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## POSTAL AND TELECOMMUNICATIONS BILL, 2017

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# BILL

To provide for the Postal and Telecommunications Regulatory Authority of Zimbabwe and to provide for its functions and management; to provide for the licensing and regulation of communications services; to repeal the Postal and Telecommunications Act [*Chapter 12:05*]; and to provide for matters incidental to or connected with the foregoing;

ENACTED by the Parliament and the President of Zimbabwe.

## PART I PRELIMINARY

### 1 Short title and date of commencement

(1) This Act may be cited as the Postal and Telecommunications Act, 2017.

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument:

Provided that the President may fix different dates of commencement for different provisions of this Act.

### 2 Interpretation

(1) In this Act—

“**agency service**” means any reserved service prescribed as an agency service in terms of this Act;

“**aircraft station**” bears the meaning assigned to that term in the *Third Schedule*;

“**anti-competitive conduct**” means any act or omission to act which is in breach of fair competition as provided for under or in terms of this Part;

“**apparatus**”, in relation to telecommunications apparatus, means apparatus constructed or adapted for use in transmitting or receiving a telecommunications service;

“**Authority**” means the Postal and Telecommunications Regulatory Authority of Zimbabwe referred to in section 4;

“**authorised dealer**” means a person authorised in terms of paragraph (a) of subsection (1) of section 70 to carry on the business of dealing in radio transmitting stations or radio apparatus necessary for the proper working of such stations;

“**authorised repairer**” means a person authorised in terms of paragraph (b) of subsection (1) of section 70 to carry on the business of repairing radio transmitting stations;

“**Board**” means the Postal and Telecommunications Authority of Zimbabwe Board referred to in section *six*;

**“Broadcasting Corporation”** means the Zimbabwe Broadcasting Corporation referred to in section 3 of the Zimbabwe Broadcasting Corporation Act [*Chapter 12:01*];

**“broadcasting service”** means a service comprising programmes for reception by members of the general public and transmitted by a broadcasting or telecommunications system;

**“broadcasting station”** means a radio transmitting station used for the purposes of carrying on a broadcasting service;

**“cellular telecommunication system”** means a radiocommunication service designed to use a limited radio frequency spectrum between cellular handsets or other terminal equipment and network transceivers for the provision of mobile, bearer and supplementary services across the cellular network, by allocating a limited number of frequencies within each of a number of defined geographical areas or cells, allowing the re-use of the same frequencies, and enabling users to maintain connections whilst moving through different geographical areas by making use of call handover between adjacent cells;

**“commercial courier service”** means a service for the conveyance for reward of postal articles in respect of which any undertaking is given to deliver the article to a specified destination within a specified time;

**“communication”** means any communication by way of a telecommunication, radiocommunication or postal service and “communications” shall be construed accordingly;

**“community centre”** means any school, railway station, police station and other location providing a service to the community;

**“community service telephone”**, means any fixed-line, cellular or satellite telephone that is made available to the general public;

**“Constitution of the Universal Postal Union”** means the Constitution of the Universal Postal Union signed at Vienna on the 10th July, 1964, and the Regulations annexed thereto, or any amendment or replacement of that Constitution or regulations to which Zimbabwe is a party;

**“dealer”** includes—

- (a) a person who carries on a trade, business or industry in which radio transmitting stations or their component parts are assembled, manufactured, imported, bought, sold, hired or exchanged or offered or exposed for sale, hire or exchange; and
- (b) an auctioneer of radio transmitting stations; and
- (c) the employee or agent of a person referred to in paragraph (a) or (b);

**“designated licensee”** means any entity designated as such by the Minister for the purposes of the provision of reserved services;

**“diffusion service”** means the dissemination—

- (a) by means of any conducting medium of the whole or any part of writing, signs, signals, pictures, impulses or sounds broadcast by a broadcasting service; or
- (b) of music, speech, pictures or other data for information, education or entertainment purposes by means of any conducting medium connected to two or more items of apparatus specifically designed for the reproduction of sound, pictures or data; or
- (c) of teletext and vertical blanking intervals;

**“directory information service”** means a service consisting in the provision by means of a telecommunication service of directory information for the purpose of facilitating the use of a telecommunication service;

**“disabled person”** means a person who is substantially and permanently handicapped by any physical or mental disability;

**“dominant licensee”** means a licensee who the Authority has determined to be a licensee in terms of section 74 and **“dominant position”** shall be construed accordingly.

**“electronic mail service”** means a service for the distribution of messages by electronic means;

**“emergency”** means any event or circumstance resulting from a major accident or natural disaster;

**“emergency organisation”** means, in respect of any locality, the police and any fire, ambulance or other emergency service;

**“fixed date”** means the date fixed in terms of subsection (2) of section 1 as the date of commencement of this Act;

**“fixed-line telephone service”** means a telephone service transmitted by telecommunication lines;

**“Fund”** means the Universal Service Fund established by section 83;

**“generating apparatus”** means any apparatus—

- (a) generating or designed to generate; or
- (b) liable to generate fortuitously;

Hertzian waves, which is prescribed to be generating apparatus for the purposes of this Act;

**“harmful interference”** means radiation, induction, conduction or other electromagnetic effect which prevents the proper functioning of or obstructs or repeatedly interrupts—

- (a) a radiocommunication service carried on in accordance with this Act or the International Telecommunication Convention; or
- (b) a telephone or telegraph service carried on in terms of this Act;

**“Hertzian waves”** means electromagnetic waves of frequencies between 10 kilohertz and 400 gigahertz propagated in space without artificial guide;

**“implementation plan”** means a plan referred to in section 84;

**“inspector”** means a person appointed in terms of subsection (1) of section 116 to be an inspector for the purposes of this Act;

**“interconnection”** means the physical or logical connection of two or more telecommunication networks;

**“international standards”** means the standards and recommendations from time to time adopted by--

- (a) the International Telecommunication Union;
- (b) the International Organisation for Standardisation; or
- (c) the International Electrotechnical Committee;
- (d) Universal Postal Union;

to which Zimbabwe subscribes by virtue of it being a party to or a member of any international treaty or organisation, as the case may be;

**“International Telecommunication Constitution”** means the International Telecommunication Constitution and Convention of the International Telecommunications Union signed in Geneva on the 22nd December, 1992, and the Regulations annexed thereto, or any other international telecommunication convention or agreement to which Zimbabwe may be a party and any regulations annexed thereto;

**“international transit service”** means a telecommunication service consisting in the conveyance of sounds, visual images or signals which have been conveyed from, or are to be conveyed to, places outside Zimbabwe;

**“internet service”** means a telecommunication service consisting in the transmission by means of satellite, telecommunication lines or electricity transmission lines of sounds, visual images or signals between computer terminals located within and outside Zimbabwe;

**“letter”** includes a letter packet, postcard, aerogram or telegram conveyed by post;

**“licence”** means any licence issued in terms of this Act;

**“licensee”** means a person who holds a licence in terms of this Act;

**“mail”** means any article which is deposited in a post box for collection and conveyance by post or which is being conveyed by post;

**“mail bag”** means any bag, box, basket, parcel, hamper or other container or covering in which a postal article is conveyed, whether it does or does not contain a postal article;

**“market”** means a market for any telecommunication service connected with a network, application or postal service.

**“member”** means a member of the Board;

**“Minister”** means the Minister responsible for communications services ICT, Postal and Courier Services

**“mobile station”** bears the meaning assigned to that term in the *Third Schedule*;

**“money order”** means an order for the payment of money remitted at the expense of the person making the order through and on the credit of a postal licensee;

**“numbering plan”** means a plan referred to in section 41 of numbering in compliance with the ITU standards for the purpose of routing calls between subscribers or between network elements;

**“operate”**, in relation to a telecommunication system, means to install, work, maintain, develop or hire the telecommunication apparatus comprising the system concerned;

**“person in charge”**, in relation to—

(a) a vessel, means any person, other than a pilot, having command or charge of the vessel;

(b) an aircraft, means any person in command or in charge of the aircraft;

**“philatelic archival materials”** bears the meaning assigned to that term by section 54;

**“postage”** means the duty payable for the transmission of articles by post;

**“postage stamp”** means any piece of paper or other substance or material whatsoever having thereon the stamp, mark or impression of any die, plate or other instrument made or used by a postal licensee for the purpose of denoting any postage;

**“postal article”** includes any letter, postcard, printed paper, small packet, newspaper, literature for the blind, parcel or other article whatsoever in the course of transmission by post;

**“postal licence”** means a licence that authorises the licensee to operate any specified postal service;

**“postal order”** means a money order in a form provided by a postal licensee on which a fixed amount for remittal is denominated;

**“postal service”** means—

(a) a service comprising--

- (i) the conveyance for reward of postal articles from one place to another, whether by land, sea or air; and
- (ii) the performance of all services incidental to the receiving, collecting, sending, despatching and delivering of postal articles; and
- (iii) the issuance of money orders and postal orders;

or

(b) a commercial courier service;

as may be specified in the postal licence concerned and “postal” shall be construed accordingly;

**“post box”** means any letter box, mail box or other receptacle for the reception of postal articles for transmission by post;

**“post office”** includes—

(a) any house, building, room, place or structure or any vehicle used for the handling or transmission of postal articles or telegrams; and

(b) any post box;

**“prescribe”** means prescribe by regulations made in terms of this Act;

**“private telecommunication service or system”** means a telecommunication service or system which is not offered to or provided for members of the public, serving only an entity or entities in the same group of companies and is not connected to or with any telecommunication system established, maintained or worked by a telecommunication licensee;

**“radio apparatus”** includes any apparatus, equipment, instrument, pole, mast, standard, wire, cable, thing or means whatsoever which is or may be used in connection with, or for the purpose of, conveying electromagnetic energy to or from a radio station;

**“radio frequency spectrum”** means the continuous range of electromagnetic wave frequencies up to and including the frequency of 3000 GHz;

**“radio receiving station”** means apparatus referred to in paragraph (b) of the definition of “radio station”;

**“radio station”** means—

- (a) apparatus, other than generating apparatus, capable of being used for the transmission or emission of writing, signs, signals, pictures, impulses and sounds of all descriptions whatsoever wholly or partly by means of Hertzian waves; or
- (b) apparatus capable of being used for the reception of writing, signs, signals, pictures, impulses and sounds of all descriptions whatsoever wholly or partly by means of Hertzian waves; or
- (c) apparatus referred to in paragraph (a) of this definition and apparatus referred to in paragraph (b) of this definition in combination;

**“radio station licence”** means a licence authorising the licensee to possess, control or work a radio station;

**“radio transmitting station”** means apparatus referred to in paragraph (a) of the definition of “radio station”, whether in combination with apparatus referred to in paragraph (b) of that definition or otherwise;

**“radiocommunication service”** means a telecommunication service or system whereby writing, signs, signals, pictures, impulses and sounds of all descriptions whatsoever are transmitted, emitted or received wholly or partly by means of Hertzian waves;

**“repealed Act”** means the Posts and Telecommunications Act [*Chapter 12:05*] repealed by section 124 of this Act;

**“reserved service”**, in relation to an agency, postal or telecommunications service, means any prescribed agency, postal or telecommunications service the provision of which is reserved exclusively to any designated licensee in terms of this Act;

**“satellite telephone”** means a telephone service transmitted by satellite;

**“sender”** means the person from whom any parcel, article or telegram purports to have come, unless that person proves that he or she is not the sender thereof;

**“ship station”** bears the meaning assigned to that term in the *Third Schedule*;

**“SIM”** means Subscriber Identity Module for the identification and authentication of a subscriber;

**“SIM Card”** means an electronic communication device that enables a user to transmit and receive communications through the connectivity of such device to a telecommunications network and stores user identity, location, phone number and network authorisation date;

**“State land”** means land vested in the President, other than Communal Land;

**“statutory body”** means —

- (a) any commission established by the Constitution; or
- (b) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any statutory body or by a commission established by the Constitution;

**“tariff”** means a tariff of prices, rates, subscriptions or charges levied by a licensee for the provision of communication services in terms of this Act;

**“telecommunication”** means any communication by way of the transmission, emission or reception of signs, signals, messages, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems;

**“telecommunication licence”** means a licence authorising the licensee to provide a telecommunication service or to operate a telecommunication system, other than a private telecommunication service or system;

**“telecommunication line”** includes any apparatus, instrument, pole, mast, standard, wire, pipe, fibre, tunnel, pneumatic or other tube, thing or means whatever that is or may be used in connection with or for the purpose of sending, transmitting, conveying or receiving signs, signals, sounds, pictures or communications which are conveyed by means of a telecommunications system;

**“telecommunication service”** means any service transmitted by means of a telecommunication system;

**“telecommunications system”** means any system by means of which signs, signals, sounds, pictures or communications are conveyed by the agency of electricity, magnetism or electromagnetism or by any agency of a like nature, whether with or without the aid of wires, and includes telephony and telegraphy and any improvements or developments thereof;

**“telegram”** means any communication transmitted or intended to be transmitted by a telegraph service or delivered or intended to be delivered from any post office or telegraph office as a communication transmitted either wholly or partly by a telegraph service, and includes a communication transmitted or intended to be transmitted by means of a radiocommunication service that is reduced to writing;

**“telegraph employee”** means any person employed by a telecommunication licensee to accept, transmit or deliver telegrams;

**“telegraph office”** means any place used for the handling of telegrams;

**“telegraph service”** means a telecommunication service by means of which a person using the service may communicate by means of a telegram with another person;

**“telephone service”** means a telecommunication service by means of which a person using the service may speak or in any other way communicate to another person using the service;

**“transmission”**, in relation to—

(a) a telegram, includes the reception as well as the sending thereof;

(b) a postal article, includes the depositing by the sender of the article in a post box;

**“under-serviced area”** means any area that is not, in the opinion of the Minister formed in consultation with the Authority, adequately provided with communications services.

**“universal service”** means the availability of accessible and affordable to every person of information and communication services, including telecommunication services determined by the Authority as being a service to be provided by a licensee to an area or sector not served or adequately served by the service.

**“vessel”** means and includes a ship, boat, air-cushioned vehicle or floating rig, vehicle or container which moves on water or platform used in navigation.

(2) For the purposes of this Act—

- (a) a postal article shall be deemed to be in the course of transmission by post from the time of its delivery to a post office and until it is delivered to the person to whom it is addressed or returned to the sender or otherwise disposed of under this Act;
  - (b) the placing of an article in any post box or the delivery of an article to an employee of a postal licensee in the course of his or her duties shall be deemed to be delivery to a post office;
  - (c) the delivery of a postal article in terms of this Act shall be deemed to be delivery to the person to whom the postal article is addressed;
  - (d) in the case of a building which consists of a number of self-contained residences commonly known as flats, each such flat shall be regarded as a single building.
- (3) Any reference in this Act to--
- (a) the provision, reception or transmission of telecommunication services includes the provision or reception within or transmission to Zimbabwe of any such service by satellite;
  - (b) the operation in Zimbabwe of telecommunication systems includes the operation in Zimbabwe of telecommunication apparatus connected to telecommunication systems operated outside Zimbabwe.

### **3 Objects of Act**

The objects of this Act are—

- (a) to provide a framework for the regulation of the communications sector by an independent regulatory authority and for the provision of communications services;
- (b) to promote the availability of efficient and quality communications services nationally;
- (c) to promote technological innovation and the introduction and maintenance of the use of advanced facilities and services in line with international standards;
- (d) to encourage private investment and the participation by citizens of Zimbabwe in the communications sector;
- (e) to ensure increased accessibility of efficient and quality communications services to all regions of the country at fair and reasonable prices to consumers;
- (f) to enhance regional and global co-operation and integration in communications services; and
- (g) to ensure fair competition in the communications sector and to advance consumer protection from unfair business practices by communications services providers.

**PART II**  
**ESTABLISHMENT, FUNCTIONS AND POWERS OF THE TELECOMMUNICATIONS**  
**COMMUNICATIONS AUTHORITY**

#### **4 Establishment of Authority**

(1) The Postal and Telecommunications Regulatory Authority of Zimbabwe established by section 3 of the repealed Act shall continue in force and shall be known as the Postal and Telecommunications Regulatory Authority of Zimbabwe and shall be deemed to have been established in terms of this section.

(2) The Authority shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

#### **5 Functions of Authority**

(1) Subject to this Act, the functions of the Authority shall be—

- (a) to regulate the provision and access to diverse and widespread postal and telecommunication services of a standard sufficient to meet national and international needs of Zimbabwe; in accordance with the provisions of this Act and in so doing ensure that, as far as it is practicable, the services so provided are widespread, diverse, inclusive and sufficient to the national and international demand for postal and telecommunication services;
- (b) without prejudice to the generality of paragraph (a), to ensure that any person by whom any postal or telecommunication service falls to be provided, is able to provide those services at rates consistent with the provision of an efficient and continuous service and the necessity of maintaining independent financial viability;
- (c) to promote the development of postal and telecommunication systems and services in accordance with practicable recognised international standards and public demand;
- (d) to recommend to the Minister the categories and content of any licence as may be necessary from time to time and to exercise licensing and regulatory functions in respect of postal or telecommunication systems and services, including the establishment of standards and codes relating to the operation of any postal and telecommunication systems and services;
- (e) to administer the radio frequency spectrum covering the band 8.3KHz-300GHz equitably and in the national and public interest, with due regard the rights granted under other enactments;
- (f) to promote the interests of consumers in respect of the quality and variety of postal and telecommunication services provided and telecommunication equipment supplied;
- (g) to maintain and promote effective competition between persons engaged in the provision of postal and telecommunication services and any activities connected therewith;
- (h) to promote and ensure the expansion of postal and telecommunication services and secure the availability throughout Zimbabwe of a wide range of communication services which are of a high quality;
- (i) to promote research and development in the postal and telecommunications sector;
- (j) to establish and regulate, as necessary, telecommunication gateways and to promote and control the provision of international transit services by telecommunication services providers in Zimbabwe;

- (k) to ensure access to emergency services by all telecommunication users;
  - (l) to ensure information and cyber security, network reliability and integrity;
  - (m) to promote and ensure access to postal and telecommunication services by persons with disabilities and other persons with special needs;
  - (n) to ensure public health and safety with respect to telecommunications installations by licensed operators, in particular exposure to excessive electromagnetic fields;
  - (o) to ensure the safe disposal of disused or unusable communication equipment;
  - (p) to regulate the registration, administration and management of IXPS internet services and domain names for Zimbabwe;
  - (q) to regulate the registration of sim cards for telecommunication services;
  - (r) to administer national satellite orbit allocations;
  - (s) administer the numbering and naming resources taking into account international standards, processes and procedure for the management of such resources.
  - (t) to investigate complaints and determine disputes relating to sector operations and make appropriate determinations in connection therewith;
  - (u) to represent Zimbabwe internationally in matters relating to postal and telecommunication services and ensure domestic implementation of International Agreements and Treaties, as appropriate.
- (2) The Authority shall exercise any function imposed upon it under any other Act of Parliament.
- (3) In the exercise of its functions in terms of subsection (1)(u), it shall be the responsibility of the Authority, subject to such directions as the Minister may give in this regard—
- (a) to provide technical support and to represent Zimbabwe on international and other bodies having postal or telecommunications functions;
  - (b) to become, or to serve as, a member of any international or other body having postal or telecommunications functions;
  - (c) to subscribe to any such body;
- (4) Subject to this Act, for the better exercise of its functions the Authority shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the *First Schedule*, either absolutely or conditionally and either solely or jointly with others.
- (5) Subject to this Act, the Authority shall not, in the lawful exercise of its functions under this Act, be subject to the direction or control of any person or authority.

### **PART III**

#### **POSTAL AND TELECOMMUNICATIONS REGULATORY AUTHORITY BOARD**

##### **6 Establishment of Board of Authority**

The operations of the Authority shall, subject to this Act, be controlled by a board to be known as the Postal and Telecommunications Regulatory Authority of Zimbabwe Board.

## 7 Composition of Board

(1) Subject to this section, the Board shall consist of not fewer than nine and not more than eleven members appointed by the President after consultation with the Minister.

(2) In appointing the members of the Board, the President shall endeavour to secure that members are representative of groups or sectors of the community having an interest in postal services and telecommunications, and, in particular, that at least seven of the members are chosen for their experience or professional qualifications or competence in—

- (a) telecommunications;
- (b) postal services;
- (c) law;
- (d) accountancy;
- (e) economics; and
- (f) human resources and administration.

(3) At least half of the members of the Board shall be women.

(4) The President shall designate one of the members as chairman of the Board and another member as vice-chairman of the Board.

(5) A member shall hold office for a period not exceeding four years and shall be eligible for re-appointment for a further one term of office:

Provided that a member shall continue in office after the expiry of his or her term until he or she has been re-appointed or his or her successor has been appointed.

(6) Subject to this section, the *Second Schedule* shall apply—

- (a) to the qualifications, terms and conditions of office, vacation of office, suspension and dismissal of members of the Board; and
- (b) to the procedure to be followed by the Board at its meetings.

## 8 Members of Board and committees to disclose certain connections and interests

(1) In this section—

“**relative**”, in relation to a member of the Board or of a committee, means—

- (a) the member’s spouse or a person living with a member in a relationship similar to a marriage; or
- (b) a person separated by not more than two degrees of natural or adopted consanguinity or affinity from a member;

(2) Subject to subsection (4)—

(a) if a member of the Board or of a committee—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or a committee thereof; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his or her functions as a member; or

(iii) knows or has reason to believe that his or her relative—

A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or the committee; or

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his or her functions as a member;

or

(b) if for any reason the private interests of a member of the Board or of a committee come into conflict with his or her functions as a member;

the member shall forthwith disclose the fact to the Board or to the committee, as the case may be.

