

**THE LAWS OF SOUTH SUDAN**

**NATIONAL COMMUNICATION ACT, 2012**

Act No.24

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## National Communication Act, 2012

In accordance with the provisions of Article 86 (2) (3) read together with Article 55 (2) (3) (b) of the Transitional Constitution of the Republic of South Sudan, 2011, the National Legislative Assembly, ratifies and promulgates the following into law-

### CHAPTER I

#### PRELIMINARY PROVISIONS

**1. Title and Commencement.**

This Act shall be cited as “National Communication Act, 2012” and shall come into force on the date of signature.

**2. Repeal and Saving.**

Any existing legislation governing the subject of this Act is hereby repealed; *provided that* any orders issued or regulations made thereunder, except to the extent they are cancelled by or are otherwise inconsistent with provisions of this Act shall continue in force and effect until repealed or amended by this Act.

**3. Purpose.**

The purpose of this Act is to establish the Communication Authority and provide for its powers, functions and duties, structures, composition, finances and other related matters.

**4. Authority and Application.**

(1) This Act is drafted in accordance with the provisions of Schedule A (11) and (45) of the Transitional Constitution of the Republic of South Sudan, 2011, which confers upon the National Government, exclusive legislative and executive powers over postal services, Tele communications and national information, publication and mass media.

(2) This Act shall apply throughout the territory of South Sudan and extends to all persons involved in the postal and communication sectors.

**5. Interpretations.**

In this Act, unless the context otherwise requires:

“**Authority**” means National Communication Authority established under Section (7) of this Act;

“**Beneficiary**” means any person who uses or benefits from communication services;

**“Board”** means the Board of Directors of the Authority established under the provisions of this Act;

**“Board of Trustees”** means the Board established under the provisions of Section (76) of this Act;

**“Broadcasting Station”** means any equipment used for transmission of audio or visual broadcast by cable, radio waves, satellite or Internet (the Internet) or by means of fixed and mobile networks;

**“Broadcasting”** means the transmission of sound, video or data, intended for simultaneous reception by the public;

**“Communication”** means transmitting or receiving signals, sound, moving or still pictures, data or mail by means of wire or wireless including information technology, audio and visual broadcast or post;

**“Communication Services”** means audio, video, data, feasibility studies, support services, value added services, and any other services provided through any communication media;

**“Competent Minister”** means the national Minister in the Government of the Republic of South Sudan responsible for the communication sector;

**“Director General”** means the chief executive of the Authority appointed under provision of this Act;

**“Dominant Operator”** means the operator who owns the major portion of communication service facilities or has the largest share in the market which enables such operator to have a substantial degree of power of control in the market;

**“Information Technology”** means establishing, collecting, processing and storing of information and sending it through electronic devices, including those involving the use of computers and other communication systems;

**“Infrastructure Sharing”** means the sharing of different level of infrastructure of a communication network and its resources between two or more operators;

**“Interconnection”** means the linking-up of two communication networks so that the users of either network may communicate within users of or utilize services provided by means of the other network or any other communication network;

**“Licence”** means the permission issued by the Authority for establishment, operation or management of broadcast station or private or public communication network or for the use of frequencies or manufacture or for import of communication equipment and materials;

**“Licensee”** means any person or persons Licenced by the Authority in accordance with provisions of this Act;

**“Minister”** means the National Minister in the Government of the Republic of South Sudan responsible for Finance;

**“Operator”** means any person who owns or manages the operation of public or private communication network;

**“Public Communication Network”** means any communication system providing public communication services to the public;

**“Private Communication Network”** means any communication system providing private communication services to individuals or group of persons;

**“Postal Article”** means inward and outward correspondence;

**“Postal Services”** means collection, transmission, distribution and delivery of Postal Articles; materials or electronic objects and all types of postal financial services, documents and issuance of all types of postal stamps;

**“Post”** means any system for the collection, dispatch, conveyance, handling and delivery of Postal Articles;

**“Person”** means any individual, partnership, association, joint venture, trust, body corporate, or corporation;

**“Reference Interconnection Offer”** means a document or any agreement model that contains terms and conditions at which a dominant operator will provide access to specify communication services or facilities;

**“Secretary General”** means the chief executive of the Fund appointed under provisions of this Act;

**“Service Provider”** means any person that provides communication services, storage services or processing services or any combination of the three;

**“Type Approval”** means any administrative procedure of technical test or vetting applied to items of communications equipment before they can be sold or interconnected with the public network;

**“Universal Access”** means ensuring that every citizen has suitable means of access to points or common public communication facilities without regard to geographical or physical location;

**“Universal Service”** means the provision and availability of communication services with affordable prices and easy access to all citizens;

**“Fund”** means the fund established in accordance with provisions of this Act.

## **6. Transitional Procedures.**

Persons or entities involved in activities and functions that are regulated under this Act who are subject to licence or payment of fees, levies and other charges under this Act, shall regularize such

activities and adapt their positions to comply with requirements of this Act within a period not exceeding three months from the date of signature of this Act.

## **CHAPTER II**

### **NATIONAL COMMUNICATIONS AUTHORITY**

#### **7. Establishment and Supervision of the Authority.**

- (1) There shall be established a body to be known as the National Communication Authority which shall have corporate personality, a corporate seal and the right to sue and be sued.
- (2) The Authority shall be answerable to the President of the Republic of South Sudan and shall be under the direct supervision of the Competent Minister.
- (3) The Headquarters of the Authority shall be in the national Capital and the Authority may have branches in any state of South Sudan.
- (4) The Competent Minister shall determine general policy and shall guide operations of the Authority in accordance with the general policies and plans of the Government.

#### **8. Objectives of the Authority.**

The Authority shall aim to achieve the following non-exclusive objectives:

- (1) Promote and regulate the communication sector to meet the changing demands of development and globalization.
- (2) Encourage conducive environment favorable to promotion of communication services by ensuring free and fair competition and support of investment in this field.
- (3) Ensure accessible, reliable and affordable communication services through use of state-of – the-art technologies in all parts of the country.
- (4) Ensure availability, connectivity and interoperability amongst Licenced communication networks.
- (5) Ensure efficient use of Frequency Spectrum, Numbering System and other scarce communication resources in order to maximize their return.
- (6) Promote capacity building, awareness and confidence building in the communication sector.
- (7) Protect national security and priority interests of the Republic of South Sudan.
- (8) Ensure compliance with international and regional agreements and resolutions in the communication sector as adopted by the Republic of South Sudan.

- (9) Enhance the role of South Sudan as a model country in the field of communication on regional and the international levels.

## **9. Functions and Powers of the Authority.**

The Authority shall have the following functions and powers:

- (a) enforce Government policies in the field of communication;
- (b) lay-down regulatory policies, plans, programs, and guidelines in connection with establishment and provision of communication services at the national level having due regard to balanced development, equitable service delivery and other social and national objectives;
- (c) licence business operations in various fields of communication services and activities;
- (d) approve costing and pricing methods for communication services, capacity leasing and infrastructure sharing, in addition to regulating tariffs for services in co-ordination with entities that provide such services;
- (e) set rules and regulations for planning, managing, allocating, licensing and monitoring frequencies, wireless systems, broadcasting stations and postal services with due consideration to their respective security aspects;.
- (f) protect obligations and requirements of the country in fields of security, defense and emergencies, having due regard to regional and international standards and practices and in collaboration with concerned bodies and entities providing communication services;
- (g) regulate Internet Domain Names in South Sudan, and electronic signatures, organize special systems for Internet use and application while taking appropriate measures to protect security of information and communication networks against intrusion, and limit practices that contravene beliefs, values, culture and heritage of the people of South Sudan;
- (h) set rules that guarantee the protection of beneficiaries by ensuring provision of modern telecommunications services at affordable prices and of highest quality and ensuring compliance by the Licenced entities;
- (i) co-ordinate with relevant authorities with regard to importation, assembling and manufacture of communication equipment and materials and issue the type approval necessary for such purposes;
- (j) set and approve appropriate specifications, standards, measurements and test-procedures for systems, terminals, equipment and materials used in the field of communication, in co-ordination with relevant entities and agencies of Government;
- (k) set fair procedures for interconnections among Licenced networks and providing appropriate measures for resolving disputes that may arise between the parties;

