

No. 26 of 2002.

Telecommunications Industry Act 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2002.

Telecommunications Industry Act 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2002.

AN ACT

entitled

Telecommunications Industry Act 2002,

Being an Act to modify the existing regulatory regime for the telecommunications industry by amending the *Telecommunications Act 1996* and other related legislation, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART 1. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely –

- (a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and

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- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and
- (f) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49 of the *Constitution*; and
- (g) the right of reasonable access of official documents conferred by Section 51 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*) –

- (h) taking account of the National Goals and Directive Principles (including, in particular, the goal that Papua New Guinea should, among other things, be economically independent and its economy basically self reliant and to achieve development primarily through the use of Papua New Guinea forms of economic organization) and the Basic Social Obligations (including, in particular, the obligation to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, and the development of underprivileged or less advanced groups or areas; and
- (i) in order to protect the exercise of the rights and freedom of others; and
- (j) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act be made without delay.

(4) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* –

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be –
 - (i) to facilitate and maintain the efficient and economical provision of telecommunications services; and
 - (ii) to maintain the peace and good order in Papua New Guinea,

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and each of those purposes and reasons is hereby also declared and described as –

- (iii) a public purpose; and
- (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,

for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and

- (b) for the purposes of Section 53(2) of the *Constitution*, just compensation will be made on just terms for the compulsory taking of possession of property or the compulsory acquisition of an interest in or right over property in accordance with the terms set out in Section 31 below and such terms will constitute compensation procured (and accordingly made) by, and made on a behalf of, the State in connection with each such taking and acquisition.

PART II – AMENDMENT OF THE *TELECOMMUNICATIONS ACT* 1996.

**2. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS
(AMENDMENT OF SECTION 1).**

Section 1 of the *Telecommunications Act* 1996 is repealed and is replaced with the following :-

"1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely –

- (a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and
- (f) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49 of the *Constitution*; and
- (g) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

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is a law that is made (pursuant to Section 38 of the *Constitution*) –

- (h) taking account of the National Goals and Directive Principles (including, in particular, the goal that Papua New Guinea should, among other things, be economically independent and its economy basically self reliant and to achieve development primarily through the use of Papua New Guinea forms of economic organization) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, and the development of underprivileged or less advanced groups or areas; and
- (i) in order to protect the exercise of the rights and freedom of others; and
- (j) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

"(2) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

"(3) For the purposes of –

- (a) Section 29 of the *Organic Law on Provincial Governments*; and
- (b) Section 41 of the *Organic Law on Provincial and Local-level Governments*,

it is hereby declared that this Act relates to a matter of national interest.

"(4) Insofar as this Act involves a compulsory taking of possession of property or compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* –

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be –
 - (i) to facilitate and maintain the efficient and economical provision of telecommunications services; and
 - (ii) to maintain the peace and good order in Papua New Guinea,and each of those purposes and reasons is hereby also declared and described as–
 - (iii) a public purpose; and

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- (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind, for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and
- (b) for the purposes of Section 53(2) of the *Constitution*, just compensation will be made on just terms for the compulsory taking of possession of property or the compulsory acquisition of an interest in or right over property in accordance with the terms set out in Section 58A and such terms shall constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition."

3. GENERAL OBJECTIVES OF ACT (AMENDMENT OF SECTION 2).

Section 2 of the *Telecommunications Act 1996* is amended –

(a) by repealing Paragraph (a) and replacing it with the following:-

- “(a) ensuring that the standard telephone service –
 - (i) is supplied as efficiently and economically as practicable; and
 - (ii) is supplied commercially at performance standards and technical standards that reasonably meet the social, industrial and commercial needs of the Papua New Guinea community; and”;

(b) in Paragraph (c), by repealing the word “moderation” and replacing it with the following :-

“modernization”.

4. INTERPRETATION (AMENDMENT OF SECTION 3).

Section 3 of the *Telecommunications Act 1996* is amended –

(a) in the definition of “apparatus”, by inserting after the word “Part” the following :-

“XIV”; and

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

“ ‘Appeals Panel’ has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*.”; and

(c) by inserting after the definition of “Chief Executive” the following new definitions :-

“ ‘Code’ means a Code of Practice determined by the Commission or by PANGTEL under Part XVIII;

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'Commission' means the Independent Consumer and Competition Commission established by the *Independent Consumer and Competition Commission Act 2002*;

'Commission direction' means a direction given by the Commission to a licensee under any provision of this Act;"; and

- (d) in the definition of "convention", by inserting after the words "arrangement or understanding between" the following :-

"the Commission or"; and

- (e) by repealing the definitions of "dominate", "earth based facility", "exempt activity" and "Fund"; and

- (f) by inserting after the definition of "interference" the following new definition :-

"International Arbitrator" means a member of the Panel of Experts who satisfies the requirements set out in Section 41(3) of the *Independent Consumer and Competition Commission Act 2002*;"; and

- (g) by repealing the definition of "levy"; and

- (h) by repealing the definition of "PANGTEL" and replacing it with the following :-

" "PANGTEL" means the Papua New Guinea Radiocommunications and Telecommunications Technical Authority;"; and

- (i) by repealing the definitions of "PANGTEL direction", "participating carrier", "radcom facility" and "radiocommunication transmitter"; and

- (j) by repealing the definition of "receiver" and replacing it with the following :-

" "receiver" means an electronic device capable of receiving and transforming radiocommunication to a useable form;"; and

- (k) by repealing the definition "registered access agreement" and replacing it with the following :-

" "registered access agreement" means an access agreement registered by the Commission under Section 85 or Section 86(4);"; and

- (l) by inserting after the definition of "registered access agreement" the following new definitions :-

"regulated entity" has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

"regulated goods" and "regulated services" have the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

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"regulated industry" has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

"regulatory contract" has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;" and

(m) by repealing the definitions of "rural development service carrier", "satellite based facility" and "secondary public payphone licence holder"; and

(n) by repealing the definition of "tariff" and replacing it with the following :-

"tariff", in relation to a carrier means a tariff given to PANGTEL or to the Commission by a carrier under Section 78 and in force for the time being, whether or not it has been varied under Section 79 but does not include a document that the Commission has disallowed under Section 78(4);" and

(o) in the definition of "Telikom", by repealing the words " or to be incorporated"; and

(p) by repealing the definition of "value added services" and replacing it with the following :-

"value added services" means a service, other than a reserved service, determined by the Commission to be suitable for the grant of a value added service licence under Part VI."

5. NEW SECTIONS 19A AND 19B.

The *Telecommunications Act 1996* is amended by inserting after Section 19 the following new sections :-

"19A. TELECOMMUNICATIONS IS A REGULATED INDUSTRY.

The telecommunications industry is declared to be a regulated industry for the purposes of the *Independent Consumer and Competition Commission Act 2002*.

"19B. GOVERNMENT POLICY TO BE CONSISTENT WITH THE REGULATORY CONTRACT AND LICENCES.

(1) Any Government Policy declared in relation to this Act shall not be inconsistent with or contrary to any of the provisions contained in any regulatory contract or the licences applying to or granted to Telikom and its subsidiary companies.

(2) If any Government Policy or any direction pursuant to Government Policy is inconsistent with the regulatory contract or a carrier licence as described in Subsection (1), that Government Policy or direction shall, to the extent of the inconsistency, be of no effect."

6. NEW PART IIIA.

The *Telecommunications Act 1996* is amended by inserting at the end of Part III the following new Part :-

“PART IIIA. – FUNCTIONS AND POWERS OF THE COMMISSION.

