

# TABLE OF CONTENTS

## Telecommunications Act 2004

### Part I – Preliminary Provisions

- 1 Short Title
- 2 Interpretation
- 3 General objectives

### Part II – Telecommunications Authority of Kiribati

- 4 The Authority
- 5 Functions and powers of Authority
- 6 Notification of Government policies
- 7 Directions by the Minister
- 8 Annual Report
- 9 Consultations
- 10 Obligations of the Authority
- 11 Provision of information
- 12 Use of information
- 13 Charges for services provided by the Authority
- 14 Delegation of Powers

### Part III – Licences and Control

#### *A – Telecommunication Systems and Services*

- 15 Licence for telecommunication system or service
- 16 Conditions in a licence
- 17 Public telecommunication operators
- 18 Interconnection of facilities
- 19 Regulation of rates and tariffs
- 20 Technical standards
- 21 Approval of equipment

#### *B – Radiocommunication*

- 22 Radio management
- 23 Radio licences

## *C – Licensing*

- 24 Grant of licence
- 25 Modification of a licence
- 26 Transfer of licence
- 27 Suspension and revocation of licence
- 28 Directions to remedy breaches

### **Part IV – Use of Land**

- 29 Entry to land
- 30 Request for removal
- 31 Removal in emergency
- 32 Construction or repair of lines on roads
- 33 Urgency
- 34 Non-compliance with sections 32 and 33
- 35 Appeals
- 36 Alteration to line
- 37 Lines must not interfere with traffic
- 38 Telephone cabinets
- 39 Compensation
- 40 Protection of existing works
- 41 Compulsory purchase of land

### **Part V – Investigations, Inspections, and Enforcement**

- 42 Inquiries
- 43 Decisions of the Authority
- 44 Reconsideration of decisions
- 45 Rules
- 46 Appeals
- 47 Evidence
- 48 Appointment of Inspectors
- 49 Powers of Inspector
- 50 Search warrant

### **Part VI – Offences and Penalties**

- 51 Operating a telecommunication system without a licence
- 52 Fraudulent use of telecommunication system or service
- 53 Improper use of telecommunication system or service
- 54 Offences in respect of messages
- 55 Offences in respect of radiocommunications
- 56 Forfeiture of apparatus
- 57 Protection of telecommunications installations
- 58 Contravention of decisions of Authority

- 59 Criminal liability of bodies corporate
- 60 General offence
- 61 General penalty
- 62 Authority for prosecution
- 63 Compounding offences

### **Part VII – Computer Misuse**

- 64 Interpretation
- 65 Unauthorised access to computer material
- 66 Unauthorised access for commission of offences
- 67 Unauthorised modification of computer material
- 68 Unauthorised use or interception of computer service
- 69 Penalties

### **Part VII – Miscellaneous Provisions**

- 70 Distribution and Exhibition of Obscene Matter
- 71 Non responsibility for bodily injury or damage
- 72 Power of Government in emergency
- 73 Service of notices
- 74 Regulations
- 75 Foreign vessels and aircraft
- 76 Broadcasting services
- 77 Exemption from income tax, customs duty and import levy
- 78 Repeals and amendments
- 79 Act binds the Republic

### **Schedule 1**

Appointment and Removal of Members

### **Schedule 2**

Systems and services for which licences are not required

**Republic of Kiribati**  
**(No. 11 of 2004)**

I assent,

Beretitenti  
03/02/2005

**AN ACT TO PROVIDE FOR AND REGULATE TELECOMMUNICATIONS SYSTEMS  
AND SERVICES AND RELATED MATTERS**

Commencement:  
2004

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

**Part I – Preliminary Provisions**

**Short title**

1. This Act may be cited as the Telecommunications Act 2004.

**Interpretation**

2. In this Act —

“Authority” means the Telecommunications Authority of Kiribati;

“basic telecommunication service” means a two-way voice communication service, or point-to-point data service;

“communication” includes any communication between persons and persons, things and things, or things and persons, in any form;

“customer premises equipment” means equipment that is intended to be connected to a telecommunication network of an operator, but does not include equipment that is intended to be used within the boundaries of such a network;

“equipment” includes any appliance, apparatus, or accessory used or intended to be used for telecommunication purposes;

“line” means any wire, cable, tube, pipe, or other thing which is designed or adapted for use in connection with the running of a telecommunication system, and includes any casing, coating, tube or pipe enclosing that and any appliances and apparatus connected for the same purpose, and includes any structure, post or other thing in which, by which, or from which any telecommunication apparatus is or may be installed, supported, carried, or suspended;

“message” means any communication sent, received, or made by means of telecommunication or radiocommunication;

“Minister” means the Minister responsible for telecommunications;

“operator” means a person licensed –

(a) to establish or operate a telecommunication system for the provision of service to members of the public (including other operators) for payment; or

(b) to provide a telecommunication service to members of the public for payment;

“public telecommunication operator” means an operator designated under section 17;

“radiocommunication” means any communication by means of radio waves;

“radio waves” means electromagnetic waves of frequencies arbitrarily lower than 3000 GHz propagated in space without artificial guide;

“telecommunication” means the emission, transmission, or reception, through the agency of electricity or electromagnetism, of any sounds, signs, signals, writing, images, or intelligence of any nature by wire, radio, optical, or other electromagnetic systems, whether or not such signs, signals, writing, images, sounds, or intelligence have been subjected to rearrangement, computation, or other processes by any means in the course of their transmission, emission, or reception;

“telecommunication line” means any wire, cable, equipment, tower, mast, antenna, tunnel, hole, pit, pole, or other structure or thing used or intended to be used in connection with a telecommunication system;

“telecommunication system” means equipment for telecommunication.

### **General Objectives**

3.(1) Telecommunications perform an essential role in the economic and social development of Kiribati.

(2) The purposes of this Act therefore include —

- (a) promoting the development of telecommunication systems and services, as far as practicable, in accordance with recognised international standards, practices and public demand;
- (b) providing basic telecommunication services to as many people as practicable in Kiribati at affordable prices;
- (c) protecting the interests of consumers, purchasers and other users of telecommunication systems and services;
- (d) promoting efficiency and competition among persons engaged in the operation of telecommunication systems and services;
- (e) promoting research in telecommunications and fostering innovation in the provision of telecommunication services;
- (f) encouraging the introduction of new services;
- (g) fostering the development of human resources in the telecommunication sector;
- (h) promoting the effective and efficient use of the radio frequency spectrum; and
- (i) creating a regulatory environment that will ensure the achievement of the purposes identified in paragraphs (a) to (h).

## **Part II – Telecommunications Authority of Kiribati**

### **The Authority**

4.(1) The Telecommunications Authority of Kiribati is established for the purposes of this Act.

(2) The Authority shall consist of a Chairman and such other members not being less than 5, as the Minister may from time to time determine.

(3) The provisions of Schedule 1 relating to the appointment and remuneration of members of the Authority and to the procedure of and other similar matters concerning the Authority shall have effect with respect to the Authority.

