

No. 1 of 2008.

Telecommunications (Amendment) Act 2008.

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No. of 2008.

AN ACT

entitled

Telecommunications (Amendment) Act 2008,

Being an Act to amend the *Telecommunications Act 1996,*

MADE by the National Parliament.

1. INTERPRETATION (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended –

- (a) by inserting after the definition of “appropriate fee” the following:-

“backhaul link’ means the facilities which carry communications directly or indirectly between a mobile carrier’s cellular base stations and that carrier’s cellular core network;”; and

- (b) by inserting after the definition of “carry” the following:-

“cellular base station’ means the facilities which provide control and connection (directly or indirectly) using backhaul links between customer equipment used in connection with a public mobile telecommunications service and a mobile carrier’s cellular core network;
‘cellular core network’ means the facilities which provide control and connect communications between a mobile carrier’s cellular base stations, and to the networks of other carriers;”; and

- (c) by deleting from the definition of “Code” the words “Part XVIII” and substituting the words “Part VIA”; and

- (d) by inserting after the definition of “Commission” the following:-

“Commission Determination’ means a determination made by the Commission in accordance with Section 84;”; and

- (e) by inserting after the definition of “convention” the following:

“core network link’ means the facilities which carry communications within a mobile carrier’s cellular core network;”; and

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- (f) by deleting from the definition of "facility" in Paragraph (a) the figure "13" and substituting "14"; and
- (g) by inserting after the definition of "facility" the following:-
"final determination' means a Commission Determination other than an interim determination;"; and
- (h) by deleting from the definition of "install" the word "include" and substituting the word "includes"; and
- (i) by inserting after the definition of "install" the following:-
"intercarrier link' means the facilities which carry communications between a mobile carrier's cellular core network and the network of another carrier;
'interconnection service' means the physical and logical linking of a carrier's network to the facilities of the same or a different carrier and the carrying of communications across the respective networks in accordance with Section 82(2);"; and
- (j) by inserting after the definition of "interference" the following:-
"interim determination' means a Commission Determination that is expressed to be an interim determination;"; and
- (k) by inserting after the definition of "International Arbitrator" the following:-
"international gateway' means those facilities which are used to send or receive communications between a place within Papua New Guinea and a place outside Papua New Guinea whether by line link, satellite-based facilities, microwave facilities or otherwise;"; and
- (l) by inserting after the definition of "microwave facilities" the following:-
"Ministerial Determination' means a determination made by the Minister in accordance with Section 84A;" and
- (m) by inserting in the definition of "network" in Paragraph (b) after the words "and places outside Papua New Guinea" the following:-
", including an international gateway"; and
- (n) by inserting after the definition of "POST PNG" the following:-
"private network service' means a telecommunications service only for the carriage of private traffic -
 - (a) by the person supplying the service; or
 - (b) by persons all of whom have a common interest with each other,whether the service is supplied by one of those persons or by two or more of those persons and includes such a telecommunications service that is supplied (in whole or part) within the boundaries of a telecommunications network operated by a carrier, but does not include a value added service;"; and

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- (o) by inserting after the definition of "standard telephone service" the following:-
 - "supply', in relation to a private network service, means supply of the service by a person for the person's own purposes;"; and
- (p) by deleting from the definition of "terms and conditions" the word "supplies" and substituting the word "supplied".

2. NEW SECTION 3A.

The Principal Act is amended by inserting after Section 3 the following:-

"3A. SUPPLY UNDER A CLASS LICENCE OF PRIVATE NETWORK SERVICE.

"For the purposes of this Act, a private network service is supplied under a class licence if -

- (a) supplying the service is permitted under the class licence; and
- (b) the service is supplied in accordance with the conditions of the licence."

3. PROPERTIES (AMENDMENT OF SECTION 7).

Section 7 of the Principal Act is amended in Subsection (2) by deleting the word "lease" and substituting in its stead the word "Lease".

4. RESERVED LINE LINKS (AMENDMENT OF SECTION 15).

Section 15 of the Principal Act is amended in Subsection (1) by repealing the following words:-

"or by a secondary public licence holder".

5. PUBLIC MOBILE TELECOMMUNICATIONS SERVICE (AMENDMENT OF SECTION 16).

Section 16 of the Principal Act is amended in Subsection (1) by repealing from Paragraph (f) the words and figures "neither Subsection (2) nor (3) prevents" and replacing it with the following:

"Subsection (2) does not prevent".

6. PUBLIC ACCESS CORDLESS TELECOMMUNICATIONS SERVICES (AMENDMENT OF SECTION 17).

Section 17 of the Principal Act is amended by deleting from Subsection (1) the word "services" first time appearing and substituting the word "service".

