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MALAWI GOVERNMENT

(Published 31st December, 1998)

Act

No. 41 of 1998

I assent

BAKILI MULUZI

PRESIDENT

30th December, 1998

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An Act to make provision for the regulation and provision of services in the Communications Sector in Malawi comprising telecommunications, posts and broadcasting; for the establishment of an independent regulatory authority, the Malawi Communications Regulatory Authority; for the separation of the administration and provision of telecommunication services from postal services; for the reconstitution of the Malawi Broadcasting Corporation (MBC) as a public broadcaster; and for matters connected therewith or ancillary thereto

ENACTED by the Parliament of Malawi as follows—

PART I — PRELIMINARY

1. —(1) This Act may be cited as the Communications Act, 1998.
- (2) Save as provided in subsection (3), this Act shall come into force on a date to be appointed by the Minister by notice published in the *Gazette*, being a date occurring earlier to the transfer date.
- (3) Part VII and Part VIII of this Act shall come into force on the transfer date.

Short title
and com-
mencement

2. In this Act unless the context otherwise requires—

"Authority" means the Malawi Communications Regulatory Authority established under section 3;

"broadcasting" means any form of telecommunication intended for general reception by the public by means of receivers adapted for the purpose;

"broadcasting licence" means a radio licence that authorizes the provision of a broadcasting service;

"broadcasting service" means a service consisting of the diffusion of sound or television programmes for general reception by the public;

"cable television network" means a telecommunication network which is intended for the distribution of radio or television programmes to users through a system of lines and which is capable of, or of being adapted for, providing access to telecommunication services;

"communication service" means any telecommunication service, broadcasting service or postal service;

"community broadcasting service" means a broadcasting service which—

- (a) serves a particular community;
- (b) is carried on for non-profitable purposes; and
- (c) is fully controlled by a non-profit entity.

"coverage area" means the area in which a broadcasting service is intended to be received;

"frequency allocation" means the reservation of one or more radio frequency bands for a particular use or particular uses;

"frequency assignment" means the reservation of one or more radio frequencies for use by a particular person in accordance with the table of national frequency allocations;

"general licence" means a licence to operate a telecommunication network or to provide a telecommunication service for which the person concerned does not require an explicit authorization by the authority before exercising the rights stemming from the licence;

"immediate family member" in relation to any person, means that person's spouse, child, parent, brother, sister, grandchild or grandparent;

"individual licence" means a licence to operate a telecommunication network or provide a telecommunication service issued by the Authority to a body corporate under Part III of this Act and which gives that person specific rights and obligations;

"infrastructure" means any structure or facility installed and maintained for the purpose of the provision of a public utility service;

"interconnection" means the physical and logical connection of telecommunication network in order to allow the users connected to one such network to have access to users connected to other networks or to access services provided by means of such other networks;

"letter" means any communication in written form which—

(a) is directed to a specific person or address;

(b) relates to the personal, private or business affairs of, or the business affairs of the employer of, either correspondent; and

(c) neither is to be nor has been transmitted by means of telecommunications,

and includes any such other article transmissible by post which contains any such communication;

"licence network" means a telecommunication network, the establishment or operation of which is authorized by a licence issued under this Act;

"licensee" means the holder of a licence issued or deemed to have been issued under this Act or a person registered under a general licence issued under this Act;

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

"mail" means letters and other articles in course of transmission by post;

"Malawi Posts" means the body corporate by that name established under section 74,

"Malawi Posts and Telecommunications Corporation" means the body corporate by that name established under the Malawi Posts and Telecommunications Act, 1994, repealed by this Act;

"Malawi Telecom" means a company by that name incorporated or to be incorporated under the Companies Act pursuant to section 70;

"MBC" means the Malawi Broadcasting Corporation established under section 86;

"message" means any communication sent or received or made by means of telecommunication;

"National Communications Policy" means any statement made by the Minister under section 105;

"post" means any system for the collection, despatch, conveyance, handling and delivery of letters, postcards, printed papers, commercial papers, samples, parcels or other similar articles;

"postal article" means any article in course of transmission by post;

"post office" means any building, house, room, receptacle, vessel, vehicle or place where postal articles are received, sorted, made up or despatched;

"private broadcasting service" means a broadcasting service operated for profit and controlled by a person who is not a holder of a public broadcasting licence;

"Public Appointments Committee" means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution;

"public broadcasting service" means—

(a) any broadcasting service provided by MBC; or

(b) any broadcasting service provided under a licence which stipulates—

- (i) national or local transmission of the broadcasting service;
- (ii) the provision of regular news bulletins; and
- (iii) access to the service for public information announcements or programmes;

"public telecommunication network" means a telecommunication network used, in whole or in part, for the provision of telecommunication service to the public;

"radiocommunication" means any telecommunication by means of radio frequencies;

"radiocommunication service" means any service for telecommunication by means of radio frequencies;

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

"radio station" means any equipment, facility or system used or intended to be used for radiocommunication;

"subscriber" means any person who has entered into a contract with an authorized provider of a telecommunication service which includes or requires the provision or maintenance of a connexion to a telecommunication network;

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

"telecommunication licence" means any license to operate a telecommunication network or provide a telecommunication service;

"telecommunication network" means transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or other electric or electromagnetic means;

"telecommunication operator" means the operator of a telecommunication network designated by the Authority under section 24;

"telecommunication service" means a service consisting wholly or partly in the transmission and routing of signals on a telecommunication network, with the exception of radio and television broadcasting;

"terminal equipment" means any equipment to be connected to a telecommunication network which is operated by a person duly licensed to provide a public telecommunication service;

"transfer date" means the date on which—

(a) the telecommunications assets and undertakings of Malawi Posts and

Telecommunications Corporation are transferred to Malawi Telecom as prescribed in section 71;

(b) the postal assets and undertakings of the Malawi Posts and Telecommunications Corporation are transferred to Malawi Posts as prescribed in section 83;

"voice telephony" means the commercial provision for the public of the direct transport and switching of speech in real time between public switched network termination points.

PART II — MALAWI COMMUNICATIONS REGULATORY AUTHORITY

Establishment
of the Malawi
Communica-
tions
Regulatory
Authority

3. —(1) There is hereby established the Malawi Communications Regulatory Authority (in this Act otherwise referred to as the "Authority") for the purpose of performing the functions assigned under this Act.

(2) The Malawi Communications Regulatory Authority shall be a body corporate by that name and shall—

(a) have perpetual succession and a common seal;

(b) be capable of suing and being sued in its corporate name;

(c) be capable of acquiring and disposing of any moveable or immovable property and performing such acts and things as bodies corporate may by law do or perform; and

(d) have power to perform such functions and exercise such powers as are conferred by this Act.

*First
Schedule*

(3) In addition to the provisions of this Act, the First Schedule shall apply to the Authority with respect to the matters specified in that Schedule.

General duties
of the
Authority

4. —(1) The Authority shall have the general duty to ensure that, so far as it is practicable, there are provided throughout Malawi reliable and affordable communication services sufficient to meet the demand for them.

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

(a) protect the interests of consumers, purchasers and other users of communication services in respect of the prices charged for the quality and variety of services provided and terminal equipment supplied.

(b) promote open access to information by means of communication services;

(c) promote efficiency and competition among persons engaged in provision of communication services or supply of communication equipment;

(d) encourage the introduction of new communication services;

(e) promote research in telecommunications, including radiocommunications; and

(f) foster the development of communications services and technology in accordance with recognized international standards.

(3) The Authority shall be independent in the performance of its functions.

Powers and
functions of
the Authority

5. —(1) The Authority shall have the power to regulate telecommunications, broadcasting, the use of radio frequencies, and the provision of postal services throughout Malawi.

(2) The Authority shall carry out the following functions—

(a) to keep under review the carrying on within and outside Malawi of activities connected with communications;

(b) to collect and to publish information with respect to commercial activities connected with communications carried on in Malawi;

(c) to provide advice to users and providers of communication services;

(d) to sponsor the provision of, and where necessary to provide, training in activities related to the provision of communication services;

(e) to give information, advice and assistance to the Minister with respect to any matter which concerns the provision of communication services;

(f) to investigate any matter which is related to the provision of communication services or to the use of radio frequencies and which is the subject of a representation to the Authority;

(g) to regulate the provision of telecommunication services through—

(i) licensing of service providers;

(ii) providing advice to the Minister on regulations or policies;

(iii) monitoring the activities of licensees to ensure compliance with the terms and conditions of their licence and applicable regulations, and related activities;

(h) to draw up numbering plans for public telecommunication networks;

(i) to ensure, so far as it is possible, the adoption of international standards and, where that is not possible or appropriate, to draw up and apply national standards for telecommunication services and terminal equipment;

(j) to establish a type approval regime for terminal equipment, to grant approvals and to ensure that type approval procedures are adhered to;

(k) to regulate broadcasting services through—

(i) licensing of providers of broadcasting services;

(ii) providing advice to the Minister on regulations or policies

(iii) monitoring the activities of licensees to ensure compliance with the terms and conditions of their licence and applicable regulation, and related activities;

(l) to plan the use of radio frequencies and make frequency allocations;

(m) to carry out and co-ordinate frequency assignments;

(n) to monitor radio emissions and deter interference with authorized radiocommunications;

(o) to establish technical requirements and technical standards in relation to—

(i) radio apparatus; and

(ii) interference-causing equipment,

or any class thereof;

(p) to regulate the provision of postal services through—

(i) licensing of service providers;

(ii) providing advice to the Minister on regulations and policies;

(iii) monitoring the activities of licensees to ensure compliance with the terms and conditions of their licence and applicable regulations, and related activities;

(q) to propose modifications and amendments to licences and regulations;

(r) as directed by the Minister, to represent the Government at conferences and meetings of international organizations concerned with communications; and

(s) to do all such things as are necessary or incidental or conducive to the better carrying out of the functions of the Authority specified in this Act.

Membership
of the
Authority

6. —(1) The Authority shall consist of a Chairman and—

(a) six other members appointed in accordance with the provisions of section 7;

(b) the following members *ex officio*—

(i) the Secretary to the President and Cabinet;

(ii) the Secretary for Information.

(2) Members of the Authority shall be persons who—

(a) are citizens resident in Malawi;

(b) possess qualifications, expertise and experience in any of the fields of posts, telecommunications, broadcasting, frequency planning, law, economics, business, finance, public administration and public affairs.

(3) Members of the Authority shall serve part-time.

(4) Any person who—

(a) is a member of Parliament;

(b) is a Minister or Deputy Minister;

(c) is a member of a committee of a political party at district, regional or national level, shall be disqualified from being appointed as a member of the Authority.

Appointment
of members

7. —(1) The President shall appoint members of the Authority.

(2) The first appointment of members of the Authority as provided for in subsection (1) shall be made within twenty-eight days of the coming into force of this Act.

(3) The names of all members of the Authority as first constituted and every change of membership shall be published in the *Gazette*.

(4) In appointing members of the Authority under subsection (1), the President shall have regard to the need for continuity of service on the Authority, so that at least half of the members of the Authority appointed thereunder shall be re-appointed for the next term of

office.

8. —(1) The President shall appoint one of the members of the Authority as Chairman.

Chairman of
Authority

(2) In the event of the Chairman being absent for a period of more than twenty-eight days, members of the Authority shall elect one of their number to exercise the powers and perform the duties of the Chairman.