(3) A member referred to in subsection (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board or the committee, as the case may be, which relates to any contract, right, immovable property or interest referred to in that subsection.

(4) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or, to imprisonment for a period not exceeding three months or, to both such fine and such imprisonment.

## **PART IV FINANCIAL PROVISIONS**

### **9 Funds of Authority**

(1) The funds of the Authority shall consist of—

(a) fees, charges and other income accruing to the Authority from licences issued and other things done by it in terms of this Act; and

(b) any fines payable to the Authority in terms of this Act; and

(c) such moneys as may be payable to the Authority from moneys appropriated for the purpose by Act of Parliament; and

(d) such other moneys as may vest in or accrue to the Authority, whether in the course of its operations or otherwise; and

(e) funds donated or lent to the Authority.

(2) Moneys not immediately required by the Authority during the course of the year may be invested in such manner as the Board, in consultation with the Minister and the approval of the Minister responsible for finance, may approve.

### **10 Surplus funds of Authority to be appropriated to Universal Service Fund**

Any surplus of income over expenditure at the end of the Authority's financial year shall be appropriated to the Universal Service Fund established by subsection (1) of section 83.

## **11 Financial year of Authority**

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

## **12 Accounts of Authority**

(1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Authority's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year of the Authority, the Authority shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

## **13 Audit of Authority's accounts**

(1) Subject to the Public Finance Management Act [*Chapter 22:19*], the Authority shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Authority in terms of subsection (1) of section 12 shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subsection (2) of section 12 and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Authority's affairs.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the Authority's operations, funds and property as the Minister may consider expedient, and the Board shall forthwith comply with any such requirement.

## **14 Powers of auditors**

(1) An auditor referred to in section 13 shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating to such accounts which are kept by the Authority or its agents and to require from any member of the Board or employee or agent of the Authority such information and explanations as in the auditor's opinion are necessary for the purposes of his or her audit.

(2) Any member of the Board or employee or agent of the Authority who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or, to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

**PART V**  
**MISCELLANEOUS PROVISIONS RELATING TO AUTHORITY**

**15 Minister may give policy directions**

(1) Subject to subsection (2), the Minister may give the Board such general directions relating to the policy the Authority is to observe in the exercise of its functions as the Minister considers necessary in the national interest.

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal.

(3) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given to the Board in terms of subsection (1), the Board shall ensure that the direction and any views the Board has expressed on it in terms of subsection (2) are set out in the Authority's annual report.

**16 Minister may direct Board to reverse, suspend or rescind its decisions or actions**

(1) Subject to subsection (2), where the Minister, after consultation with the President, is of the view on reasonable grounds that any decision or action of the Board is not in the national or public interest or the interests of consumers or licensees as a whole, the Minister may direct the Board in writing to reverse, suspend or rescind such decision or to reverse, suspend or rescind such action.

(2) Before making any direction in terms of subsection (1), the Minister shall inform the Board in writing of his or her intention to do so, setting out the purport of the proposed direction and his or her grounds for making it, and the Board may, within fourteen days of being so informed, make written representations to the Minister on the matter.

(3) The Board shall, with due expedition or within a period that the Minister may direct in writing, comply with any direction given to it in terms of subsection (1).

**17 Execution of contracts and instruments by Authority**

Any agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Authority by any persons generally or specially authorised by the Board for that purpose.

**18 Reports of Authority**

(1) In addition to any report which the Authority is required to submit to the Minister in terms of this Act or the Public Finance Management Act [*Chapter 22:19*], the Authority—

(a) shall submit to the Minister such other reports as the Minister may require; and

(b) may submit to the Minister such other reports as the Authority considers advisable;

in regard to the operations and property of the Authority.

(2) The Minister shall, within six months of the end of the Authority's financial year, lay before Parliament a report submitted to him or her by the Authority in terms of subsection (1), together with

the statement of accounts and auditor's report for the preceding financial year of the Authority referred to in sections 12 and 13.

## **19 Director-General and other employees of Authority**

(1) For the better exercise of the functions of the Authority the Board shall, in consultation with the Minister, appoint a person to be the Director-General of the Authority, on such terms and conditions as the Board, with the approval of the Minister, may fix.

(2) The Board shall terminate the appointment of the Director-General if he or she would be required in terms of subparagraph (2)(a) or (b) of paragraph 4 of the Second Schedule to vacate his or her office had that paragraph and paragraph 2 of the Second Schedule applied to him or her.

(3) The Board shall not terminate the services of the Director-General on a ground other than one referred to in subsection (2) without the approval of the Minister.

(4) The Authority shall employ such persons in addition to the Director-General as it considers expedient for the better exercise of the functions of the Authority:

(5) Subject to the general control of the Board, the Director-General shall be responsible for--

- (a) managing the operations and property of the Authority; and
- (b) supervising and controlling the activities of the employees of the Authority in the course of their employment.

(6) The Board may assign to the Director-General such of the functions of the Board as the Board thinks fit:

Provided that the Board shall not assign to the Director-General any duty that has been assigned to the chairman of the Board.

(7) Any assignment of functions in terms of subsection (6)—

- (a) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Board may determine;
- (b) may be amended or revoked by the Board at any time.

(8) The Director-General shall have the right to attend meetings of the Board and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Board as if he or she were a member, but shall not have a vote on any question before the Board.

## **20 Departments of Authority**

The Authority shall have such departments or divisions as the Board may establish from time to time.

## **21 Delegation of functions under this Act**

The Director-General may delegate to any appropriate employee of the Authority any functions which by this Act or any Act referred to in subsection (2) of section 5 is conferred or imposed upon him or her, other than the power to delegate.

## **22 Exemption from liability for Authority**

No liability shall attach to the Authority or to any employee of the Authority or the Board or to a member of the Board or any committee of the Board for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Authority or the Board:

Provided that this section shall not be construed so as to prevent any person from recovering compensation for any loss or damage sustained by him or her which was caused by  
negligence

## **PART VI LICENSING**

### **23 Postal licences**

(1) Subject to this section, no person shall operate a postal service except in accordance with an appropriate licence issued by the Authority in terms of this Act.

(2) The Minister may, after consultation with the Authority, make regulations prescribing the classes or types of postal licences and the terms and conditions subject to which any of the licences shall be issued by the Authority for the purposes of this Act.

(3) Except as otherwise prescribed, any licence issued in terms of this section shall not authorise any person, other than a statutory corporation or any other company designated by the Minister, to provide a reserved postal service:

Provided that, if any company referred to in this subsection ceases to exist or to operate a reserved postal service, or if its licence is cancelled or suspended, the Authority may, after consultation with the Minister, issue an appropriate licence to any other person authorising that person to provide a reserved postal service.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(5) In addition to any punishment it may impose under subsection (4) and without derogation from its powers under any enactment, a court convicting a person of contravening subsection (1) shall declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence:

Provided that the court shall not make such a declaration if the convicted person satisfies the court that, for reasons which it shall record, there are special reasons in the particular case why the equipment or apparatus concerned should not be forfeited.

(6) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to a declaration in terms of subsection (6).

### **24 Telecommunications licences**

(1) Subject to this section, no person shall provide any telecommunication service or operate a telecommunication network or system except in accordance with an appropriate telecommunication licence.

(2) The Minister may make regulations prescribing—

(a) the classes or types of telecommunication licences, the geographic and population-related coverage for any such licences and such other terms and conditions subject to which any of the licences shall be issued by the Authority for the purposes of this Act; and

(b) abolishing any class or type of licence subject to such period of notice as may be prescribed.

(3) In pursuance of rights conferred and to the extent authorised by or under--

(a) the Electricity Act [*Chapter 13:19*], the Zimbabwe Electricity Supply Authority; and

(b) the Railways Act [*Chapter 13:09*], the National Railways of Zimbabwe;

shall, subject to subsection (4), be authorised to operate telecommunication services or systems for the purpose of providing private telecommunication services or systems.

(4) The Authority shall, without delay, cause appropriate telecommunication licences to be issued to the statutory bodies referred to in subsection (3), and those licences may be renewed or amended, but not, except with the consent of the Minister, suspended or cancelled, in all respects as if they had been issued in terms of this Part.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) In addition to any punishment it may impose under subsection (5) and without derogation from its powers under any enactment, a court convicting a person of contravening subsection (1) shall declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence:

Provided that the court shall not make such a declaration if the convicted person satisfies the court that, for reasons which it shall record, there are special reasons in the particular case why the equipment or apparatus concerned should not be forfeited.

(7) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to a declaration in terms of subsection (6).

## **25 Radio frequency spectrum licence**

(1) Subject to this Act, no person shall use any radio frequency spectrum to provide a service or transmit any signal by radio or use any radio apparatus to receive any signal by radio except in accordance with a radio frequency spectrum licence issued by the Authority which shall have the exclusive authority to control and manage the use of the radio frequency spectrum.

(2) Notwithstanding that a person is the holder of any other licence issued in terms of this Act for another service, such person shall be required to apply for a radio spectrum frequency licence if the provision of such other service requires the use of radio frequency spectrum.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable to a fine not exceeding level fourteen or to imprisonment for period not exceeding two years or to both such fine and such imprisonment.

(4) In addition to any penalty it may impose under subsection (3) and without derogation from its powers under any enactment, a court convicting a person of contravening subsection (1) or (2) shall declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence:

Provided that the court shall not make such a declaration if the convicted person satisfies the court that, for reasons which it shall record, there are special reasons in the particular case why the equipment or apparatus concerned should not be forfeited.

(5) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to a declaration in terms of subsection (3).

## **26 Radio station licence**

(1) Subject to this section, no person, other than the Broadcasting Corporation, shall have in his or her possession or under his or her control or work a radio station specified in the *Third Schedule*, except in accordance with a radio station licence.

(2) Subject to this section, no person other than the Zimbabwe Broadcasting Corporation or a person licensed in terms of the Broadcasting Services Act [*Chapter 12:06*] shall have in his or her possession or under his or her control or work a radio transmitting station which is not a radio station specified in the *Third Schedule*.

(3) Subject to this section, no person shall have in his or her possession or under his or her control or work a radio transmitting station which is not a radio station specified in the *Third Schedule*.

(4) The Authority may issue a temporary radio station licence authorising a person to possess a radio station referred to in subsection (1) or a radio transmitting station referred to in subsection (2) for a limited period on condition that the station is not used for the purpose of carrying on a radio communication service.

(5) Subsection (1) shall not, except in so far as it relates to the working of a radio station referred to in that subsection, apply in relation to a person whose licence has been cancelled or which has not been renewed unless the person as failed to dispose of the radio station in his or her possession or under his or her control within the period specified by the Authority in terms of that subsection.

(6) Subsection (1) shall not apply to an authorised repairer who, for the purposes of testing and repair, has in his or her possession or under his or her control or works a radio transmitting station referred to in that subsection.

(7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(8) In addition to any punishment it may impose under subsection (6) and without derogation from its powers under any enactment, a court convicting a person of contravening subsection (1) or (2) shall declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence:

Provided that the court shall not make such a declaration if the convicted person satisfies the court that, for reasons which it shall record, there are special reasons in the particular case why the equipment or apparatus concerned should not be forfeited.

(9) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to a declaration in terms of subsection (7).

## **27 Persons disqualified to be licensed**

(1) The Authority shall not issue any licence to any person other than a body corporate in which a controlling interest is held, directly or indirectly, whether through any individual, company or association or otherwise, by one or more individuals who are citizens of Zimbabwe and ordinarily resident in Zimbabwe:

Provided that a licence may be issued to a body corporate in which no such controlling interest is held, subject to the condition that, within a period specified in the licence, a controlling interest is held by one or more such individuals.

(2) For the purposes of this section “controlling interest”, in relation to a body corporate, means--

- (a) the majority of shares in the body corporate; or
- (b) shares representing more than half the share capital of the body corporate; or
- (c) shares of a value in excess of half the share capital of the body corporate; or
- (d) shares entitling the holders thereof to a majority or preponderance of votes in the affairs of the body corporate.

(3) The Authority shall not, without the authority in writing of the Minister, issue any licence to a person who is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe or to a body corporate other than a body corporate in which a controlling interest is held in terms of subsections (1) and (2).

## **28 Application for and issue and publication or refusal of licence**

(1) An application for a licence shall be made to the Authority in the form and manner prescribed and be accompanied by the prescribed fee, if any, and such information or documents as may be prescribed or as it may require, including information concerning any tariff required in terms of section 82.

(2) An applicant for a licence who owns more than ten *per centum* of the shares in a body corporate which has applied for or holds another such licence shall disclose such interest to the Authority in the application.

(3) An applicant for any telecommunication licence shall specify in the application the types or classes of licences sought by the applicant.

(4) Subject to subsection (6) and (7) and section and 39, if on consideration of an application in terms of subsection (1) the Authority is satisfied that--

- (a) the applicant will comply with such of the provisions of this Act as apply to the service or system he or she intends to provide or operate; and
- (b) the grant of the licence does not infringe upon the rights of a prior licensee; and
- (c) in the case of an applicant referred to in subsection (2), the grant of the licence is not detrimental to the interests of consumers, purchasers and other users of the services concerned;
- (d) the issue of the licence is in the national interest; and
- (e) the applicant is a fit and proper person to hold a licence;

the Authority may issue the licence sought by the applicant.

(5) Within thirty days after the issue of a licence referred to in subsection (4), the licensee shall, at the licensee's own expense, cause the licence to be published in a newspaper circulating in the area in which the licensee intends to operate.

(6) Subject to subsection (7) and to section 114, if on consideration of an application in terms of subsection (1), the Authority—

- (a) is not satisfied as to the matters referred to in subsection (4); or
- (b) considers that the service or system in respect of which the application is made is adequately provided for by a prior licensee, or that the efficiency of the provision or operation of the service or system in question by any prior licensee may be compromised if the application is granted; or
- (c) considers that it would not be in the public interest to issue a licence to the applicant;

the Authority may refuse to issue a licence to the applicant concerned:

Provided that—

- (i) before refusing to issue a licence on the ground referred to in paragraph (a), the Authority shall notify the applicant in writing that it proposes to refuse the application and of its reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;
- (ii) within ten days after deciding to refuse to issue a licence on any ground, the Authority shall notify the applicant in writing of its decision and of the reasons for it.

(7) The period between the Authority's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which it notifies the applicant of its decision or proposed decision in terms of subsection (4) or (6), as the case may be, shall not exceed six months unless the applicant consents to an extension of the period.

## **29 Terms and conditions of licences**

(1) A licence shall be issued subject to such terms and conditions as may be prescribed or as the Authority may reasonably determine.

(2) In the case of a licence issued to an applicant referred to in subsection (2) of section 28, the licence may be issued subject to the condition that the licensee shall divest himself, herself or itself within a specified period of any holding of shares in another licensee exceeding ten *per centum*.

(3) No radio station licensee shall employ a person who is not a citizen of Zimbabwe ordinarily resident in Zimbabwe to work or assist in the working or maintenance of a licensed radio station or to carry on or assist in carrying on a radiocommunication service from a licensed radio station.

(4) It shall be a condition of telecommunication licences which authorise licensees to operate a radiocommunication service that the licensee shall comply with the International Telecommunications Constitution as may be appropriate.

(5) It shall be a condition of every licence for postal services that the licensee shall comply with the Constitution of the Universal Postal Union as may be appropriate.

(6) In issuing or renewing a radio station licence, the Authority may impose terms and conditions in regard to the site at which, the purposes for which, the times during which and the manner in which the radio station in respect of which the licence is issued is to be established and worked, the class or

type of the radio station and the method of its installation, and in so doing may exclude or vary, as circumstances may require, any prescribed terms or conditions.

### **30 Form and period of validity of licence**

(1) A licence shall be in the prescribed form and shall specify—

- (a) the type of licence; and
- (b) the name of the licensee; and
- (c) the date of issue and expiry of the licence; and
- (d) any terms and conditions subject to which the licence is issued; and
- (e) any other matters which the Authority considers necessary to give effect to this Act.

(2) A licence shall be valid for such period, whether definite or indefinite, as may be determined by the Authority.

### **31 Register of licences**

(1) The Authority shall maintain or cause to be maintained a register of licences in which shall be recorded, in relation to each licence—

- (a) the name of the licensee; and
- (b) the nature of the licence; and
- (c) any terms and conditions subject to which the licence was issued; and
- (d) any renewal, amendment, suspension or cancellation of the licence.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the offices of the Authority on payment of the prescribed fee, if any.

### **32 Renewal of licence and annual licence fees**

(1) Subject to this Act, the holder of a licence wishing to renew the licence shall to the Authority for the renewal of the licence before it expires.

(2) An application for the renewal of a licence shall be made to the Authority in the form and manner and within the period prescribed, and be accompanied by the prescribed fee, if any.

(3) Section 28 shall apply, *mutatis mutandis*, to the renewal of licences.

(4) The Authority may, in respect of the extension of a current licence, require the licensee to pay a fee which is *pro rata* the prescribed renewal fee in respect of the period of extension in addition to the annual fees which shall be payable in the same manner as the annual fees were payable for the licence being extended.

### **33 Amendment of licence**

(1) Subject to this section, the Authority may at any time amend a licence or any term or condition of a licence—

- (a) to correct any error in the licence; or

- (b) if the licensee requests the amendment; or
- (c) if the Authority considers the amendment necessary to reflect the true nature of the service, system or business which the licensee is conducting; or
- (d) if for any other reason the Authority considers the amendment necessary or desirable in the public interest; or
- (e) to implement a changes in the National Radio Frequency Spectrum Plan or for the orderly management of the frequency spectrum.

(2) Before amending a licence in terms of subsection (1), otherwise than at the request of the licensee, the Authority shall notify the licensee in writing of the nature of the amendment it proposes to make and of its reasons for wishing to make the amendment, and shall give the licensee an adequate opportunity to make representations in the matter.

(3) If the Authority refuses to amend a licence at the request of the licensee, it shall, within ten days after reaching its decision, notify the licensee in writing of its decision and of the reasons for it.

### **34 Suspension, cancellation and enforcement of licences**

(1) Subject to this section, the Authority may suspend or cancel any licence if the Authority has reasonable grounds for believing that—

- (a) the licence was issued in error or through fraud or the misrepresentation or non-disclosure of a material fact by the licensee; or
- (b) the licensee has contravened any provision of this Act that is applicable to him or her; or
- (c) the licensee misrepresents the service or system he or she offers to the public; or
- (d) the licensee has ceased to provide the service or system specified in the licence; or
- (e) the licensee has assigned, ceded or otherwise transferred the licence to another person without the prior approval of the Authority; or
- (f) the licensee has failed to comply with any term or condition of the licence.

(2) Before taking any action in terms of subsection (1), the Authority shall notify the licensee in writing of its intention to suspend or cancel the licence concerned and the reasons for doing so, and shall call upon the licensee to show cause, within such reasonable period as may be specified in the notice, why the licence should not be suspended or cancelled, as the case may be.

(3) If, at the expiry of the period specified in the notice given in terms of subsection (2), and after considering any representations made by the licensee, the Authority is satisfied for any reason specified in subsection (1) that the licence concerned should be suspended or cancelled, the Authority may, by notice in writing to the licensee suspend or cancel the licence or take such other action as it considers appropriate and the Authority shall not be liable to refund to a person whose licence has been suspended or cancelled the fees or any portion of the fees paid on the issue of the licence.

(4) Without derogation from its powers in terms of subsections (1), (2) and (3), where the Authority is satisfied that a licensee is contravening, has contravened or is likely to contravene any of the terms or conditions of the licence, the Authority may serve upon the licensee an order--

- (a) requiring the licensee to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any term or condition of the licence; and

- (b) stipulating the period within which any requirement referred to in paragraph (a) shall be commenced and completed;

and notice of the order shall be published by the Authority in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the licence.

(5) Before serving an order in terms of subsection (4), the Authority shall serve a notice upon the licensee concerned--

- (a) specifying the grounds upon which the order is to be issued and what the Authority considers is required for the purpose of rectifying or avoiding any contravention or threatened contravention of any term or condition of the licence; and
- (b) stipulating the maximum period that the Authority considers reasonable for the implementation of any requirement it proposes to order; and
- (c) calling upon the licensee, if the licensee wishes to make representations, to make them to the Authority within such period from the date of service of the notice as it shall specify and the representations may also indicate the reasons why the proposed order should not be made permanent.

(6) After considering any representations made in terms of paragraph (c) of subsection (5), the Authority may serve, or refrain from or defer serving, an order in terms of subsection (4), or serve an order on different terms.

(7) An order served in terms of subsection (4) may specify a penalty for each day that the licensee subjected to the order is in default of compliance with the order, not exceeding the period and amount prescribed.

(8) The obligation to comply with an order served in terms of subsection (4) is a duty owed to any person who may suffer loss or damage by a contravention of it.

(9) Civil proceedings for specific performance, an interdict, damages, the recovery of any penalty imposed in terms of subsection (7) or other appropriate relief in respect of any contravention or threatened contravention of an order served in terms of subsection (4) may be brought against the licensee concerned by the Authority and, additionally, or alternatively, by any person referred to in subsection (8).

