



Republic of Kiribati  
(No. 3 of 2013)

I assent,

*Aruto Tung*  
Beretitenti  
17 May, 2013

**AN ACT TO PROVIDE FOR AND REGULATE  
TELECOMMUNICATIONS SYSTEMS AND SERVICES AND RELATED  
MATTERS**

Commencement  
2013

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

**Part I— Preliminary Provisions**

**Short title**

1. This Act may be cited as the Communications Act 2013

**Interpretation**

2. In this Act, unless the context otherwise requires—

‘access’ means the provision of access to communications facilities by one licensee to another for the purpose of the second licensee providing communications services;

‘Act’ means this Communications Act 2012 and includes any rules made under this Act;

‘appeals panel’ means the body established by the Commission under section from time to time;

‘associated company’ has the meaning given in the Companies Ordinance (Cap. 10A);

‘Commission’ means the Communications Commission of Kiribati described in Part II of this Act;

'communications' means the conveyance from one device to another of any message by means of any wire, radio, optical, electric, magnetic, electromagnetic or similar system;

'communications facility' means any infrastructure, building, including a switching equipment location, mast site, tower, pole, trunk line, access line, duct or other underground facility, or other passive equipment that is used or is capable of being used for communications or for any operation directly connected with communications, but excluding customer equipment;

'communications market' means a market for communications services or access;

'communications network' means a system that uses electricity or electromagnetic energy for providing communications services between network termination points;

'communications service' means a service for the transmission of communications by means of a communications network;

'consumer' means a customer who contracts for a communications service that is offered on standard conditions that are of general application and not negotiated individually;

'customer' means a person who contracts for a communications service;

'customer equipment' means equipment (including cabling) that is on the customer side of the network termination point and intended to be connected to a communications network;

'equipment' includes any appliance, apparatus, device or accessory used or intended to be used for communications purposes;

'exempt network' means a communications network—

- (a) not used to provide any communications service for which a charge is imposed;
- (b) wholly within one property (including a ship or aircraft) or a number of properties which together comprise a campus;
- (c) used only for a person's private or internal requirements (including the requirements of an organisation's staff, a related entity or a holding company, subsidiary company or associated company); or
- (d) covered by an exemption under subsection (1)(a);

'exempt service' means a communications service—

- (a) provided only over an exempt network; or
- (b) provided in circumstances covered by an exemption under subsection (1)(a);

'holding company' has the meaning given in the Companies Ordinance (Cap. 10A);

'Inspector' means a person appointed or designated by the Commission under section;

'interconnection' means the physical and logical linking of communications networks of different licensees in order to allow the customers of one licensee to communicate with customers of the same or another licensee, or to access the communications services of another licensee;

'licence' means a licence issued under this Act;

'licensee' means a person who holds or is registered under a licence, except in Parts V and XI and section where 'licensee' means only a person who holds or is registered under a licence issued under section ;

'message' means any sign, signal, writing, image, sound, instruction, information, or intelligence of any nature;

'Ministry' means the Ministry responsible for communications;

'network termination point' means the point determined by the technical rules for the purposes of this Act or, in the absence of such rules—

- (a) the first equipment socket in a private residence;
- (b) the public network termination point on the main distribution frame in a building;
- (c) a point agreed between the customer and the owner of the communications facility to which that customer is connected; or
- (d) the air side of the antenna at the customer equipment, where such equipment is connected to a network by means of radiocommunications;

'publish' means, where it relates to publication of a document by the Commission, to publish in accordance with section (2);

'radiocommunications' means communications by means of electromagnetic waves propagated in space without artificial guide and which are subject to regulation pursuant to a spectrum plan issued under this Act;

'sensitive information' has the meaning given in subsection (5);

'specified communications network' means a communications network that includes a line or radiocommunications link, or a series of lines or radiocommunications links, between two fixed points, including—

- (a) radiocommunications transmission links;
- (b) cable transmission links; and
- (c) cable access networks;

'subsidiary company' has the meaning given in the Companies Ordinance (Cap. 10A);

'Universal Access Fund' means the fund established under section ;

'Universal Access Plan' means a plan made under section ; and

'user' means any person using a communications service, regardless of whether such a person is contracted to acquire the service.

### **General objectives**

3. (1) The objectives of this Act are—

- a) providing transparent, technologically and competitively neutral regulation which focuses on promoting the long term interests of users;
- b) providing regulation that is proportionate to the end to be achieved, non- discriminatory and promotes reliance on market forces, to the greatest extent reasonable in the circumstances;
- c) providing a communications licensing regime which promotes entry by new licensees and which fosters investment and innovation in communications networks and the supply of communications services;
- d) providing for efficient use of communications facilities and providing for cost-based interconnection and access on an equitable and non-discriminatory basis for operators of communications networks, to promote end-to-end connectivity of separate communications networks;
- e) providing conditions for effective competition among licensees in Kiribati and encouraging efficient and sustainable investment in and use of communications networks and services;
- f) protecting the interests of consumers and regulating prices;
- g) promoting the development of communications in Kiribati, as far as practicable, in accordance with recognised international standards and practices;
- h) promoting the effective and efficient use of the radio frequency spectrum, numbers, rights of way and other finite resources;
- i) extending access to communications services to all persons in Kiribati, to the greatest extent reasonable in the circumstances; and
- j) promoting the appropriate use of communications networks and communications services.

## **Part II— Institutional Framework**

### **The Commission**

- 4. (1) The Telecommunications Authority of Kiribati that existed immediately before this section commenced continues to exist as the Communications Commission of Kiribati.
- (2) The Commission shall consist of a Chairman and four other members.

### **Functions and powers of Commission**

- 5. (1) For the purpose of achieving the objectives referred to in section , the Commission shall—
  - a) issue licences and supervise and enforce compliance with this Act and the conditions of licences;
  - b) regulate access to and the sharing of communications facilities and interconnection of certain communications networks of licensees where such matters are not agreed by the licensees;
  - c) monitor and enforce compliance with competition requirements and determine when industry consolidation is permissible;
  - d) regulate the protection of consumers, charges levied by licensees for communications networks and communications services and the attributes of communications services;

- e) specify technical standards and procedures for interconnection and the operation of communications networks and provision of communications services;
  - f) regulate types and characteristics of communications equipment which may be connected to a communications network;
  - g) monitor and report on the development and performance of the communications sector in supplying services and the contribution of the communications sector to the overall development of Kiribati;
  - h) monitor the quality of services provided by licensees and ensure that licensees conform to standards specified by the Commission;
  - i) manage the radio frequency spectrum, numbering and electronic addressing and assist licensees in obtaining access to land for communications networks;
  - j) administer universal service arrangements for the supply of communications services throughout Kiribati;
  - k) give effect to any Government policies given by the Minister in accordance with section ;
  - l) where required by the Minister, represent the government in international conferences or international and other organisations concerned with communications;
  - m) advise the Government on policies and legislative measures in respect of communications;
  - n) undertake consultations on matters relating to communications;
  - o) take enforcement action under this Act; and
  - p) perform such other functions as are consistent with the Act.
- (2) In addition to powers conferred on the Commission under subsection (1) the Commission shall have power as a statutory corporation to do all things necessary or convenient for or in connection with the performance of its functions.
- (3) Nothing in subsection (1) shall be construed as imposing on the Commission any form of duty or liability enforceable by legal proceedings.

#### **Appointment and removal of members**

6. (1) All the members of the Commission (including the Chairman who shall be appointed as such) shall be appointed by the Minister from among persons appearing to him to be qualified for the office for a fixed term of 5 years.
- (2) The Minister shall appoint a person under subsection (1) who is in his opinion-
- a) has demonstrated experience 10 years in the fields of economics, law, finance, business, engineering or public administration in relation to the communications sector; and
  - b) is not disqualified for appointment under subsections (3) or (4).
- (3) The Minister may appoint an officer of the Ministry as a member of the Commission other than as Chairman, but only if—
- a) the officer meets the requirements of subsection (2)(a); and
  - b) the appointment would not result in more than one officer of the Ministry being a member of the Commission at the same time.

- (4) A person shall be disqualified from becoming or remaining a member of the Commission if that person—
  - a) is found or declared to suffer from mental or physical incapacity;
  - b) is or has been convicted of a criminal offence;
  - c) is or has been declared bankrupt or insolvent;
  - d) holds an elected office in Kiribati;
  - e) except as permitted under subsection (3)(b), is a staff member or officer of a Ministry of the Government of Kiribati; or
  - f) holds a direct or indirect financial or other interest in any licensee other than through a fund over which the person has no control or influence.
- (5) The Minister shall promptly remove any member of the Commission who is disqualified under subsections (3) or (4).
- (6) The Minister shall remove a member of the Commission who has refused or materially failed to discharge the obligations imposed on him under this Act.
- (7) A member may resign from the Commission upon three months' written notice to the Minister, or such shorter time as the Minister and the member may agree in writing.
- (8) If any member of the Commission dies or ceases to hold office before the expiration of the term for which he was appointed, the term of office of his successor shall be so fixed as to expire at the end of the first-mentioned term, but the Minister may, if he thinks fit to do so and provided that the number of members of the Commission remains at least three, defer the making of an appointment until the expiration of the said first-mentioned term.
- (9) The Minister shall not appoint a person as a member of the Commission on a temporary or acting basis.

#### **Remuneration of members**

7. The Commission shall pay to each of its members, in respect of his office as such, remuneration and/or allowances as prescribed by law and in the absence of any law as determined by the Minister and approved by the Cabinet, and in determining the remuneration and allowances to be paid under this sub-paragraph, different provisions may be made as regards the Chairman and the other members but not as between the other members.

#### **Incorporation and capacity of Commission**

8. (1) The Commission shall be a body corporate with perpetual succession and a common seal.
- (2) The Commission may sue and be sued in its corporate name, may enter into contracts and may acquire, purchase, take, hold and enjoy property of every description. The Commission may convey, assign, surrender, yield up, charge, mortgage, lease, demise, re-assign, transfer or otherwise dispose of or deal with any property or any interest therein vested in the Commission upon such terms as the Commission sees fit.
- (3) The Commission may act notwithstanding a vacancy among its members.

### **Procedure of Commission**

9. (1) The quorum of the Commission shall be three, or such number as the Commission may from time to time determine in the procedural rules referred to in section.
- (2) Each member of the Commission including the Chairman shall have one vote and a simple majority of votes shall be required to dispose of any item of business. In the event of a tie, the Chairman shall cast an additional deciding vote.
- (3) The Commission shall meet as often as necessary to conduct its business, but at least once a month.

### **Duty of members to disclose conflicts of interest**

10. (1) A member of the Commission who is in any way directly or indirectly interested in a matter before the Commission shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest to the Commission.
- (2) Any disclosure made under subsection (1) shall be recorded in the minutes of the next meeting of the Commission, and the member—
  - a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to that matter; and
  - b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

### **Power of Commission to regulate own procedure**

11. Subject to this Act, the Commission may make rules regulating its own procedure.

### **Officers and employees of Commission**

12. (1) The Commission may appoint such officers, and take into its employment such other persons, as the Commission may determine.
- (2) The Commission may delegate its powers, except the power to delegate authority, to Commission officers and staff as it thinks fit.

### **Authentication of Commission's seal**

13. The application of the seal of the Commission shall be authenticated by the signatures of the—
  - a) Chairman of the Commission or other member of the Commission authorised by the Commission to authenticate the application of the Commission's seal; and
  - b) secretary of the Commission or other officer of the Commission authorised by the Commission to act in that behalf.

### **Presumption of authenticity of documents issued by Commission**

14. Any document purporting to be an instrument issued by the Commission and sealed as aforesaid or signed on behalf of the Commission shall be received in evidence and shall be deemed to be such an instrument without further proof unless the contrary is shown.

### **Protection of members of Commission**

15. No personal liability shall attach to any member of the Commission in respect of anything done or permitted in good faith under the provisions of this Act.

### **Government policies and international conventions**

16. (1) The Minister shall—
- a) before recommending to Cabinet any general policy in relation to communications, consult with the Commission, licensees and other interested persons and allow a reasonable period for consultation; and
  - b) upon making such a policy, notify the Commission in writing.
- (2) The Commission shall publish policies notified to it under subsection (1).
- (3) The Commission shall—
- a) give effect to a Government policy notified under subsection (1) to the extent possible consistent with this Act; and
  - b) have regard to obligations under any convention to which the Republic of Kiribati is a party.
- (4) Except as set out in subsection (3), the Commission shall act independently from the Government and the Minister in performing its functions and duties, and exercising its powers, under this Act.

### **Exemption from income tax, customs duty and import levy**

17. Notwithstanding the provisions of any other Act, the income of the Commission shall be exempt from payment of income tax, and the Commission shall not be liable for the payment of customs duty and import levy, or any other tax having a similar effect.

### **Annual report, accounts and audit**

18. (1) The Commission shall be funded on an annual basis by licence fees and other fees it is entitled to charge under this Act.
- (2) Charges and fees payable to the Commission under this Act shall be payable to the Commission's nominated bank account and not into the Consolidated Fund, notwithstanding section 4 of the Public Finance (Control and Audit) Act [Cap 79].
- (3) Charges and fees payable to the Commission under this Act constitute a debt which may be recovered by the Commission in a court of competent jurisdiction.
- (4) The Commission shall by—



- a) 30 September of each year, submit its annual budget for the following financial year and forecasts for the following three financial years to the Minister;
  - b) 31 March of each year, cause its accounts for the previous financial year to be audited by the Auditor-General or an auditor designated by the Auditor-General;
  - c) 30 June of each year, submit to the Minister the audited accounts and an annual report on its activities for the previous financial year; and
  - d) 30 June of each year, submit to the Minister a report on all significant matters relating to the performance and efficiency of the communications sector, with particular reference to the—
    - (i) adequacy and quality of services; and
    - (ii) contribution of the communications sector to economic development in Kiribati.
- (5) The Minister shall cause the reports and the audited accounts to be tabled in Parliament as soon as possible.
- (6) The Commission shall publish and make available upon request to any person its—
- a) budget and forecasts;
  - b) audited accounts; and
  - c) annual reports.
- (7) The Commission shall transfer to the Universal Access Fund any funds that it receives in excess of its approved budget and forecast funding needs, unless the Minister directs the Commission to retain such excess in the Commission's nominated bank account.
- (8) The Commission shall pay Kiribati's membership fee or other charges to any regional or international telecommunications body.

