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ACT NO. 4 OF 2012

Communications Act, 2012

An Act to provide for the regulation of the telecommunications, broadcasting and postal sectors; and for related matters.

Enacted by the Parliament of Lesotho.

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Communications Act 2011, and shall come into operation on such a date as the Minister may, by notice published in the Gazette, appoint and different dates may be appointed for different provisions.

Interpretation

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

“Authority” means the Lesotho Communications Authority referred to in section 3;

“board” means the Board of the Authority established under section 6;

“chairman” means the Chairman of the Board appointed under section 10;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 13;

“Commercial broadcasting service” means a broadcasting service that -

- (a) is owned and provided by individuals and companies;
- (b) is provided in order to generate profit; and
- (c) provides coverage in selected areas.

“Committee” means the Universal Service Fund Committee established under section 35;

“communications infrastructure” means any facility used for the provision of one or more communications service;

“communications network” means an integrated system of facilities used to provide one or more communications service;

“communications service” means a broadcasting, postal or telecommunications service;

“community broadcasting service means a broadcasting that -

- (a) is provided by specific communities;
- (b) transmits programs that are determined by and realize aspirations of the community that owns such broadcaster;
- (c) operates on a non-profit making basis, and
- (d) provides coverage that will enable transmission access to members of the community.

“dominant licensee” means a licensee who the Authority has determined -

- (a) has the ability to exercise significant market power in any communications market in Lesotho; or
- (b) operates communications infrastructure that is sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor.

“end-user” means an entity, other than a licensee, that obtains a communications service;

“finite resources” means resources used to provide a communications service, the quantity of which is limited and which cannot readily be increased;

“fund” means the Universal Service Fund established under section 33;

“immediate relative” means a close relative, by blood or marriage, including a spouse, parent, child, sibling, in-law or first cousin;

“interconnection agreement” means an agreement, entered into between 2 licensees, governing the provision of interconnection-related services for the purpose of enabling a licensee to provide public communications services;

“licensee” means a person who has been granted a licence by the Authority for the provision of a communications service;

“member” means a member of the Board;

“Minister” means the Minister responsible for communications;

“offer” means a Reference Interconnection Offer under section 32;

“panel” means the Broadcasting Disputes Resolution Panel established under section 39;

“person” means any individual, partnership, association, joint venture, trust, company or corporation;

“private broadcasting service” means a broadcasting service that -

- (a) is provided by individuals or organizations; and
- (b) operates on a non-profit making basis.

“private communications service” means a communications service not offered to the general public or to any class of persons so as to be generally available;

“public broadcasting service” means a broadcasting service that -

- (a) provides coverage for the whole country at all times;
- (b) serves all sectors of the society equitably;

-
- (c) realizes aspirations of the nation as regards democracy, development and nation-building;
 - (d) is a platform for voter education;
 - (e) is accessible to all political parties and independent candidates on a fair and non-discriminatory basis, particularly during election campaigns;
 - (f) contributes to bridging the digital divide by providing transmission access to other broadcasters where it is technically feasible to do so at a reasonable fee, taking into account classification of such broadcasters; and
 - (g) is funded by Parliamentary appropriations and by such funds as it may raise in the course of its business.

“radio frequencies” or “radio spectrum” means frequencies or spectrum of naturally propagated electromagnetic waves that are used for transmission and reception of communication signals.

PART II – LESOTHO COMMUNICATIONS AUTHORITY

Perpetuation of the Authority

3. (1) The Lesotho Communications Authority, as established by the Lesotho Communications Authority Act 2000, shall continue in existence.

(2) The Authority shall remain a body corporate with a common seal, perpetual succession, capable of suing and being sued and, subject to this Act, capable of performing such acts as bodies corporate may, by law, perform.

(3) In the performance of its functions, the Authority shall be independent and not subject to control by any person or authority.

General duties of the Authority

4. The Authority shall have the duty to -

- (a) implement this Act and any regulations or rules made under it;

- (b) facilitate new entry into the Lesotho communications market and the provision of new communications services, including converged communications services;
- (c) ensure the efficient and equitable allocation of finite resources necessary for the provision of communications services;
- (d) promote and preserve competition in the market for communications services;
- (e) protect the interests of consumers of communications services;
- (f) facilitate appropriate cooperation among licensees, including cooperative deployment and use of communications infrastructure;
- (g) facilitate the deployment of communications infrastructure and the provision of good-quality communication services, at reasonable prices, throughout all areas in Lesotho, giving special consideration to the needs of end-users who are low-income, disabled, or located in under-served areas;
- (h) facilitate resolution of disputes regarding communications services;
- (i) promote Lesotho's participation in the global information society;
- (j) consult with the communications industry and members of the public;
- (k) conduct a competitive market analysis and regulatory impact assessment and impose pro-competitive remedies in any market that is found to lack effective competition; and
- (l) fulfill any other duties necessary for the implementation of this Act.

General powers of the Authority

5. (1) The Authority shall, in relation to the communications sector, have the power to -
- (a) collect, retain and expend funds for the purpose of performing its functions;
 - (b) appoint, promote, remove and discipline staff;
 - (c) establish its own internal organisation and procedures and make rules, codes, directives, decisions and advisory guidelines;
 - (d) grant licences for the provision of communications services and prescribe licensing fees;
 - (e) allocate resources used for the provision of communications services, including radio frequency spectrum and telephone numbers;
 - (f) establish technical standards, and grant authorisations, for the sale or use of equipment used to provide communications services;
 - (g) define relevant markets, determine the competitiveness of relevant markets, and classify licensees as dominant or non-dominant;
 - (h) provide for safeguards to deter anti-competitive conduct by dominant licensees;
 - (i) void or modify agreements involving a licensee that unreasonably restricts competition;
 - (j) review and, as appropriate, approve or reject proposed consolidations involving a designated licensee;
 - (k) review and, as appropriate, approve or reject tariffs filed by a dominant licensee for the provision of com-

- communications services to other licensees or end-users;
- (l) establish and enforce quality of service standards for communications services;
 - (m) prohibit unfair trade practices by licensees;
 - (n) require licensees to protect the privacy and integrity of user-provided information;
 - (o) resolve disputes between licensees themselves, and between licensees and end-users;
 - (p) establish requirements governing interconnection of communications networks and access to communications network facilities and services;
 - (q) review and approve or reject interconnection agreements, including rates and charges;
 - (r) require a dominant licensee to file, and, as appropriate, approve or reject, a reference interconnection offer;
 - (s) require a licensee to share communications infrastructure, where necessary to facilitate competition;
 - (t) advise and support the Universal Service Fund Committee;
 - (u) conduct investigations, adjudicate alleged contraventions of this Act or of any regulation, rule, directive or code, and take appropriate enforcement action;
 - (v) establish advisory committees and take appropriate action to foster co-regulation and industry self-regulation;
 - (w) designate an entity to administer internet domain names;

-
- (x) facilitate the establishment and administration of internet infrastructure elements;
 - (y) take any other action, not expressly prohibited by law that is necessary and proper to perform its duties and exercise its powers under this Act; and
 - (z) suspend or revoke licences.

