

**Electronic Communications
Act, 2008**

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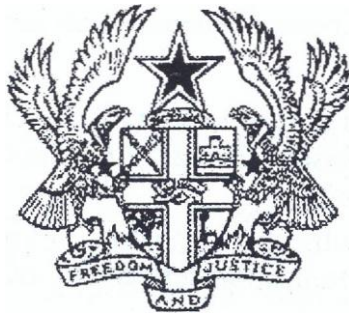
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**THE SEVEN HUNDRED AND SEVENTY-FIFTH
ACT**

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

ELECTRONIC COMMUNICATIONS ACT, 2008

AN ACT to provide for the regulation of electronic communications, the regulation of broadcasting, the use of the electro-magnetic spectrum and for related matters.

DATE OF ASSENT: *6th January, 2009.*

ENACTED by the President and Parliament:

Application

Application and scope

1. (1) This Act applies to
 - (a) electronic communications and broadcasting service providers, and
 - (b) electronic communications and broadcasting networks.
- (2) This Act does not apply to
 - (a) the military and other security agencies,
 - (b) installations of other branches of government except as expressly provided in this Act,
 - (c) the operation by a person for that person's own use or solely for the purpose of that person's business of an electronic communications system in which the equipment comprised in the system is situated
 - (i) in a single set of premises in single occupation and the transmissions from the equipment are confined to the premises, or

- (ii) in a vessel, aircraft or vehicle or in two or more vessels, aircraft or vehicles and is mechanically coupled.

(3) Business in subsection 2 (c) does not include a business for the provision of telecommunication services to another person.

Broadcasting services

Broadcasting services

2. (1) The National Communications Authority shall regulate the radio spectrum designated or allocated for use by broadcasting organisations and providers of broadcasting services in accordance with the standards and requirements of the International Telecommunications Union and its Radio Regulations as agreed to or adopted by the Republic.

(2) In furtherance of carrying out its function under subsection (1) the Authority shall determine technical and other standards and issue guidelines for the operation of broadcasting organisations and bodies providing broadcasting services.

(3) The Authority shall charge fees that it determines for a frequency authorisation.

(4) Except as provided by this Act or any other law not inconsistent with this Act, a person shall not operate a broadcasting system or provide a broadcasting service without a frequency authorisation by the Authority.

(5) In furtherance of the management of the radio spectrum allocated to broadcasting, the Authority may adopt policies to cater for rural communities and for this purpose may waive fees wholly or in part for the grant of a frequency authorisation.

(6) The Minister on the advice of the Authority may by legislative instrument make Regulations to give effect to its mandate and shall in particular make Regulations to prescribe

- (a) fees and tariffs,
- (b) the issue, conditions, duration, suspension or revocation of frequency authorisation,
- (c) the procedure to be applied by a provider of a broadcasting service or a broadcasting organisation in relation to claims and complaints by customers,

(d) the procedures for the administrative adjudication, mediation or arbitration of disputes between operators and their subscribers, and

(e) for the determination of breaches of the Regulations or conditions of the frequency authorisation and the nature of sanctions, impositions, warnings and other penalties in respect of the breaches.

(7) The Authority shall publish the Regulations on its website.

(8) The Authority shall conduct or cause to be conducted research into the social, economic, cultural and technical issues relating to broadcasting to guide the Authority to carry out its mandate.

(9) In pursuit of its mandate, the Authority shall pay particular attention to the provisions of Chapter 12 of the Constitution.

Licence and frequency authorisation

Requirement for a licence for public electronic communications service

3. (1) Except as otherwise provided under this Act a person shall not operate a public electronic communications service or network or provide a voice telephony service without a licence granted by the Authority.

(2) A person who wishes to operate a network or provide a service described in subsection (1) shall apply to the Authority in the manner specified in Regulations made under this Act.

(3) The Authority may grant or refuse an application for a licence based on policies and rules published from time to time.

(4) The Authority shall cause a notice to be published in the *Gazette* and on its website on the receipt, grant or refusal of a licence.

(5) Where an application for a licence is refused, the Authority shall notify the applicant in writing of its decision and the reasons for the refusal within seven days of the refusal.

(6) The terms of a licence shall be made available to the public at the office of the Authority and on the website of the Authority and a member of the public may obtain a copy or an extract of the terms on payment of the prescribed fee.

(7) The Authority shall determine applications for licences in a non-discriminatory and transparent manner.

(8) A person who intends to operate submarine cables within this country to connect to a telecommunications network shall first obtain a licence, in addition to any other licence, approvals, or permits required under any other law.

(9) The Authority shall conduct public hearings in respect of applications for licences under this section when the applications are made in the first instance.

(10) The Authority may grant a class licence in place of an individual licence if it considers that appropriate.

(11) A diplomatic mission in Ghana may be granted permission to operate a radio communication system on application to the Authority through the Ministry of Foreign Affairs if

(a) the Government of the diplomatic mission concerned provides reciprocal facilities to the Government of Ghana,

(b) the station is to

(i) be installed in accordance with this subsection, and

(ii) operate in accordance with the International Telecommunications Convention and the Radio Regulations of the International Telecommunications Union, and

(c) the power output of the transmitter is not higher than necessary for transmitting to the state to which the diplomatic mission belongs and is in any case not more than five kilowatts.

(12) Despite any other provision of this Act, the Authority may require that a person operating a type of electronic communications network or providing a type of electronic communication service for which a licence is not required under this section must notify the Authority within fourteen days of commencing operations.

Licence conditions

4. (1) A licence issued under this Act may be subject to conditions that the Authority considers necessary in line with the objectives of the Authority.

(2) Without limiting the power conferred on the Authority under this Act or the National Communications Authority Act, 2008 (Act 769), each individual licence or class licence shall contain conditions that

include:

- (a) a requirement for the effective and efficient use of scarce resources such as radio frequencies, numbers and rights-of-way;
- (b) the networks and services which the licensee is entitled to operate or provide and the networks to which the licensee's network can or cannot be connected; .
- (c) the duration of the licence;
- (d) the build out of the licensee's network and geographical and subscriber targets for the provision of the licensee's services,
- (e) provision of telephone numbers for emergency services;
- (f) obligations to provide certain information to the Authority for regulatory and statistical purposes and to make public non-proprietary information;
- (g) obligations that relate to customer protection;
- (h) obligations to provide customer database information for a universal directory;
- (i) the provision of services to rural or sparsely populated areas or other specified areas in which it would otherwise be uneconomical to provide service;
- (j) the provision of services to persons with disability and other social responsibility obligations;
- (k) contribution towards the provision of universal service and access;
- (l) the payment of licence fees;
- (m) obligations that relate to interconnection of networks and interoperability of services, data protection and the avoidance of harmful interference;
- (n) infrastructure sharing obligations;
- (o) the control of anti-competitive conduct on the part of the licensee;
- (p) the provision to the Authority of documents and information required by the Authority for the performance of its functions;
- (q) the publication by the licensee of its charges and other terms and conditions of doing business;

- (r) the provision by the licensee of directory information and directory inquiry services;
- (s) the regulation of prices and the quality of the services provided by the licensee;
- (t) the technical standards to be met by the licensee's telecommunications network or service;
- (u) the allocation to and use by the licensee of numbers;
- (v) the transfer and the renewal of the licence and change of ownership in the shareholding of the licensee;
- (w) prescriptions regarding national defence and public security; and
- (x) restriction on some of or all the conditions and modification of the duration of the licence.

Obligations with respect to individual licences

5. (1) A network operator or service provider shall

- (a) pay the fees specified by the Authority,
- (b) not assign the licence without the prior written approval of the Authority,
- (c) upon written request made by the President and subject to the Constitution, co-operate or collaborate with the President in matters of national security, and
- (d) observe the conditions of its licence and regulations that relate to the licence.

(2) A person who has a significant interest in a network operator or service provider shall not sell, transfer, charge or otherwise dispose of that interest or any part of that interest in the network operator or service provider, unless notice is given to the Authority thirty days before the proposed transaction.

(3) A network operator or service provider shall not without first giving notice to the Authority

- (a) cause, permit or acquiesce in a sale, transfer, change or other disposition of a significant interest,
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of that network operator's or service provider's share capital that results in
 - (i) a person acquiring a significant interest in that network operator or service provider, or
 - (ii) a person who already owns or holds a significant interest in the network operator or service provider,

increasing or decreasing the size of that person's interest.

(4) A person who acquires a significant interest in a network operator or service provider shall notify the Authority within fourteen days of the acquisition.

(5) Despite this section, where a sale, transfer, charge or other disposition referred to in subsection (2) is as a result of an internal reorganisation of a network operator or service provider,

- (a) the notification to the Authority under subsection (4) is not required, and
- (b) the network operator or service provider shall, as soon as reasonably practicable, notify the Authority of the nature and extent of the sale, transfer, charge or other disposition.

Obligations of individual licensees

6. (1) A network operator or service provider shall

- (a) submit to the Authority any information that relates to the modification of its network or service;
- (b) provide users, under conditions which are published or are otherwise notified to the Authority, access to and the opportunity to use the network or service on a fair and reasonable basis;
- (c) not discriminate among similarly situated users and shall transmit communications without discrimination, subject to section 25;
- (d) not engage in anti-competitive pricing and other related practices in order to lessen competition;
- (e) not use revenues or resources from one part of its business to unfairly cross-subsidise another electronic communications network or service, without the written approval of the Authority;
- (f) satisfy standards of quality in accordance with its licence and the Regulations;
- (g) file a report with the Authority on the quality of its service as measured against the quality of service performance indicators set by the Authority and publish other reports that the Authority may authorise;
- (h) develop, publish and implement procedures for responding to user complaints and disputes related to quality of service, statements of charges and prices and respond quickly and adequately to the complaints;

- (i) submit complaints from and disputes with
 - (i) other licensees,
 - (iii) operators of electronic communications networks,
 - (iii) providers of electronic communications services,
 - and
 - (iv) other users,to the Authority for resolution where the complaints or disputes are because of the licensee's exercise of its rights and obligations under the licence;
 - (j) file with the Authority samples of user agreements with end-users and any amendments of the agreements for the provision of public electronic communications services;
 - (k) permit the resale of its electronic communications service and not impose unreasonable or discriminatory conditions or limitations on the resale;
 - (l) provide and contribute to universal service and universal access in accordance with policies established under the National Electronic Communications Policy, amendments to the Policy and any other policies that the Minister may establish;
 - (m) *not* impair or terminate the electronic communications service provided to a user during a dispute, without the written approval of the Authority;
 - (n) disconnect terminal equipment which is attached to an operator's network in contravention of this Act and which
 - (i) is unsafe to the user,
 - (ii) is not in compliance with international standards, or
 - (iii) poses a risk of physical harm to the network;
 - (o) provide number portability when required to do so and in accordance with the requirements specified by the Authority; and
 - (p) provide dialing parity to other operators and service providers in accordance with requirements specified by the Authority.
- (2) The Authority shall specify
- (a) quality of service indicators for classes of public telecommunications service, and
 - (b) the means to enforce a licensee's compliance with its stated quality of service standards, including measures by which a

licensee shall compensate users adversely affected by a failure to provide electronic communications service in accordance with the standards.