### **Functions and Powers of Authority**

5.(1) For the purpose of achieving the objectives referred to in section 3 the Authority shall:

- (a) take steps to ensure that telecommunication systems and services in Kiribati are operated in a manner that will best serve and contribute to the country’s economic and social development;
- (b) grant licences for telecommunication systems and services and supervise and enforce compliance with the conditions of licences;

- (c) ensure that telecommunication services are provided at just and reasonable rates consistent with efficient service and the financial viability of operators;
  - (d) ensure that the requirements of this Act are carried out with due regard to the public interest, including protecting consumers and other users from the unfair practices of operators and other persons who are engaged in the provision of telecommunication services;
  - (e) promote competition including:
    - (i) protecting persons who provide telecommunication systems and services from practices of other operators that are damaging to competition; and
    - (ii) facilitating the entry into the market of telecommunication systems and services by persons who wish to supply those systems and services;
  - (f) regulate the interconnection between and access to systems of operators of telecommunication systems;
  - (g) specify technical standards and procedures for the provision of telecommunication services;
  - (h) regulate types of telecommunication equipment which may be connected to a telecommunication system;
  - (i) regulate rates and charges levied by operators of telecommunication systems and services;
  - (j) monitor the quality of services provided by operators and ensure that services conform to standards of quality specified by the Authority or under regulations;
  - (k) manage the radio frequency spectrum;
  - (l) comply with any general directions given by the Minister under section 7 regarding the performance of the functions and exercise of the powers of the Authority, and furnish such general information as may be required by the Minister;
  - (m) where required by the Minister, represent the government in international conferences or international and other organisations concerned with telecommunications or radiocommunication;
  - (n) advise the Government on policies and legislative measures in respect of telecommunication;
  - (o) collaborate with educational institutions in order to promote technical education in the field of telecommunication.
- (2) In addition to powers conferred on the Authority under subsection (1) the Authority shall have power as a statutory corporation to do all things necessary or convenient for or in connection with the performance of its functions and may sue and be sued in its corporate name and enter into contracts and may acquire, purchase, take, hold and enjoy property of every description and may convey, assign, surrender, yield up, charge, mortgage, lease, demise, re-assign, transfer or otherwise dispose of or deal with any property or any interest therein vested in the Authority upon such terms as to the Authority seems fit.
- (3) Nothing in this section shall be construed as imposing on the Authority any form of duty or liability enforceable by legal proceedings.

### **Notification of Government policies**

6. The Minister shall notify the Authority of general policies of the Government in relation to telecommunication.

### **Directions by the Minister**

7.(1) The Minister may, after consultation with the Authority, give directions of a general nature to the Authority in relation to the performance of its functions and exercise of its powers.

(2) Any direction given by the Minister shall be in writing and published in such manner as the Authority may determine.

(3) Except as provided by or under this or any other Act, the Authority shall not be subject to direction by or on behalf of the Government.

### **Annual report and audit**

8.(1) The Authority shall, within six months after the end of the financial year, submit to the Minister a report on its activities for that year.

(2) The accounts of the Authority shall be audited at the end of each financial year by the Auditor-General or an auditor designated by the Auditor-General.

(3) The Minister shall cause the report and the audited accounts to be submitted to Parliament as soon as possible.

### **Consultations**

9. The Authority may, where it considers appropriate and practicable, consult with relevant bodies and organisations or the public in performing its functions and exercising its powers under this Act.

### **Obligations of the Authority**

10. In the performance of its functions, the Authority shall have regard to –

(a) any general policies of the government notified to it by the Minister under section 6;

(b) obligations under any convention to which Kiribati is a party.

### **Provision of information**

11.(1)(a) The Authority may require any particular operator or class of operators to adopt any method of identifying the costs of providing telecommunication services and to adopt any accounting method or system of accounts for the purposes of complying with this Act or the exercise of a power conferred on the Authority.

(b) Any such accounting system or method shall not be contrary to the accounting requirements of the Kiribati companies legislation.

(2) The Authority may require any particular operator or class of operators to submit information to the Authority, in periodic reports or in such other form and manner as the Authority considers necessary for the purposes of this Act.

(3) Where the Authority believes that a person other than an operator is in possession of information which the Authority considers necessary for the fulfilment of its role under this Act, the Authority may require that person to submit the information to the Authority in such form and in such manner as the Authority may specify.

(4) No person referred to in this section shall be compelled to produce any document which they could not be compelled to produce in any civil proceedings.

### **Use of information**

12.(1) Subject to subsection (2) and with the exception of designated information, the Authority shall make available for public inspection information submitted to it in the course of the performance of its functions under this Act.

(2) (a) Neither the Authority nor any servant or agent of the Authority shall knowingly disclose or knowingly allow to be disclosed designated information to any person where the disclosure is calculated or likely to be to the benefit of any person or to the detriment of the person to whose business or affairs the information relates.

(b) This subsection shall apply whether or not the person who discloses designated information has ceased to be the Authority or an employee or agent of the Authority.

(3) Where designated information is submitted in the course of proceedings before the Authority, the Authority may disclose it or require its disclosure if it determines, after considering any representations from interested persons, that the disclosure is in the public interest.

(4) In this section, “designated information” means information submitted to the Authority by an operator and designated as confidential by that operator.

### **Charges for services provided by the Authority**

13.(1) The Authority may levy charges or fees for any service rendered by it in the performance of its functions or exercise of its powers.

(2) Charges and fees due to the Authority under this Act constitute a debt which may be recovered by the Authority in a court of competent jurisdiction.

### **Delegation of powers**

14. The Authority may, in writing and with the written approval of the Minister, delegate to any person any of its powers, other than the power conferred by this section.

## **Part III – Licences and Control**

### *A – Telecommunication Systems and Services*

#### **Licence for telecommunication system or service**

15.(1) Subject to subsection (2), no person may construct or operate a telecommunication system or operate a telecommunication service in Kiribati or between any place in Kiribati and any place outside Kiribati except in accordance with a licence granted by the Authority.

(2) No licence shall be required for the operation of the systems and services set out in Schedule 2

#### **Conditions in a licence**

16.(1) A licence for a telecommunication system or service may be subject to such conditions as the Authority considers are consistent with the objectives stated in section 3 and such other circumstances as the Authority considers appropriate.

(2) Without limiting the power conferred under subsection (1), a licence may include conditions relating to all or any of the following:

- (a) the provision of services to rural or sparsely populated areas or other specified areas;
- (b) the provision of services to disadvantaged persons;
- (c) the payment of sums of money calculated as a proportion of the rate of the annual turnover of the operator's licensed system or otherwise;
- (d) the payment by the operator of a contribution toward any loss incurred by another operator or operators as a result of such other operator's or operators' obligation imposed by the Authority regarding the provision of uneconomic telecommunication service in pursuance of the objectives contained in section 3;
- (e) interconnection of an operator's telecommunication system with any other system and permitting the connection of telecommunication apparatus to an operator's system;
- (f) prohibiting an operator from giving undue preference to or exercising undue discrimination against any particular person or class of persons (including any operator);
- (g) furnishing to the Authority such documents, accounts, returns, or other information as the Authority may require for the performance of its functions under this Act;
- (h) requiring an operator to publish, in such manner as may be specified in the licence, a notice stating the charges and other terms and conditions that are to be applicable to facilities and services provided;
- (i) provision of service on a priority basis to the Government or specified organisations;
- (j) requiring a licensee to ensure that an adequate and satisfactory information system including billing, tariffs, directory information, and directory enquiry services are provided to customers;
- (k) the criteria for setting tariffs; and
- (l) requiring a licensee to comply with such technical standards or requirements, including service performance standards, as may be specified in the licence.

#### **Public telecommunication operators**



17. The Minister, in consultation with the Authority, may designate as a public telecommunication operator any person who has been granted a licence which includes conditions under section 16(2)(e) or (f).

### **Interconnection of facilities**

18.(1) An operator may enter into an agreement with another operator or other operators for the purpose of connecting its network facilities with the network facilities of the other operator or operators on such terms and conditions as –

- (a) the first operator and the other operator or operators agree; and
- (b) the Authority approves.

(2) If the operators referred in subsection (1) fail to agree on terms for interconnecting network facilities, the Authority shall, at the request of any of them, determine such terms and conditions.

(3) The Authority may, on the application of an operator, order another operator or operators to connect any of the network facilities of the first-mentioned operator with the network facilities of the other operator or operators on such terms and conditions as the Authority may determine.