9. —(1) The Minister shall, on the recommendation of the Authority, appoint the Director General of the Authority, who shall be responsible for the direction of and supervision over the work and staff of the Authority.

Director
General of the
Authority

(2) There shall be a Deputy Director General of the Authority who shall—

(a) be appointed by the Authority with the approval of the Minister;

(b) perform such functions and duties as may be assigned to him by the Director General from time to time.

(3) The Director General or, in his absence, the Deputy Director General, shall attend meetings of the Authority and of any committees of the Authority and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Director General or the Deputy Director General to withdraw from such meeting.

10. —(1) The Authority shall establish its own administration and to that end may appoint such staff, subordinate to the Director General, as the Authority deems necessary for the discharge of its functions under this Act.

Other staff of
the Authority

(2) The Director General shall have power to appoint staff of such junior ranks as the Authority may specify.

(3) The Authority may pay to persons in its employ, or provide them with, such remuneration, pensions and employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the employment market in Malawi.

11. —(1) If any member is present at a meeting of the Authority or of any committee of the Authority at which any matter which is the subject of consideration is a matter in which that person or his immediate family member or his professional or business partner is directly or indirectly interested in a private professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and that person shall not take part in any consideration or discussion of, or vote on, any question touching such matter.

Disclosure of
conflicts of
interest

(2) The Director General shall disclose to the Chairman of the Authority any interest he or a member of his immediate family has, whether in a private or professional capacity, in any matter that is under consideration by the Authority and shall not attend any meeting of the Authority or of any committee of the Authority while any question touching such matter is being discussed.

(3) Any employee of the Authority or any consultant, adviser or sub-contractor to the Authority shall disclose to the Director General any interest he or a member of his immediate

family has, whether in a private or professional capacity, in any matter that is under consideration by the Authority and the Director General shall take such decision as he considers appropriate in each case and submit a report thereon to the Authority.

Financing of
the Authority

12. —(1) The operating and financial costs of the Authority shall be financed from—

(a) fees and other moneys payable to the Authority in respect of licences issued by the Authority under this Act;

(b) fines payable to the Authority in respect of breaches of licence terms, conditions and obligations;

(c) grants or donations received by the Authority;

(d) such moneys as are from time to time appropriated to the Authority by Parliament; and

(e) the proceeds from the sale by the Authority of any assets or equipment to which it has title.

Cap. 37:01

(2) Subject to the Finance and Audit Act, the Authority may borrow such amounts as it may require for the performance of its functions under this Act with the prior approval of the Minister of Finance.

(3) The Authority may charge fees in respect of publications, seminars, documents, advisory and other services provided by the Authority.

(4) The moneys of the Authority which are not immediately required for the performance of its functions may be invested on short-term deposit with any bank or financial institution in Malawi.

(5) All moneys of the Authority which, in the opinion of the Minister of Finance, are in excess of its budgetary requirements shall be paid into the Consolidated Fund, but the Authority shall be entitled to retain such sums as it reasonably requires for its operations.

Account and
audit

13. —(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Authority shall—

(a) be audited annually by independent auditors appointed by the Authority and approved by the Minister;

(b) be examined by the Auditor General before being presented to the Minister in accordance with section 14.

(3) The financial year of the Authority shall end on 31st March.

(4) The Minister may, by order published in the *Gazette*, prescribe a different date for the ending of the financial year of the Authority.

Annual
report

14. —(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Authority shall submit to Parliament through the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form and contain such information as the Minister shall require.

(3) There shall be appended to the report referred to in subsection (2)—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Authority may consider appropriate or as the Minister may direct.

PART III — REGULATIONS OF THE TELECOMMUNICATION NETWORKS
AND SERVICES

15. In the performance of its duties under section 4, the Authority shall regulate telecommunication networks and services in Malawi so as to ensure—

(a) the provision of a wide range of public telecommunication services in Malawi; and

(b) as far as is practicable, open entry into the provision of public telecommunication services;

Duty of the Authority in respect of public telecommunication services

16. —(1) The Authority may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties under this Part.

Policy directions by the Minister

(2) Any direction given by the Minister under subsection (1) shall be in writing.

17. —(1) Subject to subsection (2), no person may operate a telecommunication network or provide telecommunication service in Malawi or between any place in Malawi and any other place except in accordance with a licence issued by the Authority.

Requirement of licence for provision of telecommunication service

(2) The Minister, on the advice of the Authority, may from time to time make regulations exempting—

(a) the operation of the telecommunication networks; or

(b) the provision of the telecommunication services, of the kinds set out in the regulations from the requirement to be licensed under this Act.

18. —(1) The Authority may issue telecommunication licences of the following kinds—

Kinds of telecommunication licence

(a) general licences; and

(b) individual licences.

(2) The Authority shall publish a list of the telecommunication networks and services which may only be provided under an individual licence.

(3) Notwithstanding section 17 and subsection (2) of this section—

(a) the provision of voice telephony; and

(b) the operation of a cable television network, may only be authorized under an individual licence.

(4) Before issuing any telecommunication licence, the Authority shall publish in the *Gazette* a complete draft of the proposed licence and consider any representations made to it

concerning the draft.

(5) Any telecommunication licence issued by the Authority shall come into effect when published in the *Gazette*.

Registration
under a
General
Licence

19. —(1) The Authority shall publish a notice specifying—

(a) the procedure by which any person wishing to operate a telecommunication network or provide a telecommunication service which is regulated by a general licence may register with the Authority;

(b) the information which must be provided to the Authority at the time of initial registration or subsequently; and

(c) the registration fee payable.

(2) The Authority may, after due inquiry has been made, refuse to recognize the registration of any person even if made in accordance with the published procedure if so directed by the President in the interest of national security:

Provided that any person dissatisfied with a decision of the Authority may have recourse to the High Court.

(3) Subject to subsection (2), any person may begin to operate a telecommunication network or provide a telecommunication service which is regulated by a general licence twenty-eight days after its registration has been duly made within which period all other technical procedures and formalities would have been complied with.

(4) No person may operate a telecommunication network or provide a telecommunication service to which a general licence relates until the registration procedure of the Authority has been complied with.

Application
for individual
licences

20. —(1) The Authority shall publish the procedures by which individual licences may be applied for.

(2) Licensing procedures shall be objective, transparent and non-discriminatory and shall specify—

(a) the kinds of individual licences which may be applied for;

(b) the criteria by which each licence will be issued; and

(c) the fees payable for the issue of a licence.

(3) The Authority may grant or refuse an application for an individual licence taking into consideration—

(a) the applicant's capability to operate the network or service for which he seeks a licence;

(b) the published criteria by which the licence will be issued;

(c) the extent to which issuing such a licence would be consistent with the principles stated in section 4; and

(d) whether or not the issue of such a licence is in the public interest.

(4) The Authority shall communicate its decision on an application for an individual licence within six months of receipt of the application.

(5) Where the individual licence to be issued for the operation of a particular type of telecommunication network or the provision of a particular type of telecommunication service is to be limited in number, the Authority shall—

(a) publish a consultative document providing a detailed explanation of the reasons for the proposed limitation and consider any representation made to it on the matter;

(b) publish a notice in the *Gazette* stating the number of licences to be issued and the grounds for the limitation to the number; and

(c) review from time to time a review of any limitation imposed.

(6) An individual licence may not be transferred except with the consent in writing of the Authority.

21. —(1) A telecommunication licence issued by the Authority shall—

(a) be issued on payment by the applicant of the appropriate licence fee;

(b) state the terms and conditions on which it is issued;

(c) specify the services that may be provided; and

(d) come into effect when published in the *Gazette*.

(2) A telecommunication licence may only be issued on such terms and subject to such conditions as are consistent with the principles stated in section 4.

(3) A telecommunication licence may include all or any of the following conditions—

(a) the provision of services to rural or other specified areas;

(b) the payment of sums of money for the licence calculated as a proportion of the annual turnover of the licensed network or otherwise;

(c) the payment by the licensee of a contribution toward any loss incurred by another licensee as a result of an obligation imposed on that licensee by the Authority regarding the provision of uneconomic service in accordance with the principles stated in section 4;

(d) the interconnexion of the licensee's telecommunication network with any other licensed network and permitting the connexion of approved equipment to the licensee's telecommunication network;

(e) prohibiting the licensee from giving undue preference to or from exercising undue discrimination against any particular person or any class of persons (including any other licensee);

(f) prescribing rules that govern commercial behaviour of the licensee;

(g) requiring the submission to the Authority for its approval of a standard contract for the provision of service to users;

Terms and
conditions of
telecommu-
nication
licences

(h) specifying the criteria for setting tariffs of voice telephony services and of any other telecommunication service if provided on an exclusive basis, and such criteria shall as far as possible promote consultation between the Authority and the operator or service provider;

(i) requiring the licensee to publish the charges and other terms and conditions that are to be applicable to facilities and services provided;

(j) requiring the licensee to ensure that adequate and satisfactory information including billing, tariffing, directory information and directory enquiry services and emergency numbers are provided to customers;

(k) establishment by the licensee of a simple method of resolving disputes with users;

(l) furnishing to the Authority such documents, accounts, returns or such other information as the Authority may require for the performance of its functions under this Act;

(m) requiring the licensee to comply with such technical standards or requirements including service performance standards as may be specified in the licence;

(n) any other conditions as the Authority may consider appropriate and which are consistent with the principles stated in section 4 of this Act.

Monitoring
and
enforcement of
telecom-
munication
licences

22.—(1) The Authority shall ensure that telecommunication services are provided in accordance with the terms and conditions of licences and regulations in force.

(2) The Authority may—

(a) Investigate any complaint made to it concerning activities undertaken under a telecommunication licence;

(b) appoint an independent person to carry out an investigation into such a complaint;

(c) require the licensee to respond to such a complaint.

(3) Where, after due inquiry, the Authority is satisfied that a licensee has breached a term or condition of its telecommunication licence, it shall notify the licensee of the fact in writing and may make a provisional order requiring the licensee to remedy the breach forthwith.

(4) The Authority may make a provisional order suspending the registration of any person under a general licence if it believes on reasonable grounds that the person has ceased to be eligible or that the person has contravened any condition of the licence, provided that the Authority—

(a) gives not less than twenty-eight days notice in writing before the suspension takes effect;

(b) gives the person reasons in writing for the intended suspension; and

(c) provides a reasonable opportunity for the person to make representations in writing or in person.

(5) After due consideration of any representations made to it, the Authority may confirm a provisional order made under this section and may require the payment of a penalty or

compensation, as appropriate.

(6) Any person affected by an order made by the Authority under this section may apply to the High Court for judicial review.

23. —(1) The Authority may modify any condition of a telecommunication licence in accordance with the provisions of the licence or, in the absence of such provision, if it is in the public interest to do so.

Amendment of a telecommunication licence

(2) Before modifying any condition of a telecommunication licence, the Authority shall—

(a) publish a notice stating the reasons for the intended modification and giving any person with an interest in the matter the opportunity to make representation; and

(b) give due consideration to any representation regarding the proposed modification made to it by any person having an interest or holding an individual licence.

24. —(1) The Authority may designate as a telecommunication operator any person who has been issued an individual licence under this Part which includes the following conditions—

Designation of telecommunication operators

(a) an obligation to provide such telecommunication services as are specified in the licence;

(b) an obligation to connect to any telecommunication network to which the licence relates or permit the connexion to any such network, of such other networks as are specified in the licence;

(c) a prohibition on showing undue preference to, or on exercising undue discrimination against, particular persons or persons of any class or description in respect of any service provided or connexion made (whether in respect of the charges or other terms and conditions applied or otherwise); and

(d) such other terms and conditions as the Authority may specify.