#### **Efficiency audit**

19. (1) The Minister may, if he considers that the Commission's expenditure is excessive having regard to the Commission's functions under this Act, direct the Auditor-General to undertake an efficiency audit of the Commission.
- (2) On being directed to undertake an efficiency audit, the Auditor-General shall within three months—
- a) review the Commission's annual budget for the current financial year and the Commission's forecasts for the following three financial years;
  - b) assess whether the budget and forecasts are reasonable having regard to the Commission's functions under this Act; and
  - c) provide a report to the Commission and the Minister outlining these findings and, if desirable, recommending changes to the Commission's budget and forecasts.
- (3) The Auditor-General may delegate its responsibility to undertake the efficiency audit to a suitably qualified person or firm.
- (4) The Commission shall provide all reasonable assistance (including providing access to any documentation and financial records of the Commission) to a person undertaking an efficiency audit.

- (5) If a report provided to the Commission under sub-section (2) concludes that the Commission's budget and forecasts are not reasonable having regard to the Commission's functions under this Act, the Commission shall provide a response to the Minister within three months responding to the recommendations in the report.

### Consultation

20. (1) The Commission shall carry out such consultations as are required by this Act. The Commission may also carry out such other consultations with interested persons as it thinks appropriate in the circumstances.
- (2) Where this Act requires the Commission to conduct a consultation, the Commission shall publish a written notice specifying—
- a) the power which the Commission intends to exercise;
  - b) the way in which the Commission intends to exercise that power; and
  - c) the reasons for the intended exercise of that power.
- (3) Where this Act requires the Commission to conduct consultation with a particular person, the Commission shall also provide the written notice specified in subsection (2) to that person.
- (4) A person shall be entitled to provide a submission to the Commission in response to a notice published under subsection (2). The due date to lodge such a submission shall be 14 days from the date of the notice or such longer period as the Commission may specify in the notice.
- (5) The Commission shall take into account any submission which it receives under subsection (4) by the due date. The Commission is not prohibited from taking into account a submission which it receives after the due date.
- (6) Subject to section, the Commission shall make available a copy of any submission it receives under subsection (4). The Commission may charge a reasonable fee to cover any administrative costs of complying with this subsection.
- (7) The Commission shall, before making a final decision—
- a) publish a draft decision; and
  - b) provide a copy of such draft decision to every person who has made a submission under subsection (4), where required by this Act, or where the Commission otherwise considers it appropriate.
- (8) If the Commission issues a draft decision, subsections (2) to (6) shall apply to the draft decision, as if references to the written notice provided under subsection (2) were references to the draft decision.
- (9) After making a final decision, the Commission shall promptly—
- a) publish that decision; and
  - b) provide a copy of such decision to every person who has made a submission under subsection (4).

## Publication and use of information

21. (1) Subject to subsection (3), the Commission shall publish—
- a) this Act;
  - b) all rules or other instruments made under this Act;
  - c) all licences and permits issued under this Act; and
  - d) such other documents it is required to publish under this Act.
- (2) Where the Commission is required to publish a document, the Commission
- a) shall publish the document on its website; and
  - b) may publish the document in such other manner as the Commission considers appropriate.
- (3) Neither the Commission nor any employee or agent of the Commission shall knowingly publish or disclose sensitive information to any person, knowingly allow sensitive information to be disclosed to any person, or use sensitive information for personal advantage.
- (4) Subsection (3) shall also apply to a person who publishes, discloses or uses sensitive information after ceasing to be a member, employee or agent of the Commission.
- (5) Subject to subsection (7), 'sensitive information' means information—
- a) submitted to the Commission by a person;
  - b) not already in the public domain;
  - c) designated as confidential or proprietary by that person because—
    - (i) the person has a legal obligation to keep the information confidential;
    - (ii) the information is commercially sensitive to the person;
    - (iii) disclosure would compromise effective competition in a communications market; or
    - (iv) disclosure would create a risk to a person's safety or national security;and
  - d) which the Commission has not determined, by notice to the person within 7 days of the information being submitted, is not confidential or proprietary, and includes data derived from that information.
- (6) Where information is provided to the Commission voluntarily, a notice issued under subsection (5)(d) shall give such person an opportunity to withdraw the information in which case—
- a) the Commission shall not have regard to the information; and
  - b) subsections (3) and (4) shall apply as if the information were sensitive information.
- (7) Sensitive information does not include the terms of an interconnection and access agreement, including prices for interconnection and access services.

## Service of notices

22. Unless otherwise expressly provided in this Act, any document required or authorised by this Act to be provided to or served on any person, may be provided or served on the person concerned by—

- a) delivering it to the person or to some adult member or employee of that person's family at the person's last known residence;
- b) leaving it at that person's usual or last known residence or place of business in a cover addressed to the person;
- c) affixing it to some conspicuous part of that person's last known residence;
- d) sending it by registered post addressed to that person at that person's usual or last known residence or place of business;
- e) where the person is a body corporate—
  - (i) delivering it to the secretary or other similar officer of the body corporate at its registered or principal office; or
  - (ii) sending it by registered post addressed to the body corporate at its registered or principal office.

**Charges for commercial services provided by the Commission**

- 23. (1) The Commission may levy charges or fees for commercial services rendered upon request to any person.
- (2) The Commission may provide commercial services to a person only where it does not give rise to a conflict of interest in respect of the Commission's functions under this Act.

**Delegation of powers**

- 24. The Commission may, in writing and with the written approval of the Minister, delegate to any person (not being an officer or staff of the Commission) any of its powers, other than the power conferred by this section.

**Part III – Reconsideration and Rehearings**

**Review options**

- 25. (1) A person affected by a determination, decision or order of the Commission under this Act may apply—
  - a) for reconsideration of the decision under section ;
  - b) for a rehearing under section ; or
  - c) to a Court for relief on the basis of an error of law.
- (2) Notwithstanding subsection (1), a person may not apply to the Court in respect of a decision of the Commission—
  - a) if the person has not applied for reconsideration of the decision under section ;
  - b) if the person has applied for reconsideration and the Commission has not yet made a decision as to whether to reconsider the decision; or
  - c) where this Act provides for a rehearing of that decision by the appeals panel.

**Reconsideration of decisions**

- 26. (1) A person directly affected by a decision of the Commission may apply to the Commission for reconsideration of the decision within 14 days of the decision of which review is sought.

- (2) An application under subsection (1) must specify—
  - a) the decision of the Commission to which the application relates;
  - b) the reasons for which the reconsideration is sought; and
  - c) the decision sought on reconsideration.
- (3) The Commission shall, within 20 days from receipt of an application under subsection (1), consider the application and notify the applicant as to whether the decision will be reconsidered.
- (4) If, 20 days after the filing of an application for reconsideration of a decision, the applicant has not received a response to the application, the Commission shall be deemed to have affirmed the decision in respect of which the application for reconsideration was made.
- (5) If the Commission determines to reconsider the decision, it shall comply with the same procedures (such as consultation and preparation of a draft decision) required to be complied with when the decision was first made.
- (6) This section does not apply to a decision of the Commission made under this Part or Parts II, XII, XIII or XIV of this Act.

#### **Appointment of experts**

27. (1) The Commission shall establish a register of experts who shall be available to act as members of an appeals panel constituted under section.
- (2) The Commission shall ensure the register of experts comprises at all times at least three persons who collectively have commercial, technical and legal expertise in the field of communications.
- (3) The Commission may only appoint a person to the register of experts if the person—
  - a) meets the eligibility criteria to be appointed a member of the Commission;
  - b) has at least 10 years international experience in the regulation of communications markets; and
  - c) is not a member, officer, employee, agent or consultant of the Commission and has not been such a person for at least 12 months.
- (4) The Commission shall remove a person from the register of experts if the person no longer meets the criteria for appointment under subsection (3).
- (5) The Commission shall act as the secretariat for the appeals panel and shall publish the membership of the register of experts.

#### **Rehearing of decision**

28. (1) A person may apply to the secretariat of the appeals panel for rehearing of a decision where expressly permitted by this Act.
- (2) An application under subsection (1) must—

- a) specify the decision to which the application relates;
  - b) specify the reasons why the review is sought and the outcome sought from the appeals panel; and
  - c) be submitted to the secretariat within 14 days of publication of the decision or after that period with the consent of the secretariat.
- (3) On receipt of a valid application for review under subsection (1), the secretariat shall select an appeals panel comprising a member or members from the register of experts having regard to the—
- a) suitability of the expert to hear the subject matter of the appeal; and
  - b) availability of the expert.
- (4) If more than one member is appointed to the appeals panel the secretariat shall designate one member of the panel as the Chair whose opinion shall determine the appeal in the event of a tie.
- (5) The appeals panel—
- a) shall give a copy of the application for review to persons affected by the decision under review and any other person who made a submission to the Commission in a consultation relating to the decision under review, and invite such persons to make submissions;
  - b) may determine an application on the papers or convene a hearing in person or by teleconference or other means that permits all those participating to communicate with each other simultaneously and instantaneously; and
  - c) in all other matters, may determine their own procedures as they see fit, provided that such procedures do not give one person affected by the decision an advantage over any other person affected by the decision.
- (6) An appeal shall be by way of rehearing on the evidence before the Commission. The appeals panel—
- a) shall take into account information submitted by a party to the appeal that updates the information previously provided to the Commission; and
  - b) may, in exceptional circumstances, take into account new information submitted by a party to the appeal.
- (7) The appeals panel may stay the operation of the decision while considering the application.
- (8) The appeals panel shall—
- a) affirm the decision under review;
  - b) vary the decision under review;
  - c) set aside the decision under review and make their own decision, which shall be treated as a decision of the Commission; or
  - d) refer the matter back to the Commission.
- (9) The appeals panel shall give a copy of a decision and the reasons for the decision to each person affected by the decision and the Commission.
- (10) The Commission shall publish a decision and the reasons for a decision given to it under subsection (9).

- (11) The costs of the appeals panel in conducting the review shall be borne by the person making the application for review.
- (12) The appeals panel may make a costs order in exceptional circumstances and, if no such order is made, costs lie where they fall.

#### **Limit on judicial review**

- 29 (1) A decision of the appeals panel is final and binding, subject to section (1)(c).

### **Part IV— Licences**

#### **Licence for communications network or service**

30. (1) Subject to subsections (5) and (6), no person may—
  - a) own or operate a specified communications network; or
  - b) provide a communications service, in Kiribati or between any place in Kiribati and any place outside Kiribati, except in accordance with a licence issued under this Act.
- (2) The Commission may issue the following types of licences pursuant to the requirements of the licensing rules—
  - a) an individual licence, to authorise the ownership or operation of any specified communications network and the provision of any communications service; and
  - b) a class licence, to authorise the provision of any communications service.
- (3) An individual licence shall be issued by the Commission to a specified person for a specified period but not exceeding 20 years.
- (4) A class licence shall—
  - a) be issued by the Commission setting out—
    - (i) the terms and conditions of the licence; and
    - (ii) any applicable eligibility criteria; and
  - b) come into force with respect to any person upon registration by that person under subsection (1)(b).
- (5) No licence shall be required under subsection (1) to own or operate an exempt network or to provide an exempt service, subject to compliance with any conditions set out in the licensing rules.
- (6) No licence shall be required for the ownership of a specified communications network where the operator of that specified communications network has been issued with the required licence.

#### **Licensing rules for communications networks or services**

31. (1) The Commission may make licensing rules specifying—
  - a) additional exempt services and exempt networks;

- b) the process for submitting an individual licence application or application for registration, including the intended timeframe for the Commission to process an application;
  - c) the application fees to be paid to the Commission;
  - d) the eligibility criteria for individual licences and registration under class licences;
  - e) a fair and transparent method or methods of selecting applicants in circumstances where applications for licences may exceed the restrictions set out in subsection (2); and
  - f) general licence conditions which apply to all licences.
- (2) The licensing rules may set out restrictions or limitations on the issuance or scope of licences which are necessary to give effect to the objectives of this Act, including promoting sustainable and workably competitive communications markets.
- (3) Before making licensing rules under subsection (1), the Commission shall conduct a public consultation and publish a draft of such licensing rules.

#### **Obtaining a licence for communications networks or services**

32. (1) A person may in accordance with the licensing rules apply to the Commission—
- a) for an individual licence; or
  - b) for registration under a class licence.
- (2) The Commission shall promptly issue an individual licence to an applicant provided that—
- a) the applicant's application complies with the licensing rules;
  - b) the applicant pays any applicable application fee to the Commission;
  - c) the applicant meets the eligibility criteria for the licence; and
  - d) the licence is not of a type that is restricted in number.
- (3) An applicant for an individual licence may combine that application with an application under section. In such case, the Commission shall progress the two applications in concert and issue the licences together or under such arrangement as the Commission and the applicant agree.
- (4) The Commission must provide reasons for any refusal to issue an individual licence to an applicant.
- (5) The Commission shall promptly register an applicant under a class licence provided that—
- a) the application for registration complies with the licensing rules; and
  - b) the applicant meets the eligibility criteria for the licence.
- (6) The Commission shall maintain and publish a register of licensees and licences. The entry in the register shall be the authoritative record of the status of any licence.
- (7) The Foreign Investment Act 1985 does not apply to carrying on the business of owning or operating a communications network or providing a communications service by a licensee.