(4) The Authority may issue guidelines in accordance with which telecommunication operators may negotiate interconnection agreements.

### **Regulation of rates and tariffs**

19.(1) No public telecommunication operator shall provide a basic telecommunication service except in accordance with a tariff or table of charges approved by the Minister, in consultation with the Authority.

(2) A tariff or a table of charges shall be prepared and published in such manner as the Authority may direct.

(3) The Minister, in consultation with the Authority, shall not approve any tariff or charge unless it is satisfied that it is just and reasonable.

(4) A public telecommunication operator shall not unduly discriminate against or give undue preference to any person, including itself, or subject any person to an undue disadvantage, in relation to tariffs, charges, or the other terms on which it provides service.

(5) The Authority may issue guidelines on any matter concerning tariffs or charges for services, including the method or techniques in accordance with which operators shall calculate tariffs or charges for services.

(6) Notwithstanding subsection (1), where a public telecommunication operator has submitted a tariff or table of charges to the Authority and it has not been approved or rejected by the Authority within one month, the operator may implement the tariff or table of charges.

(7) A tariff or table of charges shall not be implemented before it has been published in the *Gazette*.

### **Technical standards**

20.(1) The Authority may determine technical standards regarding telecommunications, including standards about network matters and customer premises equipment.

(2) In determining a technical standard the Authority may apply, adopt, or incorporate, with or without modification, any existing standard.

(3) Every determination regarding a standard shall be published in such manner as the Authority may direct.

### **Approval of equipment**

21.(1) The Authority may, by notice published in such manner as it may direct, specify the telecommunication equipment that requires the Authority's approval before it may be connected to a licensed telecommunication system.

- (2) Every person who intends to connect to a licensed system equipment to which subsection (1) applies shall apply to the Authority in the form and manner required by the Authority.
- (3) A person applying for approval under this section may be required by the Authority to comply with such requirements as the Authority may consider appropriate, and those requirements may include the requirement to satisfy some other designated person with respect to any matter.
- (4) Any approval under this section may apply either to particular equipment or to equipment of a description specified in the approval.
- (5) (a) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purposes specified in the approval, to any telecommunication system or equipment.
  - (b) Any such condition may impose on the person to whom the approval is given a requirement from time to time to satisfy some other person with respect to any matter.

### *B – Radiocommunication*

#### **Radio management**

- 22.(1) The Authority may, taking into account all matters the Authority considers relevant for ensuring the orderly development and efficient operation of radiocommunication in Kiribati –
- (a) issue licences for radio apparatus and spectrum use;
  - (b) issue radio operator certificates;
  - (c) issue any other licence as the Authority may consider appropriate; and
  - (d) fix the terms and conditions for such licences and certificates.
- (2) The Authority may –
- (a) plan the allocation and use of the spectrum;
  - (b) amend the terms and conditions of any licence or certificate issued under subsection (1);
  - (c) establish technical requirements and technical standards in relation to –
    - (i) radio apparatus; and
    - (ii) interference-causing equipment;
  - (d) monitor the use of the radio spectrum and licences for compliance with this Act.

#### **Radio licences**

- 23.(1) Subject to subsection (2), no person shall install, use, or possess radiocommunication apparatus, except in accordance with a licence issued by the Authority.
- (2) No licence is required to install, operate or possess radiocommunication apparatus that is –
    - (a) exempted by regulations made under this Act; or
    - (b) capable only of the reception of broadcasts; or
    - (c) for use by the police, the armed forces and any other services directly employed by the State in the performance of their official duties,
 if the apparatus complies with such technical requirements as may be specified by the Authority.
  - (3) No person shall manufacture, import, distribute, lease, offer for sale, or sell any radio equipment or interference-causing equipment except in accordance with an authorisation issued by the Authority.

### *C – Licensing*

#### **Grant of licence**

- 24.(1) The Minister may, by Regulations, and after consultation with the Authority, specify the fee for a licence to operate the system or provide the service authorised under this Act.
- (2) Every application for a licence shall be made in the form and manner required by the Authority.
  - (3) The Authority may grant or refuse the application for a licence taking into consideration:

- (a) the applicant's capacity to operate the system or provide the service for which the licence is sought;
  - (b) the extent to which granting such a licence would be consistent with the objectives stated in section 3; and
  - (c) the public interest.
- (4) A licence under this section –
- (a) shall be issued on payment by the applicant of the licence fee specified in the Regulations;
  - (b) shall be subject to this Act and shall state the terms and conditions on which it is granted; and
  - (c) shall specify any services to be provided by the holder of the licence.
- (5) The licence fee shall be paid annually in advance.

#### **Modification of a licence**

25.(1) The Authority may modify any condition of a licence granted by it if it considers it is in the public interest to do so.

- (2) Before modifying any condition of a licence, the Authority shall give the licensee 90 days' notice, stating the reasons for the intended modification and giving the licensee the opportunity to make representations.
- (3) The Authority shall give due consideration to any representation made by the licensee.
- (4) The Authority may, if it considers it appropriate to do so, modify any condition of a licence on the application of the licensee.

#### **Transfer of licence**

26.(1) An operator may apply to the Authority in the prescribed form and manner for the transfer of a licence.

- (2) A licence may not be transferred without the consent in writing of the Authority.
- (3) An application by a licensee under subsection (1) shall be accompanied by an application, by the person to whom the licensee intends to transfer the licence, for the grant of a licence.
- (4) If the Authority grants the application it shall –
  - (a) revoke the existing licence; and
  - (b) grant a licence to the new licensee.

#### **Suspension and revocation of licence**

27.(1) The Authority may suspend for such a period as the Authority may decide or revoke a licence if it believes on reasonable grounds that the licensee is not or has ceased to be a person to whom a licence would be granted, or that the licensee has contravened this Act, or any condition of the licence, or has failed to adhere to a direction of the Authority addressed to it.

- (2) The Authority shall, unless the urgency of the matter otherwise requires, give the licensee 5 days notice in writing of the reasons for the intended suspension or revocation and opportunity to make representations.
- (3) After due consideration of any representations by the licensee the Authority may, without any compensation, revoke the licence.

#### **Directions to remedy breaches**

28.(1) Where the Authority is satisfied that a licensee has breached the conditions of a licence or an obligation under this Act, the Authority may direct the licensee in writing to remedy the breach or to do such acts as the Authority may specify in the direction.

- (2) The Authority shall not issue a direction to a licensee unless the licensee was given or has been given reasonable opportunity to make representations concerning the conduct giving rise to the directive.

### **Entry to land**

29.(1) Subject to subsection (2), an operator may –

- (a) enter land for the purpose of gaining access to any existing works or existing lines owned or used by the operator; and
- (b) perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing those works or lines.

(2) The power to enter land is subject to the following conditions:

- (a) entry must only be made by an officer, employee, or agent of the operator authorised by the operator in writing:
- (b) reasonable notice of the intention to enter must be given:
- (c) entry must be made at reasonable times:
- (d) the person entering must produce evidence of his or her authority and identity –
  - (i) on initial entry; and
  - (ii) after the initial entry, on request.

(3) The conditions in subsection (2) do not apply if the entry is necessary in circumstances of probable danger to life or property.

### **Request for removal**

30.(1) If a tree, shrub, or plant on any land interferes with, or is likely to interfere with, a line, the operator who uses the line may request the owner or occupier of the land, or local authority or other person which has control of the road, to remove or trim the tree, shrub, or plant.

(2) If an owner, occupier, local authority, or other person fails to comply with a request made under subsection (1), the operator may apply to a Magistrates' Court for an order authorising the operator to remove or trim the tree, shrub, or plant in respect of which the request was made.