(3) Where an operator has significant market power, as determined in accordance with the criteria set out in this Act, the operator shall make available to other operators of electronic communications networks or providers of electronic communications services, technical information regarding the network or service, including planned deployment of equipment and other information relevant to the other network operator or service provider.

Class licences or authorisations

7. (1) The Authority may grant a Class Licence or authorisation for the operation of

- (a) value added services,
- (b) resale of electronic communications capacity or services by private operators to the public,
- (c) networks for wholesale, private line or public distribution,
- (d) domestic telephone service, or
- (e) other services for which the Authority considers Class Licence to be appropriate.

(2) A Class Licence gives a person the right to carry on the activities subject to the conditions specified in the licence.

(3) A Class Licence shall specify the electronic communications network or service it authorises, a person's eligibility for the Class Licence and the conditions of the Class Licence, including

- (a) the scope of the licensed networks or services,
- (b) applicable technical and operational standards or conditions,
- (c) the location in which the authorised networks are to be operated or the authorised services are to be provided,
- (d) the duration of the licence, and
- (e) other requirements.

(4) The Authority shall issue within the period specified in this Act or Regulations made under this Act a declaration that a person is authorised to operate the electronic communications network or provide the electronic communications service specified in the Class Licence .. -

(5) The Authority may issue the declaration immediately after the registration if it considers it appropriate.

(6) A person who has a Class Licence must notify the Authority of any change or inaccuracy in the information provided for the registration or any change in its operations that makes it ineligible for the Class Licence within fourteen days after the operator becomes aware of the occurrence.

Obligations of operators of electronic communication networks and communications service

8. (1) A network operator or a service provider who is a holder of a Class Licence shall not use or permit another person to use or disclose confidential, personal or proprietary information of a user, another network operator or service provider without lawful authority unless the use or disclosure is necessary for

- (a) the operation of the network or service,
- (b) the billing and collection of charges,
- (c) the protection of the rights or property of the operator or provider, or
- (d) the protection of the users or other network operators or service providers from the fraudulent use of the network or service.

(2) The Authority may authorise a network operator or service provider to disclose lists of its subscribers, including directory access databases, for the publication of directories or for other purposes that the Authority may specify.

Requirement for a frequency authorisation

9. (1) A person shall not use a spectrum for designated services without a frequency authorisation granted by the Authority.

(2) A person who wishes to use a spectrum shall apply to the Authority in the manner specified in Regulations.

(3) The Authority may grant or refuse an application for frequency authorisations in accordance with policies and rules published by the Authority.

(4) On the receipt, grant or refusal of an application for a frequency authorisation the Authority shall cause a notice to that effect to be published in the *Gazette* and on its website.

(5) Where an application for frequency authorisation is refused, the Authority shall notify the applicant in writing within seven days after the refusal and give reasons for the refusal in the notice.

- (6) The terms of a frequency authorisation may be accessed by the public at the office of the Authority and a copy or an extract of the terms may be obtained from the Authority, by a member of the public, on payment of the specified fee.

(7) Where it appears to the Authority that the frequency authorisation contains information relating to national security or other international obligations, the Authority may withhold that information from the public.

(8) A frequency authorisation shall be consistent with the spectrum plan established under this Act and Regulations and shall confer on the authorisation holder the right to use a specified frequency band subject to the conditions set out in the frequency authorisation.

(9) The holder of a frequency authorisation shall utilise only the spectrum granted for the service and shall do so in accordance with the terms of its licence.

(10) The Authority shall not discriminate in the determination of frequency authorisation.

Obligations regarding frequency authorisation

10. (1) A holder of a frequency authorisation shall

- (a) pay the fees specified by the Authority,
- (b) strictly adhere to the authorised frequency band,
- (c) not assign the frequency authorisation without the written approval of the Authority,
- (d) on a request made by the President and subject to the Constitution co-operate with the Government in matters of national security, and
- (e) observe the Regulations made under this Act and the conditions of the authorisation.

(2) A person who has a significant interest in the holder of a frequency authorisation shall not sell, transfer, charge or otherwise dispose of that interest, or any part of that interest, unless that person gives the Authority at least thirty days notice in writing before the proposed transaction.

(3) A holder of a frequency authorisation shall not without at least thirty days notice to the Authority

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition of a significant interest in the holder, or

- (b) issue or allot any shares or cause, permit or acquiesce in any other re-organisation of its share capital that results in
 - (i) a person acquiring a significant interest in the holder, or
 - (ii) a person who already has a significant interest in the holder, increasing or decreasing the size of that interest.

(4) The written approval of the Authority is not required where a sale, transfer, charge or other disposition is the result of an internal re-organisation of a body corporate and does not constitute ultimate transfer of control of a holder but the holder shall, as soon as is reasonably practicable, notify the Authority of the nature and extent of the sale, transfer, charge or other disposition.

Conditions of frequency authorisations

11. A frequency authorisation shall contain conditions that relate to]

- (a) the expiration of the frequency authorisation and the time required for an application for renewal,
- (b) the duration of the authorisation,
- (c) the circumstances under which the frequency authorisation may be amended for force majeure, national security, changes in national legislation and implementation of international obligations and the public interest,
- (d) the use of the authorised frequency band,
- (e) the type of emission, power and other technical requirements for the radio-communication service, and
- (f) other matters that the Authority may specify for frequency authorisation.

Authorisation to operate in territorial waters or airspace

12. Despite section 10 (1), a ship or aircraft operating in the territorial waters or airspace of Ghana, which is not registered in the country is not required to have authorisation from the Authority for a radio-communication service if the service is operated under a valid authority or frequency authorisation issued in another country in accordance with international agreements relating to radio-communication as regards ships or aircrafts.

Suspension and revocation of licences and frequency authorisations

13. (1) The Authority may suspend or revoke a licence or a frequency authorisation where

- (a) the licence or the authorisation holder has failed to comply materially with any of the provisions of this Act,

- Regulations or the terms and conditions of its licence or frequency authorisation,
- (b) the licensee or the authorisation holder has failed to comply materially with a lawful direction of the Authority,
 - (c) the licensee or the authorisation holder is in default of payment of a fee or other money charged or imposed in furtherance of this Act, the National Communications Authority Act, 2008 (Act 769) or Regulations.
 - (d) the licensee ceases to
 - (i) operate the public communications network,
 - (ii) provide the public electronic communications service, or
 - (iii) use the frequency band,
 - (e) the suspension or revocation is necessary because of national security or is in the public interest, or
 - (f) imposition of a fine under the Act will not be sufficient under the circumstances.

(2) The Authority shall, before exercising the power of suspension or revocation under this section, give the licensee or the authorisation holder thirty days notice in writing of its intention to do so and specify in the notice the grounds on which it proposes to suspend or revoke the licence or the frequency authorisation.

(3) Where the Authority decides to suspend or revoke a licence or authorisation, the Authority shall give the licensee or authorisation holder the opportunity

- (a) to present its views"
- (b) to remedy the breach which has occasioned the decision to suspend or revoke the licence, and
- (c) to submit to the Authority within the time specified by the Authority a written statement of objections to the suspension or revocation of the licence or the frequency authorisation.

(4) The suspension or revocation of a licence or a frequency authorisation shall take effect on the date specified by the Authority in the notice under subsection (2).

(5) Until the Authority suspends or revokes a licence or authorisation, the licensee or the authorisation holder shall continue to operate and if the period of the licence or the frequency authorisation comes to an end before the decision by the Authority, an interim renewal of the licence or the frequency authorisation shall be granted on the same

terms.

(6) A licence shall be revoked on the making of a winding up order by the Court or the Registrar-General.

Amendment of licences and frequency authorisations

14. (1) A licence or a frequency authorisation may be amended by a written agreement between the licensee or the holder of the frequency authorisation and the Authority, where

- (a) force majeure, national security considerations, change in national legislation or the implementation of an international obligation require the amendment, or
- (b) the Authority, on account of the public interest, decides that the amendment is necessary to achieve the objects of the Authority,

(2) Where a licence or a frequency authorisation is amended on grounds of national security the licensee or the authorisation holder is entitled to compensation.

(3) The Authority shall not amend a licence or frequency authorisation if it has not given the licensee or authorisation holder adequate advance notice in writing and in any case the notice shall not be given less than ninety days before the proposed amendment.

(4) The Authority shall state in the notice the reasons for the amendment and the date on which the amendment takes effect, and shall give the licensee or the authorisation holder the opportunity to

- (a) present its views, and
- (b) submit to the Authority a written statement of objections to the amendment which may include proposed alternatives to the amendment within the time specified by the Authority.

(5) The Authority shall take into account the views and the written statement of the licensee before reaching a decision on the amendment.

(6) A licensee or an authorisation holder may request the Authority to amend its licence or frequency authorisation.

Emergency licences

15. Section 14 does not preclude the Authority from amending a licence or a frequency authorisation without notice where there is, or there is likely to be, a risk to national security, or where immediate amendment is essential in the public interest.

Duration and renewal of licence and frequency authorisation

16. (1) The duration of a licence shall be stated in the licence.

(2) Subject to subsection (3), on an application by the licensee or authorisation holder, the Authority may renew a licence or frequency authorisation granted under this Act.

