconnection offer of operators having significant market power.

(2) The Authority is entitled to request the operator having significant market power to add or modify the services set out in their offers, when those additions or modifications are justified for compliance with the principles of non-discrimination and cost-orientation of interconnection.

(3) The offers must be as detailed as possible in order to facilitate and smooth interconnection contract negotiations.

(4) The operator having significant market power is required to publish annually a reference interconnection offer, reflecting its price list and the technical services offered which shall contain at least the following services-

- (a) services for the routing of switched traffic (call termination and origination);
- (b) leased lines;
- (c) interconnection links;
- (d) supplementary services and implementation arrangements for them;
- (e) description of all points of interconnection and conditions of access to them, for the purposes of physical co-location;
- (f) comprehensive description of proposed interconnection interfaces, including the signaling protocol and possibly the encryption methods used for the interfaces; and
- (g) technical and tariff conditions governing the selection of carrier and portability.

(5) The Authority may impose transparency obligations in line with international best practices.

(6) The Authority shall also ensure that any reference interconnect offer on the part of operators includes a list of the subscriber-serving exchanges that have are not available for interconnection for valid technical or security reasons, along with the provisional timing to open such subscriber exchanges to interconnection.

(7) Where the forwarding of expected operator traffic to or from subscribers connected to exchanges on the list mentioned in subsection (6) is justified, the Authority shall ensure that the operator is required, at the request of the Authority, to establish a transitional offer for that exchange.

(8) Transitional offer under subsection (7) shall allow the requesting operator to define a fee schedule that reflects the costs which, in the absence of technical access restrictions, would have been incurred for switching communications to or from, first, the

subscribers connected to that exchange, and second, the subscribers who would have been accessible without the need for routing through a higher-echelon exchange.

Publication of a reference interconnect offer

75. The reference interconnect offers approved by the Authority shall be made available on the websites of operators having significant market power and shall be accessible by a web link available on the Authority's website.

Relevant cost orientation

76. (1) Operators having significant market power shall respect the principle of relevant cost orientation, that is, the costs of network components or the management structures of the operator effectively involved in the provision of interconnection.

(2) The relevant costs shall include-

(a) general network costs, that is, costs relating to network components used by the operator both for services for its own customers and for interconnection services; and

(b) costs specific to interconnection services, that is, costs directly incurred solely by those services.

(3) Relevant costs must take account of long-term economic efficiency; in particular, the investments required for network renewal and expansion with a view to sustained quality of service and incorporate the cost of return on capital invested.

(4) Non-relevant costs include costs specific to services other than interconnection.

Monitoring of interconnection tariffs

77. (1) Operators having significant market power shall attach to the draft reference interconnection offer submitted to the Authority a detailed presentation justifying the main tariffs proposed and once the harmonized method for calculating interconnection costs has been adopted, the operators shall use that method to provide the requested justification.

(2) The Authority shall ensure that the methods and data used are valid, and as required, it shall request the operator to adjust its calculations to rectify errors identified.

(3) If an operator fails to provide the justifications required, the Authority may, in the operator's stead evaluate the costs based on the information available to it.

(4) The Authority shall ensure that tariff setting for access and interconnection in so far as the operators with are concerned is cost-oriented and, as appropriate, that the fees payable by consumers are not dissuasive.

Communica-
tion of infor-
mation to the
Authority

78. (1) Operators having significant market power shall communicate to the Authority, at least once a year, the basic information required for checking the calculation of interconnection costs.

(2) The Authority shall prepare and communicate to operators a detailed list of that information and regularly update the list, taking account, *inter alia*, of steps taken to harmonize the calculation methods.

(3) Operators having significant market power are required to allow the duly authorized staff or agents of the Authority to have access to their installations and information system in order to check the validity of the information received.

(4) The Authority shall respect the confidentiality of non-public information to which it has access within the framework of auditing the interconnection costs in order to eliminate any anti-competitive practices by the operators having significant market power.

Co-location

79. (1) The Authority shall ensure that there is an obligation for operators who have to provide co-location and that a co-location offer, presenting no barrier to the entry of competitors, is included in the reference interconnect offer for network interconnection and in the unbundling offer for unbundling.

(2) The Authority shall ensure that-

- (a) where physical co-location is impossible for some valid reason-such-as lack of space, an alternative co-location offer must be made by the operators having significant market power;
- (b) it has a map of self-contained routing switches that are open to interconnection and are available for competitors' co-location.

(3) For purpose of subsection (2), a working group comprising the Authority, the incumbent operator and alternative operators shall, in a fully transparent manner, examine the problems of co-location and propose different solutions in order to solve problems that might arise.

(4) The Authority shall prevent the creation of any entry barriers inherent to co-location and provide solutions to conflicts relating to it as rapidly as possible.

(5) The Authority shall establish the minimal set of conditions that must be fulfilled in any co-location offer, after consultation with the operators of public telecommunication networks.

(6) The conditions established under subsection (5) may lead to the specification, in every co-location offer, of the following-

- (a) information on co-location sites;
- (b) precise location of the operator's sites suitable for co-location;
- (c) publication or notification of an updated list of sites;
- (d) indications as to the availability of alternative solutions in the event that physical space for co-location is not available;

- (e) information on what types of co-location are available, and on the availability of electric systems and cooling equipment on the sites, as well as the rules governing sublease of the co-location premises;
- (f) indications on the time required to conduct feasibility studies for any co-location request;
- (g) information on equipment characteristics and any restrictions on equipment that can be accepted for co-location;
- (h) measures that operators offering co-location must take to ensure the security of their premises and to identify and resolve problems;
- (i) conditions under which competing operator personnel may enter the premises; and
- (j) conditions under which competing operators and the Authority may inspect a site where physical co-location is impossible, or a site where co-location has been refused on the grounds of lack of capacity.

Interconnection disputes

80. (1) Disputes relating to refusal to interconnect, interconnection agreements and conditions of access shall be submitted to the Authority in the form of a petition from the petitioner requesting the Authority to resolve the dispute.

(2) The petition shall contain-

- (a) a detailed statement of the matters and facts at issue;
- (b) a statement of attempts made to resolve the dispute;
- (c) a copy of the interconnection agreement, if any; and

(d) any other information as the petitioner deems relevant or the Authority may require.

(3) The party against whom the petition is filed shall be given the opportunity to respond to the petition.

(4) The Authority shall in considering a petition take such steps as are necessary to enable it to decide the dispute, and may establish, by way of written notice to the parties, all dates and deadlines not established.

(5) The Authority shall decide on a petition under this section within a period of two months of its submission, which period may be extended to four months when additional investigations and expert opinions are required.

(6) The decision of the Authority shall be substantiated, and shall specify the equitable conditions, both technical and financial, under which the interconnection is to be effected and matters remaining in dispute shall be brought before the competent jurisdictions.

(7) In the case of serious and blatant breach of the rules governing the information and communication sector, the Authority may, after inviting the parties to submit their remarks, order appropriate provisional measures to be taken to ensure the continued functioning of networks and services.

PART VII – REGULATIONS OF TARIFFS AND QUALITY OF SERVICE

Tariff regulation

81. (1) Notwithstanding the provisions of the Regulatory Authority Act or any other law, tariffs in the information and communications sector which -

- (a) are, in the opinion of the Authority, subject to, effective competition, shall be established by the operation of the market;
- (b) in the opinion of the Authority, lack effective competition, shall be subject to such pro-

portionate controls and non-discriminatory controls set out in the guidelines provided by the Authority, taking into account the mechanisms specified in section 82.

(2) Where guidelines have been provided pursuant to this section, any rate mechanism in force at the time of the publication of the guidelines shall cease to have effect, without prejudice to its validity in respect of any preceding period, with regard to the market or markets segments to which the guidelines refer.

Price caps

82. (1) Unless and until guidelines are provided pursuant to section 81, the general structure of the tariff regulation mechanism shall be price cap, in accordance with the following provision-

- (a) all authorized providers under this Act who provide Information and communications services and systems to the public shall file with the Authority schedules of their tariffs, including those of their agents and correspondents;
- (b) all authorization providers whose tariffs are subject to regulation by the Authority shall be subject to a price cap mechanism and shall file with the Authority all the necessary documents as required in their licences;
- (c) all proposed tariffs or changes to the existing tariffs, including the terms and conditions applicable to them, but excluding special offers and other promotions, shall be filed with the Authority within thirty days before being implemented by an authorized provider;
- (d) if the Authority takes no action before the expiration of thirty days from the date on which the proposed tariffs are filed, the authorized provider may implement the proposed tariffs, provided that a proposed tariff shall not be implemented where a complaint, as to the appropriateness of the

proposed tariff, has been filed with the Authority and has not been determined;

- (e) authorized providers subject to tariff regulation by the Authority shall ensure that all filed tariffs are printed and kept open for public review and inspection and furnish them to customers on request;
- (f) authorized providers whose tariffs are subject to regulation by the Authority pursuant to the price cap mechanism who wish to change the tariff, shall file with the Authority an application that they intend to adjust the tariff.

(2) In this section, “price cap” means a methodology where the price charged for an information and communications service or system is allowed to change by the rate of inflation over the initial price with an adjustment factor, (X), based on factors, such as-

- (a) technological changes;
- (b) the need to finance development infrastructure; and
- (c) need to adopt efficient working systems,

provided that the overall rate of the basket of services in which the rate is included, does not exceed a limit set by the operation of a price cap formula.

Quality of service

83. In the context of the responsibilities of the Authority under this Act, the Authority shall undertake the following as it finds appropriate-

- (a) measure some or all quality of service indicators;
- (b) audit the quality of service reports submitted by licensees;

- (c) apply the appropriate sanctions when failure to meet targets or to provide adequate information occurs; and
- (d) publish quality of service indicators as the it deems appropriate.”

Obligations of authorized operators

84. (1) Notwithstanding the provisions of section 83, authorized operators shall undertake the following-

- (a) establish and administer measurement systems consistent with the quality of service framework;
- (b) establish the measures needed to comply with measurement systems;
- (c) provide bi-annual reports with respect to the quality of service indicators, measurement results.

(2) Authorized operators shall submit bi-annual reports to the Authority that contain, at a minimum, the quality of service indicators information as required by the Authority.

(3) The bi-annual reports shall-

- (a) contain the processed information based on statistics or empirical information that the authorized operator collects from its own measurement systems and the empirical data as explained in the quality of service indicators using formulas and calculation methods in accordance with those specified in quality of service indicators guidelines; and
- (b) include statistics regarding performance indicators on a monthly, quarterly, and bi-annual basis, for the six month reporting period.

(5) If an authorized operator fails to provide the necessary quality of service reports, the Authority has the right, after written notification, to make arrangements for a third party to carry out independent measurements at the expense of the

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authorized operator.

(6) The Authority may conduct an audit immediately following the submission of the first quality of service report by the authorized operator under the quality of service framework in order to verify that the authorized operator is submitting accurate and timely information.

(7) The Authority reserves the right to conduct audits of operator's network, as it deems necessary.

PART VIII - ALLOCATION AND ASSIGNMENT OF FREQUENCIES AND REGULATION OF THE ELECTROMAGNETIC SPECTRUM

Interpretation of this part

85. In this Part-

“Plan” means the National Spectrum Allocation Plan prepared under this Part; and

“Spectrum Regulations” means the Spectrum Regulations made under this Part.

Allocation and assignment of spectrum

86. (1) The Secretary of State shall allocate the frequency bands of electromagnetic spectrum in The Gambia.

(2) The Authority has jurisdiction over the assignment and usage of the frequency bands of electromagnetic spectrum in The Gambia and shall assign spectrum and regulate the usage of frequency bands of electromagnetic spectrum in The Gambia.

(3) The Authority may delegate, to any competent person or body, any technical aspect of its jurisdiction over frequency regulation.

National spectrum allocation plan

87. (1) The Authority shall, with the approval of the Secretary of State, within one year of the commencement of this Act, prepare a National Spectrum Allocation Plan and make the Spectrum Regulations designed to implement the Plan.

(2) The Authority shall, in developing the National

Spectrum Allocation Plan, work and liaise with the different users of spectrum in The Gambia, including the Armed Forces, law enforcement and security agencies, maritime and civil aviation authorities.

(3) The Plan shall be-

- (a) based on, and include, the material provisions of the Frequency Assignment Plan prepared for The Gambia by the Union; and
- (b) consistent with the objectives of this Act.

(4) The Spectrum Regulations shall contain guidelines for the allocation of frequencies.

Categories of
frequency
bands

88. The Plan and Spectrum Regulations shall organize frequency bands in The Gambia into the following five categories-

- (a) the Free Use Spectrum, which includes those frequency bands which may be used by the public in general without any licence, permit or registration;
- (b) the Commercial Use Spectrum, consisting of those frequency bands assigned by means of a licence granted by the Secretary of State, which may be used for information and communications services and information and communications systems authorized by the issued licence;
- (c) the Official Use Spectrum, consisting of those frequency bands reserved for the exclusive and official use of the Central and Local Governments of The Gambia and the Armed Forces;
- (d) the Experimental Use Spectrum, which includes those frequency bands which may be assigned directly by the Secretary of State, through a non-transferable licence to test the technical and economic feasibility for a limited period of time, of technologies still

not developed either in The Gambia or abroad, for scientific purposes or for temporary tests of equipment; and

- (e) the Reserved Spectrum, which includes those frequency bands which the Secretary of State has held for future possible allocation.

Application
procedures

89. (1) An authorized person or an applicant to establish an information and communications system or provide information and communications services shall apply to the Authority for the licence to use frequencies related to the system or service in the categories set out in section 88.

(2) The Authority may, on receipt of an application, and on completion of the process set out in the Spectrum Regulations, assign to the applicant, the frequency or frequencies applied for if-

- (a) it does not cause interference or harm to persons or existing operators or authorizations;
- (b) there are no compelling reasons founded on technical data, national security, public safety or other reasonable justification for refusing the application, which shall be communicated to the applicant; and
- (c) the granting of the application is consistent with this Act, the Plan and the Spectrum Regulations.

(3) In addition to the other requirements of the Plan and the Spectrum Regulations, the Authority shall, when assigning frequencies-

- (a) take into account the availability of frequencies, the distribution of service points of the information and communications service or system with regard to urban, rural, residential and commercial, or other categories of uses and the technical characteristics of the equipment involved and its capability to interconnect with other information and

communications apparatus and systems,

- (b) ensure that the radio frequency spectrum is utilized and managed in an orderly, efficient and effective manner;
- (c) aim at reducing congestion in the use of the radio frequency spectrum;
- (d) aim at protecting radio frequency spectrum licensees from harmful interference;
- (e) provide for flexibility and the rapid and efficient introduction of new technologies; and
- (f) aim at providing opportunities for the introduction of the widest range of services and the maximum number of users of those services as is practically feasible.

(4) Without prejudice to subsection (3), the Authority shall, in assigning, managing and monitoring frequencies-

- (a) classify radio stations;
- (b) determine the location of classes of stations or individual stations and approve their call signs;
- (c) assign bands of frequencies to various classes of stations, assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;
- (d) modify frequencies;
- (e) establish areas or zones to be served by any station as appropriate, having regard to the efficient allocation of frequencies;
- (f) prescribe and publish such regulations applicable to radio stations engaged in chain broadcasting as may be conducive to the efficient assignment of frequencies;

- (g) designate standards of equipment to be used with respect to the external sharpness of the emissions from each radio station and from the equipment in it; and
- (h) ensure avoidance of harmful emission, interference or illegal broadcasting;

(5) Nothing contained in this Act permits the modification, suspension or cancellation of a frequency assigned by the Authority to an operator because of views or opinions expressed through the medium of the information and communications service or system of the operator unless the view or opinion is-

- (a) stated as that of the operator; and
- (b) a breach of the conditions of its assignment or allocation or other law of The Gambia.

Environmental
impact
statement

No. 13 of
1994

Migration of
users

Harmful
interference

90. An application for the allocation or assignment of frequencies shall contain, among other terms specified in the Spectrum Guidelines, an environmental impact assessment issued in accordance with the National Environment Management Act, 1994 which demonstrates technically and scientifically that the assignment of the frequencies for the purpose requested will not have a negative impact on the environment in The Gambia.

91. The Authority may, where the Plan identifies radio frequency spectrum that is occupied and requires the migration of the users of the radio frequency spectrum to other radio frequency bands, migrate the users to the other radio frequency bands in accordance with the Plan.

92. (1) If there is harmful interference between or among operators or between operators and other technical systems using frequencies, the Authority may take immediate action, including the giving of directives, to remedy the problem.

(2) A licensee affected by an action taken by the

Authority shall be given not less than twenty-one days opportunity to state its views and to propose remedies to the harmful interference.

(3) The Spectrum Guidelines shall set out the procedure to be followed and the decision to be taken by the Authority under this section.

Restrictions

93. The Authority may impose restrictions on the use of frequencies which it assigns as are reasonably required in the public interest.

Radio monitoring

94. The Authority shall control compliance with the requirements of the legal acts regulating radio communication and shall carry out radio monitoring.

Co-ordination of frequency usage

95. (1) Licensees requiring spectrum must, in good faith, co-ordinate their respective frequency usage with other licensees to-

- (a) avoid harmful interference among licensees;
- (b) ensure efficient use of any applicable frequency band; and
- (c) allow for the provision of cost-efficient services.

(2) Where licensees are unable or unwilling to co-ordinate in good faith in terms of subsection (1), the Authority shall intervene and resolve the dispute.

(3) The Authority shall prescribe guidelines on the co-ordination contemplated in subsection (1), which may include a process for the resolution of disputes among licensees on an expedited basis.

Right to enter building, etc.

96. (1) The Authority may, subject to this Act, the related legislation and other applicable law, enter into any building, place, ship and aircraft for purposes of subsection (2).

(2) Where a person is found in possession of any radio apparatus in contravention of the provisions of this section, the Authority may-

- (a) seal or alter the apparatus or any part of it in order to prevent the use of that radio apparatus for the purpose of transmission or reception;
- (b) grant a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not, during that period, used for the purpose considered to be an infringement; or
- (c) seize the apparatus, whether or not it is sealed as contemplated in paragraph (a), for disposal.