(3) The operator must give the owner, occupier, local authority, or other person who fails to comply with the request at least 10 working days' notice of the operator's intention to apply to the Court under subsection (2).

(4) On being satisfied that a tree, shrub, or plant on land interferes with, or is likely to interfere with, a line, the Magistrates' Court may make an order on any terms and conditions (including those relating to notice and time of removal or trimming) that the Court thinks fit.

(5) If an operator removes or trims a tree, shrub, or plant on any land or road under the authority of an order made under subsection (4), the owner, occupier, local authority, or other person to whom notice of the application under subsection (1) was given is liable to the operator for the reasonable cost of the work of the operator.

### **Removal in emergency**

31.(1) If a tree, shrub, or plant on any land or road causes or is likely to cause imminent danger to, or serious interference with, a line, the operator may –

- (a) enter the land or road where the tree, shrub, or plant is rooted or overhangs; and
- (b) do work in respect of the tree, shrub, or plant that is necessary to remove the danger or serious interference, or likely danger or serious interference.

(2) The operator must, if it is possible in the circumstances, notify the occupier of the land, or the local authority or other person who has control of the road, as the case may be, of the operator's intention to enter the land or road and carry out work under subsection (1).

(3) Every officer, employee, or agent of an operator who enters land or a road under subsection (1) must –

- (a) carry evidence of his or her authority and identity, which must be produced on request; or
- (b) work under the immediate control of a person who holds evidence of the officer, employee, or agent's authority and identity, which must be produced if requested.

(4) If an operator removes or trims a tree, shrub, or plant on any land or road under subsection (1), the occupier of the land, or the local authority or other person who has control of the road, as the case may be, is liable to the operator for the reasonable cost of the work of the operator.

### **Construction or repair of lines on roads**

32.(1) Subject to subsection (2), an operator may -

- (a) construct, place, and maintain lines in, on, along, over, across, or under any road; and
- (b) for any of those purposes, open or break up any road, and alter the position of any pipe (not being a main) for the supply of water or gas; and
- (c) alter, repair, or remove those lines or any part of those lines.

(2) An operator must exercise the powers under subsection (1) in accordance with any reasonable conditions that the local authority or other person which has jurisdiction over that road requires.

(3) Except as provided in section 33, before an operator proceeds to open or break up any road, the operator must give to the local authority or other person which has jurisdiction over the road written notice of the intention to carry out the work.

(4) Every notice must specify the location of the proposed work, the nature of the work to be carried out, and the reasons for it.

(5) No later than 15 days after the receipt of the written notice of the intention to carry out work, the local authority or other person which has jurisdiction over the road must notify the operator in writing of any conditions imposed under subsection (2).

(6) If a local authority or other person which has jurisdiction over the road fails to notify the operator of conditions under subsection (2) within the 15 day period referred to in subsection (5), the conditions may not be imposed, and the operator may commence work.

### **Urgency**

33. If work is urgent and necessary because of any defective equipment, or other emergency, the operator—

- (a) is excused from complying with the requirements of section 32(3) before commencing the work; but
- (b) must give the information required by section 32(4) as soon as practicable after commencing the work.

### **Non-compliance with sections 32 and 33**

34.(1) An operator who fails to comply with sections 32 or 33 commits an offence.

(2) An operator who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$10,000.

(3) In addition to any fine imposed under subsection (2), the Court may make any order relating to compensation that it thinks fit.

### **Appeals**

35.(1) An operator may appeal to a Magistrates' Court against all or any of the conditions imposed under section 32(2) by the local authority or other person which has jurisdiction over the road.

(2) An appeal must be made not later than 45 working days after the date of notification of the conditions imposed.

(3) In its determination of any appeal, a Magistrates' Court may confirm, modify, or cancel any or all of the conditions imposed.

(4) The decision of a Magistrates' Court in the determination of an appeal under this section is final.

### **Alteration to line**

36.(1) The owner of land or some other person who requires a line or work to be altered or a service to be interrupted so that the owner or other person has reasonable use of the land, shall give the operator not less than one month's notice in writing of the requirement.

(2) The operator may require the person who makes the request to pay the cost of the alteration.

### **Lines must not interfere with traffic**

37.(1) An operator must not place the wires of a line so that they interfere with the lawful traffic on a road.

(2) Wires of a line do not interfere with the lawful traffic on the road if the wires are placed at a height of 5.5 metres or more above the surface of the road if the wires cross a public road, or at a height of 4.25 metres or more elsewhere.

(3) An operator must not place a line so that it interferes with the navigation of navigable waters.

(4) An operator, in maintaining, repairing, altering, or removing a line that crosses or is along a road, or that is over or under navigable waters, must not cause unnecessary or avoidable interference to the traffic on, or to the lawful use of, any road or navigable waters.

### **Telephone cabinets**

38.(1) Subject to subsection (2), an operator may construct, place, and maintain public telephone cabinets, distribution cabinets, and any other similar appliances on a road.

(2) An operator must —

(a) give to the local authority that has control of the road at least 5 days' notice of its intention to place a cabinet or appliance on the road; and

(b) not place the cabinet or appliance on the road so that it interferes with ordinary traffic.

### **Compensation**

39.(1) Every person whose property is damaged as a result of the exercise of the powers under this Part is entitled to compensation.

(2) The amount of the compensation may be agreed between the operator and the person concerned.

(3) If any dispute arises concerning sufficiency of the compensation to be paid under subsection (1), it shall be determined in accordance with Part VI and Schedule 3 of the Magistrates Courts, on application for that purpose by either of the disputing parties to a Magistrates' Court composed in accordance with section 7(4) of the Magistrates' Courts Ordinance Chapter 52.

(4) If any dispute arises as to the person entitled to receive compensation, or as to the proportion in which the persons interested are entitled to share in it, the operator may pay into the Court such amount as it deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient, or the amount has been determined under subsection (3), that amount.

(5) Where subsection (4) applies, the Court shall, after giving notice to the parties and hearing such of them as desire to be heard, determine the persons entitled to receive the compensation, or, as the case may be, the proportions in which the persons interested are entitled to share in it.

### **Protection of existing works**

40.(1) Any existing equipment or existing line owned or used by an operator that is fixed to, or installed over or under, land that is not owned by the operator is deemed to be lawfully fixed or installed, and continues to be lawfully fixed or installed.

(2) No person shall have an interest in any of the equipment or line by reason only of having an interest in the land.

### **Compulsory purchase of land**

41.(1) Where, in the opinion of an operator, the acquisition by the operator of any land or an interest in any land without the agreement of the owner is necessary for the purpose of providing telecommunication services to the public, the operator shall advise the Authority.

(2) The Authority shall if it approves the proposal of the operator provide a copy of the proposal and its approval to the Minister, to the Minister responsible for lands, and to the owner of, or person having an interest in, the land.

(3) If the Minister responsible for lands is satisfied that the land or interest in land is required for the purpose of providing telecommunication services to the public, steps shall be taken to acquire the land or in interest in the land in accordance with the State Acquisition of Land Act.

## **Part V – Investigations, Inspections, and Enforcement**

### **Inquiries**

42.(1) The Authority shall investigate any representation (other than one appearing to be frivolous) made to the Authority by or on behalf of a person appearing to the Authority to have an interest in the matter which is the subject of the representation, which relates to telecommunication services provided or telecommunication apparatus supplied in Kiribati.

(2) The Authority may appoint any person or committee to inquire into and report to the Authority on any matter concerning the Authority's functions under this Act.

(3) The Authority shall institute an inquiry if directed to do so by the Minister.

(4) The Authority may, when inquiring into any matter or making a determination, on its own motion or on the application of any interested person, hold a public hearing where it deems it in the public interest to do so.