(2) Notwithstanding subsection (1), the Authority shall, in relation to the communications sector, have power to do anything for the implementation of this Act, or anything related to the development of the communications sector that is not prohibited by this Act.

PART III – ORGANISATION AND OPERATION OF THE AUTHORITY

Board of Directors

6. (1) There shall be a Board of Directors which shall be responsible for the exercise of the powers and performance of the duties of the Authority.

(2) The Board shall consist of the Chairman and 5 other members appointed by the Minister.

(3) The Chief Executive Officer shall be an ex-officio member.

(4) The Minister shall appoint the members in accordance with subsections (5) and (6).

(5) Prior to making an appointment to the Board, the Minister shall cause to be published, in a manner calculated to be readily accessible to potential candidates, an invitation to submit recommendations or expressions of interest for appointment, and the Minister may specify the supporting information that shall be provided.

(6) The Minister shall appoint to the Board persons who represent a diverse range of relevant professional skills, experience and views relevant to the communications sector.

- (7) The Minister shall not appoint any person to be a member -
- (a) who has been adjudged or otherwise declared insolvent and has not been rehabilitated or discharged;
 - (b) who has made an assignment to or arrangement or composition with, his creditors which has not been rescinded or set aside;
 - (c) who has been convicted of a criminal offence; or
 - (d) who holds or has a direct interest in a licence issued under this Act.
- (8) A member shall hold office for a term of 3 years.
- (9) The Minister need not invite recommendations or expressions of interest before reappointing a member.

Remuneration

7. (1) The Minister, after consultation with the Minister responsible for finance, shall determine the remuneration to be paid to a member.
- (2) A member shall be paid such allowances and travelling expenses incurred in the performance of duties as the Minister may, after consultation with the Minister responsible for finance, determine.

Vacation from office

8. (1) The Minister may remove any member from office for misconduct, physical or mental incapacity.
- (2) If the Minister has reason to believe that a member should be removed, the Minister shall state, in writing, the reasons for the removal.
- (3) A member shall be given an adequate opportunity to respond to the allegations against him by the Minister.
- (4) A member may resign from office by giving notice of not less

than 90 days to the Minister, with a simultaneous copy of the notice to the Board.

(5) The Minister may, by written notice, suspend a member against whom an investigation by a tribunal has been set up or criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed.

(6) A member shall vacate office, and that office shall become vacant -

- (a) if the member becomes disqualified under the terms of this Act;
- (b) if the member is declared insolvent;
- (c) if the member is absent from 3 consecutive meetings of the Board without a valid excuse;
- (d) upon termination of the services of the member in accordance with this Act;
- (e) upon dismissal;
- (f) upon conviction of the member for a criminal offence; and
- (g) if the member or an immediate relative of the member acquires a direct interest in a licensee or becomes a holder of a licence.

Filling of vacancies

9. (1) Where a vacancy occurs in the membership of the Board, other than in respect of the Chief Executive Officer, either due to the death, resignation or removal from office of a member, the Minister shall, pursuant to section 6(5) and (6) appoint a person to take the place of such a member.

(2) Where 3 or more members have recused themselves with regard to anyone or more pending matters, or where 3 or more members have

been duly suspended for any reason, or where 3 or more members are unavailable to hear any specifically designated matters due to any combination of recusals or suspensions, then the Minister shall, after consultation with the Board, appoint persons to hear such specifically designated matters in the place and instead of the recused or suspended members.

(3) A person appointed pursuant to this section shall have the power, authority and responsibility of a member with regard to specifically designated matters only.

Chairman of the Board

10. The Minister shall appoint, and may remove, the Chairman of the Board in the same manner as the other members.

Meetings of the Board

11. (1) The Board shall meet as often as may be necessary or expedient for the discharge of its functions and, in any case, not less than once every 3 months.

(2) 4 members of the Board shall form a quorum and no business may be conducted in the absence of a quorum or at any meeting at which both the Chairman and the Chief Executive Officer are absent.

(3) A decision of the Board shall be by majority of those voting and in the event of a tie vote, the Chairman may cast a second vote.

(4) If the Chairman is absent, the other members shall select, by majority of those voting, a member to preside as chairman for the purposes of that meeting.

(5) A member shall not participate in any discussion or decision regarding any matter in which the member or any immediate relative has a direct or substantial interest and if the member does so, the member commits an offence and is liable, on conviction, to a fine of M50,000.00 or imprisonment for a term of 5 years or both.

(6) The Board may establish such committees as it deems fit.

(7) To the extent consistent with this section, the Board may establish such procedures as are necessary and proper for the performance of its duties.

Delegation

12. (1) The Board may delegate its powers to the Chairman, the Chief Executive Officer or any member of the staff of the Authority.

(2) A power, duty or a function delegated under subsection (1) shall be exercised or performed subject to the direction of the Board and the Board is not divested of such delegated power or function and may -

- (a) issue such guidelines or instructions or may place such limitations relating to the exercise of the power, function or duty as may be necessary;
- (b) at any time withdraw or amend such delegation; and
- (c) authorize or issue instructions relating to the further delegation of such power, function or duty.

Chief Executive Officer

13. (1) There shall be a Chief Executive Officer who shall be appointed by the Minister in the manner specified in this section.

(2) Prior to appointing the Chief Executive Officer, the Minister shall request the Board to recommend a candidate for the position.

(3) Prior to making a recommendation to the Minister, the Board shall cause to be published, in a manner calculated to be readily accessible to potential candidates, an invitation to submit expressions of interest for appointment.

(4) The Minister shall appoint the Chief Executive Officer in accordance with the recommendation of the Board.

(5) If the Minister rejects the Board's recommendation, the Minister shall consult with the Board to determine a suitable candidate.

(6) The Minister shall appoint a candidate who has professional training, skills or experience to perform the functions of Chief Executive Officer.

(7) The Minister shall not appoint any person to be a Chief Executive Officer -

- (a) who has been adjudged or otherwise declared insolvent and has not been rehabilitated or discharged;
- (b) who has made an assignment to or arrangement or composition with, his creditors which has not been rescinded or set aside;
- (c) who has been convicted of a criminal offence of which dishonesty is an element of the offence; or
- (d) who holds or has a direct interest in a licence issued under this Act.

(8) The Minister shall, in consultation with the Board, enter into a written retention agreement with the Chief Executive Officer, specifying the terms and conditions of employment of the Chief Executive Officer.

Removal of the Chief Executive Officer

14. The Minister shall remove the Chief Executive Officer if -

- (a) requested by the Board through a recommendation justifying such removal; or
- (b) the Chief Executive Officer materially breaches the retention agreement specified in section 13(8).