(2) Any person designated as a telecommunication operator shall enjoy the rights and comply with the obligations specified in the code of conduct set out in the Second Schedule.

(3) The Authority may co-opt any person designated as a telecommunication operator as a member of its delegation to any international organization concerned with telecommunications.

25. If it appears to the Authority that a person holding an individual licence is taking or intends to take any action which—

Competition rules

(a) may constitute an abuse of a dominant position in relation to the provision of any telecommunication service, or

(b) has or is likely to have the effect of placing another person engaged in telecommunication activities at a competitive disadvantage in relation to that person,

the Authority may, after giving the person concerned an opportunity to make representations, direct that person to cease or refrain from taking such actions, as the case may be.

26. —(1) Any person holding a telecommunication licence under this Act may enter into an agreement regarding interconnexion with another such person on such terms and conditions as the parties agree, provided that the agreement is notified to the Authority with a copy supplied.

Network interconnexion

(2) The Authority may, within twenty-eight days of an agreement regarding interconnexion notified to it under subsection (1), declare void any term of the agreement.

(3) Where, pursuant to subsection (2), the Authority declares void a term of an agreement regarding interconnexion, the Authority shall notify the parties to the agreement in writing giving its reasons.

(4) If the persons referred in subsection (1) fail to agree on terms for interconnexion, the Authority shall, at the request of any of them, determine such terms and conditions.

(5) The Authority may issue guidelines in accordance with which agreements regarding interconnexion may be negotiated.

(6) Any network interconnexion agreement reached pursuant to this section shall be filed with the Authority and shall be open to inspection by the public at the premises of the Authority.

National
numbering
plans

27. —(1) After consultation with licensees designated as telecommunication operators, the Authority shall publish in the *Gazette* a numbering plan for use by subscribers in Malawi.

(2) The Authority shall from time to time consult with operators of telecommunication networks providing voice telephony on the need for additions to or changes in the published numbering plan.

(3) No change to the numbering plan may be made without the consent of the Minister.

(4) Any change in the numbering for voice telephony shall be designed so as to ensure that—

(a) sufficient numbers can be made available to subscribers without delay;

(b) numbers include as few digits as practicable;

(c) additional blocks of numbers are allotted to licensees in a non-discriminatory manner;

(d) no undue competitive advantage is conferred on any licensee;

Use of
infrastructure

28. —(1) Telecommunication operators in Malawi may by agreement have access to or make use of any infrastructure for the purpose of providing public telecommunication services.

(2) Any person authorized to operate infrastructure may install, maintain and operate telecommunications equipment and facilities for the purposes of operating that infrastructure:

Provided that—

(a) any permits required from the Authority to install, maintain or operate such equipment and facilities have been obtained;

(b) subject to section (1), the telecommunications equipment and facilities are not used to provide a public telecommunication service.

(3) An operator of public telecommunication service shall, whenever technically feasible and subject to a negotiated agreement, make available its infrastructure or part thereof to any other operator of public telecommunications services unless sharing of such infrastructure or

any part thereof causes or is likely to cause harmful interference with the provision of services by the first operator.

(4) The cost, if any, of making infrastructure available to a requesting operator of public telecommunications pursuant to subsection (3) shall be borne by that requesting operator.

(5) Any request for sharing of infrastructure pursuant to subsection (3) shall be made in writing and shall be responded to in writing within twenty-eight days of the receipt of the request and in the event of refusal the requested operator shall be required to furnish reasons.

(6) Where the parties referred to in subsection (3) fail to reach agreement and the Authority is of the opinion that it is technically feasible for those parties to share the infrastructure concerned, the Authority shall have power to compel the parties to reach agreement on such terms and conditions as the Authority shall determine.

(7) Any agreement for sharing infrastructure made pursuant to subsection (1) and (3) shall be filed with the Authority by the requesting operator of public telecommunications services being party to the agreement.

(8) Any dispute regarding the sharing of infrastructure pursuant to this section shall be resolved by the Authority.

29. —(1) The Authority shall establish and maintain a procedure by which any matter which—

Settlement of
disputes

(a) relates to the provision of a telecommunication service;

(b) has not, after allowing a reasonable period, been resolved between the subscriber or subscribers concerned and the provider of the telecommunication services; and

(c) in relation to which the Authority has been requested to act by a subscriber concerned, may be resolved in an effective, fair and relatively cheap manner.

(2) The Authority may intervene at the request of any party in order to resolve any dispute between holders of telecommunication licences.

30. The Authority may require any person holding a telecommunication licence—

Provision of
information

(a) to adopt any method of calculating the costs of providing telecommunication services and to adopt any accounting method or system of accounts for the purposes of complying with the provisions of this Act or the exercise of a power conferred on the Authority under this Act:

Provided that any such accounting system or method shall not be contrary to the accounting requirements of companies' legislation;

(b) to submit information to the Authority, in periodic reports or in such other form and manner as the Authority considers necessary for the implementation of this Act.

Confidentiality **31.** —(1) The Authority shall not discuss any information provided to it as part of the exercise of its functions under this Act which relates to the business activities of any body

corporate which that person has notified to the Authority that it wishes to be kept confidential.

(2) Notwithstanding subsection (1), the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfill its functions under this Act or if so directed under an order of a court.

(3) Before disclosing any information that it has been notified should be kept confidential, the Authority shall inform the person affected and consider any representations made by it regarding the necessity for, time and manner of disclosure.

Telecom-
munication
regulations

32. —(1) The Minister, on the advice of the Authority, may from time to time make regulations governing the operation of telecommunication networks, the provision of telecommunication services or the use of terminal equipment.

(2) Before advising the Minister to make any regulations contemplated in subsection (1), the Authority shall publish a complete draft of the proposed regulation and consider any representations made to it concerning the draft.

PART IV — RADIO SPECTRUM MANAGEMENT

Duty of the
Authority in
respect of use
of radio
frequencies

33. —(1) It shall be the duty of the Authority to regulate access to, and use of, radio frequencies in Malawi so as to ensure the most efficient use of the radio frequency spectrum and to protect users of radio frequencies from interference in accordance with—

- (a) the National Communications Policy;
- (b) the recommendations of the International Telecommunications Union; and
- (c) other international agreements entered into by the Republic of Malawi.

(2) The Authority shall comply with any general directions given to it in writing by the Minister as to the manner in which it is to carry out its duties under this Part.

Planning and
management of
the radio
spectrum

34. —(1) The Authority shall be responsible for the management of the radio frequency spectrum and for this purpose may from time to time prepare and adopt in relation to any part of the radio spectrum a plan which defines how the radio spectrum shall be used.

(2) Before adopting any radio spectrum plan, the Authority shall give notice in the *Gazette* of its intention, publish its proposals and invite interested parties to make representations either in writing or in person to it.

(3) Any radio spectrum plan adopted by the Authority shall—

- (a) minimize congestion in the use of frequencies;
- (b) provide opportunities for the introduction of the widest range of telecommunication services and for the widest take up of such services as is practically feasible;

(c) encourage the introduction of new radio technologies;

(d) take into account existing uses of the radio spectrum and the cost of requiring any changes by existing users; and

(e) be published by the Authority.

(4) The Authority shall maintain and make available to the public—

(a) a table of national frequency allocations; and

(b) a register of frequency assignments made and remaining in force.

35. —(1) Subject to subsection (2), no person may operate a radio station in Malawi or between any place in Malawi and any other place except in accordance with a radio licence issued by the Authority.

Requirement of licence for operation of a radio station

(2) The Minister, on the advice of the Authority, may make regulations to exempt from licensing a particular class of radio station or the use of a radio station for a particular purpose.

(3) A radio licence shall be required in addition to any telecommunication licence where the operation of a telecommunication network or provision of a telecommunication service entails the use of radio.

36. —(1) The Authority shall publish a schedule describing each kind of radio licence that may be issued under this section and the fees payable for each such licence.

Kinds of radio licence

(2) A radio licence issued to any person by the Authority shall be in writing and shall specify—

(a) the purpose for which the radio station may be used;

(b) the place at which it may be located;

(c) the radio frequencies that may be used;

(d) conditions as to the nature of any transmissions that are made;

(e) the period for which the radio licence is valid;

(f) the fees payable by the licensee when the radio licence is first issued and annually while it remains in force; and

(g) other requirements that the Authority considers to be relevant in the light of its duties under this Act.

37. —(1) The Authority shall publish the procedures by which each kind of radio licence may be applied for.

Application for radio licences

(2) Licensing procedures shall be objective, transparent and non-discriminatory and shall specify the criteria by which a licence will be issued.

(3) The Authority may grant or refuse an application for a radio licence taking into consideration—

(a) the proficiency of the applicant to operate and maintain the radio station for which he seeks a licence;

(b) the published criteria by which the licence will be issued;

(c) the extent to which issuing such a licence would be consistent with the principles stated in section 4; and

(d) whether or not the issue of such a licence is in the public interest.

Competitive
tendering
process for
radio licences

38.—(1) Where necessary to ensure efficient use of the radio frequency spectrum, and with the prior written approval of the Minister, the Authority may prepare and issue a public tender for a radio licence that grants exclusive rights to the use of particular radio frequencies or to their use for a particular purpose.

(2) A tender issued under this section shall specify—

(a) the terms and conditions of the radio licence that it is proposed to issue as a result of the tender;

(b) the qualifications that bidders must demonstrate to be eligible to enter the tender;

(c) the timetable for the tender and for subsequent radio licence award;

(d) the criteria by which the result of the tender will be determined; and

(e) any fees that may be payable at any stage by bidders participating in the tender.

(3) The Minister shall ensure that a tender held under this section is conducted in accordance with the procedure specified in the tender.

Amendment of
radio licences

39.—(1) The Authority may modify any term or condition of a radio licence if it considers it necessary in order to implement a frequency plan adopted by the Authority in accordance with this Part.

(2) Before modifying any term or condition of a radio licence, the Authority shall notify the holder of the licence and consider any representation made to it by that person regarding the proposed modification.

(3) In respect of any radio licence issued to a person authorized to provide telecommunication services or broadcasting services, no modification shall be made until that person has had a reasonable opportunity to take steps necessary to ensure continuity in the provision of the relevant services.

Monitoring
and enforce-
ment of radio
regulations

40.—(1) The Authority shall monitor the use of radio frequencies in Malawi in order to ensure that the terms and conditions of licences and regulations are being complied with.

(2) The Authority may make an order requiring any person to comply with regulations in respect of—

(a) the operation of a radio station under the terms of a radio licence issued to him;

(b) the emission of electromagnetic radiation from equipment of any description.

(3) The Authority may order a person to cease using apparatus or equipment of any description which, in its opinion, is causing harmful interference with radio communications otherwise than in accordance with the terms and conditions of the radio licence issued or a regulation made under this Part.

(4) Any person affected by an order made by the Authority under this section may apply to the High Court for judicial review.

41.—(1) The Authority may require a person whom it has reasonable cause to believe is a

Control of
radio stations

person required to hold a radio licence or other authority under this Part to produce his licence or authority.