(3) Any Radio apparatus seized under subsection (2)(c) shall be held by the Authority at the cost of the person from whom it was seized until its possession is authorized in terms of this Act, or the matter is dealt with by a court of law.

PART IX – MANAGEMENT OF NUMBERS

Responsibility **97.** The Authority has overall responsibility to plan and carry out the administrative duties related to numbering resources.

National Numbering Plan **98. (1)** The Authority shall establish and manage the National Numbering Plan for electronic communication services.

(2) The Authority control the assignment of all national numbering resources and ensure that adequate numbers and numbering ranges are provided for all publicly available information and communications services.

(3) The National Numbering Plan shall cover numbers, short numbers, identifiers, codes, prefixes and special numbers, such as, emergency numbers.

Management of the National Numbering Plan **99.** The Authority shall, as necessary, subject to ensuring the proper management of the National Numbering Plan, grant rights of use for numbers and number ranges for all publicly available information and communications services according to procedures that are objective, transparent and non-

discriminatory.

Rules on numbering

100. The Authority may issue further rules on numbering which shall specify the type of numbers, identifiers and codes that may be used in information and communications and the purpose for which they are to be used.

Publication of the national numbering plan

101. The Authority shall publish, subject only to limitations imposed on the grounds of national security, the national numbering plan, all subsequent additions or amendments to it.

Conditions for the use of numbers

102. (1) The Authority may, without prejudice to the generality of any provisions by or under this Act relating to licences, attach conditions to rights of use for numbering resources, including the payment of fees to ensure efficient and effective management of all numbering resources.

(2) Conditions that may be attached under subsection (1) shall be defined in regulations made by the Authority.

Revocation of the right to use numbers

103. (1) The Authority may revoke the right to use a numbering resource if-

- (a) the holder of the right to use the numbering resource does not pay the fee the grant of use for the numbering right or the yearly extension;
- (b) the use of the numbering resource is against the grant of numbering right;
- (c) the numbering resource is not taken into use within a reasonable time after the grant of the numbering right or its use has been discontinued; or
- (d) the holder of the right to use the numbering resource does not rectify his or her conduct within a one month in spite of being requested to do so.

(2) Before the Authority revokes the right to use a

numbering resource, it shall give the holder of the right to use the numbering resource prior written notice of at least thirty working days and the holder of the right to use the numbering resource shall have seven days in which to respond in writing to the notice unless otherwise extended by the Authority demonstrating that it is utilising the numbering resource in compliance with this Act and the conditions.

(3) The Authority, based on the written response of the under subsection (2) shall notify the holder of the right to use the numbering resource of its decision to revoke or not to revoke the right to use the numbering resource.

Access to emergency numbers

104. (1) An information and communications operator in a public communications network shall ensure that users are able to access the emergency call numbers free of charge.

(2) The Authority may issue further orders on technical measures necessary to meet the obligation referred to in subsection (1).

Information of the use of numbers

105. (1) Information and communications providers shall continuously report to the Authority, and to those service providers subject to the obligation of directory services, all data of subscribers, including information regarding the use of numbers, names and addresses of associated end-users, depending on their approval as are required by the Authority or necessary in connection with providing the directory services. .

(2) The Authority may make regulations on requirements for the provider's duties and end-users' rights in regard to directory enquiry services.

Use of data-bases

106. (1) The Authority may issue directives regarding the use of databases that are utilised in connection with information and communications and contain information on or are connected to numbers, names or addresses.

(2) The Authority may-

- (a) nominate an organisation for administration of the databases; and
- (b) issue regulations on the use of databases and on the nomination.

Electronic addressing

107. (1) The Authority may, from time to time, make rules and give directions in relation to electronic addressing of electronic communications services and related services, including the allocation and use of electronic addresses.

(2) The Authority may develop, administer and enforce a plan for electronic addressing.

PART X – TYPE-APPROVAL OF TERMINAL EQUIPMENT

Principles

108. (1) The Authority shall prepare Technical Guidelines of Radio Equipment and Communications Terminal Equipment in which it shall lay down-

- (a) the conditions and basic requirements for the connection of radio equipment and information and communications terminal equipment;
- (b) the obligations related to the provision of information on interface specifications and to the connection of radio equipment and communications terminal equipment;
- (c) the procedure and conditions for the placing on the market, selling and use of the equipment;
- (d) the requirements for radio equipment and communications terminal equipment;
- (e) the procedure and conditions of conformity assessment, approval and monitoring; and
- (f) other related requirements.

(2) The Authority shall prepare Technical Guidelines

on Electromagnetic Compatibility in which it shall lay down-

- (a) the conditions for applying electromagnetic compatibility requirements, the procedure and conditions for the placing on the market and use of equipment and devices;
- (b) the requirements for equipment and devices, their installation and use;
- (c) the procedure and conditions of assessment, approval and monitoring of compliance with electromagnetic compatibility; and
- (d) the payment of type approval fees.

(3) The Authority shall prepare the rules for the use of industrial, medical and scientific equipment and devices, that is, equipment and devices the operation of which generates and consumes radio wave energy and which are intended for industrial, medical, scientific, domestic and similar purposes, except for purpose of electronic communications.

(4) The owner or user of radio equipment and devices shall allow officials from the Authority to inspect equipment and devices, also to confiscate them if necessary.

Type approval

109. (1) The Authority may grant type-approval for certain types of recurring equipment or apparatus on a one-time basis, and subsequent users of the same model of equipment or apparatus shall not apply to the Authority for type approval.

(2) Notwithstanding the provisions of subsection (1) above, radio and terminal equipment covered by international agreements to which The Gambia is a party and that meet requirements in accordance with those agreements, may be held, sold and used.

(3) Requirements referred to in subsection (2), include requirements for the safety of life and health, requirements for electro-magnetic compatibility, requirements for effective use of the electromagnetic

frequency spectrum, other requirements in regulations laid down pursuant to section 108 and requirements for procedures and labelling.

(4) Possession, sale and use of radio and terminal equipment that is not covered by agreement in accordance with subsection (2), require equipment approval from the Authority.

(5) The Authority may-

- (a) deny approval if the equipment; does not fulfil the requirements as stated in section 108;
- (b) impose conditions for equipment approval; or
- (c) make exceptions to the requirement for approval.

(6) Notwithstanding the provisions of subsections (1) to (5), a subsequent change in model, design or specification of an equipment or apparatus, which has been type-approved by the Authority, shall be submitted for type approval.

(7) The Authority shall ensure that the connection of an apparatus to an information and communications system does not damage or jeopardize the integrity of the information and communications system.

PART XI – UNIVERSAL ACCESS ANDSERVICE

Non-discrimination in service provision

110. (1) Except as provided by or under this Act, an authorized provider shall not deny a subscriber or any other user of an information and communications service it provides, or have the service discontinued.

(2) An authorized provider may deny a service for a reason allowed by regulations made under this Act or contained in the terms and conditions of information and communications service submitted to and approved by the Authority.

(3) The right of an authorized provider to discontinue

a service shall in all cases be exercised in a proportionate manner.

Licensees to offer uniform services

111. (1) Licensees shall provide uniform, non-preferential information and communications services or systems on a first-come, first-served basis to all persons within a covered geographic area who request the service or system.

(2) A licensee is not in breach of the principle of equal access and non-preferential treatment if the licensee-

- (a) considers the ability of a person to pay for an information and communications service or system when deciding whether to provide it to the person; or
- (b) makes other rational classifications among subscribers, such as, business and residential, high or low volume, and provides the information and communications service or system on the basis of those classifications and all persons within a given classification are served on a non-preferential basis.

Universal service obligation

112. (1) The Authority shall-

- (a) determine the most effective and appropriate approach for ensuring the implementation of universal access or service, with due respect for the principles of objectivity, transparency, non-discrimination and proportionality; and
- (b) shall endeavor to keep market distortions to a minimum, particularly where they take the form of service provision at rates or under conditions which differ from those normally prevailing in a commercial operation, while protecting the public interest.

(2) The universal access obligation may be fulfilled by-

- (a) contribution to the provision of universal

service;

- (b) the provision of information and communications systems or services at lower than tariff or normal rates; or
- (c) any other form which the Authority designates.

(3) Where the Authority establishes, by directive, regulation or otherwise, a form of contribution to the goal of universal access, all the operators shall, unless specifically exempted by the Authority pursuant to detailed regulations, contribute uniformly in accordance with the formula or manner established by Authority for that purpose.

Cooperation
in the management of
universal
access or
service

113. Cooperation in the management of universal access or service shall be explored on several levels-

- (a) between the private sector and communities, so that where possible; the market can deliver universal access or service;
- (b) between communities, Government and the private sector, to ensure that the access gap is dealt with in a manner that is relevant to communities; and
- (c) within Government, to realize full benefits of information and communications beyond infrastructure and technology, and extended to health, education, agriculture and other sectors.

Designation of
universal
access or
service
providers

114. (1) The Authority may designate one or more licensees as universal service provider.

(2) The process for designating universal service providers shall be efficient, objective, transparent and non-discriminatory, ensuring that no undertaking is excluded *a priori* from being designated, and may include tenders.

(3) The terms of a tender, if applicable, shall ensure

that the universal service is provided in a cost-effective manner and sets out provisions for the maintenance of obligations, in the event of mergers or assignment of the provider's contractual position.

(4) Operators designated by the Authority, shall comply with-

- (a) the terms of the universal access programme; and
- (b) such reporting requirements,

as the Authority shall establish for that purpose.

Reviewing the scope of universal access and service

115. (1) With a view to monitoring and reviewing policies, the Authority shall-

- (a) adopt measurable targets for improving connectivity and access to information and communications which can be based on distance, population density or length of time needed to have access to information and communications; and,
- (b) hold periodic reviews of universal access and service policies, regulations and practices in order to adapt to the evolving nature of information and communications services and end-user needs.

(2) The Authority shall periodically review the scope of the universal service, in particular with a view to making proposals for its modification or redefinition.

(3) The first review shall be held not later than two years following the date of entry into force of this Act, and thereafter a review shall be held every three years.

(4) The review shall take account of social, economic and technological developments, and particular regard to data mobility and transfer rates for the technologies most widely used by the majority of subscribers.

Funding of
universal
service

116. (1) Funding and subsidies shall be targeted, and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive and competitively neutral.

(2) Subsidies can be provided using several means, including-

- (a) a universal service fund, which should be developed as a mechanism within a broader market-oriented approach to achieving universal access and which can be financed by a broad range of market players, managed by a neutral body, and be used to kick-start public access projects that meet the needs of the local community;
- (b) a full range of other financing mechanisms;
- (c) competitive minimum subsidy auctions which may be used, as an option, to reduce the amount of financing necessary for public access projects financed by a universal service fund; and
- (d) public access projects, which can be designed to achieve long-term financial self sustainability, especially where consideration is given to innovative low-cost technologies.

Universal
service fund

117. (1) The Secretary of State may establish a Fund to fund projects to provide telephone, internet and associated services to areas which, for some reasons, are not attractive to private sector investors.

(2) If established, the sources of the Fund shall consist of-

- (a) such levies from information and communications systems and services operators as the Authority may from time to time, specify;
- (b) grants, donations and endowments that

may be received within and outside The Gambia;

- (c) subventions from Government; and
- (d) such other monies as may, from time to time, accrue to the Fund.

(3) The Fund shall be kept in a bank approved by the Board of Trustees.

(4) The Fund Board and the Secretariat as defined in sections 118 to 120 shall supervise and provide policy direction for the management of the Fund and the Fund Manager.

Fund board

118. (1) Where a Fund is established, a Board of Trustees shall be established which shall manage and control the Fund, and comprise-

- (a) the Permanent Secretary of the Department of State;
- (b) a representative from the National Planning Commission;
- (c) the Director General of the Authority;
- (d) one member of the Board of the Authority;
- (e) a representative of consumers;
- (f) a representative of service providers; and
- (g) two other private sector representatives to be appointed by the Secretary of State, on the recommendation of the Authority.

(2) A Chairperson shall be appointed by the Secretary of State from amongst the members, in consultation of the Authority.

(3) The Fund Board shall have the ability to establish standing or Ad Hoc Committees to assist it in exercising its functions under this Act, but decisions of the Fund Board Committees shall not, be binding and valid until they are adopted and agreed on by

the Fund Board.

(4) Membership of the Fund Board Committees may be constituted beyond the members of the Fund Board to include persons and representatives of organizations that are capable in the Board's Fund estimation, of assisting the Authority and the Board in the discharge of the universal service functions, provided that Fund Board Committees shall at all times be headed by Board members.

(5) The functions of the Fund Board shall be defined in regulations to be made by the Secretary of State and shall include-

- (a) supervising and provide broad policy directions for the management of the Fund and the Fund Managers;
- (b) appointing and remove Fund Managers, in consultation with the Authority;
- (c) approving Operating Plans, which shall include one or more Programs and projects and a budget for all operations and expenses of the Fund Board, Secretariat, Fund Managers and all other matters to be financed by the Fund during the period of the Operating Plan;
- (d) establishing guidelines and regulate the activities of the Fund Manager;
- (e) approving all processes, procedures, guidelines, and decisions to give full force and effect to the regulations; and
- (f) performing all other functions assigned to it.

(6) The accounts of the Fund shall be audited by the Auditor General.

Fund
secretariat

119. (1) Where a Fund is established, a Fund Secretariat, shall be established.

(2) The Fund Secretariat resides in the Authority and shall be responsible for the day-to-day management of the Universal Service Fund.

(3) The Authority-

- (a) shall ensure that the Fund Secretariat is staffed with suitably qualified and experienced personnel, who may be seconded from the Authority's staff;
- (b) may also recruit suitably qualified personnel from outside the Authority as required to meet the staffing requirements of the Fund Secretariat.

(4) The functions of the Fund Secretariat shall be defined in regulations to be made by the Secretary of State and shall include-

- (a) receiving applications for loans and grants from eligible persons such as, community-based information and communications operators;
- (b) reviewing those applications and making recommendations to the Fund Board as to which applications should be funded;
- (c) liaising with other Directorates in the Authority in processing licences for funded applications;
- (d) providing loan recipients and grantees with technical and managerial assistance, such as, resolution of equipment vendor issues and setting up billing systems;
- (e) evaluating project performance and effecting such actions as may be necessary to ensure that loan recipients and grantees meet objectives for network expansion and provision of service;
- (f) enforcing standards of quality of service in rural and underserved areas set by the Fund Board;
- (g) collecting project assessments and loan repayments and paying the loan repayments into the Fund;

- (h) evaluating the effectiveness of the Fund in meeting policy goals as set by the Government and the Board;
- (i) facilitating collaboration between activities that are funded by the Fund and other infrastructure and development efforts; and,
- (j) liaising between the Fund Board and the Fund Managers;
- (k) preparing and recommending to the Board Fund the Operating Plans;
- (l) preparing and recommending to the Authority and to the Board the guidelines to establish and regulate the structure and activities of the Fund Secretariat and the Fund Manager, and revisions to such guidelines from time to time;
- (m) coordinating with the Authority in order to carry out its functions;
- (n) preparing and recommending to the Board all processes, procedures, guidelines and decisions necessary to give full force and effect to the regulations; and,
- (o) performing all other functions assigned to it.

Fund
manager

120. (1) The Fund Secretariat shall carry out a public, transparent and competitive selection process in consultation with the Authority to select a Fund Manager and shall submit its recommendation to the Board.

(2) The Board shall appoint the Fund Manager on the basis of the recommendation of the Secretariat.

(3) The Fund Manager shall advise and assist the Secretariat to-

- (a) maintaining Funds financial accounts and records;

- (b) collaborate with the Secretariat in the collection of the project assessments and loan repayments;
- (c) estimate the amount needed annually to sustain the rate of network expansion determined by the Authority as appropriate to meet Universal Service Policy objectives;
- (d) determine the amount of annual revenue required to ensure that the Fund remains fiscally sound, and to calculate the corresponding rate of assessment;
- (e) disburse funds to eligible entities based upon approval by the Fund Board;
- (f) invest Fund cash reserves under directions from the Board and to establish cash management procedures to ensure maximum return on investments while meeting short-term cash requirements for disbursements;
- (g) regularly report on financial performance of the Fund to the Fund Board; and,
- (h) evaluate the effectiveness of the Fund in meeting policy goals as set by Government and the Fund Board.

(4) The Fund Manager shall report on a quarterly basis to the Fund Board and the Secretariat on the status of the Fund including a report detailing the financial situation and performance of the Fund.

PART XII - PROVISIONS CONCERNING THE INTERESTS AND RIGHTS OF END USERS

Principles

121. (1) The provisions of this Part shall not be derogated from to the detriment of the consumer.

(2) Where users are not consumers, the provisions shall only apply to the relevant parts of any agreement and only if the contrary has not been agreed.

(3) Except as provided by this Act, a subscriber or other user of an information and communications system or service shall not be denied a service provided by an authorized provider, or have the service discontinued without reasonable notice, taking into account the circumstances of each case.

(4) An operator shall-

- (a) make available all information and communications systems and services as may reasonably be provided to any person wishing to subscribe to the systems or services;
- (b) ensure that all rates, charges, practices and classifications are just and reasonable;
- (c) provide efficient services and comply with the standards for quality generally accepted in the industry.
- (d) notify the Authority and publish by notice in the media when the services are to be interrupted for the installation, repair or changing of equipment;
- (e) establish an efficient mechanism for receiving complaints and repairing failures in the information and communications systems or services;
- (f) comply with the provisions of this Act, regulations made under this Act and the terms and conditions of the licence; and
- (g) abide by any directives of the Authority which it is authorized to issue.

Right to
deposit or
security

122. (1) An information and communications service operator has the right to require from a consumer a reasonable deposit or security for the payments under the network subscriber connection agreement, but only for special reasons, including those relating to foreseeable insolvency or some other comparable circumstance.

(2) If the special reasons referred to in subsection (1) apply, the information and communications service operator has the right to impose a reasonable balance limit, as well as a deposit or security, as a condition of a subscriber connection agreement.

Calling line identification

123. An information and communications service provider in a public communication network has an obligation to provide a user with tone dialling and a service with which the call recipient can see the calling number before answering the call.