“19C. COMMISSION IS THE PRINCIPAL REGULATOR.

The Commission, established under the *Independent Consumer and Competition Commission Act 2002*, is the principal regulatory agency in respect of the provisions of this Act, except those provisions relating to technical regulation where PANGTEL is designated by this Act to be the principal regulatory agency.

“19D. THE COMMISSION AND PANGTEL.

(1) Where the Commission and PANGTEL are given concurrent functions or powers under this Act or under the *Independent Consumer and Competition Commission Act 2002*, the Commission and PANGTEL shall carry out those functions and exercise those powers in consultation with each other.

"(2) If the Commission and PANGTEL, in carrying out their concurrent functions or exercising their concurrent powers are, after consultation, unable to agree, the views of the Commission shall prevail.

"(3) Any action taken by the Commission shall not be open to challenge by reason that any consultation required by Subsection (1) had not taken place or was in any way defective.

“19E. TRANSFER OF PANGTEL STAFF AND ASSETS.

(1) Such persons employed as staff of PANGTEL pursuant to Section 42 as the Minister may determine by notice published in the National Gazette, shall have their employment transferred to the Commission with effect from the date of gazettal or the date specified in the notice, whichever is the later, referred to in this section as “the transfer date”.

"(2) Each transferred employee referred to in Subsection (1) is to be regarded as –

- (a) having been employed by the Commission with effect from the transfer date; and
- (b) having been employed on the same terms and conditions as those that applied to the person immediately before the transfer date, as an officer or employee of PANGTEL; and
- (c) having accrued an entitlement to benefits, in connection with that employment by the Commission, that is equivalent to the entitlement that the person had accrued, as an officer or employee of PANGTEL, immediately before the transfer date.

"(3) The service of a transferred PANGTEL employee as an employee of the Commission is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the transfer date, as an officer or employee of PANGTEL.

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"(4) A transferred PANGTEL employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of PANGTEL because of this section.

"(5) Such assets and resources of PANGTEL as the Minister may determine by notice in the National Gazette shall be transferred to the Commission, to assist the Commission in carrying out its functions under this Act, with effect from the date of gazettal or the date specified in the notice, whichever is the later.

"19F. FUNCTIONS OF THE COMMISSION.

The Commission has (in addition to its functions under the *Independent Consumer and Competition Commission Act 2002*) the following functions :-

- (a) any functions that a regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002*, being a regulatory contract which relates to the telecommunications industry, contemplates will be performed by the Commission for the purposes of that regulatory contract;
- (b) providing economic monitoring, control, inspection and regulation of the telecommunications industry;
- (c) implementing any Government Policy notified to the Commission in accordance with Section 19I;
- (d) ensuring that this Act is implemented with due regard to the public interest;
- (e) in consultation with PANGTEL, establishing performance standards for any carrier and monitoring compliance with those standards;
- (f) in consultation with PANGTEL, reporting to the Parliament on the performance of any carrier (including the quality of consumer service);
- (g) overseeing the fulfillment by licensees of their obligations under any enactment and their compliance with any Commission directions;
- (h) advising the Minister in the formulation of national policies in respect of the promotion, development and regulation of telecommunications and the telecommunications industry;
- (i) developing and approving guidelines for carriers and other licensees for the purpose of keeping of accounts and cost allocation manuals;
- (j) developing and monitoring a system for reviewing and responding to complaints by consumers in relation to telecommunications services;
- (k) determining Codes of Practice for telecommunications carriers and licenses including, in consultation with PANGTEL, Codes of Practice on technical telecommunications matters;
- (l) in consultation with PANGTEL acting as the duly appointed representative of the State at all international bodies or authorities which have the purpose of regulating or administering telecommunications services;

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- (m) monitoring access agreements and assisting in the resolution of any disputes relating thereto;
- (n) in consultation with PANGTEL, monitoring the use of telecommunications services on any ship or aircraft; and
- (o) consulting, where appropriate, with commercial, industrial and consumer organizations about any matter relating to the supply of telecommunications services;
- (p) monitoring, and reporting on, charges paid by consumers;
- (q) in consultation with PANGTEL, developing and monitoring a numbering plan for Papua New Guinea;
- (r) the licensing functions conferred by this Act;
- (s) performing such other functions as are assigned to the Commission under this Act or any other law.

"19G. POWERS OF THE COMMISSION.

(1) The Commission has (in addition to the powers it has under the *Independent Consumer and Competition Commission Act 2002*) the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions under this Act.

"(2) The Commission shall not exercise any power in a manner that is inconsistent with the requirements of a regulatory contract that is in effect, where that regulatory contract relates to the supply of telecommunications goods or services, and any exercise of a power that is inconsistent with such a regulatory contract is of no effect to the extent of the inconsistency.

"19H. GENERAL GOVERNMENT OBLIGATIONS OF THE COMMISSION.

Subject to Section 19G(2), the Commission shall perform its functions under this Act in a manner consistent with –

- (a) any Government Policy notified by the Minister under Section 19I; and
- (b) Papua New Guinea's obligations under any convention.

"19I. GOVERNMENT POLICIES.

(1) Subject to Section 19B, the Minister may notify the Commission in writing of any Government Policy.

"(2) The Commission shall ensure that any Government Policy notified in accordance with Subsection (1) is carried out.

"19J. CHARGES FOR SERVICES PROVIDED BY THE COMMISSION.

(1) The Commission may levy charges or fees for any service rendered by it in the performance of its functions or the exercise of its powers under this Act.

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"(2) Without limiting the generality of Subsection (1), the Commission may levy charges of fees –

- (a) for publications made generally available by the Commission; and
- (b) for consultancy services performed by the Commission; and
- (c) for arbitration of access terms pursuant to Section 84.

"(3) Without limiting the generality of Subsection (1), the Commission may –

- (a) make a scheme or schemes of determining rates of charges or fees for any service provided by it; or
- (b) by regulation, prescribe the rate of charges and fees or the method of calculating charges or fees for services provided by the Commission.

"(4) Charges and fees due to the Commission under this Act constitute a debt which may be recovered in a court of competent jurisdiction.

"(5) The Commission may charge licensees annual licence fees of an amount fixed from time to time by the Minister responsible for treasury matters in respect of that licence as an amount that he considers to be a reasonable contribution towards administrative costs.

"(6) For the avoidance of doubt, the Commission shall not be entitled to levy any charges or fees in relation to its licensing functions under this Act, except such charges or fees as are specified in this Act or otherwise levied in accordance with this Act.

"(7) In this section, "administration costs" means –

- (a) the costs of administration of this Act; and
- (b) any costs of administration of the *Independent Consumer and Competition and Commission Act 2002* relating to the telecommunications industry; and
- (c) such other costs as are prescribed."

7. ESTABLISHMENT, ETC., OF PANGTEL (AMENDMENT OF SECTION 20).

Section 20 of the *Telecommunications Act 1996* is amended by repealing Subsection (1) and replacing it with the following :-

"(1) There is established the Papua New Guinea Radiocommunications and Telecommunications Technical Authority, to be known as PANGTEL."

8. MEMBERSHIP (AMENDMENT OF SECTION 21).

Section 21(4) of the *Telecommunications Act 1996* is amended by repealing Paragraph (e).

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9. MONEYS OF PANGTEL (AMENDMENT OF SECTION 29).

Section 29 of the *Telecommunications Act 1996* is amended by repealing Subsection (2).