- (l) represent South Sudan in regional and international forums related to operation, management and regulation of the communication sector;
- (m) receive complaints against any Licenced service provider and deal with such complaints in accordance with the provisions of this Act and applicable regulations;
- (n) establish a numbering system to be used for all communication services and manage its resources in accordance with the adopted national numbering plan;
- (o) advise the Government with respect to development of information and communication technology and all other matters related to proper regulation of communication industry;
- (p) collect and disseminate data related to the communication sector for benefit of the end users and for the purpose of raising public awareness in relation to the importance of the sector and its impact to socio-economic development;
- (q) undertake control, inspection, follow up and supervision of all communication activities in South Sudan to ensure that public communication Licensees are able to provide communication services at rates that are consistent with efficient and continuous service provision and financial viability;
- (r) propose draft laws and regulations related to the communication sector and submit them to relevant authorities within Government;
- (s) enhance the role of South Sudan as a model country in the field of communication both at the regional and international levels;
- (t) conform service delivery within the sector to scientific and technological advancement in the field of communication taking into consideration emerging health and environmental standards and collaborating with educational and research institutions to keep pace with new developments in the field;
- (u) promote and encourage the expansion of communication services in South Sudan;
- (v) assure privacy, security and confidentiality within communication services;
- (w) establish a national postal system for addresses and postal codes;
- (x) set designs and specifications for postal and postage stamps and approve their issuance;
- (y) authorize specialized Information and Communication Technology, postal training centers and approve issuance of certificates by those centers in accordance with regulations;
- (z) own and dispose of movable and immovable property as necessary in accordance with regulations and as approved by the Minister;
- (aa) recruit and retain staff as necessary for achieving its objectives and in accordance with applicable civil service laws and regulations;

- (bb) perform such other functions and duties as necessary for the implementation of this Act and applicable regulations.

### **CHAPTER III**

#### **MANAGEMENT OF THE AUTHORITY**

##### **10. Establishment and Constitution of the Board.**

- (1) There shall be established a Board for the management of the Authority which shall perform all functions and duties of the Authority.
- (2) Members of the Board shall be appointed by the President upon the recommendation of the Competent Minister and shall be comprised of the following categories:
  - (a) a non-full time Chairperson;
  - (b) a Vice-Chairperson;
  - (c) six other members representing relevant Government Agencies and the private sector; and
  - (d) the Director General of the Authority who shall be an ex-officio member and Secretary to the Board.
- (3) In appointing the Chairperson, Vice-chairperson and the six other members of the Board, the appointing authority shall take into considerations aspects of; core competencies, experience, knowledge, equity, diversity and gender balancing of the Board.
- (4) The functions of Chairperson and of Director General shall not vest in one person at any time.

##### **11. Functions and Powers of the Board.**

- (1) The Board shall set the general policy of the Authority, supervise and review its business, promote the achievement of its objectives and exercise the Authority's powers on sound management principles.
- (2) Without limiting the generality of sub-section (1) of this section, the Board shall exercise the following functions and powers:
  - (a) approve necessary plans to improve and promote management of the Authority;
  - (b) approve methods of costing and pricing of communication services;
  - (c) appoint and relieve employees of the Authority in grade four (IV) and above in accordance with National Civil Service Laws;

- (d) endorse and present the organizational structure, terms and conditions of the employees of the Authority to the Competent Minister for approval;
  - (e) conclude contracts and agreements on behalf of the Authority in accordance with applicable policies of the Government;
  - (f) approve the draft annual budget of the Authority and submit it to Government for final approval;
  - (g) submit final accounts and financial statements of the Authority to the Minister for submission to the Council of Ministers within the first half of the following year;
  - (h) establish internal rules of procedure for the organization and for conducting its work and meetings;
  - (i) establish technical committees to assist with management of the Authority in the exercise of its duties, powers and functions;
  - (j) review actions and decisions of the Director General and provide a process for receiving complaints and grievances against such actions and decisions in accordance with the provisions of this Act and applicable regulations;
  - (k) perform such other functions and exercise such powers as may be necessary for the proper management of the Authority in order to achieve its goals and objectives.
- (3) The Board may delegate any of its powers under this Act to the Chairperson, Director General or any other members of the Board.
- (4) The Board may, when necessary, delegate its powers to a committee constituted from its members not including its Chairperson or the Director General.

## **12. Conditions of Membership.**

A person shall be eligible for membership on the Board if such person is:

- (a) a South Sudanese national;
- (b) of good character and reputation;
- (c) of sound mind;
- (d) has not been terminated due to incompetence;
- (e) has never been convicted of any offence involving fraud or dishonesty;
- (f) has never been declared bankrupt;
- (g) possesses the relevant professional competencies in the communication field; and
- (h) is not a current holder of a public communication Licence.

**13. Vacating Office.**

- (1) The office of a member of the Board shall fall vacant upon any of the following occurrences:
  - (a) failure to meet any of the membership requirements set forth in section 12 of this Act;
  - (b) upon being convicted of any offence involving fraud or dishonesty;
  - (c) upon being absent without permission or excuse acceptable to the Board from three consecutive meetings of the Board;
  - (d) upon dismissal or resignation;
  - (e) upon death of a member;
  - (f) upon expiration of the term of office.
- (2) Whenever a position on the Board falls vacant prior to expiration of the term of a board member, another person shall be appointed to complete the remaining period in the manner provided for under section 10 (2) of this Act.

**14. Disclosure of Interest.**

Any member of the Board, who directly or indirectly has an interest in any matter under consideration by the Board shall disclose the nature or extent of his or her interest at the meeting of the Board and shall not attend any deliberations or take part in any decision of the Board with respect to that matter.

**15. Remuneration of Members of the Board.**

Remuneration of the chairperson, vice-chairperson and members of the Board shall be determined by the National Council of Ministers upon recommendations of the Competent Minister.

**16. Meetings of the Board.**

The Board shall hold at least four periodic meetings in every fiscal year and may convene extraordinary meetings in the manner specified by the rules of procedures it establishes which shall provide for other matters, including but not limited to:

- (1) The quorum for meetings which shall be more than one-half of the members of the Board.
- (2) In absence of the chairperson or vice-chairperson the board shall elect one of its members to chair the meeting.
- (3) In the event of a tie vote, the chairperson shall have a casting vote.
- (4) All the decisions at meetings of the Board shall be passed by a two-third vote of the members present.

- (5) Notwithstanding the provision of sub-section (4) of this section, decisions of the Board concerning issuing amendments to or cancellation of public or private communication Licences shall be more than two thirds of all members of the Board.

**17. Tenure of Office.**

- (1) A member of the Board, other than the Director General, shall hold office for period of four years but shall be eligible for re-appointment for only one additional term.
- (2) To avoid disruption of the work of the Authority, the chairperson shall, in consultation with the Competent Minister, take such measures as shall be necessary to timely avert simultaneous termination of the terms of all members of the Board.

**18. The Executive Body.**

The Authority shall be managed by an executive body which shall be headed by the Director General who shall be assisted by directors and heads of state branches of the Authority.