Standard contracts

124. (1) An information and communications service provider in a public communications network shall, with the approval of the Authority, draw up standard contract terms for subscriber connections and shall use the standard terms when making agreements with consumers.

(2) An information and communications service provider in a public communications network shall publish standard contract terms and tariff information on services and shall ensure that they are easily available to users without charge.

Provisions regarding contracts

125. (1) Contracts for public communications network subscriber connections and contracts for receiving any other communications service shall be made in writing, and may also be made electronically, provided that the content of the electronic contract cannot be amended without the consent of the other party and that the contract remains available to both parties.

(2) The contract shall be sent to the user for signature within five working days from an order of a service and the user has the right to cancel an order within twenty working days.

(3) If the signed contract has not been returned to the information and communications service provider within twenty working days, the user is deemed to have cancelled the order and the information and communications service provider cannot claim any charges from that period.

(4) The contract shall state the name and contact information of the provider of the information and communications service, including but not limited to the following-

- (a) the validity of the contract;
- (b) the nature of the services and the types of maintenance service provided;
- (c) the time of delivery of the subscriber connection;
- (d) the pricing basis for the services or the tariffs to be applied;
- (e) the procedure for giving notice to terminate the contract and the reasons for termination;
- (f) the sanctions for any error or delay;
- (g) the user's right to obtain information on the calculation of his/her bill;
- (h) how the user is informed of amendments to the contract terms;
- (i) the user's rights if the contract terms are amended;
- (j) the sanctions for neglect of payment;
- (k) the user's right to complain about a bill;
- (l) the right of the information and communications service provider to terminate the provision of a service or to restrict the use of a service; and
- (m) the right of the consumer to refer a dispute on the contract for the decision of the Authority.

(5) The standard conditions established for the provision of information and communications services to the public shall be published by the information and communications service provider on

its website or in any other reasonable manner and be given to the user together with the contract to be signed.

(6) The terms of a contract for a public communications network subscriber connection and any other contract for receiving an information and communications service shall not restrict the user's right to-

- (a) choose a content service provider;
- (b) connect to the network any functioning radio or information and communications terminal equipment that is type approved for the purpose; or
- (c) connect to a public communications network any communications network that is internal to a property or building, which meets the requirements of this Act.

Amendments
to terms of
subscriber
contracts

126. (1) A provider of an information and communications service may amend the price and other terms of a contract for a subscriber connection only-

- (a) on grounds specified in the contract terms, assuming that the content of the contract does not essentially change as a whole;
- (b) on the basis of a change in legislation or a consequent decision by the authorities; or
- (c) for any other special reason due to an important change in circumstances.

(2) The user has the right to give notice of termination, with immediate effect, of contract on a public communications network subscriber connection or any other contract on receiving an information and communications service if the information and communications operator gives notification that it is amending the agreement terms.

(3) An information and communications service operator shall notify the user of any change in the contract terms and the content no later than one month before the amended terms enter into force.

Dispute
resolution

127. (1) Information and communications service operators shall establish and manage a dispute resolution system, as provided for in this Act and that is free of charge for the users.

(2) Complaints shall be dealt with within a reasonable time-frame and decisions shall be done in an objective and transparent way.

(3) Where disputes relate to billing, the operator shall not disrupt the service provision to the user if the user pays the non-disputed part of the payment of the bill.

(4) Where a dispute is not resolved to the satisfaction of the user or operator, it shall be referred to the Authority.

Temporary
closure of
connections

128. (1) An information and communications service operator may close or restrict the use of a network subscriber connection temporarily without the consent of the user if this is necessary for network construction or maintenance work.

(2) An interruption shall be made in a way that causes as little inconvenience to the user as possible and shall be announced well in advance wherever possible.

(3) If a subscriber connection is closed for more than forty-eight hours in a calendar month for reasons of network construction or maintenance work or a fault in the information and communications network, the provider of the information and communications network services shall refund to the user, the monthly rental for one month or pay an equivalent reasonable refund.

(4) The refund obligation referred to in subsection (3) does not, however, apply if the fault is caused by-

- (a) a natural phenomenon or other *force majeure*, and if the provider of information and communications network services demonstrates that, using reasonable measures, it has not been able to repair the fault within forty-eight hours;
- (b) neglect on the part of the user or another person that has used the subscriber connection; or
- (c) the poor operating condition of terminal equipment or the wiring in the premises.

Removing restrictions or re-opening of connections

129. (1) On the request of the user, the provider of information and communications services shall reopen a closed subscriber connection or remove a restriction on use as soon as the restriction on the use or closure of the subscriber connection is no longer justified.

(2) A provider of an information and communications service has the right to charge a reasonable fee for reopening a subscriber connection or removing a restriction on use.

Right to close connections

130. (1) An information and communications service operator has the right to close the connection if the user has not paid a due bill in spite of a reminder that has been sent not sooner than fourteen days after the bill was due and fourteen days after sending the reminder.

(2) On the request of the user, the provider of an information and communications service shall, without compensation, bar the use of a subscriber connection if the barring is technically easy to implement, but if the barring is later removed on the request of the user, the information and communications operator may charge a fee for doing so.

(3) An information and communications operator with a public communications network subscriber connection used by another information and communications operator to provide a communications service or which collects fees on behalf of another

information and communications operator shall bar the use of the other information and communications operator's service, on request, if the information and communications operator requesting the barring is not itself able to bar the use of its communications service.

(4) The Authority may issue further orders on the minimum call-barring categories for outgoing traffic from the subscriber connection that shall be provided to the user, and on the technical implementation of call-barring services.

Termination of contracts

131. (1) A provider of an information and communications service has the right to terminate a contract on a network subscriber connection if-

- (a) the subscriber connection has been closed for at least for thirty days and the reasons for closure still apply; or
- (b) the user has been convicted for disrupting communications using a subscriber connection.

(2) A provider of an information and communications service may only terminate a network subscriber connection contract in writing after the information and communications operator has warned the user in advance of the termination of the subscriber connection contract.

(3) The user may give notice of termination of a subscriber connection contract orally and may also give notice of termination of a subscriber connection contract that is valid until further notice to terminate fourteen days from the notice.

(4) The information and communications operator shall send the user a written confirmation of the termination.

Itemized billing

132. (1) Information and communications service providers shall, without charge, provide itemised bills for the use of the public communications network subscriber connections without being separately

requested to do so.

(2) The bill shall, without difficulty, indicate at least the following billing items-

- (a) network charges;
- (b) different categories of calls, including national, mobile and international calls;
- (c) subscriber connection rates;
- (d) text messages, picture messages and other messages;
- (e) data transfer services.

(3) Irrespective of the amount of the bill, the provider of information and communications service shall itemise the fees for services other than telephony services without being requested to do so and without charge.

(4) Calls to free phone numbers shall not be indicated on an itemised bill.

(5) Users have the right to obtain a non-itemised bill on request.

Numbering changes

133. Providers of information and communications services shall in an efficient manner and in good time provide users with information on changes in numbering affecting the public communications network.

(2) Users shall be given information on any changes to their telephone numbers not less than six months before the change enters into force.

PART XIII - DISPUTE RESOLUTION

Complaints of unfair competition

134. (1) Where the Authority receives a complaint or it appears to the Authority that a breach of fair competition, or equal access, has been committed, the Authority may investigate the act or omission and give written notice to the licensee-

- (a) informing the licensee that the Authority is investigating a possible breach of fair competition or equal access;
- (b) stating the reasons for the suspicion of a breach, including any facts or law which are relevant to the investigation;
- (c) requiring the licensee to furnish to the Authority information required in order to complete the investigation; and
- (d) specifying the steps to be taken in order to remedy the breach.

(2) The licensee shall, within twenty-one days from the date of the notice, make representations in response to the notice and give the Authority all information in its possession required under the notice.

(3) A person affected by the alleged breach of fair competition or equal access may also make a representation to the Authority in relation to the allegation.

(4) Where investigation reveals that a licensee is competing unfairly, the Authority may issue an order-

- (a) requiring the licensee to cease and desist from the activity found to constitute unfair competition or failure to provide equal access;
- (b) requiring the licensee to take action to remedy the unfair competition or failure to provide access;
- (c) requiring the licensee to pay such penalty as the Authority may determine, as reasonable for every month or part of a month during which the breach of the unfair competition continues; and

(d) declaring any anti-competitive agreement or contract null and void.

(5) The provisions of this Part do not affect the right of a person to take any other action against a licensee under any applicable law of The Gambia.

Disputes
between
undertakings

135. (1) If a dispute arises between undertakings established in the Gambia, the Authority shall, subject to subsection(2), at the request of any party to the dispute, initiate an investigation of the dispute and, as soon as possible and in any case, other than in circumstances which the Authority considers exceptional, within four months from the date on which the dispute was notified to it by a party to the dispute, make a determination to resolve the dispute and ensure compliance with this Act.

(2) Nothing in subsection (1) article shall be construed as restricting or prohibiting the Authority from undertaking of its own initiative any investigation of any disputes it may become aware of and which the Authority believes ought to be investigated.

(3) Disputes arising between or among licensees that may be referred to the Authority for determination under subsection (1) include disputes relating to-

- (a) allegations of unfair competition or abuse of by a licensee;
- (b) access to, use or an abuse of, and other matters relating to, network interconnection, whether or not an interconnection agreement exists;
- (c) rates, charges and other payments or compensation arising under agreements between licensees;
- (d) frequency coordination;

- (e) technical aspects of the public information and communications services and systems; and
- (f) damage to or interference with licensee's equipment, network or services by another licensee.

(4) The Authority may decide not to initiate an investigation referred to in subsection (1) where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(5) Where the Authority decides not to initiate an investigation under subsection (4), it shall inform the parties of the decision.

(6) Notwithstanding the provisions of subsection (4), if four months from the date of a decision referred to in subsection (3), the dispute is not resolved and the party seeking redress has not initiated legal proceedings before the ordinary courts or any other competent adjudicative for a however so described, the Authority shall initiate an investigation and give a decision in accordance with the provisions of this section.

(7) On receipt of a reference under this section, or on otherwise becoming aware of a dispute or a possible default which the Authority believes should be investigated in the public interest, the Authority shall notify the licensee concerned that the matter is under investigation and allow the licensee seven days within which to produce the relevant information and make its representations to any claim or allegation levied against it.

(8) Based on its own investigations and on written and testimonial representations provided by the parties, the Authority may issue such directives as are within its powers and as it may deem appropriate.

(9) The decision of the Authority rendered pursuant to this section shall be entered in the register of the Authority within fifteen days, and communicated to all parties to the dispute.

(10) In issuing a decision under this article the Authority shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(11) Unless arbitrary or capricious, the decision of the Authority in a dispute is binding on the parties and, where a contract or agreement exists between the parties, the decision shall have the effect of an addendum to the contract or agreement.

(12) For the purpose of this section, a decision is arbitrary or capricious if it is not in conformity with the rules of procedure with which the Authority is legally bound to comply.

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

(14) An undertaking to which a decision under this section applies shall forthwith comply with that decision, and if the undertaking fails to do so, it shall be deemed to have committed an infringement of this section and the Authority may impose an administrative fine for each day of non-compliance in accordance with the provisions of this Act.

(15) The period of non-compliance under subsection (14) shall be deemed to have commenced from the date of notification of the decision of the Authority or from any such other date as may be communicated in the decision, which date shall, in any case, be on or subsequent to the date of notification.

136. (1) Where a dispute arises between an undertaking and a consumer further to a complaint by a consumer alleging an infringement of this Act, any

party to the dispute may refer the dispute to the Authority, provided that in making a complaint the consumer must prima facie show that he or she has been affected by the act or omission of the undertaking giving rise to the complaint.

(2) Disputes arising between a licensee and a consumer or a class of consumers that may be referred to the Authority for determination under subsection (1) include disputes relating to allegations of-

- (a) undue discrimination by a licensee for unauthorized charges or terms for the provision of an information and communications service system;
- (b) unauthorized or high charges levied by a licensee; and
- (c) failure of service.

(3) On receipt of any reference as under sub-section, or on otherwise becoming aware of dispute that the Authority believes should be investigated, the Authority shall notify all the parties to the dispute that the matter is being investigated.

(4) In its investigation, the Authority shall regulate its own procedure, which procedure-

- (a) may, at its discretion, include the institution of alternative dispute resolution processes for the resolution of the complaints; and
- (b) shall, as far as is reasonably possible, be transparent, simple, inexpensive and conducive to a prompt and fair settlement of the dispute, and shall afford all parties to the dispute reasonable opportunity to make their submissions and to produce any relevant information.

(5) The Authority may decide not to initiate an investigation in accordance with this section where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if

legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(6) The Authority in resolving any disputes referred to it under this section, may issue directives to an undertaking requiring that undertaking to comply with any measure the Authority may specify for the resolution of the dispute.

(7) The directives may, having regard to its determination of the dispute and to all other relevant matters, include an order to effect the reimbursement of payments received or to make compensation payments which may also include the whole or part of the costs of any party relating to the engagement of a legal practitioner and, or of a technical adviser in relation to any submissions relating to the dispute.

(8) The Authority shall make publicly available any administrative procedures it may, from time to time, establish in relation to the handling of any disputes referred to it under this section.

(9) In issuing a decision under this section, the Authority shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(10) The Authority shall publish notice of a decision given under this section and shall indicate where copies of or information regarding the decision may be obtained.

(11) The Authority shall-

- (a) establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees; and
- (b) may, at its discretion, institute alternative dispute resolution processes for the resolution of the complaints or disputes, provided

that the licensee's dispute resolution procedures shall first have been exhausted by the consumer without resolution of the complaint before presentation of the complaint to the Authority.

PART XIV – PROCESSING OF PERSONAL DATA AND PROTECTION OF PRIVACY

Principles

137. (1) Information and communications service providers shall be authorized to process the personal data of end-users and subscribers, to the extent required and necessary-

- (a) for their identification for the purpose of drawing up contracts for information and communications services;
- (b) to define and amend the contents of these contracts;
- (c) to monitor contractual performance, billing charges and fees as contracted; and
- (d) for enforcing any related claims.

(2) Information and communications service providers shall be authorized to process personal data in connection with billing charges for information and communications services, to the extent required and necessary for calculating and billing charges, in particular, the data relating to the date, the duration and place of the service to which it pertains.

(3) In addition to the identification and other personal data referred to in subsections (1) and (2), information and communications service providers may also process the type of personal data which is technically essential for the provision of services.

(4) Information and communications service providers shall use in their operations for providing information and communications services only the type of information and communications apparatuses which have sufficient facilities to ensure that personal data is processed only where it is

absolutely necessary in terms of the provision of services and for the implementation of other objectives specified in this Act.

(5) Information and communications service providers shall delete any personal data from its records that is used for purposes other than those defined in subsections (1) to (3) immediately on gaining knowledge of an unlawful data processing.

(6) The provision of information and communications services shall not be rendered contingent on the user providing consent for processing his or her personal data for purposes other than those defined in subsections (1) to (3).

(7) Information and communications service providers shall enable the end-users to have access to information concerning the type of personal data the service provider is processing and the objectives, at any time before and during the use of the information and communications services.

Intercept

138. (1) The national security agencies and investigating authorities may monitor, intercept and store communications, and the Authority, when exercising its powers conferred relating to frequency monitoring, or may otherwise intrude communication for surveillance purposes.

(2) If an alleged threat of murder or physical violence or blackmail occurs, the user or subscriber threatened may in writing authorize the investigating authority to intercept telephone conversations, other information and communications, e-mail messages and any other form of communications on his or her end terminal to investigate and to identify the persons involved in communications within the period of time set in the user's authorization.

(3) The Secretary of State may determine that information and communications operators and service providers must implement the capability to allow authorized interception of communications.

(4) A determination, under section (3) of this Article, may specify the technical requirements for the capability to allow authorized interception of communications.

Measures to ensure privacy of communications

139. (1) Information and communications service providers shall take appropriate technical and organizational measures, jointly with other service providers, if necessary, in order to block any unauthorized attempt to intercept, store or monitor communications transmitted and any related traffic data and to prevent any unauthorized or accidental access to communications transmitted and any related traffic data.

(2) Information and communications service providers shall use in their operations for providing information and communications services only the type of information and communications apparatuses which have sufficient facilities to ensure the privacy of communications defined in subsection (1).

(3) Information and communications service providers shall be authorized to obtain and store communications transmitted on their network only to the extent absolutely necessary for the provisions of services for technical reasons.

(4) Information obtained via information and communications networks may be stored on electronic communication terminal equipment, or accessed, only on the end-users' and subscribers' prior consent granted after being in possession of clear and comprehensive information about implications.

Security of information and communications services

140. (1) Information and communications service providers shall take appropriate technical and organizational measures, jointly with other service providers if necessary, in order to safeguard security of their services.

(2) The technical and organizational measures shall be sufficient, with regard to best practices and the costs of the proposed measures, to afford a level of security appropriate to the risk presented in

connection with the services provided.

(3) In case of a particular risk of a breach of the security of the services in spite of the technical and organizational measures taken, the service provider must inform the subscribers of the risk and of the measures the subscribers may take to enhance the level of protection.

(4) The information provided under subsection (3) shall also indicate any software and encryption technologies available for use by the end-users and subscribers to safeguard the security of their communications.

(5) In case of the occurrence of an event effecting or jeopardizing the security of the services, where a previously unknown risk of a breach of the security appears in consequence, the information and communications service provider shall promptly inform the subscriber of the risk, free of charge and of the measures the subscriber may take to enhance the level of protection, and the estimated costs involved.

(6) The requirement under subsection (5) to inform subscribers of particular security risks does not discharge the service provider from the obligation to take appropriate and immediate measures to restore the normal security level of the service.

(7) Where the provision of a value added service requires that traffic or location data are forwarded, the service provider shall inform the subscribers or users concerning the type of data required, the purpose and duration of data processing, and as to whether or not the data is to be forwarded to third persons.

(8) Information and communications service providers shall be authorized to process traffic or location data only on the prior consent of the subscribers or users to whom the data are related, and only to the extent and for the duration as it is necessary for the provision of value added services.

(9) Users and subscribers have the right to withdraw their consent referred to in subsection (8) at any time.