10. FUNCTIONS OF PANGTEL (AMENDMENT OF SECTION 32).

Section 32(1) of the *Telecommunications Act 1996* is amended –

(a) by repealing Paragraph (a) and replacing it with the following:–

“(a) providing technical inspection and technical regulation of the telecommunications industry; and”;

(b) in Paragraph (e), by inserting at the beginning of that paragraph the following:–

“in consultation with the Commission,”; and

(c) by repealing Paragraphs (f), (g), (h) and (i); and

(d) by repealing Paragraph (k); and

(e) by repealing Paragraph (m) and replacing it with the following:–

“(m) in consultation with the Commission, determining Codes on technical telecommunications matters; and”;

(f) in Paragraphs (n), (p) and (u), by inserting at the beginning of each of those paragraphs respectively the following:–

“in consultation with the Commission,”; and

(g) by repealing Paragraph (o); and

(h) in Paragraph (s), by inserting after the words “about any” the following:–

“technical”;

(i) by repealing Paragraph (t); and

(j) in Paragraph (v), by inserting after the words “granted of” the following:–

“cabling”;

(k) by repealing Paragraphs (w) and (y).

11. REPEAL AND REPLACEMENT OF SECTION 33.

Section 33 of the *Telecommunications Act 1996* is repealed and is replaced with the following:–

“33. POWERS OF PANGTEL.

(1) PANGTEL has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

“(2) PANGTEL shall not exercise any power in a manner that is inconsistent with the requirements of a regulatory contract that is in effect, where that regulatory contract relates to the supply of telecommunications goods or services, and any exercise of a power that is inconsistent with such a regulatory contract is of no effect to the extent of the inconsistency.”.

12. PANGTEL, CARRIERS AND LICENSEES TO PREVENT USE OF NETWORKS AND FACILITIES IN COMMISSION OF OFFENCES (AMENDMENT OF SECTION 34).

Section 34 of the *Telecommunications Act 1996* is amended –

- (a) in the heading, by inserting at the beginning the following :-
"THE COMMISSION,"; and
- (b) in Subsections (1) and (2), by inserting at the beginning of those subsections respectively the following :-
"The Commission,"; and
- (c) in Subsection (3), by repealing the words "PANGTEL is not" and replacing them with the following :-
"Neither the Commission nor PANGTEL is"; and
- (d) in Subsection (4) –
(i) by inserting at the beginning of that subsection the following :-
"The Commission,";
(ii) in Paragraph (c), and by inserting after the words "a direction that" the following :-
"the Commission or"; and
- (e) in Subsection (5) –
(i) by inserting after the words "or agent of" the following :-
"the Commission or of"; and
(ii) by inserting after the words "or omitted by" the following :-
"the Commission,".

13. GENERAL GOVERNMENT OBLIGATIONS OF PANGTEL (AMENDMENT OF SECTION 35).

Section 35 of the *Telecommunications Act 1996* is amended by inserting at the beginning of that section the following :-

"Subject to Section 33(2),".

14. MINISTER MAY NOTIFY PANGTEL OF POLICIES OF THE GOVERNMENT (AMENDMENT OF SECTION 36).

Section 36 of the *Telecommunications Act 1996* is amended –

- (a) by repealing Subsection (1) and replacing it with the following :-
"(1) Subject to Section 19B, the Minister may notify PANGTEL in writing of any Government Policy."; and
- (b) by repealing Subsection (3).

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15. CONSULTATION (AMENDMENT OF SECTION 37).

Section 37 of the *Telecommunications Act 1996* is amended by inserting after Paragraph (a) the following new paragraph:—

“(aa) the Commission; and”.

16. REPEAL AND REPLACEMENT OF SECTION 38.

Section 38 of the *Telecommunications Act 1996* is repealed and is replaced with the following :—

“38. ADVISORY COMMITTEES.

(1) The Commission may, by writing, establish advisory committees to assist it in performing any of its functions under this Act (other than its functions under Section 84).

"(2) PANGTEL may, by writing, establish advisory committees to assist it in performing any of its functions under this Act.

"(3) The Commission and PANGTEL, may, by writing, establish joint advisory committees to assist them in performing their functions.

"(4) The Commission or PANGTEL, as the case may be, may give an advisory committee established by it written directions as to —

(a) the way in which the committee is to carry out its functions; and

(b) the procedures to be followed in relation to meetings.

"(5) A member of an advisory committee is entitled to such remuneration, if any, as is determined by the Commission or by PANGTEL, as the case may be, or as is prescribed.”.

17. QUALIFICATION OF CHIEF EXECUTIVE (AMENDMENT OF SECTION 40).

Section 40(1) of the *Telecommunications Act 1996* is amended by repealing Paragraphs (d) and (e).

18. CHARGES FOR SERVICES PROVIDED BY PANGTEL (AMENDMENT OF SECTION 44).

Section 44(2) of the *Telecommunications Act 1996* is amended by repealing Paragraphs (a), (b) and (c) and replacing them with the following :—

"(a) for publications made generally available by PANGTEL; and

(b) for consultancy services performed by PANGTEL.”.

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

Section 45(2) of the *Telecommunications Act 1996* is amended by inserting after the words “line link” the following :—

“in any area in which it is permitted by its licence to operate as a general carrier.”.

20. REPEAL AND REPLACEMENT OF SECTION 47.

Section 47 of the *Telecommunications Act 1996* is repealed and replaced with the following :-

“47. PROVISION OF PUBLIC PAY PHONES.

A person may supply, install and maintain a public payphone that is connected to a network operated by a carrier within Papua New Guinea.”.

21. NEW SECTION 48A.

The *Telecommunications Act 1996* is amended by inserting after Section 48 the following new section :-

“48A. TELIKOM MOBILE CARRIER OPERATIONS.

(1) Notwithstanding any other provisions of this Act, Telikom is deemed for all purposes to have been the holder of a public mobile telecommunications licence from the date of commencement of this Act until 31 December 2001, whether PANGTEL had issued any such licence to Telikom or not.

(2) For the purposes of Section 48 and Section 50, any supply of public mobile telecommunications services by Pacific Mobile Communications Limited, from its date of incorporation until 31 December 2001, shall be deemed to have been done for and on behalf of Telikom.”.

22. REPEAL AND REPLACEMENT OF SECTION 50.

Section 50 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

“50. ACTS DONE ON BEHALF OF A CARRIER.

This Part does not prevent a person from doing anything for or on behalf of a carrier which that carrier would be entitled to do itself under this Act or under the provisions of its licence.”.

23. LINE LINKS USED BY BROADCASTER (AMENDMENT OF SECTION 52).

Section 52(1) of the *Telecommunications Act 1996* is amended by inserting after the words ‘a reserved line link for the’ the following :-

“sole”.

24. OBJECTIVES (AMENDMENT OF SECTION 54).

Section 54 of the *Telecommunications Act 1996* is amended by repealing Paragraphs (c) and (e).

25. REPEAL AND REPLACEMENT OF SECTION 55.

Section 55 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

“55. LICENCES AND REGULATORY CONTRACTS.

(1) A regulatory contract applying to a carrier may specify limitations on when the Commission may issue a general telecommunications licence, a public mobile telecommunications licence or other licence under this Part.

"(2) The limitations specified in a regulatory contract referred to in Subsection (1) may apply –

- (a) for a defined period; or
- (b) in relation to defined areas or between defined places; and
- (c) may be conditional on the carrier meeting defined obligations,

in each case as specified in the regulatory contract.