- (8) Notwithstanding the Local Government Act 1984, a licence issued under a council by-law shall not be required to carry on the business of owning or operating a communications network or providing a communications service.
- (9) Except as set out in this section, a licence shall not discharge the licensee from any obligation to obtain any other licences, permits or approvals required by law.

### **Licence for radiocommunications**

33. (1) Subject to subsection (2), no person shall use any radio frequency transmitting device, except in accordance with this Act.
- (2) No licence or permit shall be required for any radio frequency transmitting device that is specified as exempt in the radiocommunications rules provided the device complies with any technical requirements specified in the radiocommunications rules.
- (3) The Commission may issue—
- a) a spectrum licence to a person to authorise that person to use designated parts of the radio spectrum in designated geographic areas;
  - b) an apparatus licence to a person to authorise that person to use designated radio frequency transmitting devices within designated frequencies and geographic areas; and
  - c) permits to authorise any person to engage in designated conduct subject to the terms of the permit,  
provided that the issue is consistent with the spectrum plan and any frequency allocation plan.
- (4) A person shall not be required to apply to or register with the Commission for a permit issued under subsection (3)(c) and no fees shall be payable for such a permit.

### **Licensing rules for radiocommunications**

34. (1) The Commission may make radiocommunications rules specifying—
- a) the types of apparatus licences and spectrum licences that may be issued in relation to spectrum blocks or particular frequencies;
  - b) the technical requirements that apply to the use of parts of the radio spectrum, particular devices or particular spectrum licensees or apparatus licensees;
  - c) the circumstances in which a radio frequency transmitting device is exempt under section (2);
  - d) the parts of the radio spectrum for which an apparatus licence or spectrum licence may only be issued following a request for applications published by the Commission;
  - e) the process for submitting an application for an apparatus licence or spectrum licence including the intended timeframe for the Commission to process an application;
  - f) the licence fees payable to the Commission;
  - g) the eligibility criteria for an apparatus licence or spectrum licence;
  - h) a fair and transparent method or methods of selecting applicants in circumstances where applications for apparatus licences or spectrum licences exceed the available spectrum, which may include a competitive tender; and
  - i) general licence conditions for spectrum licences, apparatus licences and permits.

- (2) Before making radiocommunications rules under subsection (1), the Commission shall conduct a public consultation and publish a draft of the radiocommunications rules.

### **Obtaining a radiocommunications licence**

- 35 (1) A person may apply to the Commission for an apparatus or spectrum licence in accordance with the radiocommunications rules.
- (2) The Commission shall issue an apparatus or spectrum licence to an applicant provided that—
- a) if required, the application has been made pursuant to and consistent with a request for applications published by the Commission;
  - b) the applicant's application complies with the radiocommunications rules;
  - c) the applicant pays any applicable application fee to the Commission;
  - d) the applicant meets the eligibility criteria for the licence the application is consistent with the spectrum plan and any other spectrum planning instruments made by the Commission; and
  - e) in circumstances where a method of selecting applicants is specified in the radiocommunications rules and the applications for licences exceed the available spectrum, the applicant has been selected in accordance with those rules.
- (3) Except in circumstances where a method referred to in subsection (2)(d) is used, the Commission may only refuse to issue an apparatus or spectrum licence after consultation with the applicant.
- (4) The Commission shall publish all apparatus licences, spectrum licences and permits issued under this Act.

### **Licence conditions**

36. (1) It is a condition of a licence that the licensee—
- a) comply with this Act;
  - b) pay any applicable licence fees to the Commission; and
  - c) comply with any applicable general conditions imposed under this Act and any special conditions imposed under subsection (2).
- (2) The Commission may impose special licence conditions that shall apply to a licensee other than a person registered under a class licence.

### **Licence fees**

37. (1) The Commission shall make licensing rules specifying the annual licence fees payable to the Commission by a licensee.
- (2) Before making licensing rules under subsection (1), the Commission shall conduct a public consultation and publish a draft of such licensing rules.
- (3) Licensing rules under subsection (1) shall determine annual fees for licences for a communications network or service in accordance with the following principles—

- a) the Commission shall endeavour to minimise the annual licence fees payable by licensees (having regard to subsection (1) and the funding required for the proper discharge of the Commission's functions under this Act);
  - b) the method of determining such fees shall be transparent;
  - c) the total projected licence fees payable by all licensees in a year shall not exceed the Commission's proposed annual budget and forecasts under section ;
  - d) licence fees should aim to reflect the relative value of the licensed communications networks or communications services to the licensees; and
  - e) licence fees shall be determined on the same basis for all licensees holding the same category of licence.
- (4) Licensing rules under subsection (1) shall determine annual fees for radiocommunications licences in accordance with the following principles—
- a) the annual licence fee for a licence issued as a result of a competitive tender process may be the tendered amount; and
  - b) in the case of other licence fees—
    - (i) the Commission shall endeavour to minimise the level of fees payable by licensees (having regard to subsection (1) and the funding required for the proper discharge of the Commission's functions under this Act);
    - (ii) the fee setting process and the methodology shall be transparent; and
    - (iii) fees shall not discriminate between similarly situated licensees.

#### **Revocation, suspension, dealing or surrender of a licence**

38. (1) A licence continues in effect until it is revoked by the Commission by written notice to the licensee or until the expiration of any term specified in the licence.
- (2) The Commission may revoke or suspend an individual licence or registration of a person under a class licence for a communications network or service—
- a) with the consent of the licensee;
  - b) if the licensee is in material breach of a licence condition;
  - c) if the licensee has made false or misleading statements to the Commission in—
    - (i) its licence application; or
    - (ii) information submitted to the Commission under this Act; or
  - d) if the licensee is insolvent, in receivership, bankrupt or being wound up.
- (3) Subject to subsection (4), the Commission may revoke or suspend a spectrum licence or an apparatus licence—
- a) in the circumstances specified in subsections (2)(a) to (d); or
  - b) if it is necessary to implement a variation to the spectrum plan or any other spectrum planning instrument made by the Commission and is consistent with international spectrum planning or the international obligations of the Republic of Kiribati.
- (4) The Commission may only revoke a licence under subsection (2)(b) or (2)(c) if it is satisfied that suspension is not appropriate in the circumstances, having regard to the seriousness of the breach of licence condition or the false or misleading statements.
- (5) A licensee may surrender a licence (other than a class licence) by notice to the Commission.

- (6) A licence is personal to the licensee and must not be assigned, transferred, sub-licensed or otherwise dealt with without the Commission's written consent.

### **Part V— Interconnection and Access**

#### **Commercial negotiation**

39. Subject to this Act, licensees may negotiate, agree and vary agreements with one another for interconnection of networks, access to facilities and other services, including the type and amount of charges, in such manner and on such conditions as are mutually acceptable to the licensees.

#### **Interconnection and access by all licensees**

40. (1) A licensee must, on written request from another licensee, promptly negotiate an interconnection and access agreement providing for the following—
- a) interconnection of the licensees' communications networks at any economically and technically feasible point of the first licensee's network where interconnection would not affect the security, performance or efficiency of the first licensee's network;
  - b) conditions that maintain end-to-end operability to facilitate the provision of communications services by the second licensee to a customer notwithstanding that the customer is directly connected to the first licensee's communications network;
  - c) reasonable conditions, including with respect to the timing, quality, technical, operational and fault handling terms;
  - d) conditions that do not unfairly discriminate between licensees and are no less favourable to the second licensee than those the first licensee provides for its own communications services or those of its affiliates;
  - e) access to communications facilities, networks, software and services, in a manner that is sufficiently unbundled, including co-location, to enable the second licensee to access the facilities that it reasonably requires in order to provide communications services to its customers;
  - f) the provision on a timely basis by each licensee of information, including technical specifications and commercially relevant information reasonably required for interconnection and the operation of communications services for each licensee's customers; and
  - g) a commitment from each licensee not to disclose or use information received from the other licensee in connection with the interconnection and access agreement for any purpose other than for which it was supplied.
- (2) A licensee who enters an interconnection and access agreement with another licensee must lodge a copy of the interconnection and access agreement with the Commission.

#### **Disputes between licensees**

41. (1) If an interconnection and access agreement has not been reached within 30 days of a request under section (1), the Commission may, on written request by either licensee—
- a) determine the terms of the interconnection and access agreement including the terms contemplated by subsection 40(1); or
  - b) direct the licensees to take specified action to reach agreement (such as to engage an arbitrator), by written notice to both licensees. The licensees shall comply with such a direction.

- (2) An interconnection and access agreement determined by the Commission must—
  - a) include the provisions referred to in section (1);
  - b) apply the interconnection and access prices or pricing principles specified in the interconnection and access rules;
  - c) not provide for interconnection or access to communications facilities where interconnection or access is not technically, economically or legally feasible or would adversely affect the security, performance or efficiency of the first licensee's network;
  - d) not deny a licensee the opportunity to use its communications facilities, equipment or communications network for its current requirements or its reasonably anticipated requirements in the following 12 months;
  - e) have regard to the best interests of users and aim to have a positive impact on competition between licensees; and
  - f) not be inconsistent with a reference offer approved or determined by the Commission in respect of either licensee, unless the licensees otherwise agree.
- (3) The Commission must consult with both licensees and provide both licensees with a draft interconnection and access agreement or a draft direction before determining the terms of the interconnection and access agreement or making the direction.
- (4) A licensee may apply for a rehearing under section of the terms of any interconnection and access agreement determined by the Commission that applies to it.
- (5) The Commission shall publish copies of all interconnection and access agreements.

#### **Interconnection and access rules**

42. (1) The Commission may make interconnection and access rules specifying—
  - a) interconnection and access prices or pricing principles (including cost methodologies, which may be by way of any internationally recognised approach) and other principles that the Commission will apply when determining—
    - (i) an interconnection and access agreement under section ;
    - (ii) a reference offer under section ; or
    - (iii) whether to approve a reference offer under section ;
  - b) the circumstances in which the Commission shall require a licensee to prepare and provide a reference offer to the Commission;
  - c) the manner and time in which such reference offer must be prepared and provided to the Commission and then revised periodically; and
  - d) the matters to be included in a reference offer for its effective implementation.
- (2) The interconnection and access rules made under subsection (1) may designate mandatory services, including roaming services, which licensees must provide between interconnected communications networks and which must be included in interconnection and access agreements.
- (3) Before making interconnection and access rules under subsection (2), the Commission shall conduct a public consultation and publish a draft of such interconnection and access rules.

- (4) In specifying interconnection and access prices or pricing principles under subsection (1)(a), the Commission shall take into account internationally accepted principles for determining regulated prices, including methodologies designed to reflect actual costs.
- (5) The Commission may make interim interconnection and access prices or pricing principles to which subsection (4) shall not apply. Such interim prices or pricing principles will continue to apply for 2 years after the commencement of this Act, regardless of whether the Commission has specified pricing principles to which subsection (4) applies.
- (6) The interconnection and access rules shall not specify (including in interim prices or pricing principles)—
  - a) a price for termination of calls or messages on a type of communications network which is greater than 50% of the lowest long-term price charged by the terminating licensee to its retail customers for any service which includes termination on that type of network; or
  - b) pricing principles which would result in such a price.

**Reference offers**

- 43. (1) The Commission may by written notice to a licensee—
  - a) require a licensee to prepare and submit a reference offer for approval by the Commission by the date specified in the notice;
  - b) accept a reference offer the licensee has submitted; or
  - c) direct the licensee to make changes to the reference offer by a particular date.
- (2) Before directing the licensee to make changes to the reference offer, the Commission must consult with the licensee.
- (3) A licensee may apply for a rehearing under section of a direction by the Commission that the licensee make changes to its reference offer.
- (4) If the Commission directs the licensee to make changes to a reference offer, the licensee must do so promptly and provide the revised reference offer to the Commission for approval before the date set by the Commission.
- (5) If a licensee fails to prepare or make changes to a reference offer to the reasonable satisfaction of the Commission by the date set by the Commission, the Commission may by written notice to the licensee—
  - a) determine a reference offer to apply to that licensee, by applying principles made under section 42(1)(a); or
  - b) direct the licensee to take specified action to prepare the reference offer for approval by the Commission (such as to engage a consultant to produce the reference offer), by written notice to the licensee. The licensee shall comply with such a direction.
- (6) A licensee may apply for a rehearing under section of a reference offer determined by the Commission for that licensee.
- (7) The Commission shall publish all reference offers it approves or determines.

### **Acceptance of a reference offer by another licensee**

44. A licensee may accept a reference offer of another licensee approved or determined by the Commission by written notice to the other licensee and, on acceptance, the terms of the reference offer will become an interconnection and access agreement between the two licensees.

### **Reference offers for proposed investments**

45. (1) A person may, in connection with a proposal for a new investment, provide a reference offer to the Commission for approval together with details of the proposed investment.
- (2) The Commission may decline to consider a reference offer provided under subsection (1) or may approve or reject the reference offer.
- (3) Before approving or rejecting the reference offer, the Commission shall conduct a public consultation.
- (4) A licensee may apply for a rehearing under section of a decision by the Commission to reject a reference offer.
- (5) If the Commission approves the reference offer, upon the person becoming a licensee and making the proposed investment, the reference offer will be an approved reference offer as if it had been accepted under section.