Storage of
traffic data

141. (1) Traffic data relating to subscribers and users processed and stored by an information and communications service provider shall be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication without prejudice to subsections (2) and (9).

(2) Information and communications service providers shall be authorized to process the following data for subscribers and users for the purposes of billing for calls, collecting the related charges and for keeping the subscriber contracts up to date-

- (a) the telephone number or other identifier of the subscriber terminal;
- (b) the address of the subscriber and the type of terminal equipment;
- (c) total units chargeable for the billing period;
- (d) calling and called subscriber numbers;
- (e) the type of calls or other services, their direction, start time, the duration of conversations or the size of data transmitted, the International Mobile Equipment Identity of the network and cell providing the service and of the telephone set used for making use of the service provided in the case of mobile radio telephone networks, and for Internet Protocol networks the identifiers used;
- (f) the date of call or other services provided;
- (g) data connected with the payment of charges or charges in arrears;
- (h) events of the termination of a subscriber contract if terminated with debts outstanding;

(i) data relating to other, non-information and communications services, in particular to the billing of charges, that may be used by subscribers and users in the case of telephone services.

(3) The data referred to in Subsection (2) may be processed until the term of limitation established for claims arising from subscriber contracts and, service providers are authorized to process data solely for the purposes set out in this Act.

(4) Information and communications service providers may use the type of data referred to in subsection (2) for marketing purposes, subject to the subscriber's prior written consent.

(5) Within the framework of proceedings for insider trading, market manipulation and unauthorized provisions of services, the data referred to in subsection (2) may be disclosed for the purposes of criminal investigation and prosecution.

(6) The data referred to in subsection (2), to the extent required for the purpose of data processing, may be transferred to-

(a) the persons involved in billing operations, management of claims and management of sales, and in client information on behalf of the information and communications company;

(b) the bodies authorized under the law to settle disputes arising in connection with billing and sales;

(c) authorized national security bodies, investigating authorities and the competent court of justice for the protection of national security, national defence or public safety and for the prosecution of criminal acts and any unauthorized use of the information and communications system; and

(d) court bailiffs.

(7) In respect of data transferred under subsections (5) and (6), the obligation to maintain confidentiality shall equally apply to the recipients of the data as to their provider.

(8) Information and communications service providers shall, for compliance with the disclosure requirements set out in of subsection (6)(c), retain-

(a) the data referred to in subsection (2)(a), for three years from the date when the contract is terminated; and

(b) subject to paragraph (a), the data referred to in subsection (2), for three years.

(9) Information and communications service providers shall, for compliance with the disclosure requirements set out in subsection (6)(c), be authorized to process, for maximum three years - data the service provider has obtained in connection with the unlawful use of subscriber terminal equipment, or any attempt to do so, for accessing subscriber services in the information and communications network, in particular, when the equipment has been barred by its rightful owner.

Data for the identification of subscribers

142. (1) In order to prevent any evasion of the obligation to pay charges and other obligations following from the contract, information and communications service providers have the right to transfer to or receive from, other information and communications service providers data for the identification of subscribers, from the data legally processed in accordance with this Act, together with the reasons for the data transfer as laid down in subsection (2), or to raise a joint data bank with corresponding data content in order to determine whether or not to enter into contract with certain subscribers.

(3) Subscriber data may be forwarded to or recorded in, the data bank if-

- (a) a contract was terminated by the service provider on account of overdue charges, or the availability of the service for use by a subscriber was fully or partially suspended;
 - (b) judicial or public proceedings were instituted by the service provider against a subscriber on account of outstanding debts, or if the subscriber's place of abode is unknown; or
 - (c) the service provider was misled or an attempt was made by an applicant or subscriber to mislead the service provider with the intention of causing damage (in particular when the documents of subscriber identification are obviously false, fraudulent or invalid) or for other unlawful purposes.
- (4) Service providers shall promptly inform the subscribers concerned of the data transfer.
- (5) Where the grounds for lawful processing or forwarding of data no longer exist, the service provider shall take measures to have the subscriber's data erased from the joint data bank, and notify all previously notified service providers and the subscriber concerned that the data have been erased.
- (6) Data included in the data bank may be requested by-
- (a) the information and communications service provider only for the purpose defined in Subsection (1); and
 - (b) any consumer so as to find out the data contained in the data bank relating to him or her.
- (7) The parties concerned shall agree in writing as to the creation of a joint data bank, the commissioning of the data manager or data processor, and their rights and obligations.

Information to be provided to subscribers

143. (1) Prior to the conclusion of a subscriber contract, the applicant shall be expressly and clearly informed of-

- (a) the processing of his or her data as mentioned in section 142;
- (b) the cases where data used may be transferred, and the information and communications service providers to which data may be transferred;
- (c) the decisions that information and communications service providers may make on the basis of those data;
- (d) the legal remedies the applicant may have recourse to; and
- (e) the manager and data processor and the address of data processing and management.

(2) The subscribers shall be informed without delay of any changes in the conditions mentioned in subsection (1) (a) to (e).

Maintenance of subscriber lists

144. (1) Information and communications service providers shall maintain subscriber lists for keeping data that is necessary for the identification of subscribers and for the services used and that can be processed by the service provider under authorization by this Act or specific other legislation.

(2) Information and communications service providers may use data included in their subscriber directory and address register for providing information, as a service, from the data they contain, but in providing the service, no data exceeding those contained in the subscriber directory or address register may be disclosed, unless the subscriber concerned has approved of the disclosure of more of his or her data.

(3) The security of the queries from the subscriber directory or address register shall be maintained,

and any misuse, in particular any, unauthorized downloading of the data, shall be prevented by appropriate technical solutions.

(4) No interrelation shall be established between the data of electronic subscriber directories or address registers and other data or directories unless it is inevitable for operational purposes on the part of the information and communications service provider.

Use of communications for direct marketing

145. (1) Applying the Automated calling system free of any human intervention for the purposes of direct marketing and information in respect of a subscriber shall only be applied with prior consent of the subscriber.

(2) No communication serving the purposes of direct marketing or information may be forwarded to a subscriber, by telephone or through other means of information and communications, who has declared that he or she does not wish to receive any publicity matter.

(3) Communication for direct marketing purposes shall not be forwarded, even with the subscriber's express consent, if the sender cannot be clearly identified.

Itemised billing and privacy

146. (1) At the request of a subscriber, a provider of a public electronic communications service shall provide that subscriber with bills that are not itemised.

(2) The Authority shall when exercising their functions, have regard to the need to reconcile the rights of subscribers receiving itemised bills with the rights to privacy of calling users and called subscribers, including the need for sufficient alternative privacy enhancing methods of communications or payments to be available to the users and subscribers.

Prevention of calling line identification – outgoing calls

147. (1) This section applies to outgoing calls where a facility enabling the presentation of calling line identification is available.

(2) The provider of a public communications service shall provide users originating a call by means of that service with a simple means to prevent presentation of the identity of the calling line on the connected line as respects that call.

(3) The provider of a public communications service shall provide subscribers to the service, as respects their line and all calls originating from that line, with a simple means of preventing presentation of the identity of that subscriber's line on any connected line.

(4) The measures to be provided under subsections (2) and (3) shall be provided free of charge.

Prevention of calling or connected line identification - incoming calls

148. (1) This section applies to incoming calls.

(2) Where a facility enabling the presentation of calling line identification is available, the provider of a public communications service shall provide the called subscriber with a simple means to prevent, free of charge for reasonable use of the facility, presentation of the identity of the calling line on the connected line.

(3) Where a facility enabling the presentation of calling line identification prior to the call being established is available, the provider of a public communications service shall provide the called subscriber with a simple means of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.

(4) Where a facility enabling the presentation of connected line identification is available, the provider of a public communications service shall provide the called subscriber with a simple means to prevent, without charge, presentation of the identity of the connected line on any calling line.

(5) In this section, "called subscriber" means the subscriber receiving a call by means of the service in question whose line is the called line (whether or not it is also the connected line).

Publication of information for the purposes of calling or connected line identification

149. Where a provider of a public communications service provides facilities for calling or connected line identification, it shall provide information to the public regarding the availability of those facilities, including information regarding the options to be made available.

Co-operation for purposes of calling and connected line identification

150. An information and communications provider shall comply with any reasonable requests made by the provider of the public electronic communications service by means of which facilities for calling or connected line identification are provided.

Tracing of malicious or nuisance calls

151. (1) An information and communications provider may override anything done to prevent the presentation of the identity of a calling line where-

- (a) a subscriber has requested the tracing of malicious or nuisance calls received on his or her line; and
- (b) the provider is satisfied that the action is necessary and expedient for the purposes of tracing the calls.

(2) Any term of a contract for the provision of public information and communications services which relates to the prevention of the presentation referred to in subsection (1) shall have effect subject to the provisions of that subsection.

(3) Nothing in this Act prevents a communications provider, for the purposes of any action relating to the tracing of malicious or nuisance calls, from storing and making available to a person with a legitimate interest, data containing the identity of a calling subscriber which were obtained while subsection (1) applied.

Emergency calls

152. (1) For the purposes of this section, “emergency calls” means calls to the national emergency call numbers.

(2) In order to facilitate responses to emergency calls-

- (a) no person is entitled to prevent the presentation on the connected line of the identity of the calling line; and
- (b) any restriction on the processing of location data shall be disregarded.

Termination of automatic call forwarding

153. (1) Where-

- (a) calls originally directed to another line are being automatically forwarded to a subscriber's line as a result of action taken by a third party; and
- (b) the subscriber requests his or her provider of electronic communications services (referred to as the subscriber's provider") to stop the forwarding of those calls,

the subscriber's provider shall ensure, free of charge, that the forwarding is stopped without any avoidable delay.

(2) For the purposes of subsection (1), every other communications provider shall comply with any reasonable request made by the subscriber's provider to assist in the prevention of forwarding of those calls.

Unsolicited goods, services or communications

154. (1) A person who sends unsolicited commercial communications to consumers, shall provide the consumer with-

- (a) the option to cancel his or her subscription to the mailing list of that person; and
- (b) the identifying particulars of the source from which that person obtained the consumer's personal information, on request of the consumer.

(2) No agreement is concluded where a consumer has failed to respond to an unsolicited communication.

(3) A person who fails to comply with or contravenes subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dalasis or imprisonment for term not exceeding three years or to both the fine and imprisonment.

(4) A person who sends unsolicited commercial communications to another person who has advised the sender that the communications are unwelcome, commits an offence and is liable on conviction to a fine of fifty thousand dalasis or imprisonment for term not exceeding three years, or to both the fine and imprisonment.

Unsolicited
calls for direct
marketing
purposes

155. (1) A person shall not use, or instigate the use of, a public communications service for the purposes of making unsolicited calls for direct marketing purposes where-

- (a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under this section.

(2) A subscriber shall not permit his or her line to be used in contravention of subsection (1).

(3) A person shall not be held to have contravened subsection (1) (b) where the number allocated to the called line has been listed on the register for less than twenty-eight days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to his or her to be listed in the register kept under this section has notified a caller that he or she does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the register.

(5) Where a subscriber has given a caller notification pursuant to subsection (4) in relation to his or her line-

- (a) the subscriber is free to withdraw that notification at any time, and
- (b) where the notification is withdrawn, the caller shall not make such calls on that line.

Use of auto-
mated calling
systems for
direct
marketing
purposes

156. (1) A person shall not transmit, or instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling system except in the circumstances specified in subsection (2).

(2) The circumstances referred to subsection (1) are where the called line is that of a subscriber who has previously notified the caller that for the time being he or she consents to those communications being sent by, or at the instigation of, the caller on that line.

(3) A subscriber shall not permit his or her line to be used in contravention of subsection (1).

(4) For the purposes of this Act, an automated calling system is a system which is capable of-

- (a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- (b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.

Use of
facsimile
machines for
direct
marketing
purposes

157. (1) A person shall not transmit, or instigate the transmission of, unsolicited communications for direct marketing purposes by means of a facsimile machine where the called line is that of-

- (a) an individual subscriber, except in the circumstances specified to in subsection (2);

- (b) a corporate subscriber who has previously notified the caller that such communications should not be sent on that line; or
- (c) a subscriber and the number allocated to that line is listed in the register kept under this Act.

(2) The circumstances referred to in subsection (1)(a) are that the individual subscriber has previously notified the caller that he or she consents for the time being to those communications being sent by, or at the instigation of, the caller.

(3) A subscriber shall not permit his or her line to be used in contravention of subsection (1).

(4) A person shall not be held to have contravened subsection (1)(c) where the number allocated to the called line has been listed on the register for less than twenty-eight days preceding that on which the communication is made.

(5) Where a subscriber who has caused a number allocated to his or her line to be listed in the specific register created under this Act has notified a caller that he or she does not, for the time being, object to those communications being sent on that line by that caller, the communications may be sent by that caller on that line, notwithstanding that the number allocated to that line is listed in the register.

(6) Where a subscriber has given a caller notification pursuant to subsection (5) in relation to his or her line-

- (a) the subscriber shall be free to withdraw that notification at any time; and
- (b) where the notification is withdrawn, the caller shall not send such communications on that line.

Use of electronic mail for direct marketing purposes

158. (1) This section applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances specified to in subsection (3), a person shall not transmit, or instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he or she consents for the time being to those communications being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where-

- (a) the person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;
- (b) the direct marketing is in respect of that person's similar products and services only; and
- (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his or her contact details for the purposes of the direct marketing, at the time that the details were initially collected, and, where he or she did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber shall not permit his or her line to be used in contravention of subsection (2).

Use of electronic mail for direct marketing purposes where the identity or address of the sender is concealed

159. A person shall not transmit, or instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail where-

- (a) the identity of the person on whose behalf the communication has been sent has been disguised or concealed; or

- (b) a valid address to which the recipient of the communication may send a request that the communications cease has not been provided.

Information to be provided for the purposes of direct marketing

160. (1) Where a public communications service is used for the transmission of a communication for direct marketing purposes, the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication-

- (a) in relation to a communication with automated calling systems and facsimile machines, the particulars mentioned in subsection (2)(a) and (b);
- (b) in relation to a communication through telephone calls, the particulars mentioned in subsection (2)(a) and, if the recipient of the call so requests, those mentioned in subsection (2)(b).

(2) The particulars referred to in subsection (1) are-

- (a) the name of the person; and
- (b) the address of the person or a telephone number on which he or she can be reached free of charge.

CHAPTER III – INFORMATION SOCIETY ISSUES

PART I – INTERPRETATION OF THIS CHAPTER

Interpretation of the Chapter

161. In this Part-

"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;

“addressee”, in respect of a data message, means a person who is intended by the originator to receive the data message, but not a person acting as an intermediary in respect of that data message;

“authentication products or services” means products or services designed to identify the holder of an electronic signature to other persons;

“automated transaction” means an electronic transaction conducted or performed, in whole or in part, by means of data messages in which the conduct or data messages of one or both parties are not reviewed by a natural person in the ordinary course of the natural person’s business or employment;

“bill” includes an invoice, account, statement or other document of similar character and “billing” shall be construed accordingly;

“browser” means a computer programme which allows a person to read hyperlinked data messages;

“cache” means high speed memory that stores data for relatively short periods of time, under computer control, in order to speed up data transmission or processing;

“call” means a connection established by means of a telephone service available to the public allowing two-way communication in real time;

“certificate” means a record which is issued by an electronic certification service provider for the purpose of supporting a digital signature which-

- (a) purports to confirm the identity or other significant characteristics of the person who holds a particular key pair;
- (b) identifies the certification service provider issuing it;
- (c) names or identifies the person to whom it is issued;
- (d) contains the public key of the person to whom it is issued; and
- (e) is signed by a responsible officer of the

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certification service provider issuing it;

"certification authority" means a person duly authorized under this Act to issue a certificate;

"communication" means any information exchanged or conveyed between a finite number of parties by means of a public electronic communications service, but does not include information conveyed as part of a programme service, except to the extent that the information can be related to the identifiable subscriber or user receiving the information;

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

"computer system" means a device or combination 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, input data and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

"consumer" means a natural person who enters or intends entering into an electronic transaction with a supplier as the end-user of the goods or services offered by that supplier;

"data" means electronic representations of information in any form;

"data controller" means a person who electronically requests, collects, collates, processes or stores personal information from or in respect of a data subject;

"data message" means data generated, sent, received or stored by electronic means and includes-

- (a) voice, where the voice is used in an automated transaction; and
- (b) a stored record;

“data subject” means a natural person from, or in respect of whom, personal information has been requested, collected, collated, processed or stored, after the commencement of this Act;

"digital signature" –

- (a) means an electronic signature consisting of a transformation of an electronic record using an asymmetric cryptosystem such that a person having the initial untransformed electronic record and the signer's public key can accurately be determined whether-
 - (i) the transformation was created using the private key that corresponds to the signer's public key; and
 - (ii) the initial electronic record has been altered since the transformation was made; and
- (b) includes voice recognition features, digital fingerprinting or such other biotechnology features or process, as may be prescribed;

“e-government services” means any public service provided by electronic means by any public body in The Gambia;

“electronic agent” means a computer programme or an electronic or other automated means used independently to initiate an action or respond to data messages or performances in whole or in part, in an automated transaction;

“electronic communication” means a communication by means of data messages;

“electronic certification service provider” means a person providing an authentication product or service in the form of a digital certificate attached to, incorporated in, or logically associated with, a data message;

“electronic mail” means any text, voice, sound or image message sent over a public electronic communications network which can be stored in the net-work or in the recipient’s terminal equipment until it is collected by the recipient and includes messages sent using a short message service;

"electronic record" means a record created, generated, sent, communicated, received or stored by electronic means;

"electronic signature" means an electronic sound, symbol, or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the electronic record;

“identifiable person” means a person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;

“information system” means a system for generating, sending, receiving, storing, displaying, or otherwise processing, data messages and includes the Internet;

“information system services” includes the provision of connections, the operation of facilities for information systems, the provision of access to information systems, the transmission or routing of data messages between or among points specified by a user and the processing and storage of data, at the individual request of the recipient of the service;

“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 that function;