(5) A hearing or a part of a hearing before the Authority may, at the request of any interested person, be held in camera if that person establishes to the satisfaction of the Authority or the Authority determines that the circumstances of the case so require.

### **Decisions of the Authority**

43.(1) In respect of any matter to be decided by it, the Authority may make such order or give such direction as it thinks fit.

(2) The Authority shall give reasons for its decisions.

(3) The Authority may publish its decisions in such manner as it considers appropriate.

### **Reconsideration of decisions**

44.(1) The Authority may, on the application of any interested person or on the Authority's own motion, reconsider and rescind or vary any decision by it or rehear a matter considered by it.

(2) Any interested person may, within 10 days from the date of the publication of a decision of the Authority, apply to the Authority for reconsideration of the decision.

(3) The Authority shall, within 20 days from the receipt of the application for reconsideration of a decision, either notify the applicant of the Authority's decision on the application or of the date on which the Authority will make a decision on the application.

(4) If, 20 days after the filing of an application for reconsideration of a decision, the applicant has not received a response to the application, the Authority shall be deemed to have affirmed the decision in respect of which the application for reconsideration was made.

### **Rules**

45.(1) The Authority may make rules not inconsistent with this Act in respect of procedure and practice in the performance of its functions and exercise of its powers under this Act.

(2) Without limiting the scope of subsection (1), the Authority may make rules prescribing criteria for the award of costs and related matters.

(3) Rules made by the Authority under this section may be of general application or applicable in respect of a particular matter or class of matters, and shall be published in the *Gazette*.

## **Appeals**

46.(1) The decisions of the Authority in exercising its powers and performing its functions under this Act shall be final and conclusive on questions of fact.

(2) Any person aggrieved by the decision of the Authority on any question of law may appeal to the High Court with the leave of that Court.

(3) An application for leave to appeal shall be filed with the High Court within 10 days from the date on which a copy of the decision of the Authority was served on the applicant.

## **Evidence**

47.(1) A document appearing to be signed by the Minister or the Authority shall be evidence of the official character of the person appearing to have signed it and, in the case of the Authority, of its issuance by the Authority and, if the document appears to be a copy of a decision or report, shall be evidence of its contents.

(2) A copy of a document submitted to the Authority and appearing to be certified as a true copy by the Authority shall be evidence of the original, of its submission to the Authority, of the date of its submission, and of the signature of any person appearing to have signed it.

(3) A certificate appearing to be signed by the Authority and bearing the Authority's seal shall be evidence of its contents without proof of the signature.

## **Appointment of Inspectors**

48.(1) The Authority may appoint or designate Inspectors for the purposes of verifying compliance with this Act and with the decisions of the Authority.

(2) An Inspector shall be provided with a certificate of identity, which shall be presented at the request of any person appearing to be in charge of any place entered by the Inspector.

## **Powers of Inspector**

49.(1) Subject to subsection (2), an Inspector may –

(a) enter and inspect, at any reasonable time, any place owned by or under the control of an operator in which the Inspector believes on reasonable grounds there is any document, information, equipment, or thing relevant to the enforcement of this Act, and examine the document, information, equipment, or thing or remove it for examination or reproduction, as the case may be;

(b) enter any place on which the Inspector believes on reasonable grounds there is any radio apparatus or interference-causing equipment, and examine any radio apparatus or interference-causing equipment, logs, books, reports, data, records, documents, or other papers, and remove such information, document, apparatus, equipment, or thing for examination or reproduction, as the case may be;

(c) make use of or cause to be made use of, any data processing system at the place, to examine any data contained in or available to the system;

(d) reproduce or cause to be reproduced any record from the data in the form of a print-out or other intelligible output, and take the print-out or other output for examination or copying; and

(e) make use of any copying equipment or means of communication located at the place.

(2) Where a place referred to in subsection (1) is a dwelling-house, an Inspector shall not enter that dwelling-house without the consent of the occupier, except –

(a) under the authority of a warrant issued under section 50; or

(b) where, by reason of special circumstances, it would not be practical for the Inspector to obtain a warrant.

(3) For the purposes of subsection (2)(b), special circumstances include circumstances in which the delay arising from obtaining a warrant would result in danger to human life or safety or the loss or destruction of evidence.



(4) The owner or person in charge of a place entered by an Inspector shall give the Inspector all reasonable assistance and shall give the Inspector any information that the Inspector reasonably requests.

(5) Every person who is required to possess a licence under this Act shall exhibit the licence for inspection on demand by the Authority or an Inspector.

(6) Any person who obstructs an Inspector in the exercise of the powers under this Act commits an offence.

### **Search warrant**

50.(1) Where, on application, a Magistrate is satisfied by information on oath that –

(a) entry to a dwelling-house is necessary for the purpose of performing any duty of an Inspector under this Act, and

(b) entry to the dwelling-house has been refused, or there are reasonable grounds for believing that entry will be refused,

the Magistrate may issue a warrant authorising the Inspector named in it to enter that dwelling-house, subject to any conditions specified in the warrant.

(2) In executing a warrant issued under this section, an Inspector shall not use force unless the Inspector is accompanied by a police officer and the use of force is specifically authorised in the warrant.

## **Part VI – Offences and Penalties**

### **Operating a telecommunication system without a licence**

51.(1) Any person who establishes or operates a telecommunication system without a licence commits an offence.

(2) A person who commits an offence under subsection (1) of this section shall, on summary conviction, be liable to a fine not exceeding \$200 for a first offence or \$400 for a subsequent offence, and in the case of a continuing offence, to a further fine not exceeding \$50 for each day during which the offence continues.

### **Fraudulent use of telecommunication system or service**

52.(1) Any person who dishonestly obtains a service provided by means of a telecommunication system or service with intent to avoid payment of any charge applicable to the provision of that service commits an offence.

(2) A person who commits an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding \$200 and to imprisonment for a term not exceeding three years.

### **Improper use of telecommunication system or service**

53.(1) Any person who, by means of a telecommunication system or service –

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

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

(c) for the purpose of causing annoyance, inconvenience, or needless anxiety to another person, persistently makes use of a licensed telecommunication system or service –  
commits an offence.

(2) A person who commits an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding \$100 and to imprisonment for a term not exceeding three months.

### **Offences in respect of messages**

54.(1) Subject to subsections (2) and (3) of this section, any person engaged in the running of a telecommunication system or service who, otherwise than in the course of duty –

- (a) intentionally modifies or interferes with the contents of a message sent by means of that system or service;
- (b) intentionally intercepts a message sent by means of that system or service;
- (c) where a message sent by means of that system or service has been intercepted, intentionally discloses to any person the contents of that message; or
- (d) intentionally discloses to any person the contents of any statement of account specifying the telecommunication services provided for any other person by means of that system or service –

commits an offence.

(2) Subsection (1) (b) and (c) shall not apply to anything done in obedience to a warrant under the hand of the Minister.

(3) Subsection (1) (b), (c), and (d) shall not apply to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings.

(4) Any person who fraudulently retains, secretes, makes away with or wilfully detains a message which ought to have been delivered to some other person, commits an offence.

(5) A person who commits an offence under this section shall be liable on summary conviction, to a fine not exceeding \$200 and to imprisonment for a term not exceeding six months.

### **Offences in respect of radiocommunications**

55.(1) Any person who –

(a) knowingly sends, transmits, or causes to be sent or transmitted any false or fraudulent distress signal, message, call, or radiogram of any kind; or

(b) without lawful excuse, interferes with or obstructs any radio communication –  
commits an offence.

(2) Any person who, without lawful excuse, intercepts and makes use of, or intercepts and divulges, any radiocommunication, except where permitted by the originator, commits an offence.