### **Model access agreements, interconnection principles and reference offers**

46. The Commission must apply the same principles that apply when the Commission determines an interconnection and access agreement under subsection in—
- a) formulating principles under section (1)(a); and
  - b) determining reference offers; and
  - c) determining whether to approve a reference offer.

### **New infrastructure**

47. (1) A licensee who proposes to construct a new communications facility to expand its communications network shall at least 30 days before it plans to finalise the design of the communications facility—
- a) publish details of its proposal on its website together with an invitation for expressions of interest in sharing the communications facility; and
  - b) on the same day, provide a copy of the details and invitation to the Commission (which shall promptly publish the details and invitation).
- (2) A person may, within 7 days of his proposal being published by the licensee, provide an expression of interest in sharing the communications facility to the Commission. The Commission shall promptly provide any expressions of interest to the licensee who proposes to construct the communications facility.
- (3) After the expiry of the 7 day period in subsection (2), the licensee who proposes to construct the communications facility shall promptly provide each person who has

provided an expression of interest with a list of the other persons who have provided an expression of interest.

- (4) The licensee who proposes to construct the communications facility and each person who has provided an expression of interest shall promptly negotiate in good faith the—
  - a) the extent practical, each such person shall be able to use the communications facility for their reasonably anticipated requirements; and
  - b) commercial terms for the construction, maintenance, ownership and ongoing use of the communications facility by the licensee and each such person design characteristics of the communications facility so that, to person.
- (5) If the design characteristics and commercial terms described in subsection (4) have not been agreed within 14 days of the negotiations commencing, the Commission may, on written request by any party to the negotiations, and by written notice to each party, direct the parties to take specified action to reach agreement (such as to engage an arbitrator). The parties shall comply with such a direction.

#### *Part VI – Competition*

##### **Prohibition on anti-competitive conduct**

48. (1) A licensee shall not engage in a conduct which has the purpose, effect, or is likely to have the effect, of reducing competition in a communications market.
- (2) Without limiting subsection (1), a conduct has the purpose, effect or likely effect of reducing competition in a communications market if it directly or indirectly involves—
  - a) supplying a communications service at a price below cost for a substantial period of time for the purpose or with the effect or likely effect of limiting competition in a communications market;
  - b) cross-subsidising a service in a competitive communications market from a service that is supplied in a communications market that is not competitive;
  - c) bundling a communications service that is supplied in a competitive market with a service that is not supplied in a competitive market, in circumstances where more favourable terms are applied to the competitive service sold as part of the bundle;
  - d) imposing restrictions on whom another person may deal with in a communications market or otherwise hinders the willingness of a supplier to provide goods or services to another licensee, without legitimate commercial justification;
  - e) reducing the margin of profit available to a competing licensee in a retail communications market by engaging in a margin squeeze at the wholesale or retail level in circumstances where the wholesale service or access service—
    - (i) is not supplied in an effectively competitive communications market;
    - (ii) is necessary as a matter of commercial necessity for the competitor to provide the retail service; and
    - (iii) cannot for economic, technical or legal reasons be duplicated by the competitor;
  - f) pre-emptively acquiring scarce facilities or resources, including land, that are required or likely to be required by another licensee for the operation of its business, for the purpose of restricting the use of the facilities or resources by the other licensee; or



- g) designing or installing a communications facility or communications network with the purpose of preventing or hindering another licensee from acquiring interconnection or access.
- (3) Without limiting subsection (1), an arrangement between two or more licensees has the effect or likely effect of reducing competition in a communications market if it directly or indirectly—
    - a) fixes the prices or other conditions for the supply of a communications service or access service;
    - b) apportions, shares or allocates a communications market or markets among themselves or other licensees; or
    - c) prevents, restricts or limits the supply or acquisition of a communications service or access service to or from a person or class of persons.
  - (4) The Commission may exempt a conduct from the prohibition in subsection (1) if the Commission is satisfied that the conduct—
    - a) will or is likely to create efficiencies for the supply of communications services which are greater than any potential detriments; and
    - b) will not eliminate competition in respect of a substantial part of such communications services.
  - (5) Notwithstanding this section, anti-competitive conduct does not include an arrangement among licensees for an interconnection and access agreement pursuant to Part V of this Act provided that—
    - a) the terms of such an arrangement do not preclude similar arrangements with other licensees on non-discriminatory terms; and
    - b) such arrangements do not preclude efficiencies that would likely result from licensees acquiring and using such facilities separately.

#### **Contravention of competition provisions**

- 49. (1) If the Commission considers that a licensee is engaging in anti-competitive conduct, it may serve a notice of contravention on the licensee specifying the conduct that the Commission deems to be in contravention of this Act and requiring the licensee to cease that conduct and pay the specified penalty.
- (2) A licensee specified in the notice under subsection (1) shall comply with the notice within such time period and on such conditions as is specified in the notice.
- (3) A licensee specified in a notice issued under subsection (1) may apply for a rehearing under section seeking relief setting the notice aside or varying any conditions specified in the notice.
- (4) The penalty specified in a notice under subsection (1) shall not exceed three times the estimated gain derived from the conduct or 10% of the annual revenue derived from the licensed activities whichever is the greater.
- (5) If a licensee complies with subsection (2) in relation to a notice served under subsection (1), the Commission shall not take enforcement action under Part IV or Part XIII of this Act in respect of the conduct specified in that notice.

## **Industry consolidation**

50. (1) A licensee shall not acquire or obtain an interest in shares or assets related to communications facilities or the provision of communications services of another licensee without the prior written consent of the Commission.
- (2) A licensee obtains an interest in shares or assets if the licensee becomes the legal or beneficial owner of the shares or assets or it or its holding company, subsidiary company or associated company is in a position to control the shares or assets.
- (3) A licensee who wishes to acquire, directly or indirectly, shares in or assets of another licensee shall—
- a) apply to the Commission for consent to the acquisition; and
  - b) provide the Commission with such additional information as the Commission may request for the purposes of determining the effect or likely effect of the proposed acquisition on competition in a communications market.
- (4) The Commission may make competition rules specifying the form and information required for an application under subsection (3).
- (5) The Commission shall consent to an application lodged under subsection (3) unless it is satisfied, after consultation with the licensee proposing to make the acquisition, that the proposed acquisition would have the effect or likely effect of reducing competition in a communications market.
- (6) A licensee may apply for a rehearing under section of a decision of the Commission not to consent to an application it has provided under subsection (3).

## ***Part VII – Consumer Protection and Price Regulation***

### **Publication of terms and conditions**

51. (1) Before offering a communications service to the public, a licensee shall—
- a) publish on its website and make available for inspection at its offices, the terms and conditions (including the price) for that service in clear and simple terms; and
  - b) provide a copy to the Commission.
- (2) Within 5 days of any change to the terms and conditions, a licensee shall—
- a) update the terms and conditions (including the price) published on its website and made available for inspection at its offices; and
  - b) provide a copy to the Commission.
- (3) The Commission shall publish information provided to it under this section.

### ***Price regulation***

### **Pricing rules**

52. (1) The Commission may make pricing rules specifying—

- (2) In the case of a customer who has—
  - a) contracted for communications services for which they will pay after usage, a licensee shall provide the customer with invoices—
    - (i) in writing, which may be transmitted electronically if the customer consents;
    - (ii) on a regular basis;
    - (iii) in a plain and simple format;
    - (iv) with accurate and itemised information about the services provided and the corresponding amounts due; and
    - (v) that clearly indicate the method of calculation of prices for any service for which invoices are based on the length of calls or other measure or usage; and
  - b) paid in advance for communications services, the licensee shall permit the customer on request to review the amount of the prepayment which has been consumed and the amount remaining.
  
- (3) A licensee shall not make or cause to be made any claim or representation about the availability, price or quality of its communications services or equipment or those of a competing licensee if the licensee knows or reasonably ought to know that the statement or claim is false or misleading in any material respect.
  
- (4) The Commission may make consumer protection rules regulating or prohibiting the use of a communications network or communications services to provide unsolicited communications.
  
- (5) Before making consumer protection rules under subsection (4), the Commission shall conduct a public consultation and publish a draft of such consumer protection rules.

#### **Confidentiality of customer information**

54. (1) Subject to subsections (2) and (3), a licensee—
  - a) shall not, without a customer's consent, collect, use, maintain or disclose information about a customer for any purpose; and
  - b) shall apply appropriate security safeguards to prevent the collection, use, maintenance or disclosure of such information without the customer's consent.
  
- (2) A licensee may disclose a customer's name, address and telephone number in a printed or electronic directory or as provided for in the consumer protection rules, provided that a licensee shall permit customers on request to have their name omitted from such directory.
  
- (3) A licensee shall ensure that information it discloses or retains concerning a customer is accurate and complete for the purposes for which it is to be used.
  
- (4) A licensee shall permit a customer to inspect its records regarding a communications service provided to that customer and shall promptly correct or remove information that is shown to be incorrect.
  
- (5) A licensee shall disclose to a customer the purpose of requesting or collecting any information about that customer on request, and shall not use or maintain information about customers for undisclosed purposes.

- (6) The Commission may make consumer protection rules requiring a class of licensees to retain or not retain specified information relating to customers, including information about billing, beyond a specified period.
- (7) Before making consumer protection rules under subsection (6), the Commission shall conduct a public consultation and publish a draft of such consumer protection rules.

#### **Confidentiality of communications**

- 55. A licensee shall take all reasonable steps to ensure the confidentiality of its users' communications except as permitted by law.

#### **Access by government authorities**

- 56. Nothing in sections to shall be interpreted to prohibit or infringe upon the rights of government authorities under the laws of Kiribati to exercise such rights to access otherwise confidential information or communications of users in a lawful manner.

#### **No unjustified discrimination**

- 57. Unless the Commission has provided written consent, a licensee shall not discriminate between customers in the terms and conditions on which a communications service is offered except for commercially justified reasons.

#### **Terms of service, complaints and disputes**

- 58. (1) The Commission may make consumer protection rules requiring a class of licensees to take any of the following steps in a communications market—
  - a) establish fair and reasonable standard conditions for the provision of communications services to consumers, including procedures for dealing with complaints from and disputes with consumers, and provision for consumers' remedies (including refunds and compensation) where circumstances warrant;
  - b) submit such conditions, procedures and remedies, or proposed amendments to the Commission for its approval;
  - c) make such changes to such conditions, procedures and remedies as may be reasonably required by the Commission;
  - d) publish such conditions, procedures and remedies on its website and circulate them to points of sale for publication in a manner that ensures that prospective consumers are able to be clearly informed of them;
  - e) comply with such conditions, implement such procedures and provide such remedies in accordance with their terms as approved by the Commission;
  - f) report to the Commission on the types and volumes of consumer complaints and disputes, the application of complaints procedures and manner in which complaints have been resolved; and
  - g) take such other measures as the Commission considers appropriate to ensure that consumers' complaints and disputes are satisfactorily addressed.
- (2) Before making consumer protection rules under subsection (1), the Commission shall conduct a public consultation and publish a draft of such consumer protection rules.

- (3) If a licensee fails to establish, submit or make changes to conditions, procedures or remedies if so required under subsection (1), the Commission may do so and the licensee shall comply with such conditions, implement such procedures and provide such remedies.
- (4) A consumer whose complaint or dispute has not been treated by a licensee in accordance with its procedures for dealing with complaints may apply to the Commission for a determination—
  - a) requiring the licensee to comply with those procedures; or
  - b) addressing the complaint or dispute and providing for a remedy, if such remedy is not inconsistent with any reasonable conditions and procedures established by the licensee pursuant to this section.
- (5) Before making a determination under subsection (4), the Commission shall consult with the licensee and the consumers.

#### **Directory assistance**

59. (1) The Commission may make consumer protection rules requiring a licensee or class of licensees to establish and provide customers with directory assistance services on conditions prescribed in those rules, requiring licensees to co-operate for the provision of directory assistance services, and providing for the costs of providing directory assistance services to be shared between licensees whose customers may access the service.
- (2) In this section, 'directory assistance services' means such services to provide access to a customer's name, telephone number and such other information about a customer as is set out in the consumer protection rules.
- (3) Before making consumer protection rules under subsections (1) and (2), the Commission shall conduct a public consultation and publish a draft of such consumer protection rules.

#### **Quality of service**

60. (1) The Commission may make consumer protection rules requiring a class of licensees to—
  - a) establish key performance indicators for the quality of its service to users, which may be required to comply with minimum standards set out in the consumer protection rules;
  - b) submit the indicators (and any subsequent amendments) to the Commission for approval;
  - c) make such changes to such indicators as may be required by the Commission; and
  - d) ensure that its services comply with such indicators.
- (2) Before making consumer protection rules under subsection (1), the Commission shall conduct a public consultation and publish a draft of such consumer protection rules.
- (3) If a licensee fails to make performance indicators as required by consumer protection rules made under subsection (1), the Commission may issue performance indicators and the licensee shall comply with such indicators.

## *Part VIII – Technical Standards*

### **Technical standards**

61. (1) The Commission may make technical rules specifying technical standards for—
- a) interconnection of licensees' communications networks; and
  - b) customer equipment permitted to be attached to licensees' communications networks.
- (2) Before making technical rules under subsection (1), the Commission shall conduct a public consultation and publish a draft of such technical rules.
- (3) In making the technical rules the Commission may apply, adopt, or incorporate, with or without modification, any existing standard as it exists at a particular time or from time to time.
- (4) A licensee shall comply with the technical rules.