(3) An application for the renewal of a licence shall be refused if

- (a) the licensee or the authorisation holder failed to comply materially with any of the provisions of this Act, Regulations or the terms and conditions of the licence or the frequency authorisation,
- (b) the Authority is satisfied that the applicant will not comply with this Act, Regulations or the terms and conditions of the licence or the frequency authorisation if the licence is renewed,
- (c) the licensee or the authorisation holder has failed to comply materially with any lawful direction of the Authority, or
- (d) in the case of an operator or service provider, the Authority determines that it is not in the public interest to renew the licence and gives the operator or service provider notice of the decision not less than three years before the expiration of the licence.

(4) A licence which is of less than three years duration shall contain the period required for a notice under subsection (3) (d).

(5) Subject to subsection (3) (d), the Authority shall give the licensee or the authorisation holder advance notice of not less than thirty days of its intention not to renew the licence or frequency authorisation.

(6) The Authority shall state the grounds for its contemplated refusal of the renewal of a licence or authorisation and shall give the licensee or the authorisation holder the opportunity

- (a) to present its views, and
- (b) to submit to the Authority within the time specified by the Authority a written statement of objections to the refusal.

(7) The Authority shall take into account the views and the written statement of the licensee or the authorisation holder before reaching its final decision.

Regulation of premium rates

17. (1) The Authority may set conditions to regulate the provision, content, promotion and marketing of premium rate services.

(2) A service is a premium rate service if

- (a) there is a charge for the provision of the service,

- (b) the charge is required to be paid to the provider of the telecommunications service.
 - (c) that charge is imposed for the use of the telecommunications service,
 - (d) it has the contents of electronic communications transmitted by means of an electronic communications network, and
 - (e) it allows the user of an electronic communications service to access a facility provided by that service to make a transmission.
- (3) A person provides a premium rate service if that person
- (a) provides the service described in subsection (2),
 - (b) exercises editorial control over the contents of the service,
 - (c) packages together the contents of the service for the purpose of facilitating its provision,
 - (d) makes available a facility comprised in the service,
 - (e) is the provider of an electronic communications service used for the provision of the service and is entitled under arrangements made with a provider of the service falling within paragraph (a) to (d), to retain some or all of the charges received in respect of the provision of the service or of the use of the electronic communications service,
 - (f) is the provider of an electronic communications network used to provide the service and an agreement relating to the use of the network for that service subsists between the provider of the network and a person who is a provider of the service falling within paragraph (a) to (d), and
 - (g) is the provider of an electronic communications network used to provide the service and the use of that network
 - (i) for the premium rate services, or
 - (ii) of services that include or may include premium rate services,and is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the service by virtue of paragraph (e) or (f).

Special licences

18. (1) The Authority may grant a special licence where it determines that an emergency or other exigent circumstance exists.

(2) A person who wishes to obtain a special licence shall apply to

the Authority in the manner specified in Regulations made under this Act.

(3) A special licence shall be for a duration determined by the Authority and may only be renewed in exceptional circumstances.

Directions for the reporting of information

19. (1) The Authority may, by notice published in the *Gazette* and on its website, issue directions to

- (a) service providers,
- (b) network operators, or
- (c) persons holding frequency authorisation

to make returns or furnish documents to the Authority for statistical or regulatory purposes.

(2) The notice shall specify the period within which the returns are to be made or the documents furnished.

(3) The directions may provide differently for different persons, circumstances or cases.

(4) A service provider or network operator or a person holding a frequency authorisation that fails, within the period specified, to make a return or furnish documentation to the Authority in accordance with directions issued under subsection (1) commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units.

(5) Where a person convicted of an offence fails to pay the fine, the fine shall be treated as a civil debt and execution may be levied in accordance with the High Court (Civil Procedure Rules), 2004 (C.I.47).

Interconnection

Interconnection

20. (1) A network operator shall in addition to the obligations contained in its licence or under this Act, provide interconnection of its electronic communications network with the network of another operator.

(2) A service provider shall subject to the obligations contained in its licence or under this Act provide for the transmission and routing of the services of other operators or service providers, at any technically feasible point specified by the Authority.

(3) A request by a network operator to another network operator for interconnection shall be

- (a) in writing, and
- (b) responded to in writing within fourteen days after receipt.

(4) A request for interconnection, transmission and routing of service may only be refused on reasonable technical or financial grounds which must be stated in writing.

(5) The network operator or service provider shall

- (a) comply with guidelines and standards established by the Authority in Regulations or another relevant law to facilitate interconnection,
- (b) on request provide points of interconnection in addition to those offered. generally to other network operators or service providers, subject to rates that reflect the network operator's or service provider's total economic cost of constructing additional facilities necessary to satisfy the request,
- (c) provide the elements of interconnection to other network operators and service providers, in a manner that is at least equal in both quality and rates to that provided by that network operator or service provider to
 - (i) its own business units,
 - (ii) body corporate with which it is affiliated, or
 - (iii) any other party to which the network operator or service provider provides interconnection and without regard to the types of users to be served, or the types of services to be provided, by the other operator or service provider,
- (d) promptly negotiate, on the request by another network operator or service provider, and endeavour to conclude, an agreement with regard to the charges and the technical and other terms and conditions for the elements of interconnection subject to paragraph (g),
- (e) submit to the Authority a copy of any agreement concluded under paragraph (d) within seven days after the conclusion to enable the Authority to determine whether the agreement complies with the guidelines established under this Act,
- (f) offer, on a non-discriminatory basis, the terms and conditions of an agreement concluded under paragraph (d) or required by a decision made under paragraph (g) to any other network operator or service provider seeking interconnection,

- (g) submit to the Authority for prompt resolution, and in accordance with procedures adopted by the Authority any dispute that may arise between the network operator or service provider and any other licensee as regards interconnection, including
 - (i) denial of interconnection,
 - (ii) failure to conclude an agreement promptly under paragraph (d), or
 - (iii) disputes as to price and any technical, commercial or other term or condition for interconnection, and
 - (h) be bound by a decision made by the Authority under paragraph (g).
- (6) The Authority shall promptly decide an interconnection dispute referred to it within fourteen days after the referral.
- (7) An interconnection agreement concluded under subsection (3),
 - (a) shall be made available for public scrutiny at the office of the Authority, or
 - (b) may be reproduced by the Authority at the request of a member of the public on payment of the prescribed fee, but those parts of the agreement which in the opinion of the Authority contain the commercial strategy of the parties shall not be made available or be reproduced.
- (8) A network operator or service provider who has significant market power shall
 - (a) disaggregate its network or its service or its network and service and on a cost-oriented basis specified by the Authority establish prices for its individual elements and offer the elements at the established prices to other operators and service providers,
 - (b) publish, in the manner specified by the Authority the prices, technical, commercial and other terms and conditions pertaining to its offer for elements of interconnection, and
 - (c) permit other network operators and service providers to have equal access to directory listing, operator services, directory assistance and directory listing without unreasonable delay, in accordance with requirements specified by the Authority.
- (9) Where a network operator or service provider who has significant market power fails to comply with its obligations, the Authority may notify the network operator of a deadline within which it has to

comply and if the operator fails to comply within the deadline given, the Authority may apply to the High Court for an order to compel it to comply.

(10) The Authority may classify a network operator or service provider as dominant if individually or jointly with others, that network operator or service provider enjoys a position of economic strength that enables it to behave to an appreciable extent independently of competitors and users.

(11) In making the classification under subsection (10), the Authority shall take into consideration

- (a) the relevant market,
- (b) technology and market trend,
- (c) the market share of the operator or service provider,
- (d) the power of the operator or service provider to introduce and sustain a material price increase independently of competitors,
- (e) the degree of differentiation among networks and services in the market, and
- (f) any other matter that the Authority considers relevant.

(12) Where an operator or service provider which is classified as dominant by the Authority considers that it has lost its dominance with respect to a network or service, it may apply to the Authority to be classified as non-dominant and if the Authority grants the application, the applicable licence shall be amended to reflect the classification,

(13) The Authority may only classify or declassify a network operator or service provider as dominant, if it first publishes the intention to do so in the *Gazette* and on its website.

Access to facilities and international transmission capacity

Access to facilities and public rights of way

21. (1) An operator shall give access to other operators who request access to the facilities or public rights of way or statutory wayleaves that it owns or controls on a timely basis

(2) Where, a network operator requests the use by its network of a utility installation owned by a public utility it shall have the right to use the installation in accordance with this section and where any public utility requests the use of facilities of a network operator, the public utility shall have the rights of the network operator under this section.

(3) Access to facilities and utility installations shall be negotiated

between or among network operators and public utilities on a non-dis-

criminary and equitable basis and charges payable shall be determined on a cost-sharing basis.

(4) At the request of the parties, the Authority may assist in negotiating an agreement between them.

(5) A network operator or public utility may deny access to a facility or utility installation only where it demonstrates that the facility or utility installation has insufficient capacity, taking into account its reasonably anticipated requirements, or where there are reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(6) The Authority may regulate the rates, terms and conditions for access to a facility or utility installation, and shall ensure that the rates, terms and conditions are just and reasonable and to the greatest extent possible, based on a cost-sharing formula.

(7) In carrying out its functions under this section, the Authority may adopt necessary and appropriate procedures to resolve disputes concerning the rates, terms and conditions.

(8) The owner of a shared facility shall be responsible for the maintenance of the facility and the responsibility for the connection and engineering of other occupiers equipment shall be by agreement of the parties.

(9) Under this section, access to facilities does not include inter-connection.

Access to international transmission capacity

22. Access to international transmission capacity shall be made available to all service providers in a cost-based, transparent, and non-discriminatory manner determined by the Authority.

Universal service, universal access and tariffs

Universal service

23. (1) The Authority shall determine the public telecommunications services in respect of which the requirement of universal service shall apply, taking into account the needs of the public, affordability of the service and advances in technologies.

(2) Universal service includes, at a minimum, a high quality public telephone service, that offers

- (a) a free telephone directory for subscribers of the service,
- (b) operator assisted information service,
- (c) free access to emergency number information,

- (d) telecommunications services, and
- (e) provision of services that enable persons with disability to make and receive calls.

(3) The Authority shall determine

- (a) the manner in which a public telecommunications service is provided and funded in order to meet the requirements of universal service, and
- (b) the obligations, if any, of the providers and users of the service.

(4) The Authority may require providers of private electronic communications services, closed user group services and value added services, and the users of these services and of any other electronic communications services to contribute to the funding of universal service with the approval of the Minister.