7. FUNCTIONS OF THE COMMISSION (AMENDMENT OF SECTION 19F).

Section 19F of the Principal Act is amended by deleting Paragraph (k) the word "licenses" and substituting the word "licensees".

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8. CHARGES FOR SERVICES PROVIDED BY THE COMMISSION (AMENDMENT OF SECTION 19J).

Section 19J of the Principal Act is amended in Subsection (2) by deleting the word "of", first time appearing, and substituting the word "or".

9. STAFF (AMENDMENT OF SECTION 42).

Section 42 of the Principal Act is amended in Subsection (8) by deleting the word "corporation" wherever appearing and substituting in its stead the word "corporation".

10. RIGHTS TO RESERVE LINE LINKS AND ANCILLARY FACILITIES (AMENDMENT OF SECTION 45).

Section 45 of the Principal Act is amended –

- (a) in the heading by deleting the word "RESERVE" and substituting the word "RESERVED"; and
- (b) by adding the following new subsection:-

"(2A) A mobile carrier may install or maintain backhaul links, intercarrier links and core network links in any area in which it is permitted by its licence to operate as a mobile carrier only for use in connection with a public mobile telecommunications service."

11. SUPPLY OF TELECOMMUNICATIONS SERVICES BY SATELLITE BASED FACILITIES OR MICROWAVE FACILITIES (AMENDMENT OF SECTION 46).

Section 46 of the Principal Act is amended -

- (a) by repealing the words "A person other than a general carrier" and by inserting in their stead the following:-

"(1) Subject to this section and to Section 50, a person"; and

- (b) by adding the following new subsections:-

"(2) A general carrier may supply a telecommunications service as mentioned in Subsection (1)(a) and (b).

"(3) A mobile carrier may supply a telecommunications service as mentioned in Subsection (1)(a) only in relation to the supply of public mobile telecommunications services."

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12. SUPPLY OF PUBLIC MOBILE TELECOMMUNICATION SERVICES (AMENDMENT OF SECTION 48).

Section 48 of the Principal Act is amended -

- (a) by repealing the words "A person other than a mobile carrier" and by inserting in their stead the following:-

"(1) Subject to this section and to Section 50, a person"; and

- (b) by adding the following new subsections:-

"(2) A mobile carrier may supply a public mobile telecommunications service as mentioned in Subsection (1)(a).

"(3) A mobile carrier may supply a public mobile telecommunications service as mentioned in Subsection (1)(b) only using an international gateway owned or operated by a general carrier."

13. OBJECTIVES (AMENDMENT OF SECTION 54).

Section 54 of the Principal Act is amended by adding the following new paragraph:-

- "(h) establishing a system for class licensing of private network services to regulate the supply of private network services."

14. CONDITIONS TO WHICH A LICENCE IS SUBJECT (AMENDMENT OF SECTION 61).

Section 61(1) of the Principal Act is amended -

- (a) by deleting "VIA" from Paragraph (c) and substituting "VIA"; and
(b) by deleting "." at the end of Paragraph (g) and substituting ","; and
(c) by adding the following new paragraph:-

"(h) in the case of class licences, the conditions specified by the Commission in accordance with the procedures in Division 3A."

15. DECLARATION OF CONDITIONS OF LICENCES (AMENDMENT OF SECTION 63).

Section 63 of the Principal Act is amended in Subsection (2) by deleting the word "PANGTEL" and substituting in its stead the words "The Commission".

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16. NEW DIVISION VI.3A.

The Principal Act is amended by adding immediately after Section 65A the following:-

"Division 3A. - Private Network Class Licence.

"Subdivision 1. - Preliminary.

"65B. OBJECTS OF PART.

"The objects of this Part are -

- (a) by providing for a system of class licences for private network services, to regulate the supply of private network services in such a way that they are used only in the supply of telecommunications services on a private basis; and
- (b) to ensure the proper use of telecommunications networks in the supply of private network services.

"65C. PRIVATE NETWORK SERVICE LICENSING PRINCIPLES.

"The private network service licensing principles are as follows:-

- (a) private network services are not to be supplied in a way that would permit a person (other than a carrier) to sell, or otherwise dispose of, capacity of private networks to third parties; and
- (b) private network services are not to be supplied in a way that would result in a person engaging in conduct that would involve an infringement of a reserved right that a carrier has under Part V.

"Subdivision 2. - Class licences.

"65D. ISSUING OF CLASS LICENCES.

"(1) The Commission may, by notice published in the National Gazette, issue a class licence or licences specifying private network services that persons are, subject to the conditions set out in the licences, permitted to supply.