"(3) The Commission shall not issue a general telecommunications licence, a public mobile telecommunications licence or other licence under this Part if doing so would be inconsistent with limitations specified in a regulatory contract applying to a carrier.”.

26. REPEAL AND REPLACEMENT OF SECTION 56.

Section 56 of the *Telecommunications Act 1996* is repealed and is replaced with the following :—

“56. APPLICATION FOR GENERAL TELECOMMUNICATIONS LICENCES, PUBLIC MOBILE LICENCES AND CERTAIN OTHER LICENCES.

(1) A citizen or an eligible corporation may apply to the Commission, in a manner and form approved by the Commission, for a general telecommunications licence.

"(2) A citizen or an eligible corporation may apply to the Commission, in a manner and form approved by the Commission, for a public mobile telecommunications licence.

"(3) A citizen or an eligible corporation may apply to the Commission, in a manner and form approved by the Commission, for a value added service licence.

"(4) The Commission may require an applicant for a licence under this section to give the Commission such further information in relation to the application as it thinks necessary.”.

27. NEW SECTION 56A.

The *Telecommunications Act 1996* is amended by inserting after Section 56 the following new section :—

“56A. SPECIALLY ISSUED LICENCES.

(1) The Prime Minister may, by order in writing, require that one or more licences be issued under this Division to Telikom, or to Telikom’s purchaser, in accordance with specified requirements as to the term and conditions of such licence or licences and the rights conferred by such licence or licences.

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"(2) The requirements of the Prime Minister as to the conditions of a licence must be consistent with the provisions of this Act as to such conditions.

"(3) The Prime Minister may, by order in writing, require that a licence issued to Telikom in accordance with an order under Subsection (1) be transferred to Telikom's Purchaser.

"(4) An order under this section must be given effect to without the need for Telikom or Telikom's purchaser to apply for the licence or agreement to the transfer of the licence and notwithstanding the provisions of this Act and Section 23 of the *Independent Consumer and Competition Commission Act 2002*.

"(5) A licence issued to Telikom in accordance with an order under this section may not be suspended or cancelled under this Act on the ground of any change that has occurred in the officers or shareholders of Telikom associated with the shares in Telikom being transferred from a Minister or Ministers to Telikom's purchaser.

"(6) If the Prime Minister makes an order under Subsection (1) which is given effect to under Subsection (4), no subsequent order or orders under Subsection (1) shall be of any effect."

28. DECISION ON APPLICATION (AMENDMENT OF SECTION 57).

Section 57 of the *Telecommunications Act 1996* is amended by repealing Subsection (2) and replacing it with the following :-

"(2) The Commission shall refuse the application where the applicant is not a citizen or an eligible corporation or where the grant of the licence applied for would not be in accordance with this Act or with Government Policy or with any regulatory contract or licence in force under the Act."

29. REPEAL AND REPLACEMENT OF SECTION 58.

Section 58 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

"58. SUSPENSION OR REVOCATION OF LICENCE.

(1) The Commission may, by writing, suspend or revoke a licence where -

- (a) the holder of the licence so requests in writing; or
- (b) in the Commission's opinion, the holder of the licence is about to cease, or has ceased, to be an eligible corporation; or
- (c) the holder of the licence fails to comply with this Act or with a condition of the licence.

"(2) The revocation of a licence under this section does not affect an obligation of the holder of the licence to do an act where the obligation arose before the revocation, whether it arose under this Act or under a condition of the licence or otherwise.

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- "(3) A suspension of a licence under this section may be –
- (a) for a specified period; or
 - (b) until the fulfillment of specified conditions; or
 - (c) until further order of the Commission.

"(4) Before the Commission acts under this section, the Commission shall –

- (a) notify the holder of the licence in writing of the proposed action specifying the reasons for the proposed action; and
- (b) allow the holder of the licence at least 14 days within which to make submissions to the Commission in relation to the proposed action.”.

30. NEW SECTIONS 58A AND 58B.

The *Telecommunications Act 1996* is amended by inserting after Section 58 the following new sections :–

“58A. POWER TO TAKE OVER OPERATIONS.

- (1) If –
- (a) a carrier contravenes a condition of its licence or any other requirement of this Act, or a carrier’s licence ceases, or is to cease, to be in force; and
 - (b) it is necessary, in the Commission’s opinion, to take over the carrier’s operations (or some of them) to ensure an adequate supply of telecommunications services to customers,

the Head of State, acting on advice, may make an order under this section.

"(2) Before an order is made under this section, the Commission shall give the carrier a reasonable opportunity to make written representations giving reasons why the order should not be made.

- "(3) An order under this section –
- (a) authorizes the Commission to take over the carrier’s operations or a specified part of the carrier’s operations; and
 - (b) may contain ancillary directions (and may, in particular, contain directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with).

"(4) A direction under Subsection (3)(b) operates to the exclusion of rights that are inconsistent with it.

"58B. APPOINTMENT OF OPERATOR.

(1) If an order is made under Section 58A, the Commission shall appoint a suitable person (who may, but need not, be any carrier) to take over the relevant operations on agreed terms and conditions.

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"(2) A person appointed to take over a carrier's operations is referred to in this section as the 'operator'.

"(3) The carrier shall facilitate the take over of the relevant operations by the operator.

"(4) The operator may have access to the facilities and other property of the carrier for the purposes of carrying on the relevant operations.

"(5) A person shall not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this division.

Penalty: A fine not exceeding K10,000,000.00.

"(6) A person shall comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this division.

Penalty: A fine not exceeding K10,000,000.00."

31. TRANSFER OF LICENCE (AMENDMENT OF SECTION 59).

Section 59 of the *Telecommunications Act 1996* is amended in Subsection (3) by inserting after the words "public mobile licence" the following :-

"or a value added services licence".

32. REPEAL AND REPLACEMENT OF SECTION 61.

Section 61 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

"61. CONDITIONS TO WHICH A LICENCE IS SUBJECT.

(1) A licence is subject to -

- (a) a condition that the holder of the licence comply with this Act and the regulations; and
- (b) a condition that the holder of the licence comply with any direction, determination or order that this Act provides for the Commission to give or make; and
- (c) a condition that the holder of the licence comply with applicable Codes of Practice and technical Codes of Practice determined under Part VIIA; and
- (d) a condition that the holder of the licence comply with applicable codes or rules made under the *Independent Consumer and Competition Commission Act 2002* as in force from time to time; and
- (e) a condition that the holder of the licence comply with any regulatory contract issued under Section 34 or Section 35 of the *Independent Consumer and Competition Commission Act 2002* that applies to the licensee; and
- (f) such conditions as are specified in a declaration made under Section 63; and
- (g) such special conditions as may be specified by the Commission.

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"(2) A condition of a licence held by a carrier has effect subject to the provisions of a licence under the *Radio Spectrum Act 1996* under which the carrier is authorized to do something.

"(3) A condition of a licence shall not be inconsistent with this Act or with Government Policy or with a regulatory contract."

33. CONDITIONS (AMENDMENT OF SECTION 62).

Section 62(1) of the *Telecommunications Act 1996* is amended –

- (a) by repealing Paragraphs (a), (d), (e) and (h); and
- (b) in Paragraph (c), by repealing the words "PANGTEL or the holder is a party" and replacing them with the following :-

"the Commission, PANGTEL or the holder is a party and which has been notified to the licensee"; and

- (c) in Paragraph (j), by inserting after the words "shall operate" the following :-

"telecommunications services"; and

- (d) in Paragraph (k), by repealing the word "PANGTEL's" and replacing it with the following :-

"the Commission's".