(2) If authorized by a warrant issued by a magistrate and accompanied by a police officer, the Director General may at all reasonable times enter premises which are owned or occupied by a person whom he has reasonable cause to believe is—

- (a) operating a radio station in contravention of this Act; or
- (b) causing harmful interference with radio communications.

(3) The Authority may authorize in writing any other person to carry out on its behalf the functions set out in subsections (1) or (2) of this section:

Provided that the conditions stipulated in subsections (1) and (2) are complied with.

(4) A police officer having specific written authority from the Authority may seize a radio station which he has reasonable cause to believe is being operated in contravention of this Act.

(5) Nothing in this section shall give any person a right of entry into a private dwelling house for the purpose of inspecting apparatus or equipment not designed or adapted for emission of radio frequencies.

42. —(1) The Authority may revoke the radio licence of any person who—

Revocation
of radio
licences

(a) has made a declaration or statement which he knew to be false for the purpose of obtaining a radio licence or authority under this Act;

(b) has failed to furnish information, or has furnished false information, when requested or required by the Authority in accordance with the conditions of a radio licence issued to him or a regulation made under this Part;

(c) has failed to comply with the conditions of a radio licence issued to him after having been notified of the fact by the Authority and having had not less than twenty-eight days to comply;

(d) has, after a reasonable period, failed to make use of the radio licence for the intended purpose; or

(e) has failed to comply with an order made by the Authority under this Part, having had not less than twenty-eight days to comply.

43. —(1) The President may, on the occurrence of a public emergency and after consulting with the Authority make an order directing the Authority to—

Emergency
powers in
connexion with
radio stations

(a) require the operator of any radio station to transmit a message relating to the emergency or in the interests of public safety or tranquillity; and

(b) take over a radio station specified in the order and any associated equipment and premises necessary for the proper working and maintenance of the radio station and to make the same available to an officer or authority of the Government.

(2) Any property taken over pursuant to subsection (1) shall be returned to its owner when the President declares that the public emergency is at an end.

(3) Reasonable compensation shall be paid from moneys provided for the purpose by Parliament to any person who suffers loss or damage through the exercise of the powers conferred by this section in such amount as may be agreed between that person and the Authority.

(4) If a dispute arises as to entitlement to, or the amount of, compensation payable under of subsection (3), the dispute shall be determined in accordance with the law relating to arbitration in force in Malawi and for that purpose the parties shall be treated as parties to a submission under the Arbitration Act.

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Radio
regulations

44. —(1) The Minister, on the advice of the Authority, may make regulations with respect to radiocommunications other than the reception of broadcasting services.

(2) The Minister, on the advice of the Authority, may make regulations in respect of the emission of electro-magnetic radiation from apparatus or equipment of any description in order to ensure that such apparatus or equipment does not cause harmful interference with radiocommunications.

PART V — REGULATION OF BROADCASTING

Broadcasting
policy

45. —(1) The Authority shall regulate the provision of broadcasting in Malawi in the manner which it considers is best suited—

(a) to meet demand for broadcasting services;

(b) to ensure the provision of regular news services and programmes on matters of public interest in Malawi;

(c) to provide for the broadcast of programmes in support of the democratic process through civic education;

(d) to promote the provision of a diverse range of broadcasting services on a national and local level;

(e) to promote the integrity and viability of public broadcasting services; and

(f) to ensure equitable treatment of political parties and election candidates by all broadcasting licensees during any election period.

(2) The Authority may, where necessary and subject to subsection (1), seek the general direction of the Minister in carrying out its duties under this Part of the Act.

(3) Any direction given by the Minister under subsection (2) shall be in writing.

Requirement
of licences for
provision of
broadcasting
services

46. No person may provide a broadcasting service in Malawi except in accordance with a broadcasting licence issued to that person by the Authority under this Part.

Kinds of
broadcasting
licences

47. —(1) The Authority may issue broadcasting licences for radio and television broadcasting services of the following kinds—

(a) public broadcasting services;

(b) private broadcasting services; and

(c) community broadcasting services.

(2) It shall be permissible for the holder of a broadcasting licence to broadcast text by radio in the course of his broadcasting service.

48. —(1) The Authority shall issue broadcasting licences in sufficient numbers to meet the public demand for broadcasting services.

Application
broadcasting
licences

(2) When it intends to issue a broadcasting licence, the Authority shall publish a notice in the *Gazette* and in at least two issues of a newspaper in general circulation stating—

(a) the kind of broadcasting service that may be offered under the proposed licence;

(b) the coverage area of the broadcasting service;

(c) the radio frequencies that will be made available and other relevant technical parameters; and

(d) the procedure by which an application can be made, including in particular—

(i) the information which applicants must provide;

(ii) the criteria by which applicants will be assessed; and

(iii) the date by which applications must be received by the Authority.

(3) Within twenty-eight days of the date specified for the receipt of applications under subsection (1), the Authority shall publish in the *Gazette* a notice summarizing any applications received and inviting persons to make representations regarding the Authority's proposals and such applications.

(4) The Authority shall maintain a record of each application for a broadcasting licence received by it, whether in response to a notice published under subsection (1) or otherwise, and shall make such records available to the public at its premises during normal working hours.

(5) Before the Authority makes a determination on any application for a broadcasting licence, the Authority shall—

(a) notify each applicant of the representations that it has received regarding his application; and

(b) accord each applicant a reasonable opportunity to respond in writing or in person to such representations.

(6) Where the number of suitable applications exceeds the number of licences that the Authority intends to issue, the Authority shall select the successful applicant or applicants according to the criteria notified under subsection (2) (d) (ii).

(7) No broadcasting licence shall be issued to any association, party, movement, organization, body or alliance which is of a party-political nature.

49. —(1) Before publishing a notice under section 48 which invites applications for a licence to provide a public broadcasting service, the Authority shall undertake and publish the results

Public
broadcasting

of a study of—

(a) the demand for the proposed public broadcasting service within the proposed coverage area;

(b) the likely effect on the existing broadcasting services in the coverage area; and

(c) the technical quality of the public broadcasting service, taking into account advances in broadcasting technology,

and shall obtain the approval of the Minister.

(2) The Authority may invite any person holding a licence to provide public broadcasting services to its delegation to any international organization concerned with broadcasting.

Control of
private
broadcasting
services

50. —(1) No person shall directly or indirectly exercise control over more than one licence for a national private broadcasting service or be a director of a company or other body which directly or in concert with one or more other companies or bodies exercises such control.

(2) No person shall directly or indirectly exercise control over more than two licences for local private broadcasting services or be a director of a company or other body which directly or in concert with one or more other companies or bodies exercise such control.

Terms and
conditions to
be contained in
broadcasting
licence

51. —(1) A broadcasting licence issued by the Authority—

(a) shall be issued on payment by the applicant of the appropriate licence fee;

(b) shall state the radio frequencies that may be used and the technical parameters of the transmissions that may be made;

(c) shall specify the broadcasting services that may be provided and the coverage area; and

(d) shall be valid for a period of seven years from the date when it is published in the *Gazette*.

(2) A broadcasting licence may only be issued on such terms and subject to such conditions as are consistent with the principles stated in section 4.

(3) A broadcasting licence other than for a community broadcasting service may include all or any of the following conditions—

(a) the balance and equitable reporting during any election period;

(b) the provision of party political broadcasts during any election period;

(c) the broadcasting of news services and factual programmes;

(d) the broadcasting of programmes in support of the democratic process;

(e) the preservation of broadcast material;

(f) the provision of financial information relating to the broadcasting services provided;

(g) the limitation on the proportion of broadcasting time that may be allocated to advertisements;

(h) the limitation on the financial or voting interest in the licence held by one or more foreign persons to forty per cent:

Provided that the Authority may include conditions (f), (g), and (h) in a licence for a private broadcasting service only if similar such conditions are included in all such licences.

52. —(1) All broadcasting licensees shall adhere to the code of conduct for broadcasting services set out in Third Schedule.

Code of conduct for broadcasting services
Third schedule
Third Schedule

(2) All persons licensed under Part III to operate cable television networks shall ensure that programmer distributed by them adhere to the code of conduct for broadcasting services set out in the Third Schedule.

53. —(1) The Authority may amend a broadcasting licence only—

Amendment of broadcasting licences

(a) to the extent necessary in the interest of efficient management of the radio spectrum and provided that the amendment will not cause substantial prejudice to the licensee;

(b) to the extent necessary to comply with any international agreement to which Malawi is party; or

(c) with the agreement of the licensee.

(2) Whenever the Authority considers amending a broadcasting licence, it shall publish the proposed amendment in the *Gazette* and allow not less than twenty-eight days from the date of publication for any person to make representations;

(3) Any amendment of a broadcasting licence made by the Authority shall not come into effect until it is published in the *Gazette*.

54. —(1) The Authority shall monitor compliance with the terms and conditions of broadcasting licences, with the code of conduct for broadcasting services and with other material provisions of this Act relevant to broadcasting licences.

Monitoring and enforcement of broadcasting licences

(2) The Authority may hold public hearings on any matter relating to the monitoring and enforcement of broadcasting licences.

(3) Where the Authority determines that a broadcasting licensee has failed to comply with the terms and conditions of the licence, the code of conduct or the provisions of this Act, it shall notify the licensee in writing.

(4) If, after hearing any representations made by a broadcasting licensee who has been notified in accordance with subsection (3), the Authority confirms the non-compliance, it shall publish its findings and the reasons for them.

(5) Having taken into account the nature, gravity and consequences of the non-compliance, and after hearing any representations made by the licensee or any other interested persons in response to the publication of its findings, the Authority shall make any one or more of the following orders which it considers appropriate—

(a) requiring the licence to broadcast—

(i) a correction;

(ii) an alternative version;

(iii) a balancing opinion,

whichever is applicable;

(b) directing the licensee to desist from non-compliance;

(c) imposing a fine proportional to the effects of the non-compliance;

(d) directing the licensee to take appropriate remedial steps.

(6) If the broadcasting licensee does not comply with an order under subsection (5), the Authority may prohibit the licensee from providing a broadcasting service for any period which, in the first instance, may not exceed thirty days.

Complaints concerning broadcasts

55. —(1) The Authority shall publish the form and procedure as regards the adjudication of complaints concerning television or sound broadcasts.

(2) Any person who has reason to believe that a broadcasting licensee has failed to comply with the terms and conditions of the licence or the code of conduct may lodge a complaint with the Authority within thirty days of the occurrence of the alleged non-compliance.

(3) A complaint referred to in subsection (2) shall be in writing and, on receipt by the Authority, shall be notified to any licensee concerned.

(4) After having considered a complaint and any representation in regard thereto, the Authority shall publish its findings.

(5) The Authority shall keep a record of all complaints regarding broadcasting received by it and shall publish each year an analysis of them.

Power to licence reception of broadcasting service

56. —(1) The Authority may require all persons who have in their possession a television set capable of receiving broadcast television programmes to obtain each year a licence to operate the set.

(2) Before commencing to issue the television licence contemplated in subsection (1) the Authority shall commission an independent study of the options for the finance of television broadcasting and publish the results.

(3) A television licence shall be available without any condition to any person who pays the prescribed fee.

(4) The net proceeds from the issuing of television licences shall be used exclusively for the purpose of financing public television broadcasting services by MBC.

(5) Malawi Posts shall enter into an agreement with the Authority and with MBC to issue television licences, to collect the fees and to account for the proceeds.