"(2) The Commission may include conditions in a class licence, including, for example, conditions relating to -

- (a) the way in which private network services specified in the licence are to be supplied; and
- (b) prohibition of the supply of private network services for illegal purposes; and

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- (c) prohibition of the improper use of telecommunications networks.

"(3) The Commission shall not issue a class licence unless it is satisfied that the conditions included in the licence are sufficient to ensure that -

- (a) any private network service supplied under the licence will be supplied in a way consistent with the private network service licensing principles; and
- (b) any customer equipment or customer cabling that will be used in the supply of a private network service under the licence will comply with technical standards determined under Part XII.

"(4) The Commission shall not issue a class licence where that licence would not be in accordance with this Act or with Government Policy or with any regulatory contract or licence in force under the Act.

"(5) A class licence has effect on and from the day specified in the notice published under Subsection (1).

"65E. CONSULTATION WITH CARRIERS ON PROPOSED CLASS LICENCES.

"(1) Before issuing a class licence, the Commission shall send to each carrier a copy of the proposed licence.

"(2) A carrier may, within 21 days after receipt of the notice, make written representations to the Commission concerning the proposed licence.

"(3) The Commission shall, before issuing a class licence, give due consideration to any representations so made, and may alter the proposed licence.

"(4) Failure to comply strictly with Subsection (1) does not affect the validity of a class licence if the requirements of that subsection are substantially complied with.

"65F. VARIATION OF CLASS LICENCES.

"(1) Subject to Section 65H the Commission may, by notice published in the National Gazette, vary a class licence.

"(2) The power to vary a class licence includes the power to -

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- (a) specify further private network services that persons are to be permitted to supply under the licence in addition to the services already specified in the licence; or
- (b) vary or revoke descriptions of any services specified in the licence; or
- (c) add to the conditions in the licence; or
- (d) vary or revoke any of the conditions.

"(3) The Commission shall not vary a class licence under this section unless it is satisfied that the conditions included in the licence as varied are sufficient to ensure that -

- (a) any private network service supplied under the licence will be supplied in a way consistent with the private network service licensing principles; and
- (b) any customer equipment or customer cabling that will be used in supplying a private network service under the licence will comply with technical standards determined under Part XII.

"(4) The Commission shall not vary a class licence where the licence as varied would not be in accordance with this Act or with Government Policy or with any regulatory contract or licence in force under the Act.

"(5) A class licence varied under this section has effect, as varied, on and from the day specified in the notice published under Subsection (1).

"65G. APPLICATION FOR VARIATION OF CLASS LICENCES.

"(1) A person who is proposing to supply a private network service may apply to the Commission for a class licence to be varied in such a way that the service would be supplied under the licence.

- "(2) The application shall -
- (a) describe in sufficient detail the nature of the private network service;
 - (b) be in the form approved by the Commission; and
 - (c) be accompanied by the payment of the appropriate fee.

"(3) The approved form of application may provide for verification by statutory declaration of statements in applications.

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"65H. CONSULTATION AND NOTICE ON VARIATION OF CLASS LICENCES.

"(1) The Commission shall, at least one month before varying a class licence under Sections 65F or 65I, consult with each carrier, and any other person, who may be affected by the variation.

"(2) The Commission shall cause a copy of any proposed variation to a class licence under Section 65F or 65I to be published promptly in the national gazette and shall give a copy to any carrier affected by the variation at least 14 days prior to the date specified in the variation as the date when the variation comes into effect.

"65I. VARIATION OF CLASS LICENCES ON APPLICATION.

"(1) Where an application has been made under Section 65G, the commission may, by written notice given to the applicant, vary a class licence in such a way that the private network service that is the subject of the application will be supplied under the class licence.

"(2) the commission shall, before deciding whether to vary the class licence, give due consideration to any representations made under Sections 65E and 65H concerning the proposed variation of the licence and may alter the proposed variation or not make the variation.

"(3) The Commission shall not vary a class licence under this section unless it is satisfied that the conditions included in the licence, as varied, are sufficient to ensure that -

- (a) any private network service supplied under the licence will be supplied in a way consistent with the private network service licensing principles; and
- (b) any customer equipment or customer cabling that will be used in supplying a private network service under the licence will comply with technical standards determined under Part XII.

"(4) The Commission shall not vary a class licence in a way that is inconsistent with this Act or with Government Policy or with any regulatory contract or licence in force under the Act.

"(5) The Commission shall not vary a class licence under this section so that -

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- (a) a private network service that was previously permitted to be supplied under the licence would no longer be permitted; or
- (b) the conditions under which a private network service is permitted to be supplied under the licence would become more onerous on a supplier of the service.