**19. Appointment and Duties of the Director General.**

- (1) The Director General shall be appointed by the President, upon recommendation of the Competent Minister, based on a competitive and transparent recruitment process.
- (2) The National Council of Ministers shall, upon recommendations of the Competent Minister, establish the remuneration and privileges of the Director General.
- (3) The Director General shall possess academic and professional qualifications in the field of information and communication technology and shall have working knowledge or experience in the fields of business administration, law or economics.
- (4) The initial term of office of the Director General shall not exceed five (5) years but it may be extended for one additional term only which shall also not exceed five (5) years.
- (5) The Director General shall be the chief executive officer of the Authority and responsible to the Board. He or she shall undertake the financial, administrative, and technical operations of the Authority in accordance with the policies and directions as established from time-to-time by the Board and in accordance with provisions of this Act and applicable regulations.
- (6) Without limiting the generality of the foregoing section, the Director General shall have the following functions and powers including but not necessarily limited to:
  - (a) preparing the annual progress report together with the annual budget proposals and submitting them before the Board for consideration and approval;
  - (b) adhering to the approved budget in accordance with governing financial regulations;

- (c) closing the Authority's annual accounts within a period of three months from the end of each fiscal year and submitting it to the National Audit Chamber and the appropriate unit within the Ministry of Finance and Economic Planning;
- (d) complying with the requirements of the Public Finance, Management and Accountability Act;
- (e) Preparing tender documents, advertising tenders as necessary, evaluating proposals, conducting negotiations, and submitting recommendations to the Board;
- (f) concluding contracts and agreements on behalf of the Authority as specified in the financial regulations or as may be delegated by specific resolutions of the Board;
- (g) preparing necessary plans and programs for improving and promoting management of the Authority and submitting them for consideration by the Board;
- (h) issuing business Licences with respect to various fields of communication services and activities in accordance with the provisions of this Act and applicable regulations;
- (i) issuing Licences for the use of frequencies and wireless equipment in accordance with the provisions of this Act and regulations;
- (j) preparing methods of costing and pricing of communication services and submitting them to the Board for approval and administer appropriate utilization of communication tariffs, rates and schedules in accordance with Board approved costing methods;
- (k) regulating and supervising all the communication regulatory activities in South Sudan;
- (l) representing the Authority at local, regional and international functions relating to Telecommunication activities;
- (m) establishing data and statistical units within different sectors of the communication industry in collaboration with other Governmental and state agencies and supporting decision making;
- (n) recruiting and relieving staff to and from posts below grade four (IV) in accordance with the National Civil Service laws and nominating suitable candidates for appointment to posts at grade four (IV) and above for consideration by the Board;
- (o) developing and submitting the proposed organizational structure of the Authority and proposed terms and conditions of service of employees of the Authority for consideration by the Board;

- (p) receiving complaints against any Licenced service provider and taking appropriate measures for responding to such complaints in accordance with established procedures and provisions of this Act and regulations;
  - (q) executing all functions and duties assigned by the Board; and
  - (r) undertaking other duties as necessary for the proper implementation of this Act and applicable regulations.
- (7) The Director General may delegate any of his or her powers conferred under this Act to any of his or her directors or to any committee constituted to perform a particular function with such terms and conditions as he or she may deem appropriate.

**20. Removal of the Director General from Office.**

Upon recommendation of the Board through the Competent Minister, the President may remove the Director General from office for misconduct or for proven inefficient performance of duties.

## **CHAPTER IV**

### **FINANCIAL PROVISIONS**

**21. Financial Resources and Assets of the Authority.**

- (1) The financial resources of the Authority shall consist of:-
- (a) appropriations by Government;
  - (b) licensing fees and charges, business licenses, business and services rendered for a fee by the Authority as provided in the rules and regulations of the Authority;
  - (c) fund obtained from the Authority's own investment upon approval by the minister;
  - (d) fines, levies and charges imposed by the Authority which are not in conflict with other laws;
  - (e) donations, and grants approved by the Minister and in accordance with the Public Finance, Management and Accountability Act, 2011;
  - (f) support funds offered by the National and state governments; and
  - (g) revenue in connection with delivery of Communication services as approved by Government.
- (2) The Authority shall effectively manage and account for its funds according to applicable laws and regulations.

- (3) Notwithstanding the generality of the foregoing subsections, the funds of the Authority shall be applied to the following activities:
  - (a) settlement of financial obligations and performance of the Authority's core business;
  - (b) payment of remuneration of staff, Board and committee members including dues and gratuities as provided for by this Act and applicable regulations; and
  - (c) any other expenses as necessary for proper performance of the duties and obligations of the Authority.
- (4) The Authority shall keep regular records of all movable and immovable assets and shall conduct a comprehensive inventory evaluation every five years.

## **22. Annual Budget.**

The Authority shall have an independent annual budget that shall be prepared in accordance with sound accounting principles and consistent with the requirements of the Public Finance Management and Accountability Act, 2011.

## **23. Accounts, Financial Books, Records, and Deposits.**

- (1) The Authority shall keep accurate, proper and complete accounts and records of all revenue and expenditure that shall comply with proper accounting principles and requirements of the Public Finance Management and Accountability Act, 2011.
- (2) The Authority shall keep its funds in Board approved accounts opened with Government approved Banks or investment accounts. Operation and use of those accounts shall be consistent with proper banking and accounting principles. The Authority's accounts may be in local or foreign currencies kept inside or outside South Sudan with the approval of the Minister.

## **24. Auditing.**

- (1) The Authority shall establish an internal auditing unit to be headed by a person of professional qualifications and experiences appointed in accordance with the Public Finance Management and Accountability Act, 2011 and shall prepare monthly internal audit reports according to the internal auditing regulations and consistent with requirements of the Public Finance, Management and Accountability Act, 2011.
- (2) The Audit Chamber or other delegated auditor approved by the Auditor General shall audit accounts of the Authority at the end of each year.

## **25. The Annual and Final Financial Statement.**

At the end of each financial year the Authority shall submit to the Competent Minister the following reports for presentation to Government:

- (a) the Final Financial Statement of the Authority;
- (b) the Auditor General's Report; and
- (c) the Annual Performance Report of the Authority depicting its financial position and future programs and plans.

## **CHAPTER V**

### **LICENSING**

#### **26. Services and Activities Subject to Licensing.**

The Authority shall specify types of services and activities that are subject to licensing and rules, terms and conditions applicable to classes and types of Licences in accordance with provisions of this Act and its regulations.

#### **27. Establishment, Possession and Operation of Communication Networks.**

- (1) No person shall establish, possess, operate or manage any public or private communication network unless it is licenced in accordance with the provisions of this Act and applicable regulations.
- (2) The following entities are hereby exempted from the provisions of sub-section (1) of this section:
  - (a) Communication Networks of the National Armed Forces, other law enforcement agencies, and National Security organs within the limits of frequency band allocated to each of them respectively;
  - (b) Wired or wireless private communication networks for use by the office within the same building or premises owned by one or more persons as specified in the regulations;
  - (c) Any other network as approved for exemption by the Authority.
- (3) The entities exempted in accordance with sub-Section (2) of this section shall not offer communication services on commercial basis except under Licence issued upon approval of the Authority.

#### **28. Communication Equipment and Broadcasting Stations.**

- (1) No person shall possess, install, use, operate or manage any communications equipment or broadcasting station inside the territories of South Sudan or on board of any airplane or water vessel registered in South Sudan except under Licence duly issued by the Authority,

- (2) The following entities shall be exempted from the provisions of sub-section (1) of this section:-
- (a) Communication networks of the National Armed Forces, Law Enforcement Agencies and National Security within the limits of the frequency band allocated to each of them respectively
  - (b) communication equipment in foreign airplanes or water vessels in South Sudan's territorial waters or space
  - (c) Any other person as approved for exemption by the Authority.

**29. Regulation of Broadcasting Services.**

The Authority shall not allocate frequency or frequency band to any person for the purpose of providing public or private broadcasting services unless such person has obtained a Licence from the relevant agency.

**30. Import, Assembly, Manufacture and Trading in Communication Equipment and Materials.**

- (1) No person shall import, repair, assembly, manufacture, install or trade in any communication equipment or materials except under license duly issued by the Authority.
- (2) The customs authority shall not release to any person communication equipment which is found to have been imported without a valid license or permit from the Authority.
- (3) Fixed or mobile telephone sets, computers, fax machines or other communication equipment intended for personal use shall be exempt from the application of sub-Section (2) of this section as prescribed in more details by the regulations issued under this Bill.
- (4) Notwithstanding the provisions of sub-section (3) of this section, the Authority may exempt some entities from restrictions regarding importation of Information and Communication Technology equipment.

**31. Types and Conditions of Licences.**

The types and conditions of Licences, their validity, terms for renewal and fees shall be as prescribed by regulations.