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

Section 63(1) of the *Telecommunications Act 1996* is amended in Paragraph (b) by repealing the word "licence" and replacing it with the following :-

"licences".

35. NOTIFICATION AND DATE OF EFFECT OF INSTRUMENT UNDER SECTION 63 (AMENDMENT OF SECTION 64).

Section 64 of the *Telecommunications Act 1996* is amended by adding after the words "affected by the declaration" the following:-

"at least 14 days prior to the date specified in the declaration as the date when the conditions come into effect."

36. PANGTEL TO CONSULT BEFORE CHANGING LICENCE CONDITIONS (AMENDMENT OF SECTION 65).

Section 65 of the *Telecommunications Act 1996* is amended –

- (a) in the heading, by repealing the word "PANGTEL" and replacing it with the following :-

"THE COMMISSION"; and

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- (b) by repealing the words "PANGTEL shall," and replacing it with the following :-

"The Commission shall, at least one month".

37. NEW SECTION 65A.

The *Telecommunications Act 1996* is amended by inserting after Section 65 the following new section :-

"65A. LICENCE CONDITIONS TO BE CONSISTENT WITH REGULATORY CONTRACT.

If any condition in a licence held by a regulated entity conflicts with, or is inconsistent with, any terms or conditions of the regulatory contract relating to that regulated entity, the provisions of the regulatory contract shall prevail and the licence conditions, to the extent of any inconsistency, shall be of no effect."

38. NEW PART VIA.

The *Telecommunications Act 1996* is amended by inserting after Section 66 the following new Part :-

"PART VIA. – CODES OF PRACTICE.

"66A. CARRIER CODES OF PRACTICE.

(1) The Commission may, by writing, determine Codes of Practice to be followed by carriers in the course of their operations.

"(2) Without limiting the generality of Subsection (1), Codes of Practice to be followed by carriers in the course of their operations may include –

- (a) a Customer Service Charter Code of Practice; and
- (b) a Complaints Handling Code of Practice; and
- (c) a Land Access Code; and
- (d) a Billing and Credit Control Code of Practice; and
- (e) an Interconnection Code of Practice.

"(3) At least one month before determining any Code of Practice, the Commission shall consult all carriers and other persons who may have an interest in the development of that Code of Practice, including, where appropriate, the State.

"66B. TECHNICAL CODES OF PRACTICE FOR CARRIERS.

(1) PANGTEL may, by writing, determine technical Codes of Practice for carriers.

"(2) Technical Codes of Practice shall deal principally with engineering and related technical aspects of telecommunications networks, equipment and services.

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- "(3) Without limiting the generality of Subsection (1), technical Codes of Practice may include –
- (a) a Code of Practice for inter-carrier network connections and points of interconnect ; and
 - (b) a Code of Practice for connection of customer equipment; and
 - (c) a Code of Practice for network quality and standards.

"(4) Before determining any technical Code of Practice, PANGTEL shall consult all licensed carriers, the Commission and any other interested party including, where appropriate, the State.

"66C. LICENSEES TO COMPLY WITH CODE.

A licensee shall, when providing a telecommunications service in accordance with its licence, comply with all relevant Codes of Practice and technical Codes of Practice determined under this Part by the Commission or by PANGTEL, as the case may be."

39. REPEAL AND REPLACEMENT OF HEADING OF PART VIII.

Part VIII of the *Telecommunications Act 1996* is amended by repealing the heading of that Part and replacing it with the following :-

"PART VIII. – POWERS AND DUTIES IN RELATION TO LAND."

40. NEW SECTIONS 68A AND 68B.

The *Telecommunications Act 1996* is amended by inserting after Section 68 the following sections :-

"68A. ERECTION, MAINTENANCE AND REMOVAL OF TRANSMISSION LINES, ANTENNAE, ETC.

(1) In this section –

"Government land" means all land other than –

- (a) customary land that is not leased by the owners to the State; and
- (b) land held by a person other than the State for an estate greater than a term of years; and
- (c) land that is the subject of a State lease under the *Land Act 1996*;

"town" means a place declared to be a town under the *Town Boundaries Act* (Chapter 8).

"(2) For the purposes of the provision of telecommunications services, a carrier, on giving notice of its intention to do so to the owner or occupier of the land, may, subject to Subsection (4), erect, maintain and remove facilities in, under, through, over, across or on any land or any building, house or premises on any such land.

"(3) The land to which Subsection (2) applies is land, including land under the sea or a river or stream, that –

- (a) is outside a town; or
- (b) is a street or other Government land within a town,

at the time when the facilities are erected.

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"(4) The exercise of the powers conferred by Section (2) is subject to the prior approval of—

- (d) the Head of State, acting on advice, in the case of land outside a town; or
- (e) the Minister, in the case of land within a town.

"68B. OWNERSHIP OF FACILITIES.

Notwithstanding anything in any other law, but subject to any agreement in writing to the contrary, the ownership of facilities erected or operated by a carrier is not affected by their affixation to land."

41. REPEAL AND REPLACEMENT OF HEADING OF PART IX.

Part IX of the *Telecommunications Act 1996* is amended by repealing the heading of that part and replacing it with the following :—

"PART IX. PROVISION OF TARIFFS."

42. REPEAL OF DIVISION IX.1.

Part IX of the *Telecommunications Act 1996* is amended by repealing Division 1.

43. TARIFFS (AMENDMENT OF SECTION 78).

Section 78 of the *Telecommunications Act 1996* is amended —

- (a) in Subsection (4), repealing the words "with Government Policy" and replacing them with the following :—

"or any code or other instrument made under this Act or under the *Independent Consumer and Competition Act 2002* or with the carrier's regulatory contract"; and

- (b) by repealing Subsection (8) and replacing it with the following :—

"(8) The Commission may not disallow a tariff or variation of a tariff relating to regulated services provided by a regulated entity, by reason of the charges payable under that tariff where those charges are in accordance with the regulated entity's regulatory contract."

44. VARIATION AND REVOCATION OF TARIFF (AMENDMENT OF SECTION 79).

Section 79 of the *Telecommunications Act 1996* is amended by repealing Subsection (3) and replacing it with the following :—

"(3) Section 78 applies to a variation or revocation of a tariff made under Subsection (2)."

45. TERMS AND CONDITIONS IN TARIFF APPLY UNLESS EXCLUDED (AMENDMENT OF SECTION 80).

Section 80(1) of the *Telecommunications Act 1996* is amended by inserting after the words "or another Act" the following :—

"or regulations made under this Act,".

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- 46. NATIONAL NUMBER PLAN (AMENDMENT OF SECTION 81).**
Section 81 of the *Telecommunications Act 1996* is amended by inserting after Subsection (3) the following subsection :-

“(4) In preparing and administering a national numbering plan, PANGTEL shall consult the Commission which may give directions to PANGTEL to ensure that, as far as practicable, the national numbering plan provides competitive neutrality for carriers and service providers and is in the best interest of Papua New Guinea consumers.”.

- 47. PANGTEL'S ROLE IN NEGOTIATIONS OF ACCESS AGREEMENTS (AMENDMENT OF SECTION 83).**

Section 83 of the *Telecommunications Act 1996* is amended -

- (a) in the title, by repealing the word “PANGTEL'S” and replacing it with the following :-

“THE COMMISSION'S”; and

- (b) in Subsection (1), by inserting after the word “Where ” the following:-

“one or”.