(6) A public electronic communications service that offers universal service shall not terminate its service to the public without first obtaining written approval from the Authority.

Universal access

24. (1) Universal access includes

- (a) access, through broad geographic coverage, to community-based broadband information and communication services that include voice, data services, access to the internet, local relevant content, community radio and Government services, that are affordable and of high quality,
- (b) signal coverage of mobile and broadcast networks throughout remote regions, and
- (c) access to the services in paragraphs (a) and (b) by kindergarten, first and second cycle institutions, community colleges, universities, community health facilities, hospitals, telecentres and any other public or private community centres.

(2) In accordance with the policy established by the Minister, the Authority shall determine

- (a) the manner in which universal access shall be provided, and
- (b) the obligations, if any, of the providers and users of the service.

(3) The Authority may, with the approval of the Minister, require

- (a) a provider of a private electronic communications service, closed user group service or value added service, and

(b) the users of these services and of any other electronic communications service to contribute to the funding of universal access.

(4) The obligation to provide and contribute to the funding of universal access shall be determined in a transparent manner and on a non-discriminatory basis between similarly situated providers of electronic communications services and users.

Tariffs

25. (1) Tariffs for electronic communications services, except those which are regulated by the Authority under this section shall be determined by service providers in accordance with the principles of supply and demand.

(2) The Authority may establish price regulation regimes, which may include the setting, review and approval of prices by Regulation, where

(a) there is only one network operator or service provider or one network operator or service provider that has significant market power,

(b) a sole network operator or service provider or a network operator or service provider with significant market power and cross-subsidises another electronic communications network or service, and

(c) the Authority detects anti-competitive pricing or acts of unfair competition.

(3) A service provider shall provide rates that are fair and reasonable and shall not discriminate among similarly situated persons, including the service provider and any body corporate with which it is affiliated except as otherwise provided in this Act.

(4) The Authority may prescribe a method to regulate the cost of the service for any public electronic communications service in which a service provider is dominant by establishing a ceiling on the cost, or by other methods that it considers appropriate.

(5) A service provider shall publish the prices, terms and conditions for its public electronic communications services at the times and in the manner that the Authority shall specify and the prices, terms and conditions shall, be the lawful prices, terms and conditions for the services subject to this Act and the conditions of the licence.

*Consumer protection***Duty to carry out consumer research**

26. (1) The Authority shall periodically ascertain public opinion on the performance of service providers and network operators.

(2) The Authority shall

(a) publish the results of research that it carries out or that is carried out on its behalf on its website and in any other manner that it considers appropriate to bring the results to the attention of the public, and

(b) take account of the results of the research in performing its functions.

Duty to consult consumers

27. (1) The Authority shall establish and maintain effective arrangements for consultation with consumers on the performance of its functions.

(2) The Authority shall create a mechanism for dealing with complaints or concerns of consumers of telecommunication services and shall bring the complaints or concerns to the attention of network operators and service providers.

Duty to establish a Consumer Code

28. (1) The Authority shall, prepare a Consumer Code on its own or in conjunction with the Industry Forum which shall include procedures for

(a) reasonably meeting consumer requirements,

(b) the handling of customer complaints and disputes and for the compensation of customers in case of a breach of the Consumer Code, and

(c) the protection of consumer information.

(2) The Consumer Code may provide for

(a) the provision of information to customers on services, rates and performance,

(b) the provision of technical support to customers and repair of faults,

(c) advertisement of services, and

(d) customer charging, billing, collection and credit practices.

(3) The Consumer Code shall be published on the website of the Authority.

Industry Forum

Establishment of Industry Forum

29. (1) There is established under this Act, an Industry Forum which is a platform that periodically brings the industry together to discuss matters of common interest to the industry.

(2) The Authority may designate a body by notice within the industry to be the facilitator for the Forum if the Authority is satisfied that the body

(a) is capable of performing the function required under this section,

(b) has the administrative capacity to facilitate the Forum, and

(c) has agreed in writing to be the facilitator for the forum.

(3) A network operator, service provider or an electronic communications equipment manufacturer or dealer may participate in the activities of the Forum.

(4) The Authority may decide that a body that was previously designated to be the facilitator for the Forum shall no longer be the facilitator if the Authority is satisfied that the body has ceased to meet the requirements set out in subsection (2).

(5) A designation or withdrawal of designation under this section shall take effect from the time specified by the Authority.

(6) Until the Authority designates a facilitator, the Authority shall facilitate the meetings of the Forum.

(7) The Minister and the Authority shall participate in the Forum as observers.

Industry code

30. (1) An Industry Forum may

(a) on its own initiative, or

(b) upon request by the Authority,

prepare a voluntary industry code to deal with a matter provided for in this Act.

(2) The code is not effective until it is registered by the Authority.

(3) The Authority shall register a voluntary industry code if it is consistent with

(a) the objects of the Authority,

(b) Regulations, standards and guidelines made under this Act, and

(c) the provisions of this Act which are relevant to the particular matter or activity.

(4) The Authority may refuse to register a code if the Authority is satisfied that sufficient opportunity for public consultation has not been given in the development of the code by the Forum.

(5) If registration of the code is refused, the Authority shall notify the Forum in writing and provide the reasons for the refusal within thirty days of the refusal.

(6) If the Authority

(a) fails to register a code within thirty days after the date that the code was submitted for registration, and

(b) does not give the Forum notice of its refusal to register the code and the reasons for the refusal within the required period the Authority shall be deemed to have registered the code.

Ghana Investment Fund for Electronic Communications

Establishment of the Fund

31. There is established a Fund known as the Ghana Investment Fund for Electronic Communications.

Object of the Fund

32. The object of the Fund is to

(a) provide financial resources for the establishment of universal service and access for all communities, and

(b) facilitate the provision of basic telephony, internet service, multimedia service, broadband and broadcasting services to these communities.

Sources of money for the Fund

33. The sources of money for the Fund are

(a) contributions from operators and service providers as stipulated in their respective licences, or authorisations,

(b) moneys provided by Parliament to the Fund,

(c) moneys that may accrue to the Fund from investments made by the Trustees of the Fund,

(d) donations, grants and gifts, and

(e) any other money that may become lawfully payable to the Fund.

Composition of the Board of Trustees

34. (1) The Fund shall be administered and managed by a Board of Trustees that comprises

- (a) a chairperson,
- (b) the administrator of the Fund,
- (c) a representative of the National Communications Authority nominated by the Authority,
- (d) a member of the Parliamentary Select Committee on Communications nominated by that Committee,
- (e) a representative of the Ministry of Communications nominated by the Minister, and
- (f) five representatives elected by the Industry Forum.

(2) The Trustees shall be appointed by the President in accordance with article 70 of the Constitution.

Functions of the Board of Trustees

35. In furtherance of the management of the Fund the Trustees shall

- (a) pursue policies to achieve the object of the Fund;
- (b) collect or arrange to be collected moneys lawfully due the Fund;
- (c) account for the moneys in the Fund;
- (d) determine procedures for disbursement of the Fund and disburse the Fund;
- (e) monitor the utilisation of moneys disbursed by the Fund;
- (f) invest the moneys of the Fund in safe securities that the Board considers financially beneficial to the Fund; and
- (g) perform any other function incidental to the achievement of the object of the Fund.

Tenure of office of Trustees

36. (1) A Trustee excluding the Administrator shall hold office for a period not exceeding four years and is eligible for re-appointment but a Trustee shall not be appointed for more than two terms.

(2) Where a Trustee resigns, dies, is removed from office or is for a reasonable cause unable to act as a Trustee, the Minister shall notify the President of the vacancy and the President shall, acting on the advice of the nominating authority and in consultation with the Council of State appoint another person to hold office for the unexpired portion of the Trustee's term of office.

(3) A Trustee may at any time resign from office in writing addressed to the President through the Minister.

(4) A Trustee who is absent from three consecutive meetings of the Board of Trustees without reasonable cause ceases to be a Trustee.

(5) The President may by letter addressed to a Trustee revoke the appointment of that Trustee.

Meetings of the Trustees

37. (1) The Trustees shall meet at least once every two months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the Trustees convene an extra ordinary meeting of the Trustees at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Trustees is six Trustees or a greater number determined by the Trustees in respect of an important matter.

(4) The chairperson shall preside at meetings of the Trustees and in the absence of the chairperson, a Trustees elected by the Trustees present from among their number shall preside.

(5) Matters for decision by the Board of Trustees shall be decided by a majority of the Trustees present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Trustees may co-opt a person to attend a Trustees' meeting but that person shall not vote on a matter for decision at the meeting.

(7) The proceedings of the Board of Trustees shall not be invalidated because of a vacancy among the Trustees or a defect in the appointment or qualification of a Trustee.

(8) Subject to this section, the Trustees may determine the procedure for their meetings.

Disclosure of interest

38.(1) A Trustee who has an interest in a matter for consideration by the Board of Trustees shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Trustees in respect of that matter.

(2) A Trustee who contravenes subsection (1) ceases to be a Trustee.

Establishment of committees

39. The Trustees may establish committees consisting of Trustees or non Trustees or both to perform a function.

Allowances

40. The Trustees and members of a committee of the Trustees shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Ministerial directives

41. The Minister may give directives to the Trustees on matters of policy and the Trustees shall comply.

Appointment of the Administrator

42. (1) the President shall in accordance with article 195 of the Constitution appoint a Chief Executive of the Fund who shall be known as the Administrator.

(2) The Administrator shall subject to the directives of the Trustees, be responsible for the day-to-day management and administration of the Fund.

(3) The Administrator shall hold office on the terms and conditions specified in the letter of appointment.

Other staff

43. (1) The Fund shall have other staff and employees that the Trustees determine are necessary for the proper and effective performance of its functions

(2) The President shall in accordance with article 195 of the Constitution appoint the other officers and staff of the Fund.

(3) The Trustees may engage the service of consultants and advisors as they consider necessary for the effective performance of the functions of the Fund.

Bank accounts for the Fund

44. (1) Moneys of the Fund shall be paid into bank accounts opened by the Trustees for the Fund.

(2) Contributing operators shall pay their contributions directly into the account of the Fund upon verification by the Authority.

Disbursement from the Fund

45. (1) Disbursements from the Fund shall be solely in the form of start-up funds to provide basic communications and internet services in

rural areas and shall mainly take the form of non-commercial but competitive grants.