**32. Licensing Procedures.**

- (1) The Authority may invite applications for any new Licence or for any new services through the use of tender, auction procedures or direct applications as shall be prescribed in the regulations issued under this Act,
- (2) The Authority shall specify methods of submitting applications for Licences according to type, nature or coverage of the services and number of providers needed for the provision of such service.
- (3) The regulations shall set forth the basis, criteria, technical conditions and necessary requirements for examining applications and offers for Licences and their review and evaluation.
- (4) When considering applications for Licences, the Authority shall take into account, the following:
  - (a) fair competition;
  - (b) security aspects;
  - (c) technical, financial and managerial aspects relating to capacities of the applicants;
  - (d) all agreements between South Sudan and other countries and between the Authority and local or external entities in connection with the communication sector.

**33. Amendment of Licence.**

- (1) The Licensee shall not amend the Licence, once issued, without first obtaining the approval of the Authority,
- (2) The Authority may amend any of the conditions of the Licence, after issuance, in accordance with the procedures that is prescribed in the regulations,
- (3) Any party aggrieved by a decision of the Authority to amend any of the conditions of the Licence pursuant to the provisions of sub-section (2) of this section shall petition the Competent Minister whose decision on the matter shall be the final administrative decision on the matter. The party aggrieved, shall have the right of appeal to a competent court.

**34. Obligations of the Licensee.**

The Licensee shall comply with the following-

- (1) Conditions of the Licence
- (2) Provisions of regional and international agreements
- (3) Provisions and regulations of International Telecommunication Union (ITU), Universal Postal Union (UPU), appendices and subsequent amendments.

- (4) Requirements to implement the work to which Licence applies according to agreed time schedules and to notify the Authority of any constraints hindering timely implementation at any stage.
- (5) Requirement to submit quarterly and annual reports indicating the technical, administrative and financial aspects and any other information and data at such periods as specified by the Authority.
- (6) Compliance with regulation, directives and orders issued by the Authority and any applicable laws affecting the nature of Licence issued.
- (7) Establishing special unit for receiving and settling of customer complaints;
- (8) Where the Licensee wishes to enter into any association, contract or arrangement with a third party to provide communication services which only the Licensee is permitted to provide under the Licence he or she shall first seek approval of the Authority before entering into such association, contract or arrangement.
- (9) The Licensee shall not enter into any arrangement with any person operating international communication services on terms or conditions deemed by the Authority to be in conflict with the public policy and national interests of South Sudan.

### **35. Cancellation of Licence.**

- (1) The Authority shall cancel any communication Licence in any of the following circumstances-
  - (a) a Licensee's non-payment of the prescribed fees for renewal of the Licence at the specified time without acceptable excuse;
  - (b) where the Licensee contravenes any conditions of the Licence;
  - (c) upon liquidation of the Licensee's business, declaration of bankruptcy or loss of legal capacity;
  - (d) where the Competent Minister or the Board has determined that continuation of the Licence may prejudice the public policy or national interests of South Sudan.
- (2) The Authority may cancel a Licence issued for any specific services or area, if:
  - (a) the Licensee contravenes any provisions of this Act or regulations;
  - (b) where the Licensee's operations have resulted in harm to other persons or where the Licensee refuses to adapt his or her operations after having been required to do so by the Authority;

- (c) where the Licensee fails to execute a decision of the Authority after expiration of a period of thirty (30) days from the date of the notice of the requirement mentioned in sub-section (b) of this subsection;
- (d) where the services rendered by the Licensee are determined to be below the required standard upon verification by the Authority of the complaints lodged against the Licensee;
- (e) where the Licensee has been given two warnings within a period of six consecutive months without taking heed;
- (f) where there are necessary and exceptional reasons justifying cancellation as determined by the Authority.

### **36. Consequences of Licence Cancellation.**

- (1) A person whose Licence for the establishment of a public communication network or provision of communication services has been cancelled shall:
  - (a) take immediate steps to notify the customers through the available public media;
  - (b) not accept new subscriptions as of the date of cancellation of the Licence unless a written waiver has been given by the Authority;
  - (c) not dispose of communication or network equipment unless an express waiver has been issued by the Authority;
  - (d) return any deposits collected from subscribers in relation to the cancelled services;
  - (e) not apply for any communication Licence until after the expiration of one year from the date of cancellation.
- (2) A person whose licence for manufacturing or assembling communications equipment and materials has been cancelled shall:
  - (a) immediately disclose to the Authority the nature and amounts of current stock and, unless expressly permitted by the Authority, shall not dispose of it; and
  - (b) shall not dispose of the factory facilities or other equipment unless authorized to do so by the Authority.

### **37. Delivery of Licence.**

The Licensee or the person in possession of the Licence shall deliver it to the Authority immediately upon its cancellation.

**38. Claims for Compensation.**

- (1) The Licensee whose Licence has been cancelled pursuant to any provision of this Act or applicable regulations shall not be entitled to claim compensation or refund of fees and charges paid to the Authority in respect of renewing or issuance of the Licence.
- (2) Cancellation of the Licence shall, however, not prejudice the rights of affected persons having legitimate claims from asserting such claims against the Licensee.

**CHAPTER VI**

**POSTAL SERVICES**

**39. Right to Provide Postal Services.**

- (1) No person shall operate or provide postal services except under Licence issued by the Authority.
- (2) Notwithstanding the provisions of sub-sections (1) of this section the Authority may exempt some services as shall be specified in detail by the regulations issued pursuant to this Act.
- (3) The Authority shall grant to the public postal Licensee an exclusive right to provide private letter boxes, postal bags and postal services except such services as shall be excluded by regulations issued under this Act.
- (4) In the event of any question arising as to whether or not a Postal Article is a letter within the meaning of this Act or applicable regulations, determination by the Authority on the matter shall be final and conclusive.

**40. Postage Stamps and Letter Boxes.**

The public postal Licensee shall have exclusive rights to issue postage stamps and provide private letter boxes subject to such conditions as the Authority may impose.

**41. Liability for Postal Article.**

- (1) The person to whom any Postal Article is tendered on which postage or other charges are due shall be liable to pay such postage or charge unless:
  - (a) he or she refuses to accept delivery of such Postal Article; or
  - (b) having accepted delivery of such Postal Article, he forthwith returns it unopened.
- (2) If any Postal Article for which postage or other charges are due is refused or returned unopened by the addressee, or if the addressee is dead or cannot be found, the sender shall be liable to pay the postage or other charges due thereon.

**42. Opening of Postal Articles.**

- (1) Subject to this Act, where any Postal Article is in the course of transmission by post, no employee of the Licensee shall open it or deliver it to any person other than the addressee nor permit it to be opened or delivered by any person other than the addressee unless such employee is duly authorized in writing by the Licensee.
- (2) Nothing in this section shall preclude the examination or disposal of any Postal Article pursuant to provisions of any law providing for such examination or disposal, in particular laws relating to:
  - (a) customs and duty; or
  - (b) laws regulating import or export of goods.
- (3) The Licensee may, on a case by case basis, authorize the opening or returning of any specified Postal Article.

**43. Interception of Postal Article.**

- (1) Upon declaration of a state of public emergency or in the interest of public safety and tranquility, the National Government officer responsible for internal security may order any class or description of Postal Articles that are in transit through post within South Sudan to be intercepted or detained or to be delivered to any officer in service of the Government mentioned in the order, or may direct that such articles be disposed of in such manner as the officer may direct.
- (2) A certificate signed by the National Government officer responsible for internal security shall be sufficient evidence of the existence of a state of public emergency and of the fact that any actions directed to be done in accordance with sub-section (1) of this section is done in the interest of public security and tranquility.

**44. Article or Material Injurious to Persons.**

- (1) No person shall send by post any material or Postal Article which may in the course of transmission by post be likely to injure or cause harm to any person.
- (2) Except as otherwise provided by regulations made under this Act and subject to such conditions as may be prescribed, no person shall send by post explosives, inflammable, dangerous, filthy, noxious or deleterious substance or sharp instruments or objects that are not properly protected which may cause injury to any person in the course of its transit by post.