Functions of the Chief Executive Officer

15. (1) The Chief Executive Officer of the Authority shall be responsible for -

- (a) the execution of the decisions of the Board;

-
- (b) the transaction of the day-to-day business of the Authority; and
 - (c) the exercise of such powers as may be delegated to the Chief Executive Officer by the Board pursuant to section 12.

(2) Within 60 days of the date this Act comes into operation, the Chief Executive Officer shall develop a plan, for approval by the Board, to reorganise the Authority as a converged regulator for the telecommunications, broadcasting and postal sectors.

PART IV – FINANCES

Finances of the Authority

16. (1) The Authority shall prepare an annual budget, which shall -
- (a) specify the anticipated revenues and expenditures of the Authority;
 - (b) be submitted to the Minister, for information, not later than 60 days prior to the financial year in which it is to be effective; and
 - (c) cover the financial year commencing on 1 April and ending 31 March.
- (2) The revenues of the Authority shall consist of -
- (a) such monies as may be appropriated by Parliament;
 - (b) such fees as the Authority may impose for services provided under this Act;
 - (c) such fees as the Authority may impose for licences issued under this Act;
 - (d) such other fees or monies as the Authority may, by virtue of this Act, raise or impose;

- (e) fines and other monies collected pursuant to penalties imposed under this Act; and
- (f) grants, contributions or endowments from any other source.

(3) The Authority shall expend its revenues to meet the cost of its operations and shall use any surplus accrued for the promotion and development of the communications sector.

(4) The Authority shall keep proper account of its operations in compliance with international accounting standards.

(5) The Auditor General shall appoint an independent and qualified auditing firm to audit annually the accounts of the Authority.

(6) The Authority shall -

- (a) submit its statements of account to the auditing firm within 90 days after the end of its financial year;
- (b) cooperate fully with, and provide any additional information requested by the auditing firm;
- (c) submit the report of the auditing firm to the Minister in a timely manner; and
- (d) make publicly available the statement of accounts of the Authority and the report of the auditing firm.

Liability insurance

17. The Authority may contract with an insurance company or other body for liability insurance.

Annual Report

18. (1) The Authority shall, within 6 months of the end of its financial year, submit a comprehensive annual report on its operations, to the Minister.

(2) The Minister shall cause a copy of the annual report, on receipt, together with the report of the auditing firm and the audited accounts, to be laid before Parliament.

PART V – AUTHORISATIONS

Authorisation to provide communications services

19. (1) The Authority shall be responsible for granting licences authorizing the provision of communications services in a manner consistent with this section.

(2) A person shall not provide any communications services in Lesotho except under, and in accordance with, a licence granted by the Authority.

(3) The Authority shall grant licences on -

- (a) an individual basis, if the Authority concludes that individual licensing is necessary to serve the public interest; or
- (b) a class basis, to the extent feasible.

(4) A licence shall entitle the licensee to the right to provide the communications services specified in the licence, for a specified period of time.

Prior restraint

20. (1) No licensee shall be prevented or impeded, either directly or indirectly, from providing service, unless either -

- (a) the Authority has suspended or revoked the licensee's licence; or
- (b) the Minister issues an emergency suspension order.

(2) The Minister shall only issue an emergency suspension order if the Minister has a reasonable basis to conclude that continued operation by a

licensee poses a substantial, direct and imminent threat to national security or public order and that there is no other way to forestall the threat other than to act in the manner provided for in this subsection.

- (3) Any emergency suspension order shall -
 - (a) be in writing;
 - (b) explain the basis for the suspension; and
 - (c) remain in effect for no more than 72 hours, unless extended by a court of competent jurisdiction.

PART VI – COMPETITION MANAGEMENT

Classification of dominant licensees

21. (1) The Authority shall after conducting a market study and impact assessment, classify a licensee as a dominant licensee if the Authority concludes that the licensee -

- (a) has the ability to exercise significant market power in any communications market in Lesotho; or
- (b) operates communications infrastructure that is sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor.

(2) In assessing whether a licensee has significant market power, in a relevant market the Authority shall give due consideration to whether the licensee provides, or previously has provided, any reserved or restricted service.

(3) A dominant licensee shall be subject to the statutory and regulatory provisions applicable to dominant licensees for all infrastructure that it operates, and in all communications markets in which it participates within Lesotho.

(4) The Authority, after providing an opportunity for public comment, may exempt the dominant licensee from the application of any such provision to -

- (a) any service provided by the dominant licensee in a market in which the dominant licensee does not have significant market power; or
- (b) any infrastructure operated by the dominant licensee that is not sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor.

(5) The Authority may reclassify a dominant licensee as non-dominant if the licensee no longer meets the criteria for classification as a dominant licensee.

(6) The Authority may grant an exemption, or reclassify a licensee, either -

- (a) on its own motion; or
- (b) at the request of the licensee.

(7) The Authority shall publish a notice in the Gazette in any case in which the Authority -

- (a) classifies a licensee as dominant;
- (b) reclassifies a dominant licensee as non-dominant; or
- (c) grants an exemption to a dominant licensee.

Competitive safeguards

22. (1) In addition to any requirements contained in this Act, the Authority may adopt competitive safeguards designed to deter a dominant licensee from using its significant market power in one market to impede the development of competition in another market.

(2) Competitive safeguards may include rules that require a dominant licensee to -

- (a) offer services on an unbundled basis;
- (b) separately account for costs and revenues related to specific services;
- (c) establish separate corporate affiliates to provide specific services;
- (d) use separate facilities or personnel to provide specific services;
- (e) disclose information about specific infrastructure or services to other licensees;
- (f) not engage in cross-subsidisation; and
- (g) not engage in discrimination in favour of an affiliate.

(3) The Authority may also adopt provisions designed to prevent a licensee who is affiliated with an entity that has significant market power in any market, whether or not within Lesotho, from using that affiliation in a manner that enables the licensee to, or is likely to enable it to, unreasonably restrict competition in any communications market in Lesotho.

Abuse of dominant position

23. (1) A dominant licensee shall not use its significant market power in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any communications market in Lesotho.

(2) A dominant licensee shall not engage in unilateral conduct that has, or is likely to -

- (a) significantly restrict output below the competitive level, increase prices above cost, reduce quality below the level that end users seek, reduce end users' choice or deter innovation; or

-
- (b) preserve or enhance its dominant position by engaging in conduct that deters or precludes efficient companies from participating in the market by means other than competing based on service availability, price and quality.

(3) A dominant licensee abuses its dominant position if the Authority concludes that the dominant licensee engaged, or is engaging, in -

- (a) predatory pricing;
- (b) price squeezing;
- (c) unreasonable discrimination;
- (d) exclusionary refusals to deal; or
- (e) tying.