Broadcasting regulations

57. The Minister, on the advice of the Authority, may from time to time make regulations governing the provision of broadcasting services.

PART VI — REGULATION OF POSTAL SERVICES

Duty of the Authority in respect of postal

58. The Authority shall regulate postal services so as to ensure that there are provided throughout Malawi good and sufficient postal services at rates consistent with efficient and continuous service, the financial viability of Malawi Posts and in accordance with the

services recommendations of the Universal Postal Union and other international agreements entered into by the Republic of Malawi.

Policy directions by the Minister **59.** —(1) The Minister may, after consultation with the Authority, give directions of a general or special nature to the Authority in relation to the performance of its functions and exercise of its powers under this Part.

(2) Any direction given by the Minister under subsection (1) shall be in writing.

60. —(1) Subject to the provisions of this Part, Malawi Posts shall have throughout Malawi the exclusive right of conveying letters weighing not more than 350 grams from one place to another and of performing all the incidental services of receiving, collecting and delivering such letters. Exclusive right of Malawi Posts to convey letters

(2) The exclusive right conferred on Malawi Posts by subsection (1) is not infringed by the conveyance and delivery of—

(a) a letter personally by a sender or by a member of the sender's family;

(b) a letter by a messenger sent for the purpose;

(c) letters carried by a person having a business interest in the letters, and the collection of letters for that purpose;

(d) letters concerning goods sent with the goods and delivered therewith;

(e) letters carried to and from a post office;

(f) letters carried privately and delivered without hire, reward or profit.

61. —(1) Within one year of the transfer date the Authority shall issue to Malawi Posts a licence regulating the provision of services subject to the exclusive right granted to it by section 60. Licensing of mail services

(2) Subject to the approval of the Minister and after consultation with Malawi Posts, the Authority may issue a licence to any other person for the doing of any act or the performance of any service falling within the exclusive right of Malawi Posts.

(3) Any licence issued under subsection (2) shall be—

(a) for a period not exceeding twelve months to be stated in the licence; or

(b) subject to conditions requiring the licensee—

(i) to provide services within the licensed area to a standard equivalent to that prescribed for Malawi Posts;

(ii) to charge for services according to an approved tariff; and

(iii) to make an appropriate contribution to the costs of running a national postal service.

62. —(1) The Authority may modify the conditions of any licence issued under this Part if it is in the public interest to do so. Amendment of a mail licence

(2) Before making modifications to the conditions of a licence issued under this Part, the Authority shall—

(a) publish a notice stating the reasons for the intended modification and giving any person with an interest in the matter the opportunity to make representations; and

(b) give due consideration to any representations regarding the proposed modification made to it by any person with an interest or holding such a licence.

Charges and other terms and conditions of postal services

63. —(1) Malawi Posts shall publish, as respects any of the services provided by it, a statement specifying—

(a) the charges for the service, except in so far as they are the subject of a contractual agreement between it and a person availing himself of the service;

(b) the other terms and conditions which are to be applicable to those services; and

(c) the manner in which, the time at which and the person by whom the charges are to be paid.

(2) A statement drawn up by the Malawi Posts under this section shall be submitted by it to the Authority for approval before publication.

(3) Malawi Posts may recover a charge levied by virtue of this section in any court of competent jurisdiction as if it were a simple contract debt.

Design, etc. of postage stamps

64. —(1) Subject to the conditions of its licence, Malawi Posts may issue such postage stamps as it may deem necessary for the purpose of this Part.

(2) Before issuing any postage stamps, Malawi Posts shall—

(a) inform the Authority of the proposed design; and

(b) publish the proposed design in such manner as it thinks fit,

and shall take into account any representations made to it concerning such design.

(3) Malawi Posts shall not issue any postage stamp to whose design the Authority has objected in writing.

Inviolability of mail

65. —(1) Subject to the other provisions of this section, no mail may be opened in course of transmission by post or be delivered to any other person than the addressee.

(2) An employee of Malawi Posts may refuse to deliver or accept for delivery or may open any mail if authorized to do so by express warrant in writing of the Postmaster General.

(3) The Postmaster General may grant a warrant to refuse to deliver or to open any mail in any individual circumstance if he has reason to believe that an offence may have been committed under this Act or under any other written law.

Use of public transport for carrying mail

66. —(1) Any person providing a regular public transport service within Malawi shall, if requested by Malawi Posts or any other person holding a licence issued under this Part, carry mail between any places connected by that service.

(2) The terms under which any person carries mail pursuant to subsection (1) shall be normal

commercial terms and shall be determined by agreement between the parties or, in the absence of agreement, by the Authority.

Transactions on behalf of the Government and local authorities in post offices

67. —(1) The Government and local authorities shall enter into contracts with Malawi Posts for Malawi Posts to do work consisting in the effecting of transactions of the Government and of local authorities during normal business hours in such parts of post offices as are open to the public during those hours for the transaction of postal business.

(2) In consideration of its doing work for the Government or any local authority, Malawi Posts shall be entitled under any such contract to receive from the Government or the local authority payment for the work done that covers the costs incurred by Malawi Posts including the costs of capital employed.

(3) In the event of a dispute arising concerning any aspect of such a contract, either party may request the Authority to make a determination.

68. —(1) Malawi Posts may, subject to the conditions of its licence, carry out financial services on its own account.

Financial services

(2) The financial services referred to in subsection (1) include—

(a) the issue of money orders, including postal orders;

(b) traveller's cheques;

(c) giro services;

(d) the collection and payment of bills;

(e) the provision of savings services; and

(f) such other financial services as the Minister, after consultation with the Authority, shall approve.

69. —(1) The Minister, on the advice of the Authority, may make regulations generally with respect to the postal services, including but not limited to—

Postal regulations

(a) the use of franking machines for prepayment of postage;

(b) specifying the conditions on which postage stamps may be accepted or refused for payment of postal and other charges;

(c) specifying any article which may not be sent by post;

(d) specifying the conditions for the registration and insurance of postal articles;

(e) specifying the conditions on which compensation may be paid for the loss of or damage to any postal articles;

(f) providing for the disposal of undelivered or uncollected postal articles; and

(g) specifying the conditions under which any financial services may be provided at a post office.

(2) Before giving any advice under this section, the Authority shall consult with Malawi Posts.

PART VII — MALAWI TELECOM

Incorporation
of Malawi
Telecom
Cap. 46:03

70. —(1) The Minister of Finance shall form and register in accordance with the provisions of the Companies Act, a company limited by shares to be known as Malawi Telecommunications Limited (in this Act otherwise referred to as "Malawi Telecom").

(2) The Memorandum and Articles of Association of Malawi Telecom shall contain provisions which limit its activities to the operation of a telecommunication network, the provision of telecommunication services and other activities related thereto.

Transfer of
assets, etc.

71. —(1) Before the transfer date, the Malawi Posts and Telecommunications Corporation shall take steps to separate the postal network and postal services from the telecommunication network and telecommunication services.

(2) On the transfer date, all property, rights, duties, obligations and liabilities which were comprised in the part of the undertakings of the Malawi Posts and Telecommunications Corporation concerned with the operation of the public telecommunications network and the provision of telecommunication services shall be transferred to Malawi Telecom.

Election to
transfer to
employment
with Malawi
Telecom

72. —(1) Any employee of the Malawi Posts and Telecommunications Corporation whose duties relate wholly or mainly to the operation of a telecommunication network or the provision of telecommunication services may elect to transfer to the service of Malawi Telecom.

(2) Any person who—

(a) was in the service of the Malawi Posts and Telecommunications Corporation immediately before the transfer date; and

(b) has elected to transfer to the service of Malawi Telecom not less than ninety days before the transfer date,

shall enjoy terms and conditions of service after his transfer that are no less favourable than those he enjoyed before his transfer, and his previous service with the Malawi Posts and Telecommunications Corporation shall be treated as service with Malawi Telecom for the purpose of determining his rights to or eligibility for any pension, gratuity, leave or other benefits.

(3) Any person who transfers to the service of Malawi Telecom in accordance with the provisions of subsection (2) shall not be entitled to receive any other compensation for having left the service of Malawi Posts and Telecommunications Corporation.

Sale of shares
in Malawi
Telecom

73. The Authority shall be consulted before the Minister of Finance may dispose of all or part of the Government interest in the shares of Malawi Telecom.

PART VIII — MALAWI POSTS

Establishment
of Malawi
Posts

74. —(1) There is hereby established a corporation to be known as Malawi Posts Corporation (in this Act otherwise referred to as "Malawi Posts") which shall—

- (a) be a body corporate by that name with perpetual succession and a common seal;
- (b) be capable of suing and being sued in its corporate name;
- (c) be capable of acquiring and disposing of any moveable or immoveable property; and
- (d) subject to this Act, have power to do or perform all such acts or things as a bodies corporate may by law do or perform.

Duties of
Malawi
Posts

75. —(1) It shall be the general duty of Malawi Posts to provide all reasonable facilities for the transmission of postal articles throughout the Republic of Malawi and between the Republic of Malawi and other countries.

(2) It shall be the duty of Malawi Posts to conduct its affairs according to commercial principles and in such a manner as to secure that, taking one year with another, its gross revenue from all sources is sufficient to meet outgoings properly chargeable to revenue account, including reasonable allocation to the general reserve and provision for the depreciation of capital assets and the repayment of loans; and, further, to ensure that its net operating income in any year is sufficient to secure an annual return on the value of the net fixed assets employed of such percentage as the Minister may from time to time direct.

76. —(1) Malawi Posts shall have power—

Powers and
functions of
Malawi Posts

- (a) to provide postal services and to perform other services incidental to transmission of postal articles;
- (b) to establish and operate post offices; and
- (c) to provide financial services.

(2) Subject to the provisions of this Act, powers conferred by subsection (1) shall include power—

- (a) to enter into such contracts as may be necessary for carrying out the purposes of Malawi Posts;
- (b) to construct, acquire, maintain and repair buildings and premises and to carry out works required for the purposes of Malawi Posts;
- (c) to acquire, manufacture, maintain and repair equipment and facilities required for the purposes of Malawi Posts;
- (d) to levy rates and charges for any service performed by Malawi Posts or for the use by any person of the premises, equipment or facilities provided by Malawi Posts; and
- (e) to represent the Republic of Malawi in matters relating to the Universal Postal Union, the Pan African Postal Union and such other international organizations as the Authority or the Minister may designate.

77. —(1) There shall be a Board of Directors of Malawi Posts which shall direct the operations of Malawi Posts.

Board of
Directors of
Malawi Posts

(2) The Board of Malawi Posts shall consists of—

- (a) a Chairman appointed by the Minister;

(b) one member, not being a public officer or an employee of Malawi Posts, appointed by the Minister on account of his knowledge and experience in matters of postal administration or postal services;

(c) the Principal Secretary responsible for posts;

(d) the Secretary to the Treasury; and

(e) three other members, not being public officers or employees of Malawi Posts, appointed by the Minister by virtue of their knowledge and experience in law, commerce, industry, finance, public administration or public affairs.

(3) A member of the Board of Malawi Posts, other than a member *ex officio*—

(a) shall hold office for a period not exceeding two years from the date of his appointment;

(b) shall be eligible for re-appointment; and

(c) may resign his office by written notification in writing to the Minister.

(4) Members of the Board of Malawi Posts shall be entitled to such remuneration, allowances and such other benefits as the Minister may, from time to time determine.