(10) The amount of any penalty imposed in terms of subsection (7) shall form part of the funds of the Authority.

(11) Upon cancellation or suspension of a licence in terms of this section, the Authority shall forthwith, by notice in the *Gazette*, notify the public of such cancellation or suspension.

### **35 Licensee to inform Authority of changes**

(1) A licensee shall without delay inform the Authority of any material alteration in the information or particulars furnished by him or her when he or she applied for his or her licence.

(2) A licensee, other than a licensee referred to in subsection (3) of section 24, shall not, without the approval of the Authority, transfer or permit the transfer by any shareholder, of more than 10% of the shares in the licensee.

### **36 Transfer of licences prohibited**

No licensee shall assign, cede or otherwise transfer his or her licence to any other person without the prior approval of the Authority.

### **37 Interest on unpaid fees**

If any fee or part thereof remains outstanding after due date, the licensee shall be liable for interest thereon at the prescribed rate of interest for the period any amount remains outstanding.

### **38 Exemptions**

(1) The Minister may, after consultation with the Authority, make regulations prescribing the terms and conditions under which the Authority may in writing grant to any applicant or licensee or class of applicants or licensees an exemption from any provisions of this Act for such period as may be specified in such, with any of the requirements for registration or obligations of a licensee under this Act.

(2) The Authority may, on written notice to the applicant concerned, rescind any exemption granted in terms of this section.

### **39 Infrastructure sharing**

(1) Where considerations of effective use of resources, the interests of health, the environment or safety or other societal interests warrant that duplication of infrastructure should be avoided, the Minister may by regulation, prescribe on a public licensee or on a dominant licensee an obligation to meet a reasonable request for co-location or other shared utilisation of infrastructure within the market where as may be appropriate to promote sustainable competition.

(2) In determining whether a request is reasonable, account shall be taken of—

- (a) the public or dominant licensee's interest in control over its own infrastructure against the need to give others the access necessary to be able to offer competing services;
- (b) whether in the light of developments in the market, it is technically, economically and commercially viable to install or use competing infrastructure;
- (c) the available capacity and sustainable competition in the long term;
- (d) the licensee's investment in relation to the risk with which the investment is associated;
- (f) the need to sustain the network's integrity and protect intellectual property rights;
- (h) the desirability of securing the availability of telecommunication services throughout the country; and
- (i) the investment made by the licensee who is required to share its infrastructure.

(3) A determination shall be made for an equitable apportioning and for the making of contributions towards costs incurred in relation to shared infrastructure and the manner in which the contributions shall be paid to the public licensee or dominant licensee.

(4) The Minister shall make regulations prescribing the manner in which consultations with the public licensee or dominant licensee concerned shall be made with a view to affording the licensees an adequate opportunity to be heard, providing appropriate justification for any position taken by the licensee in relation to any requirement for infrastructure sharing.

- (5) Regulations referred to in this section may include provision for securing—
- (a) fairness and reasonableness in the manner in which requests for infrastructure-sharing are made and responded to; and
  - (b) that the obligations contained in any determination for infrastructure-sharing are complied with within specified periods.

## PART VII

### NUMBERING AND ADDRESSING RESOURCES

#### **40 Management of numbering and addressing resources**

(1) The Authority shall be responsible for establishing a national post and telecommunications services numbering and addressing resources plan, and the assignment, regulation, management and control of the usage of the resources to ensure that the resources are allocated efficiently, in a non-discriminatory manner and in line with the International Telecommunications Union standards and any other relevant international or regional instruments of which Zimbabwe is a party.

(2) The Authority may delegate any or all of its functions under this section to any person with the necessary technical capacity and shall at all times operate under the direction of the Authority and in accordance with this Act or any regulations prescribed for the purposes of this section.

#### **41 Numbering and addressing plan**

(1) The Authority shall develop a numbering plan and an addressing plan for numbering and addressing for network and application services.

(2) The numbering and addressing plans shall set out rules which shall include--

- (a) use of different numbers and addresses for different kinds of services;
- (b) assignment of numbers and addresses;
- (c) transfer of assigned numbers and addresses;
- (d) the efficient use of assigned numbers and addresses;
- (e) portability of assigned numbers and addresses;
- (f) requirements for licensees or service providers to maintain a plan for the efficient assigning and reassigning numbers and addresses;
- (g) the maintenance by a licensee of a database of assigned resources and, with the permission of a subscriber, the publication of numbers and addresses in directory of information;
- (h) the basis of withdrawal by the Authority of number assignment to any operator;
- (i) the return to the Authority of assigned numbers not required by a licensee;
- (j) fees which may be charged by the Authority for the assignment and transfer of numbers and addresses.

(3) The Authority shall maintain and publish a database of the numbering and addressing plans and shall ensure that they are up-dated regularly.

(4) No person may use any numbering or addressing resources except as provided for in terms of this section and any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(5) A court convicting a person for contravention of this section may declare any equipment used in the commission of the offence forfeited to the State.

#### **42 Subscriber registration**

(1) No person shall activate service to a subscriber on its telecommunication network system unless the subscriber details have been registered and all the prescribed requirements of subscriber registration have been complied with.

(2) Every subscriber of any telecommunication service shall register for the service in accordance with such subscriber requirements as may be prescribed.

#### **43 Licensee to establish and maintain subscriber records**

(1) A licensee shall establish a register of subscribers or a subscriber database in the form prescribed and shall retain such registers for a period of at least five years from the date on which the SIM ceases to be active.

(2) A licensee shall make available to the Authority, in such manner as may be prescribed, the subscriber register or data base inspection.

(3) The Authority shall maintain copies of the subscriber registers or data bases of licensees.

(4) Any person who contravenes subsection (1) and (2) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **PART VIII**

#### **RADIO FREQUENCY SPECTRUM**

##### **44 Administration of radio frequency spectrum**

(1) The Authority shall plan and administer the radio frequency spectrum within the range 8.3 KHz to 3000GHz or any other range as may be prescribed.

(2) The Authority shall administer geostationary satellite orbital slots allocated to Zimbabwe.

(3) In the discharge of its functions in terms of this section, the Authority shall--

- (a) take all steps necessary to ascertain the demand for, the effects of and the likely future developments in, the use of the electromagnetic spectrum for wireless services and applications and any other related matters which the Authority may consider relevant;
- (b) take into account the International Radio Regulations and any other relevant international and regional instruments to which Zimbabwe is a party.
- (c) ensure the efficient utilisation of the radio frequency spectrum, taking into account the need for regional and global harmonisation;
- (d) pay due regard to the radio frequency spectrum currently assigned to the Government, civil aviation, aeronautical services, scientific research and other its planned uses;
- (e) ensure flexibility to enable the swift and efficient introduction of new technologies;

- (f) create opportunities for the introduction of the widest range of services and the maximum number of users possible;
- (g) eliminate harmful interference to licensed systems, including interferences from across Zimbabwe's borders;
- (h) ensure the equitable distribution of radio frequency spectrum among different services.

#### **45 National Frequency Allocation Plan**

(1) The Authority shall develop and maintain a frequency allocation plan to be known as the Zimbabwe National Frequency Allocation Plan.

(2) The plan shall set out the apportionment of the radio frequency spectrum into frequency bands which are allocated to a limited number of radio services designated for use for specified applications.

(3) The plan shall be reviewed and amended at any time to update it as necessary in line with prevailing trends but, in any case and as necessary, within twelve months of the holding of every World Radio Communications Conference.

(4) Before the development or amendment of the plan, the Authority shall give notice in the *Gazette* of its intention to develop or amend the plan, and invite any interested persons to submit written representations to the Authority within such period, being not less than thirty days from the date of publication of the notice, as may be specified in the notice.

(5) Within a further period of thirty days following the expiry of the period referred to in subsection (4), the Authority shall recommend a plan to the Minister who shall be informed of the representations received in terms of that subsection.

(6) The Minister shall, within thirty days of receipt of the recommended plan, either approve the plan and notify the Authority in writing accordingly or direct the Authority to carry out further consultations in which event the Authority shall proceed in terms of subsections (4) and (5).

(7) In developing or amending the plan, the Authority shall take into account the impact of any changes to existing users.

(8) Upon approval of the plan, the Authority shall cause the Plan to be published in the *Gazette* and shall keep the plan posted on the website of the Authority.

(9) The plan and all the representations and documents received under subsection (4) shall be--

- (a) kept at the offices of the Authority; and
- (b) open to the public for inspection during normal business hours of the Authority.

(10) The Authority shall, at the request of any person and upon payment of such fee as may be prescribed, furnish the person with a copy of the National Radio Frequency plan.

#### **46 Development of radiocommunication standards**

(1) Subject to public consultations and with the approval of the Minister, the Authority shall establish technical and operational standards for all frequency bands designated for use in radiocommunication systems for the purpose of—

- (a) ensuring the efficient use of the radio frequency spectrum;
- (b) the protection of the integrity radiocommunication systems or networks;
- (c) ensuring regional and international harmonisation, conformity and interoperability of the radiocommunication systems;
- (d) aligning with the relevant ITU Standards and guidelines; and
- (e) promoting flexibility, certainty and innovation.

(2) The Minister shall, by statutory instrument, publish the technical and operational standards in the *Gazette*.

#### **47 Frequency assignments**

(1) Subject to this section, the assignment of any frequencies to any stations and or classes of stations and the authorizing through licensing of the use of the frequencies between 8.3 kHz and 3000 GHz for radiocommunication or for any other purpose, including the transfer of energy by radio, shall be made in accordance with the Zimbabwe Frequency Allocation Plan.

(2) Provided that no harmful interference will be caused to services operating in accordance with the plan, exceptions to subsection (1) may be authorized--

- (a) in particular cases and on a temporary basis only, for projects of short duration or in emergencies if the Authority is satisfied that the importance and exceptional nature of the circumstances require such utilization on the same frequencies as other similar services;
- (b) for experimental stations for the use of any frequency that is not exclusively allocated to passive services;
- (c) for the interim use of the band by stations in that service for a temporary, specified period, in the event that a band is reallocated so as to delete its availability for use by a particular service.

(3) The Authority shall assign as a block, all frequencies designated for the broadcasting service to the Broadcasting Authority of Zimbabwe and the assignment shall be notified in the *Gazette*.

#### **48 Licensing, authorisation and exemptions**

(1) Subject to this Act, no person shall use any radio frequency spectrum to provide a service or transmit any signal by radio or use any radio apparatus to receive any signal by radio except in accordance with a radio frequency spectrum licence issued by the Authority.

(2) Subject to this section, no person shall have in his or her possession or under his or her control or work a radio station except in accordance with a radio frequency spectrum licence issued for that purpose or in accordance with a specific authorisation given by the Authority.

(3) Subsections (1) and (2) do not apply to—

- (a) television or an audio broadcast receiver as contemplated under the Broadcasting Services Act [*Chapter 12:06*]

(b) such other equipment and devices or classes thereof as may be exempted by the Authority from time to time, whether absolutely or subject to such terms and conditions as may be prescribed.

(4) A radio frequency spectrum licence shall be required in addition to any licence issued for any service in terms of this Act where the provision of such a service requires the use of radio frequency spectrum and similarly for the converse situation.

(5) Any person who contravenes subsection (1), (2) or (4), shall be guilty of an offence and shall be liable to a fine not exceeding level fourteen or to imprisonment for period not exceeding two years or to both such fine and such imprisonment.

(6) In addition to any penalty it may impose under subsection (4) and without derogation from its powers under any enactment, a court convicting a person of contravening subsection (1) or (2) shall declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence:

Provided that the court shall not make such a declaration if the convicted person satisfies the court that, for reasons which it shall record, there are special reasons in the particular case why the equipment or apparatus concerned should not be forfeited.

(7) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to a declaration in terms of subsection (3).

## **PART IX POSTAL SERVICES**

### **49 Postal licensees to comply with licence and regulations**

A postal licensee shall operate in accordance with the licence and regulations made in terms of section 120.

### **50 Post codes and addressing system**

(1) The Authority shall as necessary, develop, regulate and manage post codes and addresses for postal services.

(2) Post codes and addressing system shall be set out in rules and the Authority shall make the codes and systems available for inspection by the public before implementation.

### **51 Money orders and postal orders**

(1) A postal licensee may—

(a) arrange for the remittance of moneys to, from or within Zimbabwe through post offices by means of money orders;

(b) authorise the issue of money orders in the special form of postal orders.

(2) The conditions under which money orders or postal orders shall be issued and paid shall be as prescribed.

(3) Any money paid to a postal licensee in respect of the issue of a money order shall form part of the licensee's income, and if a money order is not claimed and the remitter of that money order cannot be found within three years of the date of the issue of the money order, no liability shall attach to the licensee in respect of the amount of that money order.

## **52 Delivery of postal articles**

(1) The Authority may, from time to time, by notice in the *Gazette*, publish the specifications relating to the number, place, dimensions and other characteristics of letter boxes to be used by a postal licensee, and may approve the installation and use of such other mail delivery systems or arrangements as it thinks fit.

(2) A developer of any residential, commercial or industrial building shall—

- (a) provide one letter box per unit in the case of any residential building and one letter box per tenant in the case of any commercial or industrial building; and
- (b) ensure that the letter boxes provided under paragraph (a) are numbered in numerical sequence; and
- (c) comply with any other specifications published by the Authority in terms of subsection (1).

## **53 Posting boxes**

(1) Subject to such terms and conditions as may be determined by the Authority, a postal licensee may erect, maintain and use posting boxes and postage label vending machines in any public road, street or highway or in any other public place, and may remove any such posting box or postage label vending machine erected by it.

(2) The Authority may determine the conditions subject to which a postal licensee shall be entitled to use posting boxes erected or owned by another such licensee.

## **54 Provision of postage stamps**

(1) In this section—

**“philatelic archival materials”** include--

- (a) philatelic stamps; and
- (b) artworks, proofs, progressive sheets, printed sheets and printing plates of philatelic stamps; and
- (c) date-stamps, slogan dies and other artefacts used in connection with the production of philatelic stamps.

(2) Subject to this Act and any directions given by the Authority, a postal licence authorising the provision by the licensee of postage stamps may cause postage stamps to be provided of such kinds and denoting such values as the licensee may determine.

(3) A postage stamp provided under this section shall be used for the prepayment of any postage or other sum chargeable in respect of any postal article, except where the postal licensee concerned determines that prepayment may be made in some other manner.

(4) All philatelic archival materials produced by a postal licensee shall be kept in such custody as the Authority directs.

### **55 Official marks to be *prima facie* evidence of certain facts denoted**

In any proceedings for the recovery of any postage or other fee or sum payable in respect of a postal article—

- (a) the production of a postal article having thereon the official mark of a postal licensee denoting that the article has been refused or that the addressee is dead or cannot be found shall be *prima facie* evidence of the fact so denoted; and
- (b) the person from whom any postal article purports to come shall, until the contrary is proved, be deemed to be the sender thereof.

### **56 Recovery of postage and other sums due in respect of postal services**

(1) Where any postage or other fee or sum is not prepaid or fully prepaid in respect of a postal article posted for delivery by a postal licensee, the postal licensee may refuse to deliver the postal article until the postage or other fee or sum has been paid to or recovered by him or her.

(2) If any postage or other fee or sum has not been paid or recovered within six months of a written demand by the postal licensee made to the person liable to pay it, the licensee may dispose of the postal article in any manner described in paragraph (d) of subsection (1) of section 57, and paragraph (e) of subsection (1) and subsection (2) of that section shall, *mutatis mutandis*, apply to such disposal.

(3) An official mark or label on a postal article denoting that any postage or other fee or sum is due in respect thereof to a postal licensee or to the postal authority of any foreign country shall be *prima facie* evidence that the postage or other fee or sum denoted is so due.

### **57 Undeliverable postal articles**

(1) The following provisions shall apply to any postal article which a postal licensee is unable to deliver or return to the sender after using his or her best efforts--

- (a) the postal licensee shall have the right to open and examine the postal article for the purpose of determining from its contents the identity and address of the addressee or sender;
- (b) the opening and examination of any postal article in terms of paragraph (a) shall be done by an employee of the postal licensee authorised in writing generally or specifically for the purpose by the postal licensee;
- (c) if, after an examination in terms of paragraph (a), the postal licensee--
  - (i) determines the identity and address of the addressee or the sender, he or she shall re-seal the postal article and enclose or append a written explanation of the reasons and the authority for opening it; or
  - (ii) fails to determine the identity and address of the addressee or the sender, he or she shall hold the postal article for six months after the date of the examination and, on being satisfied at any time within that period that any person enquiring for it is entitled to the postal article, deliver it to that person;

- (d) if no delivery of the postal article is made in terms of subparagraph (ii) of paragraph (c), the postal licensee may--
  - (i) destroy the postal article or any of its contents; or
  - (ii) sell any of the contents of the postal article and credit the proceeds to his or her income;
- (e) if the postal article is disposed of in terms of paragraph (d), the postal licensee shall make a record of the disposal and store such record together with other such records in a manner prescribed, or approved by the Authority, for a period of not less than twelve months from the date of the disposal, and the postal licensee shall make such record available for inspection by the Authority at its request.

(2) No liability shall attach to a postal licensee in respect of any postal article dealt with in terms of subsection (1).

### **58 Restriction on opening, detention and examination of postal articles**

(1) Except as otherwise provided by or in terms of this Act or any other law, after a postal article has been delivered to a postal licensee, no person shall open that article.

(2) Subject to this section, if there are reasonable grounds to suspect that a postal article in the custody of a postal licensee—

- (a) contains anything in respect of which an offence or attempted offence is being committed; or
- (b) contains anything that will afford evidence of the commission of an offence; or
- (c) is being sent in contravention of this Act or in order to further the commission of an offence; the postal licensee—
  - (i) may, if specifically or generally authorised to do so by the Prosecutor-General or by a person designated by the Prosecutor-General; and
  - (ii) shall, if directed to do so by the Prosecutor-General or by a person designated by the Prosecutor-General;

detain the postal article and open and examine it in the presence of a police officer or such other person as may be prescribed.

(3) If, on an examination of a postal article in terms of subsection (2)—

- (a) the suspicion that gave rise to its examination is substantiated, the postal article may be detained for the purposes of prosecution or destroyed or dealt with in such other manner as may be prescribed;
- (b) the suspicion that gave rise to its examination is not substantiated, the postal article shall be delivered to the person to whom it is addressed or to his or her representative on payment of any postage payable thereon.

(4) Subject to this section, if the Commissioner-General of the Zimbabwe Revenue Authority or any customs officer designated by him or her suspects on reasonable grounds that any postal article in the custody of a postal licensee contains goods liable to duty or tax imposed under any enactment, he or she may—

- (a) examine the postal article; and

(b) for the purpose of such examination, require an employee of the postal licensee to open the postal article in his or her presence.

(5) If, on an examination of a postal article in terms of subsection (4)—

(a) any goods liable to duty or tax are discovered in the postal article, it may be detained for the purposes of prosecution or may be delivered to the person to whom it is addressed or to his or her representative on payment of the duty or tax and any postage payable thereon;

(b) no goods liable to duty or tax are discovered in the postal article, it shall be delivered to the person to whom it is addressed or to his or her representative on payment of any postage payable thereon.

(6) If the Minister, by written notice to a postal licensee, certifies that it is necessary in the interests of defence, public safety or public order for a postal article in the licensee's custody to be detained and additionally, or alternatively, opened and examined, the postal licensee shall forthwith comply with the notice.

### **59 Exclusion of liability of postal licensees**

(1) A postal licensee shall not be liable in respect of any injury, loss or damage suffered by any person by reason of—

(a) any loss, mis-delivery or delay of or damage to any postal article in the course of transmission by post; or

(b) any failure to provide or delay in providing any postal service or any equipment associated therewith or service ancillary thereto; or

(c) any failure, interruption, suspension or restriction of any postal service or service ancillary thereto or delay of, or fault in, any communication by post; or

(d) any loss of secrecy in communication arising from the use of any postal service; or

(e) any wrong payment or delay in payment in connection with any remittance of money through the post or any other irregularity in the document used in connection with the remittance.

(2) Notwithstanding subsection (1), in the event of the loss of or damage to any article enclosed in or forming part of a parcel or an insured postal article, or the loss of any registered postal article while in the custody of a postal licensee, the licensee may pay an indemnity in accordance with the provisions of the Constitution of the Universal Postal Union or any international agreement to which Zimbabwe is a party.

## **PART X TELECOMMUNICATION SERVICES AND SYSTEMS**

### **60 Telecommunication licensees to comply with licence and regulations**

A telecommunication licensee shall provide telecommunication services or operate telecommunication systems in accordance with the licence and any regulations made in terms of section 120.

### **61 Approval of telecommunications apparatus**

(1) Where a telecommunication licence authorises the connection to any telecommunication system to which the licence relates of any telecommunication apparatus specified in the licence or of a description so specified, the apparatus shall require the prior approval of the Authority before it is so connected.

(2) A person applying for approval in terms of this section shall comply with such requirements as the Authority may think appropriate.

(3) An approval in terms of this section may be granted--

(a) so as to apply to any particular telecommunication apparatus or any class thereof, or for the purposes of a particular telecommunication system or any class thereof;

(b) absolutely or subject to such conditions as the Authority may specify.

(4) The Authority may, subject to subsections (5) and (6), cause a notice to be published in the *Gazette* establishing standards to which apparatus of a specified description shall conform if it is to be approved for connection to a telecommunication system of a specified description.