(3) It shall not be an offence under subsection (1)(b) and subsection (2) of this section to do anything in obedience to a specific order under the hand of the Minister or to an order of a Magistrate.

(4) Any person who –

(a) contravenes section 23; or

(b) without lawful excuse, manufactures, imports, distributes, leases, offers for sale, sells, installs, modifies, operates, or possesses any equipment under circumstances that give rise to a reasonable inference that the equipment has been used, or is or was intended to be used, for the purpose of contravening subsection (1) –

commits an offence.

(5) A person who commits an offence under this section shall be liable, on summary conviction, in the case of an individual, to a fine not exceeding \$5,000 and to imprisonment for a term not exceeding 3 years.

(6) Where an offence under this section is committed or continued on more than one day, the person who committed the offence shall be liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(7) Where any offence against this Act is committed in relation to a radiocommunication station onboard a vessel or aircraft, the master or person in charge of the vessel or aircraft shall, without prejudice to the liability of any other person, commit such offence.

### **Forfeiture of apparatus**

56. In the case of a conviction for an offence under this Act or any regulation made under this Act, any apparatus in relation to which or by means of which the offence was committed may be –

- (a) forfeited to the Authority by order of the Court which tried the offence; and
- (b) disposed of as the Authority may direct.

#### **Protection of telecommunications installations**

57.(1) Any person who, intending to –

- (a) prevent or obstruct the transmission or delivery of any message; or
- (b) commit mischief,

damages, removes, or tampers with any installation or plant belonging to an operator, commits an offence.

(2) Any person who –

- (a) without permission of the telecommunication officer in charge enters the signal room of a telecommunication office of the Government or a person licensed under this Act;
- (b) enters a fenced enclosure around such telecommunication office in contravention of any rule or notice not to do so;
- (c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed there; or
- (d) wilfully obstructs any such officer or servant in the performance of their duty,

commits an offence.

#### **Contravention of decisions of Authority**

58. Any person who contravenes or fails to comply with a decision of the Authority commits an offence.

#### **Criminal liability of bodies corporate**

59. Where a corporation commits an offence under this Act, any director, officer, employee or agent of the corporation who directed, authorised, assented to, or acquiesced or participated in the commission of the offence shall be a party to and guilty of the offence, and shall be liable to the punishment provided for that offence in respect of an individual.

#### **General offence**

60. Any person who contravenes or fails to comply with any provision or requirement of this Act or regulations made under this Act, commits an offence.

#### **General penalty**

61. Any person who commits an offence under this Act or any regulations made under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$200 and to imprisonment for a term not exceeding 3 months.

#### **Authority for prosecution**

62. The Attorney General may authorise employees or agents of the Authority to prosecute offences under this Act subject to any conditions or restrictions imposed.

#### **Compounding offences**

63.(1) The Attorney General may, if satisfied that any person has committed an offence under this Act, instruct such person to pay a sum of money to the Authority by way of compounding such offence.

(2) The payment shall not exceed the maximum fine prescribed for the offence nor be less than half the amount of the maximum fine prescribed.

(3) Such payment shall be accepted only where the person suspected of having committed an offence has consented in writing to the offence being dealt with under this section.

(4) In any proceedings brought against any person for an offence against this Act it shall be a good defence if that person proves that the offence has been compounded under this section.

## **Part VII – Computer Misuse**

### **Interpretation**

64.(1) In this Part –

“computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include a device which is non-programmable or which does not contain any data storage facility;

“computer service” includes computer time, data processing and the storage or retrieval of data;

“data” means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer;

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

“intercept”, in relation to a function of a computer, includes listening to or recording a function of a computer, or acquiring the substance, meaning or purport of a function of a computer;

“output” means a statement or representation (whether in written, printed, pictorial, graphical or other form) purporting to be a statement or representation of fact:

- (a) produced by a computer; or
- (b) accurately translated from a statement or representation so produced;

“program” means data representing instructions or statements that, when executed in a computer, causes the computer to perform a function, and includes part of a program.

(2) A person secures access to any program or data held in a computer if by causing a computer to perform any function that person –

- (a) alters or erases the program or data;
- (b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;
- (c) uses it; or
- (d) causes it to be output from the computer in which it is held (whether by having it displayed or in any other manner), and references to access to a program or data (and to an intent to secure such access) shall be read accordingly.

(3) For the purposes of subsection (2)(c), a person uses a program if the function they cause the computer to perform–

- (a) causes the program to be executed; or
- (b) is itself a function of the program.

(4) For the purposes of subsection (2)(d), the form in which any program or data is output (and in particular whether or not it represents a form in which, in the case of a program, it is capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(5) Access of any kind by any person to any program or data held in a computer is unauthorised or done without authority if that person –

- (a) is not entitled to control access of the kind in question to the program or data; and
- (b) does not have consent to access of the kind in question to the program or data from any person who is so entitled.

(6) A reference to any program or data held in a computer includes a reference to any program or data held in any removable storage medium which is for the time being in the computer, and a computer is to be regarded as containing any program or data held in any such medium.

- (7) A modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or any other computer -
- (a) any program or data held in the computer concerned is altered or erased;
  - (b) any program or data is added to its contents; or
  - (c) any act which impairs the normal operation of any computer, and any act which contributes towards causing such a modification shall be regarded as causing it.
- (8) Any modification referred to in subsection (7) is unauthorised if the person whose act causes it -
- (a) is not entitled to determine whether the modification should be made; and
  - (b) does not have consent to the modification from any person who is so entitled.

#### **Unauthorised access to computer material**

65.(1) Any person who knowingly causes a computer to perform any function for the purpose of securing access without authority to any program or data held in any computer commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years or to both.

- (2) For the purposes of this section, it is immaterial that the act in question is not directed at -
- (a) any particular program or data;
  - (b) a program or data of any kind; or
  - (c) a program or data held in any particular computer.

#### **Unauthorised access for commission of offences**

66.(1) Any person who causes a computer to perform any function for the purpose of securing access without authority to any program or data held in any computer with intent to commit an offence to which this section applies commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both.

- (2) This section applies to offences involving property, fraud, dishonesty or which causes bodily harm.
- (3) For the purposes of this section, it is immaterial whether the offence to which this section applies is to be committed when the unauthorised access is secured or on a future occasion.

#### **Unauthorised modification of computer material**

67.(1) Any person who does any act which that person knows will cause an unauthorised modification of the contents of any computer commits an offence.

- (2) For the purposes of this section, it is immaterial that the act in question is not directed at -
- (a) any particular program or data;
  - (b) a program or data of any kind; or
  - (c) a program or data held in any particular computer.
- (3) For the purposes of this section, it is immaterial whether an unauthorised modification is, or is intended to be, permanent or merely temporary.

#### **Unauthorised use or interception of computer service**

68.(1) Any person who knowingly -

- (a) secures access without authority to any computer for the purpose of obtaining, directly or indirectly, any computer service;
  - (b) intercepts or causes to be intercepted without authority, directly or indirectly, any function of a computer; or
  - (c) uses or causes to be used, directly or indirectly, the computer or any other device for the purpose of committing an offence under paragraph (a) or (b), commits an offence.
- (2) For the purposes of this section, it is immaterial that the unauthorised access or interception is not directed at -
- (a) any particular program or data;
  - (b) a program or data of any kind; or
  - (c) a program or data held in any particular computer.

## **Penalties**

69. A person who commits an offence under this Part for which a penalty is not specifically provided shall be liable on conviction to a fine not exceeding \$10,000 and to a term of imprisonment not exceeding 2 years and where damage is caused by the offence to an order for restitution in favour of the person who suffered the loss, in a sum not exceeding the amount of the damage.