(2) The disbursement of funds

(a) for public telephony projects shall be by open tender,

(b) for internet point-of-presence and training contracts shall be by open tender,

(c) for applications related to rural areas, which do not have services and are seeking amounts less than the cedi equivalent of US\$50,000 shall be by direct disbursements.

(3) The Trustees shall ensure that disbursement are in accordance with approved programmes and order of priority of the Fund.

(4) The operational expenses including administrative expenses, salaries and other expenses incidental to the operation of the Fund shall be charged to the Fund.

(5) Where there are differences between the established procedures of the Trustees and those proposed by a donor or development partner, appropriate measures may be taken to ensure that the primary goals are maintained.

Prioritisation of projects

46. (1) Projects for which moneys from the Fund are disbursed shall satisfy the criteria laid out in the order of priority.

(2) The order of priority for support by the Fund is as follows:

(a) projects that are established to provide basic telephony service to rural areas;

(b) projects for the establishment of access to value-added services including introduction of internet points-of-presence in a district; and

(c) other projects that the Minister may designate as priority projects.

Accounts and audit

47. (1) The Trustees shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Trustees shall submit the accounts of the Fund to the Auditor-General for audit-within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The Internal Audit Agency Act, 2003 (Act 658) shall apply to , this Act.

(5) The financial year of the Fund shall be the same as the financial year of the Government.

Annual report and other reports

48. (1) The Trustees shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Trustees shall also submit to the Minister any other reports which the Minister may require in writing.

*Rural communication services***Access to frequency spectrum**

49. (1) The Authority shall cater for rural communication services in its role as manager of the radio spectrum resource but shall take into consideration the freedom of choice of technology by the network operator.

(2) The Trustees may recommend the waiver of part of the frequency fees for the provision of rural service to the Authority.

(3) The Trustees may not dictate the choice of technology or methodology but may encourage network operators to use current or state-of-the-art technology.

Tariffs for rural communication services

50. (1) The Trustees may make recommendations to the Authority as regards tariff rebalancing as well as initiation and termination costs in relation to rural communication services.

(2) The Authority shall ensure that the principle of special inter-connect applies to agreements for the provision of rural telecommunications services.

(3) Calls to rural areas shall not be priced higher as a result of a special interconnection agreement.

Monitoring of subsidised projects

51. (1) Projects that are subsidised by the Fund shall be independently monitored and evaluated on an on-going basis to ensure that universal access targets are met.

(2) A project subsidised by the Fund shall have reporting requirements.

Evaluation

52. (1) The following performance indicators shall be used to evaluate the Fund:

- (a) the growth in the number of districts that have access to basic telecommunication services;
- (b) *the* growth in the number of districts that have internet points-of-presence;
- (c) the growth in the number of vanguard schools or institutions that have been established;
- (d) the growth in the number of people trained at the vanguard schools or institutions;
- (e) the quality and quantity of programmes undertaken in the areas of content creation and information communication technology awareness;
- (f) the overall sustainability and profitability of the Fund supported programmes; and
- (g) the socio-economic impact of the Fund supported programmes in the communities.

(2) The Trustees shall advise the Minister on the most appropriate policy for rural communications development through the Authority.

(3) The policy shall be reviewed at two year intervals to take into account technological changes and to ensure that its provisions remain relevant.

(4) The Trustees shall be responsible for initiating a review and reform of the policy.

Tax exemption

53. The Fund is exempt from the payment of tax.

Road works and access to land

Road works

54. (1) A network operator may in connection with its operations

- (a) install or maintain a facility, and
- (b) remove a facility
 - (i) in or over a road or public ground, or
 - (ii) on the shore or the bed of the sea,

in accordance with the regulations of the Town and Country Planning Department, the Land (Statutory Wayleaves) Act, 1963 (Act 186) and any other relevant law.

(2) A network operator shall before carrying out road works under subsection (1),

- (a) obtain from the relevant authorities plans showing the utility installations that might be affected,
- (b) submit detailed plans of the intended road works to each utility installation owner likely to be affected by the works,
- (c) first obtain written permission from the affected utility installation owner for road works that might affect a utility installation,
- (d) notify the Authority of intended road works, and
- (e) obtain an environmental clearance certificate from the Environmental Protection Agency.

(3) Where a network operator fails to obtain the permission of a utility installation owner under subsection (2) (c), and there is a dispute, the Authority shall resolve the dispute .

(4) The Authority on receipt of a notice under subsection (2) (d), shall notify other operators or public utilities of the intended road works and inquire whether they have an intention to undertake similar road works.

(5) Before carrying out road works, a network operator shall publish a description of the works in both electronic and print media in the locality in which the road works are to be carried out and shall inform affected persons by a means specified by the Authority.

(6) Road works shall not commence until after the expiration of fourteen days from the date of the receipt of the permission and the environmental clearance certificate.

(7) The licensee may with the approval of the Authority dispense with the requirement set out in subsection (6) in the event of an emergency.

(8) A network operator may dispense with the requirement of subsection (2) (c) where the Authority certifies in writing that the intended road works are necessitated by an emergency.

(9) A network operator or public utility notified under subsection (4) shall not carry out road works within three months after the receipt of the notice except where the network operator or public utility proves to the satisfaction of the Authority the necessity of carrying out emergency works.

(10) The network operator shall carry out the removal or alteration of utility installation and where the affected utility installation owner carries out the removal or alteration, the cost shall be borne by the

network operator.

Repair and restoration

55. (1) Where a network operator damages a utility installation in the process of carrying out road works, the operator shall immediately notify the utility installation owner and repair the damage to the utility installation within two weeks and the costs arising from the repairs shall be borne by the network operator.

(2) A network operator shall, complete road works and restore the road and public grounds, including the removal of debris, to the satisfaction of the relevant authority as quickly as possible and within two weeks after completion of the road works.

(3) A network operator which fails to comply with subsection (2) is liable for the expenditure incurred in the restoration of the road and public grounds and for any other loss caused to another person.

Access to lands for inspection and maintenance

56. (1) An operator duly authorised in writing by the relevant authority may, at any reasonable time, enter and survey public land in order to ascertain whether the land is suitable for the operation of the operator's electronic communications network.

(2) Where, in the exercise of the power conferred by this section,

(a) damage is caused to land or to chattels, or

(b) a person is disturbed in the enjoyment of land or chattel, the operator shall make good the damage or pay compensation for the damage to or disturbance of the person whose interest in the land or chattels has been affected.

(3) An operator in the inspection of land, installation of facilities, or maintenance of facilities shall

(a) act in accordance with good engineering practice,

(b) protect the environment,

(c) protect the safety of persons and property, and

(d) ensure that the activity as far as practicable does not interfere with the operations of a public utility, road, path, the movement of traffic, or the use of public grounds.

Installation of facilities on private land or buildings

57. (1) An operator may install and maintain facilities along, on or over land or in a building and may enter any land or place, maintain a facility and repair or renew a facility on that land or place.

(2) A network operator who wishes to install a facility on private land or building shall

- (a) obtain the permission of the landowner, and
- (b) pay compensation to the landowner for the access to the land.

(3) In furtherance of the installation, a network operator

- (a) may lop or trim a tree that in its opinion is likely to damage or obstruct its facility,
- (b) shall avoid causing damage to property or a person and shall pay full compensation for any damage sustained by any person because of the installation, and
- (c) shall not

- (i) place a facility on private land or in a building in a manner that interferes with or obstructs any business or cultivation on adjoining land or the use of adjoining land by the occupier of that land, or

- (ii) lop or trim a tree on the land,

if it has not given at least fourteen days written notice to the owner or occupier of the adjoining land or building, specifying the work to be done and advising the owner or occupier of that owner's or occupier's right to give notice of an objection to the Authority.

(4) An owner or occupier or the agent of an owner or occupier of land or building who receives notice of a network operator's intention to place a facility on the land or building may within fourteen days after receipt of the notice object to the notice by writing to the Authority and the operator shall not proceed with the work or the part that is objected to until authorised by the Authority to do so.

(5) Where there is disagreement over the amount of compensation to which a landowner is entitled or where there is a dispute relating to the installation or maintenance of a facility on or over land or in a building, the matter shall be referred to the Authority.

(6) A network operator shall, to the extent feasible, provide access to its facilities to other network operators in accordance with section 20 and shall co-ordinate its installation or maintenance of facilities on or over private land or in a private building with other operators.

(7) The rights of an owner of land or property under this section does not limit any other rights or reliefs that the owner has at law.

Spectrum management

Spectrum

58. (1) The Authority shall control, plan, administer, manage and license the radio frequency spectrum for telecommunication.

(2) The Authority shall comply with the applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by the Republic in controlling, planning, administering, managing and licensing the use of the radio frequency spectrum.

(3) The Authority shall allocate the uses of the spectrum of the electronic communications sector in a manner that promotes the economic and orderly utilisation of frequencies by electronic communications networks and services.

(4) The Authority shall, in co-operation and consultation with the users of the spectrum in the electronic communications sector in the country, develop and adopt a spectrum plan for the allocation of the uses of the spectrum.

(5) The Authority shall consult bilaterally, regionally and internationally in developing the spectrum plan and in the co-ordination of the use of frequencies.

(6) The Authority shall make the spectrum plan available to a member of the public if that member pays the fee specified by the Authority.

(7) The spectrum plan shall state how the spectrum shall be used and the procedures that the Authority is to use to determine an application for authorisation to use a frequency band for telecommunication services.

(8) The procedure referred to in subsection (3) may include granting the authorisation for the use of the frequency band

- (a) through auction,
- (b) through tender,
- (c) at a fixed price, or
- (d) based on stated criteria.

Establishment of Spectrum Management Committee

59. There is established by this Act a Spectrum Management Committee which is a technical committee of the Authority.

(2) The Spectrum Management Committee is subject to section 58 responsible for the allocation of frequency bands to electronic communications operators or service providers in the country.

(3) The Committee consists of

- (a) the Director-General of the Authority,
- (b) the representative of the National Security Council on the Board of the Authority,
- (c) one representative of
 - (i) the Civil Aviation Authority,
 - (ii) the Centre for Scientific and Industrial Research,
 - (iii) the public universities,
 - (iv) the National Maritime Authority, and
 - (v) the National Media Commission.