“intermediary” means a person who, on behalf of another person, whether as agent or not, sends, receives, or stores, a particular data message or provides other services with respect to that data

message;

“Internet” means the interconnected system of networks that connects computers around the world using the Transmission Control Protocol or Internet Protocol and includes future versions of it;

“Internet Protocol address” means the number identifying the point of connection of a computer or other device to the Internet;

"key pair" , in an asymmetric cryptosystem, means a private key and its mathematically related public key, having the property that the public key can verify a digital signature that the private key creates;

“location data” means a data processed in an electronic communications network indicating the geographical position of the terminal equipment of a user of a public electronic communications service, including data relating to-

- (a) the latitude, longitude or altitude of the terminal equipment;
- (b) the direction of travel of the user; and
- (c) the time the location information was recorded;

“modification” means a modification of the contents of a computer system by the operation of any function of that computer system or any other computer system as a result of which-

- (a) a programme or data held in the computer system is altered or erased;
- (b) a programme or data is added to its contents;
or
- (c) a act occurs which impairs the normal operation of the computer system;

“originator” means a person by whom, or on whose

behalf, a data message purports to have been sent or generated prior to storage, if any, but does not include a person acting as an intermediary with respect to that data message;

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

‘personal data’ means any information relating to an identified or identifiable natural person;

“private body” means-

- (a) an individual who carries or has carried on any trade, business or profession, but only in that capacity;
- (b) a partnership which carries or has carried on any trade, business or profession; or
- (c) any former or existing body corporate, but not a public body;

"private key" means the key of a key pair used to create a digital signature;

"programme" means a set of instructions, expressed in words, codes, schemes or any other form, which is capable, when incorporated in a machine readable medium, of causing a computer to perform or achieve a particular task or result;

“processing” means processing of personal data;

‘processing of personal data’ means a operation or set of operations which is performed upon personal data, whether or not by automatic means, such as, collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking erasure or destruction;

"public key" means the key of a key pair used to

verify a digital signature;

“public communications provider” means a provider of a public electronic communications network or a public electronic communications service;

“public body” means the Government, a Department of State, Government institutions, constitutional and statutory bodies and Local Government authorities;

“registrant” means an applicant for or holder of a domain name;

“registrar” means an entity which is licensed by the Authority to update a repository;

“registry” means an entity licensed by the Authority to manage and administer a specific sub-domain;

“relying party” means a person that may act on the basis of a certificate or an electronic signature;

“repository” means the primary register of the information maintained by a registry;

“subscriber” means a person who is a party to a contract with a provider of public electronic communications services for the supply of those services;

“subscriber information” means any information, contained in the form of computer data or any other form, that is held by a service provider, relating to subscribers, other than traffic or other data, by which can be established-

- (a) the type of the communication service used, the technical provisions taken to use the communication service and the period of the service;
- (b) the subscriber’s identity, postal or geographical address, telephone and other access number, billing and payment information, available on the basis of a service agreement

or arrangement; or

- (c) any other information on the site of installation of a communication equipment available on the basis of a service agreement or arrangement;

“TCP and IP” means the Transmission Control Protocol and Internet Protocol used by an information system to connect to the Internet;

“third party”, in relation to a service provider, means a subscriber to the service provider’s services or any other user of the service provider’s services or a user of information systems;

“traffic data” means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing in respect of that communication and includes data relating to the routing, duration or time of a communication;

“transaction” means a transaction of either a commercial or non-commercial nature, and includes the provision of information and e-government services;

"trustworthy system" means computer hardware, software, and procedures that-

- (a) are reasonably secure from intrusion or misuse;
- (b) provide a reasonable level of availability, reliability and correct operation;
- (c) are reasonably suitable for performing their intended functions; and
- (d) adhere to generally accepted security procedures;

‘user’ means a natural person using a publicly available electronic communications service, for private or business purposes, without necessarily

having subscribed to that service;

“value added service” means a service which requires the processing of traffic data or location data beyond that which is necessary for the transmission of a communication or the billing in respect of that communication.

PART II - FUNCTIONS OF THE DEPARTMENT OF STATE

Functions of the Department of State and the Authority in relation to information society issues

162. (1) The functions of the Department of State in relation to electronic transactions and e-government are to-

- (a) facilitate electronic communications by means of reliable electronic records;
- (b) facilitate electronic commerce and eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements;
- (c) promote public confidence in the integrity and reliability of electronic records and electronic transactions;
- (d) foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium;
- (e) facilitate access to e-government services;
and
- (f) minimise the incidence of forged electronic records and fraud in electronic commerce and other electronic transactions;

(2) The Department of State may-

- (a) liaise, consult and cooperate with any person or other authority; and
- (b) appoint experts and other consultants on such conditions as it may determine.

PART II - COMPUTER MISUSE AND CYBER CRIME

Unauthorized
access to
computer data

163. (1) Subject to subsections (2) and (3), a person who causes a computer system to perform a function, knowing that the access he or she intends to secure is unauthorized, commits an offence and is liable on conviction to a two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

(2) A person shall not be liable under subsection (1) where he or she-

- (a) is a person with a right to control the operation or use of the computer system and exercises such right in good faith;
- (b) has the express or implied consent of the person, empowered to authorise him or her, to have such an access;
- (c) has reasonable grounds to believe that he or she had the consent as specified in paragraph (b);
- (d) is acting pursuant to measures that can be taken under this Act; or
- (e) is acting in reliance of any statutory power arising under any enactment for the purpose of obtaining information, or of taking possession of, any document or other property.

(3) An access by a person to a computer system is unauthorized where the person-

- (a) is not himself or herself entitled to control access of the kind in question; and
- (b) does not have consent to access by him or herself of the kind in question from any person who is so entitled.

(4) For the purposes of this section, it is immaterial that the unauthorized access is not directed at-

- (a) any particular programme or data;
- (b) a programme or data of any kind; or
- (c) a programme or data held in any particular computer system.

Access with intent to commit offences

164. (1) A person who causes a computer system to perform any function for the purpose of securing access to any programme or data held in any computer system, with intent to commit an offence under any other enactment, commits an offence and is liable on conviction to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

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

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

Unauthorized access to and interception of computer service

165. (1) Subject to subsection (5), a person who, by any means, knowingly –

- (a) secures access to any computer system for the purpose of obtaining, directly or indirectly, any computer service;
- (b) intercepts or causes to be intercepted, directly or indirectly, any function of, or any data within a computer system,

shall commits an offence.

(2) A person convicted for an offence under subsection (1) is liable on conviction, in the case of –

- (a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and

imprisonment;

- (b) body corporate, to fine of not less than five hundred thousand dalasis.

(3) Where as a result of the commission of an offence under subsection (1), the operation of the computer system, is impaired, or data contained in the computer system is suppressed or modified, a person convicted of the offence is liable to a further fine of five hundred thousand dalasis.

(4) For the purpose of this section, it is immaterial that the unauthorized access or interception is not directed at -

- (a) any particular programme or data;
- (b) a programme or data of any kind; or
- (c) a programme or data held in any particular computer system.

(5) A person is not liable under subsection (1) if he or she-

- (a) has the express or implied consent of both the person who sent the data and the intended recipient of the data; or
- (b) is acting in reliance of any statutory power.

Unauthorized
modification
of computer
material

166. (1) Subject to subsections (3) and (4), a person who, knowingly does an act which causes an unauthorized modification of data held in any computer system commits an offence and is liable on conviction in the case of-

- (a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;
- (b) body corporate, to fine of not less than five hundred thousand dalasis.

(2) Where as a result of the commission of an offence under this section-

- (a) the operation of the computer system;
- (b) access to any program or data held in any computer; or
- (c) the operation of any program or the reliability of any data,

is suppressed, modified or otherwise impaired, a person convicted for the offence is liable to a further fine five hundred thousand dalasis.

(3) A person is not liable under this section where he or she is acting-

- (a) pursuant to measures that can be taken under this Act; or
- (b) in reliance of any other statutory power.

(4) A modification is unauthorized if -

- (a) the person whose act causes it is not himself or herself entitled to determine whether the modification should be made; and
- (b) he or she does not have consent to the modification from any person who is so entitled.

(5) For the purposes of this section, it is immaterial whether an unauthorized modification or any intended effect of it, is permanent or merely temporary.

Damaging or denying access to computer system

167. (1) A 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,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction-

- (a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;

- (b) body corporate, to fine of not less than five hundred thousand dalasis.

Unlawful possession of devices and data

168. (1) A person who knowingly manufactures, sells, procures for use, imports, distributes or otherwise makes available, a computer system or any other device, designed or adapted primarily for the purpose of committing an offence under subsections (3) to (8), commits an offence.

(2) A person who knowingly receives, or is in possession of without sufficient excuse or justification, one or more of the devices mentioned in subsection (1) commits an offence.

(3) A person who is found in possession of any data or programme with the intention that the data or programme be used, by the person himself or herself or another person, to commit or facilitate the commission of an offence under this Act, commits an offence.

(4) For the purposes of subsection (3), possession of any data or programme includes -

- (a) having possession of computer system or data storage device that holds or contains the data or programme;
- (b) having possession of a document in which the data or programme is recorded; or

(c) having control of data or programme that is in the possession of another person.

(5) A person who commits an offence under this section is liable on conviction, in the case of-

(a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;

(b) body corporate, to fine of not less than five hundred thousand dalasis.

Unauthorized disclosure of password

169. (1) A person who, knowingly discloses any password, access code, or any other means of gaining access to any program or data held in any computer system –

(a) for any wrongful gain;

(b) for any unlawful purpose; or

(c) knowing that it is likely to cause prejudice to any person,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of-

(a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;

(b) body corporate, to fine of not less than five hundred thousand dalasis.

Publishing of information which is obscene in electronic form

170. (1) A person who publishes or transmits or causes to be published in electronic form, any material which is lascivious or appeals to the prurient interest, or if 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, commits an

offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of-

- (a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;
- (b) body corporate, to fine of not less than five hundred thousand dalasis.

Re-programming of mobile telephone

171. (1) A person who knowingly or intentionally, while not being a manufacturer of a mobile telephone devices or authorized agent of the manufacturer, changes mobile telephone equipment identity, or interferes with the operation of the mobile telephone equipment identity commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of-

- (a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;
- (b) body corporate, to fine of not less than five hundred thousand dalasis.

Possession or supply of anything for re-programming mobile telephone

171. (1) A person commits an offence if he or she-

- (a) has in his or her custody or under his or her control anything which may be used for the purpose of changing or interfering with the operation of a mobile telephone equipment identifier, and intends to use the thing unlawfully for that purpose or to allow it to be used unlawfully for that purpose;
- (b) supplies anything which may be used for the purpose of changing or interfering with the operation of a mobile telephone equipment; knows or believes that the person to whom the thing is supplied intends to use it

unlawfully for that purpose or to allow it to be used unlawfully for that purpose; and

- (c) offers to supply anything which may be used for the purpose of changing or interfering with the operation of a mobile telephone equipment identifier and knows or believes that the person to whom the thing is offered intends if it is supplied to him to use it unlawfully for that purpose or to allow it to be used unlawfully for that purpose.

(2) A person convicted of an offence under subsection (1) is liable, on conviction, in the case of-

- (a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;
- (b) body corporate, to fine of not less than five hundred thousand dalasis.

Computer-related extortion, fraud and forgery

173. (1) A person who performs or threatens to perform any of the acts described in this Part for the purpose of obtaining an unlawful proprietary advantage by undertaking to cease or desist from the act, or by undertaking to restore any damage caused as a result of those acts, commits of an offence.

(2) A person who performs any of the acts described in this Part for the purpose of obtaining any unlawful advantage by causing fake data to be produced with the intent that it be considered or acted on as if it were authentic, commits of an offence.

(3) A person who commits an offence under this section is liable on conviction, in the case of-

- (a) an individual, to a fine of two hundred thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;
- (b) body corporate, to fine of not less than five

hundred thousand dalasis.

PART III - PROTECTION OF CHILDREN

Indecent
photographs
of children

174. (1) A person who -

- (a) takes or permits to be taken or to make, a indecent photograph or pseudo, photograph of a child;
- (b) distributes or shows an indecent photograph or a pseudo, photograph;
- (c) has in his or her possession an indecent photograph or pseudo, photographs, with a view to it being distributed or shown by himself or herself or any other person; or
- (d) publishes or causes to be published an advertisement likely to be understood as conveying that the advertiser distributes or shows the indecent photograph or a pseudo, photograph, or intends to do so,

commits an offence and liable on conviction to imprisonment for life.

(2) Where a person is charged with an offence under subsection (1)(b) or (c), it is a defence for the person to prove that he or she-

- (a) had reasonable grounds for distributing or showing the photograph or pseudo-photograph or having them in his or her possession; and
- (b) had not himself or herself seen the photograph or pseudo, photograph and did not know, or had any cause to suspect, it to be indecent.

(3) Where -

- (a) the impression conveyed by the pseudo-photograph is that the person shown is a child; or

- (b) the predominant impression conveyed is that the person shown is a child, notwithstanding that some of the physical characteristics shown are those of an adult,

the pseudo-photograph shall be treated for all purposes of this Act as showing a child.

(4) The Court before which a person is convicted of an offence under this section may, in addition to any penalty imposed, order -

- (a) the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence; or
- (b) that the material subject matter of the offence be no longer stored on and made available through the computer system, or that the material be deleted.

(5) An offence under this section shall be considered to be an extraditable crime for which extradition may be granted or obtained.

Deletion order

175. A Judge may, on application by an investigatory authority, and being satisfied that a computer system or any other information and communication technologies medium contains indecent photograph of children, order that such data be-

- (a) no longer stored on and made available through the computer system or any other medium; or
- (b) deleted or destroyed.

PART IV - ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES

Sphere of application

176. (1) Subject to subsections (2) and (3), the provisions of this Part apply to electronic records and electronic signatures relating to a transaction or an automated transaction.

(2) The provisions of this Part do not apply to any

enactment requiring writing or signatures in writing in-

- (a) the creation or execution of a will;
- (b) a negotiable instrument;
- (c) a power of attorney;
- (d) a contract for the sale or other disposition of immovable property, or any interest in the property;
- (e) the conveyance of immovable property or the transfer of any interest in immovable property; or
- (f) a document of title; or such other document or instrument as may be prescribed.

(3) This Part is subject to provision in any agreement between the parties involved in creating, generating, sending, receiving, storing or otherwise processing or using electronic records.

Legal recognition of data messages

177. (1) Information is not without legal force and effect merely on the grounds that it is wholly or partly in the form of a data message.

(2) Information incorporated into an agreement and that is not in the public domain is regarded as having been incorporated into a data message if the information is-

- (a) referred to in a way in which a reasonable person would have noticed the reference to it and incorporation of it; and
- (b) accessible in a form in which it may be read, stored and retrieved by the other party, whether electronically or as a computer printout as long as the information is reasonably capable of being reduced to electronic form by the party incorporating it.

Incorporation by reference

178. Information shall not be denied legal effect,

validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to the legal effect, but is merely referred to in that data message.

Requirement
for writing

179. Where an enactment requires any information or record to be in writing, that requirement shall be satisfied by an electronic record where the information contained in it is accessible so as to be usable for subsequent reference.

Other
requirements

180. (1) A requirement in a law for multiple copies of a document to be submitted to a single addressee at the same time is satisfied by the submission of a single data message that is capable of being reproduced by that addressee.

(2) An expression in a law, whether used as a noun or verb, including the terms "document", "record", "file", "submit", "lodge", "deliver", "issue", "publish", "write in", "print" or words or expressions of similar effect, shall be interpreted so as to include or permit the form, format or action in relation to a data message unless otherwise provided for in this Act.

(3) Where a seal is required by law to be affixed to a document and the law does not prescribe the method or form by which the document may be sealed by electronic means, that requirement is met if the document indicates that it is required to be under seal and it includes the advanced electronic signature of the person by whom it is required to be sealed.

(4) Where a law requires or permits a person to send a document or information by registered or certified post or similar service, that requirement is met if an electronic copy of the document or information is sent to a service provider authorized by the Authority, is registered by the service provider and sent by that service provider to the electronic address provided by the sender.

Retention

181. (1) Where a rule of law requires that certain documents, records or information be retained, that requirement is satisfied by retaining them in the form

of electronic records, if the following conditions are satisfied-

- (a) the information contained in them remains accessible so as to be usable for subsequent reference;
- (b) the electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- (c) such information, if any, as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received, is retained; and
- (d) the consent of the department of the Government, organ of State or the statutory body, which has supervision over the requirement for the retention of such records, has been obtained.

(2) An obligation to retain documents, records or information in accordance with subsection (1) (c) does not extend to any information necessarily and automatically generated solely for the purpose of enabling a record to be sent or received.

(3) A person may satisfy the requirement referred to in subsection (1) by using the services of any other person, if the conditions in subsection (1) (a) to (d) are complied with.

(4) Nothing in this section shall-

- (a) applies to any rule of law which expressly provides for the retention of documents, records or information in the form of electronic records;
- (b) precludes any department of the Government, organ of State or a statutory corporation from specifying additional require-

ments for the retention of electronic records that are subject to the jurisdiction of Department of State or other organ of State or statutory body.

Retention of information in original form

182. (1) Where the law requires information to be presented or retained in its original form, that requirement is met by electronic record if-

- (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as an electronic message or otherwise; and
- (b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.

(2) Subsection (1) applies whether the requirement in that subsection is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

(3) For the purposes of subsection (1)(a)-

- (a) the criteria for assessing integrity are whether the information has remained complete and unaltered, except for-
 - (i) the addition of any endorsement; or
 - (ii) any change which arises in the normal course of communication, storage and display; and
- (b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Production of document or information

183. (1) Where a law requires a person to produce a document or information, that requirement is met if the person produces, by means of a data message, an electronic form of that document or information,

and if-

- (a) considering all the relevant circumstances at the time that the data message was sent, the method of generating the electronic form of that document provided a reliable means of assuring the maintenance of the integrity of the information contained in that document; and
- (b) at the time the data message was sent, it was reasonable to expect that the information contained in it would be readily accessible so as to be usable for subsequent reference.