(4) A dominant licensee engages in predatory pricing if the evidence demonstrates that -

- (a) the dominant licensee is selling a communications service at a price that is less than the average incremental cost of the service;
- (b) the dominant licensee's sells at prices below average incremental cost and have driven, or are likely to drive, efficient rivals from the market or deter future efficient rivals from entering the market; and
- (c) entry barriers are so significant that, after driving rivals from the market or deterring entry, the dominant licensee could impose an increase in prices sufficient (in amount and duration) to enable the dominant licensee to recoup the full amount of the loss that it incurred during the period during which the predatory conduct occurred.

(5) A dominant licensee engages in a price squeeze if the evidence

demonstrates that -

- (a) the dominant licensee provides a communications service or facility that is necessary, as an input, for another licensee to provide a communication service; and
- (b) the price that the dominant licensee charges for the communications service or facility is so high that an efficient competitor could not profitably sell its product if it were required to recover the full purchase price of the input through its charges to its end users.

(6) A dominant licensee engages in unreasonable discrimination if the evidence demonstrates that the dominant licensee has provided an affiliate with access to infrastructure, systems, services or information, necessary to enable a non-affiliated licensee to provide a communications services, on prices, terms or conditions that are more favourable than the prices, terms and conditions on which the dominant licensee provides those infrastructure, systems, services or information to licensees that are not affiliates, without any objective justification.

(7) A dominant licensee engages in an exclusionary refusal to deal if the evidence demonstrates that the dominant licensee has refused to provide a non-affiliated licensee with access to infrastructure, systems, services or information necessary to enable the non-affiliated licensee to provide a communications services, without any objective justification.

(8) A dominant licensee engages in tying if the evidence demonstrates that the dominant licensee required a customer to purchase a communications service that is subject to effective competition in order to be allowed to purchase a communications service that is not subject to effective competition.

(9) In any case in which the Authority has reason to believe that a dominant licensee has engaged in conduct that constitutes an abuse of dominant position, the Authority may conduct an investigation.

(10) In any case in which the Authority determines that a dominant licensee has engaged in conduct that constitutes an abuse of dominant position, the Authority may -

-
- (a) direct the licensee to cease the abusive conduct; and
 - (b) take enforcement action, pursuant to section 46 of this Act.

Anti-competitive agreements

24. (1) A licensee shall not enter into any agreement, whether or not legally enforceable, that unreasonably restricts, or is likely to unreasonably restrict competition in any communications market in Lesotho.

(2) An agreement shall be unreasonable if the parties have agreed, expressly or tacitly, to -

- (a) fix prices;
- (b) restrict output;
- (c) co-ordinate separate bids;
- (d) allocate customers or geographic markets; or
- (e) not to do business with a specific supplier, licensee or customer.

(3) The Authority shall assess whether other types of agreements have, or are likely to, unreasonably restrict competition based on their actual or likely effect on competition.

(4) In any case in which the Authority has reason to believe that a licensee has entered into an agreement that has, or is likely to, unreasonably restrict competition in any communications market within Lesotho, the Authority may conduct an investigation, pursuant to section 45.

(5) In any case in which the Authority determines that a licensee has entered into an agreement that has, or is likely to, unreasonably restrict competition in any communications market within Lesotho, the Authority may -

- (a) direct the licensee to modify the agreement to remove the unreasonable restriction;

- (b) void the agreement; or
- (c) take enforcement action, pursuant to section 46.

(6) The Authority may exempt any agreement involving 2 or more licensees for the joint deployment or operation of infrastructure used to provide a communications service, where the Authority concludes that the agreement is necessary to foster the deployment of communications services to geographic areas that might not otherwise have access to such services.

Consolidation review

25. (1) The Authority shall declare certain licensees as designated communications licensees and shall designate any licensee who -

- (a) has been classified as a dominant licensee; or
- (b) has a market share in excess of 10 percent in any communications market within Lesotho in which the 3 largest participants collectively have a market share of 75 percent or more.

(2) A designated communications licensee shall notify the Authority, and obtain the Authority's approval, prior to concluding any transaction that would constitute a consolidation and the notification shall contain -

- (a) a description of the proposed transaction; and
- (b) an assessment of the likely impact of the proposed consolidation on competition in the Lesotho communications sector.

(3) After receiving the notification, the Authority may -

- (a) conduct a public consultation; or
- (b) conduct an investigation pursuant to section 45.

(4) Within 4 months of receiving the notification, the Authority shall issue a decision and may -

-
- (a) approve the proposed consolidation;
 - (b) approve the proposed consolidation, subject to conditions designed to reduce any adverse effect of the consolidation on competition; or
 - (c) reject the proposed consolidation.

(5) The Authority shall not approve a consolidation where the Authority determines that the proposed consolidation is likely to -

- (a) substantially lessen competition in any communication market in Lesotho; or
- (b) harm the public interest.

(6) The conditions that the Authority may impose include -

- (a) compliance with any of the safeguards specified in section 22; or
- (b) partial divestiture to a purchaser approved by the Authority.

Prohibition of unfair trade practices

26. (1) A licensee shall not engage in unfair trade practices.

(2) A licensee engages in an unfair trade practice where the licensee -

- (a) has engaged in an improper, unethical or unscrupulous practice; and
- (b) the practice has provided, or is likely to provide, the licensee with a competitive advantage for itself or an affiliate in any communication market in Lesotho, for reasons unrelated to the availability, price or quality of the service that the licensee or its affiliate offers.

(3) In any case in which the Authority has reason to believe that a licensee has engaged in an unfair trade practice, the Authority may conduct an investigation, pursuant to section 45.

(4) In any case in which the Authority determines that a licensee has engaged in an unfair trade practice, the Authority may -

- (a) void any agreement that was entered into as a result of the unfair trade practice; or
- (b) take enforcement action, pursuant to section 46.

PART VII – INTERCONNECTION

Interconnection agreements

27. (1) A licensee who seeks to obtain interconnection-related services from another public communications licensee for the purpose of providing public communications services shall submit a written request to the licensee. The request shall describe, with reasonable specificity, the type of interconnection-related services that the requesting licensee seeks to obtain.

(2) Upon receipt of the request, the parties shall engage in good faith negotiations.

(3) Any interconnection agreement shall include -

- (a) the specific interconnection-related services that are being provided;
- (b) the prices, terms and conditions on which the interconnection-related services are being provided; and
- (c) the duration of the agreement.

(4) Licensees shall submit to the Authority, for approval, any interconnection agreement into which they enter.

(5) Where neither party is a dominant licensee, the interconnection agreement will become effective within 21 days of submission to the

Authority, unless the Authority, after providing the parties to the agreement with notice and an opportunity for comment, issues a decision that -

- (a) rejects the agreement; and
- (b) provides an explanation of the specific changes that the parties must make in order to receive approval.

(6) The Authority shall only reject such an agreement if it concludes that the agreement -

- (a) violates this Act or any applicable regulation or rule;
- (b) has charges for interconnection-related services that exceed the dominant licensee's cost, including allowance for a reasonable return on capital investment.
- (c) has a substantial adverse effect on end users; or
- (d) unreasonably restricts competition in any Lesotho communications market.