"(6) A class licence varied under this section has effect, as varied, on and from the day on which notice of the variation is given under Subsection (1).

"(7) Where the Commission varies a class licence under this section, it shall -

- (a) under Section 65L, register under the class licence the private network service in relation to which the application for the variation was made; and
- (b) cause to be published in the National Gazette a notice -
 - (i) specifying the class licence that has been varied; and
 - (ii) setting out the text of the variation; and
 - (iii) specifying the day on and from which the variation has effect; and
- (c) give a copy of the text of the variation to each carrier and any other person to whom notice of the application was given under Section 65H(1); and
- (d) subject to Subsection (9), give a copy of its reasons for varying the licence to each carrier and other person (if any) that has made representations concerning the application under Section 65H.

"(8) The Commission shall include in the notice given under Subsection (1) a statement that the private network service concerned has been registered under the class licence.

"(9) The Commission shall delete any confidential commercial information from the documents that it gives to a carrier under Subsection (7).

"(10) If the Commission decides not to vary the licence under this section, it shall -

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- (a) give to the applicant written notice that the application is refused together with reasons for the refusal; and
- (b) give to each carrier and to any other person to whom notice of the application was given under Section 65H(1) written notice that the application is refused.

"65J. DEEMED REFUSAL OF APPLICATIONS, ETC.,

"If, at the end of 30 days after an application for the variation of a class licence is made, the Commission has not varied the licence, the Commission shall be regarded, for the purposes of Section 182A(1), as -

- (a) having decided, on the last of the 30 days, not to vary the licence; and
- (b) having informed the applicant accordingly on that day.

"65K. REGISTER OF PRIVATE NETWORK SERVICES.

"(1) The Commission shall maintain a register of private network services in respect of each class licence that it has issued.

"(2) The register shall be open to public inspection.

"(3) Subject to Section 65P(1), if a particular private network service is registered under a class licence, the supply of that service shall be taken, for the purposes of this Act, to be under the class licence.

"65L. REGISTRATION OF PRIVATE NETWORK SERVICES.

"(1) Before supplying a private network service, a person must apply in writing to the Commission for the registration under a class licence of the particular private network service that the person is proposing to supply.

- "(2) The application must -
- (a) describe in sufficient detail the nature of the private network service; and
 - (b) specify the class licence under which the service is sought to be registered; and
 - (c) be in the form approved by the Commission; and
 - (d) be accompanied by the payment of the appropriate fee.

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- "(3) If the Commission is satisfied that -
- (a) the application complies with Subsection (2); and
 - (b) the provision of the private network service is or will be under the class licence specified in the application; and
 - (c) the application is accompanied by payment of the fee referred to in Subsection (2)(d),

the Commission shall register the service under the class licence and give to the applicant written notice of the registration.

"(4) If the Commission is not satisfied as described in Subsection (3), it shall refuse the application and give to the applicant written notice -

- (a) stating that the application is refused; and
- (b) setting out the reasons for the refusal; and
- (c) stating that the applicant may, within 21 days after the day on which the notice is given, request the Commission to reconsider the application.

"65M. DEEMED REFUSAL OF APPLICATION FOR REGISTRATION.

"If, at the end of 30 days after an application for the registration of a particular private network service under a class licence has been made under Section 65L, the Commission has not given to the applicant a notice under Section 65L indicating its decision concerning the application, the Commission shall be regarded, for the purposes of Section 182A(1) as -

- (a) having refused the application on the last day of the 30 days; and
- (b) having informed the applicant accordingly on that day.

"65N. DECLARATIONS THAT SERVICES ARE UNLICENSED.

"(1) Where the Commission has reasonable cause to suspect that -

- (a) a person is supplying, or proposes to supply, a private network service; and
- (b) the service is not being, or would not be, supplied under any class licence,

the Commission may give the person a written notice under this section.

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- "(2) The notice shall -
- (a) specify the service concerned; and
 - (b) invite the person to make representations to the Commission as to why the service should not be declared to be an unlicensed service; and
 - (c) specify a date, not being later than 28 days after the notice is sent to the person, by which such representations may be made.

"(3) The notice may, in addition, require the person to give to the Commission, in writing, such information relating to the service concerned as is required by the notice.

- "(4) The Commission may, if it is satisfied -
- (a) that the person is supplying, or proposes to supply, the service concerned; and
 - (b) that -
 - (i) the service is not being, or would not be, supplied under any class licence; or
 - (ii) the person has failed to comply, to the best of the person's ability, with a requirement under Subsection (3),

give to the person a written declaration that the service is an unlicensed service.