(5) Before establishing any standard in terms of subsection (4) the Authority shall, by notice in the *Gazette*--

(a) state that it proposes to establish standards for the purposes of this section;

(b) describe any standard it proposes to establish and its effect;

(c) invite any representations or objections in relation to its proposal to be made and lodged with it in writing within twenty-one days from the publication of the notice;

and the Authority shall consider any representations or objections which are duly made and not withdrawn.

(6) In establishing any standard for the purposes of this section, the Authority shall at all times have regard to international standards governing the compatibility and interoperability of telecommunication systems and secure harmonisation and standardisation of the regulation of telecommunication networks, services and associated facilities to facilitate the meeting of any obligations imposed by the Authority on any licensee relating to network access, service interoperability and interconnection, whether or not a licensee is a dominant licensee.

## **62 Roaming**

The Minister may make regulations on national and international roaming on mobile networks, including the fixing of charges, if any which may be levied therefor by licensees.

## **63 Special provisions relating to telecommunication licensees operating telecommunication systems**

(1) Subject to this section and to such exceptions or conditions as the Authority may include in the relevant licence, the Authority may apply any of the provisions of the *Fourth Schedule* to a telecommunication licensee operating a telecommunication system:

Provided that the licensee concerned shall not be released from any duty attaching to or connected with any right or power so applied.

(2) The Authority shall not act in terms of subsection (1) unless it is satisfied, upon representations made by the licensee or proposed licensee concerned, that the operation of the telecommunication system concerned is not otherwise practicable.

(3) Without derogating from the generality of subsection (1), the exceptions and conditions mentioned therein shall include such exceptions and conditions as appear to the Authority to be necessary or expedient for the purpose of securing--

- (a) that the physical environment is protected;
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary;
- (c) that funds are available for meeting any liabilities which may arise from the exercise of any rights or powers applied in terms of subsection (1).

(4) Not later than fourteen days after the publication in terms of subsection (5) of section 28 of the telecommunication licence of a licensee to whom any of the provisions of the *Fourth Schedule* have been applied in terms of subsection (1), any person having an interest in the matter may lodge an objection with the Authority in the form and manner prescribed against the application of any or all such provisions to the licensee concerned.

(5) On receiving an objection in terms of subsection (4) the Authority, after affording all the parties concerned a reasonable opportunity of making representations to it, either in person or in writing, may uphold the objection in whole or in part and amend the licence accordingly or dismiss the objection, and shall notify each party concerned in writing of its decision and of the reasons for it.

(6) Section 114 shall apply to any person who is aggrieved by any decision of the Authority made in terms of subsection (5).

(7) Subsections (4), (5) and (6) shall not apply to the application of any of the provisions of the *Fourth Schedule* to any company designated by the Minister for that purpose.

#### **64 Use of certain conduits for telecommunication purposes**

(1) In this section--

“**authority**” includes a local authority and statutory body;

“**conduit**” includes a tunnel or subway;

“**relevant conduit**” means--

- (a) any conduit which, whether or not it is itself an electricity transmission line, is maintained by an electricity authority for the purpose of enclosing, surrounding or supporting such a line, including, where such a conduit is connected to any box, chamber or other structure (including a building) maintained by an electricity authority for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or
- (b) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another; or
- (c) a public sewer.

(2) The functions of an authority with control of a relevant conduit shall include the power--

- (a) to carry out, or to authorise any person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus; and
- (b) to keep telecommunication apparatus installed in that conduit or to authorise any other person to keep telecommunication apparatus so installed; and
- (c) to authorise any person to enter that conduit to inspect telecommunication apparatus kept installed there; and
- (d) to enter into agreements on such terms, including terms as to the payments to be made to the authority, as it thinks fit, in connection with the doing of anything authorised by or under this section; and
- (e) to carry on an ancillary business consisting in the making and carrying out of such agreements.

(3) Where any enactment expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.

(4) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the authority, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.

(5) Subject to subsections (3) and (4), subsection (2) is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.

## **65 Notice of construction of railways and electricity works and control of other works**

(1) Any person who desires to construct or extend any railway or any works for the supply or transmission of electricity shall—

- (a) give one month's notice in writing to any affected licensee of the intention to commence such construction or extension; and
- (b) furnish the licensees and the Authority with a plan of the proposed railway or works, together with the particulars showing the manner and position in which the railway or works are intended to be constructed or extended and carried on and such further information as the Authority may require:

Provided that this subsection shall not apply to the construction or extension of works or lines for the supply or transmission of electricity of a prescribed voltage.

- (2) If it appears to the Authority that—
  - (a) the operation of or the equipment to be used in connection with a railway or works referred to in subsection (1) is likely to affect injuriously or interfere with the work or maintenance of a telecommunication line or the carrying on by a telecommunication licensee of a telecommunications service; or
  - (b) any telecommunication line is being affected injuriously or interfered with by the construction or operation of or the equipment used in connection with—

- (i) a railway or work referred to in subsection (1); or
- (ii) any railway works or other operations whatsoever;

the Authority shall notify in writing the person constructing or operating the railway or works of the action which that person is required to take in order to remedy or prevent the injury or interference.

(3) A person referred to in subsection (2) who, after receipt of a notice in terms of that subsection, proceeds with the construction or operation of the equipment concerned or continues to operate the railway or works without complying with the terms of that notice shall be liable for all loss and damage caused to any telecommunication licensee by reason of the failure to comply with the terms of that notice.

## **PART XI RADIOCOMMUNICATION SERVICES**

### **66 Provision of facilities for radiocommunication**

(1) In this section—

“**building**” includes a structure or erection of any kind, whether permanent or temporary, and any extension or alteration thereto.

(2) Any person who intends to install or construct a building more than thirty metres above ground level within a radius of two hundred metres of any installation or plant used in connection with a radiocommunication service operated by a telecommunication licensee, shall notify the licensee before carrying out such installation or construction.

(3) After receiving notification in terms of subsection (2), the licensee concerned may make arrangements with the person who gave the notification for the licensee to enter upon the building concerned at any reasonable time to provide such accommodation or other facilities in or around the building as may be necessary or proper for any installation or plant used in connection with the radiocommunication service to be laid, placed, constructed, erected or installed in, on or around the building.

(4) Where a building interrupts or interferes with a radiocommunication service operated by a licensee before the building was installed or constructed, the licensee may, at any reasonable time, enter upon the building to provide such accommodation or other facilities in or around the building as may be necessary or proper for any installation or plant used in connection with the radiocommunication service to be laid, placed, constructed, erected or installed in, on or around the building for the purposes of eliminating such interruption or interference.

### **67 Authority to approve sites of radio transmitting stations, allocate frequencies, etc.**

(1) Subject to subsection (2), the Authority shall—

- (a) approve the sites at which all radio transmitting stations, other than aircraft, mobile or ship stations, are to be established and at which all radio apparatus used in connection therewith is to be erected; and
- (b) allocate the frequencies on which all radio transmitting stations and all apparatus referred to in paragraph (a) of the definition of “generating apparatus” in subsection (1) of section *two* shall be worked; and

(c) approve—

- (i) the mode of transmission to be used in connection with all radio transmitting stations and the power to be radiated therefrom; and
- (ii) the classes, types and standards of radio transmitting stations and radio apparatus to be used in connection with different classes of radiocommunication services; and
- (iii) the classes, types and standards of radio receiving stations to be used in connection with diffusion services.

(2) In exercising the powers conferred upon it by paragraph (b) or subparagraph (i) of paragraph (c) of subsection (1), the Authority shall have regard to the International Telecommunications Constitution.

**68 Approval of Authority required for establishing and working of radio transmitting stations, etc.**

No person shall—

- (a) establish a radio transmitting station which is not an aircraft, mobile or ship station or erect radio apparatus at a site which has not been approved by the Authority; or
- (b) work a radio transmitting station or apparatus referred to in paragraph (a) of the definition of “generating apparatus” in subsection (1) of section *two* on a frequency which is not a frequency allocated to the radio transmitting station or apparatus by the Authority; or
- (c) use in connection with a radio transmitting station a mode of transmission or cause power to be radiated therefrom which is not the mode of transmission or the radiated power approved for the radio transmitting station by the Authority; or
- (d) establish, erect or work in connection with a radiocommunication service a radio transmitting station or radio apparatus which is not of a class, type or standard approved by the Authority for use in connection with that class of radiocommunication service; or
- (e) establish, erect or work in connection with a diffusion service a radio receiving station which is not of a class, type or standard approved by the Authority; or
- (f) modify or extend a radio transmitting station or radio apparatus used in connection with a radiocommunication service or a radio receiving station used in connection with a diffusion service, otherwise than in a manner approved by the Authority.

**69 Disposal of certain radio transmitting stations or radio apparatus to be authorised**

Except with the Authority’s written permission no person, other than an authorised dealer, shall sell, give, supply or transfer to another person in any manner whatsoever ownership or possession of a radio transmitting station or radio apparatus necessary for the proper working of such a station, which is not also radio apparatus necessary for the proper working of a radio receiving station.

**70 Certain dealers and repairers to be authorised**

(1) No person shall—

- (a) carry on the business of dealing in radio transmitting stations or radio apparatus necessary for the proper working of the same except in accordance with a certificate issued by the Authority authorising him or her to carry on business as an authorised dealer; or
  - (b) carry on the business of repairing radio transmitting stations, other than broadcasting stations, except in accordance with a certificate issued by the Authority authorising him or her to carry on business as an authorised repairer.
- (2) Section 34 shall, *mutatis mutandis*, apply to a certificate issued in terms of this section.

### **71 Certificates of competency required in respect of the working of certain radio stations**

(1) No person shall work a radio station of a class or type prescribed except in accordance with a certificate of competency issued by the Authority.

(2) The Authority shall not issue a certificate of competency in terms of subsection (1) to a person who is not citizen of Zimbabwe without the authority in writing of the Minister.

(3) Section 34 shall, *mutatis mutandis*, apply to a certificate issued in terms of this section.

### **72 Interference**

(1) Where a telecommunication installation causes interference to other telecommunication or broadcasting services, the Authority may require the licensee to modify it at its own expense or to suspend operation of the installation notwithstanding that the installation otherwise complies with other requirements in terms of this Act.

(2) Where telecommunication installations disrupt or are likely to disrupt the use of any frequency spectrums that require more protection, the Authority may restrict or forbid the setting up of the installation notwithstanding that the installations otherwise comply with other requirements in terms of this Act.

(3) The Minister may prescribe the conditions under which the police may in the interests of public safety or public security may install or operate a telecommunication installation which causes interference but such interference shall not disproportionately disrupt other public or third-party interests.

(4) In order to determine the source of any interference to telecommunication or broadcasting services, the authority shall have access to all telecommunication installations.

## **PART XII. ECONOMIC REGULATION**

### **73 Fair competition and prohibition of anti-competitive conduct**

(1) A licensee shall not engage in any conduct in connection with the provision of services where the conduct concerned has or is intended or is likely to result in unfairly preventing, restricting, reducing or distorting competition in the market.

(2) The Authority shall ensure that there is fair competition in the market and shall promote, develop and enforce fair competition and fair treatment among licensees in order to prevent anti-competitive conduct in the sector.

(3) Notwithstanding subsections (1) and (2), the Authority may, if it is satisfied that it is in the national interest to do so, authorise any specific anti-competitive conduct by a licensee for a specified period and for that purpose, the Authority shall—

- (a) require from the licensee such undertakings in respect of the authorised conduct as it may specify;
- (b) maintain a register of such authorisations.

#### **74 Determination of dominant licensee**

(1) Where a licensee individually or jointly with others has economic dominance in the market or a segment thereof affording such licensee the power to an appreciable extent to act independently of competitors, customers and consumers, the Authority shall determine that the licensee is a dominant licensee for the purposes of this Act.

(2) Before making a determination in terms of this section, the Authority shall, in the form prescribed, notify the licensee of the proposal to make the determination and the notice must—

- (a) state that the Authority is proposing to make a determination of dominant licensee and the market segment for which the determination is proposed;
- (b) set out the effect of the proposal;
- (c) give reasons for the proposal; and
- (d) specify the period within which representations may be made to Authority about the proposal.

(3) In making a determination of dominant licensee in terms of subsection (1), the Authority shall take into account—

- (a) the licensee's share of the market;
- (b) the level of control over the market infrastructure;
- (c) the availability to the licensee of capital, technological or other resources and the technological advancement of the licensee;
- (d) the extent of the licensee's power in the supply of any service in the market or any segment of the market;
- (e) the ability of the licensee to materially restrict competition for a significant period of time; and
- (f) the power of the licensee to manipulate prices the effect of which is to unfairly exclude or materially restrict competition for a significant period of time.

(3) The Authority shall make a determination of dominant licensee, maintain, review or rescind a determination, taking into account prevailing conditions with regard to markets, following market analyses designed for that purpose and conducted at such intervals as the Authority may consider appropriate.

(4) A licensee may call upon the Authority to conduct a market analysis on presenting to the Authority sufficient information which satisfies the Authority that there is *prima facie* evidence that a new determination is necessary.

(5) The Minister, in consultation with the Authority, may by regulations prescribe the form and content of market analyses by which market dominance shall be determined.

## 75 Granting of access by dominant licensees

(1) A dominant licensee shall provide access to other licensees' facilities and services including access in the form of--

- (a) fully unbundled access to the local loop;
- (b) interconnection, in respect of which section 77 shall *mutatis mutandis* apply;
- (c) leased lines;
- (d) access to cable ducts, provided these have sufficient capacity,

(2) A dominant licensee shall publish the conditions and prices for access to any of these services.

(3) If, within such time as may be prescribed following a request for access, the parties do not agree on the conditions for access, the Authority shall, at the request of one party, determine such conditions having regard to the need to promote effective competition and the effects of its decision on competing parties.

(4) In determining what conditions to set in any case, the Authority—

(a) shall take into account, in particular, the following factors—

- (i) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed network access unnecessary;
- (ii) the feasibility of the provision of the proposed network access;
- (iii) the investment made by the person initially providing or making available the network or other facility in respect of which access is proposed;
- (iv) the need to secure effective competition in the long term;
- (v) any rights to intellectual property that are relevant to the proposal;
- (vi) the desirability of securing the availability of postal and telecommunication services throughout the country; and
- (vii) the guidelines referred to in section 77.

(b) may include conditions—

- (i) for securing fairness and reasonableness in the way in which requests for network access are made and responded to;
- (ii) for securing compliance with the obligations contained in the conditions within the periods and at the times required by or under the conditions;
- (iii) requiring the dominant licensee not to discriminate unduly against any persons in relation to matters connected with network access or with the availability of the associated facilities;
- (iv) for the purpose of securing transparency, requiring the dominant licensee to publish, in such manner as may be prescribed, all such information as they may be prescribed, including the terms and conditions on which it is willing to enter into an access contract;

(5) The conditions authorised in terms of this section may also include conditions requiring the dominant licensee to maintain a separation for accounting purposes between different matters relating to network access or the availability of associated facilities, in such manner as may be prescribed, including the accounting methods to be used in maintaining the separation.

(6) Subject to section 86, conditions in terms of this section may include the imposition on the dominant licensee of such price controls as the Authority may direct in relation to matters connected with the provision of network access or the availability of associated facilities, including--

- (a) rules in relation to the recovery of costs;
- (b) rules on the use of cost accounting systems for those purposes; and
- (c) obligations to adjust prices in accordance with such directions as the Authority may consider appropriate;

and the Authority shall obtain from the dominant licensee a description, to be made available to the public, of the cost accounting system used for the purposes of this section, covering the main categories under which costs are brought into account and the rules applied with respect to the allocation of costs under the cost accounting system.

(7) The decision of the Authority shall be made within such time as may be prescribed.

(8) A dominant licensee whose services are bundled must also offer the services included in the bundle individually unless the services can only be offered as a bundle for technical, economic, quality and security reasons.

## **76 Conditions for network access pricing etc.**

(1) The Authority shall not act in terms of subsection (6) of section 75, unless it appears--

- (a) from the market analysis carried out for the purpose of setting that condition that there is a risk of adverse effects arising from price distortion; and
- (b) that the setting of the condition is appropriate for the purposes of—
  - (i) promoting efficiency;
  - (ii) promoting sustainable competition; and
  - (iii) conferring the greatest possible benefits on the end-users;
 and in the national interest;

(2) When acting in terms of subsection (6) of 75, the Authority must take account of the extent of the investment by the dominant licensee in the matters to which the condition relates.

(3) For the purposes of this section, adverse effects arising from price distortion might occur if the dominant licensee—

- (a) imposes a price squeeze which have adverse consequences for end-users.

(4) In considering the matters mentioned in subsection (1)(b), the Authority may—

- (a) have regard to the prices at which services are available in comparable competitive markets;
- (b) determine what it considers to represent efficiency by using such cost accounting methods as they think fit.

## **77 Interconnection between telecommunication licensees**

(1) Subject to this section, if a telecommunication licensee is requested to do so by another such licensee, the requested licensee shall connect the requesting licensee's telecommunication system to the requested licensee's telecommunication system in accordance with the terms and conditions of an agreement concluded between the licensees in terms of this section.

(2) An agreement for the interconnection of telecommunication systems in terms of subsection (1) shall—

- (a) subject to subsection (5), be concluded within the period specified by the Authority or within such longer period as the Authority may permit; and
- (b) be consistent with guidelines published in terms of subsection (3); and
- (c) be subject to approval by the Authority.

(3) The Authority shall prescribe guidelines as to the form and content of agreements for the interconnection of telecommunication systems, and such guidelines may make provision for—

- (a) the period within which the interconnection shall be completed; and
- (b) the quality or standards of service to be provided by the interconnected systems; and
- (c) the fees and charges payable for the interconnection; and
- (d) any other matter which, in the Authority's opinion, will facilitate the interconnection.

(4) Before concluding an agreement for the interconnection of telecommunication systems in terms of subsection (1), the parties shall lodge their proposed agreement with the Authority for its approval, which approval shall be given if the Authority is satisfied that the agreement is consistent with the prescribed guidelines.

(5) If the Authority refuses to approve an agreement in terms of subsection (4), it shall notify the parties in writing of the reasons for its refusal and shall require the parties to re-negotiate the proposed agreement, within such period as the Authority may specify, to render it consistent with the prescribed guidelines.

(6) If, after a request for the interconnection of telecommunication systems has been made in terms of subsection (1)—

- (a) the licensee to whom the request was made refuses to accede to the request; or
- (b) the licensees concerned are unable, within the period referred to in paragraph (a) of subsection (2), to agree on the terms and conditions of an agreement for the interconnection of their telecommunication systems;

the matter shall be referred to the Authority for its decision.

(7) Where a matter has been referred to the Authority in terms of subsection (6), the Authority shall conduct such investigation into the matter as it considers necessary and, after affording the parties an adequate opportunity to make representations, shall—

- (a) where the matter concerns a refusal by a licensee to accede to a request for interconnection in terms of subsection (1)—
  - (i) direct the licensee concerned to accede to the request, subject to such terms, conditions or modifications as the Authority may specify, if the Authority is satisfied that the interconnection is technically feasible and will promote increased public use of telecommunication services or more efficient use of telecommunication services; or

(ii) permit the licensee concerned to reject the request, if the Authority is not satisfied as provided in subparagraph (i);

or

(b) where the matter concerns the terms and conditions of an agreement for the interconnection of telecommunication systems—

(i) suggest terms and conditions which the parties should or might incorporate in the agreement to resolve their dispute and direct them to resume negotiations towards reaching an agreement within such reasonable time as the Authority shall specify; and

(ii) if the parties fail to reach agreement within the period specified in terms of subparagraph (i), make a decision as to what the disputed terms and conditions should be, and those terms and conditions shall bind the parties and shall be included in an agreement:

Provided that any such terms and conditions shall be consistent with the prescribed guidelines.

(8) A party to any interconnection agreement shall not, notwithstanding anything to the contrary contained in the agreement, disconnect or discontinue interconnection to an interconnecting party without prior written approval of the Authority on written application therefor.

(9) Any expired interconnection agreement shall remain in force until completion of any negotiations for a successor interconnection agreement but in any event, for a period not exceeding three months following the date of expiry of the agreement.

(10) Any person who contravenes subsections (8) and (9) shall be guilty of an offence and section 34 shall apply for the purposes of enforcing the said subsections.

## **78 Anti-competitive conduct**

(1) The Authority may, at its own instance or upon a complaint being made to it, investigate any licensee who it has reason to believe or is alleged to have committed or is engaged in any conduct which is anti-competitive by reason of such conduct being in breach of fair competition.

(2) Anti-competitive conduct in contravention of subsection (1) shall include—

(a) any abuse by any licensee, either independently or with others, of a dominant position which unfairly excludes or limits competition between such licensee and any other party;

(b) entering into any agreement or engaging in any practice with any other party which unfairly prevents, restricts or distorts competition or which—

(i) directly or indirectly fixes prices or any other trading conditions;

(ii) limits or controls markets, technical development or investment;

(iv) applies dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage;

(iv) makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contract.

(c) the causing of anti-competitive changes in the market structure and in particular, anti-competitive mergers or acquisitions in the sector;

(d) any other conduct which may be prescribed as anti-competitive conduct for the purposes of this Act.