- 48. ARBITRATION BY PANGTEL OF ACCESS TERMS (AMENDMENT OF SECTION 84).**

Section 84 of the *Telecommunications Act 1996* is amended in Subsection (4) by inserting at the beginning of Paragraph (f) the following :-

“any”.

- 49. DETERMINATION UNDER SECTION 84 TAKEN TO BE AN ACCESS AGREEMENT (AMENDMENT OF SECTION 85).**

Section 85 of the *Telecommunications Act 1996* is amended -

- (a) by repealing the figure “87” and replacing it with the following :-

“84”; and

- (b) in Paragraph (c), by repealing the words “and with Government Policy”.

- 50. REPEAL AND REPLACEMENT OF SECTION 86.**

Section 86 of *Telecommunications Act 1996* is repealed and is replaced with the following:-

“86. CHARGING PRINCIPLES.

(1) The regulatory contract or the licence of a regulated entity 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 a regulated entity from whom access is being sought, for -

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

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- (b) carriage of communications across the networks of the regulated entity; 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 Subsection (1) does not apply, or principles 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 by carriers or determined by the Commission shall comply with those charging principles.

"(4) A carrier which agrees to 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 (3) 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.”.

51. REPEAL OF PART XV.

Part XV of the *Telecommunications Act 1996* is repealed.

52. DISCUSSION PAPER (AMENDMENT OF SECTION 151).

Section 151 of the *Telecommunications Act 1996* is amended by in Subsection (1) repealing the figure “141” and replacing it with the following :-

“149”.

53. REPEAL AND REPLACEMENT OF SECTION 153.

Section 153 of the *Telecommunications Act 1996* is repealed and replaced with the following :-

“153. PUBLIC HEARINGS.

(1) The Commission may hold public hearings for any purposes of a public inquiry including, without limiting the foregoing generality, purposes—

- (a) in order to receive submissions about the matter to which the inquiry relates; or
- (b) in order to provide a forum for public discussion of issues relevant to that matter.

"(2) At a public hearing, the Commission may be constituted by the Commissioner or one or more Associate Commissioners, or person or persons determined in writing by the Commissioner for the purposes of that hearing.

"(3) The Commissioner is to preside at all public hearings at which he is present.

"(4) Where the Commissioner is not present at a public hearing, the Associate Commissioner or the person specified in an instrument under Subsection (2), as the person who is to preside at the hearing, is to preside.

"(5) The Commission may regulate the conduct of the proceedings at a public hearing as it thinks appropriate.”

54. REPEAL AND REPLACEMENT OF SECTIONS 155, 156 AND 157.

Part XVII of the *Telecommunications Act 1996* is amended by repealing Sections 155, 156 and 157 and replacing them with the following :-

“155. MATTERS THE COMMISSION AND PANGTEL MAY INVESTIGATE.

(1) The Commission may investigate, as provided by this Part –

- (a) matters which may constitute a contravention of Division IX.1 or 2; or
- (b) matters which may constitute a contravention of a condition of a licence; or
- (c) matters which may constitute a contravention of a provision of a Code of Practice, including a Code of Practice in force under Section 66; or
- (d) matters relating to the supply of, or a failure to supply, telecommunications services; or
- (e) any other conduct of a carrier or other licensee under this Act in relation to any of the Commission’s functions under this Act.

"(2) The powers of the Commission under this Part are in addition to its powers and functions under the *Independent Consumer and Competition Commission Act 2002*.

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"(3) PANGTEL may investigate, as provided by this Part, matters relating to a contravention or possible contravention of Part XII or Part XIII.

"156. COMPLAINTS.

(1) A person may complain to the Commission about a matter of a kind referred to in Section 155(1).

"(2) A person may complain to PANGTEL about a matter of a kind referred to in Section 155(3).

"(3) If the Commission receives a complaint relating to a matter under Section 155(3) or if PANGTEL receives a complaint relating to a matter under Section 155(1), the Commission or PANGTEL, as the case may be, shall forthwith refer that complaint to the other agency for investigation.

"(4) A complaint may be made in writing or orally.

"157. INVESTIGATIONS.

(1) The Commission may investigate a matter of a kind referred to in Section 155(1) where –

- (a) a complaint is made under Section 156; or
- (b) the Commission thinks that it is desirable to investigate the matter.

"(2) PANGTEL may investigate a matter of a kind referred to in Section 155(3) where –

- (a) a complaint is made under Section 156; or
- (b) PANGTEL thinks that it is desirable to investigate the matter.

"(3) Neither the Commission nor PANGTEL shall conduct an investigation where it thinks that the subject matter of the investigation would not be a matter relevant to the performance of any of its functions.

"(4) The Commission or PANGTEL shall investigate –

- (a) a matter of a kind referred to in Section 155; or
- (b) any other matter concerning telecommunications services or the telecommunications industry,

where the Minister requests the Commission or PANGTEL, as the case may be, so to investigate.”.

55. REPEAL OF SECTION 158.

Section 158 of the *Telecommunications Act 1996* is repealed.

56. REPEAL AND REPLACEMENT OF SECTIONS 159 AND 160.

Part XVII of the *Telecommunications Act 1996* is amended by repealing Sections 159 and 160 and replacing them with the following :–

“159. CONDUCT OF INVESTIGATIONS.

(1) An investigation under this Part shall be conducted in such manner as the Commission or PANGTEL thinks fit.

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"(2) The Commission or PANGTEL may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.

"(3) It is not necessary for a complainant or a respondent to a complaint to be afforded an opportunity to appear before the Commission or PANGTEL in connection with an investigation.

"(4) The Commission or PANGTEL shall not, as a result of the investigation, make a finding that is adverse to a complainant or a respondent unless it has afforded the complainant or respondent an opportunity to make submissions in relation to the matter to which the investigation relates.

"160. COMPLAINANT TO BE INFORMED OF VARIOUS MATTERS.

Where the Commission or PANGTEL decides not to investigate, or not to investigate further, a matter to which a complaint relates, it shall, as soon as practicable and in such manner as it thinks fit, inform the complainant of the decision and of the reasons for the decision."

(h) REPEAL OF SECTION 161.

Section 161 of the *Telecommunications Act 1996* is repealed.

(i) REPEAL AND REPLACEMENT OF SECTION 162.

Section 162 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

"162. REPORTS ON INVESTIGATIONS.

(1) After concluding an investigation under Section 157(1), the Commission may prepare and give to the Minister a report under this section.

"(2) After concluding an investigation under Section 157(2), PANGTEL may prepare and give to the Minister a report under this section.

"(3) After concluding an investigation under Section 157(3), the Commission or PANGTEL, as the case may be, shall prepare and give to the Minister a report under this section.

"(4) A report under this section shall cover –
(a) the conduct of the investigation concerned; and
(b) any findings that the Commission or PANGTEL, as the case may be, has made as a result of the investigation."

59. PROTECTION FROM CIVIL ACTIONS (AMENDMENT OF SECTION 165).

Section 165 of the *Telecommunications Act 1996* is amended –

- (a) in Subsection (1), by repealing Paragraphs (c) and (d); and
- (b) by repealing Subsection (2).

60. PUBLIC REGISTER OF INFORMATION ABOUT INVESTIGATIONS (AMENDMENT OF SECTION 166).

Section 166 of the *Telecommunications Act 1996* is amended –

- (a) in Subsection (1), by repealing the words “PANGTEL shall” and replacing them with the following:–

“The Commission and PANGTEL shall each”; and

- (b) in Subsections (3) and (4), by repealing the word “PANGTEL” wherever occurring and replacing it in each case with the following:–

“the Commission or PANGTEL”; and

- (c) by repealing Subsection (5) and replacing it with the following:–

“(5) As soon as practicable after it has enough information to enter in the register all of the matters that each provision of Subsection (3) or (4) requires the register to set out, the Commission or PANGTEL, as the case may be, shall so enter that matter.”.