(7) The Authority shall not publicly disclose any approved Interconnection Agreements between non-dominant licensees.

(8) The parties may agree to modify an interconnection agreement and any proposed modification shall be submitted to the Authority for approval.

Interconnection agreements involving a dominant licensee

28. A requesting licensee may enter into an interconnection agreement with a dominant licensee by -

- (a) accepting the dominant licensee's reference interconnection offer, if such an offer has been approved by the Authority;
- (b) entering into an individualised interconnection agree-

ment with the dominant licensee; or

- (c) entering into an interconnection agreement on the same prices, terms and conditions that the dominant licensee has entered into an interconnection agreement with a similarly situated licensee.

Acceptance of the reference interconnection offer

29. In any case in which a requesting licensee chooses to accept the dominant licensee's offer -

- (a) the requesting licensee shall notify the dominant licensee regarding the specific interconnection-related services that the requesting licensee wishes to obtain;
- (b) the dominant licensee shall provide the interconnection-related services within the provisioning intervals specified in the offer without further negotiations.

Individualised interconnection agreements

30. (1) The requirements specified in this section shall apply in any case in which a requesting licensee seeks to enter into an individualised interconnection agreement with a dominant licensee.

(2) The requesting licensee shall submit a written request to the dominant licensee describing with reasonable specificity, the type of interconnection-related services requested.

(3) Upon receipt of the request, the parties will commence good faith negotiations.

(4) If the parties are unable to reach an agreement within 90 days, either party may request the Authority to resolve the dispute.

(5) If the Authority is unable to foster a voluntary agreement after 60 days of dispute resolution, it shall issue a decision resolving all disputed issues.

(6) If the parties are able to reach an agreement, they shall submit the agreement to the Authority.

(7) Within 30 days of receiving the agreement, the Authority shall issue a decision that either -

- (a) approves the agreement; or
- (b) rejects the agreement, and provides an explanation of the specific changes that the parties must make in order to receive approval.

(8) The Authority shall not reject any individualised interconnection agreement unless the Authority concludes that the agreement would -

- (a) violate this Act or any rule made by the Authority;
- (b) discriminate against another licensee; or
- (c) result in charges for interconnection-related services that exceed the dominant licensee's forward looking incremental cost, including allowance for a reasonable return on capital investment.

(9) A difference in charges for interconnection-related services between different licensees shall not constitute discrimination where the different charges reflect cost differences directly attributable to providing service to different licensees.

(10) The Authority shall publish all approved interconnection agreements involving a dominant licensee in a manner that will be readily accessible to the public.

Acceptance of an existing interconnection agreement

31. (1) The requirements specified in this section shall apply in any case in which a requesting licensee seeks to enter into an interconnection agreement on the same prices, terms and conditions that the dominant licensee has entered into an interconnection agreement with a similarly situated licensee.

(2) The requesting licensee shall notify the dominant licensee, in writing, regarding the interconnection agreement into which it seeks to enter.

(3) Within 15 days, the dominant licensee shall inform the requesting licensee, in writing, that either -

- (a) the dominant licensee is prepared to enter into an interconnection agreement on the same prices, terms and conditions as in the interconnection agreement identified by the requesting licensee; or
- (b) the dominant licensee is not prepared to enter into an interconnection agreement on the same prices, terms and conditions as in the interconnection agreement identified by the requesting licensee because the requesting licensee is not similarly situated to the licensee with which the dominant licensee previously entered into an interconnection agreement.

(4) In any case in which the dominant licensee notifies the requesting licensee that it is prepared to enter into an interconnection agreement on the same prices, terms and conditions as in the interconnection agreement identified by the requesting licensee, the parties shall enter into an agreement without further negotiations.

(5) In any case in which the dominant licensee notifies the requesting licensee that it is not prepared to enter into an interconnection agreement on the same prices, terms and conditions as in the interconnection agreement identified by the requesting licensee, the requesting licensee may either -

- (a) withdraw its request; or
- (b) request the Authority to resolve the dispute.

(6) Within 30 days of receiving the request for dispute resolution, the Authority shall issue a decision finding either that -

- (a) the dominant licensee is obligated to enter into an interconnection agreement on the same prices, terms and conditions as in the interconnection agreement identi-

fied by the requesting licensee, in which case the parties shall do so without further negotiation; or

- (b) the dominant licensee is not obligated to enter into an interconnection agreement on the same prices, terms and conditions as in the interconnection agreement identified by the requesting licensee because the requesting licensee is not similarly situated to the licensee with whom the dominant licensee previously entered into an interconnection agreement.

Reference interconnection offer

32. (1) The Authority may direct a dominant licensee to develop a reference interconnection offer and dominant licensee shall submit a proposed offer within 90 days.

- (2) The Authority -
 - (a) shall specify the interconnection-related services that the dominant licensee must offer under the offer; and
 - (b) may review and revise the list of interconnection-related services.
- (3) The dominant licensee's offer shall -
 - (a) contain a comprehensive and complete written statement of the prices, terms and conditions on which the dominant licensee is prepared to provide interconnection-related services to any licensee for the provision of public communications services;
 - (b) be modular, allowing a licensee to purchase only those interconnection-related services that it wants to obtain;
 - (c) be sufficiently detailed to enable a licensee who is willing to accept its prices, terms and conditions to obtain interconnection-related services without having to engage in negotiations with the dominant licensee; and

- (d) contain any terms, and comply with any other requirements, specified by the Authority.
- (4) In the offer, the dominant licensee shall -
- (a) set prices based on a forward-looking incremental cost methodology; and
 - (b) offer to provide all interconnection-related services on prices, terms and conditions that are no less favourable than the prices, terms and conditions on which it provides comparable services to itself, its affiliates or other customers.
- (5) Within 90 days after receiving the proposed offer, the Authority, after conducting a public consultation, shall issue a decision approving or rejecting the proposed offer.
- (6) If the Authority rejects any portion of the proposed offer, it will provide the dominant licensee with a written explanation of the basis for the rejection and the modifications required to bring the proposed offer into compliance with the Authority's requirements.
- (7) A dominant licensee shall notify the Authority, and obtain the Authority's written approval, before making any changes to its offer.

PART VIII – UNIVERSAL SERVICE FUND

Establishment of universal service fund

33. There is established a fund to be known as the Universal Service Fund for the promotion of universal access to communications services especially in unserved or underserved areas of the country and the Fund shall be managed by a body to be known as the Universal Service Fund Committee.