"(5) Before giving the declaration to the person, the Commission shall give due consideration to any representations made by the person on or before the date referred to in Subsection (2)(c).

"(6) A declaration given to a person shall be accompanied by a statement informing the person that the person may, within 21 days after the day on which the declaration is given, request the Commission to reconsider its decision to give the declaration.

- "(7) A declaration given to a person under Subsection (4) has effect -
- (a) if the person does not, within the period for making an application under Section 182A(1) for review of the decision to give the declaration, make such an application to the Commission under that Section - on and from the day occurring 30 days after the declaration is given to the person; or

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- (b) if the person makes such an application within that period - on and from the day occurring 30 days after the making of the application for review of the decision to give the declaration.

"(8) Where the Commission -

- (a) has given a notice under Subsection (1) to a person in respect of a private network service; and
- (b) subsequently decides not to give to the person a declaration under Subsection (4) in respect of the service,

the Commission shall give to the person a notice to the effect that it has decided not to declare the service to be an unlicensed service.

"65O. DECLARATIONS IN RESPECT OF REGISTERED PRIVATE NETWORK SERVICES.

"(1) The Commission shall not give a declaration under Section 65N(4) in respect of a private network service that is, under Section 65L, registered under a class licence unless, in addition to the requirements of Section 65N, it is satisfied that, since the registration of the service, the conditions of the class licence concerned have been varied so that the service is no longer being, or would no longer be, supplied under the class licence.

"(2) Where the Commission gives to a person a declaration under Section 65N in respect of a service that is, under Section 65K, registered under a class licence -

- (a) the registration of the service ceases to have effect on and from the day on which the declaration has effect; and
- (b) the Commission shall remove the service from the register maintained under Subsection 65K (1) in respect of the class licence concerned.

"65P. EFFECT OF DECLARATIONS.

"(1) If a declaration under Section 65N that a particular service is an unlicensed service has effect, the supplying of the service shall be taken, for the purposes of this Act, not to be under any class licence.

"(2) A private network service (other than such a service that is registered under a class licence) may be taken not to be supplied under any class licence even though no declaration under Section 65N in respect of the service has been given or has effect.

"65Q. REGISTRATION OF UNLICENSED SERVICES.

"(1) Where -

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- (a) a declaration has been given that a private network service is an unlicensed service; and
- (b) since the declaration has been given, the Commission has issued a new class licence or has varied a class licence,

a person wishing to supply the service may apply in writing under Section 65L for registration of the service under the class licence concerned.

"(2) If the Commission registers the service under Section 65L, the declaration ceases to have effect on and from the day of registration.

"65R. CONNECTION ETC., OF UNLICENSED SERVICES.

"(1) Where, under Section 65N, the Commission declares a private network service to be an unlicensed service, it shall give to each carrier a written notice –

- (a) stating that the declaration has been made; and
- (b) specifying the service concerned; and
- (c) specifying the person to whom the declaration was given.

"(2) Where a carrier is given such a notice –

- (a) if the service concerned is already connected to a telecommunications network operated by the carrier - it shall take the necessary action to ensure that the service is no longer so connected; or
- (b) if the service concerned is not already so connected - it shall not connect the service to any telecommunications network that it operates.

"65S. OBLIGATION OF CARRIERS TO CONNECT PRIVATE NETWORK SERVICES.

"(1) Subject to Subsection (2), where a person wishing to supply a private network service gives a carrier who operates a telecommunications network that will need to be used in the supply of the service a request to connect the service to the network, the carrier shall connect the service unless a notice has been given to the carrier under Section 65R(1) in relation to the service.

"(2) A carrier shall not be taken to be in breach of an obligation under Subsection (1) to connect a service to a network if the connection is delayed –

- (a) for a period that –
 - (i) is reasonable in the circumstances; and

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- (ii) is not substantially longer than the delay normally experienced for connection of a service of that type, and in that locality, to the network; or
- (b) because a connection of the private network service is not technically feasible; or
- (c) for reasons beyond the carrier's control.

"(3) Subsection (2)(b) does not apply in relation to the connection of a private network service to a telecommunications network operated by a carrier unless there is in force a written notice, given by PANGTEL to the carrier, certifying that connection of a private network service of that kind to a telecommunications network is not technically feasible.

"(4) Where PANGTEL is satisfied that it has become technically feasible to connect a private network service of a kind in respect of which a notice under Subsection (3) is in force, PANGTEL shall, by written notice given to the carrier to whom the notice under Subsection (3) was given, revoke the notice under Subsection (3).

"65T. PRE-EXISTING PRIVATE NETWORK SERVICES.