## **Part VIII – Miscellaneous Provisions**

### **Distribution and Exhibition of Obscene Matter**

70.(1) In this Part —

“distribute” means transfer possession of, with or without consideration;

“knowingly” means being aware of the character of the matter;

“matter” –

- (a) means any recording, pictorial representation, figure, transcription, printed or written material, mechanical, chemical, electrical, or electronic reproduction, or other article, equipment, machine, or material, and includes but is not limited to any book, magazine, newspaper, picture, drawing, photograph, motion picture, statue, film, filmstrip, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage medium, CD-ROM, computer-generated image, or computer-generated equipment, and
- (b) includes any live or recorded telephone message if transmitted, disseminated, or distributed as part of a commercial transaction;

“obscene matter” means matter which, applying contemporary Kiribati standards, appeals to the prurient interest, depicts or describes sexual conduct in a patently offensive way, and, taken as a whole, lacks serious literary, artistic, or scientific value. In determining whether matter lacks serious literary, artistic, or scientific value, the fact that the defendant knew that the matter depicted persons under the age of 16 years engaged in sexual conduct shall be taken into account.

(2) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into Kiribati for distribution, or who in Kiribati possesses, prepares, publishes, produces, develops, duplicates, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter, commits an offence and shall be liable on conviction to a fine not exceeding \$1000 and imprisonment for a term not exceeding 2 years or both.

### **Non responsibility for bodily injury or damage**

71.(1) The Republic of Kiribati, the Minister, the Authority, an Inspector, or any other person exercising or performing powers or functions under this Act shall not be liable in respect of any action, claim, or demand that may be brought or made by any person in respect of any bodily injury or damage to property or any other circumstances arising from any act permitted by a licence issued under this Act.

(2) No operator or employee or agent of an operator shall be liable in any criminal proceedings or in any suit for damages by reason of his having in the course of his employment transmitted or conveyed by any telecommunication, or taken any part in transmitting or conveying by any telecommunication, any defamatory libel.

### **Power of Government in emergency**

72.(1) If it appears to the Minister to be expedient or requisite, on the occurrence of any public emergency, or in the interest of public security or national defence, the Minister may, by an order published in the *Gazette* or specially in writing, give directions to a person to whom this section applies.

(2) Directions given under subsection (1) may include –

- (a) the prohibition or control of telecommunication systems and radio stations as may be considered necessary;
  - (b) the possession or the control of or use for official purposes of telecommunication systems and radio stations;
  - (c) the stoppage, delay, or interception of telecommunication messages; and
  - (d) the carrying out of any other purposes which the Minister considers necessary.
- (3) The Government may –
- (a) pay compensation for any loss or damage caused to an operator or owner of a radio station, as the case may be, by reason of compliance with directions under subsection (2)(b);
  - (b) make grants to operators, or owners of radio stations, as the case may be, for defraying or contributing towards any losses which they may sustain by reason of their compliance with the directions of the Minister under this section.

### **Service of notices**

73. Unless otherwise expressly provided in this Act, any notice, order, or document required or authorised by this Act, or any regulations made under it, to be given or served on any person, may be served on the person concerned by –

- (a) delivering it to the person or to some adult member or employee of that person's family at the last known residence; or
- (b) leaving it at that person's usual or last known residence or place of business in a cover addressed to the person; or
- (c) affixing it to some conspicuous part of that person's last known residence; or
- (d) sending it by registered post addressed to the person at that person's usual or last known residence or place of business; or
- (e) where the person is a body corporate –
  - (i) delivering it to the secretary or other similar officer of the body corporate at its registered or principal office; or
  - (ii) sending it by registered post addressed to the body corporate at its registered or principal office.

### **Regulations**

74.(1) The Minister may make regulations for the purposes of this Act.

- (2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following:
  - (a) the classes of licences and the conditions for the grant of licences by the Authority;
  - (b) proficiency examinations, including syllabuses, for the certification of competency of individuals operating telecommunication services or a radio-communication station, or for the grant of any licence by the Authority;
  - (c) the classes and conditions for grant of radiocommunication licences and authorisations;
  - (d) the control and regulation of dealing in and use of radio or telecommunication equipment;
  - (e) the control and regulation of interference by radio waves or electrical or other means to telecommunication or radiocommunication;
  - (f) the control and regulation of installation, wiring, cabling, and other types of works to be carried out on telecommunication systems;
  - (g) the remission or waiver, in whole or in part, of any sum payable in respect of a licence;
  - (h) the use of any radiocommunication station on board any vessel while in the territorial waters of Kiribati;
  - (i) the use of any radiocommunication station on any aircraft while in or over Kiribati or the territorial waters of Kiribati;
  - (j) licensing and fees under this Act;
  - (k) the exemption of any person or class of person from any or all of the provisions of this Act;
  - (l) declarations that some of the provisions of this Act shall not apply to –
    - (i) any particular telecommunication system or class of telecommunication systems;

- (ii) any particular telecommunication service or class of services;
- (m) the amendment of Schedule 1 and Schedule 2; and
- (n) the amendment of Regulations made under section 24.

(3) Regulations made under this section may impose penalties for any contravention of or failure to comply with any regulation.

(4) The penalties that may be imposed under subsection (3) shall not exceed a fine of \$200 and two months' imprisonment together with, in the case of a continuing offence, a further fine, not exceeding \$20 a day while the offence continues.

#### **Foreign vessels and aircraft**

75. Unless otherwise expressly provided this Act does not apply to any foreign vessel or aircraft.

#### **Broadcasting services**

76. This Act shall not apply to any broadcasting services under the Broadcasting and Publications Authority Ordinance, other than for the issue of radio spectrum licences and the management of the radio spectrum.

#### **Exemption from income tax, customs duty and import levy**

77. Notwithstanding the provisions of any other Act, the income of the Authority shall be exempt from payment of income tax, and the Authority shall not be liable for the payment of customs duty and import levy, or any other tax having a similar effect.

#### **Repeals and amendments**

78. The Telecommunications Act 1983 is repealed.

#### **Act binds the Republic**

79. This Act binds the Republic.



## **Schedule 1**

(Section 4(3))

### **Appointment and Removal of Members**

1.(1) All the members of the Authority (including the Chairman who shall be appointed as such) shall be appointed by the Minister from among persons appearing to him to be qualified for the office.

(2) Subject to sub-paragraphs (3) and (4), every member of the Authority shall hold office for such period as the Minister may determine, and may, on ceasing to be a member, be eligible for re-appointment.

(3) The Minister may at any time direct by notice in writing that any member of the Authority shall cease to hold office, and any member of the Authority may at any time by notice in writing to the Minister resign his office.

(4) If any member of the Authority dies or ceases to hold office before the expiration of the term for which he was appointed, the term of office of his successor shall be so fixed as to expire at the end of the first-mentioned term, but the Minister may, if he thinks fit to do so, defer the making of an appointment until the expiration of the said first-mentioned term.

### **Remuneration of Members**

2. The Authority shall pay to each of its members, in respect of his office as such, remuneration and/or allowances as prescribed by law and in the absence of any law as determined by the members and approved by the Minister, and in determining the remuneration and allowances to be paid under this sub-paragraph, different provisions may be made as regards the Chairman and the other members.

### **Incorporation and Capacity of Authority**

3.(1) The Authority shall be a body corporate with perpetual succession and a common seal.

(2) The Authority may act notwithstanding a vacancy among its members.

### **Quorum of Authority**

4. The quorum of the Authority shall be 3, or such number not being less than 3 as the Authority may from time to time determine.

### **Duty of Members to Disclose Interest in Contracts**

5.(1) A member of the Authority who is in any way directly or indirectly interested in a contract made or proposed to be made by the Authority shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Authority.