Revenue of the Fund

34. The Fund shall generate revenue from -
- (a) the Government, pursuant to an appropriation made by the

Parliament or in any other lawful manner;

- (b) the Lesotho Communications Authority, which shall make -
 - (i) an initial contribution of not less than M10 million; and
 - (ii) an annual contribution of not less than 25 percent of any annual surplus;
- (c) grants from donor agencies; and
- (d) contributions from licensees, who shall contribute a percentage, not to exceed 2%, of their Net Operating Income from the provision of communications services in Lesotho:

Provided that the Authority may exempt or reduce the contribution of any licensee, where -

- (i) the licensee's contribution would be minimal;
- (ii) the licensee is authorised to operate on a not-for-profit basis;
- (iii) the licensee does not provide any public communications services; or
- (iv) the licensee is authorised to operate pursuant to a class license.

Establishment and Operation of the Universal Service Fund Committee

35. (1) A Universal Service Fund Committee is hereby established.
- (2) The members of the Committee shall be -
- (a) a representative of the Ministry responsible for communications, who shall be the chairman;
 - (b) a representative of the Lesotho Communications Authority, who shall be deputy-chairman;

- (c) a representative of the Ministry responsible for local government;
 - (d) a representative of the Ministry responsible for finance; and
 - (e) a representative of the Lesotho Electricity Company.
- (3) There shall be the Executive Secretary who shall be appointed by the Authority, on a contract of not more than 3 years;
- (4) The Executive Secretary shall -
- (a) serve as a non-voting member of the Committee;
 - (b) serve as secretary of the Committee;
 - (c) be responsible for -
 - (i) executing the decisions of the Committee;
 - (ii) transacting the day-to-day business of the Fund; and
 - (iii) exercising such powers as may be delegated by the Committee.

Functions of the Universal Service Fund Committee

36. (1) The Committee shall take such action, consistent with this Act, as may be necessary to ensure that people throughout Lesotho -
- (a) have access to basic domestic and international telephony services and Internet access;
 - (b) have access to a diverse range of radio and television broadcasting services; and
 - (c) receive basic postal services.

(2) The Committee may use revenue from the Universal Service Fund for -

- (a) the deployment of infrastructure used to provide communications services in unserved or under-served areas of the country;
- (b) the establishment and operation of telecentres, providing both access to basic telecommunications and/or Internet access services, in public or private facilities;
- (c) the establishment of an Internet exchange point within Lesotho;
- (d) acquisition of satellite capacity to facilitate nationwide distribution of broadcasting content;
- (e) the provision of public broadcasting services;
- (f) the electrification of post offices and the provision of universal postal service; and
- (g) other activities necessary to promote universal access to communications services.

(3) The Committee shall determine the entities that will receive revenues from the universal service fund:

Provided, however, that no member of the Committee shall participate, in any manner, in decisions involving the allocation of Fund revenue to any entity in which the member has a financial interest or of which the member is an employee.

(4) To the extent feasible, the Committee shall allocate revenue from the Fund based on a competitive tender process.

(5) An entity that poses the requisite qualifications shall be eligible to receive revenue from the Fund.

(6) Prior to allocating any revenue from the Fund, the Committee

shall enter into a contract with a service provider or entity that specifies -

- (a) the specific functions that the service provider or entity is to perform, including quantifiable performance measures;
- (b) the amount of money that the Committee will provide;
- (c) the scope and duration of any requirements to provide cost-based, non-discriminatory access to other licensees; and
- (d) the duration of the agreement.

(7) The Committee shall, consistent with the provisions of this Act, be responsible for -

- (a) adopting and publishing an annual universal service plan;
- (b) designating the licensees required to make contributions to the universal service fund, and establishing a methodology to determine the amount of each licensee's contribution;
- (c) collecting all universal service funds contributions;
- (d) allocating funds for specific universal service projects;
- (e) monitoring the expenditure of funds allocated from the Fund;
- (f) adopting a manual of procedures;
- (g) commissioning an annual independent audit; and
- (h) adopting and publishing an annual report, including audited financial statements.

Obligations of Universal Service Fund recipients

37. Any entity that receives revenue from the Universal Service Fund shall -
- (a) provide complete, accurate and timely performance reports;
 - (b) cooperate with any investigation or audit; and
 - (c) provide cost-based, non-discriminatory access to any infrastructure funded using revenues from the Universal Service Fund, for such period as the Committee may require.

PART IX – BROADCASTING

Broadcasting Licensing

38. (1) In granting licences for the provision of broadcasting service, the Authority shall seek to ensure that the public has access to -
- (a) a diverse range of broadcasting services, including -
 - (i) public broadcasting services;
 - (ii) private broadcasting services;
 - (iii) commercial broadcasting services; and
 - (iv) community broadcasting services;
 - (b) a diverse range of broadcast content, including -
 - (i) news;
 - (ii) educational;
 - (iii) cultural;
 - (iv) religious; and
 - (v) sports and entertainment programming;

- (c) a diverse range of opinions regarding matters of public interest.

(2) Audio, video or any content distributed through the internet may be licensed or regulated as broadcasting.

Establishment of the Broadcasting Disputes Resolution Panel

39. (1) A Broadcasting Disputes Resolution Panel is hereby established.

(2) The Panel shall consist of a Chairman and 4 members, each of whom shall serve for a 3 year term and shall be eligible for re-appointment.

(3) The Minister, after soliciting nominations and recommendations from the public, shall appoint well-qualified and independent persons to serve as members of the Panel.

(4) The Minister shall not appoint any person -

- (a) who has been adjudged or otherwise declared insolvent and has not been rehabilitated or discharged;
- (b) who has made an assignment to or arrangement or composition with, his creditors which has not been rescinded or set aside;
- (c) who has been convicted of a criminal offence;
- (d) who holds or has a direct interest in a licence issued under this Act; and
- (e) who is a member of Parliament.

(5) The Minister may -

- (a) re-appoint any member of the Panel; or
- (b) fill any vacancy, in the manner consistent with this section.

(6) The Minister shall, in consultation with the Authority, establish a sitting allowance to be paid to members of the Panel.

(7) Upon request from the Panel, the Authority shall provide such secretarial support as may be required.

(8) The Panel shall -

- (a) prepare a broadcasting code of content;
- (b) review and seek to resolve all disputes regarding broadcast content;
- (c) refer all unresolved disputes to the Authority, with recommendations;
- (d) The Panel shall develop an annual budget for its activities; and
- (e) The Panel shall submit its budget to the Minister and Authority.

(9) The revenue of the Panel shall consist of -

- (a) such fees as the Authority may impose for broadcasting licences issued under this Act;
- (b) such monies as may be appropriated by Parliament; and
- (c) Such monies as may be contributed by the Authority.

Broadcasting Code

40. (1) The Panel shall submit to the Minister a proposed broadcasting code governing -

- (a) content that is obscene, offensive or likely to incite violence to persons or property;

- (b) fairness, accuracy and balance in the presentation of news;
- (c) protection of privacy;
- (d) carriage of political advertising; and
- (e) advertisements and sponsorships.

(2) To the extent that the code imposes any restriction on freedom of expression, the restriction shall be -

- (a) no broader than necessary to achieve a compelling public interest;
- (b) imposed pursuant to transparent procedures; and
- (c) imposed in a non-discriminatory manner.