Allocation of frequency bands

60. (1) Subject to subsection (2) and despite any frequency authorisation granted by the Authority, the Authority may, in accordance with the spectrum plan, allocate and reallocate a frequency band.

(2) The Authority shall give priority to the needs of the Government in respect of matters of national security in the allocation and re-allocation of a frequency band.

(3) The Authority may terminate a frequency authorisation if the authorisation holder refuses to migrate to the new technology as a result of change of technology.

Considerations for allocation of frequency

61. The Authority in performing its functions under sections 58, 59 and 60 shall take into account

- (a) the impact of the spectrum plan on existing and future use,
- (b) the efficient use of the spectrum,
- (c) any applicable regional agreements, standards and arrangement,
- (d) any applicable international standards, International Telecommunication Union Treaties and other international agreement, and
- (e) any other relevant matters having regard to the circumstances of the case.

Frequency monitoring stations

- 62.** The Authority may operate frequency monitoring stations to
- (a) monitor the use of the frequency spectrum, and
 - (b) carry out a technical function necessary for fulfilling the requirements of the Radio Regulations of the International Telecommunication Union.

Harmful interference

63. (1) A person shall not operate a facility, terminal equipment or other equipment in a manner that is likely to cause harmful interference except as is necessary on the grounds of national security.

(2) Where the Authority is of the opinion that the use of a facility, terminal or other equipment is likely to cause or has caused or is causing harmful interference, the Authority may

- (a) serve notice on the person in possession of the facility, terminal equipment or other equipment requiring that person to cease the use of the facility, terminal or equipment within seven days from the date of service of the notice, or
- (b) impose limits as to when the facility, terminal, equipment or other equipment may be used, and

whether or not reasonable steps have been taken to minimise the interference

Space segment

64. The Authority shall ensure that access to the space segment is made available on a non-discriminatory and equitable basis in allocating frequency bands for electronic communications services that use satellite systems.

The National Electronic Communications Numbering Plan

The establishment of the National Electronic Communication Numbering Plan

65. (1) The Authority shall establish, control, and manage a National Electronic Communication Numbering Plan for network and applications services.

(2) The plan may set out for network and applications services conditions which include

- (a). the use of different numbers for different kinds of service including emergency services,
- (b) the assignment of numbers,

- (c) the transfer of assigned numbers,
 - (d) the use of assigned numbers,
 - (e) requirements for network service providers and applications service providers to maintain a plan to assign and reassign numbers,
 - (f) the portability of assigned numbers, and
 - (g) the rates which may be imposed by the Authority for the assignment and transfer of numbers.
- (3) The Authority shall publish in the *Gazette* the National Telecommunications Numbering Plan which shall specify
- (a) the numbers that the Authority has determined to be available for allocation as telephone numbers,
 - (b) restrictions that the Authority considers appropriate for the adoption of numbers available for allocation in accordance with the plan, and
 - (c) restrictions that the Authority considers appropriate for all other uses to which numbers available for allocation in accordance with the plan may be put.
- (4) The Authority shall periodically but in any case within two years review the National Telecommunications Numbering Plan.
- (5) Subject to subsection (3), the Authority shall publish the plan on its website and in any other manner that appears to the Authority to be appropriate to bring the contents of the plan to the attention Of the general public. .
- (6) The plan shall be subject to the approval of the Minister and the Minister shall give or refuse approval of the plan within seven days after the submission of the plan to the Minister.
- (7) The Minister may direct the exclusion from the plan of numbers that the Minister considers inappropriate for use as telephone numbers.

Terminal equipment and technical standards

Terminal equipment

66. (1) Any terminal equipment sold or otherwise provided in this country may be connected to a public electronic communications network if the Authority certifies that the terminal equipment
- (a) is safe for the user,

- (b) is in compliance with international standards, and environmental, health and safety standards including standards for electromagnetic radiation and emissions,
- (c) meets the requirements of electromagnetic compatibility provisions of international treaties relating to electronic communications,
- (d) does not pose a risk of physical harm to the network,
- (e) effectively utilises the electromagnetic spectrum and prevents interference between satellite and terrestrial-based systems and between terrestrial systems, and
- (f) is compatible with the network.

(2) The Authority, in certifying terminal equipment under subsection (1), may recognise similar approvals from other jurisdictions that it may specify.

(3) Terminal equipment certified under this section shall bear labels or other markings determined by the Authority.

(4) The Authority may regulate, prohibit the sale or other distribution or connection of terminal equipment or other device that is provided in the country primarily for the purposes of circumventing, or facilitating the circumvention of a requirement of this Act.

(5) After the commencement of this Act, the Authority shall, as soon as reasonably practicable, specify the means by which terminal equipment and other accessories shall be provided and charged to users separately for the provision of public electronic communications services.

Technical standards

67. (1) Licensees and authorisation holders may implement technical standards that they consider appropriate and which are in conformity with accepted international standards.

(2) Despite subsection (1), the Authority may identify, adopt or establish preferred technical standards in Regulations or where necessary, require conformity to a stated standard.

Testing and inspection

Power to request information

68. The Authority may require a licensee, special licensee, authorisation holder or any other person, to supply information, including specific answers to questions submitted to the licensee, special licensee,

authorisation holder or that other person, concerning

- (a) an electronic communications network,
- (b) the use of the spectrum for which the licence, special licence or the frequency authorisation has been granted,
- (c) the operation of equipment or works carried out in relation to the network,
- (d) the use of the licensee's or special licensee's electronic communications network or service, .
- (e) operational and financial information, or
- (f) other information the Authority may consider relevant.

Pre-installation testing

69. (1) The Authority shall determine whether terminal equipment or any other equipment fulfils the criteria stipulated in this Act or Regulations in order to certify or approve the terminal equipment or other equipment to be installed or used for the network or service of

- (a) a public electronic communications network,
- (b) a public electronic communications service, or
- (c) a broadcasting service.

(2) In order to make the determination the Authority may require that the equipment be tested in a manner that it may specify.

(3) The Authority may waive the requirement for testing after consultation with the licensee, special licensee or authorisation holder, if it satisfied that the equipment has been certified in accordance with international standards.

Standards for testing

70. A test under section 69 shall be conducted in accordance with international standards and other standards prescribed by the Authority in Regulations.

Entry, search and inspection

71. (1) An authorised officer of the Authority may enter a place, vehicle, vessel, aircraft, or other contrivance from which electronic communications network or service is operated or provided, or from which a person is using a spectrum for telecommunications at a reasonable time and

- (a) test equipment or an article found in the place, vehicle, vessel, aircraft or other contrivance which is used or intended to be used to operate an electronic communications network, provide electronic communications service or which uses a spectrum,

- (b) examine the records or other documents related to the operation of the electronic communications network, the provision of the electronic communications service or the use of the spectrum,
- (c) search for equipment, articles, books, records or documents that may provide evidence of
 - (i) contravention of this Act or of Regulations, or
 - (ii) breach of a condition of the licence or frequency authorisationwhere necessary with the assistance of any other person authorised for the purpose by the Authority,
- (d) require the owner or person in charge of the place, vehicle, vessel, aircraft, or other contrivance to give the authorised officer the reasonable assistance required for the examination or search of the place, vehicle, vessel, aircraft or other contrivance, and
- (e) seize and take away equipment, articles, books, records or documents if it appears that there has been
 - (i) a contravention of this Act or of any Regulation or
 - (ii) a breach of condition of licence or frequency authorisation,and lodge the items seized with the Authority.

(2) In furtherance of subsection (1), the personnel of the Authority may be accompanied by a police officer.

(3) A licensee or authorisation holder shall produce the licence or frequency authorisation for inspection on request by an authorised officer of the Authority.

Enforcement powers of the Authority

Enforcement powers of the Authority

72. (1) The Authority may in furtherance of its functions

- (a) require the production of a document and information by a licensee,
- (b) apply to a District Magistrate for a warrant authorising the Authority or any other person named in the warrant
 - (i) to search premises and to break open and search any cupboard, drawer, container or other receptacle, whether a fixture or not, in the premises, and

- (ii) to take possession of, or secure against interference, any book which appears to be a book which the Authority has asked to be produced, if the Authority has reasonable grounds to believe that a document it has requested to be produced is on any premises but has not been produced,
- (c) require attendance and examination of a witness,
- (d) issue restraining orders in the "event of a breach of a condition of a licence,
- (e) impose a pecuniary penalty on a licensee for breach of a condition of a licence, and
- (f) assess and award damages to be paid by a licensee to a third party injured as a result of the breach by the licensee of the licence conditions.

(2) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) that relate to the search of premises.

(3) In this section "premises" includes any structure, building, place, aircraft, vehicle or vessel.

(4) The Authority shall specify by periodic notices in the *Gazette* and on its website the circumstances under which a pecuniary penalty and other penalties may be imposed and the basis on which they may be calculated.

Offences

Offences

73. (1) A person who

- (a) knowingly fails to comply with or acts in contravention of this Act,
- (b) knowingly fails to comply with prescribed standards and requirements for the use of radio spectrum,
- (c) provides electronic communications service without a licence where a licence is required for that service,
- (d) knowingly uses equipment in a manner that causes harmful interference,
- (e) knowingly obstructs or interferes with the sending, transmission, delivery or reception of communication,

- (f) intercepts or procures another person to intercept, without the authorisation of the provider or user, or a court order, or otherwise obtains or procures another person to obtain, unlawful access to communication transmitted over electronic communications network,
- (g) uses, or attempts to use, the content of any communication, knowing or having reason to believe that the content was obtained through unlawful interception or access under paragraph (e),
- (h) is not the sender or intended recipient of a transmitted message or data but who interferes with, alters or modifies, diverts, unlawfully discloses or decodes the transmitted message or data, or facilitates the commission of these act,
- (i) steals a transmitted message or data,
- (j) sells,
 - (i) or manufactures any system, equipment, card, plate or other device, or
 - (ii) offers for sale, produces, distributes electronic communication service,
- without licence, or
- (k) wilfully obstructs, hinders, molests or assaults personnel of the Authority duly engaged in the exercise of power conferred on the Authority under this Act or the National Communications Authority Act, 2008 (Act 769),

commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or to both.