(2) In investigating any anti-competitive conduct, the Authority shall give written notice to the licensee concerned—

(a) stating that the Authority is investigating alleged anti-competitive conduct and the basis of the allegation; and

(b) requesting such information as it may consider necessary from the licensee in order to complete the investigations; and

(c) where appropriate, the steps to be taken in order to remedy the breach.

(3) The licensee concerned shall, within thirty days from the date of receipt of the notice, give to the Authority all information required under the notice and may make any written representations in response to the notice.

(4) Any person affected by the anti-competitive conduct may also make representations to the Authority in relation thereto.

(5) The Authority shall, after considering any representations of the licensee or any other person, fix a date on which a hearing shall be held before making a decision on the matter.

(6) The decision of the Authority shall be communicated to the interested parties and published in the *Gazette* within sixty days of a complaint being lodged with the Authority or, in the case of an investigation at the instance of the Authority, within sixty days of the service of the notice referred to in subsection (3) and if the Authority finds that a licensee is or has been engaged in anti-competitive conduct, it—

(a) shall order the licensee to stop conduct forthwith; and

(b) may require the licensee to pay such fine as may be prescribed, not exceeding the equivalent of ten percent of the annual turnover of the licensee for each financial year that the breach lasted up to a maximum of three years; and

(c) shall declare any anti-competitive agreement or contract null and void.

(7) Any person aggrieved by the decision of the Authority under this section may appeal against such decision to the High Court.

(8) This section shall not in any way limit or affect the obligations of a licensee under any licence held by the licensee.

(9) Nothing contained in this Act shall be construed in any way as limiting the obligations of any person under the law governing competition in Zimbabwe if the conduct complained of under this Act constitutes an offence under any such law or from being liable under such law to a penalty higher than that provided for under this Act.

## **79 Regulations on competition**

(1) The Minister may, in consultation with the Authority, make such regulations as are necessary governing competition in the communication sector.

(2) Regulations referred to in subsection (1) may provide for—

(a) access, including rules on interconnection to each other's network;

(b) the procedure for investigating and dealing with anti-competitive conduct;

- (c) access to, or provision of, any information for purposes of any investigation;
- (e) the determination of any remedy for anti-competitive conduct;
- (f) the definition of market segments;
- (g) market segments in respect of which limited competition may be allowed.;
- (h) the regulation of any agreements between licensees and any foreign network facilities or service providers to the extent necessary to prevent or mitigate any conduct by such foreign providers that is anti-competitive under this Act.

(3) A dominant licensee shall file tariffs, terms and conditions of interconnection with the Authority.

### **80 Grant of access to the public**

(1) No licensee shall deny telecommunication access or service to any person except for failure to make payment for the services or for any other just cause.

(2) A licensee shall provide equal opportunity to all persons of access to the same type and quality of service in the same area on substantially the same conditions.

### **81 Representations by consumers**

(1) The Authority may from time to time, by notice in the *Gazette* and in such newspapers as the Authority thinks appropriate circulating in any area in Zimbabwe, call upon members of the public to make any representations with regard to—

- (a) the manner in which communications services are provided;
- (b) the manner in which associated facilities are made available;
- (c) their experiences with regard to the manner in which communication services and associated facilities are provided or made available;
- (d) the supply of apparatus designed or adapted for use in connection with any such services or facilities;
- (e) the supply of directories capable of being used in connection with the use of communications services;
- (f) the financial and other terms on which such services or facilities are provided or made available, or on which such apparatus or directories are supplied;
- (g) the standards of service and the quality and safety of services, facilities, apparatus and directories;
- (h) the handling of complaints made by persons who are consumers in the markets for such services, facilities, apparatus or directories to the persons who provide the services or make the facilities available, or who are suppliers of the apparatus or directories;
- (i) the resolution of disputes between consumers and the persons who provide or make such services or facilities available, or who are suppliers of any apparatus or directories;
- (j) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;

- (k) the information about service standards and the rights of consumers that is made available by persons who provide or make available such services or facilities, or who are suppliers of such apparatus or directories;
- (l) any other matter appearing to the Authority to be necessary for securing effective protection for consumers in the markets for any such services, facilities, apparatus or directories.
- (2) Those services and facilities include—
  - (a) electronic communication services and associated facilities;
  - (b) a service consisting in the supply of information for use in responding to directory enquiries; and
  - (c) every service or facility not falling within any of the preceding paragraphs which is provided or made available to members of the public—
    - (i) by means of a communication network; and
    - (ii) in pursuance of agreements entered into between the person by whom the service or facility is provided or made available and any members of the public.

(3) If it considers it necessary to do so, the Authority shall give advice with respect to any matters raised by members of the public and may carry out research into any such matters as appear necessary to the carrying out of its functions in terms of this Act.

(4) The Authority may publish in the *Gazette* and in such newspapers as the Authority thinks appropriate circulating in any area in Zimbabwe, such information as it thinks fit about any advice given and the reasons therefor and the results of any research carried out by it with appropriate regard for the need to preserve commercial confidentiality as may be necessary.

(11) The Authority must prepare an annual report on the carrying out of its functions in terms of this section which must be published as soon as practicable after its preparation is complete in such form and manner as it considers appropriate.

(12) The Authority may by notice in the *Gazette* publish guidelines for the purposes of implementing this section.

## **82 Approval of tariffs by Authority**

(1) At the time of applying for the issue or renewal of a licence, a licensee shall submit for the approval of the Authority written particulars of the proposed tariff at the commencement of the licensing period.

(2) If a licensee proposes to amend or replace the tariff that was approved at the time when the licence was issued or renewed, the licensee shall give notice to the Authority within such period and in such form and manner as the Authority may require or as may be prescribed.

(3) The Authority shall, within fourteen days of the receipt of the proposal, respond in writing confirming whether or not a proposal submitted in terms of subsection (2) is approved, and where the Authority has not so responded within such period, the proposal shall be deemed to have been approved by the Authority.

(4) In considering any proposal submitted to it in terms of subsection (1) or (2), the Authority shall be guided by considerations of fair competition and the need to protect consumers but shall not unreasonably refuse to approve any such proposal.

(5) No amended or substituted tariff shall come into operation unless it is published in the *Gazette* and in newspapers circulating throughout the country at least seven days before implementation.

(6) A licensee to whom this section applies shall publish the tariff by--

- (a) making it available for inspection at the licensees' principal places of business during normal business hours; and
- (b) promptly sending the relevant parts of the tariff at the request of any consumer of the services concerned.

(7) Tariffs may not exceed such maximum as may be set from time to time by the Authority based on cost models as may be prescribed.

### **PART XIII UNIVERSAL SERVICE FUND**

#### **83 Establishment and vesting of Universal Service Fund**

- (1) There is hereby established a fund to be known as the Universal Service Fund.
- (2) Subject to this Part, the Fund shall be vested in the Authority as trustee.

#### **84 Objects of Fund**

The objects of the Fund shall be—

- (a) the standardisation of postal and telecommunication services and the maintenance of high standards of quality in the provision of such services; and
- (b) to make grants to local authorities or their appointed agents for the purpose of assisting needy persons to obtain access to postal and telecommunication services; and
- (c) to finance or assist in financing the extension of postal and telecommunication services to under-serviced areas and community centres within or outside such areas; and
- (d) to assist in the training of persons in the provision of postal or telecommunication services; and
- (e) to promote or contribute towards research and development in the field of postal and telecommunication services; and
- (f) to promote and contribute towards the expenses of the adaptation or facilitation of the use of telecommunication services for the benefit of disabled persons, including the provision without charge of directory information services appropriate to meet the needs of such persons; and
- (g) to encourage and facilitate, for the benefit of Zimbabwe, the transfer of telecommunication technology from foreign providers of such technology;

in accordance with an annual implementation plan prepared by the Authority in consultation with licensees.

#### **85 Moneys of Fund**

The Fund shall consist of—

- (a) such moneys as may be raised by contributions imposed in terms of section 86; and
- (b) such moneys as may be payable to the Fund from moneys appropriated by Act of Parliament for the purpose of the Fund; and
- (c) such moneys as may be appropriated from the funds of the Authority in terms of section 10; and
- (d) any other moneys to which the Fund may be lawfully entitled.

### **86 Contributions to Fund**

(1) Every holder of a licence shall collect a prescribed percentage of levy from end users based on expenditure on services towards the fund.

(2) The dates on which contributions to the Fund become payable and the manner in which they shall be paid shall be as prescribed.

### **87 Holding of Fund**

(1) All moneys received on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn therefrom except by means of payment methods approved by the Board and signed by such persons as are authorised in that behalf by the Authority.

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister may determine:

Provided that such moneys shall not be invested directly in the shares of, or other securities issued by any other a licensee.

### **88 Financial year of Fund**

The financial year of the Fund shall be the period of twelve months ending on the 31st December in each year.

### **89 Accounts and audit of Fund**

(1) The Authority shall cause proper books of accounts of the Fund to be kept, together with adequate financial and other records in relation thereto, and, within three months after the end of the financial year to which the accounts relate, shall submit the accounts to the Auditor-General for audit in terms of subsection (2).

(2) The accounts of the Fund shall be audited by the Auditor-General, who shall have all the powers conferred upon him or her by the Public Finance Management Act [*Chapter 22:19*] as though the assets of the Fund were public moneys or State property.

(3) Sections 13 and 14 shall *mutatis mutandis* apply with respect to the audit of the Fund.

## **PART XIV OFFENCES AND PENALTIES**

**90 Forgery of stamps and money orders, etc.**

Any person who, without due authority or lawful excuse—

- (a) makes, alters or reproduces any postage stamp, date stamp, card, envelope, wrapper, cover, money order or postal order or any other warrant or order for the payment of money through a telecommunication or postal licensee; or
- (b) uses, issues, offers, exposes for sale, sells, deals in, sends by post or otherwise disposes of or has in his or her custody or possession any article knowing it to have been made, altered or reproduced in contravention of paragraph (a); or
- (c) engraves or in any other way reproduces upon any plate or material whatever any stamp, mark, figure or device in imitation of or resembling any stamp, mark, figure or device used or made or by any postal licensee; or
- (d) sells or otherwise disposes of, purchases, receives or has in his or her custody or possession any plate or material whatever that has been engraved or upon which any reproduction has been made in contravention of paragraph (c); or
- (e) makes or has in his or her custody or possession any mould, frame or other instrument capable of being used to make a postage stamp; or
- (f) sells or otherwise disposes of, or has in his or her custody or possession any paper provided or made for the purpose of being used for postage stamps or for any other purposes by any postal licensee before such paper has been issued for public use; or
- (g) makes use of any stamp, die or plate engraved or made or paper made by any postal licensee; or
- (h) sells or otherwise disposes of, purchases, receives or has in his or her custody or possession any paper or material whatever bearing any impression or mark of any such stamp, die or plate as is referred to in paragraph (g) or paper engraved or made by any postal licensee; or
- (i) makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any stamp or mark used by any postal licensee; or
- (j) writes or reproduces in any other manner whatsoever upon any article any word, letter, device or mark that signifies or implies or is likely to signify or imply that such article has been or is entitled to be sent through the post;

shall be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment.

**91 Offences in relation to postage stamps and post marks**

(1) Any person who—

(a) with intent to defraud—

- (i) removes any postage stamp from any article sent by post or any telegram or from any document used by any postal licensee; or
- (ii) removes from any postage stamp that has previously been used any mark or impression that has been made thereon at any post office by any postal licensee; or
- (iii) uses, utters or puts off any postage stamp that has previously been used; or

(iv) erases, cuts, scrapes, defaces, obliterates, adds to or alters any mark or impression upon any postal article, money order, postal order or other warrant, order, paper or material whatsoever provided, used or made by any postal licensee; or

(v) sends or causes to be sent by post any article that falsely purports to be exempt from postage in terms of this Act;

or

(b) sells any postage stamp from which any mark or impression put thereon at any post office by a postal licensee has been removed;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) For the purposes of subsection (1), the sender of a postal article to which a postage stamp is affixed shall be deemed, unless the contrary is proved, to have affixed that postage stamp to that postal article.

## **92 Offences in relation to mails or postal articles**

(1) Any person authorised to receive or in any way handle any mail or postal article who—

(a) wilfully detains, delays, mis-delivers or omits to dispatch any mail or postal article; or

(b) unlawfully communicates or divulges the contents of any postal article; or

(c) while in charge of any mail or postal article—

(i) permits any unauthorised person to have access to such mail or postal article; or

(ii) wilfully delays the arrival of such mail or postal article at its proper destination;

or

(d) through negligence or misconduct, endangers the safety of any mail or postal article; or

(e) gives false information of an assault upon him or her or of theft or attempted theft from him or her at a time when he or she was in charge of mail or a postal article; or

(f) without due authority, collects, receives, removes, intercepts or delivers any postal article otherwise than in the ordinary course of his or her duties; or

(g) without due authority or otherwise than in the course of his or her duties, date-stamps or otherwise marks any letter, postcard, printed paper, newspaper, pattern, sample, parcel or other article so as to indicate that such article is in the course of transmission by post or has been received by a post office for transmission;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Subject to subsection (3), any person who—

(a) makes any false statement as to the contents of any postal article; or

(b) wilfully detains or keeps any mail or postal article that ought to have been delivered to another person; or

- (c) by any false representation, induces any employee of a postal licensee to deliver to him or her or to any other person any postal article not addressed to or intended for him or her or such other person;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### **93 Theft of and tampering with mail**

Any person who—

- (a) steals any mail; or
- (b) steals from any post office or from the custody or possession of any employee of a postal licensee or person conveying mail any postal article or any of the contents of a postal article; or
- (c) unlawfully destroys any postal article or any of the contents of a postal article; or
- (d) receives any mail or postal article or any of the contents of a postal article knowing it to have been stolen; or
- (e) stops any vehicle, train or other vessel with intent to steal or unlawfully to search the mail; or
- (f) unlawfully opens or tampers with or secretes any postal article;

shall be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment.

### **94 Restricted and prohibited postal articles and transmission of dangerous substances**

(1) Any person who sends by post—

- (a) any indecent or obscene article; or
- (b) any postal article having thereon, therein or on the cover thereof any thing, word, mark or design of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character; or
- (c) any postal article bearing a fictitious postage stamp or purporting to be prepaid with a postage stamp that has been previously used; or
- (d) correspondence dealing with a fraudulent or immoral business or undertaking;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who, otherwise than as may be prescribed or under any law, sends by post—

- (a) any drug to which Part II, IV or VI of the Dangerous Drugs Act [*Chapter 15:02*] applies; or
- (b) any medicine which is specified in a statutory instrument in terms of subsection (1) of section 41 of the Medicines and Allied Substances Control Act [*Chapter 15:03*]; or
- (c) any substance which is declared to be a Group 1 hazardous substance in terms of the Environmental Management Act [*Chapter 20:27*].
- (d) any sharp instrument which is not adequately protected; or
- (e) any noxious living creature; or

- (f) any creature, article or thing whatsoever that is likely to injure postal articles or an employee of a postal licensee;

shall be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment.

- (3) Subject to subsection (4), any person who—

- (a) sends in or with any postal article; or  
 (b) puts into or against any post office;

any fire, match or light or any explosive, inflammable, dangerous, noxious or deleterious substance or fluid shall be guilty of an offence and liable to imprisonment for a period not exceeding seven years:

Provided that, in the case of a person who sends in or with any postal article any device, substance or fluid which is designed to cause injury to any person, he or she shall be liable to imprisonment for a period not exceeding twenty years.

(4) Subsection (3) shall not apply to any noxious or deleterious substance or fluid sent in the interests of public health in accordance with such conditions as are prescribed, or provided under any law.

(5) Subsections (1), (2) and (3) shall apply in respect of any act which constitutes an offence in terms of the said sections and is committed outside Zimbabwe by a person who sends the postal article concerned to an address within Zimbabwe.

#### **95 Offence of unauthorised notice as to reception of letters, etc.**

Any person who, not being a postal licensee or without being authorised by the Authority, places or maintains in or on any house, wall, door, window, box, pillar or other place—

- (a) the words “Post Office” or “Post and Telegraph Office”; or  
 (b) the words “Letter Box” accompanied with a word, letter or mark that signifies or implies or is likely to signify or imply that it is a post box; or  
 (c) any word or letter that signifies or implies or is likely to signify or imply that any house or place is a post office or that any box is a post box;  
 (d) any signage that signifies or implies or is likely to signify or imply that any postal services are offered;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **96 Trespass in or upon post offices or telephone exchanges**

- (1) Any person, other than an employee of the licensee concerned, who—

- (a) without the permission of the licensee who controls the premises, or of an employee of the licensee with authority to give such permission, enters—  
 (i) any part of a post office that is not open to the public; or  
 (ii) any premises on which there is a telephone exchange worked by a telecommunications licensee;

or

(b) behaves in a disorderly manner—

(i) in a post office; or

(ii) in any premises on which there is a telephone exchange worked by a telecommunication licensee;

or

(c) wilfully obstructs, hinders or delays any employee of a licensee in the execution of his or her duty;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Any person contravening paragraph (a) or (b) of subsection (1) who, on being required so to do by a person employed by the licensee concerned, fails to leave the post office or telephone exchange immediately may be removed by an employee of the licensee, and any police officer shall, on being so requested by such an employee, remove or assist in removing any such person.

### **97 False entries relating to mail and fraudulent use of official mark**

(1) Any employee of a postal licensee who is required to keep a record relating to mail and who fails to keep such record or makes a false entry in such record or erases or alters any entry in such record shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Any employee of a postal licensee who, with intent to defraud, puts any incorrect official mark on a postal article shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### **98 Unlawful use of telecommunications services or systems**

Any person who—

(a) sends or causes or permits to be sent by means of any telecommunication services or systems a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) for the purpose of causing annoyance, inconvenience or needless anxiety to another, persistently makes use of or permits to be used, any telecommunication services or systems to send or to cause to be sent, a message or other matter that he or she knows to be false;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **99 Fraudulent use of telecommunication services or systems**

(1) Any person who—

(a) dishonestly obtains any telecommunication services or systems, with intent to avoid payment of a charge applicable for the provision of the service;

- (b) has in his or her possession or under his or her control or supplies or offers to supply anything that may be used for or in connection with dishonestly obtaining any telecommunication services or systems;
- (c) allows anything to be dishonestly used to obtain any telecommunication services or systems or for a purpose connected with the dishonest obtaining of any such a service;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) For the purposes of this section, in the case of a thing used for recording data, the use of that thing includes the use of data recorded by it.

### **100 Wilful damage to or interference with or theft of telecommunication lines and apparatus.**

(1) In this section and sections 102 and 103—

**"telecommunications infrastructure material"** means any material component essential for the maintenance of telecommunication infrastructure, and includes but is not limited to—

- (a) a telecommunication line, telephone cable or wire conductor used or commonly used by a telecommunication licensee; or
- (b) any telecommunication apparatus, equipment or appliance that is essential for the maintenance of a telecommunication service operated by a licensee.

(2) Any person who without lawful excuse, the proof whereof shall lie on him or her, inserts into a community service or other telephone apparatus for the purpose of making a call or otherwise any object other than a coin which is lawful currency in Zimbabwe or any object in substitution for any means of payment permitted by the licensee providing the apparatus in question, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Any person who without lawful excuse, the proof whereof shall lie on him or her—

- (a) wilfully disturbs, obstructs or impedes in any way the free use or working of any telecommunication line belonging to or used by a telecommunication licensee; or
- (b) without the consent of the licensee concerned, affixes or attaches any wire conductor or any other thing to any telecommunication line belonging to or used by a telecommunication licensee; or
- (c) interferes with or hinders the construction, alteration, restoration, maintenance or examination of any telecommunication line by a telecommunication licensee;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) Any person who—

- (a) without lawful cause, the proof whereof shall lie on him or her, tampers or interferes with or obstructs the operation of any telecommunication apparatus constructed or adapted for use in transmitting or receiving telecommunication services, or by any means interferes with any interconnection or hinders interoperability with the result that such service is interrupted or cut off; or

- (b) without lawful cause, the proof whereof shall lie on him or her, destroys, injures or removes any telecommunication line belonging to or used by a telecommunication licensee; or
- (c) receives or takes possession of any telecommunication infrastructure material—
  - (i) knowing that it has been stolen; or
  - (ii) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (10), be liable to imprisonment for a period of not less than ten years.

(5) Any person, other than a licensee, who, otherwise than for lawful cause (the proof whereof shall lie on him or her), has on his or her person or possession, or under his or her immediate control, or upon any land or upon or in any premises, any telecommunication infrastructure material that is not being used in connection with any telecommunication service lawfully provided to him or her, shall be guilty of an offence and, if there are no special circumstances peculiar to the case as provided for in subsection (10), be liable to imprisonment for a period of not less than five years or more than ten years.

- (6) If a person is charged with contravening subsection (5) in circumstances where—
  - (a) the telecommunication infrastructure material in question was found on any land or in any premises to or in which the accused person has any title or interest whatsoever (including shares in a company that owns such land or premises); and
  - (b) the accused person knowingly used or permitted the use of the land or premises in question for the purpose of hiding or storing the telecommunication infrastructure material in question; and
  - (c) the accused person—
    - (i) had stolen the telecommunication infrastructure material in question; or
    - (ii) knew that the telecommunication infrastructure material in question had been stolen; or
    - (iii) realised that there was a real risk or possibility that the telecommunication infrastructure material in question had been stolen;

the accused person shall not be charged concurrently or alternatively with contravening subsection (4)(c), but a prosecutor may, for the purposes of subsection (7), adduce evidence showing that the offence was committed in the circumstances referred to in paragraphs (a), (b) and (c).