### **Customer equipment standards**

62. (1) A person shall not sell, or offer for sale, equipment, and a person other than the owner or operator of a communications network shall not attach equipment to a communications network, if the equipment—
- a) does not conform to a relevant equipment standard in the technical rules made under subsection (1);
  - b) does not conform with a relevant international standard; or
  - c) would adversely affect the operation, reliability or integrity of the communications network or cause a health or safety risk to a person.
- (2) A licensee may—
- a) disconnect from its communications networks any customer equipment; and
  - b) cease or refuse to supply a communications service to a customer who has connected customer equipment to its communications network, if that customer equipment does not comply with the technical standards referred to in subsection (1).

## *Part IX – National resources management*

### **Radio spectrum management**

63. (1) The Commission shall have the exclusive power to plan, manage, allocate and control the use of all radio spectrum frequencies in the Republic of Kiribati.
- (2) The Commission shall—
- a) plan the allocation, re-allocation and use of spectrum through instruments including a spectrum plan;
  - b) specify technical standards for the use of the radio spectrum;
  - c) monitor and manage interference and use of the radio spectrum;

- d) specify requirements for certification and issue certificates for use of radio frequency transmitting devices; and
  - e) make radiocommunications rules in relation to its functions in paragraphs (a) to (d).
- (3) In performing its functions under this section, the Commission shall—
- a) ensure that suitable parts of the spectrum are reserved for the provision of public or community services;
  - b) ensure compliance with applicable international treaties to which Kiribati is a signatory; and
  - c) consult publicly, including with licensees and Government, regarding the development, revocation and variation of plans issued under this section.
- (4) Before making radiocommunications rules under subsection (2)(e), the Commission shall conduct a public consultation and publish a draft of such numbering rules.

### **Numbering plan**

64. (1) The Commission shall make numbering rules specifying matters that include—
- a) a numbering plan for communications services;
  - b) rules regarding the assignment and use of numbers;
  - c) the assignment of numbers for emergency services; and
  - d) requirements for the allocation of priority, quality and capacity for calls to emergency services.
- (2) Before making numbering rules under subsection (1), the Commission shall conduct a public consultation and publish a draft of such numbering rules.
- (3) The Commission may make numbering rules specifying provisions for number portability if the Commission—
- a) has conducted a public consultation about the inclusion of the provisions;
  - b) determines that there is a reasonable likelihood of demand for number portability; and
  - c) determines that benefit outweighs the costs of introducing number portability.

### **National emergency numbers**

- 65 A licensee that provides voice communications services shall provide its subscribers with access to the numbers specified in the numbering rules as being assigned for emergency services free of charge.

## *Part X— Universal Access*

### **Universal access rules**

66. (1) The Commission shall make universal access rules prescribing the—
- a) operation of the Universal Access Fund; and
  - b) provision of services pursuant to a Universal Access Plan and project plans.
- (2) In addition to the matters set out under subsection (1), the universal access rules may also prescribe the—

- a) rules for a competitive tender or the method of selecting a person under section ;
- b) requirements for persons entering a contract with the Commission under section , including conditions to coordinate development of communications facilities with development of other infrastructure; and
- c) such other matters necessary to give effect to this Part X and the objectives of this Act.

#### **Universal Access Advisory Committee and Universal Access Plan**

67. (1) A Universal Access Advisory Committee shall be established to make recommendations to the Commission about the content of a Universal Access Plan.
- (2) The Committee shall consist of no more than 7 individuals, comprising—
- a) the Chairperson of the Commission as Chairperson of the Committee;
  - b) the Secretary of the Ministry or such representative of the Ministry nominated by the Secretary; and
  - c) such other persons nominated by the Minister.
- (3) The Universal Access Advisory Committee shall, after public consultation and at least every 2 years, make recommendations to the Commission, including in connection with—
- a) the development or update of a Universal Access Plan or parts of a Plan; and
  - b) specific geographic areas and services to be covered under a Universal Access Plan for the following two year period.
- (4) The Commission shall, after considering any recommendations of the Universal Access Advisory Committee, prepare and keep updated a Universal Access Plan which shall promote the availability of—
- a) at least the following types of communications services in Kiribati—
    - (i) a telephone service;
    - (ii) data services which permit access to the internet;
    - (iii) maritime safety services;
    - (iv) disaster management services; and
  - b) such other communications services specified by the Minister.

#### **Universal Access Projects**

68. (1) The Commission shall prepare and publish one or more project plans to address a Universal Access Plan. A project plan shall specify—
- a) the timing by which deployment of such services (or communications facilities to enable such services) in particular areas or segments of society of Kiribati should take place; and
  - b) any general requirements or specifications for the provision of such communications services or communications facilities.

#### **Universal Access Fund**

69. (1) The Commission shall establish, with a separate account, a Universal Access Fund which shall comprise—
- a) universal access levies imposed under subsection (2);



- b) grants or donations made to or for the benefit of the fund;
  - c) moneys transferred to the fund under section (7);
  - d) moneys received by way of interest or repayment of any loan granted from the fund; and
  - e) moneys appropriated by Parliament for the purposes of the fund.
- (2) The Commission may establish a levy to be collected from subscribers by licensees annually for the Universal Access Fund. A universal access levy shall be set as a percentage of a licensee's gross revenues (net of interconnection) in the most recent financial year, up to a maximum of two per cent of such gross revenues.
- (3) The Commission may disburse money from the Universal Access Fund only to provide subsidies or concessional loans in accordance with a contract under section .

### **Universal access services**

70. (1) The Commission may contract with a person to provide a subsidy or concessional loan for the provision of communications services or communications facilities in accordance with a project plan.
- (2) The Commission shall, before entering a contract under subsection (1)-
- a) consider whether there is likely to be competition for the subsidy or concessional loan offered under subsection (1) for the provision of communications services or communications facilities in accordance with the project plan; and
  - b) if the Commission believes there would be such competition, conduct a competitive tender for the provision of those services or facilities in accordance with the Universal Access Rules.
- (3) If the Commission considers that there is not likely to be competition for the provision of the communications services or communications facilities for the maximum subsidy or concessional loan the Commission could offer in fulfilment of the relevant project plan, the Commission shall negotiate with any person the Commission considers has the capability of providing those services or facilities and may enter into a contract for the provision of those services or facilities in accordance with the project plan.
- (4) If after attempting to negotiate under subsection (3) the Commission considers agreement cannot be reached, the Commission may by written notice require a licensee to enter into a specified contract with the Commission for the provision of the relevant communications services or communications facilities for a subsidy or concessional loan.
- (5) The Commission shall be guided by the following principles in requiring a licensee to enter into a contract and specifying the terms of the contract under subsection (4)—
- a) the licensee shall be chosen based on the Commission's assessment of its capability to provide the communications services or communications facilities;
  - b) the obligation to provide the relevant communications services or communications facilities shall not unfairly discriminate between licensees;
  - c) the licensee shall receive reasonable compensation having regard to the costs of providing the communications services or communications facilities and the revenues likely to be achieved from those services or facilities; and

- d) the obligation to provide the relevant communications services or communications facilities shall not be more burdensome than is reasonably necessary to achieve the objectives of the relevant Universal Access Plan.
- (6) The Commission shall endeavour to ensure any contract entered into under this Part does not diminish the incentives of licensees to maximise the availability of communications services.

*Part XI— Use of Land*

**Entry to land**

71. (1) Subject to subsection (2), a licensee may—
- (a) enter land for the purpose of gaining access to any communication facility owned or used by the licensee; and
  - (b) perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing those communication facilities.
- (2) The power to enter land is subject to the following conditions:
- (a) entry must only be made by an officer, employee, or agent of the licensee authorised by the licensee in writing;
  - (b) reasonable notice of the intention to enter must be given;
  - (c) entry must be made at reasonable times; and
  - (d) the person entering must produce evidence of his or her authority and identity—
    - (i) on initial entry; and
    - (ii) after the initial entry, on request.

**Request for removal**

72. (1) If a tree, shrub, or plant on any land interferes with, or is likely to interfere with, the communication facility, the licensee who uses the communication facility may request the owner or occupier of the land, or local authority or other person which has control of the road, to remove or trim the tree, shrub, or plant.
- (2) If an owner, occupier, local authority, or other person fails to comply with a request made under subsection (1), the licensee may apply to a Magistrates' Court for an order authorising the licensee to remove or trim the tree, shrub, or plant in respect of which the request was made.
- (3) The licensee must give the owner, occupier, local authority, or other person who fails to comply with the request at least 10 working days' notice of the operator's intention to apply to the Court under "subsection (2).
- (4) On being satisfied that a tree, shrub, or plant on land interferes with or is likely to interfere with, the communication facility the Magistrates' Court may make an order on any terms and conditions (including those relating to notice and time of removal or trimming) that the Court thinks fit.

- (5) If a licensee removes or trims a tree, shrub, or plant on any land or road under the authority of an order made under subsection (4), the owner, occupier, local authority, or other person to whom notice of the application under subsection (1) was given is liable to the licensee for the reasonable cost of the work of the licensee.

### **Removal in emergency**

73. (1) If a tree, shrub, or plant on any land or road causes or is likely to cause imminent danger to, or serious interference with, a communication facility, the licensee may—
- (a) enter the land or road where the tree, shrub, or plant is rooted or overhangs; and
  - (b) do work in respect of the tree, shrub, or plant that is necessary to remove the danger or serious interference or likely danger or serious interference, or likely danger or serious interference.
- (2) The licensee must, if it is possible in the circumstances, notify the occupier of the land, or the local authority or other person who has control of the road, as the case may be, of the licensee's intention to enter the land or road and carry out work under subsection (1).
- (3) Every officer, employee, or agent of a licensee who enters land or a road under subsection (1) must—
- (a) carry evidence of his or her authority and identity, which must be produced on request; or
  - (b) work under the immediate control of a person who holds evidence of the officer, employee, or agent's authority and identity, which must be produced if requested.
- (4) If a licensee removes or trims a tree, shrub, or plant on any land or road under subsection (1), the occupier of the land, or the local authority or other person who has control of the road, as the case may be, is liable to the licensee for the reasonable cost of the work of the licensee.

### **Construction or repair of communication facility on roads**

- 74 (1) Subject to subsection (2), a licensee may—
- (a) construct, place, and maintain communication facility in, on, along, over, across, or under any road; and
  - (b) for any of those purposes, open or break up any road, and alter the position of any pipe (not being main) for the supply of water or gas; and
  - (c) alter, repair, or remove those communication facilities or any part of those facilities.
- (2) A licensee must exercise the powers under subsection (1) in accordance with any reasonable conditions that the local authority or other person which has jurisdiction over that road requires.
- (3) Except as provided in section 35, before a licensee proceeds to open or break up any road, the licensee must give the local authority or other person which has jurisdiction over the road written notice of the intention to carry out the work.
- (4) Every notice must specify the location of the proposal work, the nature of the work to be carried out, and the reason for it.

- (5) No later than 15 days after the receipt of the written notice of the intention to carry out work, the local authority or other person which has jurisdiction over the road must notify the licensee in writing of any conditions imposed under subsection (2).
- (6) If a local authority or other person which has jurisdiction over the road fails to notify the operator of conditions under subsection (2) within the 15 days period referred to in subsection (5), the conditions may not be imposed, and the licensee may commence work.

### **Urgency**

- 75. If work is urgent and necessary because of any defective equipment, or other emergency, the licensee—
  - (a) is excused from complying with the requirements of section 32(3) before commencing the work; but
  - (b) must give the information required by section 32(4) as soon as practicable after commencing the work.

### **Appeals**

- 76. (1) A licensee may appeal to a Magistrates' Court against all or any of the conditions imposed under section 24(2) by the local authority or other person which has jurisdiction over the road.
- (2) An appeal must be made not later than 45 working days after the date of notification of the conditions imposed.
- (3) In its determination of any appeal, a Magistrates' Court may confirm, modify, or cancel any or all of the conditions imposed.
- (4) The decision of a Magistrates' Court in the determination of an appeal under this section is final.

### **Alteration to communication facility**

- 77. (1) The owner of land or some other person who requires the communication facility or work to be altered or a service to be interrupted so that the owner or other person has reasonable use of the land, shall give the licensee not less than one month's notice in writing of the requirement.
- (2) The licensee may require the person who makes the request to pay the cost of the alteration.

### **Communication facility must not interfere with traffic**

- 78. (1) A licensee must not place the communication facility so that they interfere with the lawful traffic on a road.

- (2) Communication facility do not interfere with the lawful traffic on the road if the communication facility are placed at a height of 5.5 metres or more above the surface of the road if the communication facility cross a public road, or at a height of 4.25 metres or more elsewhere.
- (3) A licensee must not place a communication facility so that it interferes with the navigation of navigable waters.
- (4) A licensee, in maintaining, repairing, altering, or removing a communication facility that crosses or is along a road, or that is over or under navigable waters, must not cause unnecessary or avoidable interference to the traffic on, or to the lawful use of, any road or navigable waters.

### **Compensation**

- 79.
- (1) Every person whose property is damaged as a result of the exercise of the powers under this Part is entitled to compensation.
  - (2) The amount of the compensation may be agreed between the licensee and the person concerned.
  - (3) If any dispute arises concerning sufficiency of the compensation to be paid under subsection (1), it shall be determined in accordance with Part VI and Schedule 3 of the Magistrates Courts, on application for that purpose by either of the disputing parties to a Magistrates' Court composed in accordance with section 7(4) of the Magistrates' Court Ordinance Chapter 52.
  - (4) If any dispute arises as to the person entitled to receive compensation, or as to the proportion in which the persons interested are entitled to share in it, the licensee may pay into the Court such amount as it deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient, or the amount has been determined under subsection (3), that amount.
  - (5) Where subsection (4) applies, the Court shall, after giving notice to the parties and hearing such of them as desire to be heard, determine the persons entitled to receive the compensation, or, as the case may be, the proportions in which the persons interested are entitled to share it.