(2) For the purposes of subsection (1), the integrity of the information contained in a document is maintained if the information has remained complete and unaltered, except for-

- (a) the addition of any endorsement; or
- (b) any immaterial change, which arises in the normal course of communication, storage or display.

Expression of intent or other statement

184. As between the originator and the addressee of a data message, an expression of intent or other statement is not without legal force and effect merely on the grounds that it is-

- (a) in the form of a data message; or
- (b) not evidenced by an electronic signature but by other means from which the person's intent or other statement can be inferred.

Attribution of electronic record and signature

185. (1) An electronic record or electronic signature shall be attributable to a person where it was the act of that person.

(2) The act of a person referred to in subsection (1) may be shown in the manner set out in this section, which includes the proper application of any security procedure to determine the person to whom the electronic record or electronic signature is

attributable.

(3) An electronic record is deemed to be that of the originator where it was sent-

- (a) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
- (b) by an information processing system programmed by or on behalf of the originator to operate automatically.

(4) Subject to subsection (5), an addressee is entitled to regard an electronic record as being that of the originator and to act on that assumption where-

- (a) in order to ascertain whether the electronic record was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
- (b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify an electronic record as its own.

(5) Subsection (4) does not apply-

- (a) from the time when the addressee has both received notice from the originator that the electronic record is not that of the originator, and had reasonable time to act accordingly;
- (b) in a case referred to in subsection (4)(b), at any time when the addressee knew or ought to have known, had it exercised reasonable care or used any agreed procedure, that the electronic record was not that of the originator; or

(c) where, in all the circumstances of the case, there are reasonable grounds for the addressee to regard the electronic record as that of the originator or to act on that assumption.

(6) Subject to subsection (7), where an electronic record is that of the originator or is deemed to be that of the originator, or where the addressee is entitled to act on that assumption, the addressee is entitled to regard the electronic record received as being what the originator intended to send, and to act on that assumption.

(7) The addressee is not entitled to regard the electronic record received as being what the originator intended to send where the addressee knew or ought to have known, had the addressee exercised reasonable care or used any agreed procedure, that the transmission resulted in an error in the electronic record as received.

(8) The addressee is entitled to regard each electronic record received as a separate electronic record and to act on that assumption, except to the extent that the addressee duplicates another electronic record and the addressee knew or ought to have known, had the addressee exercised reasonable care or used any agreed procedure, that the electronic record was a duplicate.

Effect of
change or
error

186. If a change or error occurs in the transmission of an electronic record in a case where-

(a) the originator and the addressee have agreed to use an information security procedure in respect of the electronic record and one of them has conformed to the procedure, but the other has not, and the non-conforming person would have detected the change or error had he also conformed, the conforming person may avoid the effect of the change or erroneous electronic record;

(b) an individual is either the originator or the

addressee of the electronic record, he or she may avoid the effect of the electronic record if the error was made by the individual in dealing with the electronic agent of another person and the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual-

- (i) promptly notifies the other person of the error and that he or she did not intend to be bound by the electronic record received by the other person,
 - (ii) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to return the consideration received, if any, as a result of the erroneous electronic record, and
 - (iii) has not used or received any benefit or value from the consideration, if any, received from the other person; and
- (c) if paragraph (a) or (b) does not apply, the change or error shall have the effect provided any contract between the originator and the addressee.

Acknowledgement of receipt of electronic message

187. (1) Subsections (2), (3) and (4) apply where, on or before sending an electronic record, or by means of that electronic record, the originator has requested, or agreed with, the addressee that receipt of the electronic record be acknowledged by the addressee.

(2) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by-

- (a) a communication by the addressee to the originator, automated or otherwise; or

(b) the conduct of the addressee, that is reasonably sufficient to indicate to the originator, that the electronic record has been received.

(3) Where the originator has stated that an electronic record is conditional, on receipt by him or her of an acknowledgement, the record is presumed not to have been sent until an acknowledgment has been received by him or her.

(4) Where the originator has not stated that the electronic record is conditional on receipt of the acknowledgement and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator

(a) may give notice to the addressee-

(i) stating that no acknowledgement has been received and that the electronic record is to be treated as though it had never been sent, or

(ii) specifying a reasonable time by which the acknowledgement must be received; and

(b) if the acknowledgement is not received within the time specified in paragraph (a), may, on notice to the addressee-

(i) treat the electronic record as though it had never been sent, and

(ii) exercise any other rights he or she may have.

(5) Where the originator receives the addressee's acknowledgement of receipt it may be presumed that the related electronic record has been received by the addressee but that presumption does not imply that the electronic record received corresponds to the electronic record as sent.

(6) Where the addressee's received acknow-

ledgement states that the related electronic record met the technical requirements that the originator and the addressee have agreed should be met, it is presumed that the requirements have been met.

(7) Except in so far as it relates to the sending or receipt of an electronic record, this section does not affect the legal or equitable consequences that may flow either from that electronic record or from the acknowledgement of its receipt.

Admissibility
and evidential
weight of data
messages

188. (1) In any legal proceedings, the rules of evidence shall not be applied so as to deny the admissibility of a data message, in evidence-

- (a) on the mere grounds that it is constituted by a data message; or
- (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

(2) Information in the form of a data message shall be given due evidential weight.

(3) In assessing the evidential weight of a data message, regard shall be had to-

- (a) the reliability of the manner in which the data message was generated, stored or communicated;
- (b) the reliability of the manner in which the integrity of the data message was maintained;
- (c) the manner in which its originator was identified; and
- (d) any other relevant factor.

(4) A data message made by a person in the ordinary course of business, or a copy or print out of or an extract from the data message certified to be correct by an officer in the service of the person, is

on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self regulatory organization or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in the record, copy, printout or extract.

Signature

189. (1) Where the law requires a signature of a person, that requirement is met in relation to a data message if-

- (a) a method is used to identify that person and to indicate that person's approval of the information contained in the data message; and
- (b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

(2) Subsection (1) applies whether the requirement in that subsection is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

(3) An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in subsection (1) if-

- (a) the signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
- (b) the signature creation data were, at the time of signing, under the control of the signatory and of no other person;
- (c) any alteration to the electronic signature, made after the time of signing, is detectable; and
- (d) where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates,

any alteration made to that information after the time of signing is detectable.

(4) Subsection (3) does not limit the ability of a person to-

- (a) establish in any other way, for the purpose of satisfying the requirement referred to in subsection (1), the reliability of an electronic signature; or
- (b) adduce evidence of the non-reliability of an electronic signature.

Recognition of
foreign
certificates
and electronic
signatures

190. (1) In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had to-

- (a) the geographic location where the certificate is issued or the electronic signature created or used; or
- (b) the geographic location of the place of business of the issuer or signatory.

(2) A certificate issued outside The Gambia has the same legal effect in The Gambia as a certificate issued in The Gambia if it offers a substantially equivalent level of reliability.

(3) An electronic signature created or used outside The Gambia has the same legal effect in The Gambia as an electronic signature created or used in The Gambia if it offers a substantially equivalent level of reliability.

(4) In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of subsection (2) or (3), regard shall be had to recognized international standards and to any other relevant factors.

(5) Where, notwithstanding subsections (2), (3) and (4), parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as

sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law.

Notarisation,
acknowledgement and
certification

191. (1) Where a law requires a signature, statement or document to be notarized, acknowledged, verified or made under oath, that requirement is met if the advanced or secure electronic signature of the person authorized to perform those acts is attached to, incorporated in, or logically associated with, the electronic signature or data message.

(2) Where a law requires or permits a person to provide a certified copy of a document and the document exists in electronic form, that requirement is met if the person provides a print out certified to be a true reproduction of the document or information.

(3) Where a law requires or permits a person to provide a certified copy of a document and the document exists in paper or other physical form, that requirement is met if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed by the use of an advanced electronic signature.

Equal
treatment of
signature
technologies

192. Nothing in this Act, except where there is variation by agreement, shall be applied so as to exclude, restrict, or deprive of legal effect, any method of creating an electronic signature that satisfies the requirements for compliance with the requirement for a signature, or otherwise meets the requirements of applicable law.

Conduct of a
person relying
on an elec-
tronic signa-
ture

193. (1) Where signature creation data can be used to create a signature that has legal effect, each signatory shall-

- (a) exercise reasonable care to avoid unauthorized use of its signature creation data;
- (b) without undue delay, utilize means made available by the certification service provider pursuant to the provisions of this

Act, or otherwise use reasonable efforts, to notify a person who may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if-

- (i) the signatory knows that the signature creation data have been compromised, or
 - (ii) the circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;
- (c) where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory that are relevant to the certificate throughout its life cycle or that are to be included in the certificate.

(2) A signatory shall bear the legal consequences of its failure to satisfy the requirements of subsection (1).

Conduct of
the certifica-
tion service
provider

194. (1) Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall-

- (a) act in accordance with representations made by it with respect to its policies and practices;
 - (b) exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its life cycle or that are included in the certificate;
- (c) provide reasonably accessible means that

enable a relying party to ascertain from the certificate-

- (i) the identity of the certification service provider,
 - (ii) that the signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued,
 - (iii) that signature creation data were valid at or before the time when the certificate was issued;
- (d) provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise-
- (i) the method used to identify the signatory,
 - (ii) any limitation on the purpose or value for which the signature creation data or the certificate may be used,
 - (iii) that the signature creation data are valid and have not been compromised,
 - (iv) any limitation on the scope or extent of liability stipulated by the certification service provider,
 - (v) whether means exist for the signatory to give notice pursuant to this Act,
 - (vi) whether a timely revocation service is offered;
- (e) where services under paragraph (d)(v) are offered, provide a means for a signatory to give notice pursuant to article of this Act and, where services under subsection (d)(vi) are offered, ensure the availability of a timely revocation service; and

- (f) utilize trustworthy systems, procedures and human resources in performing its services.

(2) A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of subsection (1).

Trustworthiness

195. For the purposes of determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors-

- (a) financial and human resources, including existence of assets;
- (b) quality of hardware and software systems;
- (c) procedures for processing of certificates and applications for certificates and retention of records;
- (d) availability of information to signatories identified in certificates and to potential relying parties;
- (e) regularity and extent of audit by an independent body; and
- (f) the existence of a declaration by the State, an accreditation body, or the certification service provider, regarding compliance with or existence of the factors set out in paragraphs (a) to (e).

Generating key pair

196. (1) Subject to subsection (2), where a subscriber generates a key pair of which the public key is to be set out in a certificate and accepted by the subscriber, the subscriber shall generate the key pair using a trustworthy system.

(2) Subsection (1) does not apply to a subscriber who generates a key pair using a system approved by a certification authority

Acceptance of
certificate

197. (1) A subscriber is deemed to have accepted a certificate where he or she -

- (a) publishes or authorizes the publication of the certificate-
 - (i) to any other person, or
 - (ii) in a repository, or
- (b) otherwise demonstrates approval of the certificate while knowing or having notice of its contents.

(2) A subscriber referred to in a certificate shall, by accepting a certificate, certify to a person who may rely on the information contained in the certificate that-

- (a) he or she rightfully holds the private key corresponding to the public key referred to in the certificate;
- (b) every representation made by him or her to the certification authority which is material to the information set out in the certificate are true; and
- (c) all information in the certificate that is within his or her knowledge is true.

Control to
private key

198. (1) A subscriber identified in a certificate shall, on accepting a certificate-

- (a) exercise reasonable care to retain control of the private key corresponding to the public key referred to in the certificate; and
- (b) prevent its disclosure to create his or her digital signature.

(2) Subsection (1) continues to apply during-

- (a) a the operational period of the certificate; and

(b) any period of suspension of the certificate.

Initiating
suspension or
revocation

199. Where the private key corresponding to the public key referred to in a certificate has been compromised or otherwise becomes unreliable, a subscriber who has accepted the certificate shall forthwith request the relevant certification authority to suspend or revoke the certificate.

PART V - ELECTRONIC TRANSACTIONS

Formation
and Validity of
Contracts

200. (1) In the context of contract formation, unless otherwise agreed by the parties, an offer and acceptance of an offer may be expressed by means of electronic messages.

(2) Where an electronic message is used in the formation of a contract, the contract shall not be denied validity or enforceability on the sole ground that a electronic message was used for the purpose.

(3) Nothing in this section applies to any law that expressly provides a different method for the formation of a valid contract.

Automated
transactions

201. (1) In an automated transaction-

- (a) an agreement may be formed where an electronic agent performs an action required by law for agreement formation;
- (b) an agreement may be formed where all parties to a transaction or either one of them uses an electronic agent;
- (c) a party using an electronic agent to form an agreement is, subject to paragraph (d), presumed to be bound by the terms of that agreement irrespective of whether that person reviewed the actions of the electronic agent or the terms of the agreement;
- (d) a party interacting with an electronic agent to form an agreement is not bound by the terms of the agreement unless those terms were capable of being reviewed by a natural person representing that party prior to

agreement formation; and

- (e) no agreement is formed where a natural person interacts directly with the electronic agent of another person and has made a material error during the creation of a data message and-
 - (i) the electronic agent did not provide that person with an opportunity to prevent or correct the error,
 - (ii) that person notifies the other person of the error as soon as practicable after that person has learned of it,
 - (iii) that person takes reasonable steps, including steps that conform to the other person's instructions to return any performance received, or, if instructed to do so, to destroy that performance, and
 - (iv) that person has not used or received any material benefit or value from any performance received from the other person.

Variation by agreement between parties

202. As between parties involved in generating, sending, receiving, storing, or otherwise processing data messages, any provisions relating to the formation and validity of agreements for electronic transactions, the time and place of communications, dispatch and receipt, the expression of intent or other statement, the attribution of data messages to the originator, or the acknowledgement of receipt of data messages, may be varied by agreement.

Time of dispatch

203 (1) Unless otherwise agreed to between the originator and the addressee of a data message, if a data message enters a single information system outside the control of the originator, or the person who sent the message on behalf of the originator, the dispatch of the data message occurs when it enters that information system.

(2) If a data message enters successively two or

more information systems outside the control of the originator, then unless otherwise agreed between the originator and the addressee of the data message, the dispatch of the data message occurs when it enters the first of those information systems.

Time of receipt

204. (1) Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message is determined as follows-

- (a) if the addressee has designated an information system for the purpose of receiving data messages, receipt occurs, at the time when the data message enters the designated information system;
- (b) if the data message is sent to an information system of the addressee that is not the designated information system, receipt occurs at the time when the data message is received by the addressee; or
- (c) if the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee.

(2) Subsection (1) applies notwithstanding that the place where the information system is located may be different from the place where the data message is deemed to be received under that subsection.

Place of dispatch and receipt

205. (1) Unless otherwise agreed between the originator and addressee, a data message is deemed to be dispatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business.

(2) For purposes of application of subsection (1) to a data message-

- (a) if the originator or addressee has more than one place of business, one of those places has a closer relation to the underlying transaction it is assumed that the place of

business is the originator's or addressee's only place of business;

- (b) if the originator or addressee has more than one place of business, but paragraph (a) does not apply, it is assumed that the originator's or addressee's principal place of business is the originator's or addressee's only place of business; and
- (c) if the originator or addressee does not have a place of business, it is to be assumed the originator's or addressee's place of business is the place where the originator or addressee ordinarily resides.

(3) This section shall not apply in such circumstances as the Secretary of State may by regulations prescribe.

Information to be provided

206. (1) A supplier offering goods or services for sale, for hire, or for exchange, by way of an electronic transaction must make the following information available to consumers on the web site where the goods or services are offered-

- (a) the supplier's full name and legal status;
- (b) the supplier's physical address and tele-phone number;
- (c) the supplier's web site address and e-mail address;
- (d) membership of any self-regulatory or accreditation bodies to which that supplier belongs or subscribes and the contact details of that body;
- (e) any code of conduct to which the supplier subscribes and how the consumer may access that code of conduct electronically;
- (f) in the case of a legal person, its registration number, the names of its office bearers and its place of registration;

- (g) the physical address where the supplier will receive legal service of documents;
- (h) a sufficient description of the main characteristics of the goods or services offered by the supplier to enable a consumer to make an informed decision on the proposed electronic transaction;
- (i) the full price of the goods or services, including transport costs, taxes and any other fees or costs;
- (j) the manner of payment;
- (k) any terms of agreement, including any guarantees, that will apply to the transaction and how those terms may be accessed, stored and reproduced electronically by consumers;
- (l) the time within which the goods will be dispatched or delivered or within which the services will be rendered;
- (m) the manner and period within which consumers can access and maintain a full record of the transaction;
- (n) the return, exchange and refund policy of the supplier;
- (o) any alternative dispute resolution code to which the supplier subscribes and how the wording of that code may be accessed electronically by the consumer;
- (p) the security procedures and privacy policy of the supplier in respect of payment, payment information and personal information; and
- (q) where appropriate, the minimum duration of the agreement in the case of agreements for the supply of products or services to be performed on an ongoing basis or

recurrently;

(2) The supplier shall provide a consumer with an opportunity to-

- (a) review the entire electronic transaction;
- (b) correct any mistakes; and
- (c) withdraw from the transaction, before finally placing any order.

(3) If a supplier fails to comply with the provisions of subsection (1) or (2), the consumer may cancel the transaction within fourteen days of receiving the goods or services under the transaction.

(4) If a transaction is cancelled in terms of subsection (3)-

- (a) the consumer shall return the performance of the supplier or, where applicable, cease using the services performed; and
- (b) the supplier shall refund all payments made by the consumer minus the direct cost of returning the goods.

(5) The supplier shall utilize a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned.

(6) The supplier is liable for any damage suffered by a consumer due to a failure by the supplier to comply with subsection (5).

(7) This section does not apply to an electronic transaction-

- (a) for financial services, including but not limited to, investment services, insurance and reinsurance operations, banking services and operations relating to dealings in securities;
- (b) by way of an auction;

- (c) for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer;
- (d) for services which began with the consumer's consent before the end of the seven-day period referred to in section 207;
- (e) where the price for the supply of goods or services is dependent on fluctuations in the financial markets and which cannot be controlled by the supplier;
- (f) where the goods-
 - (i) are made to the consumer's specifications,
 - (ii) are clearly personalized,
 - (iii) by reason of their nature cannot be returned, or
 - (iv) are likely to deteriorate or expire rapidly;
- (g) where audio or video recordings or computer software were unsealed by the consumer;
- (h) for the sale of newspapers, periodicals, magazines and books;
- (i) for the provision of gaming and lottery services; or
- (j) for the provision of accommodation, transport, catering or leisure services and where the supplier undertakes, when the transaction is concluded, to provide these services on a specific date or within a specific period.