(2) Where an offence is committed by a corporate entity that entity is liable to a fine of not more than nine thousand penalty units and each director of that entity shall be deemed to have committed the offence.

(3) Despite subsection (1), the Authority may, where a person has breached this Act, or Regulations or where a licensee, a special licensee or an authorisation holder has breached a condition contained in its licence, special licence or frequency authorisation

- (a) warn the person, licensee, special licensee or authorisation holder,
- (b) issue a cease and desist order,

- (c) apply to the High Court for
 - (i) an injunction to restrain the person, licensee, special licensee or authorisation holder from continuing the breach, or
 - (ii) other appropriate order to enforce compliance with this Act,
- (d) propose amendments to the licence or frequency authorisation in accordance with this Act,
- (e) suspend or terminate the licence or frequency authorisation in accordance with this Act, or
- (f) or take any other action that it considers appropriate and that is not contrary to this Act or the National Communications Authority Act, 2008 (Act 769).

(4) Despite subsection (1), a network operator or service provider may intercept any communication that is transmitted over its network or service,

- (a) if the interception is required to
 - (i) install, maintain or test equipment used or intended for use in the operation of the network or the provision of the service,
 - (ii) monitor the network or service quality,
 - (iii) bill and collect charges from the sender or recipient of the communication,
 - (iv) protect the network or service from harm,
 - (v) protect users, or
 - (vi) protect other network operators or service providers from the fraudulent use of their networks or services,
- (b) in furtherance of a Court order, or
- (c) in compliance with an executive instrument issued by the President.

Giving false information

74. A person who knowingly gives false or misleading information to the Authority commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units or to a term of imprisonment of not more than three years or to both.

False signals

75. A person who knowingly transmits or circulates false or deceptive distress, safety or identification signals commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or both.

False communications

76. (1) A person who by means of electronic communications service, knowingly sends a communication which is false or misleading and likely to prejudice the efficiency of life saving service or to endanger the safety of any person, ship, aircraft, vessel or vehicle commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or both.

(2) A person is taken to know that a communication is false or misleading if that person did not take reasonable steps to find out whether the communication was false, misleading, reckless or fraudulent.

(3) Subsection (2) does not apply to the operator or provider of a network or service over which a communication is sent.

Damage to equipment

77. A person who

- (a) recklessly, maliciously or negligently damages, removes or destroys a facility, or
- (b) recklessly, intentionally or negligently interferes with, causes damage to, or accesses without authorisation a computer, switch or other facility

used in connection with the operation or provision of electronic communications network or service, commits an offence, and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or both.

Recovery of civil debt

78. Without limits to the rights that a person may have at law, a person convicted of an offence under this Act is liable for the expenses reasonably incurred in the repair, restoration or replacement of a computer, switch or other facility damaged, removed or destroyed by that person and the expenses are recoverable as a civil debt.

Confidentiality and disclosure of personal information

79. A person who intentionally

- (a) discloses communication which that person knows was obtained in contravention of this Act, or
- (b) uses or discloses personal information in contravention of this Act,

commits an offence and is liable on summary conviction to a fine of not more than one thousand five hundred penalty units or to a term of imprisonment of not more than four years or both.

Re-programming mobile telephones

80. (1) A person commits an offence if that person

- (a) changes a unique device identifier, or
- (b) interferes with the operation of a unique device identifier.

(2) For the purposes of this section a unique device identifier is an electronic equipment identifier which is unique to a mobile wireless communications device.

(3) A person does not commit an offence under this section if that person

- (a) is the manufacturer of the device, or
- (b) does an act mentioned in subsection (1) with the written consent of the manufacturer of the device.

(4) A person who commits an offence under this section is liable on summary conviction to a fine of not more than three thousand penalty units or a term of imprisonment of not more than five years or both.

Possession or supply of a device for re-programming purposes

81. (1) A person commits an offence if

- (a) that person has custody or control of a device which may be used to change or interfere with the operation of a unique device identifier, and
- (b) there is reason to believe that that person intends to use the implement or device for an unlawful purpose or to allow it to be used for an unlawful purpose.

(2) A person commits on offence if that person

- (a) supplies or offers to supply an implement or device which may be used for the purpose of changing or interfering with the operation of a unique device identifier, and
- (b) ought to know that the person to whom the offer to supply the implement or device is made intends to use it unlawfully or to allow it to be used unlawfully.

(3) A person who commits an offence under this section is liable on summary conviction, to a fine of not more than one hundred and twenty-five penalty units or to imprisonment for a term of not more than six months or both.

Fees

82. (1) The Authority may charge fees for

- (a) an individual licence, class licence, special licence or frequency authorisation or renewal, and
- (b) a document that it makes available to a member of the public or any service that it provides.

(2) Except as provided under this section, fees charged by the Authority shall be commensurate with the cost of

- (a) carrying out the functions of the Authority under this Act,
- (b) administering the licence, special licence or frequency authorisation, and
- (c) providing the service for which the fee is charged.

(3) The fee for an individual licence may also be commensurate with the economic value of the licence.

(4) Where the cost of a licence fee may be a deterrent to rapid investment or development, the Authority may waive the fee or impose only a nominal fee for specialised operators serving rural and low income communities or implementing development objectives consistent with national policy.

(5) The fees shall be published in the *Gazette* and on the website of the Authority.

Fees payable into the Fund to be recovered

83. A fee, penalty or other levy payable to the Authority under this Act, if not paid within the stipulated time, shall become a civil debt and may be recovered by the Authority in the same manner as a judgment of the High Court.

*Resolution of disputes***Authority to establish a dispute resolution process**

84. (1) The Authority shall establish a dispute resolution process to resolve

- (a) a dispute between or among different network operators or service providers,
- (b) a dispute between a network operator or service provider and a utility provider, and
- (c) a dispute between a network operator or service provider and a consumer.

(2) Anyone or more of the parties to a dispute may refer the dispute to the Authority or for settlement by any alternative dispute resolution mechanism.

(3) Where parties to a dispute that relates to electronic communications agree that the dispute is to be settled by

(a) the dispute resolution committee established under section 84, or

(b) any alternative dispute resolution mechanism,

the parties shall not institute an action in court until the dispute resolution procedure has been exhausted.

Dispute Resolution Committee

85. (1) The Board shall establish a Dispute Resolution Committee for the purpose of the resolution of disputes.

(2) The composition of the Committee shall be determined by the Board.

(3) The Committee shall expeditiously investigate and hear any matter which is brought before it.

(4) The Authority shall determine the period within which disputes may be settled.

(5) The Committee may require evidence or arguments to be presented in writing and may decide the matters upon which it will hear oral evidence or written arguments.

(6) A party to a dispute may appear at the hearing and may be represented by a lawyer or another person of that person's choice.

Powers of the committee

86. (1) The Dispute Resolution Committee may

(a) issue summons to compel the attendance of witnesses,

(b) examine witnesses on oath, affirmation or otherwise,

(c) compel the production of documents, and

(d) refer a person for trial at the High Court for contempt.

(2) A summons issued by the Committee shall be under the hand of the Secretary of the Authority.

Resolution of referred disputes

87. The Committee may, in settling a dispute

(a) make a declaration setting out the rights and obligations of the parties to the dispute,

(b) make provisional or interim orders or awards related to the matter or part of the matter, or give directions in furtherance

of the hearing,

- (c) dismiss or refrain from hearing or determining a matter in whole or in part if it appears that the matter or part of the matter, is trivial or vexatious or that further proceedings are not necessary or desirable in the public interest,
- (d) in appropriate circumstances, order any party to pay the reasonable costs and expenses of another party, including the expenses of witnesses and fees of lawyers, in bringing the matter before the Authority, and
- (e) generally give directions and do anything that is necessary or expedient for the hearing and determination of the matter.

Electronic Communications Tribunal

Establishment of the Electronic Communications Tribunal

88. There is established an appeal tribunal to be called the Electronic Communications Tribunal which shall be convened on an ad-hoc basis to consider appeals against

- (a) decisions or orders made by the Authority or to review a particular matter under a licence, this Act or Regulations, and
- (b) decisions of the Dispute Resolution Committee of the Authority.

Composition of the Tribunal

89. (1) The members of the Tribunal shall be appointed by the chairperson of the Public Services Commission and shall consist of

- (a) a chairperson who is either a retired Justice of the Superior Court or a lawyer of at least fifteen years standing who has experience in telecommunication law, policy, regulations or arbitration, and
- (b) two other members with knowledge of and experience in the electronic communications industry, electronic engineering, law, economics or business or public administration.

(2) The Public Services Commission shall appoint a registrar and other staff necessary for the smooth operations of the Tribunal.

(3) The expenses of the Tribunal shall be paid out of income derived by the Authority and shall be part of the annual budget of the Authority.

Rules of procedure of the Tribunal

90. (1) The Board shall, within thirty days of the commencement of this Act, prepare proposals for rules of procedure for the Tribunal.

(2) The proposals shall be approved by a panel of the Tribunal specifically convened for the purpose.

(3) The Board shall by legislative instrument make Regulations under this Act which shall prescribe the approved rules.

Right of appeal

91. (1) A person affected by a decision of the Authority or the Dispute Resolution Committee may appeal against it by sending a notice of appeal to the Tribunal in accordance with the rules of procedure of the Tribunal.

(2) The notice of appeal must be sent within twenty-eight days after the date the decision that is being appealed against is announced or received.

(3) The appellant shall set out in the notice of appeal

(a) the decision appealed against,

(b) the provision under which the decision appealed against was taken, and

(c) the grounds of appeal.

(4) Within one month after receipt of a notice of appeal the Tribunal shall be convened to consider the appeal.

Decisions of the Tribunal

92. (1) The Tribunal, after hearing the appeal may

(a) quash the decision,

(b) allow the appeal in whole or in part, or

(c) dismiss the appeal and confirm the decision of the Authority.

(2) If the Tribunal allows the appeal in part, it may vary the decision of the Authority in any manner and subject to any conditions or limitations that it considers appropriate to impose.

(3) The Tribunal may take into account any submissions filed by a person acting as a friend of the Tribunal in reaching a decision on an appeal brought before it.

(4) A decision of the Tribunal has the same effect as a judgement of the High Court.

Appeals against the decisions of the Tribunal

93. (1) A party dissatisfied with a decision of the Tribunal may appeal to the Court of Appeal.