Fourth
Schedule

(5) The Fourth Schedule shall apply in relation to the Board of Malawi Posts.

Postmaster
General

78.—(1) There shall be a Postmaster General who shall be appointed by the Minister on the recommendation of the Board of Malawi Posts.

(2) The terms and conditions of service of the Postmaster General shall be determined by the Minister on the recommendation of the Board of Malawi Posts and specified in the instrument of appointment.

(3) The Postmaster General shall be the chief executive officer of Malawi Posts and, subject to the general supervision and control of the Board of Malawi Posts, shall be responsible for—

(a) the day to day operations of Malawi Posts;

(b) the management of funds, property and affairs of Malawi Posts;

(c) the administration, organization and control of the staff of Malawi Posts.

(4) There shall be a Deputy Postmaster General who shall—

(a) be appointed by the Board of Malawi Posts with the approval of the Minister;

(b) perform such functions and duties as may be assigned to him by the Postmaster General from time to time.

(5) Subsection (2) shall apply *mutatis mutandis* to the Deputy Postmaster General.

(6) The Postmaster General or, in his absence, the Deputy Postmaster General, shall attend meetings of the Board and of any committees of the Board and may address such meetings,

but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Postmaster General or the Deputy Postmaster General to withdraw from such meeting.

Other staff
of Malawi
Posts

79.—(1) The Board of Malawi Posts may appoint such other staff, subordinate to the Postmaster General, as the Board deems necessary for the discharge of the functions of the Malawi Posts under this Act.

(2) The Postmaster General shall have the power to appoint staff of such junior ranks as the Board of Malawi Posts may specify.

(3) The Board of Malawi Posts may pay to the persons in the employ of Malawi Posts, or provide them with, such remuneration, allowances, pensions, gratuities and other employment benefits as the Board may, after having obtained such professional advice as it may deem fit, consider as being competitive in the employment market in Malawi.

80.—(1) The funds of Malawi Posts shall consist of—

Financing of
Malawi Posts

(a) such sums as may be appropriated by Parliament for the purposes of Malawi Posts;

(b) such moneys or other assets as—

(i) shall vest in Malawi Posts by virtue of section 83;

(ii) may accrue to or vest in Malawi Posts by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(c) such sums as are derived from the sale of any property by or on behalf of Malawi Posts;

(d) such sums as Malawi Posts may charge in respect of its services.

(2) Malawi Posts may, subject to any directions of a general nature which may be given to the Board by the Minister of Finance, invest such part of its funds as are not for the time being required for the purposes of its operations.

(3) Subject to the Finance and Audit Act, Malawi Posts may borrow money for the purposes of Malawi Posts— Cap. 37:01

(a) by the issue of loan stock on such terms may be approved by the Minister of Finance;

(b) by way of overdraft or credits in Malawi or abroad with the approval of, and subject to such limitations as may be imposed by, the Minister of Finance.

81.—(1) Malawi Posts shall keep proper books of accounts and Account and other records relating to its accounts. Account and
audit

(2) The accounts of Malawi Posts shall—

(a) be audited annually by independent auditors appointed by the Board of Malawi Posts and approved by the Minister;

(b) be examined by the Auditor General before being presented to the Minister in accordance with section 82.

(3) The financial year of Malawi Posts shall end on 30th June.

(4) The Minister may, by order published in the *Gazette*, prescribe a different date for the ending of the financial year of Malawi Posts.

82. —(1) As soon as practicable, but not later than six months after the expiry of each financial year, Malawi Posts shall publish and submit to the Minister a report concerning its activities during that financial year.

Annual report

(2) The report referred to in subsection (1) shall be in such form as the Minister, after consultation with the Authority, shall approve and shall include information on the financial affairs of Malawi Posts, and there shall be appended to the report—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may direct.

Transfer of assets, etc.

83. —(1) Before the transfer date, the Malawi Posts and Telecommunications Corporation shall take steps to separate the telecommunications network and telecommunications service from the provision of postal services and the operation of post offices.

(2) On the transfer date, all property, rights, duties, obligations and liabilities which were comprised in the part of the undertakings of the Malawi Posts and Telecommunications Corporation concerned with the provision of postal services and the operation of post offices shall be transferred to Malawi Posts.

Election to transfer to employment with Malawi Posts

84. —(1) Any employee of the Malawi Posts and Telecommunications Corporation whose duties relate wholly or mainly to the provision of postal services or the operation of post offices may elect to transfer to the service of Malawi Posts.

(2) Any person who—

(a) was in the service of the Malawi Posts and Telecommunications Corporation immediately before the establishment of Malawi Posts; and

(b) has elected to transfer to the service of Malawi Posts not less than ninety days before the transfer date,

shall enjoy terms and conditions of services after his transfer that are no less favourable than those he enjoyed before his transfer, and his previous service with the Malawi Posts and Telecommunications Corporation shall be treated as service with Malawi Posts for the purpose of determining his rights to or eligibility for any pension, gratuity, leave or other benefits.

(3) Any person who transfers to the service of Malawi Posts in accordance with provisions of subsection (2) shall not be entitled to receive any other compensation for having left the service of the Malawi Posts and Telecommunications Corporation.

Exemption from liability of Malawi Posts

85. —(1) Save in so far as it is otherwise provided in its licence or in regulations issued or made under this Act, Malawi Posts shall not incur any liability—

(a) by reason of the loss, misdelivery or delay of, or damage to, any postal article in the

course of transmission by post; or

(b) by reason of the detention or disposal of any postal article in accordance with the provisions of this Act.

(2) The *bona fide* payment of any sum of money under this Act shall discharge Malawi Posts, the Postmaster General and the employee by whom such payment was made from any liability in respect of such payment.

(3) Nothing in this section shall be construed as exempting Malawi Posts, the Postmaster General or any employee from liability for damage or loss caused to any person by reason of negligence or fraud in relation to the activities of Malawi Posts.

PART IX — RECONSTITUTION OF MBC

Establishment
of Malawi
Broadcasting
Corporation

86. There shall continue to be a corporation known as the Malawi Broadcasting Corporation (in this Act otherwise referred to as "MBC") which shall—

(a) be body corporate by that name with perpetual succession and a common seal;

(b) be capable of suing and being sued in its corporate name;

(c) be capable of acquiring and disposing of any moveable or immoveable property; and

(d) subject to this Act, have power to do or perform all such acts or things as bodies corporate may by law do or perform.

87. —(1) MBC shall provide public broadcasting services in accordance with the following principles—

Public service
obligation of
MBC

(a) the provision of programmer which educate, entertain and inform;

(b) the encouragement of free and informed opinion on all matters of public interest;

(c) the need to reflect the wide diversity of Malawi's cultural life; and

(d) respect for human rights, the rule of law and the Constitution of Malawi.

(2) MBC shall, in the provision of its broadcasting services—

(a) function without any political bias and independently of any person or body of persons;

(b) support the democratic process;

(c) refrain from broadcasting any matter expressing its opinion or the opinion of its Board or management on current affairs or on matters of public policy, other than broadcasting matters;

(d) provide balanced coverage of any elections; and

(e) have regard to the public interest.

88. —(1) MBC shall have power—

Powers and
functions of
MBC

(a) to provide public broadcasting services throughout Malawi;

(b) to carry on such undertakings and provide such other services as are conducive to the exercise of the functions and fulfilment of the service obligations specified in or under this Act or are ordinarily within the functions of a public broadcasting service.

(2) Subject to the provisions of this Act, the powers conferred by subsection (1) shall include power—

(a) to enter into such contracts as may be necessary for carrying out the purposes of MBC;

(b) to construct, acquire, maintain and repair buildings and premises and to carry out works required for the purposes of MBC;

(c) to acquire, maintain and repair radio equipment and other facilities required for the purposes of MBC;

(d) to arrange for the broadcasting of paid advertisements and sponsored programmer;

(e) to collect television licence fees payable under section 56.

Board of
Directors of
MBC

89. —(1) There shall be a Board of Directors of MBC which shall be the body solely responsible for directing the affairs of MBC.

(2) The Board of MBC shall consist of a Chairman and—

(a) six other members appointed in accordance with section 90;

(b) the Secretary for Information, *ex officio*.

(3) In the event of the Chairman being absent for a period of more than thirty days, the Board may authorize one of the other members to exercise the powers and perform the duties and functions of the Chairman.

*Fifth
Schedule*

(4) The Fifth Schedule shall apply in relating to the Board of MBC.

Appointment
of members of
the Board of
MBC

90. —(1) The President shall—

(a) appoint the Chairman of the Board of MBC;

(b) appoint the other members of the Board of MBC in consultation with the Public Appointments Committee.

(2) Members of the Board of MBC appointed under this section shall be persons who—

(a) are citizens resident in Malawi;

(b) possess qualifications, expertise and experience in any of the fields of broadcasting, education, engineering, law, business, finance, public administration and public affairs.

(3) No person shall qualify to be appointed under this section who—

(a) has in the proceeding three years been sentenced to a term of imprisonment of more than six months for an offence involving fraud or dishonesty;

(b) is an undischarged bankrupt;

(c) is a member of Parliament;

(d) is a Minister or Deputy Minister;

(e) is a member of a committee of a political party at district, regional or national level.

Avoidance of
conflicts of
interest

91. —(1) No member of the Board of MBC may be a director or employee of any other body which directly, indirectly or in concert with one or more other bodies exercises control over a licence to provide a broadcasting service.

(2) Any member of Board of MBC who has a personal or professional interest in any matter which is to be considered by the Board shall, as soon as practically possible, disclose such interest to the Board and, if the Board so decides, shall not take part in any consideration or discussion of, or vote on, any question touching such matter.

Director
General and
other
employees of
MBC

92. —(1) The Board of MBC shall appoint a Director General, who shall be the chief executive officer of MBC and, subject to the general supervision and control of the Board, shall be responsible for—

(a) the day to day operations of MBC;

(b) the management of funds, property and affairs of MBC;

(c) the administration, organization and control of the staff of MBC.

(2) The Director General or, in his absence, such other employee of MBC as he may designate, shall attend meetings of the Board and of any committees of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Director General or such other officer to withdraw from such meeting.

(3) The Board of MBC may appoint such other employees, subordinate to the Director General, as the Board deems necessary for the discharge of its functions under this Act.

(4) The Director General shall have the power to appoint employees of such junior ranks as the Board of MBC may specify.

(5) The Board of MBC may pay to the persons in its employ, or provide them with, such remuneration, allowances, pensions, gratuities and other employment benefits as the Board may, after having obtained such professional advice as it may deem fit, consider as being competitive in the employment market in Malawi.

93. It shall be the duty of MBC to conduct its affairs in such a manner as to secure that, taking one year with another, its gross revenue from all sources is sufficient to meet its outgoings properly chargeable to revenue account, including reasonable allocations to the general reserve and provision for the depreciation of capital assets and the repayment of loans; and, further, to ensure that its net operating income in any year is sufficient to secure an annual return on the value of the net fixed assets employed of such percentage as the Minister may from time to time direct.

Financial
duty of MBC

94. —(1) The funds of MBC shall consist of—

(a) such sums as may, from time to time, be payable to MBC from the moneys appropriated by Parliament for the purposes of MBC;

Financing of
MBC

(b) such moneys or other assets as may accrue to or vest in MBC by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(c) such sums as are derived from the sale of any property by or on behalf of MBC;

(d) fees and charges payable under section 56 of this Act; and

(e) any fees and charges as MBC may raise in respect of commercial advertising, sponsored programmes and other services.