(2) Any disclosure made under sub-paragraph (1) shall be recorded in the minutes of the Authority, and the member -

- (a) shall not take part after the disclosure in any deliberation or decision of the Authority with respect to that contract; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Authority for any such deliberation or decision.

### **Power of Authority to Regulate own Procedure**

6. Subject to the preceding provisions of this Schedule, the Authority may regulate its own procedure.

### **Officers and Employees of Authority**

7. The Authority, may appoint a secretary and such other officers, and take into its employment such other persons, as the Authority may determine.

### **Authentication of Authority's Seal**

8. The application of the seal of the Authority shall be authenticated by the signatures -

- (a) of the Chairman of the Authority or some other member of the Authority authorised by the Authority to authenticate the application of the Authority's seal; and
- (b) of the secretary of the Authority or some other officer of the Authority authorised by the Authority to act in that behalf.

### **Presumption of Authenticity of Documents Issued by Authority**

9. Any document purporting to be an instrument issued by the Authority and sealed as aforesaid or signed on behalf of the Authority shall be received in evidence and shall be deemed to be such an instrument without further proof unless the contrary is shown.

### **Protection of Members of Authority**

10. No personal liability shall attach to any member of the Authority in respect of anything done or suffered in good faith under the provisions of this Act.

## Schedule 2

(Section 15)

Systems and services for which licences are not required

No licence shall be required —

- (1) to operate a telecommunication system, other than a radiocommunication system –
  - (a) which is not connected to another telecommunication system and where all the equipment comprised in it is situated either –
    - (i) in premises of single ownership or tenancy and within a contiguous boundary, for the sole use of the owner or tenant; or
    - (ii) in a vehicle, vessel, aircraft or hover craft or in two or more vehicles, vessels, aircraft or hovercraft, mechanically coupled together; or
  - (b) where a single individual runs such a system and –
    - (i) all the equipment comprised in it is under that individual's control; and
    - (ii) everything conveyed by it is conveyed solely for the individual's own domestic purposes; or
- (2) for the connection of approved customer premise equipment to the switched network of a public operator; or
- (3) for a person who carries on a business to run a telecommunication system for the purposes of that business but not for providing telecommunication service to any other person, where that telecommunication system is not connected to another telecommunication system; or
- (4) for the use, subject to compliance with such technical requirements as may be specified by the Authority, of telecommunication systems or telecommunication equipment by the police and any other services directly employed by the State for national security in the performance of their official duties; or
- (5) for the use of telecommunication systems or equipment on board any warship or aircraft in the service of Kiribati; or
- (6) for the provision of value added service where the person providing the service is licensed with the Authority.

# TELECOMMUNICATION ACT 2004

## Explanatory Memorandum

The advancement in telecommunication technology over the years has been quite fast and dramatic. Our Telecommunication Act 1983 generally cannot catch up with such developments and advancement in telecommunication. Rather than amend the current Act to bring it in line with modern trends, repealing it is inevitable, and putting a new regulatory system in place is preferred. Whereas in the 1983 Act the licensing authority has been in the hands of Government official, the new system takes that away from the Government and now vests it in the hand of an Authority which is a statutory corporation having all the necessary powers to perform the powers and functions covered by this Act.

The general objectives of the Authority is set out in Section 3 which includes promoting the development of telecommunication systems and services in accordance with international standards, practises and public demand; providing basic telecommunication services to as many people as practicable in Kiribati at affordable prices; protecting the interests of consumer, purchasers and other users of telecommunication system and service; promoting efficiency and competition among persons engaged in the operation telecommunication system and service; promoting research in telecommunication and fostering innovation in the provision of telecommunication services; and encouraging the introduction of new services.

Part II sets up the Telecommunications Authority of Kiribati. Its functions are set out under section 5 which include granting licences for telecommunication systems and services, regulate the interconnection between and access to systems of operators of telecommunication system, regulate rates and charges levied by operators of telecommunication systems and services. In addition to the specific powers, the Authority as a statutory corporation can sue and be sued, enter into contracts, acquire property and do all things necessary in connection with the performance of its functions. The Minister has the power to give directions under section 6.

Part III deals with granting of licences and conditions of licence. Division A of that Part deals with telecommunication system and services. Section 17 authorises the Minister in consultation with the Authority to designate a public telecommunication operator any person to operate a telecommunication system and services (one example is TSKL at present). S.18 allows an operator to enter into agreement with another operator for inter connecting of facilities. S.19(1) regulate the tariff or table of charges to be adopted by the operator as approved by the Minister in consultation with the Authority. Division B of Part III deals with Radiocommunication. The granting of licences for radio communication is vested in the Authority. But the setting of fees for such licences is vested in the Minister acting after consultation with the Authority (S.24). Sections 25, 26 and 27 deals with modification of licence, transfer of licence and suspension and revocation of a licence.

Part IV empowers an operator to enter land for the purpose of gaining access to existing works or existing lines owned or used by the operator upon giving reasonable notice of intention to enter to the landowner (s.29). Section 30 allows the removal of tree, shrub or plant interfering with a line, upon approval by the landowner. Section 31 provides for removal of such plant, shrub or tree in emergency. Section 32 deals with the construction of repair lines or roads. S.37 prohibits an operator to place the wires or a line to interfere with lawful traffic on a road. Section 38 allows an operator to construct, place and maintain public telephone cabinets. Section 39 provides for compensation for property damaged as a result of exercising of the powers to enter land. S.41 enables the Authority to request the Minister responsible for lands to

compulsorily acquire any land required for the purpose of providing telecommunication services to the public.

Part V deals with investigations, inspections and enforcement. S.48 empowers the Authority to appoint or designate inspectors for the purposes of verifying compliance with the Act and with the decisions of the Authority. His powers are set out under s.49 which include the power to enter and inspect any place owned by the operator in which the Inspector believes there is a document, information or equipment, relevant to the enforcement of this Act, to examine any radio apparatus or interference-causing equipment, logs, books, etc and remove such documents or information. A warrant can be issued to an Inspector to enter and search any premises (s.50).

Part VI sets out the Offences and Penalties for breaching the Act generally, or breaching the conditions of the licence issued under this Act. Anyone committing an offence connected with interfering of messages sent is liable to a fine not exceeding \$200 or to imprisonment for a term not exceeding six months. Offences in respect of radiocommunication attract a fine of \$5000 or imprisonment of up to 3 years. An apparatus used in the commission of an offence under this Part is forfeited to the Authority. Where a corporation commits an offence, it is liable such as an individual (s.55). S.62 empowers the employees or agents of the Authority to prosecute offences under the Act upon authority granted by the Attorney General. S.63 allows compounding of offences where the Attorney General may instruct the person committing an offence to pay a sum of money to the Authority by way of compounding such offences.

Part VII deals with Computer Misuse and create offences relating to unauthorised access to computer material (s.65, unauthorised access for commission of offences (s.66), unauthorised modification of computer material (s.67) and unauthorised use or interception of computer service (s.68).

Part VIII contains Miscellaneous provisions. S.70 deals with the distribution and exhibition of obscene matter. S.71 deals with non-responsibility for bodily injury or damage to any person or property by the Republic, Minister, the Authority, an Inspector or any other person exercising the powers and functions under this Act. S.72 sets out the power of Government in emergency cases. S.73 spells out how service of notice under this Act is effected. S.74 provides for the regulatory power of the Minister. S.75 states that the Act does not apply to any foreign vessel or aircraft. S.76 relates the Act to the Broadcasting and Publication Authority Ordinance (Cap. 6A). S.77 deals with exemption from income tax, customs duty and import levy. S. 78 repeals the Telecommunications Act 1983 and s.79 makes the Act binding on the Republic.

Titabu Tabane  
Attorney General  
17 May 2004