### **Protection of existing works**

- 80.
- (1) Any existing equipment or existing line owned or used by a licensee that is fixed to, or installed over or under, land that is not owned by the licensee is deemed to be lawfully fixed or installed, and continues to be lawfully fixed or installed.
  - (2) No person shall have an interest in any of the equipment or line by reason only of having an interest in the land.

## **Compulsory purchase of land**

81. (1) Where, in the opinion of a licensee, the acquisition by the licensee of any land or an interest in any land without the agreement of the owner is necessary for the purpose of providing communications to the public, the licensee shall advise the Commission.
- (2) The Commission shall if it approves the proposal of the operator provide a copy of the proposal and its approval to the Minister, to the Minister responsible for lands, and to the owner of, or person having an interest in, the land.
- (3) If the Minister responsible for lands is satisfied that the land or interest in land is required for the purpose of providing communications to the public, steps shall be taken to acquire the land or in interest in the land in accordance with the State Acquisition of Land Act.

## ***Part XII— Investigations, Inspections, and Enforcement***

### **Evidence**

82. (1) A document appearing to be signed by the Minister or the Commission shall be evidence of the official character of the person appearing to have signed it and, in the case of the Commission, of its issuance by the Commission and, if the document appears to be a copy of a decision or report, shall be evidence of its contents.
- (2) A copy of a document submitted to the Commission and appearing to be certified as a true copy by the Commission shall be evidence of the original, of its submission to the Commission, of the date of its submission, and of the signature of any person appearing to have signed it.
- (3) A certificate appearing to be signed by the Commission and bearing the Commission's seal shall be evidence of its contents without proof of the signature.

### **Appointment of Inspectors**

83. (1) The Commission may appoint or designate Inspectors for the purposes of verifying compliance with this Act and with decisions or instruments of the Commission made under this Act.
- (2) An Inspector shall be provided with a certificate of identity, which shall be presented at the request of any person appearing to be in charge of any place entered by the Inspector.

### **Powers of Inspector**

84. (1) Subject to subsection (2), an Inspector may—
- a) enter and inspect, at any reasonable time, any place owned by or under the control of a licensee or a person operating a device under a licence in which the Inspector believes on reasonable grounds there is any document, information, equipment, or thing relevant to the enforcement of this Act, and examine the document, information, equipment, or thing or remove it for examination or reproduction, as the case may be;

- b) enter any place on which the Inspector believes on reasonable grounds there is any radio transmitting device or interference-causing equipment, and examine any radio transmitting device or interference-causing equipment, logs, books, reports, data, records, documents, or other papers, and remove such information, document, device, equipment, or thing for examination or reproduction, as the case may be;
  - c) make use of or cause to be made use of, any data processing network or computer at the place, to examine any data contained in or available to the network or computer;
  - d) reproduce or cause to be reproduced any record from the data in the form of a print-out or other intelligible output, and take the print-out or other output for examination or copying; and
  - e) make use of any copying equipment or means of communication located at the place.
- (2) Where a place referred to in subsection (1) is a dwelling-house, an Inspector shall not enter that dwelling-house without the consent of the occupier, except—
- a) under the authority of a warrant issued under section 85; or
  - b) where, by reason of special circumstances, it would not be practical for the Inspector to obtain a warrant.
- (3) For the purposes of subsection (2)(b), special circumstances include circumstances in which the delay arising from obtaining a warrant would result in danger to human life or safety or the loss or destruction of evidence.
- (4) The owner or person in charge of a place entered by an Inspector shall give the Inspector all reasonable assistance and shall give the Inspector any information that the Inspector reasonably requests.
- (5) Every person who is required to hold a licence under this Act shall exhibit the licence for inspection on demand by the Commission or an Inspector.
- (6) Any person who obstructs an Inspector in the exercise of the powers under this Act commits an offence.
- (7) The Commission shall pay reasonable compensation to a person for property used or damaged by an Inspector exercising powers under this section.

### **Search warrant**

85. (1) A Magistrate may issue a warrant authorising the Inspector named in it to enter a dwelling-house, subject to any conditions specified in the warrant, if the Magistrate is satisfied by information on oath that—
- a) entry to a dwelling-house is necessary for the purpose of performing any duty of an Inspector under this Act; and
  - b) entry to the dwelling-house has been refused, or there are reasonable grounds for believing that entry will be refused.
- (2) In executing a warrant issued under this section, an Inspector shall not use force unless the Inspector is accompanied by a police officer and the use of force is specifically authorised in the warrant.

### **Provision of information to the Commission**

86. (1) The Commission may require any particular licensee, or a person operating a device under a licence or a class of such persons to submit information to the Commission, in such form and manner as the Commission may direct, by written notice to the relevant persons.
- (2) If the Commission believes that a person other than a licensee is in possession of information which the Commission considers necessary for the fulfilment of its role under this Act, the Commission may require that person to submit the information to the Commission in such form and in such manner as the Commission may specify by written notice to that person.

### **Interception and interference**

87. (1) A licensee and any person engaged in the operation or provision of a communications network or service shall intercept or disclose a message, communication or customer information only pursuant to a warrant under the hand of a magistrate or judge in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings where the maximum penalty that may be imposed by a court is at least three years in prison.
- (2) A licensee and any person engaged in the operation or provision of a communications network or service shall ensure its communications networks and services are capable of interception under subsection (1) and shall facilitate such interception as reasonably directed by the police or other services directly employed by the State for national security.
- (3) A licensee and any person engaged in the operation or provision of a communications network or service shall disclose the contents of any statement of account specifying the communications services provided, or any details about the customer, if requested by the police or other services directly employed by the State for national security, in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings. Such requests must be in writing and authorised and signed by an officer of at least Commissioner rank or public service equivalent or a magistrate.
- (4) A licensee shall intercept, interfere with or obstruct radiocommunications in obedience to a specific order under the hand of the Minister or to an order of a Magistrate.
- (5) If the Commission believes that a person is in possession of data stored in a computer system or computer-data storage medium, which data is necessary to investigate a breach of this Act, the Commission may by written notice to that person, require that person to allow the Commission to—
- a) access the computer system or computer-data storage medium;
  - b) seize or similarly secure the computer system or computer-data storage medium;
  - c) maintain the integrity of the relevant stored computer data; and
  - d) render inaccessible or remove that data from the computer system.



### **Real-time collection of data**

88. (1) If the Commission believes on reasonable grounds that a person is engaged in conduct which may contravene this Act, then for the purposes of enforcing this Act, the Commission may—
- a) collect or record through the application of technical means; and
  - b) compel a licensee, by written notice to that person, within its existing technical capability—
    - (i) to collect or record through the application of technical means; or
    - (ii) to assist the Commission in the collection or recording of, traffic and content data, in real-time, associated with specified communications transmitted by means of a computer.
- (2) The Commission may, in a notice issued under subsection (1), oblige the licensee or person to keep confidential the fact of the execution of the power provided for in this section and any information relating to it.

### **Examination of witnesses**

89. (1) The Commission may require the attendance and examination of witnesses, who shall have the right to be represented by a legal practitioner.
- (2) A person is not excused from giving information or producing a document or copy of a document on the ground that the information or the production of the document or copy might tend to incriminate the person or expose the person to a penalty under this Act.
- (3) Information or documents provided to the Commission shall not be admissible against that person in a criminal proceeding.

## ***Part XIII— Offences and Penalties***

### **Unlicensed communications networks and services**

90. (1) Any person who breaches section of this Act commits an offence.
- (2) A person who commits an offence under subsection (1) of this section shall, on summary conviction, be liable to a fine not exceeding \$5,000 for a first offence or \$10,000 for a subsequent offence, and in the case of a continuing offence, to a further fine not exceeding \$100 for each day during which the offence continues.

### **Breach of interconnection, access and competition provisions**

91. (1) Any person who breaches a section of Part IV or Part V of this Act or any rules made under those Parts, or materially breaches the provisions of an interconnection and access agreement, commits an offence.
- (2) A person who commits an offence under subsection (1) of this section shall, on summary conviction, be liable to a fine not exceeding \$5,000 for a first offence or

\$10,000 for a subsequent offence, and in the case of a continuing offence, to a further fine not exceeding \$100 for each day during which the offence continues.

#### **Breach of licence condition**

92. (1) Any person who breaches the condition of a licence held by the person or under which the person is registered or operating a device commits an offence.
- (2) A person who commits an offence under subsection (1) of this section shall, on summary conviction, be liable to a fine not exceeding \$5,000 for a first offence or \$10,000 for a subsequent offence, and in the case of a continuing offence, to a further fine not exceeding \$100 for each day during which the offence continues.

#### **Fraudulent use of communications network or service**

93. (1) Any person who dishonestly obtains a service provided by means of a communications network or service with intent to avoid payment of any charge applicable to the provision of that service commits an offence.
- (2) A person who commits an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding \$1,000 and to imprisonment for a term not exceeding three years.

#### **Improper use of communications network or service**

94. (1) Any person who, by means of a communications network or service—
- a) sends a message or other matter that is grossly offensive or of an indecent, obscene, or menacing character;
  - b) for the purpose of causing annoyance, inconvenience, or needless anxiety to another person, sends a message that he knows to be false; or
  - c) for the purpose of causing annoyance, inconvenience, or needless anxiety to another person, persistently makes use of a licensed communications network or service commits an offence.
- (2) A person who commits an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding \$1,000 and to imprisonment for a term not exceeding three months.

#### **Offences in respect of interception and disclosure**

95. (1) Any person engaged in the running of a communications network or service who, otherwise than in the course of duty or pursuant to Part XII—
- a) intentionally modifies or interferes with the contents of a message sent by means of that network or service;
  - b) intentionally intercepts a message sent by means of that network or service;
  - c) where a message sent by means of that network or service has been intercepted, intentionally discloses to any person the contents of that message; or
  - d) intentionally discloses to any person the contents of any statement of account specifying the communications services provided for any other person by means of that network or service, commits an offence.

- (2) Any person who fraudulently retains, secretes, makes away with or wilfully detains a message which ought to have been delivered to some other person, commits an offence.
- (3) A person who commits an offence under this section shall be liable on summary conviction, to a fine not exceeding \$2000 and to imprisonment for a term not exceeding one year.

**Offences in respect of radiocommunications**

96. (1) Any person who, except pursuant to Part XII—
- a) knowingly sends, transmits, or causes to be sent or transmitted any false or fraudulent distress signal, message, call, or radiogram of any kind; or
  - b) without lawful excuse, interferes with or obstructs any licensed radiocommunications, commits an offence.
- (2) Any person who, without lawful excuse, intercepts and makes use of, or intercepts and divulges, any radiocommunications, except where permitted or reasonably expected to be permitted by the originator or pursuant to Part XII, commits an offence.
- (3) Any person who—
- a) contravenes section ; or
  - b) without lawful excuse, manufactures, imports, distributes, leases, offers for sale, sells, installs, modifies, operates, or possesses any equipment under circumstances that give rise to a reasonable inference that the equipment has been used, or is or was intended to be used, for the purpose of contravening subsection (1), commits an offence.
- (4) A person who commits an offence under this section shall be liable, on summary conviction, in the case of an individual, to a fine not exceeding \$5,000 and to imprisonment for a term not exceeding three years.
- (5) Where an offence under this section is committed or continued on more than one day, the person who committed the offence shall be liable to be convicted for a separate offence for each day on which the offence is committed or continued.
- (6) Where any offence against this Act is committed in relation to a radiocommunications station onboard a vessel or aircraft, the master or person in charge of the vessel or aircraft shall, without prejudice to the liability of any other person, be deemed to also commit such offence.

**Offences in respect of damage to communications equipment**

97. (1) Any person who, intending to—
- a) prevent or obstruct the transmission or delivery of any message; or
  - b) commit mischief, damages, removes, or tampers with any communications equipment belonging to a licensee, commits an offence.
- (2) Any person who—
- a) without permission of the communications officer in charge enters the signal room of a communications office of the Government or a licensee;

- b) enters a fenced enclosure around such communications office in contravention of any rule or notice not to do so;
- c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed there; or
- d) wilfully obstructs any such officer or servant in the performance of their duty, commits an offence.

#### **General offence**

98. Any person who contravenes or fails to comply with any provision or requirement of this Act or any instrument made under this Act commits an offence.

#### **General penalty**

99. Any person who commits an offence under this Act or any rules made under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$1000 and to imprisonment for a term not exceeding three months.

#### **Criminal liability of directors, officers, employees and agents**

100. Where a corporation commits an offence under this Act, any director, officer, employee or agent of the corporation who directed, authorised, assented to, acquiesced to or participated in the commission of the offence shall be a party to and guilty of the offence, and shall be liable to the punishment provided for that offence in respect of an individual.

#### **Forfeiture of device**

101. In the case of a conviction for an offence under this Act or any rules made under this Act, any device in relation to which or by means of which the offence was committed may be—

- a) forfeited to the Commission by order of the Court which tried the offence; and
- b) disposed of as the Commission may direct.

#### **Commission for prosecution**

102. The Attorney General may authorise employees or agents of the Commission to prosecute offences under this Act subject to any conditions or restrictions imposed.

#### **Compounding offences**

103. (1) The Attorney General may, if satisfied that any person has committed an offence under this Act, instruct such person to pay a sum of money to the Commission by way of compounding such offence.
- (2) The payment shall not exceed the maximum fine prescribed for the offence nor be less than half the amount of the maximum fine prescribed.
- (3) Such payment shall be accepted only where the person suspected of having committed an offence has consented in writing to the offence being dealt with under this section.