Cooling-off
period

207. (1) Subject to subsection (2) a consumer may cancel an electronic transaction and any relate credit agreement for the supply of-

- (a) goods, within seven days after the date of the receipt of the goods; or
- (b) services, within seven days after the date of the conclusion of the agreement.

(2) The only charge that may be levied on the consumer is the direct cost of returning the goods.

(3) If payment for the goods or services has been effected prior to a consumer exercising a right referred to in subsection (1), the consumer is entitled to a full refund of such payment, which refund shall be made within thirty days of the date of cancellation.

(4) This section shall not be construed as prejudicing the rights of a consumer provided for in any other law.

Unsolicited goods, services or communications

208. (1) A person who sends unsolicited commercial communications to consumers, shall provide the consumer with-

- (a) the option to cancel his or her subscription to the mailing list of that person; and
- (b) the identifying particulars of the source from which that person obtained the consumer's personal information, on request of the consumer.

(2) A person who fails to comply with or contravenes subsection (1) commits an offence and is liable, on conviction, in the case of-

- (a) an individual, to a fine of fifty thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;
- (b) body corporate, to fine of not less than five hundred thousand dalasis.

(3) A person who sends unsolicited commercial

communications to a person who has advised the sender that those communications are not welcome, commits an offence and liable on conviction, in the case of-

- (a) an individual, to a fine of fifty thousand dalasis or imprisonment for a term not exceeding five years, or to the fine and imprisonment;
- (b) body corporate, to fine of not less than five hundred thousand dalasis.

Performance **209.** (1) The supplier shall execute the order within thirty days after the day on which the supplier received the order, unless the parties have agreed otherwise.

(2) Where a supplier has failed to execute the order within thirty days or within the agreed period, the consumer may cancel the agreement with seven days' written notice.

(3) If a supplier is unable to perform in terms of the agreement on the grounds that the goods or services ordered are unavailable, the supplier shall immediately notify the consumer of this fact and refund any payments within thirty days after the date of the notification.

Applicability of foreign law **210.** The protection provided to consumers in this Part applies irrespective of the legal system applicable to the agreement in question.

Non-exclusion **211.** A provision in an agreement, which excludes any rights provided for in this Part, is null and void.

PART VI – E-GOVERNMENT SERVICES

Acceptance of electronic filing and issue of documents **212.** A public sector agency which, pursuant to any enactment-

- (a) accepts the filing of documents, or requires that documents be created, kept or issued;
- (b) issues any notice, claim, licence permit,

authorization or approval;

- (c) provides for any payment and the method and manner of the payment; or
- (d) has to keep records, up may, notwithstanding anything to the contrary in the enactment accept the filing of such documents, or the creation or keeping of such documents in electronic form, issue such notice, claim, licence, permit, authorization or approval in electronic form, make such payment in electronic form, or convert written records into electronic records.

Requirements
may be
specified

213. (1) In any case where a public body performs any of the functions relating to the acceptance of electronic filing and issuing of documents, the body may specify by notice in the *Gazette*-

- (a) the manner and format in which the data messages shall be filed, created, retained or issued;
- (b) in cases where the data message has to be signed, the type of electronic signature required;
- (c) the manner and format in which an electronic signature shall attached to, incorporated in, or otherwise associated with, the data message;
- (d) the identity of or criteria that shall be met by any authentication service provider used by the person filing the data message or that the authentication service provider shall be a preferred authentication service provider;
- (e) the appropriate control processes and procedures to ensure adequate integrity, security and confidentiality of data messages or payments; and
- (f) any other requirements for data messages or

payments as may be approved by the body.

(2) For the purposes of subsection (1) (d), a relevant generic service provider is a preferred authentication service provider.

PART VII - REGULATION OF SERVICE PROVIDERS AND CERTIFICATION AUTHORITIES

Requirement for a licence

214. A person shall not operate an electronic certification system except in accordance with a valid licence granted under this Act.

Licence for electronic certification services

215. (1) The Secretary of State may, on application in a prescribed manner and subject to such conditions as he or she may deem necessary, grant licences under this section authorizing persons, whether of a specified class or any particular person to provide electronic certification services.

(2) A licence granted under subsection (1) may require a licensee to:

- (a) make use of hardware, software and procedures that are secure from intrusion and misuse;
- (b) provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions;
- (c) adhere to procedures to ensure that the secrecy and privacy of the digital signatures are assured; and
- (d) observe such other standards as may be specified by regulations.

Accreditation of foreign products and services

216. (1) The Secretary of State may, by notice in the *Gazette* and subject to such conditions as may be determined by him or her, recognize the accreditation or similar recognition granted to any electronic certification service provider or its authentication products or services in any foreign jurisdiction.

(2) An electronic certification service provider falsely

holding out its products or services to have been recognized by the Secretary of State in terms of subsection (1), commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis, or to imprisonment for a term not exceeding three or, to both the fine and imprisonment.

Trustworthy system

217. Every certification authority shall utilize a trustworthy system in performing its services.

Disclosure

218. (1) A certification authority shall disclose-

- (a) its certificate that contains the public key corresponding to the private key used by that certification authority to digitally sign another certificate, referred to in this section as a "certification authority certificate";
- (b) any certification practice statement;
- (c) notice of the revocation or suspension of its certification authority certificate; and
- (d) any other fact that materially and adversely affects the reliability of a certificate that the authority has issued or the authority's ability to carry out its obligations.

(2) If an event that materially and adversely affects a certification authority's trustworthy system or its certification authority certificate occurs, the certification authority shall-

- (a) notify any person who is known to be, or is likely, to be affected by that event; or
- (b) act in accordance with procedures governing an occurrence of the event specified in its certification practice statement.

Issuing of certificate

219. (1) A certification authority may only issue a certificate to a prospective subscriber where it has –

- (a) received a request to that effect from the prospective subscriber; and

(b) complied with -

(i) where it has a certification practice statement, all the practices and procedures set out in the certification practice statement, including procedures regarding identification of the prospective subscriber, or

(ii) in the absence of a certification practice statement, the conditions in subsection (2).

(2) In the absence of a certification practice statement, the certification authority shall only issue a certificate to a prospective subscriber where it has ascertained that-

(a) the prospective subscriber is the person to be referred to in the certificate to be issued;

(b) if the prospective subscriber is acting through an agent, the subscriber authorized the agent to have custody of the subscriber's private key and to request the issue of a certificate setting out the corresponding public key;

(c) the information in the certificate to be issued is accurate;

(d) the prospective subscriber rightfully holds the private key corresponding to the public key to be referred to in the certificate;

(e) the prospective subscriber holds a private key capable of creating a digital signature; and

(e) the public key to be referred to in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber.

Representations on issue of certificate

220. (1) A certification authority shall, by the issue of a certificate, represent to a person who reasonably relies on the certificate or a digital signature

verifiable by the public key referred to in the certificate that the certification authority has issued the certificate in accordance with any certification practice statement incorporated by reference in the certificate or of which the relying person has notice.

(2) In the absence of any certification practice statement, the certification authority shall, subject to subsection (3), represent that-

- (a) it has complied with all applicable requirements of this Act in issuing the certificate, and where it has published the certificate or otherwise made it available to a person relying on it, that the subscriber referred to in the certificate has accepted it;
- (b) the subscriber identified in the certificate holds the private key corresponding to the public key referred to in the certificate;
- (c) the subscriber's public key and private key constitute a functioning key pair;
- (d) the information in the certificate is accurate, unless it has stated in the certificate, or incorporated by reference in the certificate a statement, that the accuracy of specified information is not confirmed; and
- (e) it has no knowledge of any material fact which would, if it had been included in the certificate, adversely affect the reliability of the representations in paragraphs (a) to (d).

(3) Where there is a certification practice statement which has been incorporated by reference in the certificate, or of which the person relying on it has notice, subsection (2) applies to the extent that the representations are not inconsistent with the certification practice statement.

Suspension of
certificate

221. A certification authority shall, unless it has otherwise agreed with the subscriber, immediately suspend a certificate which it has issued to the subscriber on a request by-

- (a) the subscriber referred to in the certificate; or
- (b) a person duly authorized to act on behalf of the subscriber

Revocation of certificate on subscribers request

222. A certification authority shall revoke a certificate upon receiving a request to the effect by the subscriber referred to in the certificate after confirming that the person making the request is the subscriber, or is an agent of the subscriber with authority to make the request.

Revocation without subscriber's consent

223. (1) A certification authority shall, without the consent of the subscriber, revoke a certificate where-

- (a) a material fact represented in the certificate is false;
- (b) a requirement for the issue of the certificate was not satisfied;
- (c) the certification authority's private key or trustworthy system is compromised in a manner materially affecting the certificate's reliability;
- (d) an individual subscriber is dead; or
- (e) a subscriber is dissolved, wound-up or otherwise ceases to exist.

(2) The certification authority shall immediately notify the subscriber referred to in the revoked certificate of any revocation under subsection (1)(a), (b) or (c).

Notice of suspension

224. A certification authority shall, on the suspension of a certificate, forthwith publish a notice of the suspension in the repository specified in the certificate for that purpose.

(2) Where more than one repository is specified, the certification authority shall publish notices of the suspension in every repository.

Notice of revocation

225. (1) The certification authority shall, on

revocation of a certificate, forthwith publish a notice of the revocation in the repository specified in the certificate for that purpose.

(2) Where more than one repository is specified, the certification authority shall publish notices of the revocation in every repository.

CHAPTER IV - REGULATORY PROVISIONS FOR BROADCASTING CONTENT

PART I - FUNCTIONS OF THE SECRETAY OF STATE AND THE AUTHORITY

Functions of the Secretary of State in relation to broadcasting content

226. (1) The Secretary of State in charge of broadcasting content may, in consultation with the Authority, make regulations generally with respect to all broadcasting services and without prejudice to the foregoing with respect to –

- (a) the development, production and broadcast content;
- (b) financing and broadcast of local content; and
- (c) prescribing anything to be prescribed under this Part.

(2) The Secretary of State in charge of broadcasting content shall licence broadcasting services and determine the conditions of the respective licences and the fees thereof.

Objective of the Authority in relation to broadcasting content

227. The Authority shall regulate the provision of broadcasting in The Gambia in a manner which it considers best suited to-

- (a) promote the provision of a diverse range of radio and television broadcasting services throughout The Gambia;
- (b) promote the development of broadcasting services which are responsive to the needs of The Gambian audience;
- (c) preserve and promote the plural nature of

The Gambian culture by ensuring that licensees include in their services programmes reflecting the linguistic and cultural diversity of The Gambia;

- (d) ensure that licensees include in their services regular locally produced programmes;
- (e) ensure a limitation in cross-ownership between broadcasters, signal distribution licensees, newspapers, electronic communication licensees and advertising agents;
- (f) ensure fair competition in the broadcasting sector;
- (g) ensure that broadcasting services-
 - (i) are of such a nature as not to encourage or incite crime or racial hatred leading to disorder or offending public feeling,
 - (ii) give adequate coverage to information, education, culture, entertainment and recreation, and
 - (iii) are impartial and accurate.
- (h) facilitate signal distribution services for content providers;
- (i) ensure equitable distribution of access to radio and television facilities; and
- (j) promote universal access of broadcasting services.

Functions of the Authority in relation to broadcasting content

228. The Authority shall-

- (a) set acceptable standards for programmes and advertising and monitor compliance with those standards;
- (b) establish a Code of Conduct for broadcasting services;

- (c) monitor compliance with the Code of Conduct and with the terms and conditions of licences;
- (d) periodically review, develop and improve, the Code of Conduct as appropriate in consultation with broadcasters;
- (e) establish the standards and practices to be observed in advertising through a broadcasting service;
- (f) hear complaints from the general public and establish a Complaints Committee as appropriate; and
- (g) take all necessary measures as are required for the carrying out of all its regulatory functions.

PART II - LICENSING OF BROADCASTING SERVICES

Requirement for a broadcasting licence

229. (1) A person shall not broadcast or otherwise operate a broadcasting service or do or permit anything to be done for which a broadcasting licence is required in terms of this Act, unless he or she is in possession of the appropriate licence so required, in addition to any other licence or certificate which may be prescribed by this Act for the transmission on or operation of a broadcasting system undertaken by him or her or for the doing of that thing.

Deleted: ,

(2) The Secretary of State shall approve, on the recommendation of the Authority, the classification of broadcasting service activities in the following three categories requiring different levels of regulatory intervention in relation to market entry-

- (a) individual licence;
- (b) general authorisation; and
- (c) declaration leading to issuance of a permit.

Application for **230.** (1) The Secretary of State, on the advice of the

a broad-
casting
licence

Authority, shall issue broadcasting licences in sufficient numbers to meet the public demand for broadcasting services.

(2) The Authority shall ensure that-

- (a) the licensing process is fair and transparent, and shall seek to promote diversity in broadcasting; and
- (b) community broadcasting is promoted given its potential to broaden access by poor and rural communities to the airwaves.

(3) When he or she intends to issue a broadcasting licence, the Secretary of State, after consultation of the Authority, shall publish a notice in the *Gazette* and in at least two issues of a newspaper in general circulation stating-

- (a) the kind of broadcasting service that may be offered under the proposed licence;
- (b) the coverage area of the broadcasting service;
- (c) the radio frequencies that will be made available and other relevant technical parameters; and
- (d) the procedure by which an application can be made, including in particular-
 - (i) the information which applicants must provide,
 - (ii) the criteria by which applicants will be assessed, and
 - (iii) the date by which applications must be received by the Authority.

(4) An application for the grant of a licence under this Act shall be made to the Authority in such form and manner as prescribed by the Authority and shall contain or be accompanied by-

- (a) a prescribed application fee;

- (b) a prescribed deposit:
- (c) the applicant's proposals in relation to the policy and nature of the service and a programme schedule in regard to the daily transmission time allocated to different programmes;
- (d) network plan, technical specifications of the equipment and studio and installations programme;
- (e) the training programme involving local staff;
- (f) a financial statement setting out the financial resources available to the application to conduct a broadcasting service; and
- (g) such other information as the Authority may deem necessary in order to decide on the ability of the applicant to provide a technically viable and socially acceptable broadcasting service.

(5) Within thirty days of the date specified for the receipt of applications under paragraph (2), the Authority shall publish in the *Gazette* and at least two newspapers of wide circulation a notice summarizing any application received and inviting persons to make representations regarding the Authority's proposals and the application.

(6) A person may, within fourteen days of publication of a notice under subsection (3), lodge with the Authority written representations if he or she wants to oppose the grant of a licence to the applicant, and the representations shall be taken into account when the Authority considers the application.

(7) The Secretary of State, after consultation of the Authority, shall, not later than three months after the expiry of the period of fourteen days specified in subsection (6) above inform the applicant and the objector of-

- (a) his or her decision to grant or refuse the application for a licence;
- (b) the reasons for his or her decision.

(8) Where the Secretary of State, after consultation of the Authority, does not, at the end of the period of three months specified in subsection (7), make a decision on the application, he or she deemed to have refused to grant the licence.

(9) Money paid to the Authority along with an application under this section is not refundable.

Eligibility and
evaluation of
applications

231. (1) A person is not eligible for the grant of a broadcast licence if such a person-

- (a) is an active member of a political party or has affiliation or connection to one or more political parties;
- (b) is adjudged bankrupt or has entered into a composition scheme or arrangement with his or her creditors;
- (c) does not fulfil such other conditions as may be prescribed;
- (d) does not operate local studios for the production and broadcasting of local content; or
- (e) is a person of unsound mind.

(2) When considering an application for the grant of a broadcasting licence, the Authority shall have regard to-

- (a) capability, experience and expertise of the applicant in as far as carrying out such broadcast service is concerned;
- (b) financial means and business record of the applicant;
- (c) expected technical quality of the proposed

service, having regard to the developments in the broadcasting technology;

- (d) compliance with the prescribed technical broadcasting standards;
- (e) the desirability or otherwise of allowing any person or association of person, to have control of a substantial interest in-
 - (i) more than one broadcasting service,
 - (ii) more than one radio station and one television station and one registered newspaper which has a common coverage and distribution area or significantly overlapping coverage and distribution areas;
- (f) the desirability of giving priority to community-based or national development broad-casts;
- (g) whether the conditions of a broadcasting licence shall unjustly benefit one holder of a broadcasting licence above another;
- (h) the allocation of spectrum resources in such a manner as to ensure the widest possible diversity of programming and the optimal utilisation of the resources, provided that priority may be given to broadcasters transmitting the maximum number of hours per day;
- (i) the reservation of spectrum resources for future use;
- (j) efficiency and economy in the provision of broadcasting services;
- (k) the extent to which the applicant is determined and has planned to train local staff in matters concerning radio or television broadcasting;
- (l) any other matter as the Authority may

consider necessary.

Grant or
refusal of a
broadcasting
licence

232. (1) Where the Authority is satisfied that a particular applicant meets the requirements of this Act for a licensee it shall advise the Secretary of State to grant him or her a license in the prescribed form and subject to payment of the prescribed fee.

(2) Notwithstanding the other provisions of this Act, where the Authority is of the opinion that, by granting an application, the attainment of the objective of promoting a diverse range of radio and television broadcasting services and the plural nature of The Gambian culture may be impeded, the Authority may advise the Secretary of State to refuse an application.

(3) The Secretary of State shall, on the grant of a broadcasting licence, inform the applicant and publish notice of the decision in the *Gazette* and in any newspaper published in The Gambia.

Duration and
renewal of a
broadcasting
licence

233. (1) A broadcasting licence shall be issued for such period as the Secretary of State may determine, but which shall not-

- (a) in the case of a radio broadcasting licence, exceed three years;
- (b) in the case of a television broadcasting licence, exceed five years.