**45. Prohibited Materials.**

- (1) No person shall send by post:
  - (a) any indecent or obscene printing, photograph or lithograph;

- (b) any Postal Article having on its face or cover words or designs of indecent, obscene, scurrilous, threatening or grossly offensive depictions;
  - (c) any Postal Article bearing a fictitious stamp or purporting to be prepaid with any postage stamp which has previously been used in payment of stamp charges;
  - (d) other Postal Articles which the Authority may by regulation prohibit.
- (2) The Authority may make regulations in respect of the articles prohibited by sub-section (1) of this section and for detaining, disposing of, or destroying such Postal Articles sent or tendered for transmission by post.

**46. Evidence of Return of Postal Articles.**

In any proceedings for recovery of any postage or other charges alleged to be due under this Act in respect of such Postal Article:

- (1) The production of the Postal Article bearing the official mark of the Licensee or the signature of an employee of the Licensee denoting that the article has been refused, returned unopened or unclaimed, or that the addressee is dead or cannot be found, shall be *prima facie* evidence of the fact so denoted.
- (2) The person from whom the Postal Article stated to have come shall, until the contrary is proved, be deemed to be the sender of such Postal Article.
- (3) Production of the Postal Article bearing the official mark of a public postal Licensee denoting that any postage or other charge is due in respect of the Postal Article to the operator or to the postal administration of any foreign country, shall be conclusive evidence for all intents and purposes that the sum so indicated on it is due.

**47. Postal Financial Services.**

- (1) The Authority may allow a public postal Licensee to carry out postal financial services on its own account in accordance with the provisions of this Act and applicable regulations.
- (2) For purposes of this Section, “Postal Financial Services” include but may not be limited to money orders, postal orders, postal drafts, postal cheques, postal traveler’s cheques, cash-on-delivery, collection of bills, savings service, subscription to newspapers and periodicals or other forms of financial service as the Authority may prescribe.

**CHAPTER VII**

**INTERCONNECTION, INFRASTRUCTURE SHARING AND**

**ANTI-COMPETITIVE PRACTICES**

**48. Interconnection between Networks.**

Licensee shall connect their communication networks with other Licenced communication networks or equipment for use in accordance with interconnection rules specified by the Authority and in the Licensees' own inter-party coordination agreements.

**49. Obligations of the Dominant Operator.**

The dominant operator shall comply with the following requirements:

- (a) Offer services to other parties with transparency and without discrimination;
- (b) Enable the Authority to access his or her premises or facility for monitoring performance to ensure fair dealing with all interested parties; and
- (c) Other obligations as shall be specified by regulations issued under this Act.

**50. Bases and Principles of Interconnection.**

Public communication network Licensees shall offer interconnection services to other operators and service providers on the following basis and shall comply with the following guiding principles shall:

- (a) not discriminate between the operators;
- (b) offer technically feasible interconnection points;
- (c) offer services according to an established public interconnection offer;
- (d) offer equitable interconnection services in accordance with unified cost-based charges or on the basis of equitable wholesale charges; and
- (e) provide services on the dates as specified in prevailing interconnection agreements.

**51. Obligations of Interconnection Parties.**

- (1) The communication operator and public service providers in the field of interconnection shall comply with the following requirements:
  - (a) abide by the rules and directives issued by the Authority and other requirements set forth in this Act and applicable regulations;
  - (b) co-operate with other operators to enhance current capabilities, future plans for expansion and modernization of networks including technical specifications and data needed for efficient and effective interconnection arrangement;
  - (c) establish interconnection agreements with other operators on non-discriminatory basis to be approved by the Authority and made available to other operators as necessary;

- (d) Identify unit within the organization responsible for matters related to interconnection services;
  - (e) prepare Reference Interconnection Offer in accordance with guidelines provided by the Authority;
  - (f) provide interconnection services at points specified in the regulations;
  - (g) respond to requests from Licensed operators and service providers as specified in the regulations.
- (2) The interconnection parties shall reach agreement within a period of not more than two months from commencement of the negotiation. In the event of failing to reach agreement within the two months period, the parties shall notify the Authority which shall take appropriate steps to mediate between the parties and assist them towards a binding resolution.

## **52. Withdrawal or Cessation of Interconnection Services.**

- (1) A Licensee of a public network shall not withdraw or terminate interconnection services from other Licenced operators except under the following specific conditions:
- (a) where the Licenced operator causes or is likely to cause substantial damages to the public communication network;
  - (b) where the Licensee violated the terms of contract signed between them;
  - (c) when a judicial order has been issued for withdrawal or cessation of the interconnection service.
- (2) Notwithstanding the provisions of sub-section (1) of this section, the Licensee shall notify the Authority at least fifteen days prior to cessation or withdrawal of interconnection services and shall provide supporting justification and related documents the Authority might use to settle underlying interconnection issues.

## **53. Infrastructure Sharing.**

- (1) Licenced operators shall share their infrastructure on the basis of commercial agreements entered into with each other.
- (2) The types of infrastructure sharing and related policies, guidelines and conditions for each service type shall be prescribed by regulations.
- (3) Where a dispute arises in respect of an Infrastructure sharing agreement or where an operator refuses to share its infrastructure, the Authority may take steps to resolve the dispute and its decision in such an event shall be final.

- (4) Notwithstanding the provision of sub-section (1) of this section, the Authority shall direct operators to share their infrastructure where it is in the public interest to do so.

**54. Anti-Competitive Practices.**

- (1) A Licensee shall not engage in anti-competitive practices and shall desist from participating in the prohibited activities that are specified in the regulations issued under this Act.
- (2) The Authority shall take necessary measures to restrain anti-competitive practices by Licensees according to regulations issued pursuant to this Act.

**CHAPTER VIII**

**MANAGEMENT, ALLOCATION AND MONITORING  
OF FREQUENCY AND SPECTRUM**

**55. Frequency and Spectrum Control.**

- (1) The Authority shall, in collaboration with interested stakeholders, design necessary charts, tables, plans, and records for controlling the use and allocation of frequencies and frequency bands for all purposes inside South Sudan.
- (2) The Authority shall establish fixed and mobile stations and develop means and facilities for monitoring the use of frequency spectrum throughout the country and shall take immediate measures to stop harmful effects and un-Licensed users.
- (3) The Authority shall have the right to revise, amend or allocate frequencies and frequency bands and to reallocate them as the need arises.

**56. Licensing, Renewal and Cancellation.**

- (1) No person shall use any frequency, frequency band or electromagnetic waves except under a Licence duly issued by the Authority.
- (2) Applications for frequency and frequency band shall be submitted in accordance with the procedures and forms prescribed in the regulations made pursuant to this Act.
- (3) The validity of Licences, allocation of frequencies or frequency bands shall be for a period of one (1) year but the Authority may renew such Licences, frequencies or frequency bands upon payment of the prescribed fees.
- (4) Application for renewal shall be submitted to the Authority at least thirty days prior to the expiry date of the valid Licence.
- (5) The Authority may cancel the Licence, frequency or frequency band under any of the following situations:

- (a) non-payment of the prescribed fees within one month from the payment due date;
  - (b) contravention of the licensing or allocation condition;
  - (c) where the Licensee's business is liquidated or upon the Licensee declaring bankruptcy, or loss of legal capacity;
  - (d) inappropriate use of frequency or frequency band in a manner likely to cause harm to the security of the country;
  - (e) interference with other public or private communication networks;
  - (f) failure to use the allocated frequency and frequency band within three months from the date of issuance of the Licence;
  - (g) cancellation of the communication network Licence; and
  - (h) failing to comply with any condition or requirements specified in the regulations issued pursuant to this Act.
- (6) Notwithstanding the provisions of sub-section (5) of this section, the Licensee shall be notified and given an opportunity to rectify the cause for cancellation or refusal to renew the Licence within thirty days, provided that where the Licensee fails to respond within that time limit the Licence shall be cancelled.

**57. Vacating Frequency and Frequency Band.**

- (1) The Authority may order the Licensee to vacate any frequency or frequency band in accordance with the procedures prescribed in the regulations issued under this Act.
- (2) The Licensee shall be given a period of six months within which to implement the order issued under sub-Section (1) of this section and failure by the Licensee to vacate the frequency or frequency band within that period shall result in immediate cancellation of the Licence.
- (3) The Authority may, by regulation provide for reasonable compensation for loss business to affected Licensees.