"(1) For the purposes of this Act, where, immediately before the commencement of this section, a person was supplying a private network service –

- (a) that was connected to a telecommunications network operated by a carrier; and
- (b) in respect of the supply of which the person had obtained the carrier's approval.

"(2) The service shall, by force of this section, be taken to be supplied under a class licence.

"(3) If, at any time after the commencement of this section, the person supplies the private network service concerned in a way that is not in accordance with the approval given by the carrier, Subsection (1) ceases to apply from that time."

17. TARIFFS (AMENDMENT OF SECTION 78).

Section 78(2) of the Principal Act is amended by deleting the word "telecommunication" and substituting in its stead the word "telecommunications".

18. REPEAL AND REPLACEMENT OF SECTION 82.

Section 82 of the Principal Act is repealed and is replaced with the following:-

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"82. RIGHT TO ACCESS.

"(1) A carrier has the right to interconnect its facilities to a network of any other carrier, and when requested by another carrier, the obligation to interconnect its network to the facilities of such carrier –

- (a) for the purpose of enabling the carrying of communications across the respective networks under Subsection (2); and
- (b) on such terms and conditions as the carriers agree on or, failing agreement, on such terms and conditions –
 - (i) as are determined in a Commission Determination; or
 - (ii) as are determined in a Ministerial Determination but are not the subject of a Commission Determination; and
- (c) to the extent reasonable, in a manner that ensures –
 - (i) the technical and operational quality and timing of the interconnection is equivalent to that which such carrier provides to itself; and
 - (ii) in relation to interconnection, that each carrier receives fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which such carrier provides to itself.

"(1A) Subsection (1) does not impose an obligation on the requested carrier –

- (a) to the extent (if any) to which the imposition of the obligation would have any of the following effects:-
 - (i) preventing a carrier who is already supplied, or has a right under a contract, a Commission Determination or a Ministerial Determination to be supplied, an interconnection service from obtaining a sufficient amount of the service to be able to meet that carrier's reasonably anticipated requirements, measured at the time when the request was made; or

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- (ii) preventing the requested carrier from obtaining a sufficient amount of the interconnection service to be able to meet its reasonably anticipated requirements, measured at the time when the request was made; or
 - (iii) depriving any person of a contractual right that was in force as at 13 February 2008; or
- (b) if there are reasonable grounds to believe that, with such obligation –
- (i) the carrier seeking access would fail, to a material extent, to comply with the terms and conditions on which the requested carrier complies, or on which the requested carrier is reasonably likely to comply; or
 - (ii) the carrier seeking access would fail to protect the integrity of a telecommunications network or the safety of individuals working on, or using services supplied by means of, a telecommunications network.

"(2) Where a carrier's facilities are, or are to be, interconnected pursuant to Subsection (1) to a network of another carrier, the other carrier shall carry communications across the network so far as is necessary or desirable for the purposes of the first-mentioned carrier supplying by means of those facilities –

- (a) where the first-mentioned carrier is both a general carrier and a mobile carrier-telecommunications services; and
- (b) where the first-mentioned carrier is a general carrier but not a mobile carrier-telecommunications services other than public mobile telecommunications services; or
- (c) where the first-mentioned carrier is a mobile carrier but not a general carrier-public mobile telecommunications services."

**19. ARBITRATION BY THE COMMISSION OF ACCESS TERMS
(AMENDMENT OF SECTION 84).**

Section 84 of the Principal Act is amended by inserting after Section 84(5) the following new subsections:-

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“(6) A Commission Determination may be expressed to be an interim determination.

- “(7) An interim determination –
- (a) does not terminate an arbitration or relieve the Commission from its duty to make a final determination; and
 - (b) has effect on the date specified in the determination; and
 - (c) remains in force until the end of the period specified in the determination which period must not be longer than 12 months.

- “(8) The Commission may vary an interim determination and any variation will be deemed –
- (a) to apply from the date the original matter was submitted to the Commission for arbitration; and
 - (b) to be the making of an interim determination in the terms of the varied interim determination.

“(9) If an interim determination is in force and a final determination relating to the dispute takes effect, the interim determination is taken to have been revoked when the final determination takes effect.

“(10) The Commission is not required to observe any requirements of natural justice in relation to the making of an interim determination or a variation of an interim determination.

“(11) Any or all of the provisions of a final determination may be expressed to have taken effect on a specified date that is earlier than the date on which the determination took effect.

“(12) The specified date referred to in Subsection (11) must not be earlier than the date on which the parties to the determination commenced negotiations with a view to agreeing on the terms and conditions as mentioned in Section 82(1).”.

20. NEW SECTION 84A.

The Principal Act is amended by inserting after Section 84 the following:-

"84A. MINISTER MAY DETERMINE TERMS AND CONDITIONS.