(3) After receiving the proposed broadcasting code, the Minister, after conducting a public consultation, shall either accept or reject the broadcasting code.

(4) The Minister shall not reject the broadcasting code unless the Minister concludes that, taken as a whole, the broadcasting code fundamentally fails to protect the legitimate interests of -

- (a) the state;
- (b) the broadcasting industry; or
- (c) the public.

(5) If the Minister rejects the broadcasting code, the Minister shall provide a written explanation of the changes required and the Panel shall have 60 days to propose revisions.

(6) The broadcasting code shall come into force upon publication in the Gazette.

(7) No modification of the broadcasting code shall be effective unless approved by the Minister and published in the Gazette.

Co-enforcement procedures

41. (1) In any case in which the Authority, either on its own motion or in response to a complaint, has reason to believe that a broadcasting licensee has contravened any provision of the broadcasting code, the Authority shall refer the matter to the Panel.

(2) The Panel shall establish written procedures for the resolution of disputes. These procedures shall ensure that -

- (a) a licensee against whom a complaint has been made will receive notice and an opportunity to respond; and
- (b) any recommendation to the Authority will be made based solely on the record compiled by the Panel.

(3) The Panel shall resolve all disputes referred to it and a resolution may include -

- (a) withdrawal of the complaint;
- (b) issuance of a retraction, clarification or apology;
- (c) adoption of a corrective action plan;
- (d) payment of restitution; and
- (e) a fine payable to the Authority.

(4) If the Panel is unable to resolve any dispute, within 90 days of the date on which it receives a complaint, the Panel shall refer the matter to the Authority in a written report -

- (a) summarising the relevant facts, as determined by the Panel;
- (b) providing recommendations for the resolution of the

matter; and

- (c) appending all documents submitted by the parties.
- (5) Upon receipt of the Panel's written report, the Authority shall -
- (a) initiate an enforcement proceedings, pursuant to section 46 of this Act; or
 - (b) dismiss the complaint, if the Authority determines that there is no basis for enforcement action.

PART X – POSTAL SERVICES

Postal Services Authorisations

42. (1) The Authority shall grant licences for the provision of postal services in the following categories and establish procedures and rules for such licensed services:

- (a) public postal services within the exclusive rights of the Lesotho Post Office; and
- (b) commercial postal services.

(2) The Authority shall develop licence conditions and rules for the provision of postal services including rules for the protections of consumers of postal services.

(3) The Authority shall develop conditions on postal services licensees who qualify for universal access activities and will establish conditions on promotion of universal access through the postal services infrastructure.

Postal rate regulation

43. (1) A postal services licensee shall submit proposed postage rates charged for letters and packages to the Authority for approval.

- (2) The proposed rates shall be cost-based and contain all relevant

information inclusive of terms and conditions applicable for the service, and rights and remedies available to consumers in the event of unauthorized charges or other disputes or claims over billing or provision of services.

PART XI – ENFORCEMENT

Offences

44. (1) A person shall not -
- (a) make abusive, threatening or obscene communication telephone calls;
 - (b) obtain a communications service with intent to avoid payment of applicable charges for such service;
 - (c) use a communications service required to be licensed, knowing it to be unlicensed;
 - (d) provide, without being licensed, communications services required to be licensed;
 - (e) intentionally modify or interfere with the contents of any message sent by means of a communications service;
 - (f) engage in interception or tracing of communications operations or messages unless authorised by a court of competent jurisdiction;
 - (g) intentionally damage communications facilities belonging to another person;
 - (h) impersonate an employee of the Authority; or
 - (i) contravene any other provision of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding M50,000 or to imprisonment for a term not exceeding 5 years or both.

Investigations

45. The Authority may conduct an investigation, either on its own initiative or at the request of any person, in order to determine whether a licensee has contravened this Act, or any regulation, rule, code provision or directive, or has violated any condition contained in its licence.

Enforcement proceedings

46. (1) The Authority may initiate an enforcement proceeding in any case in which it has reason to believe that a licensee has contravened this Act, or any applicable rule, regulation, code provision or directive, or has violated any condition contained in its licence; or

(2) The Authority shall initiate the enforcement proceeding by sending a written notice to the party that the Authority believes committed the contravention and the notice shall -

- (a) set forth the alleged facts;
- (b) state the statutory or regulatory provisions that the person allegedly contravened; and
- (c) state the timeframe and procedures by which the person may respond.

(3) The Authority may determine whether a contravention has occurred -

- (a) by conducting an adjudicatory hearing; or
- (b) based on written pleadings filed by the party.

Penalties

47. (1) If the Authority determines, through an investigation or enforcement proceedings, that a licensee has contravened this Act, or any regulation, rule, code provision or directive issued by the Authority, the Authority may -

-
- (a) issue a warning to the licensee;
 - (b) direct the licensee to take such actions as may be necessary to remedy the violation;
 - (c) impose financial penalties on the licensee;
 - (d) require the licensee to make restitution to any person directly injured as a result of the contravention; or
 - (e) modify, suspend or revoke the licensee's licence.

PART XII – TRANSITIONAL PROVISIONS

Board of the Authority

48. A person who is a member of the Board of the Authority on the date on which this Act comes into operation, including the Chief Executive, shall remain a member until the end of the term to which the person was appointed, unless the Minister removes the member pursuant to the procedures specified in the Lesotho Communications Authority Act 2000.

Proceedings

49. (1) To the extent consistent with this Act, any applicable regulation, rule, decision, code or other administrative determination adopted or made prior to the date this Act comes into operation, shall remain in effect until such time as the regulation, rule, decision, code or other administrative determination is revoked or modified.

(2) Any proceedings commenced by the Authority before the date this Act comes into operation, but which was not completed on the date this Act comes into force, shall be conducted pursuant to the procedures specified in this Act.

(3) In any case in which the Authority made an administrative determination prior to the date this Act comes into operation, the right of any party to a dispute to seek reconsideration and review of the determination shall be governed by this Act.

Licences and authorisations

50. (1) Any person granted a licence or other authorisation, and lawfully providing communications services before the date this Act comes into operation, shall be deemed to be a licensee under this Act.

(2) The Authority shall modify the terms of any licence or other authorisation granted prior to the date this Act comes into operation to conform to the requirements of this Act and such licence shall be subject, in all respects, to this Act.

(3) Any applications for a licence or other authorisation pending before the Authority on the date this Act comes into operation shall be decided by the Authority pursuant to the provisions of this Act.

Classification of licensees

51. Upon the commencement of this Act, the Authority shall determine whether a licensee should be classified as a dominant licensee, and until such time as the Authority classifies a licensee as a dominant licensee, the licensee shall be deemed to be a non-dominant licensee.

Tariffs

52. (1) To the extent consistent with this Act, any tariff approved by the Authority prior to the date this Act comes into operation shall remain in effect until such time as the Authority directs the licensee who filed the tariff to withdraw or modify it.