61. INTERCEPTION AND DISCLOSURE OF MESSAGES (AMENDMENT OF SECTION 171).

Section 171(3) of the *Telecommunications Act 1996* is amended by repealing the words “a warrant under the hand of the Minister” and replacing them with the following:–

“an order of the National Court”.

62. REPEAL OF SECTION 176.

Section 176 of the *Telecommunications Act 1996* is repealed.

63. REPEAL AND REPLACEMENT OF HEADING OF DIVISION XIX.1

The heading to Division 1 of Part XIX of the *Telecommunications Act 1996* is repealed and is replaced with the following:–

“Division 1. – Commission directions and conditions of licences.”.

64. ENFORCEMENT OF PANGTEL DIRECTIONS AND CONDITIONS (AMENDMENT OF SECTION 178).

Section 178 of the *Telecommunications Act 1996* is amended –

- (a) in the heading, by repealing the word “PANGTEL” and replacing it with the following:–

“COMMISSION”; and

- (b) in Subsection (1)(c), by repealing the word “PANGTEL” and replacing it with the following:–

“Commission”; and

- (c) in Subsection (2), by repealing the word “PANGTEL” and replacing it with the following:–

“The Commission”.

65. PECUNIARY PENALTIES FOR CONTRAVENTIONS OF PANGTEL DIRECTIONS OR CONDITIONS (AMENDMENT OF SECTION 179).

Section 179 of the *Telecommunications Act 1996* is amended –

(a) in the heading, by repealing the word “PANGTEL” and replacing it with the following :-

“COMMISSION”; and

(b) in Subsection (1) –

(i) by repealing the word “PANGTEL” (first occurring) and replacing it with the following :-

“Commission”; and

(ii) by repealing the word “PANGTEL” (second occurring) and replacing it with the following :-

“the Commission”.

66. AMENDMENT OF HEADING OF SECTION 182.

The heading of Section 182 of the *Telecommunications Act 1996* is amended by repealing the word “PANGTEL” and replacing it with the following :-

“COMMISSION”.

67. NEW DIVISION XIX.1A.

Part XIX of the *Telecommunications Act 1996* is amended by inserting after Section 182 the following new division :-

“Division 1A. – Review of Commission Decisions.

“182A. REVIEW OF DECISIONS BY COMMISSION.

(1) An application may be made to the Appeals Panel –

- (a) by an applicant for the issue or variation of the terms or conditions of a licence under Part VI, or for agreement to the transfer of a licence under Section 59, or for review of the decision of the Commission to refuse the application for the issue or variation of the terms or conditions of the licence or the transfer of the licence; or
- (b) by a carrier for review of a decision of the Commission under Part VI to suspend or revoke the carrier’s licence or to vary the terms or conditions of the carrier’s licence; or
- (c) by a carrier to whom a direction has been given under this Act by the Commission for review of the decision to give the direction; or
- (d) by a carrier to which a regulatory contract applies of a decision of the Commission to issue a licence under Part VI that the carrier believes is inconsistent with the requirements of Section 55; or

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- (e) by a carrier for review of a decision by the Commission under Part XI.

"(2) An application for review of a decision referred to in Subsection (1) shall –

- (a) be in writing; and
(b) set out the decision to which the application relates; and
(c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
(d) be accompanied by any information that the applicant considers should be taken into account by the Appeals Panel on the review; and
(e) be lodged with the Appeals Panel within ten days from the date on which the applicant was notified of the Commission's decision or direction.

"(3) The Appeals Panel may stay the operation of the decision to which the application relates.

"(4) A review shall be decided within four weeks of the application being lodged with the Appeals Panel.

"(5) After considering the application, the Appeals Panel may confirm the decision or return the matter to the original decision maker with such directions as the Appeal Panel considers appropriate.

"(6) The Appeals Panel shall give the applicant written notice of the decision, and the reasons for the decision, on the review.

"(7) Where the entity the subject of a decision referred to in Subsection (1) is a regulated entity, the Appeals Panel shall consist of an International Arbitrator (unless a regulatory contract applying to the regulated entity provides that the Appeals Panel need not consist of an International Arbitrator).

"182B. MINISTER'S POWER TO INTERVENE.

The Minister may intervene, personally or by counsel or other representative, in a review under this Part for the purpose of introducing evidence, or make submissions, on any question relevant to the public interest."

68. REPEAL AND REPLACEMENT OF HEADING OF DIVISION XIX.2.

The heading to Division 2 of Part XIX of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

"Division 2. – Powers of entry, search and seizure by PANGTEL."

69. APPOINTMENT OF INSPECTORS (AMENDMENT OF SECTION 183).

Section 183 of the *Telecommunications Act 1996* is amended by inserting after the words "shall determine to be" the following :-

"PANGTEL".

70. IDENTITY CARD (AMENDMENT OF SECTION 184).

Section 184(1) of the *Telecommunications Act 1996* is amended by repealing the figure "174" and replacing it with the following :-

"183".

71. RETENTION OF BOOKS, RECORDS AND DOCUMENTS (AMENDMENT OF SECTION 189).

Section 189 of the *Telecommunications Act 1996* is amended -

(a) by repealing the figure "188" and replacing it with the following :-

"186"; and

(b) by repealing the figure "187(1)" and replacing it with the following :-

"188(1)"; and

(c) in Paragraph (a), by repealing the figures and word "Division XIII.6 and 7" and replacing them with the following :-

"Division XIII.1 and 2".

72. REPEAL AND REPLACEMENT OF HEADING OF SECTION 191.

The heading of Section 191 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

"191. REVIEW OF DECISIONS BY NATIONAL COURT.".

73. REPEAL AND REPLACEMENT OF SECTION 193.

Section 193 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

"193. THE COMMISSION TO REVIEW AND REPORT TO PARLIAMENT ON COMPETITION AND CARRIER PERFORMANCE.

(1) The Commission shall review, and report to the Parliament on, the development of competition within the telecommunications industry, including -

(a) matters relating to the operation of Parts V, VI, IX and XI; and

(b) such other matters relating to competition in the telecommunications industry as the Commission thinks appropriate.

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"(2) The Commission shall review, and report to the Parliament on, carrier performance, including in relation to any carrier –

- (a) the efficiency with which the carrier supplies services and facilities; and
- (b) the adequacy and quality of the services and facilities supplied by the carrier; and
- (c) the appropriateness and adequacy of the strategies and policies that the carrier is following to carry out its prescribed carrier obligations (if any); and
- (d) the efficiency with which the carrier is carrying out those obligations; and
- (e) such other matters relating to carrier performance as the Commission thinks appropriate.

"(3) Where reviewing, and reporting on, the matters referred to in Subsections (2)(a) and (b), the Commission shall have regard to the regulatory contract and to the performance standards it has developed under Section 19F(d).

"(4) The Commission shall report to the Parliament under Subsections (1) and (2) within 12 months of the conclusion of each calendar year."

74. PERSON TO USE PROTECTED NAME OR PROTECTED SYMBOL (AMENDMENT OF SECTION 197).

Section of 197(4) of the *Telecommunications Act 1996* is amended by repealing Paragraph (b) and replacing it with the following :-

"(b) "Papua New Guinea Radiocommunications and Telecommunications Technical authority";".