"(1) At any time, the Minister may determine in writing terms and conditions, including charges payable by a specified carrier to another specified carrier, for or in relation to –

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- (a) interconnection of network facilities under Section 82(1); and
- (b) carriage of communications across such networks under Section 82(2); and
- (c) the supply of facilities for the purposes of such interconnection or carriage.

"(2) Within 28 days from the date of the Ministerial Determination, the carriers must interconnect their network facilities and provide access services to one another in accordance with a relevant Ministerial Determination.

"(3) Before making a Ministerial Determination under this section, the Minister must consult with the Commission, PANGTEL and the specific carriers referred to in Subsection (1).

"(4) Nothing in Subsection (1) limits the generality of the Ministerial Determination."

21. REPEAL AND REPLACEMENT OF SECTION 85.

Section 85 of the Principal Act is repealed and is replaced by the following:-

"85. DETERMINATION UNDER SECTION 84 OR 84A TAKEN TO BE AN ACCESS AGREEMENT.

"A determination made under Section 84 or 84A –

- (a) is taken to be an access agreement between the carriers who were the subject of a Ministerial Determination or Commission Determination; and
- (b) shall be deemed registered by the Commission for the purposes of Section 86(5); and
- (c) subject to compliance with this Act, may be varied by these carriers, and enforced by each of them, as if it were a contract between them."

22. REPEAL AND REPLACEMENT OF SECTION 86.

Section 86 of the Principal Act is repealed and is replaced by the following:-

"86. CHARGING PRINCIPLES.

"(1) The regulatory contract of a regulated entity or the licence of a carrier may set out principles that are to be applied in agreeing on or in determining terms and conditions about charges payable by a carrier to another carrier from whom access is being sought, for –

- (a) interconnection of facilities to networks of the regulated entity or carrier; or

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- (b) carriage of communications across the networks of the regulated entity or carrier; or
- (c) the supply of facilities for the purposes of such interconnection or carriage; or
- (d) the grant of rights or interests, or the supply of goods or services; or
- (e) matters incidental to any matter of a kind referred to in this subsection.

"(2) Where principles of the type referred to in Subsection (1) are not set out in the regulatory contract or licence, the Commission may determine, by notice in the National Gazette, principles that are to be applied in agreeing on or determining terms and conditions about charges payable by a specified carrier to another specified carrier, for –

- (a) interconnection of facilities to networks of the other carrier; or
- (b) carriage of communications across the networks of the other carrier; or
- (c) the supply of facilities for the purposes of such interconnection or carriage; or
- (d) the grant of rights or interests, or the supply of goods or services; or
- (e) matters incidental to any matter of a kind referred to in this subsection.

"(3) Where the charging principles have been determined under Subsection (1) or Subsection (2), any access agreement agreed to by carriers, determined by the Minister or determined by the Commission shall comply with those charging principles.

"(4) A carrier which agrees an access agreement with another carrier shall submit the access agreement to the Commission for registration.

"(5) The Commission shall register an access agreement submitted under Subsection (4) where the access agreement –

- (a) complies with any charging principles then in force; and
 - (b) complies with this Act,
- but otherwise the Commission shall not register the access agreement.”

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**23. OFFENCES RELATING TO CUSTOMER EQUIPMENT
(AMENDMENT OF SECTION 93).**

Section 93 of the Principal Act is amended in Subsection (1) by deleting the word "a" first time appearing.

24. OFFENCES RELATING TO UNLICENCED TELEVISION CABLE SERVICES. (AMENDMENT OF SECTION 122).

Section 122 of the Principal Act is amended by deleting the word "UNLICENCED" in the section heading and replacing it with "UNLICENSED".

25. THE COMMISSION MAY DIRECT CARRIER TO COMPLY WITH A PRESCRIBED CARRIER OBLIGATION (AMENDMENT OF SECTION 164).

Section 164 of the Principal Act is amended by repealing the section heading and substituting the following:-

"THE COMMISSION MAY DIRECT CARRIER TO COMPLY WITH A PRESCRIBED CARRIER OBLIGATION".

26. ESTABLISHING A TELECOMMUNICATION NETWORK, ETC., WITHOUT A LICENCE (AMENDMENT OF SECTION 167).

Section 167 of the Principal Act is amended by repealing the word "TELECOMMUNICATION" in the section heading and replacing it with "TELECOMMUNICATIONS".

27. IMPROPER USE OF TELECOMMUNICATIONS NETWORK (AMENDMENT OF SECTION 169).

Section 169 of the Principal Act is amended in the penalty provision by inserting immediately before the word "exceeding" the word "not".