(4) In any proceedings brought against any person for an offence against this Act it shall be a good defence if that person proves that the offence has been compounded under this section.

(5) This section does not apply to a breach of section.

#### *Part XIV— Computer Misuse*

#### **Interpretation**

104. (1) In this Part—

'computer' means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include a device which is non-programmable or which does not contain any data storage facility;

'computer service' includes computer time, data processing and the storage or retrieval of data;

'data' means representations of facts, information or of concepts that are being prepared or have been prepared in a form suitable for processing in a computer;

'distribute' means transfer possession of, with or without consideration;

'function' includes logic, control, arithmetic, deletion, storage and retrieval and communications to, from or within a computer;

'intercept', in relation to a function of a computer, includes listening to or recording a function of a computer, or acquiring the substance, meaning or purport of a function of a computer;

'knowingly' means being aware of the character of the content;

'matter'—

a) means any recording, pictorial representation, figure, transcription, printed or written material, mechanical, chemical, electrical, or electronic reproduction, or other article, equipment, machine, or material, and includes but is not limited to any book, magazine, newspaper, picture, drawing, photograph, motion picture, statue, film, filmstrip, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage medium, CD-ROM, computer-generated image, or computer-generated equipment, and

b) includes any live or recorded telephone message if transmitted, disseminated, or distributed as part of a commercial transaction;

'minor' means a person under 16 years of age;

'obscene matter'—

a) means matter which, applying contemporary Kiribati standards, appeals to the prurient interest, depicts or describes sexual conduct in a patently offensive way,

and, taken as a whole, lacks serious literary, artistic, or scientific value. In determining whether matter lacks serious literary, artistic, or scientific value, the fact that the defendant knew that the matter depicted persons under the age of 16 years engaged in sexual conduct shall be taken into account; and

- b) includes pornographic material that visually depicts—
  - (i) a minor engaged in sexually explicit conduct;
  - (ii) a person appearing to be a minor engaged in sexually explicit conduct;
  - (iii) realistic images representing a minor engaged in sexually explicit conduct;

'output' means a statement or representation (whether in written, printed, pictorial, graphical or other form) purporting to be a statement or representation of fact—

- a) produced by a computer; or
- b) accurately translated from a statement or representation so produced;

and

'program' means data representing instructions or statements that, when executed in a computer, causes the computer to perform a function, and includes part of a program.

- (2) A person secures access to any program or data held in a computer if by causing a computer to perform any function that person—
  - a) alters or erases the program or data;
  - b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;
  - c) uses it; or
  - d) causes it to be output from the computer in which it is held (whether by having it displayed or in any other manner), and references to access to a program or data (and to an intent to secure such access) shall be read accordingly.
- (3) For the purposes of subsection (2)(c), a person uses a program if the function they cause the computer to perform—
  - a) causes the program to be executed; or
  - b) is itself a function of the program.
- (4) For the purposes of subsection (2)(d), the form in which any program or data is output (and in particular whether or not it represents a form in which, in the case of a program, it is capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.
- (5) Access of any kind by any person to any program or data held in a computer is unauthorised or done without authority if that person—
  - a) is not entitled to control access of the kind in question to the program or data; and
  - b) does not have consent to access of the kind in question to the program or data from any person who is so entitled.
- (6) A reference to any program or data held in a computer includes a reference to any program or data held in any removable storage medium which is for the time being in the computer, and a computer is to be regarded as containing any program or data held in any such medium.

- (7) A modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or any other computer—
  - a) any program or data held in the computer concerned is altered or erased;
  - b) any program or data is added to its contents; or
  - c) any act which impairs the normal operation of any computer, and any act which contributes towards causing such a modification shall be regarded as causing it.
- (8) Any modification referred to in subsection (7) is unauthorised if the person whose act causes it—
  - a) is not entitled to determine whether the modification should be made; and
  - b) does not have consent to the modification from any person who is so entitled.

### **Attempt and aiding or abetting**

105. A person commits an offence who knowingly aids or abets the commission of any of the offences established under this Part with intent that such offence be committed.

### **Corporate liability**

106. A body corporate commits an offence if an employee, agent or officer of the body corporate commits an offence under this Part to the benefit of that body corporate—
- a) as a representative of the body corporate;
  - b) carrying out duties of such responsibility that his or her conduct may fairly be assumed to represent the policies of the body corporate;
  - c) with authority to exercise control within that body corporate; or
  - d) where the offence was made possible due to the lack of supervision or control of a person referred to in paragraphs (a), (b) or (c).

### *Offences against computer data and systems*

#### **Unauthorised access to computer material**

107. (1) Any person who knowingly causes a computer to perform any function for the purpose of securing access without authority to that computer or any program or data held in any computer commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.
- (2) For the purposes of this section, it is immaterial that the act in question is not directed at—
- a) any particular
  - b) a program or data of any kind; or
  - c) a program or data held in any particular computer.

#### **Unauthorised access for commission of offences**

108. (1) Any person who causes a computer to perform any function for the purpose of securing access without authority to any program or data held in any computer with intent to commit an offence to which this section applies commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both.

- (2) This section applies to offences involving property, fraud, dishonesty or which cause bodily harm.
- (3) For the purposes of this section, it is immaterial whether the offence to which this section applies is to be committed when the unauthorised access is secured or on a future occasion.

#### **Unauthorised modification of computer material**

109. (1) Any person who does any act which that person knows will cause an unauthorised modification, damaging, deletion, deterioration or suppression of any data commits an offence.
- (2) For the purposes of this section, it is immaterial that the act in question is not directed at—
- a) any particular program or data;
  - b) a program or data of any kind; or
  - c) a program or data held in any particular computer.
- (3) For the purposes of this section, it is immaterial whether an unauthorised modification is, or is intended to be, permanent or merely temporary.

#### **Unauthorised use or interception of computer service**

110. (1) Any person commits an offence who knowingly—
- a) secures access without authority to any computer for the purpose of obtaining, directly or indirectly, any computer service;
  - b) intercepts or causes to be intercepted without authority, directly or indirectly, any data or function of a computer;
  - c) seriously hinders without authority any computer by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing data;
  - d) inputs, alters, deletes or suppresses data, resulting in inauthentic data, with the intent that it be considered or acted upon for legal purposes as if it were authentic;
  - e) inputs, alters, deletes or suppresses data or interferes with the functioning of a computer without fraudulent or dishonest intent to procure an economic benefit for the person or another person without authority; or
  - f) uses or causes to be used, directly or indirectly, the computer or any other device for the purpose of committing an offence under subsections (1)(a), (b) or (c).
- (2) For the purposes of this section, it is immaterial that the unauthorised access or interception is not directed at—
- a) any particular program or data;
  - b) a program or data of any kind; or
  - c) a program or data held in any particular computer.

#### **Unauthorised devices**

111. (1) Any person commits an offence who knowingly produces, sells, procures for use, imports, distributes or otherwise makes available—



- a) a device or program designed or adapted primarily for the purpose of committing an offence under this Part; or
- b) a password, access code or similar data by which a computer may be accessed, with the intent that it be used to commit an offence under this Part.

### *Content related offences*

#### **Copyright infringements**

112. A person who knowingly breaches the copyright of another person by means of a computer commits an offence.

#### **Distribution and exhibition of obscene matter**

113. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into Kiribati for distribution, or who in Kiribati possesses, prepares, publishes, produces, develops, duplicates, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter, commits an offence and shall be liable on conviction to a fine not exceeding \$1,000 and imprisonment for a term not exceeding two years or both.

#### **Offences related to child pornography**

114. Every person who knowingly—
- a) produces child pornography for the purpose of its distribution through a computer;
  - b) offers or makes available child pornography through a computer;
  - c) distributes or transmits child pornography through a computer;
  - d) procures child pornography through a computer for oneself or for another person; or
  - e) possesses child pornography in a computer or on a computer-data storage medium, commits an offence.

### *Penalties*

#### **Penalties**

115. A person who commits an offence under this Part shall be liable on conviction to a fine not exceeding \$10,000 and to a term of imprisonment not exceeding two years.

### *Part XVI – Miscellaneous Provisions*

#### **Non responsibility for bodily injury or damage**

116. (1) The Republic of Kiribati, the Minister, the Commission, an Inspector, or any other person exercising or performing powers or functions under this Act shall not be liable in respect of any action, claim, or demand that may be brought or made by any person in respect of any bodily injury or damage to property or any other circumstances arising from any act permitted by a licence issued under this Act.
- (2) No licensee or person engaging in conduct licensed under this Act, or an employee or agent of such a person, shall be liable in any criminal proceedings or in any suit for

damages by reason of his having in the course of his employment transmitted or conveyed by any communications, or taken any part in transmitting or conveying by any communications, any defamatory libel.

### **Power of Government in emergency**

117. (1) If it appears to the Minister to be expedient or requisite, on the occurrence of any public emergency, or in the interest of public security or national defence, the Minister may, by an order published in the *Gazette* or specially in writing, give directions to a person to whom this section applies.
- (2) Directions given under subsection (1) may include—
- a) the prohibition or control of communications networks and radio stations as may be considered necessary;
  - b) the possession or the control of or use for official purposes of communications networks and radio stations;
  - c) the stoppage, delay, or interception of communication; and
  - d) the carrying out of any other purposes which the Minister considers necessary.
- (3) The Government may—
- a) pay compensation for any loss or damage caused to a licensee or an owner of a radio station, as the case may be, by reason of compliance with directions under subsection (2)(b); and
  - b) make grants to licensees, or owners of radio stations, as the case may be, for defraying or contributing towards any losses which they may sustain by reason of their compliance with the directions of the Minister under this section.

### **Rules**

118. In addition to the matters which are specifically prescribed, the Commission may make such rules as are contemplated by or necessary for giving full effect to the provisions of this Act.

### **Extra-territorial application**

119. Unless otherwise expressly provided this Act does not apply to any foreign vessel or aircraft in respect of conduct permitted in the country of registration.

### **Broadcasting services**

120. This Act shall not apply to any broadcasting services under the Broadcasting and Publications Authority Ordinance, other than Part VIII.

### **Repeals and amendments**

121. The Telecommunications Act 2004 is repealed.

### **Act binds the Republic of Kiribati**

122. This Act binds the Republic of Kiribati.

*Part XVI — Transitional Provisions*

**Commission**

123. (1) A person who was a member of the Telecommunications Authority of Kiribati immediately prior to this Act commencing shall be deemed to be appointed to the Commission under section .
- (2) A person who was an officer or employee of the Telecommunications Authority of Kiribati immediately prior to this Act commencing shall be deemed to have been appointed an officer or employee of the Commission under section.

**Licences**

124. (1) The Commission shall, within 12 months of the commencement of this Act—
- a) identify all licences issued under the Telecommunications Act 2004 and current as at the date of the commencement of this Act; and
  - b) notwithstanding any requirements in this Act or the licensing rules for a licence application or licence fee, replace each such licence with a replacement licence issued under this Act.
- (2) A replacement licence issued under sub-section (1) shall confer a right to—
- a) own and operate a communications network;
  - b) provide a communications service; or
  - c) use a radio frequency transmitting device, to at least the same extent permitted under the licence to be replaced (subject to this Act and any rules or licence conditions made by the Commission).
- (3) Until a replacement licence is issued under sub-section (2), a licence under the Telecommunications Act 2004 shall continue to authorise the activities permitted by the licence, subject to—
- a) the conditions imposed under the licence issued to the person under the Telecommunications Act 2004; and
  - b) the Telecommunications Act 2004 and any instruments or licence conditions made under that Act, as if they were still in force, unless the requirement to do so is—
  - c) specified in a waiver published by the Commission; or
  - d) inconsistent with the licensee's obligations under this Act.

**Transitional rules**

125. The Commission may make transitional rules in order to deal with procedural and other matters that arise in connection with the transition from the Telecommunications Act 2004 to this Act.

## The Communications Bill 2012

### Explanatory Memorandum

This Communications Bill 2012 implements the Government of Kiribati's policy for the reform of the ICT sector adopted in April 2011. The central objective of that policy is to achieve open and competitive communications markets in Kiribati. International experience suggests that competition will deliver significant social and economic benefits, through improved services, lower prices, and broader coverage.

The Bill sets up a new framework for regulation of communications. The framework is intended to provide modern, independent, non-discriminatory and proportionate regulation of communications in Kiribati. The Bill has been developed having regard to international best practice and the particular needs of Kiribati.

#### Part I— Preliminary Provisions

Part I sets out the objectives of the Bill, which have been aligned with the Government's policy. The objectives centre on ensuring regulation is:

- technologically and competitively neutral;
- transparent and non-discriminatory; and
- promotes reliance on market forces, to the extent reasonable.

It is intended that the Commission will have regard to these principles when administering and exercising its powers under the Act.

#### Part II— Institutional Framework

Part II sets out the institutional framework of the regulatory regime.

The regulator of the sector will be the Communications Commission of Kiribati. The Commission is the same body corporate as the existing regulator, the Telecommunications Authority of Kiribati. The Bill establishes the powers and responsibilities of the Commission. As a statutory corporation, the Commission may appoint employees and engage external consultants in the manner it considers fit having regard to its objectives.

Part II ensures the Commission is independent from Government in order to promote regulatory certainty, transparency, predictability and encourage investment. Independence of Commission members will be assured through

- legislative criteria which ensure that members are appropriately qualified and suitable for appointment;
- limiting the reasons for which the Minister may terminate the appointment of a member of the Commission members; and
- providing that Commission members are appointed for a fixed term of 5 years and may not be appointed on a temporary or acting basis.