**58. Harmful Operation.**

If the operation of any communication network, wireless equipment, broadcasting station or electrical appliance results in the failure of or interference with another Licensee's equipment or station or causes harm to any of them, the Authority shall notify the person who owns the network, station or equipment that was responsible for causing such harm and require him or her to take immediate remedial measures to rectify the situation or remove the cause of the harm promptly.

**CHAPTER IX****PRICING AND FEES****59. Tariffs and Rates.**

The Authority shall annually study and approve the tariffs for communication services, the rates and fees for the allocation and licensing of frequencies, frequency bands, and postal services according to the procedures specified in the regulations issued under this Act.

**60. Methods of Setting Public Communication Services Tariffs.**

Regulations issued pursuant to this Act shall specify methods of setting public communication service tariffs.

**61. Bases and Criteria for Setting Public Communication Services Tariffs.**

- (1) In setting the public communication service tariffs, the Authority shall take into account the following considerations:
  - (a) tariffs are to be established on the basis of actual cost;
  - (b) tariffs shall be fair and shall not operate in a discriminatory way amongst beneficiaries;
  - (c) tariffs shall not be set at reduced prices with the intent of restricting competition;
  - (d) tariffs shall generally comply with the guiding principles and criteria that are specified by the regulations issued under this Act.
- (2) The Authority shall take into consideration overall compliance with the criteria set forth in sub-section (1) of this section when approving the public communication services tariffs.

**62. Principles and Criteria for Pricing Interconnection Services.**

The pricing of interconnection services shall be according to the following principles and criteria:

- (a) promoting direct negotiations between Licensees and encouraging agreement within the framework of the rules and guidelines issued by the Authority and in accordance with provisions of this Act;
- (b) pricing interconnection services on the basis of actual cost;
- (c) conforming to prescribed procedures, guiding principles and the criteria set forth in the regulations issued under this Act.

**63. Review of Public Communication Services Tariffs.**

The Authority shall annually review and approve public communication services tariffs to ensure compliance with the procedures specified in the regulations issued pursuant to this Act.

**64. Coming into Force and Application of the Approved Tariffs.**

- (1) The tariff rates for public communication services shall come into force after approval and announcement in accordance with the regulations issued under this Act.
- (2) The Licensee shall fully comply with the approved public communication services tariff.

**65. Amendment of the Public Communication Services Tariffs.**

- (1) The Licensee shall not amend the approved tariff structure for public communication services unless approval is first obtained from the Authority.
- (2) The Authority may review and revise the approved tariff structure, either on its own accord or upon request by a Licensee but only after three months have elapsed from the date of first application of the tariffs.

**66. Licence Fees.**

- (1) Any Licence agreement for a public communication network concluded between the Authority and the Licensee shall include the licensing fees to be paid and shall provide for payment of annual renewal fees.
- (2) The Authority shall collect frequency allocation fees and use of communication equipment fees as set forth in the regulations issued under this Act.
- (3) The Provisions shall specify the Licence fees for private network and for importation and marketing of communication equipment.

**67. Release and Type Approval Fees.**

- (1) Regulations issued under provisions of this Act shall specify the Release and Type Approval fees for communication equipment and materials.
- (2) The Licensee shall be exempted from Release and Type Approval fees for core and basic equipment tests, measurements, maintenance equipment and spare parts included in the approved technical study and that are included in future plans and programs that have been approved by the Authority.

## CHAPTER X

### NATIONAL NUMBERING PLAN

#### **68. National Numbering Plan, Number Portability, Internet Domain Names and Postal Codes.**

- (1) The Authority shall prepare a national plan for numbering and management of Internet domain names complying with the rules and procedures of the International Telecommunication Union (ITU) and other international and regional standardization bodies; provided that the Authority may amend such plans when and as necessary from time-to-time.
- (2) The Authority shall assign block numbers and Internet domain names in a fair and equitable way for the benefit of all communication services and with the aim to adequately meet the needs of existing and future capacity in accordance with the approved plan.
- (3) No Licensee shall transfer the assigned block numbers or Internet domain names without first obtaining the approval of the Authority.
- (4) The Customer Portability Number may be transferred from one operator to another upon the customer's request and agreement by the operators involved.
- (5) The Authority shall prepare a postal code numbering plan and assign postal codes in accordance with the rules and procedures of the Universal Postal Union (UPU) or other recognized international or regional regulatory bodies and may amend such plan from time to time as necessary.
- (6) Licensees shall comply with directives and orders issued by the Authority with respect to national numbering, number portability, Internet domain names and postal codes.

## CHAPTER XI

### STANDARD, SPECIFICATIONS AND TYPE APPROVALS

#### **69. Standard Specifications.**

- (1) The Authority in co-ordination with related entities, shall set standards and specifications for all communication equipment, materials and systems to ensure that no harm is caused to communication networks and services or to public health or environment.
- (2) Publish standard specifications and disseminate them to Licensee and other interested parties.
- (3) Inspect and test all communication equipment, materials and systems to ensure their conformity with the approved technical specifications as set forth in the regulations issued under this Act.

**70. Type Approvals.**

- (1) Importation, assembling, manufacturing or marketing of communication equipment and materials, shall be limited to those Licensees whose Type Approval has been recognized by the Authority.
- (2) Notwithstanding the provisions of sub-Section (1) of this section, the Authority may cancel any recognized Type Approval whenever necessary.
- (3) A Licensee having no published standards, specifications or recognized Type Approval, who desire to import, assemble, market or manufacture communication equipment or material, may submit an application supported by required documentation to obtain the prior approval of the Authority.

**CHAPTER XII****CONTRAVENTION OF REQUIREMENTS****71. Inspection, Monitoring and Detection of Contraventions.**

- (1) The Authority shall exercise powers of inspection, monitoring and detection of contraventions of requirements for equipment, systems and services within the territories of South Sudan whether at the locations of a Licensee, at communication networks, or on board of water vessels plying within territorial waters or on board of landed aircrafts or in South Sudan's air-space, in order to:
  - (a) ensure that Licensees are complying with the prescribed terms and conditions of their Licences;
  - (b) ascertain proper operation of communication services, including wireless and broadcasting stations;
  - (c) identify equipment, systems, services, frequencies or stations that are not Licenced or not complying with prescribed rules;
  - (d) inspect communication equipment inside and outside the location of the Licensee;
  - (e) examine the Licensees' documents related to tariff rates billing structure;
  - (f) evaluate the quality of services provided;
  - (g) review any reported contravention any provision of this Act or applicable regulations.
- (2) Without limiting the generality of sub-section (1) of this section, the entry into or inspection of a private residence shall not be conducted without an order issued by the prosecutor general or by a court of competent jurisdiction.

- (3) Procedures for identification and seizure of equipment and material found to contravene provisions of this Act shall be prescribed in the regulation.
- (4) The Authority may delegate any of its employees or officers to inspect, monitor, and identify contraventions of the requirements of this Act.
- (5) Employees or Officers of the Authority who are designated to carry out searches and inspection shall be issued with appropriate identification to present to any entity to be inspected.
- (6) The employee or officer who is designated to conduct search and inspection duties may seek the assistance of the Police force or other governmental agencies in carrying out those duties.

**72. Monitoring and Tracking of Electromagnetic Waves.**

- (1) The Authority has the power and right to monitor, inspect and track utilization of electromagnetic waves in communications to ensure that it is properly Licenced. Such monitoring shall not constitute infringement of private rights to privacy or contravene other laws.
- (2) Notwithstanding the provision of sub-section (1) of this section, contents of the collected messages shall be kept confidential and shall not be for public dissemination.
- (3) Any employee, officer or agent of the Authority who contravenes the provision sub-section (2) of this section commits an offence and shall be liable to punishment in accordance with the provisions of this Act and its regulations.

**CHAPTER XIII**

**UNIVERSAL SERVICE**

**73. Establishment of Universal Service and Access Fund.**

- (1) There shall be established a Fund to be known as Universal Service and Access Fund (USAF) which shall be a body corporate with its own seal and shall have powers to sue and be sued in its own name.
- (2) Among the Fund's key objectives shall be to develop and deploy communication services to cover the entire population of South Sudan, to include, urban, rural and remote areas to ensure universal service and access.
- (3) The Headquarters of the Fund shall be within the National Capital.
- (4) The Fund shall perform its functions under the direct supervision and oversight of the Competent Minister.