75. REPEAL AND REPLACEMENT OF SECTION 198.

Section 198 of the *Telecommunications Act 1996* is repealed and is replaced with the following :-

"198. CONSULTANTS.

(1) The Commission may engage such persons as it thinks fit as consultants to advise the Commission in respect of the exercise of its powers and the performance of its functions.

"(2) A consultant to the Commission is entitled to such remuneration as is determined by the Commission.

"(3) PANGTEL may engage such persons as it thinks fit as consultants to advise PANGTEL in respect of the exercise of its powers and the performance of its functions.

"(4) A consultant to PANGTEL is entitled to such remuneration as is determined by PANGTEL."

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76. REPEAL OF SECTION 199.

Section 199 of the *Telecommunications Act 1996* is repealed.

77. REPEAL AND REPLACEMENT OF SECTION 200.

Section 200 of the *Telecommunications Act 1996* is repealed and replaced with the following :-

“200. DELEGATION.

(1) The Commission may, by unanimous decision of all members of the Commission, and subject to any regulations made under this section, delegate to any member, officer or committee of the Commission or to any other person any of its powers and functions (except this power of delegation) under this Act.

"(2) A delegation under Subsection (1) -

- (a) shall be in writing; and
- (b) may be subject to such conditions or restrictions as are specified in the instrument of delegation; and
- (c) is revocable at will by resolution of the Commission in writing; and
- (d) does not affect or prevent the performance of a function or the exercise of a power by the Commission.

"(3) PANGTEL may, in writing, delegate all or any of its powers and functions (except this power of delegation) under this Act to -

- (a) a member; or
- (b) a staff member; or
- (c) a person whose services are made available to PANGTEL under Section 42(8).”.

78. FURTHER AMENDMENTS.

The *Telecommunications Act 1996* is further amended in the provisions specified in the Table by repealing, in each case, the word "PANGTEL" and replacing it, in each case, with the following :-

"the Commission".

Provisions amended
Sections 10, 57(1), 59, 60, 63(1), 64, 66, 67(4), 68, 78, 79(2), 82, 83, 84, 87(6), 117 to 127 (inclusive), 149, 150, 151, 152, 154, 163, 164, 175, 178(4), 179(1), 180 and 182.

PART III. – REPEAL OF TELIKOM PNG LIMITED ACT 1996.

79. REPEAL OF TELIKOM PNG LIMITED ACT 1996.

The *Telikom PNG Limited Act 1996* is repealed.

80. SAVINGS.

Section 79 does not affect the validity of any act or thing done by Telikom or by any other person pursuant to the *Telikom PNG Limited Act 1996*, repealed by Section 79, prior to the date on which Section 79 comes into effect.

PART IV. – AMENDMENT OF THE RADIO SPECTRUM ACT 1996.

81. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the *Radio Spectrum Act 1996* is amended –

- (a) by inserting after the definition “apparatus” the following new definition :–

““Appeals Panel” has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;” and

- (b) by inserting after the definition “Chief Executive” the following new definition –

““Commission” means the Independent Consumer and Competition Commission established under the *Independent Consumer and Competition Commission Act 2002*;” and

- (c) by repealing the definition of “PANGTEL” and replacing it with the following :–

““PANGTEL” means the Papua New Guinea Radiocommunications and Telecommunications Technical Authority established by the *Telecommunications Act 1996*;”.

82. LICENCES (AMENDMENT OF SECTION 7).

Section 7 of the *Radio Spectrum Act 1996* is amended by repealing Subsection (2) and replacing it with the following new subsections:–

“(2) Subject to Subsections (3) to (9) (inclusive), a licence shall be in such form, for such period and subject to such conditions as PANGTEL thinks fit.

“(3) In considering applications for licences by persons licensed or applying to be licensed as telecommunications carriers under the *Telecommunications Act 1996*, PANGTEL shall apply the principle that as far as practicable, such persons shall be given access to such radio spectrum as may reasonably be required to allow the effective operation of their licensed telecommunications network.

“(4) PANGTEL shall consult the Commission before issuing or refusing to issue any licence to a person referred to in Subsection (3).

“(5) In issuing any licence to a person referred to in Subsection (3), PANGTEL shall issue the licence for a period not less than the period of the person’s telecommunications carrier licence and on terms and conditions which are not inconsistent with that telecommunications carrier licence.

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"(6) PANGTEL shall consult the Commission before taking any action to suspend or revoke a licence issued to a person referred to in Subsection (3).

"(7) Notwithstanding Subsection (1), the regulations shall be of no effect to the extent that they are inconsistent with the principle in Subsection (3).

"(8) If the Commission and PANGTEL, in consultations under this section, are unable to agree, the views of the Commission shall prevail.

"(9) Decisions by PANGTEL under Subsection (3) or Subsection (6) may be reviewed by the Appeals Panel."

83. NEW PART IIA.

The *Radio Spectrum Act 1996* is amended by inserting after Section 14 the following new Part :-

"PART IIA. – REVIEW OF PANGTEL DECISIONS.

"14A. REVIEW BY APPEALS PANEL.

(1) An application may be made to the Appeals Panel by a person licensed or applying to be licensed as a telecommunications carrier under the *Telecommunications Act 1996* for review of a decision by PANGTEL under Section 7.

"(2) An application for review of a decision referred to in Subsection (1) shall –

- (a) be in writing; and
- (b) set out the decision to which the application relates; and
- (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
- (d) be accompanied by any information that the applicant considers should be taken into account by the Appeals Panel on the review; and
- (e) be lodged with the Appeals Panel within ten days from the date on which the applicant was notified of PANGTEL's decision.

"(3) The Appeals Panel may stay the operation of the decision to which the application relates.

"(4) A review shall be decided within four weeks of the application being lodged with the Appeals Panel.

"(5) After considering the application, the Appeals Panel may confirm the decision or return the matter to the original decision maker with directions the Appeal Panel considers appropriate.

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"(6) The Appeals Panel shall give the applicant written notice of the decision, and the reasons for the decision, on the review.

"(7) Where the entity the subject of a decision referred to in Subsection (1) is a regulated entity, the Appeals Panel shall consist of an International Arbitrator (unless a regulatory contract applying to the regulated entity provides that the Appeals Panel need not consist of an International Arbitrator).

"14B. MINISTER'S POWER TO INTERVENE.

The Minister may intervene, personally or by counsel or other representative, in a review under this part for the purpose of introducing evidence, or make submissions, on any question relevant to the public interest."

PART V. – AMENDMENT OF THE *LAND ACT* 1996.

84. NEW SECTION 118A.

Part XII of the *Land Act* 1996 is amended by inserting after Section 118 the following new section :-

"118A. – VARIATION OF SPECIAL PURPOSES LEASE.

(1) In this section, "the Lease" means the Lease for Special Purposes of Land at Allotment 17 Section 136, Hohola, City of Port Moresby, National Capital District and being the whole of the land contained in State Lease Volume 101 Folio 218 of the Register of State Leases, and currently held by Telikom PNG Limited as proprietor.

(2) Condition D of the Lease is deleted but the Lease is otherwise unchanged.

(3) The Registrar of Titles shall make a notation on the Register of State Leases that Condition D of the Lease has been deleted and shall issue to the registered proprietor of the Lease a new instrument of lease from which Condition D of the Lease has been deleted."

I hereby certify that the above is a fair print of the *Telecommunications Industry Act 2002* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Telecommunications Industry Act 2002* was made by the National Parliament on 27 March 2002 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