28. AMENDMENT OF HEADING OF DIVISION XIX.1.

The heading of Division XIX.1 of the Principal Act is amended by repealing the words "Commission directions" appearing in the division heading and replacing them with the words "Directions, determinations".

29. REPEAL AND REPLACEMENT OF SECTION 178.

Section 178 of the Principal Act is repealed and is replaced with the following:-

"178. ENFORCEMENT OF DETERMINATIONS AND CONDITIONS.

"(1) This section applies where a licensee -

- (a) has engaged in conduct that involves; or
- (b) proposes to engage in conduct that would involve,

contravention of—

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- (c) a Commission Determination or direction; or
- (d) a condition of a licence; or
- (e) a Ministerial Determination; or
- (f) the obligation to interconnect set out in Section 82(1).

"(2) The Commission or the Minister may apply to the National Court for –

- (a) in a case in which Subsection (1)(a) applies—an injunction, a declaration or both; or
- (b) in a case to which Subsection (1)(b) applies—an injunction.

"(3) Section 194 applies to an application under this section.

"(4) Where the Commission or the Minister applies under this Section for an injunction, the National Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages."

30. REPEAL AND REPLACEMENT OF SECTION 179.

Section 179 of the Principal Act is repealed and is replaced with the following:-

"179. PECUNIARY PENALTIES FOR CONTRAVENTIONS OF DIRECTIONS, DETERMINATIONS OR CONDITIONS.

"(1) Where the National Court is satisfied that a licensee has contravened a Commission Determination or direction, a condition of a licence, a Ministerial Determination or the obligations set out in Section 82(1), the Court may order the licensee to pay to the Commission such pecuniary penalty (not exceeding K2,000,000.00 in respect of each contravention) as the Court determines to be appropriate having regard to all relevant matters including -

- (a) the nature and extent of the contravention and of any loss or damage suffered as a result of the contravention; and
- (b) the circumstances in which the contravention took place; and
- (c) whether the carrier has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

"(2) Where conduct constitutes a contravention of two or more directions or of two or more conditions of a licence, a proceeding may be instituted under this section against a carrier in relation to the

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contravention of any one or more of the directions or any one or more of the conditions, but a carrier is not liable to more than one pecuniary penalty under this section in respect of the same conduct.”.

31. REPEAL AND REPLACEMENT OF SECTION 182.

Section 182 of the Principal Act is repealed and is replaced with the Following:-

**“182. CRIMINAL PROCEEDINGS NOT BE BROUGHT FOR
CONTRAVENTIONS OF DIRECTIONS,
DETERMINATIONS OR CONDITIONS.**

"Criminal proceedings do not lie against a carrier merely because the carrier has contravened a Commission Determination or direction, a condition of a licence, a Ministerial Determination or the obligations set out in Section 82(1).”.

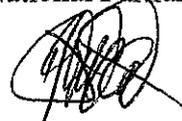
32. REVIEW OF DECISIONS BY COMMISSION (AMENDMENT OF SECTION 182A).

Section 182A of the Principal Act is amended –

- (a) in Subsection (1) by –
 - (i) by deleting "." at the end of Paragraph (e); and
 - (ii) by inserting at the end of Paragraph (e) the expression ";or"; and
- (b) by adding the following new paragraphs:-
 - “(f) by a carrier or other person who made representations under Section 65H, for a review of the Commission’s decision to vary a class licence under Sections 65F or 65I; or
 - “(g) by a person to whom a declaration has been given under Section 65N by the Commission, for a review of the decision to give the declaration; or
 - “(h) by an applicant refused registration of a particular private network service under a class licence under Sections 65K or 65L, for a review of that refusal.”; and
- (c) in Subsection (2) by repealing Paragraph (e) and replacing it with the following:-
 - “(e) be lodged with the Appeals Panel within ten days from earlier of the date on which the applicant was notified, or deemed to be notified, of the Commission’s decision direction or declaration.”.

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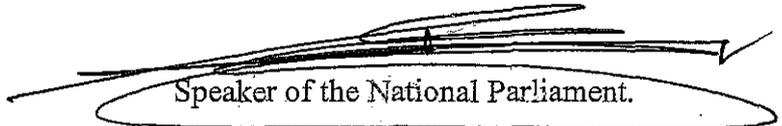
I hereby certify that the above is a fair print of the *Telecommunications (Amendment) Act 2008* which has been made by the National Parliament.



Clerk of the National Parliament.

13 MAY 2008

I hereby certify that the *Telecommunications (Amendment) Act 2008* was made by the National Parliament on 16 April 2008.



Speaker of the National Parliament.

13 MAY 2008

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