**74. Objectives of the Fund.**

The objectives of the Fund shall be as follows:

- (a) focus the attention of communication operators towards rural population and encourage expanded levels of communication penetration in rural and under-served areas;
- (b) improve broadband penetration in the country;
- (c) promote increased use of advanced tools and equipment and encourage broader utilization of e-applications and e-services for both rural and urban areas of South Sudan;
- (d) enhance advancements in research and development within the field of communication and promote use of advanced technologies.

**75. Functions and Powers of the Fund.**

- (1) The Fund shall have the following functions and powers which shall include implementing Government policies related to the core principle of universal service and access.
- (2) Lay down policies, plans, programs, regulations and guidelines for bridging the communication digital divide between the center and rural areas through promoting communication service delivery to cover the entire population of South Sudan with special emphasis given to unprivileged groups and hard-to-reach communities.
- (3) Set rules and regulations for planning and managing resources of the Fund in order to achieve the core objective of universal service and access.
- (4) Coordinate activities and efforts with regional and international agencies promoting universal service and access to leverage synergies and resources
- (5) Acquire and dispose of movable and immovable property upon approval of the Minister,
- (6) Recruit and retain staff of the Fund in accordance with approved budget and consistent with Public Service laws and regulations
- (7) Develop programs for generating resources for the Fund including fees and charges for services delivered in order to support the core goal of universal service and access.
- (8) Perform such other functions as are necessary to effectively execute the functions of the Fund and achieve its goals.

**76. Establishment of Board of Trustees of the Fund.**

- (1) There shall be established a Board of Trustees which shall supervise the activities of the Fund and support achievement of its objectives.

- (2) Members of the Board of Trustees shall be designated by the Competent Minister after consultation with the Board of the Authority and shall be approved by the National Council of Ministers to serve in the following offices:
  - (a) a non-full time Chairperson;
  - (b) the Secretary General of the Fund who shall also be a member and rapporteur;
  - (c) the Director General of the Authority who shall be a member; and
  - (d) four other members with appropriate skills, competence and experience in fields such as Communications, Business or Public Administration or Economics.
- (3) In constituting the Board of Trustees, regard shall be made to appropriate representation of key stakeholder entities.
- (4) The Board of Trustees shall report to the Competent Minister.

**77. Functions and Powers of the Secretary General of the Fund.**

- (1) The Secretary General shall be nominated by the Competent Minister through a competitive and transparent process and shall be appointed by the National Council of Ministers,
- (2) Upon the recommendations of the Competent Minister the National Council of Ministers shall determine the remunerations and privileges to be extended to the Secretary General.
- (3) The Secretary General shall have professional qualifications in Information and Communication Technology (ICT) and shall possess desired skills, knowledge and experience in the field of either Business or Public Administration, Law, Economics or any combination of them.
- (4) The term of office for the Secretary General shall not exceed four years; provided that the Secretary General may be eligible for re-appointment to only one additional term.
- (5) The Secretary General shall be answerable to the Board of Trustees in exercise the functions and powers conferred under this Act. More specifically the Secretary General shall have the following powers and perform these functions:
  - (a) head the Secretariat of the Fund;
  - (b) carry out financial and administrative functions of the Fund and ensure that expenditures are within the approved budgets and in accordance with requirements of the Public Finance, Management and Accountability Act, 2011;
  - (c) Propose plans, programs and administrative policies and procedures that are within the mandate of the Fund and submit them to the Board of Trustees for approval;
  - (d) execute the decisions of the Board of Trustees and follow-up on its recommendations;

- (e) prepare proposed budgets for the Fund and submit them for approval by the Board of Trustees;
- (f) effectively manage the resources of the Fund under supervision of the Board of Trustees;
- (g) apply the Fund's resources in accordance with approved budgets and according to the applicable rules of the Public Finance, Management and Accountability law;
- (h) prepare the annual performance report of the Fund and submit it for approval by the Board of Trustees; and
- (i) recruit, retain, discipline, motivate and terminate employees of the fund when appropriate in accordance with the Funds policies and consistent with Public Service laws and regulations.

**78. Functions and Powers of the Board of Trustees.**

The functions and powers of the board of trustees shall be as follows:

- (1) Setting the general policies, plans and programs of the Fund;
- (2) Approval of the annual budget of the Fund;
- (3) Advocating for the Fund to expand its funding sources and promoting its important work;
- (4) Approve expenditures of the Fund within the established budgets;
- (5) Execute contracts and agreements with third parties;
- (6) Approve the organizational structure of the Fund;
- (7) Issue internal rules and procedures for regulating the work of the Fund and for conducting its own meetings; and
- (8) Perform such other functions as may be necessary for proper management of the affairs of the Fund and for achievement of its objectives.

**79. Eligibility for Membership to the Board of Trustees and Vacancy.**

The provisions of sections 12 and 13 of this Act shall apply to the same extent to members of the Board of Trustees.

**80. Meetings of the Board of Trustees.**

- (1) The Board of Trustees shall hold meetings at least four times annually and may hold emergency meetings upon the request of the chairperson or upon the request of two-thirds of its members.
- (2) The quorum for meetings shall be at least half the members of the Board of Trustees.

- (3) Decision of the Board shall be taken by a majority of the members present and in the event of a tie vote, the chairperson shall have a casting vote.

**81. Financial Resources of the Fund and Uses.**

- (1) The resources of the Fund shall comprise of the following-
  - (a) funds allocated to the Fund by Government;
  - (b) subsidies provided by the Authority upon approval of the Minister and in accordance with applicable provisions of the Financial Management and Accountabilities Act (2011);
  - (c) contributions by licensees as prescribed in regulations;
  - (d) additional charges levied by the Authority on communication service tariffs;
  - (e) revenue in connection with delivery of Communication services as approved by Government
- (2) The Fund's resources shall be applied towards achieving its objectives and specifically towards the following core functions:
  - (a) financing the Universal Services projects;
  - (b) administration and management of the Fund to effectively carry out its business;
  - (c) remuneration of employees of the Fund and Members of the Board of Trustees; and
  - (d) other approved expenditure necessary to achievement of the core functions of the Fund that are not inconsistent with applicable financial regulations.

**82. Annual Budget, Accounts and Audit of the Fund.**

- (1) The Fund shall have an independent budget that shall be prepared annually in accordance with sound accounting and financial management principles. The independent budget shall include appropriate revenue and expenditure forecasts for the next financial year.
- (2) The Fund shall keep proper, accurate and complete records of accounts of the revenue and expenditures of the Fund consistent with proper accounting and financial management principles and shall also keep the books relating to such accounts.
- (3) The Fund may open Bank Accounts at any bank in accordance with law and in conformity with the Public Finance Management and Accountability Act, 2011.
- (4) The Fund shall prepare quarterly financial and account reports in accordance with the Public Finance Management and Accountability Act, 2011.
- (5) Upon approval of the Competent Minister, the Fund may maintain a general reserve fund.

- (6) The South Sudan Audit Chamber shall audit accounts of the Fund at the end of each fiscal year.
- (7) The Board of Trustees shall submit to the Competent Minister, its final financial and audited reports, including the annual performance report, within six months from the end of each fiscal year.

**83. Liquidation of the Fund.**

- (1) The Fund shall not be liquidated except by operation of a duly enacted law to that effect.
- (2) For purpose of criminal law, all funds, assets and properties of the Fund shall be deemed to be public funds and employees of the Fund shall be considered public servants.

**CHAPTER XIV**

**COMPLAINTS AND APPEALS**

**84. Complaints.**

Any person may submit a complaint against a Licensee or service provider to the Authority and a Licensee may submit its complaint against another Licensee for determination by the Authority in accordance with the procedure set forth in regulations issued under this Act.