(2) The Secretary of State may on application by a licensee renew a licence on its expiry for such period not exceeding five years as it may determine.

(3) An application for the renewal of a licence shall be made within the three months preceding the last three months before the date of expiry of the existing licence.

(4) The Authority may, when considering an application for the renewal of a licence, recommend to the Secretary of State require such new or additional information as it may deem necessary to make a finding.

(5) If at the date of expiry of a licence, the Secretary of State has not yet reached a decision in respect of an application to renew it, the licence shall continue to be of effect until the application for its renewal is granted or refused by the Secretary of State.

Transfer and
surrender of
licence

234. (1) A licensee shall not, except with the written consent of the Authority, assign or transfer his or her licence.

(2) A licensee may surrender his or her licence at any time before its expiry.

(3) A licensee who wishes to surrender his or her licence shall give written notice of his or her intention to the Authority.

(4) A person shall not assign, sell, transfer, or otherwise dispose of, any interest or share in a licensed company unless he or she has given one month's prior notice to the Authority of his or her intention to do so.

Revocation of
licence

235. (1) Subject to subsections (4) and (6), the Secretary of State may revoke a licence where it is satisfied that-

- (a) the licensee has failed to operate within six months of the issue of the licence or within such additional period as may be allowed by the Secretary of State;
- (b) the licensee has ceased his or her operation under the licence;
- (c) the licensee has given to the Authority information which is false or misleading in a material particular;
- (d) the licensee has failed to comply with the Code of Conduct specified established under section 228;
- (e) it is in the public interest to do so; and

(f) the licensee no longer satisfies any of the conditions set out under this Act.

(2) Subject to subsections (4) and (6), the Authority may recommend to the Secretary of State to revoke a licence where it is satisfied that the licensee has contravened this Act or any regulations made under this Act or a term or condition of his or her licence.

(3) Subject to subsections (4) and (6), the Authority may recommend to the Secretary of State to vary the terms and conditions of a licence for the reasons specified in subsection (1).

(4) Where the Authority is of the view that a licence should be revoked or varied, it shall give written notice of its intention to the licensee together with the reasons for it.

(5) The Authority shall, in a notice under subsection (4), require the licensee to show cause in writing, within such time as may be specified in the notice, why the licence should not be revoked or varied.

(6) The Authority shall, after considering the explanations of the licensee inform the Secretary of State, who shall inform the licensee in writing of its decision and the reasons for its decision.

Suspension of licence

236. (1) Notwithstanding section 235, the Secretary of State may suspend a licence, where he or she is satisfied that-

- (a) the licensee has failed to start operations within six months of the issue of the licence or within such additional period as may be allowed by the Secretary of State;
- (b) the licensee has ceased his or her operation under the licence;
- (c) the licensee has given the Authority information which is false or misleading in a material particular;
- (d) the licensee has failed to comply with the

terms of its licence, the Code of Conduct or any other provisions specified in this Act; or

(e) it is in the public interest to do so.

(2) A decision taken under subsection (1) shall-

(a) be notified in writing to the licensee; and

(b) have effect for not more than thirty days.

Register of
licences

237. (1) The Authority shall keep a register of every licence and of its essential particulars.

(2) The Authority shall keep the register up to date and register any transfer, surrender, variation, revocation or suspension of a licence.

(3) The register shall be open to inspection by the public.

PART III - DUTIES OF LICENSEES AND CONDITIONS OF BROADCASTING LICENCES

Duties of
licensees

238. (1) Subject to this section, it shall be the duty of every person holding a broadcasting licence under this Act to-

(a) present all news in a factually accurate, impartial and non-partisan manner;

(b) present current, affairs in a balanced, clear, factual, accurate and impartial manner;

(c) encourage the development of Gambian and African expression by providing a wide range of programming that reflects the Gambian and African attitudes, opinions, ideas, values and artistic creativity by displaying Gambian and Africa cultures and entertainment programmes;

(d) serve the needs and interests and reflect the circumstances and aspirations of Gambian men, women and children in a democratic the Gambian society;

- (e) produce and maintain programmes of high standards;
- (f) make maximum use of Gambian creative and other resources in the creation and presentation of programming;
- (g) limit advertising to a maximum of thirty per cent of the total daily broadcasting time;
- (h) contribute through programming to shared national consciousness, identity and continuity.
- (i) provide programming that caters for culture, arts, sports and education pertaining to The Gambia and Africa;
- (j) comply with generally accepted standards of journalistic ethics, in the editing of any programme to be broadcast as formulated in, which professions the Code of Conduct;
- (k) keep and store sound and video recordings of all programmes broadcast for a minimum period of three, months after the date of transmission of the broadcast, or for such further period as the Authority may direct;
- (l) disclose the name of the producer of every programme at the end of transmission of a programme;
- (m) respect copyright and neighboring rights obligations in respect of any broadcast material.

Conditions of
a broad-
casting
licence

239. (1) Where the Authority decides to advise the Secretary of State to grant an application for a broadcasting licence, it may attach specific conditions to the broadcasting licence in relation to-

- (a) the frequencies that may be used in the operation of a station, the power limitations in respect of a station, the technical servicing and inspection of a station and any other

technical specifications;

- (b) the prevention of electric and other disturbances of radio reception or the transmission over any telegraph line;
- (c) the broadcasting or non-broadcasting of reports, announcements, news or other information which is required to be broadcast in the public interest,
- (d) the location of a transmitter station, when applicable, and the specific geographical areas to which the broadcast may be made;
- (e) a requirement that the licensee shall afford, in such manner as may be prescribed, a right of reply to a person whose character, goodwill or reputation has been adversely affected by a broadcast; and
- (f) the amount of any charge or fee leviable by the licensee from any person who avails himself or herself of the broadcasting service provided by the licensee.

(2) The Secretary of State may, in respect of any particular broadcasting licence, and after giving the licensee an opportunity to make written representations to the Authority in the particular, amend any of the conditions, including adding further conditions-

- (a) if the Secretary of State is of the opinion that it is in the interest of orderly spectrum management,
- (b) in order to give effect to any international treaty in relation to broadcasting to which The Gambia is a party; or
- (c) at the request of the licensee.

and the Act

the terms and conditions of their licence, and any other provisions specified in this Act.

(2) The Authority shall monitor compliance with the terms and conditions of broadcasting licenses, and with other material provisions of this Act relevant to broadcasting licences.

(3) The Authority may hold public hearings on any matter relating to the monitoring and enforcement of broadcasting licences.

(4) Where the Authority determines that a broadcasting licensee has failed to comply with the terms and conditions of the licence, or the provisions of this Act, it shall notify the licensee in writing.

(5) If, after hearing any representations made by a broadcasting licensee who has been notified in accordance with subsection (4), the Authority confirms the non-compliance, it shall publish its findings and the reasons for them.

(6) Having taken into account the nature, gravity and consequences of the non-compliance, and after hearing any representations made by the licensee or any other interested persons in response to the publication of its findings, the Authority shall recommend to the Secretary of State to make one or more of the following orders which it considers appropriate-

- (a) requiring in the case of a licence to broadcast:
 - (i) a correction,
 - (ii) an alternative version, or
 - (iii) a balancing opinion,whichever is applicable;
- (b) directing the licensee to desist from non-compliance;

(c) directing the licensee to take appropriate remedial steps.

(7) If the broadcasting licensee does not comply with an order under subsection (6), the Secretary of State may prohibit the licensee from providing a broadcasting service for any period which, in the first instance, may not exceed thirty days.

Complaints to the Authority concerning broadcasts

241. (1) The Authority shall publish the form and procedure as regards the adjudication of complaints concerning television or sound broadcasts.

(2) A person who has reason to believe that a broadcasting licensee has failed to comply with the terms and conditions of the licence or the Code of Conduct may lodge a complaint with the Authority within thirty days of the occurrence of the alleged non-compliance.

(3) A complaint referred to in subsection (2) shall be in writing and, on receipt by the Authority, shall be notified to the licensee concerned.

(4) After having considered a complaint and any representation in relation to it, the Authority shall publish its findings.

(5) The Authority shall keep a record of all complaints regarding broadcasting received by it and shall publish each year an analysis of them.

(6) The Authority shall not deal with any complaint which is the subject matter of litigation before the Court.

Complaints procedure of licensee

242. Every licensee shall establish a procedure for dealing with complaints from consumers of its services which ensures that-

(a) every complaint is attended to within a reasonable time by a person having the authority to effect remedial action; and

(b) the complainant is made aware of his or her

right to complain to the Authority if the complaint is not remedied.

Counter-
version

243. (1) A licensee holder shall broadcast a counter-version presented by any person or body of persons affected by an assertion of fact in any programme transmitted that the assertion of fact is in fact false.

2. Notwithstanding subsection (1), a licence holder shall not transmit a counter-version if-

- (a) the person or organisation concerned has no direct interest in the transmission of the counter-version; or
- (b) the counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.

(3) The counter-version referred to in subsection (1) shall-

- (a) be limited to a factual account;
- (b) not contain any material which may reasonably be anticipated to expose the licensee to legal action if the material were to be broadcast;
- (c) be made in writing;
- (d) specify the programme and the assertions to which objection is raised; and
- (e) be signed by the person affected or, in the case of an organisation, by its chief executive officer.

(4) The person or body of persons affected is not entitled to insist on the transmission of a counter-version as contemplated in subsection (1) if the counter-version is presented to the licensee after the expiry of a period of thirty days from the date of broadcast of the false assertion of fact.

(5) The licensee shall, subject to subsection (2) and (4)-

- (a) at the first opportunity, but not later than ten days from receipt of a counter-version referred to in subsection (1), broadcast the counter-version within the same programme or programme section as the one in which the false assertion was made and at the same time of day or, should that not be possible, at, time equal in value to that of the programme objected to;
- (b) broadcast the counter-version without any omission and interruption; and
- (c) broadcast the counter-version free of charge.

(6) A licensee shall, immediately on receipt of the counter-version referred to in subsection (1), inform the Authority of that fact, and shall keep and store the programme objected to and the counter-version until he or she receives a notice to the contrary from the Authority.

(7) This section shall not apply to a broadcast of a public meeting or a meeting of the National Assembly.

CHAPTER V – MISCELLANEOUS

Offences

244. (1) Without prejudice to the Regulatory Authority Act, a person or authorized provider who-

- (a) sells or offers for sale or provides or installs or uses any installation or apparatus which does not conform with such technical standards or specifications as are required or established by or under this Act, or which the offender knows, or has reasonable cause to believe, to be defective or incompatible with the services for which it was sold, provided, installed or used;
- (b) repairs, maintains, alters, constructs, controls,

an apparatus or installation without having the qualifications required for that purpose by or under this Act;

- (c) uses, or makes improper use of, any information and communications system or apparatus supplied by an authorized provider for a purpose other than that for which it was supplied, or neglects to observe instructions which are issued by an authorized provider for the proper use of the information and communications system or apparatus,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than two hundred thousand dalasis, and in the case of-

- (a) a continuing offence, to a further fine of five hundred dalasis for each day during which the offence continues; and
- (b) repeated offences, the revocation of his or her licence in accordance with the provisions of this Act.

Offences of employees

245. (1) A person, being an employee of or detailed for duty with or attached to an authorized provider, who-

- (a) gives to a person who is not entitled to receive it any information with regard to a message with which he or she becomes acquainted by reason of his or her office;
- (b) wilfully alters or suppresses a message or the designation of the person to whom it is transmitted or to whom it is addressed, without a good cause;
- (c) wilfully omits, delays or obstructs the transmission or delivery of a message or cancels or destroys any message or an application for the transmission of a message

without a good cause;

- (d) wilfully represents a message as having been sent by a person other than the sender or as being addressed to a person other than the addressee, or an application for the transmission of a message as having been made by a person other than the applicant, without good cause;
- (e) wilfully cancels or destroys a message not addressed to him or her in an application for the transmission of a message, without good cause;
- (f) unlawfully withdraws from the control of an authorized provider, or of an individual employed or detailed for duty with, or attached to, an authorized provider, a message addressed to another person; or
- (g) wilfully intercepts a message he or she is not permitted by law to intercept,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

Assault

246. (1) A person who assaults or obstructs or impedes an officer, employee or agent of an authorized provider in the exercise of his or her duties with the authorized provider commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

Contravention
or failing to
comply with
Act

247. (1) Without prejudice to the provisions of this Part, a person who contravenes or fails to comply with a provision of this Act or directions given under this Act commits an offence and is liable on conviction-

- (a) where not already specified in this Act, to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment; and
- (b) in the case of a continuing offence, to a further fine of five hundred dalasis for every day during which the offence continues.

Offence by
body corpo-
rate

248. (1) An offence committed by a body corporate is treated as committed by a person who, at the time the offence was committed, was-

- (a) a director, principal officer, general manager, secretary, or other similar officer of the company; or
- (b) acting or purporting to act in that capacity.

(2) Subsection (1) does not apply to a person if-

- (a) the offence was committed without that person's consent or knowledge; and
- (b) the person has exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

Regulations
and guide-
lines

249. (1) Subject to subsection (2), the Secretary of State may make such regulations as may be required for the carrying out of the provisions of this Act.

(2) The Authority may, with the approval of the Secretary of State, issue such guidelines as may be required for the carrying out of the provisions of this Act as it relates to its functions under this Act.

Repeal

250. (1) The Telephone Act is hereby repealed.

(2) The Telegraph Stations Act is hereby amended in section 2 by deleting the words "and includes wireless telephony" from the definition of "wireless telegraphy".

251. (1) A person who is engaged in activities requiring a licence under this Act on the day this Act comes into force is deemed to hold an interim licence for the purposes of those activities for a period of one year, unless the interim licence is extended, modified or earlier terminated by the Authority, with the approval of the Secretary of State.

(2) An interim licence permits an interim licensee to continue to undertake the activities requiring the licence within six months from the effective date.

(3) An interim licence-

(a) may be extended for a further period of one year and no more; and

(b) is not transferable.

(4) The Authority may by rule or order, impose such requirements on one or more interim licensees as it deems appropriate, including-

(a) the payment of interim licence fees; and

(b) any requirement the Authority may by rule, regulation, or order, or as a condition to granting a licence, impose on a licensee under this Act.

(5) Notwithstanding the provisions of this Act, the Authority with approval of the Secretary of State, may modify or terminate an interim licence without regard to the performance of the interim licensee during the duration of the interim licence with the approval of the Secretary of State.

(6) The Authority may, on its own volition or application from the Department of State, a licensee, or an interim licensee, establish a procedure for the extension, modification or termination of an interim licence.

(7) The Authority shall, when considering a material modification or the termination of an interim licence, give prior notice to the Department of State and the

interim licensee, and provide an opportunity for the Department of State and the interim licensee to be heard.

(8) An interim licensee shall, before the expiration of an interim licence, if it desires to continue in business, apply to the Authority for the appropriate licence, as applicable.

(9) The tariffs of interim licensees in force on the day this Act comes into force shall remain in effect until determined by the Authority, and the Authority is deemed to have determined the rate changes for each interim licensee to the same extent as the Authority may determine an interim licence fee on that interim licensee.

OBJECTS AND REASONS

This Bill complements The Gambia Public Utilities Regulatory Authority Act, 2001, defining the roles of the Secretary of State, Department State for Communications, Information and Information Technology and The Gambia Public Utilities Regulatory Authority in the information and communications sectors. The rights and obligations of all operators have also been defined in the context of the liberalisation of the sector.

The primary object of this Bill is to create and provide policy-making and regulatory framework for The Gambia information and communications sectors and all matters related thereto and for that purpose and without detracting from the generality of the foregoing, specifically to-

- (a) promote the formulation and implementation of the national Information and Communications policy as may, from time to time, be modified and amended;
- (b) ensuring that services are provided to

persons able to meet the financial and technical obligations in relation to those services;

- (c) promote universal access to information and communications services for all persons in Gambia, to the extent that it is reasonably practicable to provide such access on the principles of affordability, accessibility and availability;
- (d) promote the information and communications sectors in The Gambia by encouraging economically efficient investment in, and use of, infrastructure to provide information and communications services;
- (e) encourage local and foreign investments in The Gambia information and communications sectors and the introduction of innovative services and practices in the industry in accordance with international best practices and trends;
- (f) ensure fair competition in all sectors of The Gambia information and communications sectors and also encourage participation of Gambians in the ownership, control and management of information and communications companies and organisations;
- (g) encourage the development of a telecommunications manufacturing and supply sector within The Gambian economy and also encourage effective research and development efforts by all information and communications sectors practitioners;
- (h) protect the rights and interest of service providers and consumers within The Gambia; and
- (i) ensure an efficient management, including planning, coordination, allocation, assignment, registration, monitoring and use of scarce national resources, in the

information and communications sectors, including but not limited to, frequency spectrum, numbers and electronic addresses, and also promote and safeguard national interests, safety and security in the use of the said scarce national resources.

- (j) enable and facilitate electronic communications and transactions;
- (k) remove and eliminate the legal and operational barriers to electronic transactions;
- (l) promote technology neutrality in the application of legislation to electronic communications and transactions;
- (m) provide legal certainty and public confidence in the use of electronic communications and transactions;
- (n) promote e-government services through electronic communications and transactions with Government, public and statutory bodies;
- (o) ensure that electronic transactions in The Gambia conform to the best practices of international standards;
- (p) encourage investment and innovation in information communications technology (ICT) for the promotion of electronic transactions;
- (q) develop a safe, secure and effective environment for the consumer, business and the Government for the conduct and use electronic transactions;
- (r) promote the development of electronic transactions that are responsive to the needs of users and consumers;
- (s) foster economic and social prosperity through

the information society

- (t) provide legal certainty and public confidence in the use of electronic communications and transactions;
- (u) promote e-government services through electronic communications and transactions with government, public and statutory bodies;
- (v) ensure that electronic transactions in The Gambia conform to the best practices of international standards;
- (w) encourage investment and innovation in information communications technology (ICT) for the promotion of electronic transactions;
- (x) develop a safe, secure and effective environment for the consumer, business and the Government for the conduct and use electronic transactions;
- (y) promote the development of electronic transactions that are responsive to the needs of users and consumers;
- (z) foster economic and social prosperity through the information society

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