(7) If a court convicts a person for contravening subsection (5) and finds that the offence was committed in the circumstances referred to in subsection (6)(a), (b) and (c), then, in addition to imposing the penalty provided for that offence under subsection (5), the court shall order to be forfeited to the State any title to or interest in the land or premises belonging to that person which is referred to in subsection (6)(a).

(8) Where a court has ordered to be forfeited to the State any land or premises in terms of subsection (7), any transaction involving the land or premises that—

- (a) is commenced at any time between the date when the person was charged for an offence against subsection (5) and the date when he or she was convicted of it or, if the person appeals against the conviction or sentence or both, the date when the appeal is finally dismissed, or abandoned; and

- (b) has the effect of alienating to any other person the title or interest of the convicted person in that land or premises;

shall be void:

Provided that the transaction shall not be void if the person charged for an offence against subsection (5) is acquitted.

(9) A court sentencing a person to imprisonment under subsection (4) or (5) shall not order the suspension of any part of the sentence if the effect of such order is that the convicted person will serve a sentence of less than ten years (in the case of a conviction for an offence in terms of subsection (4)) or five years (in the case of a conviction for an offence in terms of subsection (5)).

(10) If a person convicted in terms of subsection (4) or (5) satisfies the court that there are special circumstances in the particular case, which circumstances shall be recorded by the court, why the penalty provided under subsection (4) or (5) should not be imposed, the convicted person shall be liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(11) A person charged with an offence in terms of subsection (4)(a) or (b) may be found guilty of contravening section 141 ("Negligently causing serious damage to property") of the Criminal Law Code [*Chapter 9:23*] if such are the facts proved.

## **101 Power to arrest persons**

(1) Without derogation from the Criminal Procedure and Evidence Act [*Chapter 9:07*], it shall be lawful for—

- (a) any person to arrest without warrant anyone who is found committing any offence in terms of section 100 (2), (3) or (4)(a), (b) or (c);
- (b) any person authorised by a telecommunication licensee to exercise powers of arrest in terms of this paragraph to arrest anyone who is reasonably suspected of having committed an offence in terms of section 100 (2), (3) or (4)(a) or (b);

and immediately to convey the person arrested to a police officer in order that he or she may be dealt with according to law.

(2) Any person empowered in terms of subsection (1) to arrest any other person may request the assistance of any bystander in effecting such arrest and such bystander is hereby authorised to render such assistance.

(3) Any person who, acting reasonably and in good faith and without culpable ignorance or negligence, arrests any other person in the purported exercise of the powers conferred in terms of this section shall not be liable for damages for unlawful arrest.

## **102 Transportation of telecommunication infrastructure material**

(1) In this section and section 103—

**"customs clearance documentation"**, in relation to telecommunication infrastructure material, means any documentation endorsed by the Zimbabwe Revenue Authority for the purpose of permitting the importation into or transit through Zimbabwe of the telecommunication material in question;

"**ownership**", in relation to a vehicle, includes the possession of a vehicle by a purchaser pending the transfer of its ownership to the purchaser, and "**own**" and "**owner**" shall be construed accordingly;

"**producing on demand**", in relation to the production by an owner of a vehicle of a special police clearance certificate or customs clearance documentation in the circumstances described in subsection (2)(c), means procuring for the driver of the vehicle the required certificate or documentation to enable the driver to produce it on demand;

"**regulating authority**", in relation to any area of Zimbabwe, means the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*], is the regulating authority for that area;

"**special police clearance certificate**" means a police clearance certificate issued in respect of the transportation of telecommunication infrastructure material in terms of subsection (6);

"**things liable to seizure or forfeiture**" means any telecommunication infrastructure material that is the subject-matter of an offence under subsection (2) or section 100 (4) or (5), and any vehicle used to transport the same that is the subject-matter of offences under subsection (2) and, (by the application of subsection (3)), section 100 (5);

"**vehicle**" means—

- (a) a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*]; or
  - (b) a trailer as defined in the Road Traffic Act [*Chapter 13:11*], whether or not attached to and drawn by a motor vehicle; or
  - (c) a pushcart or scotch cart.
- (2) Any person who—
- (a) being the driver or person in control of a vehicle owned by him or her, transports or has in his or her possession in or upon such vehicle any telecommunication infrastructure material; or
  - (b) being the driver or person in control of a vehicle, transports or has in his or her possession in or upon such vehicle any telecommunication infrastructure material without the knowledge of the owner of the vehicle:

Provided that the driver or person referred to in this paragraph shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she transported or had in his or her possession in or upon such vehicle any telecommunication infrastructure material with the knowledge of the owner of the vehicle;

or

- (c) being the owner of a vehicle, authorises the driver or person in control of the vehicle to transport or have has in his or her possession in or upon such vehicle any telecommunication infrastructure material;

without producing on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or, as the case may be, the customs clearance documentation relating thereto, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Where a person is unable to produce on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or the customs clearance documentation referred to in subsection (2), such person shall, in addition to being charged with the offence referred

to in subsection (2), be charged with the offence referred to in section 100 (5) and liable to the mandatory penalty therefor, unless he or she can show lawful cause (the proof whereof shall lie on him or her), for having in his or her possession, or under his or her immediate control, any telecommunication infrastructure material:

Provided that where telecommunication infrastructure material is authorised by the owner of a vehicle to be carried in the circumstances described in subsection (2)(c), the owner shall, for the purposes of this subsection, be deemed to be in possession of, or have under his or her immediate control, the telecommunication infrastructure material in question.

(4) A person required to obtain a special police clearance certificate in terms of subsection (2) shall request the certificate from the regulating authority responsible for the area within which the vehicle is ordinarily kept at night.

(5) At the request of a person required to obtain a special police clearance certificate in terms of subsection (2), the regulating authority shall upon being satisfied that—

- (a) the vehicle is ordinarily kept at night within the area for which the regulating authority is responsible; and
- (b) the person has lawful cause for transporting in a vehicle any telecommunication infrastructure material;

issue to the person a special police clearance certificate in accordance with subsection (6).

(6) A special police clearance certificate shall—

- (a) identify the holder of the certificate, the vehicle or vehicles in respect of which it is issued, the nature and quantity, by weight, length or both, of the telecommunication infrastructure material to be transported, and the regulating authority that issued the certificate; and
- (b) specify the lawful cause for which the telecommunication infrastructure material is to be transported in or upon the vehicle or vehicles referred to in the certificate; and
- (c) specify the period for which it shall be valid; and
- (d) be valid for not more than forty-eight hours:

Provided that if the telecommunication infrastructure material is to be transported by or with the knowledge of any person licensed in terms of this Act, the regulating authority may issue a special police clearance certificate having a period of validity of up to thirty days; and

- (e) be signed by or on behalf of the regulating authority.

(7) No fee shall be charged for the issuance of a special police clearance certificate except the prescribed fee for a duplicate special police clearance certificate or the replacement of a lost or destroyed special police clearance certificate.

### **103 Seizure and forfeiture of unlawfully transported telecommunication infrastructure material and vehicles used in connection therewith**

(1) Where a person is charged with contravening—

- (a) section 100 (4) or (5) any telecommunication infrastructure material that is the subject-matter of the offence shall be liable to seizure and forfeiture under this section; or

- (b) section 102 (2) alone, any telecommunication infrastructure material which is the subject-matter of the offence shall be liable to seizure under this section pending the prosecution of the offence; or
- (c) sections 100 (5) and 102 (2) concurrently, any telecommunication infrastructure material that is the subject-matter of the offences and any vehicle used to transport the same shall be liable to seizure and forfeiture under this section.

(2) Where a person is charged with contravening sections 100(5) and 102 concurrently, and the vehicle used in connection with such offences was availed to him or her by another person who owns the vehicle, the vehicle shall still be liable to seizure and forfeiture under this section unless the owner proves that he or she was unaware that the vehicle would be so used.

(3) An inspector or police officer may seize any things liable to seizure or forfeiture which he or she has reasonable grounds for believing are the subject-matter of any offence under section *one hundred* (4) or (5), or section 101(2), or of any concurrent offences under sections *one hundred* (5) and 109.

(4) All things liable to seizure or forfeiture which have been seized in terms of subsection (3) shall—

- (a) be taken forthwith and delivered to a place of security under the control of an inspector or police officer; and
- (b) be held until the criminal proceedings which are instituted in relation to those things—
  - (i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore any such thing to the accused or the owner thereof, as may be appropriate; or
  - (ii) have resulted in the conviction of the accused, in which event the convicting court shall, where the accused is convicted of contravening—
    - A. section 105 alone, order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or
    - B. section 100 (4) or (5) or sections 100 (5) and section 102 (2) concurrently, order any such thing to be forfeited to the State.

#### **104 False declarations**

Any person who, in any declaration required to be made under this Act, makes any statement which he or she knows to be false or does not have reasonable grounds to believe to be true shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### **105 Offences by employees and other persons**

- (1) Any employee of a telecommunication licensee who—
  - (a) makes use for his or her own purposes of knowledge he or she may acquire of the contents of any communication; or
  - (b) wilfully mistimes, intercepts or prevents the transmission of a communication; or

- (c) wilfully or negligently omits to transmit or impedes or delays the transmission of a communication;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who—

- (a) fails or refuses to register as a dealer in or repairer of radio transmitting stations when required to do so in terms of this Act; or
- (b) fails or refuses to furnish a return or to supply information in the manner and in the time prescribed or furnishes a false or incomplete return or supplies false or incomplete information; or
- (c) wilfully delays or obstructs an inspector or police officer in the exercise of the powers or duties conferred or imposed upon him or her by or under this Act; or
- (d) on being required to do so, fails or refuses to produce to an inspector or a police officer a licence, certificate or authority issued in terms of this Act or a book, record or document relating to radio transmitting stations which is in his possession or under his or her control; or
- (e) fails or refuses, without reasonable cause, to give information to an inspector or a police officer when required to do so in terms of section 116 or gives false or incomplete information; or
- (f) fails to comply with the requirement contained in a notice served on him or her in terms of subsection (3) of section 117 or with a requirement made by an inspector or police officer in terms of subsection (7) of that section; or
- (g) without the permission of the licensee concerned or a person having authority to grant such permission, enters any part of any premises on which there is a radio station worked by a telecommunications licensee and which is not open to members of the public; or
- (h) behaves in a disorderly manner in any premises on which there is a radio station worked by a telecommunication licensee; or
- (i) wilfully destroys, injures or removes a radio station or radio apparatus of a telecommunication licensee; or
- (j) wilfully interferes with, hinders or impedes in any way the operating of a radiocommunication service or the free use or working of a radio station or radio apparatus of the licensee concerned; or
- (k) contravenes section sixty-eight, section *sixty-nine*, subsection (1) of section 70, subsection (1) of section 71 or subparagraph (1) or (2) of paragraph 10 of the *Fourth Schedule*;

shall be guilty of an offence and liable—

- (i) for a contravention of paragraph (i) or (j), to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (ii) for a contravention of section 68, section 69, subsection (1) of section 70, subsection (1) of section 71 or subparagraph (1) of paragraph 10 of the *Fourth Schedule*, to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;

- (iii) for an offence not specified in subparagraph (i) or (ii), to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(3) A person contravening paragraph (g) or (h) of subsection (2) who fails to leave the premises concerned immediately on being required to do so by an employee of the licensee concerned may be removed by such employee, and a police officer shall, on being requested to do so by such employee, remove or assist in the removal of the person.

(4) A person who sees another person contravening or attempting to contravene paragraph (i) or (j) of subsection (2) may, without warrant, arrest that other person.

(5) A person who arrests another person in terms of subsection (4) shall forthwith notify that other person of the cause of the arrest.

(6) A person arrested in terms of subsection (4) shall as soon as possible be brought to a police station or charge office and there, subject to the provisions of the Criminal Procedure and Evidence Act [*Chapter 9:07*] relating to the release of arrested persons on bail, be detained until a warrant is obtained for his or her further detention upon a charge or until he or she is released by reason that no charge is preferred against him or her.

(7) No person arrested in terms of subsection (4) shall be detained for longer than 48 hours unless a warrant for his or her further detention is obtained.

(8) On the conviction of a person for an offence of contravening subsection (1) of section 26, subsection (1) of section 70 or subsection (1) of section 71, the court convicting the accused may, on the application of the prosecutor and in addition to any penalty which it may impose, cancel a radio station licence, certificate or authority issued to the accused in terms of Part VI or XI and prohibit the issue to him or her, for such period as the court may specify, of such a licence, certificate or authority.

## **106 General offences and penalties**

(1) Any person who contravenes any other provision of this Act, or any order, direction, instruction or notice with which it is his or her duty to comply shall be guilty of an offence and, if no other penalty is provided therefor, shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any order, direction, instruction or notice made in terms of this Act may specify a penalty for each day that the licensee subjected to the order direction, instruction or notice is in default of compliance, not exceeding the period and amount prescribed.

## **107 Sufficiency of allegations in indictment**

In any indictment, summons or charge relating to any offence committed in respect of—

(a) any—

(i) mail or telegram or any property or moneys belonging to or used by a licensee; or

(ii) money order, postal order or other document used for the purpose of remitting, paying, collecting or depositing money through or with a postal licensee or a telecommunication licensee;

it shall be sufficient to allege that any such mail, telegram, property, moneys, money order, postal order or other document belongs to or is or was in the lawful possession of the licensee;

- (b) anything done or committed with a fraudulent intent relating to or concerning—
- (i) a telecommunication licensee or an employee of such a licensee; or
  - (ii) any mail, telegram, property, moneys, money order, postal order or other document referred to in paragraph (a);

it shall be sufficient to allege that such thing was done with intent to defraud the licensee concerned.

### **108 Recovery of fees and contributions**

(1) On the conviction of a person for an offence in terms of section 23, 24, 25 or 26, the court convicting the accused may, on the application of the prosecutor and in addition to any penalty which it may impose, give summary judgment in favour of the Authority for the amount of the appropriate licence fee.

(2) A judgment given by a court in terms of subsection (1) shall have the same force and effect and may be executed in the same manner as if the judgment had been given in a civil action instituted in the court.

(3) The Authority may, by action in a competent court, recover the amount of a licence fee or contribution payable in terms of this Act.

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### **109 Authority required for institution of certain criminal proceedings**

Where any person is brought before a court on a charge of—

- (a) committing an offence in terms of this Act; or
- (b) attempting to commit or inciting another person or conspiring with another person to commit an offence in terms of this Act; or
- (c) being an accessory after the fact to the commission of an offence in terms of this Act;

in respect of which offence the only penalty provided is imprisonment without the option of a fine, no further proceedings in respect thereof shall be taken against him or her without the authority of the Prosecutor-General, except such as the court may think necessary by remand to secure the due appearance of the person charged.

## **PART XV**

### **SETTLEMENT OF DISPUTES**

#### **110 Settlement of disputes**

(1) Where any dispute arises between the providers of any service or facility whatsoever in terms of this Act or between such providers and any member of the public, the complaint shall be referred to the Authority by any party to the dispute within a period and in such manner as may be prescribed.

(2) If the Authority considers the complaint to be justified, it shall make a determination in the matter within such period, not exceeding one month, and in accordance with such procedure, including affording the parties concerned an opportunity to make representations on the matter, as may be prescribed.

(3) Notwithstanding subsection (2), the Authority may, without taking any further action in the matter, refer it for determination by the tribunal referred to in section 111

### **111 Complaints tribunal**

(1) For the purpose of settling disputes referred to in section 110, there is hereby established a tribunal to be known as the Complaints Tribunal.

(2) The tribunal shall consist of three members appointed by the Minister, one of whom shall be a person who holds or has held judicial office in Zimbabwe or has practised as a legal practitioner in Zimbabwe for at least twelve years who shall be the chairperson, and the two other members shall be persons with expert knowledge in communications matters, one of whom shall be nominated by the Consumer Council of Zimbabwe.

(3) If at any time a member of the Complaints Tribunal is unable for any reason to act as such, the member shall be replaced in accordance with subsection (2).

(4) In addition to determining matters referred to it in terms of section 110, the tribunal shall adjudicate any other communications matters which the Minister may refer to it.

(5) The procedure to be followed by the tribunal shall be as prescribed in regulations.

(6) Appeals from any determination of the tribunal shall lie to the Supreme Court.

### **112 Tenure of office of members of tribunal**

(1) The term of office of members of the tribunal shall be a period of three years but a member shall be eligible for reappointment for one further term of office.

(2) The appointment of a member shall terminate if he or she would be required in terms of subparagraph (2)(a) or (b) of paragraph 4 of the Second Schedule to vacate his or her office had that paragraph and paragraph 2 of the Second Schedule applied to him or her.

### **113 Appeals to Administrative Court**

(1) Subject to section 114, any person who is aggrieved by a decision of the Authority in the exercise of its functions in terms of this Act may appeal against such decision to the Administrative Court.

(2) An appeal in terms of this section shall be lodged with the Registrar of the Administrative Court within twenty-one days of the date of the decision appealed against.

(3) The Administrative Court Act [*Chapter 7:01*], shall apply in relation to the composition, procedure and powers of the Administrative Court on an appeal in terms of this section.

#### **114 Appeals in connection with licences**

- (1) Notwithstanding section 113, any person who is aggrieved by—
- (a) a decision of the Authority not to issue a licence or certificate; or
  - (b) any term or condition of a licence issued to him or her, or a refusal by the Authority to specify a term or condition in a licence; or
  - (c) a refusal by the Authority to renew a licence or certificate; or
  - (d) any amendment of a licence or a refusal by the Authority to amend a licence; or
  - (e) the suspension or cancellation of a licence; or
  - (f) the grant or refusal by the Authority to grant any approval or authority in terms of this Act; or
  - (g) the outcome of any mediation by the Authority of a dispute between licensees; or
  - (h) such decision of the Authority as may be prescribed;

may, within twenty-eight days after being notified of the decision or action concerned, appeal in writing to the Minister:

Provided that such appeal shall not suspend the operation of any licence or certificate issued by the Authority.

(2) For the purpose of determining an appeal noted in terms of subsection (1), the Minister may require the Authority to furnish him or her with the reasons for the decision or action that is the subject of the appeal and a copy of any evidence upon which the reasons are based.

(3) The Minister, after due and expeditious inquiry, may make such order on any appeal noted in terms of subsection (1) as he or she considers just.

(4) An appeal shall lie to the Administrative Court against any order of the Minister in terms of subsection (3).

(5) An appeal in terms of subsection (4) shall be made in the form and manner and within the period prescribed in rules of court.

(6) For the purpose of determining an appeal in terms of subsection (4) that relates to any communications service or system, a judge of the Administrative Court shall be assisted by two assessors having ability or experience in the appropriate field of communications law or technology.

(7) On an appeal in terms of subsection (4), the Administrative Court may confirm, vary or set aside the decision or action appealed against and may make such order, whether as to costs or otherwise, as the court thinks just.

### **PART XVI MISCELLANEOUS PROVISIONS**

#### **115 Emergency and universal service obligations of certain licensees**

(1) A telecommunication or postal licensee shall provide such facilities as will enable a person to communicate with an emergency organisation free of charge in the event of an emergency occurring within any area serviced by it.

(2) A telecommunications licensee shall endeavour to ensure that their telecommunication apparatus is compatible with peripheral devices commonly used by disabled persons.

(3) Until an implementation plan covering the area and services concerned is put into effect, a telecommunication or postal licensee shall provide such services and community service telephones in such under-served areas and community centres within and outside such areas as the Authority, with the approval of the Minister, shall specify in the licence issued to the licensee.

(4) The Authority, with the approval of the Minister, may specify a tariff for the use of community service telephones in the under-served areas and community centres referred to in subsection (3).

## 116 Inspections

(1) The Authority may appoint persons employed by it to be inspectors for the purposes of this Act and shall furnish each person so appointed with a certificate signed by or on behalf of the Director-General stating that he or she has been appointed as an inspector.

(2) An inspector or a police officer may require a person whom he or she has reasonable cause to suspect is a person required in terms of this Act to possess a licence, certificate or authority to produce his or her licence, certificate or authority, as the case may be.

(3) If a person referred to in subsection (2)—

- (a) is unable to produce his or her licence, certificate or authority on demand; or
- (b) cannot be located at his or her usual or last-known place of abode or business;

the inspector or police officer concerned may serve on the person a notice in the prescribed form requiring that person to produce that notice and his or her licence, certificate or authority to the police officer in charge of a police station within a period of 7 days from the date of service of that notice.

(4) A police officer to whom a notice and a licence, certificate or authority have been produced in terms of subsection (3) shall forthwith—

- (a) issue to the person who produced the notice and licence, certificate or authority a receipt in the prescribed form; and
- (b) notify the inspector or police officer who served the notice that the notice and the licence, certificate or authority have been produced.

(5) If a person who has been served with a notice in terms of subsection (2)—

- (a) fails to comply with the requirement contained in that notice, he or she shall be presumed, until the contrary is proved, not to be the holder of the licence, certificate or authority, as the case may be, referred to in the notice;
- (b) is subsequently prosecuted for failing to comply with the requirement contained in that notice, he or she shall be presumed, unless the contrary is proved, not to have produced that notice and his or her licence, certificate or authority, as the case may be, in compliance with the notice.