**85. Appeals.**

- (1) Decisions made by the Director General shall be appealed to the Board.
- (2) Decision made by the Board shall be appealed to the Competent Minister whose administrative decision on the matter shall be final, provided that any person aggrieved by the Minister's decision may resort to courts of law with proper jurisdiction to hear the matter.
- (3) Appeals against any decisions at any of the levels shall be submitted to the next level within fifteen (15) days of receipt of the decision.
- (4) Reply to the appeal shall be submitted within thirty days from the date of receipt of the notice of appeal and appeals received outside of the thirty day period shall be rejected.

## CHAPTER XV

### DISPUTE RESOLUTION

#### 86. Disputes Resolution Mechanisms.

- (1) Licensing Agreements concluded between the Authority and Licensees shall specify the mechanisms and procedures for resolving any disputes that might arise between the Authority and the Licensees.
- (2) The Authority shall intervene to mediate disputes between Licensees as provided in the regulations issued under this Act.

## CHAPTER XVI

### CONSTRUCTION, OPERATION AND PROTECTION OF COMMUNICATION NETWORKS

#### 87. Construction and Operation.

- (1) The Licensee may construct and install any facility and may lay lines or cables to operate a network within the scope of the submitted Business Plan and consistent with the terms and conditions of the Licence issued by the Authority.
- (2) Notwithstanding the provision of sub-section (1) of this section, the Licensee shall obtain authorization from the Authority or any person having the right over any affected property, but in the event of a disagreement with the property owner, the Licensee may seek the assistance of the Authority to help in mediating the dispute.

#### 88. Protection and Safety.

- (1) The Authority and the Licensees shall endeavor to protect communication networks against intrusion and vandalism and shall discourage and prevent practices that are disruptive, unethical, malicious or contrary to established policies and regulations of the Authority.
- (2) For purposes of sub-section (1) of this section, the Authority may, in collaboration with the Licenced entities, establish protection and safety facilities to protect communication networks.
- (3) Licensees shall provide protection, technical security and safety for their facilities, equipment and communication networks to ensure system efficiency and reliability.

#### 89. Standards and Specifications.

The Licensee shall comply with the following requirements:

- (a) conduct all activities in accordance with generally accepted international standards and specifications;
- (b) take necessary steps to protect the environment from harmful effects of power radiation;
- (c) comply with the rules and standards relating to power of transmitting equipment, sizes and height of towers and requirements relating to propagation range; and
- (d) Licensees shall ensure that use of their equipment do not cause harm to the health or safety of human beings or other living organisms.

## **CHAPTER XVII**

### **NATIONAL, REGIONAL, AND INTERNATIONAL OBLIGATIONS**

#### **90. Adherence to Laws and Regulations.**

- (1) The Authority shall enforce compliance by Licensees to requirements of the law relating to national security, defense, emergencies and national, regional and international policies and regulations. The Authority shall co-ordinate activities with South Sudan regulatory bodies and with the entities that are providing complimentary communication services.
- (2) Licensees shall observe international laws and regulations to which South Sudan is a party in relation to communications and shall offer their services in accordance with the standards and specifications that are duly approved by the Authority.

#### **91. Agreements.**

- (1) Licensees shall honor local, regional and international agreements in the field of communications to which the Government of South Sudan or the Authority are parties.
- (2) The Authority shall validate and approve agreement with local and external agencies related to communication services in accordance with the regulations that are issued pursuant to this Act.
- (3) Licensees shall submit any local, regional or international agreements they enter into with any other party to the Authority.
- (4) The South Sudan National Armed Forces National Security Agency or other enforcement agencies of South Sudan shall not enter into agreements concerning communication services without the express authorization of, the Authority.

**CHAPTER XVIII****MISCELLANEOUS PROVISIONS****92. Power to Issue Regulations.**

The Authority, with the approval of the Competent Minister, shall issue regulations to support effective implementation of this Act.

**93. Transfer of Assets, Rights and Debts.**

All property, articles, rights and obligations and all resources and national communication assets of South Sudan shall vest in the Authority.

**94. Closure of Communication Equipment and Broadcasting Stations.**

- (1) The Authority, in collaboration with other regulatory agencies shall have the powers to temporarily or permanently close-down any communication equipment or broadcasting station that is found to be operating in contravention of provisions of this Act.
- (2) In the event of a temporary closure of the communication equipment or broadcasting station, the Licensee shall not use any of its equipment or facility during the period of closure, but shall be required to take appropriate steps to correct the anomalies or discrepancies which led to temporary closure or seizure of its facilities or equipment within the time- period specified in the Order of temporary closure.
- (3) In the event of permanent closure, the Licensee shall not use its communication equipment or the broadcasting station and shall inform the Authority about the method of disposal of such equipment or station whether by transfer of ownership or disposal of it by other means as shall be approved by the Authority.

**95. Radio Operator Certificate.**

No person shall operate communication equipment within South Sudan or on board of any water vessel or aircraft registered in the South Sudan without a radio operator certificate issued by an authorised agency.

**96. Confidentiality and Eavesdropping.**

- (1) No person shall disclose or disseminate contents of any message or communication or open any material sent by post except in those cases as specifically provided for by this Act and applicable regulations.
- (2) Notwithstanding the provision of sub-section (1) of this section, no person shall break into, eavesdrop, or illegally monitor or hack into communications unless duly authorized by the Authority or permitted to do so by order of the Attorney General, Director of Public Prosecutions or by a court of competent jurisdiction.

- (3) Any person affected by actions prohibited under sub-sections (1) and (2) of this section, shall, upon proving his or her claim, be entitled to compensation in accordance with applicable law.
- (4) No person shall disseminate, broadcast or transmit information intended to undermine national security through use of the communication media regulated under this Act.

**97. Contraventions and Penalties.**

- (1) The Authority shall require a Licensee who contravenes or breaches any provisions of this Act or applicable regulations to immediately remedy such contraventions in any event not exceeding the period of thirty (30) days from the date of receipt of the notice of contravention.
- (2) In the event of failure by a Licensee to remedy any contravention or breach in accordance with the provision of sub-section (1) of this section, the Authority may impose any of the following penalties which are fully described in the regulations:
  - (a) shortening of the time-period granted in the Licence as provided for in the regulations;
  - (b) suspending the Licence in full or in part for a period as permitted by the regulations;
  - (c) imposition of financial penalty as provided for in the regulations;
  - (d) cancellation of the Licence in accordance with section (35) of this Act;
  - (e) imposition of such other penalty allowed in the Regulations as the authority may deem appropriate.

**98. Offences, Contraventions and Punishments.**

- (1) Without prejudice to any other severe penalty as may be provided for by the Penal Code Act, 2008 or any other laws, any person who engages in the following activities, commits an offence and shall be liable to imprisonment, fine or both:
  - (a) using or supporting the use of unlawful means to provide communication services without paying the prescribed fees;
  - (b) directing threatening, insulting, disseminating or conveying distorted or fabricated news intended to cause confusion or chaos within any section of the public;
  - (c) providing communication services that contravene religious or cultural beliefs and values of a particular community;
  - (d) establishing, operating, or managing a public or private communication network or conducting communication activities without a Licence duly granted by the Authority;

- (e) intercepting, interfering, jamming or hacking into any communication network, radio frequency or frequency bands allocated to other Licensees;
  - (f) utilization of frequency or frequency bands without a Licence duly issued by the Authority;
  - (g) importing any communication equipment or material in contravention of provision of this Act;
  - (h) operating communication stations in contravention of provision of this Act;
  - (i) sending or conveying any Postal Articles, dealing with postal boxes, affixing matters on post office, opening or delivering Postal Articles, transmitting materials by post or using postal stamps in contravention of provisions of this Actor applicable regulations,
- (2) A Licensee who contravenes the provisions of subsection (1) of this section commits an offence and a court of competent jurisdiction seized with the matter may, in addition to the abovementioned punishments, impose the following:
- (a) confiscation of any equipment, materials, Postal Articles or other effects that are used or found to have been involved or applied in connection with the offence;
  - (b) order cancellation of the Licence; or
  - (c) impose both punishments.

**99. Court of Competent Jurisdiction.**

Offenses and contraventions of provisions of this Act shall be tried by a court at the level of county court or higher.

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Issued under my hand in Juba on this 5 day of June in the year, 2012

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by 'iir' and a large flourish.

Gen. Salva Kiir Mayardit  
President of the Republic