(2) Any tariff filed before the date this Act comes into operation, but which had not been approved or rejected on the date this Act comes into force, shall be reviewed pursuant to the procedures specified in this Act.

(3) In any case in which the Authority approved or rejected a tariff prior to the date this Act comes into operation, the right of the licensee who filed the tariff to seek reconsideration and review of the determination shall be governed by this Act.

Interconnection agreements

53. Any interconnection agreement entered into prior to the date this Act comes into operation shall remain in operation until such time as the Authority directs the parties to the agreement to modify the Agreement.

Enforcement

54. (1) A determination regarding whether the conduct of a licensee or other person prior to the date this Act comes into operation constitutes an offence or contravention shall be made using the standards and procedures specified in the Lesotho Communications Authority Act 2000, as amended.

(2) An agreement entered into or act or conduct that occurred prior to the date this Act comes into operation, but which continues after the date this Act comes into operation, shall be governed by the terms of this Act from the date this Act comes into operation.

Regulations

55. (1) The Minister may, by notice published in the Gazette, and after consultation with the Authority, make regulations for the carrying into effect of the provisions of this Act.

(2) Without derogating from the generality of subsection (1), the Minister may make regulations for -

- (a) regulatory principles for the guidance of the Authority in the performance of its functions;
- (b) the records of the Authority;
- (c) the administrative procedures of the Authority;
- (d) authorisations to provide communications services, licences, use of radio frequencies, spectrum usage, finite resources, distribution or use of equipment, access to, or use of, property;

- (e) competition management, reserved and restricted markets, classification of licences, competitive safeguards, prohibition of unfair trade practice;
- (f) consumer protection;
- (g) inter-operation relations, international interconnection agreements and resolution of disputes;
- (h) enforcement proceedings;
- (i) the membership and functions of the Universal Service Fund Committee and related matters;
- (j) the membership and functions of the Broadcasting Dispute Resolution Panel and related matters;
- (k) the broadcasting sector; and
- (l) the postal sector.

Repeal

56. The Lesotho Communications Authority Act 2000 is repealed.

NOTE

1. Act No. 12 of 1977
2. Act No. 6 of 1979
3. Act No. 5 of 2000 as amended

GOVERNMENT NOTICE NO. 9 OF 2012

**Statement of Objects and Reasons of the
Communications Act, 2012**

**(Circulated by the Authority of the Minister responsible for
Communications, Science and Technology)**

1. The Proposed Reform

The Communications Bill 2011 proposes the consolidation of the Lesotho Telecommunications Authority Act 2000 Amendments and related Laws. It proposes the integration of regulation of the telecommunications, broadcasting and postal sectors. It also introduces reforms in the regulation of the communications sector to facilitate the introduction of new services in the Lesotho market, promotion of competition, introduction and promotion of convergence of networks and facilitating universal access to communication services.

2. The Current Position

The Lesotho Telecommunications Authority Act 2000 facilitated the implementation of the objectives stipulated in the Lesotho Telecommunications Policy 1999. Some of the key elements of the Policy were to establish the Telecommunications Authority (renamed the Lesotho Communications Authority or LCA) and the liberalization of the telecommunications market. With the expiration of the incumbent fixed line operator's exclusivity rights in 2007, the market was fully liberalized such that all licensed operators could provide services which were under competition. However, challenges still remain as the current legislation is not responsible to modern international best practices in the communications sector. In communications, internet penetration remains low in Lesotho. Convergence of technology where voice communication, video content and data communications can be carried over a single platform under the internet Protocol are yet to be legally recognized and optimized to ensure that Basotho receive affordable quality communications services. The Postal Sector requires restructuring to introduce modern practices that would enhance service quality. Although the broadcasting sector has been growing, more can be achieved through improvements of transmission infrastructure to ensure that other areas outside the lowlands are appropriately served. The current legal framework is outdated and does not provide enabling legal environment for the introduction of new and affordable communications

services in the market. Furthermore, the following have been identified as some shortcomings of the Lesotho Communications Authority Act 2000:

- (a) The Lesotho Telecommunications Authority (Amendment) Act 2001 whose objective was to confer powers on the Lesotho Communication Authority to regulate broadcasting services was inelegantly drafted as all it did was to extend the definition of a “telecommunications service” to include a broadcasting service as well without providing the parameters under which the Lesotho Communications Authority would operate given the peculiar practices obtaining to the broadcasting sub-sector.
- (b) Interconnection rates: Sections 36(3) of the LTA Act 2000 provides the LCA to establish binding interconnection charges and terms and conditions only where public telecommunication service providers fail to agree on charges and terms and conditions. Interconnection agreements provide a framework for competitive telecommunications sector as the entry of new players in the market will, among others, be facilitated by a conducive interconnection regime. Interconnection rates have a bearing on the wholesale and retail rates which service providers will charge for services and LCA should approve interconnection agreements and related rates in order to provide the introduction of exorbitant tariffs in the market.
- (c) The rapid introduction of a variety of new services by operators driven by technology developments following liberalization of the communications sector warrant a review of competition regulation in the market where service providers will be classified in accordance with market development. Anti-competitive safeguards need to be introduced as a component of regulation. This factor has not been catered for in the current legislation.
- (d) Provisions on quality of service standards are lacking in the current legislation and this compromises LCA’s role of protecting consumers for non-compliance with established parameters by operators.

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- (e) The LCA Act 2000 contains a number of amendments making it not user-friendly.

3. Rational/Objective to be achieved through the Communications Bill 2011

The intention of the Bill is to address the following:

- (a) To integrate the regulation of telecommunications, broadcasting and postal sector in order to introduce efficient methods and practices which would meet international standards;
- (b) To facilitate the introduction of a converged regulatory regime for provision of communication service parameters;
- (c) To enhance consumer protection by facilitating monitoring by LCA of operator's quality of service to consumers;
- (d) To introduce competition regulation safeguards by dominant licensee (s);
- (e) To enhance tariff regulation by operators classified as dominant licensees;
- (f) To facilitate infrastructure sharing by operators to foster universal access;
- (g) To efficiently manage universal access to communication services to ensure that communications services are available to Basotho in under-served and unserved areas; and
- (h) To introduce an element of self-regulation in the broadcasting services.

4. Consultations with stakeholders

The Ministry of Communications, Science and Technology (MCST) together with the LCA through a partnership of consultants of repute comprising Squire Sanders of the United States of America and Analysis Mason of the

United Kingdom, prepared a draft Communications Policy in 2008 and Draft Communications Bill. The Draft Policy document and Draft Communications Bill were discussed with key stakeholders comprising: Network Operators, Broadcasters, Internet Service Providers, Media Institute of Lesotho and the Ministry of Law and Constitutional affairs through workshops conducted by the consultants in conjunction with the MCST and LCA. The documents were largely lauded for being progressive instruments which would ensure that Lesotho adopts international best practices in the regulation of the communications sector.