(6) Subject to subsection (9), an inspector or a police officer may at all reasonable times enter premises—

- (a) of a licensee; or
- (b) in or on which a dealer or an authorised repairer carries on business; or
- (c) which are owned or occupied by a person whom he or she has reasonable cause to suspect—

- (i) is working a radio station or has a radio station in his or her possession or under his or her control in contravention of this Act; or
- (ii) is working a radio transmitting station or apparatus for operating a diffusion service or has a radio transmitting station or apparatus for operating a diffusion service in his or her possession or under his or her control in contravention of the Broadcasting Services Act [*Chapter 12:06*];
- (iii) is providing any service or operating any system for which a licence other than a listener's licence issued in terms of the Broadcasting Services Act [*Chapter 12:06*] is required;

or

- (d) on which he or she has reasonable cause to suspect is established, constructed or installed a radio station, radio apparatus or generating apparatus which is causing harmful interference; or
- (e) which are owned or occupied by a person whom he or she has reasonable cause to suspect is in possession of a receiver as defined in the Broadcasting Services Act [*Chapter 12:06*]; or
- (f) on which he or she has reasonable cause to suspect an offence against this Act has been committed;

and shall have power to make such examination, inspection and inquiry and do such things as may appear to him or her necessary for ascertaining whether compliance has been made with this Act.

(7) Subject to subsection (9), all books, records, accounts and documents required to be kept by a dealer or an authorised repairer in terms of this Act shall be open to inspection at all reasonable times by an inspector or by a police officer.

(8) Subject to subsection (9), an inspector may inspect at all reasonable times a radio station, radio or other apparatus or premises worked or used by or in the possession or under the control of a licensee, dealer or authorised repairer.

(9) The powers of entry and inspection conferred by this section shall not be exercised--

- (a) in a case where the entry and inspection is for the purpose of ascertaining compliance with the requirement to hold a listener's licence issued in terms of the Broadcasting Services Act [*Chapter 12:06*] or with the terms of such a licence, except with the consent of the person in charge of the premises concerned or in accordance with a search warrant issued in terms of section 50 of the Criminal Procedure and Evidence Act [*Chapter 9:07*];
- (b) in a case other than one referred to in paragraph (a), except with the consent of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence in terms of this Act or for the obtaining of evidence relating to such an offence.

(10) An inspector or police officer may, in the exercise of the powers conferred upon him or her by this section, seize—

- (a) a radio station which he or she has reasonable cause to suspect is being worked by or is in the possession or under the control of a person in contravention of this Act; or
- (b) a radio transmitting station or apparatus for operating a diffusion service or broadcasting service which he or she has reasonable cause to suspect is being worked by or is in the

possession or under the control of a person in contravention of this Act or the Broadcasting Services Act [*Chapter 12:06*]; or

- (c) a book, record or document which he or she has reasonable cause to suspect will afford evidence of the commission of an offence against this Act, or, as the case may be, the Broadcasting Services Act [*Chapter 12:06*] relating to the matters referred to in subparagraph (ii) of paragraph (c) of subsection (6);

and may retain it for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry.

(11) An inspector may, in the exercise of the powers conferred upon him or her by this section, order a person referred to in subsection (8) to cease using, pending inquiry by the Authority, a radio station or radio or other apparatus which, in his or her opinion, is causing harmful interference or is being worked otherwise than in accordance with this Act, the Broadcasting Services Act [*Chapter 12:06*], or the International Telecommunication Constitution or, as the case may be, the terms and conditions of his or her licence.

(12) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon him or her by this section, exhibit the certificate issued to him or her in terms of subsection (1).

### **Insert new section**

#### **117 Disclosure of confidential information and use of information acquired by inspectors, etc., for personal gain**

(1) If an inspector or member or employee of the Authority in the course of his or her duties as such acquires information relating to the financial affairs of any person, or to any commercial secret, he or she shall not for personal gain make use of such information, nor disclose it to any other person except--

- (a) for the purpose of legal proceedings under this Act or any other law; and  
 (b) to the extent that it may be necessary to do so for the purpose of this Act or any other law, to another inspector or member or employee of the Authority.

(2) No inspector or member or employee of the Authority shall, for personal gain, make use of any information acquired by him or her in the course of his or her duties as such for a period of five years after the date on which he or she ceased to be an inspector, member or employee.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to the forfeiture of any proceeds accruing to him or her on account of the contravention and to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **118 Power to give directions**

- (1) For the purpose of ensuring—  
 (a) reliability of the provision of any service;  
 (b) technical compatibility and safety of operation of any equipment or telecommunication system;

- (c) fair and efficient market conduct by licensees;
- (d) co-ordination and co-operation, on such terms as the Authority may specify, with any other licensee in the use or sharing of any installation or system, or part thereof, owned or used by the licensee for the provision of any service;

the Authority may, without derogation from the liability of any licensee for any offences under this Act, before or concurrently with any legal proceedings against the licensee, give directions in writing to such licensee affording the licensee an opportunity to take such corrective action in respect of, or to desist from, any conduct which is in contravention of this Act or of the conditions of the licence of the licensee.

(2) A direction given under subsection (1) shall-

- (a) require the licensee concerned, subject to the circumstances of the case, to do or to desist from doing, such things as are specified in the direction, or as are of a description specified in the direction; and
- (b) take effect within such time as is practicable as specified in the direction.

(3) The Authority may at any time vary, suspend or revoke the whole or any part of a direction made in terms of this section.

(4) Before giving a direction to any licensee in terms of this section or varying any such direction, the Authority shall, unless it considers impracticable or undesirable, give notice—

- (a) stating that the Authority proposes to make or vary the direction and setting out its effect; and
- (b) specifying the period within which representations or objections to the proposed direction or variation may be made.

(5) The licensee concerned shall comply with a direction of the Authority given in terms this section.

### **119 Interception of communications**

A postal or telecommunication services licensee or employee of such licensee in charge of a telegraph office shall detain any telegram—

- (a) which he or she suspects of containing anything that will afford evidence of the commission of a criminal offence or which he or she suspects of being sent in order to further the concealment of the commission of a criminal offence; or
- (b) which he or she is requested by a commissioned police officer to detain on the ground that that police officer suspects it of containing anything that will afford evidence of the commission of a criminal offence or that he or she suspects it of being sent in order to further the concealment of the commission of a criminal offence;

and, if so authorised by the Prosecutor-General, that licensee or employee in charge shall cause the telegram to be handed over to such person as may be specified by the Prosecutor-General:

Provided that where, in the opinion of that licensee or employee in charge, by reason of the possibility of injury to any person or property, urgency or other good cause, it is necessary that the telegram be delivered to a police officer as soon as is possible, the employee in charge shall cause the telegram to be handed over to a police officer and shall forthwith inform the Prosecutor-General in writing thereof.

**PART XVI**  
**GENERAL**

**120 Regulatory powers of Minister**

(1) The Minister may, after consultation with the Authority, make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in the opinion of the Minister, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) all matters relating to the management of post offices and the provision or operation of postal and telecommunication services or systems;
- (b) the supply, sale and use of postage stamps, and in so doing provide for—
  - (i) the classes of postal articles in respect of which postage stamps shall be used for the payment of postage or other sums payable under a postal tariff approved in terms of section *eighty*;
  - (ii) the conditions subject to which postage stamps, including perforated or defaced postage stamps, may be accepted or refused in payment of postage or any other sum;
  - (iii) the regulation of and the measures to be taken in connection with the supply, sale and custody of postage stamps;
  - (iv) the persons by whom, and the conditions subject to which, postage stamps may be sold;
  - (v) the duties and remuneration of persons authorised to sell postage stamps;
  - (vi) the conditions of sale of international reply coupons;
- (c) the installation of letter boxes or receptacles by members of the public for the purpose of the delivery to them of postal articles and the disposal of postal articles addressed to members of the public who fail to install in the prescribed manner letter boxes or receptacles of a type prescribed;
- (d) the registration of postal articles, and in so doing provide for—
  - (i) the classes of postal articles that may be registered;
  - (ii) the maximum amount for which a postal article may be registered;
  - (iii) the amount payable as compensation for the loss of a registered postal article or its contents;
- (e) the insurance of postal articles, and in so doing provide for—
  - (i) the classes of postal articles that may be insured;
  - (ii) the maximum amount for which a postal article may be insured;
  - (iii) the amount payable as compensation for the loss of an insured postal article or its contents;
- (f) a money order service and in so doing provide for—
  - (i) the maximum amount for which money orders may be issued;
  - (ii) the period during which money orders shall remain current;

- (g) a postal order service, and in so doing provide for the manner in which and the conditions subject to which postal orders may be issued, paid and cancelled;
- (h) the establishment, maintenance, working and conduct of telecommunication services or systems, and in so doing—
  - (i) provide in connection with a telegraph service for—
    - A. the order of precedence of messages sent by telegraph service and the method of disposal of unclaimed and undelivered telegrams;
    - B. the measures to be taken to prevent the improper interception or disclosure of messages sent by telegraph service;
    - C. the period for which and the conditions subject to which telegrams and documents relating to telegrams that are in the custody of telegraph offices shall be preserved;
  - (ii) provide in connection with telephone services for—
    - A. the conditions subject to which persons may use or avail themselves of telephone services and facilities connected therewith;
    - B. the supply, installation, maintenance and repair of such apparatus and equipment as may be necessary for the purposes of affording persons the use of telephone services and facilities connected therewith and, if the nature of the apparatus or equipment so requires, for the working of the apparatus or equipment by a licensee;
    - C. the conditions subject to which apparatus and equipment referred to in subparagraph B shall be supplied, installed, worked, whether by a licensee or otherwise, maintained and repaired;
    - D. the deposits and charges to be paid in connection with the supply, installation, working by a licensee, maintenance and repair of apparatus and equipment referred to in subparagraph B and generally in connection with the use of telephone services and facilities connected therewith;
    - E. the forfeiture of deposits referred to in subparagraph D and the payment of sums to meet losses in income occasioned by the default of a person to whom apparatus or equipment referred to in subparagraph B is supplied or on whose behalf or request it is installed and to meet the costs of work done for the purpose of installation and like costs when apparatus or equipment supplied to or installed on behalf of or at the request of a person is removed before the expiration of a prescribed period or, as the case may be, is not supplied or installed owing to the default of the person;
    - F. the varying, exclusion or substitution, with the agreement of a person to whom a telephone service or facilities connected therewith are afforded or by whom such a service or facilities are used, of any provision prescribing a condition or relating to a matter referred to in subparagraphs A to E in respect of the supply to him or her or the installation, maintenance, working, repair or use of apparatus or equipment by him or her or on his or her behalf or at his or her request;
- (i) the protection from interference or injury by works and lines for the supply of electricity of telecommunication systems established, maintained or worked by a licensee and by persons authorised in terms of this Act to establish, maintain or work telecommunication systems, and in so doing provide for the varying, exclusion or substitution, with the agreement of a

person by whom such works or lines are established or operated, of any regulations providing for the protection of such telecommunication systems from interference or injury which may be applicable to the person;

- (j) the giving of such access to buildings and the furnishing of such places, facilities and fittings in buildings by the owners of buildings as may be necessary for the purpose of installing, maintaining and repairing apparatus and equipment used or to be used in connection with telecommunication systems within the building;
- (k) such matters as the Minister may consider appropriate or necessary to give force and effect, within Zimbabwe, to the provisions of the International Telecommunication Constitution and the Constitution of the Universal Postal Union;
- (l) in relation to the provision of reserved services—
  - (i) the category of reserved services, including reserved agency services;
  - (ii) the rates of postage payable on reserved postal articles;
  - (iii) the redirection of reserved postal articles and the transmission by post of postal articles so redirected free of charge or subject to a prescribed charge;
  - (iv) the charges to be paid for registration of reserved postal articles;
  - (v) the charges to be paid for insurance of reserved postal articles;
  - (vi) the rates of commission or the charges to be charged on and in respect of reserved money orders;
  - (vii) the rates of commission to be charged on reserved postal orders;
  - (viii) the rates at which and the conditions and restrictions subject to which—
    - A messages shall be transmitted by a reserved telegraph service;
    - B messages transmitted by a reserved telegraph service shall be delivered;
  - (ix) the charges for searching for telegrams or documents relating to telegrams that are in the custody of telegraph officers employed by a reserved telegraph service;
- (m) the classification of radio stations, other than broadcasting stations and radio stations used solely in connection with broadcasting and diffusion services, and in so doing amend the *Third Schedule* or vary the definition of a radio station specified in the *Third Schedule* and prescribe the nature of the radiocommunication services to be carried on therefrom;
- (n) the inspection and testing by employees of broadcasting stations, licensed radio stations and radio stations and radio and other apparatus used in connection with broadcasting services or systems and for the method of installation, working and maintenance thereof;
- (o) the establishment, maintenance, protection, working and conduct of all or any radiocommunication service established, maintained or carried on by a licensee, whether in conjunction with a telecommunications service or system or otherwise;
- (p) the prohibition, restriction or control, by licence or otherwise, of the importation, purchase and sale of any apparatus capable of causing harmful interference;
- (q) ensuring that—
  - (i) the use of generating apparatus or power lines does not cause harmful interference and in so doing prescribe the conditions to be observed with respect to—

- A. the maximum intensity of electromagnetic energy of specified frequencies which may be radiated in any direction from generating apparatus or power lines when in use;
  - B. the electromagnetic energy of specified frequencies which may be injected by generating apparatus into the power lines by means of which power is supplied to the generating apparatus;
- (ii) the use, in connection with a broadcasting or diffusion service or otherwise of radio stations or radio or other apparatus that does not injure or interfere with telecommunication services established, maintained or carried on by a licensee or injure or interfere with radio stations or radio or other apparatus, equipment, circuits, instruments, wires and the like of a licensee, and in so doing authorise the Authority to order the modification of radio stations or the removal or replacement of radio or other apparatus;
- (r) the registration of dealers in and repairers of radio transmitting stations and the information to be supplied to the Authority in connection with applications for registration;
  - (s) the keeping of books, records and documents, the furnishing of returns and the supply of information relating to dealings in and the repair of radio transmitting stations by dealers and authorised repairers;
  - (t) the qualifications in respect of age, term of service, skill, character and otherwise required by applicants for certificates of competency to work prescribed classes and types of radio stations;
  - (u) the holding of examinations to determine the proficiency of applicants for certificates of competency to work prescribed classes and types of radio stations;
  - (v) the issue of certificates of competency referred to in paragraph (t) to persons with the qualifications prescribed in terms of that paragraph;
  - (x) the fees to be paid—
    - (i) by applicants in connection with examinations referred to in paragraph (t); and
    - (ii) on the issue of certificates of competency to work prescribed classes and types of radio stations;
  - (y) the form and manner in which applications for licences, certificates and authorities are to be made and the information to be supplied in connection therewith;
  - (z) the form of licences, certificates and authorities, the terms and conditions to be contained in licences, certificates and authorities and the periods for which licences, certificates and authorities shall remain in force;
  - (aa) the terms and conditions subject to which licences, certificates and authorities shall be issued;
  - (bb) the cancellation, suspension and amendment of licences, certificates and authorities and the surrender or delivery to the Authority of licences, certificates and authorities for those purposes;
  - (cc) the circumstances in which and the conditions, including the payment of a fee, subject to which copies of licences, certificates and authorities may be obtained;
  - (dd) the notification to the Authority by persons to whom licences, certificates and authorities are issued of changes in their places of residence or business;

- (ee) the notification to the Authority of changes in the places, aircraft, ships or vehicles at or in which radio stations in respect of which licences are issued, are established, installed or worked;
  - (ff) the proper exercise by the Authority of the powers of control of and supervision over radiocommunication services conferred upon it by this Act and of the other powers, functions and duties conferred or imposed upon it by this Act;
  - (gg) the procedures to be followed for the settlement of disputes in terms of this Act;
  - (hh) access to communications services by the elderly and people with disabilities;
  - (ii) the prevention or minimisation of harmful emissions from communications systems;
  - (jj) the disposal of used communications equipment;
  - (kk) performance standards for the public operators;
  - (ll) accounting and charging requirements for public operators;
  - (mm) the registration and administration of domain names and licensing of internet service providers and the regulation of the installation and operation of internet and other information communication technologies;
  - (nn) the registration of SIM cards and subscriber information;
  - (oo) consumer protection and competition in the communications sector;
  - (pp) the provision of emergency communications services; and
  - (qq) the management and monitoring of telecommunication traffic.
- (3) Subject to subsection (4), before making regulations in terms of paragraph (1) of subsection (2), the Minister shall consult the Minister responsible for finance:

Provided that the Minister shall not be required to consult the Minister responsible for finance in the case of any regulations the effect of which is solely—

- (a) to alter any prices, rates or charges in order to conform with changes made by countries outside Zimbabwe; or
- (b) to fix charges and costs in connection with the supply, installation, working, maintenance or repair or any work done for the purposes of the installation of apparatus or equipment supplied, installed, worked, maintained or repaired by a designated licensee.

(4) Where a designated licensee proposes to increase any tariff for the provision of any reserved agency, postal or telecommunication service, and the Minister gives no written indication to the designated licensee of his or her intention to implement a specified alternative to the proposed increase within thirty days after the designated licensee first notified him or her in writing of the proposal, such increase shall be deemed to have been approved and shall take effect not earlier than the date on which the designated licensee publishes a notice of the increase in the *Gazette*:

Provided that the approval of the Minister shall not be required in the case of any tariff the effect of which is solely to alter the rates of postage in order to conform with changes to postal rates made by countries outside Zimbabwe.

(5) Regulations made in terms of subsection (1) may provide for the imposition of penalties not exceeding level five or, in default of payment, imprisonment for a period not exceeding six months for contraventions of the regulations.

(6) Nothing in this section shall be construed as conferring any right on a person to be supplied with or to be afforded the use of any telecommunication services or facilities connected therewith or apparatus or equipment necessary for that purpose.

### **121 Administrative charges**

(1) The Authority may, with the approval of the Minister, after consultation with the Minister responsible for finance, by notice in the *Gazette*, provide for such administrative fees and charges in respect of any of its services provided in terms of this Act.

(2) Without limiting the generality of subsection (1), administrative fees and charges may be imposed in connection with—

- (a) the registration, monitoring and surveillance of telecommunication installations, apparatus and systems;
- (b) the surveillance and inspection of licensees and persons engaged in markets for telecommunication services;
- (c) the management, assignment and revocation of addressing resources;
- (d) decisions concerning access, interconnection, interoperability and leased lines;
- (e) the amendment of licences;
- (f) the management and technical monitoring of the frequency spectrum;
- (g) the examination or testing of such applicants, the fees payable in respect of such examination or testing and the circumstances in and conditions on which an applicant may be exempted from such examination or testing for the provision of any services in terms of this Act.
- (h) the resolution of disputes.

(3) The Authority may impose a surcharge not exceeding twice the amount of the charge fixed for the relevant service if any such charge is not paid within the specified time.

(4) Any fee or charge due in terms of this section shall be a debt due to the Authority and may be recovered by proceedings in any court of competent.

(5) If responsibility for any of the services of the Authority have been delegated to any person in terms of this Act, such services shall be provided by such person in accordance with the charges notified in terms of subsection (1).

### **122 Evidence in proceedings for recovery of fees due**

In any legal proceedings for the recovery of any sum payable under this Act in respect of a postal article—

- (a) the official stamp or mark thereon denoting the sum due shall be *prima facie* evidence that such sum is due in respect of the postal article;
- (b) the production of the postal article having thereon a post office stamp or mark denoting that delivery of the postal article has been refused or that the person to whom it is addressed is dead or could not be found shall be *prima facie* evidence of such fact;
- (c) the person from whom the postal article purports to have come shall be deemed to be the sender thereof, unless the contrary is proved.

### **123 Proceedings on failure of Authority to comply with Act or direction**

(1) If at any time it appears to the Minister that the Authority has failed to comply with this Act or with a direction given to it in terms of section 15 or 16, he or she may, by notice in writing, require the Board to make good the default within a specified period.

(2) If an act or thing required to be done in terms of this Act is omitted to be done or is not done in the manner or within the time so required, the Minister may order all such steps to be taken as in his or her opinion are necessary or desirable to rectify such act or thing, and the said act or thing when done in terms of the said order shall be of the same force and validity as if originally done in accordance with the appropriate provisions of this Act.

(3) Any expenses incurred by the Minister in the exercise of his or her powers in terms of subsection (2) shall be defrayed from the funds of the Authority.

### **124 Repeal and savings**

(1) Subject to this section, the Postal and Telecommunications Act [*Chapter 12:05*], is repealed.

(2) Any regulations, by-laws or notices which, immediately before the fixed date, were in force under the Postal and Telecommunications Act [*Chapter 12:05*] shall continue in force as if they had been made in terms of this Act, and may be amended or repealed accordingly.

(3) Any licence, certificate, authority or permit which was issued or deemed to be issued in terms of the Postal and Telecommunications Act [*Chapter 12:05*] and which had effect immediately before the fixed date shall continue to have effect for the remainder of its period of validity as if it had been issued under this Act.

(4) Members of the Board and staff of the Authority who were in office immediately before the fixed date shall continue in office for the remainder of the period of their terms of office as if they had been appointed in terms of this Act.

## **FIRST SCHEDULE (*Section 5 (4)*)**

### **ANCILLARY POWERS OF AUTHORITY**

1. To acquire by lease, purchase, or otherwise, immovable property and to construct buildings thereon.

2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.