(2) MBC may, subject to any directions of a general nature which may be given to the Board by the Minister of Finance, invest such part of its funds as are not for the time being required for the purposes of its operations.

(3) Subject to the Finance and Audit Act, MBC may borrow money for the purposes of MBC— Cap 37:01

(a) by the issue of loan stock on such terms as may be approved by the Minister of Finance; and

(b) by way of overdraft or credits in Malawi or abroad with the approval of, and subject to such limitations as may be imposed by, the Minister of Finance.

Account and
Audit

95. —(1) MBC shall keep proper books and other records relating to its accounts.

(2) The accounts of MBC shall—

(a) be audited annually by independent auditors appointed by the Board of MBC and approved by the Minister;

(b) be examined by the Auditor General before being presented to the Minister in accordance with section 96.

(3) The financial year of MBC shall end on 30th June.

(4) The Minister may, by order published in the *Gazette*, prescribe a different date for the ending of the financial year of MBC.

Annual report

96. —(1) As soon as practicable, but not later than six months after the expiry of each financial year, MBC shall publish and submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister, after consultation with the Authority, shall approve and shall include information on the financial affairs of MBC, and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may direct.

PART X — OFFENCES

Telecom-

97. —(1) Any person who operates a telecommunication offences network or provides a

munication
offences

telecommunication service, unless under subsection (2) of section 17, without, as the case may be—

(a) an individual licence issued or deemed to have been issued under Part III; or

(b) having registered or being deemed to have been registered under a general licence issued under Part III,

shall be guilty of an offence.

(2) Any person who—

(a) knowingly connects unapproved terminal equipment to a licensed network; or

(b) fails to comply with a request by a licensee to disconnect unapproved terminal equipment,

shall be guilty of an offence.

(3) Any person who dishonestly obtains a telecommunication service with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence.

(4) Any person licensed to operate a telecommunication network or provide a telecommunication service who otherwise than in the course of his duty intentionally intercepts, interferes with the contents of, or modifies any message sent as part of a telecommunication service shall be guilty of an offence.

(5) Any person licensed to operate a telecommunication network or provide a telecommunication service who discloses, other than in his official capacity—

(a) the contents of a message sent as part of a telecommunication service; or

(b) any information, other than directory information, about any user of a telecommunication service,

shall be guilty of an offence.

(6) Any person who, when required by a telecommunication operator to leave premises being used for the business of that operator, fails to comply with the requirement shall be guilty of an offence unless he has the authority to be on the premises.

98. —(1) Any person who operates a radio station, except—

(a) a radio station exempted under subsection (2) of section 35;

or

(b) a radio station controlled by the Authority pursuant to section 43,

without a licence issued or deemed to have been issued under Part IV shall be guilty of an offence.

(2) Any person who operates, or who permits on premises that he owns or occupies the operation of, a television set without a licence provided for under section 56 shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for six months.

(3) Any person who operates apparatus or equipment of any description as to cause harmful

Radio-commu-
nication
offences

interference with radiocommunications shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for two years.

99. —(1) Any person who provides a mail service subject to the exclusive right granted to Malawi Posts under section 60 without a licence issued under Part VI shall be guilty of an offence.

Postal offences

(2) Any person who, knowingly without lawful excuse—

(a) makes or sells or offers for sale, deals in or otherwise puts into circulation any fictitious postage stamp;

(b) possesses any fictitious postage stamp;

(c) makes or possesses any die, plate, instrument or material for making any fictitious postage stamp;

(d) uses any fictitious postage stamp for the purposes of Malawi Posts;

(e) imports any fictitious postage stamp, or any die, plate, instrument or materials for making such a fictitious postage stamp,

shall be guilty of an offence.

(3) Any postage stamp, die, plate, instrument or other materials found in the possession of any person in contravention of subsection (2) may be seized and, on conviction of such person, forfeited.

(4) Any person who, without authority, opens, or tampers with, or secretes any postal articles shall be guilty of an offence.

(5) Any person who, when required by an employee of Malawi Posts to leave premises being used for the business of Malawi Posts, fails to comply with the requirement shall be guilty of an offence.

Broadcasting offences

100. —(1) Any person who provides broadcasting service without a licence issued or deemed to have issued under Part V shall be guilty of an offence unless the person has authority to be on the premises.

(2) Any person who, when required by an employee of a broadcasting licensee to leave premises being used for the business of the licensee, fails to comply with the requirement shall be guilty of an offence.

Miscellaneous offences

101. —(1) Any person who falsely holds himself out to be—

(a) a member of the Authority, an employee of the Authority or authorized by the Authority; or

(b) a licensee, an employee of a licensee or authorized by a licensee,

shall be guilty of an offence.

(2) Any licensee who fails to comply with an order by the Authority in the exercise of its functions under this Act shall be guilty of an offence.

General punishment

102. A person guilty of an offence under this Act, for which no other penalty has been

for offences prescribed, shall be liable to a fine of K300,000 or to imprisonment for ten years.

PART XI — TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Existing
licences and
authorities

103. —(1) Any regulations or rules made under any law relating to communication matters in respect of which regulations may be made under this Act and in force immediately before the date of commencement of this Act shall, in so far as they are consistent with the provisions of this Act, continue in force as if made under this Act until they are revoked or replaced by regulations or rules made under this Act.

(2) Any agreement, contract, document, licence, or permission, made, granted or approved under any law relating to communication matters shall, in so far as it is consistent with the provisions of this Act and except as otherwise expressly provided in this Act or in any other written law, continue and be deemed to have been made, granted or approved by the Authority or the Minister as the case may be, under the corresponding provisions of this Act.

(3) Notwithstanding subsection (2), any person duly licensed or authorized under applicable legislation prior to the commencement of this Act to provide—

(a) a telecommunication service;

(b) a postal service;

(c) a broadcasting service,

shall continue to be authorized to provide that service, provided that the terms and conditions of any licence issued to that person under this Act are complied with.

(4) Any frequency assignment duly made under applicable legislation prior to the commencement of this Act shall continue in force as if made under this Act, provided that—

(a) information relating to frequency assignment is made available to the Authority; and

(b) any conditions generally contained in a radio licence applicable to such an assignment if made under this Act are complied with.

(5) The Malawi Defence Forces and the Malawi Police Force shall be deemed to have been issued radio licences in respect of all radio frequencies being used by them immediately prior to the commencement of this Act, provided that they apply to the Authority for the radio licences applicable to such frequencies within one year of the date of commencement of this Act.

(6) Any equipment approval duly given under applicable legislation prior to the commencement of this Act shall continue in force as if given under this Act.

104. —(1) Any assets and liabilities of the Malawi Posts and Telecommunications Corporation which are not to be vested in Malawi Telecom, Malawi Posts, MBC or the Authority shall be disposed of within a reasonable time from the transfer date but not later than five years in such a manner as the Minister of Finance shall determine.

Dissolution of
MPTC

(2) The Malawi Posts and Telecommunications Corporation shall be dissolved on or before

the first anniversary of the transfer date, and the Minister shall give notice of the dissolution in the *Gazette*.

105. —(1) The Minister may from time to time set out in a statement, the policy of the Government with respect to communications (in this Act referred to as the "National Communications Policy").

National
communi-
cation policy

(2) Any statement made by the Minister pursuant to subsection (1) shall be published in the *Gazette*.

106. —(1) Any terminal equipment shall be approved in accordance with regulations made by the Minister on the advice of the Authority and shall be operated or maintained in accordance with the terms and conditions of the approval.

Type approval
of equipment

(2) The Authority shall specify and approve standards for terminal equipment which are applicable to the connexion of terminal equipment to any network used to provide a public telecommunication service.

(3) Standards for terminal equipment developed under section (2) shall enter into force when approved by the Authority.

(4) Any approval under this section may apply either to particular equipment or to any equipment of a description specified in the approval.

107. —(1) The Authority may establish consultative or advisory forums in the communications sector to assist it with the discharge of its functions under this Act.

Advisory
forums

(2) The Authority may contribute out of its annual budget to the expenses of any forum established under subsection (1).

Publication of
licences **108.** —(1) All licences issued by the Authority under this Act shall be published in the *Gazette*.

(2) The Authority shall—

(a) keep a register of every licence issued or renewed under this Act;

(b) record on the register details of the ownership and control of and the holding by any person of a financial or voting interest in each licensee; and

(c) hold the register for inspection by interested persons at its premises during the normal office hours of the Authority.

(3) The Authority shall, at the request of any person and on payment of a reasonable fee, furnish that person with copy of any licence issued by the Authority under this Act.

Licence fees
and other
charges

109. —(1) The Authority shall publish a schedule of any fees that it proposes to charge for the inspection or the issuing of a licence or the issuing of an approval under the provisions of this Act.

Repeals and savings
No. 29/1994
Cap. 68:02
Cap. 20:01

110. —(1) Each of the following Acts, namely—

- (a) The Posts and Telecommunications Act, 1994, save as provided in subsection (2);
- (b) the Radiocommunications Act; and
- (c) the Malawi Broadcasting Corporation Act, save as provided in subsection (3),

is repealed.

(2) The Malawi Posts and Telecommunications Corporation shall continue until dissolved under section 104.

(3) The Board of MBC as constituted immediately before the date of commencement of this Act shall continue to hold office until new members have been appointed under section 90.

FIRST SCHEDULE

s. 3 (3)

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

Tenure of office and vacancies

1. —(1) A member of the Authority, other than a member *ex officio*, shall hold office for a period of four years and shall be eligible for re-appointment but the office of that member shall become vacant—

- (a) if he resigns;
- (b) upon his death;
- (c) if he becomes bankrupt;
- (d) if he knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;

(e) if he is absent, without the consent in writing of the Chairman or without valid excuse, from three consecutive meetings of which he has had notice;

(f) upon the expiry of the period of his appointment;

(g) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member; or

(h) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as a member.

(2) A member of the Authority shall not be removed from office except after due inquiry, and then only upon a decision in accordance with subparagraph (1) by the appointing authorities.

(3) A vacancy in the Authority shall be filled by the appointment of another member in accordance with this Act and the member so appointed shall hold office for the unexpired period of his predecessor's term of office.

2. Members of the Authority shall be paid from the funds of the Authority such remuneration, allowances or other benefits as the Minister may, on the recommendation of the Authority, from time to time approve.

Remuneration of members

3. —(1) Meetings of the Authority shall be held at such times and places as the Chairman

Meetings of

may direct:

the Authority

Provided that the Authority shall meet for the transaction of business at least once every three months:

Provided further that the Chairman shall convene a special meeting after receiving written requests to that effect signed by at least two members, and if the Chairman fails to convene a special meeting within seven days of receipt of such request, any two members may jointly convene the special meeting.

(2) The quorum for any meeting of the Authority shall be a majority of the total number of members.

(3) The Chairman shall preside at any meeting of the Authority and, in his absence, the members present shall elect one of their number to preside at the meeting.

(4) Subject to subparagraph (2), a decision of the Authority at any meeting shall be that of the majority of the members present at the meeting and, in the event of an equality of votes, the person presiding shall have the casting vote in addition to his deliberative vote.

(5) No member of the Authority shall attend a meeting of the Authority by representation.