The Commission is legally, institutionally and financially independent from Government. The Commission will be funded on an annual basis by licence fees and other fees it is entitled to charge under the Bill. The Government retains oversight of the Commission's activities to ensure accountability; the Commission must provide reports on its activities to the Minister responsible for communication and the Minister may require the Commission to be audited to ensure its efficiency.

The Commission will not be subject to direction by the Minister or Government but will be required to give effect to general Government policies.

This Part also sets out rules about how the Commission may exercise its powers. Many powers of the Commission may only be exercised after conducting a specific consultation process. Certain decisions also require the Commission to publish and seek comment on a draft of any proposed instrument before the final instrument can be made. The Commission is obliged to publish all regulations, rules, licences and other significant documents issued under the Bill, subject to confidentiality obligations designed to protect licensees' sensitive information.

### **Part III – Reconsideration and Rehearings**

Part III sets out the process which a person affected by a decision of the Commission may seek a review of the decision: improving the quality of regulatory decisions, confidence in regulatory outcomes, and enhancing transparency and accountability. This Part sets out three avenues for review.

The first is that a person directly affected by a decision of the Commission may apply to the Commission to reconsider the decision. Following an application the Commission must consider the application and notify the applicant as to whether the decision will be reconsidered. The Commission must then comply with any consultation requirements that applied when the decision was initially made. Reconsideration is intended to be a simple and efficient method for addressing errors.

An affected person may also apply to an appeals panel to have a decision of the Commission reheard. The membership of the appeals panel must be drawn from a register of experts to be maintained by the Commission. The appeals panel has the power to affirm, vary or set aside decisions of the Commission. Because a rehearing may be expensive and create uncertainty while the matter is being decided, this avenue is limited to considering decisions that may require specialist international expertise.

A person may also seek judicial review of an administrative decision. However, it is intended that this option would not be available where other review avenues have not been exhausted or where the appeals panel may review the decision.

### **Part IV – Licences**

Part IV sets out the licensing regime for communications and radiocommunications.

There is a general prohibition on a person:

- owning or operating a specified communications network;
- providing a communications service; or
- using a radio frequency transmitting device;

unless that person holds the relevant licences issued by the Commission under the Bill.

#### **Communications licences**

There are two categories of communications licence issued under the Bill.

Individual licences are issued to a specified person for a specified period and are intended to be highly flexible, authorising the ownership and operation of any specified communications network and any communications service. Individual licences will be required where a licensee owns or operates networks with a significant impact on amenity or land use (specified communications networks which require an individual licence, will be those networks that use fixed line or radiocommunications links). Other activities may require class licences.

Class licences come into force by registration by a licensee and authorise the provision of any communications service.

Licences are not required to own or operate exempted networks or to provide exempt services.

### *Radiocommunications licences*

Part IV also deals with radiocommunications licences authorising the use of radio frequency transmitting devices. There are three types of radiocommunications licence. Spectrum licences authorise the use of designated parts of the radio spectrum in designated geographic areas. Apparatus licences authorise the use of designated devices within designated frequencies and geographic areas.

Spectrum is a finite resource and spectrum licences and, accordingly, apparatus licences may be limited. General permits authorise any person to engage in designated conduct subject to the terms of the permit. Licences are not required for exempt devices.

### *Other provisions*

The Commission is empowered to make rules that will govern the licensing process (which will include competitive tenders where there are a limited number of licences), set out licence conditions and determine licence fees. To enhance certainty for potential market entrants, the Commission is required to promptly consider licence applications and must provide reasons for any refusal to issue an individual licence to an applicant. The Commission is required to maintain and publish a register of licensees and licences.

The Commission is required to determine fees for licences in a transparent manner that minimises the annual fees payable by licensees. The Commission must ensure that its projected licence fee revenue payable by all licensees in a year will not exceed the Commission's proposed annual budget and forecasts.

There are very limited circumstances where the Commission is entitled to revoke or suspend licences. The Commission may revoke or suspend a radiocommunications licence where it is necessary to implement a variation to the spectrum plan or any frequency allocation plans and it is consistent with international spectrum planning or the international obligations of the Republic of Kiribati.

### **Part V— Interconnection and Access**

Part V provides a framework for interconnection and sharing of facilities between licensees. These provisions are important to ensure communications markets in Kiribati develop efficiently, that barriers to entry are minimised and that consumers in Kiribati can enjoy any-to-any connectivity. This Part aims to ensure scarce resources such as land are shared between licensees as far as possible.

This Part requires licensees to negotiate agreements dealing with interconnection and facility sharing on the request of another licensee. The agreement must meet certain requirements to ensure the agreements are fair, reasonable and will promote competition. Where the licensees do not agree, a licensee will be entitled to refer the matter to the Commission, which may determine the terms of the agreement or require the licensees to take action to reach agreement.

The Commission may make rules setting out a prices and principles that it will apply in the event of a dispute. It is intended that these rules will also act to assist licensees to understand the likely regulatory outcome if an agreement cannot be reached commercially.

The Commission may also require a licensee to prepare a reference offer to be made on a standing basis to other licensees. A reference offer is another mechanism to minimise the need for the Commission to intervene in interconnection disputes. Reference offers may also be prepared and approved by persons proposing to invest in a communication network in Kiribati, to ensure such investors can obtain regulatory certainty.

The Bill requires licensees who propose to construct a new tower, mast, tunnel, hole, pit, pole or similar passive communications facility to consult with other potential users of the facility to allow and encourage facility sharing.

### **Part VI— Competition**

Part VI prohibits licensees engaging in conduct which has the purpose, effect, or is likely to have the effect, of reducing competition in a communications market. This Part includes examples of such conduct to assist licensees to assess whether their conduct may breach the prohibition.

Conduct can be exempted from the prohibition if the Commission is satisfied that the conduct will promote efficiency.

To minimise the need for expensive and difficult proceedings to enforce the prohibition, the Commission will be entitled to serve a notice of contravention on a licensee specifying the anti-competitive conduct and requiring the licensee to cease that conduct and pay the specified penalty. The Commission may not take enforcement action against a licensee that complies with the terms of a notice of contravention.

Part VI also provides protections against industry consolidation. Licensees may not acquire an interest in another licensee without the Commission's consent, which may be withheld if the Commission considers that the acquisition would have the effect or likely effect of reducing competition in a communications market.

### **Part VII— Consumer Protection and Price Regulation**

Part VII imposes transparency requirements, minimum standards and price regulation to promote access to and confidence in communications services.

A licensee must file details of their wholesale and retail prices with the Commission and publish on its website the prices and conditions for its communications services. Licensees must not discriminate between consumers except where commercially justified.

The Commission is also empowered to regulate retail or wholesale prices charged by individual licensees. However, the Commission must be satisfied that the prices exceed the licensee's economically efficient costs and a reasonable return on investment. The methodology for regulating pricing will be set out in the Commission's pricing rules. A licensee whose prices are regulated may have those prices adjusted by the Commission on the basis of the pricing methodology in the rules.

Part VII contains a number of consumer protection measures, including that licensees:

- a) may only charge customers for services that customers have ordered;
- b) are required to provide licensees with regular, simple and accurate invoices;
- c) are prohibited from making certain claims about communications services which the licensee knows or reasonably ought to know are false or misleading;
- d) must adopt appropriate safeguards to protect the confidentiality of customer information.

The Commission is empowered to make consumer protection rules which may apply to a specified class of licensee setting out minimum standards for communication services, requiring licensees to make acceptable standard terms and conditions, and requiring licensees to provide directory assistance services.

### **Part VIII— Technical Standards**

Part VIII empowers the Commission to make rules specifying technical standards for interconnection and for customer equipment to be attached to licensees' communications networks.

## **Part IX— National resources management**

Part IX deals with the management and allocation of radiocommunications spectrum and numbering for communications services.

The Commission is granted the exclusive power to plan, manage, allocate and control the use of all radio spectrum frequencies in the Republic of Kiribati. The Commission is required to prepare spectrum plans, frequency allocation plans and radiocommunications rules which will govern spectrum management and radiocommunications licensing, monitoring of the use of radio spectrum, and certification of certain users of radio frequency transmitting devices.

The Commission is required to make numbering rules specifying a numbering plan for communications services, the assignment of numbers for emergency services, and requirements for the allocation of priority and quality of capacity for calls to emergency services. The Commission may make also numbering rules providing for number portability if it considers the benefits of portability outweigh the costs.

Licensees providing voice communications services to subscribers must provide access to emergency services numbers free of charge.

## **Part X— Universal Access**

Part X reflects the Government's commitment to introduce a universal service regime to ensure communications services are available, to the greatest extent feasible, to all of the people of Kiribati.

This Part establishes a Universal Access Advisory Committee to undertake public consultation on and advise the Commission in developing Universal Access Plans. The Commission must consider the recommendations of the Committee and publish Universal Access Plans to promote the availability of communications services in Kiribati. The Commission may then develop project plans to address the Universal Access Plans.

The provision of communications services under Universal Access Plans will be supported by a Universal Access Fund, to which the Commission may require licensees to contribute.

The Commission may contract with a person to subsidise the provision of communications services in accordance with a project plan. Subsidies provided in accordance with the Universal Access Plan are to be paid from a Universal Access Fund maintained by the Commission. The Commission shall select a person to receive the funds based on a competitive tender (where the Commission considers there would be competition to provide the services for a subsidy), by negotiation or by imposing an obligation on a licensee.

## **Part XI— Use of Land**

The provision of communications services necessarily involves the construction of a communications network and the installation of equipment and facilities including ducts and towers. To facilitate the construction and installation process, this Part provides for the rights of the licensees to access and use third party land.

## **Part XII— Investigations, Inspections, and Enforcement**

Part XII sets out the investigatory and enforcement powers of the Commission. The Commission may appoint Inspectors for the purpose of verifying compliance with the Act and delivering instruments of the Commission. Inspectors have the power to enter and inspect premises and networks in furtherance



of their inspection duties. In circumstances where an Inspector is refused access to a premises the Bill provides that a magistrate may issue an Inspector a warrant granting access.

The Commission also has a general power to require a person to submit information to the Commission which the Commission considers it necessary for the fulfilment of its duties. The Commission may also require the attendance and examination of witnesses.

Licensees operating a communications network may be obliged to intercept or disclose a communication or customer information in connection with the investigation of serious criminal offences. Licensees must ensure their networks are capable of providing such interception.

### **Part XIII— Offences and Penalties**

Part XIII sets out general offences and penalties under the Bill.

It is an offence under the Bill to:

- a) own or operate a communications network or provide a communications service without a licence;
- b) breach the interconnection, access and competition provisions of the Bill;
- c) breach the conditions of a licence issued under the Bill;
- d) makes fraudulent or improper use of a communications network or service;
- e) except as provided for under the Bill, intercept, modify or disclose a message sent by means of a communications network or service;
- f) makes a false or fraudulent distress signal or unlawfully use or interfere with radiocommunications, or use or modify equipment for this purpose;
- g) obstruct the delivery of a message or tamper with communications equipment belonging to a licensee; and
- h) contravene or fail to comply with any provision of the Bill or an instrument made under the Bill.

Where an offence is committed by a corporation, a director, officer, employee or agent of the corporation who directed, authorised, or acquiesced in the commission of the offence shall be a party to and guilty of the offence.

### **Part XIII— Computer Misuse**

Part XIV sets out offences in relation to computer misuse. This Part aims to implement the Convention on Cybercrime into Kiribati laws. The Part includes various offences dealing with the unauthorised access, modification and misuse of computer systems and computer data. The Part also includes offences dealing with copyright infringements, the distribution or exhibition of obscene materials and child pornography.

It will also be an offence to aid or abet the commission of any of the offences set out in this Part.

### **Part XVI— Miscellaneous Provisions**

Part XVI sets out miscellaneous powers and provisions. These includes provisions excluding the Government's liability for licensed activities and clarifying that a person is not liable for transmitting or conveying by communications any defamatory libel in the course of their employment.

This Part also retains the Government's emergency powers to control or possess communications networks, or stop, delay or intercept communications, if it appears to the Minister expedient or requisite on the occurrence of any public emergency or in the interest of public security or national defence.

The Commission is granted a general power to make rules necessary to give full effect to the provisions of the Communications Act 2012 in addition to the matters for which the making of rules is specifically prescribed.

This Part repeals the Telecommunications Act 1983 and the Telecommunications Act 2004 and confirms that the Bill does not apply to broadcasting services (except for the purposes of radiocommunications regulation).

The Communications Bill 2012 binds the Republic of Kiribati. It does not apply to any foreign vessel or aircraft in respect of conduct permitted in the country of registration.

#### **Part XVII- Transitional Provisions**

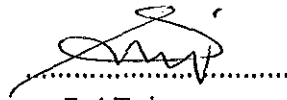
Part XVI deals with transitional matters. It sets out provisions allowing a transitional period for licences issued under the Telecommunications Act 2004 to continue to have effect, before new licences are issued under the Communications Act 2012.

This Part also confirms that members and officers of the Telecommunications Authority of Kiribati are deemed to be appointed to the Commission on commencement of the Communications Act 2012.

The Commission is also empowered to make transitional rules to deal with matters arising in connection with the transition from the Telecommunications Act 2004 to the Communications Act 2012.

**CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU**

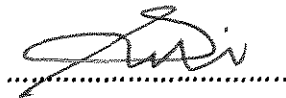
This printed impression of the Communications Act 2013 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 25<sup>th</sup> April 2013 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene

Clerk of the Maneaba ni Maungatabu

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