(2) An appeal under this section shall relate only to a point of law arising from the decision of the Tribunal.

(3) An appeal shall be made within ninety days after the decision of the Tribunal and there shall be no extension of time.

General provisions

Services provided from outside the Republic

94. The Authority may take appropriate action where electronic communications service provided in the Republic from outside the Republic jeopardises the provision of, or otherwise competes unfairly with a service licensed under this Act.

Business operation rates

95. (1) A district assembly shall with the approval of the Authority determine the rate to be paid by a network operator or service provider in respect of its business within the district.

(2) The Environmental Protection Agency, the District Assembly, the Ghana Atomic Energy Commission and the Civil Aviation Authority shall with the approval of the Authority determine the rate to be paid by a network operator or service provider in respect of charges related to the granting of permits for the erection of towers and masts.

Levy on installed equipments

96. A levy shall not be imposed on installed equipment of a network operator or service provider.

Regulations

97. (1) The Minister may on the advice of the Authority by legislative instrument make Regulations generally to give effect to the provisions of this Act and shall in particular, make Regulations in relation to

- (a) fees and tariffs,
- (b) the issue, conditions, duration, suspension or revocation of licences for electronic communications service, as well as frequency assignments and other authorisations relating to these services,
- (c) interconnection which may contain, among others, the matters to be covered in every interconnection agreement,
- (d) procedures to be applied by a service provider to handle claims and complaints filed by subscribers or customers of communications services,

- (e) conditions under which claims and complaints of communications services subscribers or customers which are not satisfactorily resolved by the service provider may be submitted to the Authority, and the procedures to be applied by the Authority in handling the claims and complaints,
 - (f) procedures for the administrative adjudication, mediation, or arbitration of disputes between operators,
 - (g) procedures for the determination of breaches of Regulations and the imposition of sanctions, warnings and other penalties in respect of the breach,
 - (h) other matters that the Board may from time to time consider necessary, having regard to the objectives and functions of the Authority, and
 - (j) the guidelines, standards and other requirements that the Authority may issue or specify.
- (2) The Authority shall publish the Regulations on its website.

(3) Despite the Statutory Instruments Act, 1959 (No. 52) the penalty for contravention of the regulations shall be a fine of not more than two thousand penalty units.

Forbearance

98. (1) The Authority may refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the discharge of any duty under this Act in relation to electronic communications network or service, class of electronic communications services or use of spectrum by a person where the Authority finds that to be in the interest of the Republic.

(2) Before determining to refrain from the exercise of any power or the discharge of any duty, the Authority shall publish the matter for decision in the *Gazette*.

(3) A decision of the Authority under this section may be the subject of appeal to the Tribunal.

Communications during a state of emergency

99. (1) Where a state of emergency is declared under Article 31 of the Constitution or -another law, an operator of communications or mass communications systems shall give priority to requests and orders for the transmission of voice or data that the President considers necessary in the interest of national security and defence.

(2) A service provider may, if facilities are disrupted as a result of force majeure or during a period of emergency, use its service for emergency communications in a manner other than specified in its licence or in the applicable regulations.

(3) The use of a service for emergency communications shall be discontinued when normal telecommunication services are again available or when the special use of the facilities, equipment or service is terminated by the President.

(4) Where the President requires a licensee or special licensee to give priority to communications of the Government, the communications shall have priority over all other communications but be in accordance with the International Telecommunications Union Treaties.

(5) A network operator or service provider shall develop and cooperate in the development and implementation of plans for operating networks and providing services during force majeure and periods of serious and substantial interruption in the provision of electronic communications services.

(6) The President may assume direct control of the electronic communications services and issue operating regulations in the event of a war declared according to law.

Powers of the President

100. The President may by executive instrument make written requests and issue orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security.

Interpretation

101. In this Act, unless the context otherwise requires

"access" means, with respect to a electronic communications network or service, the ability of a service provider or user to use the electronic communications network or service of another operator or provider;

"affiliated" has the same meaning assigned to it under the Companies Act 1963;

"authorisation holder" means a person that is granted a frequency authorisation by the Authority under this Act;

- "Authority" means the National Communications Authority established under the National Communications Authority Act 2008 (Act 769);
- "Board" means the Board of the National Communications Authority established in section 1 of the National Communications Authority Act 2008 (Act 769)
- "broadcasting service" includes the offer of the transmission of programmes whether or not encrypted by any means of communication, for reception by the public, such as sound, radio, television and other types of transmissions, like those on a point to multipoint basis;
- "build out" means the process of finishing raw space to meet specific needs of tenant notice issued by a judge or an authority that has well defined meaning on ceasing of operation;
- "cease and desist order" means notice issued by a judge or an authority that has well defined legal meaning on ceasing of operation;
- "class licence" means a licence, other than an individual licence, granted on the same terms to each applicant in respect to a class of electronic communications networks or services or radio-communication services;
- "closed user group" means a group of persons who have a common Business or other economic or social interest other than the provision of electronic communications service;
- "closed user group service" means electronic communications service, used by a closed user group, operated without interconnection to a public electronic communications network enabling electronic communications to persons other than the members of that group;
- "Committee" means the Dispute Resolution Committee;
- "Community college" means other tertiary institutions of learning in communities;
- "Court" means the High Court;
- "district" means the area of authority of a District Assembly;
- "district assembly" includes a Municipal and Metropolitan Assembly;

- "electronic communications" means any communication through the use of wire, radio optical or electromagnetic transmission emission or receiving system or any part of these;
- "electronic communications network" means any wire, radio, optical or electromagnetic transmission, emission or receiving system, or any part of these, used for the provision of electronic communications service;
- "electronic communications service" includes a service providing electronic communications, a closed user group service, a private electronic communications service, a public electronic communications service, a radio communication service and a value added service;
- "facility" includes a physical component of electronic communications network, wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or object connected to post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used to carry, suspend, support or protect the structure or which is used for the purpose of electronic communications but does not include terminal equipment;
- "frequency authorisation" means an authorisation granted by the Authority under this Act;
- "frequency band" means a continuous frequency range of spectrum;
- "Fund" means the Ghana Investment Fund for Electronic Communication established under section 31;
- "Geographic market" means the geographic or demographic area, or any part of the area which an operator is authorised or licenced by the Authority to serve or in which an operator is authorised or licenced to operate;
- "harmful interference" means interference with the authorised use of spectrum that impedes, degrades, obstructs or interrupts a broadcasting service or electronic communications service;
- "interconnection" means the linking of public electronic communications networks and services to allow the users of one public electronic communications service to communicate with users of another public electronic communications service;

- "International Telecommunications Union Treaties" includes the Constitution, the Convention and the Regulations of the International Telecommunication Union;
- "Minister" means the Minister responsible for electronic communications;
- "network" means electronic communication network;
- "network operator" means a person licensed under this Act to operate a public electronic communications network;
- "network termination point" means the point designated for connection of terminal equipment by a user to electronic communications network;
- "prescribe" means prescribed by Regulations made under this Act;
- "private electronic communications service" means electronic communications service used within one enterprise or any body corporate with which it is affiliated, to satisfy its internal needs and operated without interconnection to a public electronic communications network that enables electronic communications to persons other than within the enterprise or the body corporate;
- "public ground" includes any open or enclosed space to which the public has or is permitted to have access;
- "public utility" has the same meaning assigned to it in the Public Utilities Regulatory Commission Act, 1997 (Act 538).
- "public electronic communications network" means electronic communications network used to provide a public electronic communications service;
- "public electronic communications service" include electronic communications service, a public telephone service, offered to members of the general public which permits one user to communicate with another user regardless of the technology used to provide the service, but does not include a service that modifies a communication, restructures, adds or supplies, or permits user interaction with information unless the service is offering a public telephone service;
- "public telephone service" means the commercial provision to the public of the direct transport and switching of voice telephony in real time from and to network termination points;

- "radio-communication service" means electronic communications service that is provided through the transmission, emission or reception of electromagnetic waves;
- "Regulations" means the Regulations made under this Act;
- "Republic" means the Republic of Ghana;
- "roadworks" means any activity that involves breaking open a road or public ground, or that removes, alters or affects any utility installation;
- "service provider" means a person licensed under this Act to provide a public electronic communications service;
- "significant interest" in respect of a company, means a holding or interest in a company or a holding company by a person, either alone or with another person whether legally or equitably that entitles or enables the person, directly or indirectly;
- "significant market power" means where a network operator or service provider, either individually or jointly with other operators or providers, has a position that allows it to behave in a way that is appreciably independent of its competitors and customers;
- "space segment" means satellite systems including their sensors needed for data acquisition and their receiving stations;
- "special licence" means a special licence granted by the Authority under this Act;
- "special licensee" means a person granted a special licence;
- "spectrum" means the continuous range of electromagnetic wave frequencies used for telecommunications;
- "telecentre" means technology work location in a community;
- "telecommunications" includes the transmission, emission or reception of signals, writing, pulses, images, sounds or other intelligence of any kind by wire, radio, terrestrial or submarine cables, optical or electromagnetic spectrum or by way of any other technology;
- "terminal equipment" means equipment on the user's side of the network termination point that is connected directly or indirectly to electronic communications network by wire,

radio, optical or electromagnetic means and with which a user can originate, process or terminate telecommunications;

"Tribunal" means the Electronic Communications Tribunal

"Trustee" means a member of the board of Trustees of the Fund established in section 34;

"Trustees" means the Board of Trustees of the Fund as provided for in section 34;

"universal access" means any community based services which the Authority, in accordance with this Act, determines shall be provided;

"universal service" means any public electronic communications service which the Authority, in accordance with this Act, determines the requirements of universal service shall apply;

"user" means a customer or a subscriber of electronic communications network or service or broadcasting service and includes a customer that is an operator or provider of electronic communications network or service;

"utility installation" means any physical component of a system owned or operated by a public utility to provide water, gas or electricity;

"utility installation owner" means the owner or operator of any utility installation; and

"value added service" includes a service that combines applications provided to users with telecommunications, but does not include any public electronic communications service.

Repeals and savings

102. (1) The Telecommunications Frequency Registration and Control Decree, 1977 (S.M.C.D. 71) is hereby repealed.

(2) Despite the repeal under subsection (1) any regulations made under the repealed enactment are saved.

Date of *Gazette* notification: 9th January, 2009.