(6) The Authority may, at its discretion, allow members of the public to attend any of its meetings.

(7) Subject to this Act, the Authority shall have power to determine its own procedure.

4. —(1) The Authority may, for the purpose of performing its functions under this Act, establish one or more committees and delegate to any such committee such of its functions as it considers necessary.

Committees of the Authority

(2) The Authority may invite any person to attend any of the meetings of its committees and such person shall be entitled to participate in the deliberations of the meetings but shall not have the right to vote;

(3) The Chairman of every committee shall be a person who is a member of the Authority;

(4) The Chairman of the Authority shall, by reason of his office, be a member of every committee of the Authority.

(5) A member of a committee of the Authority may be paid from the funds of the Authority such allowance as the Authority may determine.

(6) Subject to the general or special directions of the Authority and to the provisions of this Act, every committee of the Authority shall have power to determine its own procedure.

SECOND SCHEDULE

s. 24 (2)

CODE OF CONDUCT FOR TELECOMMUNICATION OPERATORS

Entry upon and construction of lines across land

1. —(1) A telecommunication operator may, for the purposes of the provision of telecommunication services in accordance with its licence, enter upon any land, including any road, footpath or other land reserved for public purposes, and construct and maintain a telecommunication facility upon, over or under any such land, and alter or remove the same,

provided that—

(a) lines installed over any land shall be placed at the minimum height above the surface of the ground prescribed by regulations made under section 32.

(b) lines installed under any land shall be placed at the minimum depth below the surface of the ground prescribed by regulations made under section 32.

(2) If a telecommunication operator finds it necessary to move any line or other facility constructed upon, over or under any land, owing to any work on the part of any person or public authority, the cost of the alteration or removal shall be borne by that person or public authority.

(3) Where a telecommunication operator undertakes any work which disturbs the surface of a road or footpath, it shall—

(a) restore or re-instate the surface to its original condition; or

(b) compensate the relevant authority or owner of the road.

(4) In taking any action under this paragraph, due regard shall at all times be had to visual amenity and the preservation of the environment.

Underground pipes for installing

2. —(1) If any local authority requires that in a particular area electricity supply and telecommunication services shall be provided by means of underground cable, each telecommunication operator authorized to provide services in that area shall enter into an agreement with the local authority as to the installation and use of ducts and other facilities necessary for the running of underground cables.

(2) Where ducts and other facilities are provided by the local authority under subsection (1), the costs of provision shall be payable by the telecommunication operators and other public utilities making use of the facilities in proportion to their use.

3. —(1) A telecommunication operator or his representative authorized in writing may, for the purposes of provision of telecommunication services in accordance with his licence—

Right of access to land for the provision of telecommunication services

(a) at all times on reasonable notice, enter upon any land and install and maintain any line upon, over or under that land;

(b) cut back or prune any branch of a tree which may in any way injure, or which is likely to injure, impede, or interfere with any line; and

(c) do and perform all other acts and things necessary for the purpose of establishing, constructing, repairing, improving, examining, altering, or removing any line.

(2) A telecommunication operator shall not exercise the powers conferred by subparagraph (1) except with the prior consent of the owner of the land upon, over or under which any line is or is to be placed.

(3) A telecommunication operator shall not, by reason of the exercise of the rights conferred by subparagraph (1), acquire any right other than that of user only in the land upon, over or under which any line is or is to be placed;

(4) A telecommunication operator shall do as little damage as possible to land and to the environment and shall pay reasonable compensation to all interested persons for any damage or loss sustained by them by reason of the exercise of the powers under this paragraph.

4. —(1) A telecommunication operator or his representative authorized in writing may, with the prior written consent of the occupier, enter any private premises for the purposes of—

Right of
access to
private
premises

(a) the provision of public telecommunication services in accordance with his licence;

(b) the installation; maintenance or removal of any line; or

(c) the inspection or testing of any terminal equipment.

(2) A telecommunication operator shall not interfere with or obstruct any means of entering or leaving any private premises.

(3) A telecommunication operator shall pay compensation to the owner of private premises, not being the occupier, in the event that the exercise of the right of access granted by subparagraph (1) depreciates the value of the owner's interest in the premises.

THIRD SCHEDULE
CODE OF CONDUCT FOR BROADCASTING SERVICES

s. 52

- Freedom of Broadcasters
1. —(1) The freedom of all broadcasting licensees is indivisible from and subject to the same restraints as those relevant to the individual person, and is founded on the individual's right to be informed and to freely receive and disseminate opinions.
- General obligations of broadcasters
2. Broadcasting licensees shall—
- (a) not broadcast any material which is indecent or obscene or offensive to public morals (including abusive or insulting language) or offensive to the religious convictions of any section of the population or likely to prejudice the safety of the Republic or public order and tranquillity;
- (b) exercise due care and sensitivity in the presentation of material which depicts or relates to acts of brutality, violence, atrocities, drug abuse, obscenity;
- (c) exercise due care and responsibility in the presentation of programmes where a large proportion of the audience is likely to be children.
- News
3. —(1) Broadcasting licensees shall report news truthfully, accurately and objectively.
- (2) News shall be presented in an appropriate context and in a balanced manner without intentional or negligent departure from the facts.
- (3) Where a report is founded on opinion, supposition, rumour or allegation, it shall be presented in such a manner as to indicate clearly that such is the case.
- (4) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay.
- Comment
4. —(1) Broadcasting licensees shall be entitled to comment on and criticise any actions or events of public importance.
- (2) Comment shall be presented in such manner that it appears clearly to be comment.
- (3) Comment shall be an honest expression of opinion.
- Controversial issues
5. —(1) In presenting a programme in which controversial issues of public importance are discussed, a broadcasting licensee shall make reasonable efforts to present differing points of view in the same programme or in a subsequent programme within a reasonable period of time and in substantially the same time slot.
- (2) A person whose views, deeds or character have or has been criticised in a broadcasting programme on a controversial issue shall be given a reasonable opportunity by the broadcasting licensee to reply to such criticism, should that person so request.
- Elections
6. During any election period, all broadcasting licensees shall ensure equitable treatment of political parties, election candidates and electoral issues.
- Privacy
7. In so far as news and comment are concerned, broadcasting licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, but may however bear in mind that the right to privacy may be overridden by a legitimate public interest.

8. No payment shall be made to persons involved in crime or who have been engaged in crime in order to obtain information, unless compelling public interest indicates the contrary. Payment for information

FOURTH SCHEDULE
BOARD OF MALAWI POSTS

s. 77 (5)

1. —(1) The office of a member of the Board of Malawi Posts (in this Schedule referred to as the "Board"), other than a member *ex officio*, shall become vacant— Vacation of office

(a) if he resigns;

(b) upon his death;

(c) if he becomes bankrupt;

(d) if he is convicted of an offence punishable by imprisonment for more than twelve months;

(e) if he is absent, without the consent in writing of the Chairman or without valid excuse, from three consecutive meetings of which he has had notice;

(f) upon the expiry of the period of his appointment;

(g) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(h) if any circumstances arise that, if he were not a member, would cause that member to be disqualified as a member.

(2) A vacancy in the Board of a member other than a member *ex officio* shall be filled by the appointment of another member by the Minister as soon as may be reasonably practicable after the occurrence of the vacancy and the other member so appointed shall hold office for the unexpired period of his predecessor's term of office.

2. A member of the Board shall be paid from the funds of Malawi Posts such remuneration, allowances and other benefits as the Minister may, on the recommendation of the Board, from time to time approve. Remuneration of members

3. —(1) The Board shall meet for the transaction of business at least once every three months at such places and times as the Chairman may determine. Meetings of the Board

(2) The Chairman shall convene meetings of the Board by giving the members at least seven days written notice unless the Chairman notifies the members of the Board in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The quorum for any meeting of the Board shall be a majority of the total number of members.

(4) A decision of the Board at any meeting shall be that of the majority of the members present at the meeting and, in the event of an equality of votes, the person presiding shall have the casting vote in addition to his deliberate vote.

(5) No member of the Board shall attend a meeting of the Board by representation.

(6) Subject to this Act, the Board shall have power to determine its own procedure.

Committees of
the Board

4. —(1) The Board may establish one or more committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Board may invite any person to attend any of the meetings of its committees and such person shall be entitled to participate in the deliberations of the meetings but shall not have the right to vote.

(3) The chairman of every committee of the Board shall be a person who is a member of the Board.

(4) The Chairman of the Board shall by reason of his office be a member of every committee of the Board.

(5) Any member of a committee may be paid from the funds of Malawi Posts such allowances as the Board may determine.

(6) Subject to the general or special directions of the Board and to the provisions of this Act, every committee of the Board shall have power to determine its own procedure.

FIFTH SCHEDULE

s. 89 (4)

BOARD OF MALAWI BROADCASTING CORPORATION

Tenure of
office and
vacancies

1. —(1) A member of the Board of MBC (in this Schedule referred to as the "Board") shall hold office for a period of two years and shall be eligible for re-appointment, but the office of such member shall become vacant—

(a) if he resigns;

(b) upon his death;

(c) if he becomes bankrupt;

(d) if he is convicted of an offence punishable by imprisonment of more than twelve months;

(e) if he is absent, without the consent in writing of the Chairman or without valid excuse, from three consecutive meetings of which he has had notice;

(f) upon the expiry of the period of his appointment;

(g) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(h) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as a member.

(2) A member of the Board shall not be removed from office except after due inquiry, and then only upon a decision in accordance with subparagraph (1) by the appointing authorities.

(3) A vacancy in the Board shall be filled by the appointment of another member in accordance with this Act and any member so appointed shall hold office for the unexpired period of his predecessor's term of office.

2. A member of the Board shall be paid from the funds of MBC such remuneration, allowances or other benefits as the Minister may, on recommendation of the Board, from time to time approve. Remuneration of members
3. —(1) The Board shall meet for the transaction of the Board business at least once every three months at such places and times as the Chairman may determine. Meetings of the Board
- (2) The Chairman shall convene meetings of by giving the members at least seven days written notice unless the Chairman notifies the members of the Board in writing that the urgency of the matter to be discussed requires a shorter period of notice.
- (3) The quorum for any meeting of the Board shall be a majority of the total number of members.
- (4) The Chairman shall preside at any meeting of the Board and, in his absence, the members present shall elect one of their number to preside at the meeting.
- (5) A decision of the Board at any meeting shall be that of the majority of the members present at the meeting and, in the event of an equality of votes, the person presiding shall have the casting vote in addition to his deliberative vote.
- (6) No member of the Board shall attend a meeting of the Board by representation.
- (7) Subject to this Act, the Board shall have power to determine its own procedure.
4. —(1) The Board may establish one or more committees and delegate to any such committee such of its functions as it considers necessary. Committees of the Board
- (2) The Board may invite any person to attend any of the meetings of its committees and such person shall be entitled to participate in the deliberations of the meetings but shall not have the right to vote.
- (3) The chairman of every committee shall be a person who is a member of the Board.
- (4) The Chairman of the Board shall, by reason of his office, be a member of every committee of the Board.
- (5) Any member of a committee may be paid from the funds of MBC such allowances as the Board may determine.
- (6) Subject to the general or special directions of the Board and to the provisions of this Act, every committee of the Board shall have power to determine its own procedure.

Passed in Parliament this thirtieth day of November, one thousand, nine hundred and ninety-eight.

R. L. GONDWE
Clerk of Parliament