3. To maintain, alter and improve property acquired by it.

4. To mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Authority may, with the approval of the Minister, determine.

5. To open bank and building society and post office accounts in the name of the Authority and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.

6. To insure against losses, damages, risks and liabilities which it may incur.

7. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.

8. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Authority thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.

9. With the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Minister.

10. To employ, upon such terms and conditions as the Authority may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.

11. Subject to the Public Finance Management Act [*Chapter 22:19*] to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay bonuses and the like to its employees as the Authority thinks fit.

12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.

13. With the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.

14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Authority.

15. To sell or let dwellings and land for residential purposes to its employees.

16. With the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.

17. To provide security in respect of loans guaranteed in terms paragraph 16 by the deposit of securities.

18. With the approval of the Minister, to make loans to any employee of the Authority—

(a) for the purpose of purchasing vehicles, tools or other equipment used by him or her in carrying out his or her duties; or

(b) not exceeding three months' salary or wages payable to him or her, for any purpose;

on such security as the Authority considers adequate.

19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.

20. To provide such services as the Authority considers could properly be provided by the Authority.

21. With the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Authority, of benefit to the Authority.

22. Generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Authority under this Act or any other enactment.

**SECOND SCHEDULE** (*Section 7(6)*)  
**PROVISIONS APPLICABLE TO BOARD**

*Section*

- 1 Interpretation in Second Schedule.
- 2 Disqualification for appointment to Board.
- 3 Term of office and conditions of service of members of Board.
- 4 Vacation of office by members of Board.
- 5 Filling of vacancies of Board.
- 6 Procedure of Board.
- 7 Committees of Board.
- 8 Minutes of proceedings.
- 9 Validity of decisions and acts of Board.

*Interpretation in Second Schedule*

1. In this *Schedule*—

“**appointed member**”, in relation to the Board, means a member appointed under section 7;

“**chairperson**” means the chairperson of the Board referred to in section 7(1).

*Disqualification for appointment to Board*

2. (1) Subject to this Act, a person shall not be qualified for appointment as a member of the Board, nor shall he or she hold office as an appointed member, if—

- (a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) he or she is a member of two or more other statutory bodies; or
- (c) he or she is a member of Parliament; or
- (d) he or she is a member of a local authority or is in the full-time employment of a local authority; or
- (e) in terms of the law in force in any country—
  - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

- (ii) he or she has made an assignment to or composition with his or her creditors which has not been rescinded or set aside; or
  - (f) within the period of 5 years immediately preceding his or her proposed appointment, he or she has been sentenced in a country to a term of imprisonment imposed with or without the option of a fine, whether or not any portion thereof has been suspended, and has not received a free pardon.
- (2) For the purposes of subparagraph (1)(b)—
- (a) a person who is appointed to a council, board or authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
  - (b) “statutory body” means—
    - (i) any Commission established by the Constitution Act 1 of 2013; or
    - (ii) any corporate body established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a Commission established by the Constitution Act 1 of 2013.

*Term of office and conditions of service of members of Board*

- 3 (1) Subject to this *Schedule*, the term of office of an appointed member of the Board shall be such period not exceeding 4 years as the Minister may fix on his or her appointment.
- (2) On the expiry of an appointed member’s term of office, he or she shall be eligible for re-appointment for a further one term.
- (3) Subject to this *Schedule*, the conditions of service of an appointed member of the Board, including allowances, shall be fixed by the Minister in consultation with the Minister responsible for finance, at the time of his or her appointment.
- (4) Notwithstanding any other provision of this paragraph, the allowances payable to an appointed member of the Board shall not be reduced during his or her tenure of office.
- (5) Written notice of any special meeting convened in terms of subsection (2) shall be sent to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened:
- Provided that if, in the opinion of the chairman or Minister, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of at least forty-eight hours may be given.

*Vacation of office by members of Board*

- 4 (1) An appointed member of the Board may resign from his or her office at any time by giving the Minister and the Board such notice of his or her intention to resign as may be fixed in his or her conditions of service in terms of paragraph 3 or, if no such period has been fixed, after the expiry of 30 days from the date he or she gives notice or after the expiry of such other period of notice as he or she and the Minister may agree.
- (2) An appointed member of the Board shall be deemed to have resigned from his or her office and his or her office shall become vacant—

- (a) if he or she becomes disqualified for appointment to the Board in terms of paragraph 2(a), (b), (c), (d) or (e); or
- (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion was suspended, imposed with or without the option of a fine—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence.

*Filling of vacancies of Board*

5 On the death of, or vacation of office by, an appointed member of the Board, the Minister shall fill the vacancy within three months of the occurrence of the vacancy.

*Procedure of Board*

6 (1) Subject to subparagraph (2), the Board shall meet at such dates, times and places as may be fixed by the chairperson:

Provided that the Board shall meet at least once every three months.

(2) The chairperson—

- (a) may convene a special meeting of the Board at any time; and
- (b) shall convene a special meeting of the Board on the written request of not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened:

Provided that a failure by a member to receive such a notice, or an inadvertent failure to send notice to a member, shall not invalidate the meeting.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the chairperson where he or she convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where the chairperson convened the meeting in terms of subparagraph (2)(b).

(5) In the absence of the chairperson the deputy chairperson shall preside over the meeting of the Board as chairperson.

(6) In the absence of the chairperson or deputy chairperson, the members present shall, if they constitute a quorum, elect one of their numbers to preside over the meeting of the Board as chairperson.

(7) At any meeting of the Board, five of the members of the Board shall form a quorum.

(8) The Board will undertake to make decisions by consensus among the members present at the meeting of the Board at which a quorum is present; failing which anything authorised or required to be done by the Board shall be decided by a majority vote of the members at that meeting.

(9) At all meetings of the Board each member present shall have one vote on each question before the Board: *fetter*

Provided that, in the event of an equality of votes, the chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(10) With the approval of the Board and in consultation with the Director General, the chairperson may invite any person to attend a meeting of the Board where the chairperson considers that the person has special knowledge or experience in any matter to be considered at the meeting.

(11) A person invited to attend a meeting of the Board under subparagraph (10) may take part in the meeting as if he or she were a member of the Board, but shall not have a vote on any question before the meeting.

(12) Any proposal circulated among all members of the Board and agreed to in writing by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the members and shall be incorporated into the minutes of the next meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subparagraph shall not apply to the proposal.

(13) Except as otherwise provided in this paragraph, the procedure for the convening and conduct of meetings of the Board shall be as fixed from time to time by the Board.

#### *Committees of Board*

7 (1) For the better exercise of its functions, the Board may establish one or more committees in which it may vest such of its functions as it considers appropriate.

(2) The vesting of a function in a committee in terms of subparagraph (1)—

- (a) may be made absolutely or subject to conditions and may be amended or withdrawn at any time; and
- (b) shall not divest the Board of that function;

and the Board may amend or rescind any decision of the committee in the exercise of that function.

(3) On the establishment of a committee under subparagraph (1) the Board—

- (a) shall appoint at least one of its members as a member of the committee, and that member or one of those members designated by the Board, as the case may be, shall be chairperson of the committee; and
- (b) may, subject to paragraph 2, appoint as members of the committee persons who are not members of the Board and fix the terms and conditions of their appointment.

(4) Meetings of a committee may be convened at any time and at any place by the chairperson of the committee.

(5) If the chairperson of the committee is absent from a meeting of the committee, the members present may elect one of their number to preside at that meeting as chairperson.

- (6) A majority of members of a committee shall form a quorum at any meeting of a committee.
- (7) Anything authorised or required to be done by a committee may be decided by a majority vote at a meeting of the committee at which a quorum is present.
- (8) At all meetings of a committee each member present shall have one vote on each question before the committee:

Provided that, in the event of an equality of votes, the chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

- (9) Subject to this paragraph, the procedure to be followed at any meeting of a committee shall be fixed by the Board.

#### *Minutes of proceedings*

- 8 (1) The Board shall cause minutes to be taken at its meetings and at meetings of its committees and enter them in books kept for the purpose.
- (2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Board or committee, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.
- (3) The Board and any committee of the Board shall cause copies of all minutes that have been signed to be sent to the Minister for his or her information.

#### *Validity of decisions and acts of Board*

- 9 (1) No decision or act of the Board or act done under the authority of the Board shall be invalid solely because there were one or more vacancies on the Board when the decision was taken or the act was done or authorised or a disqualified person partook in the act or decision.
- (2) If any decision or other act of the Board is rendered invalid through a procedural irregularity, the Board may at a duly convened meeting ratify the decision or act, and any decision or act so ratified shall be valid in all respects with effect from the date of its ratification.

### **10 Dismissal or suspension of members**

## **THIRD SCHEDULE (Sections 2, 24 and 120 (3)(m))**

### **CLASSIFICATION OF RADIO STATIONS**

In this Schedule, “radio station” does not include a broadcasting station or a radio receiving station used solely in connection with a broadcasting or diffusion service.

Aeronautical station	means a radio station used for the purpose of carrying on a radiocommunication service with and for the benefit of aircraft.
Aircraft station	means a radio station continuously subject to human control which is installed in an aircraft.
Amateur station	means a radio station worked by a person interested in the technique of radiocommunications solely with a personal

	aim and without pecuniary interest.
Base station	means a radio station established on land and used for the purpose of carrying on a radiocommunication service with mobile stations.
Coast station	means a radio station established on land and used for the purpose of carrying on a radiocommunication service with and for the benefit of ship stations.
Community repeater mobile radio-communication station	means a radio station of special type with a base station in which the antenna system is strategically located on a high building, tower or some other elevation to receive a signal from a fixed, mobile or portable station for retransmission to other fixed, mobile or portable stations.
Fixed station	means a radio station used for the purpose of carrying on a radiocommunication service between specified points.
Meteorological aids station	means a radio station used for the purpose of transmitting special signals intended solely for meteorological and hydrological observations and exploration.
Mobile station	means a radio station capable of use whilst in motion or during halts at unspecified points and includes those radio stations commonly known as “walkie-talkies”, but does not include an aircraft station or ship station.
Model control station	means a radio station used for the purpose of controlling models.
Press station	means a radio receiving station used for the purpose of receiving news broadcasts from recognized press agencies.
Private experimental station	means a radio station utilizing Hertzian waves in experiments with a view to the development of the science and technique of radiocommunications, but does not include an amateur station.
	means a radio station the emissions of which—
Radio beacon station	(a) are intended to enable a mobile station, aircraft station or ship station to determine its bearings or direction in relation to the radiobeacon station; or (b) provide information solely as to the position or identity of the radiobeacon station.
Radio control station	means a radio station used for the purpose of controlling mechanism or other apparatus which is not installed in a model.
	means a radio station used for the purposes of—
Radio location station	(a) determining the relative direction, position or motion of an object; or (b) the detection of an object;

	by means of the constant velocity or rectilinear propagation characteristics of Hertzian waves.
Ship station	means a radio station installed in a vessel which is not permanently moored.
Special service station	means a radio receiving station used exclusively for the purposes of receiving time signals, notices to navigators, epidemiological and medical advice and like services of general utility.
Standard frequency station	means a radio transmitting station used for the purpose of transmitting standard and specified frequencies of known high accuracy intended for general reception.

#### FOURTH SCHEDULE (*Section 58*)

### RIGHTS, POWERS AND DUTIES OF TELECOMMUNICATION LICENSEES OPERATING TELECOMMUNICATION SYSTEMS

#### *Interpretation*

#### 1. In this Schedule--

“**licensee**” means a telecommunication licensee referred to in subsection (1) of section *fifty-eight*.

#### *Compulsory acquisition of rights in or interests over land for telecommunication purposes*

2. (1) Subject to subparagraph (3), a licensee may, with the approval of the Authority and the Minister responsible for lands and subject to such conditions as that Minister may impose, compulsorily acquire any servitude or other interest in or right over land required—

- (a) for the purposes of constructing or maintaining a telecommunication line and the buildings and exchanges and other apparatus connected therewith; and
- (b) for an access road to a site referred to in paragraph (a) or for the construction and use of such road; and
- (c) for the erection of power lines and for the maintenance and inspection of such lines.

(2) The Authority and the Minister responsible for lands shall not grant approval in terms of subparagraph (1) except after consideration of the following reports, namely--

- (a) a report by the licensee concerned that—
  - (i) the licensee is unable to acquire the servitude, interest or right upon reasonable terms by agreement with the owner; and
  - (ii) it is necessary that the servitude, interest or right be acquired by the licensee for a purpose referred to in subparagraph (1);

and

- (b) a report by the Ministry responsible for the environment made on behalf of the licensee by a person qualified to make such reports assessing the anticipated impact on the environment of any works to be undertaken for a purpose referred to in subparagraph (1), and recommending any measures to be taken to assess, prevent or minimize such impact.

(3) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the exercise by a licensee of his or her powers in terms of subsection (1).

*Use of buildings and structures to support telecommunication lines, etc.*

3. (1) Subject to this paragraph, a licensee may, on one month's written notice to the owner or occupier of the building or structure concerned, attach wires, stays or any other kind of support to any building or other structure for the purpose of facilitating or constructing a telecommunication line.

(2) If the owner or occupier of any land objects to the exercise of the powers referred to in subparagraph (1), he or she may lodge written notice of his or her objection and his or her reasons therefor with the licensee concerned and, on receipt of such objection, the licensee shall refer the matter to the Authority, whose decision shall be final:

Provided that an objection shall be lodged within one month of receipt of the notice given in terms of subparagraph (1).

(3) Before making any decision or order in terms of subparagraph (2), the Authority shall give to all parties concerned a reasonable opportunity of making representations, either in person or in writing.

(4) Before carrying out any work under, over or along any land reserved for railway purposes, other than maintenance and repair work, a licensee shall give notice in writing to the National Railways of Zimbabwe of the work he or she intends to carry out.

*Entry upon land for telecommunication purposes*

4. When, in accordance with this Schedule, a licensee has been permitted to occupy or use any land or has placed a telecommunication line in position, he or she shall be entitled to reasonable access to such land or line for the purpose of carrying on his or her operations on the land or of maintaining, removing, repairing or replacing the telecommunication line.

*Removal of telecommunication lines*

5. (1) If it is necessary to alter or remove a telecommunication line owing to any work or operations on the part of the State or a local authority or other person, the cost of the alteration or removal shall be borne by the State or the local authority or other person concerned.

(2) If a building is about to be erected on any land and any telecommunication line passing under or over the land will interfere with building operations, the licensee concerned shall, within one month of being required in writing to do so, undertake such alteration or deviation of the telecommunication line as may be necessary to remove the interference.

(3) If a licensee is satisfied that any alteration or deviation of a telecommunication line that is desired for any reason, other than that mentioned in subparagraph (2), is possible, necessary or expedient, the licensee shall, within one month of being required in writing to do so, undertake the alteration or deviation, and the cost of carrying out any such alteration or deviation shall be borne by the person at whose request it is made.

(4) If by reason of—

- (a) any excavation, blasting, mining or quarrying operations; or
- (b) deposits of mining debris or the making of drains, railways or other cuttings or any other operations; or

- (c) fumes or effluent from any factory, power station or other such premises; or
- (d) the construction of any dam;

any telecommunication line is damaged or, in the opinion of the licensee who erected it, the safety or stability of any telecommunication line is endangered or likely to be adversely affected, the licensee may repair, deviate or alter the telecommunication line and the cost of such repair, deviation or alteration shall be borne by the person by whom or on whose behalf the operations referred to in paragraph (a) or (b) were conducted, the premises referred to in paragraph (c) were operated or the dam was constructed, as the case may be:

Provided that, where the alterations or deviations which are necessary or expedient are, in the opinion of the licensee, extensive, the licensee may charge the person concerned such proportion of the cost of the alteration or deviation as the licensee, with the consent of the Authority, considers fair or reasonable.

*Erection of gates for access to telecommunication lines*

6. (1) If a fence on any land, including State land, makes it impossible or inconvenient for a licensee to gain access to his or her telecommunication line, the licensee may, at his or her own expense, erect and maintain a gate in that fence.

(2) A licensee who has erected a gate in terms of subparagraph (1) shall provide a lock for the gate and supply a key for the lock to the owner or occupier of the land on which the gate is erected.

(3) Any person intending to erect a fence that would render it impossible or inconvenient for a licensee to obtain access to his or her telecommunication line shall give the licensee one month's notice in writing of his or her intention to erect the fence.

*Trees obstructing telecommunication lines*

7. (1) Trees or undergrowth which, in the opinion of a licensee, obstruct or interfere with or are likely to interfere with the working or maintenance of any telecommunication line shall, on 14 days' notice by the licensee and to such extent as the licensee may consider necessary, be cut down or trimmed—

- (a) by the authority responsible for the care and management of the land, road or street concerned, where the trees or undergrowth are growing on State land, other than State land which has been leased, or on Communal Land or on a road or street;
- (b) by the owner or occupier of the land, concerned, in any other case.

(2) If the authority, owner or occupier referred to in subparagraph (1) objects to the exercise of the powers referred to in that subparagraph, he or she may lodge written notice of his or her objection and his or her reasons therefor with the licensee concerned and, on receipt of such objection, the licensee shall refer the matter to the Authority, whose decision shall be final:

Provided that an objection shall be lodged within 14 days of receipt of the notice given in terms of subparagraph (1)

(3) Before making any decision or order in terms of subparagraph (2), the Authority shall give to all parties concerned a reasonable opportunity of making representations, either in person or in writing.

(4) The Authority shall uphold an objection made in terms of subparagraph (2) if it is shown to its satisfaction that the obstruction to or interference or likely interference with the telecommunication line in question can be avoided without cutting down or trimming any trees or undergrowth and without unreasonable extra cost to the licensee.

(5) The reasonable expenses incurred in cutting down or trimming trees or undergrowth in terms of subparagraph (1) shall be borne by the licensee concerned.

(6) Subject to this paragraph, if the authority, owner or occupier referred to in subsection (1) fails to comply with a notice given by the licensee in terms of that subparagraph, the licensee may enter upon the land, road or street, as the case may be, in question and cut down or trim the trees or undergrowth to the extent he or she considers necessary.

(7) Notwithstanding subparagraph (1), if the working of any telecommunication line is actually interfered with or endangered by any trees or undergrowth, the licensee concerned may remove the interference or danger without giving the notice required by subparagraph (1).

*Laying of telecommunication lines under streets, etc.*

**8.** (1) A licensee may construct and maintain a telecommunication line under any street, road or footpath, and may alter or remove any such telecommunication line:

Provided that before doing so the licensee shall give reasonable notice to the authority or person that owns or has the care and management of the street, road or footpath concerned.

(2) In the exercise of the powers conferred by subparagraph (1), the licensee may break or open up any street, road or footpath and alter the position thereunder of any pipe, other than a main sewer, main drain or gas main, and of any electric cable other than an electric main:

Provided that no alteration in the position of any such pipe or cable shall be made except under the supervision of a person appointed by the person to whom the pipe or cable belongs or by whom it is used, unless no such person is appointed or the person so appointed fails to supervise at the time specified in the notice for the commencement of the work or discontinues supervision during the work.

*Powers to be exercised with care and compensation for damage*

**9.** (1) In the exercise of the powers conferred by this Schedule, a licensee shall--

- (a) cause as little detriment and inconvenience and do as little damage as possible; and
- (b) pay compensation to any person who suffers loss or deprivation of rights through the exercise of the powers conferred by this Schedule; and
- (c) if so requested by the Authority, commission a report referred to in paragraph (b) of subparagraph (2) of paragraph 2 before exercising any powers conferred by paragraphs 3 to 8.

(2) Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the payment of compensation in terms of subparagraph (1):

Provided that any reference in Part VIII of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be construed as a reference to the date of the exercise by the licensee concerned of the powers referred to in subparagraph (1).

(3) On completion of any work in connection with the construction, maintenance or repair of a telecommunication line in the exercise of the powers conferred by this *Schedule*, the licensee

concerned shall promptly restore the surface of any street, road, footpath, land or railway affected thereby as nearly as reasonably possible to the same condition as that in which it was before the work was commenced.

(4) While any street, road or footpath is opened, broken up or otherwise obstructed by the exercise of the powers conferred by this *Schedule*, the licensee concerned shall cause the obstruction to be fenced or guarded and, during the night, lighted.

*Height and depth of telecommunications lines*

**10.** (1) Aerial telecommunication wires and cables shall be carried over land at such height from the surface of the ground as may be prescribed.

(2) An underground telecommunication line that is not carried in a pipe or duct shall be placed such distance below the surface of the ground as may be prescribed.

(3) If the owner or occupier of any land is obstructed in the use of the land because a telecommunication line is insufficiently high, the licensee concerned shall, subject to paragraphs 5 and 7, take such steps as may be necessary for the removal of the obstruction.

*Acquisition of right or interest in Communal Land*

**11.** Notwithstanding anything to the contrary in this Schedule, no right over or interest in Communal Land shall be acquired, whether compulsorily or by agreement, otherwise than in accordance with the Communal Land Act [*Chapter 20:04*].

*Licensee to authorise persons for purposes of Fourth Schedule*

**12.** The licensee shall furnish every person authorised by him or her to exercise any of the powers conferred by this *Schedule* with a certificate signed by or on behalf of the licensee stating that the person has been so authorised, and such person shall produce such certificate at the request of any person affected by the exercise of the said powers.