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Restructuring of the Incumbent National Operator

LESOTHO TELECOMMUNICATIONS AUTHORITY ACT 2000

ACT NO. 5 OF 2000

An Act to provide for the restructuring and the development of telecommunications; establish an autonomous and independent regulatory authority; license the providers of telecommunication services having regard to fairness, transparency, universal service, accountability to the general public; and for related matters.

ENACTED by the Parliament of Lesotho

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Lesotho Telecommunications Authority Act, 2000 and shall come into operation on such a date as the Minister' may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act unless the context otherwise requires -

“allocation” means the apportionment of segments of the radio frequency spectrum among various users and radio-based services;

“appointing authority” means, in the case of member's of the Board of

the Authority, the Minister or any other body or person vested with powers to make appointments;

“assignment” means the designation to an individual licensee of specific radio frequencies for use in providing a particular service;

“Authority” means the Lesotho Telecommunications Authority established under section 4 of this Act;

“Board” means the Board of the Authority established under section 5 of this Act;

“competitive services” means any telecommunication services that are or may be provided by 2 or more persons;

“customer” means a person who receives and pays for a telecommunication service over a period of time under an agreement with or pursuant to terms and conditions established by the service provider with the approval of the Authority;

“customer premises equipment” or “terminal equipment” means equipment employed on the premises of a customer of a public telecommunication service or private telecommunication service to originate route, or terminate telecommunication services and includes telephone handsets (whether for wireless or wireline communications), fax machines, computer modems, associated hardware and internal wiring to the customer’s premises or property on which the customer has installed the customer premises equipment;

“domestic telecommunication services” means telecommunication services provided within Lesotho;

“exclusive services” means any telecommunication services that are provided or may be provided by one person over the whole country or by 2 or more persons in specific areas of the country;

“incumbent national operator” or “incumbent” means the national telecommunication enterprise, Lesotho Telecommunications Corporation;

“information” includes signs, signals writings, pictures, sounds or other information of any nature which constitutes the content transmitted by telecommunication;

“international telecommunication services” means telecommunication services provided between Lesotho and any other country including transit traffic;

“licence” means an authorisation granted by the Authority for the provision of telecommunication services or for the use of the radio frequency spectrum;

“licensee” means a person that holds a valid licence duly granted by the Authority;

“member” means a member of the Board appointed under section 5;
“Minister” or “Ministry” means, unless otherwise specified, the Minister or Ministry responsible for telecommunication services;

“network” means an integrated system of facilities which comprise the facilities used to provide one or more telecommunication services;

“operator” means a person who operates telecommunication facilities;
“person” means any individual, partnership, association, joint venture, trust, company or corporation;

“private line service” means the offering of telecommunication services in which certain telecommunication facilities or an agreed upon amount of capacity between or among fixed points is reserved for the exclusive use of a particular customer for an agreed upon period of time, for which the customer compensates the provider based on the total amount of capacity leased rather than the customer’s actual usage of that capacity and which may be offered as a private telecommunication service or as a public telecommunication service;

“private telecommunication service” means telecommunication services not interconnected with the public switched network and subject to prohibitions against resale, provided exclusively for transmission and reception by one person or its employees or among persons under common ownership or control or their employees;

“public telecommunication network” means a fully interconnected and integrated system of telecommunication consisting of various means of transmission and switching, utilised to provide telecommunication services to the general public;

“public telecommunication services” means telecommunication services provided to the general public or to a class of persons so as to be generally available;

“public telecommunication services provider” means a licensed provider of telecommunication services having the authority and responsibilities assigned by this Act;

“radio frequencies” Or “radio frequency spectrum” means frequencies or spectrum of naturally propagated electromagnetic waves that are utilised for transmission and reception of telecommunication signals;

“resale” means the offering to users or customers for profit of telecommunication services obtained from another telecommunication service provider;

“subscriber” means a person or entity who is provided a telecommunications service by a licensee, and who is responsible for

payment of all charges and rentals thereof;

“tariffs” means the published rates and other usage conditions under which a customer may receive telecommunication services;

“telecommunication” means any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user’s choosing;

“telecommunication equipment” means equipment (including hardware and software) used in the provision of telecommunication;

“transfer date” means the date designated by the Minister when assets, liabilities and employees are transferred from the incumbent national operator to a successor company.

Policies

3. The Minister may, in consultation with the Authority, formulate general overall policies for the telecommunication sector.

Part II

Establishment of the Authority

Establishment of the Authority

4. There is hereby established an autonomous and independent Lesotho Telecommunications Authority which shall be a body corporate with a common seal, perpetual succession, capable of suing and being sued and subject to this Act, capable of performing such acts as bodies corporate may, by law, perform.

The Board

5. (1) The powers and duties of the Authority shall be exercised and performed by a Board consisting of 5 members including the Chief Executive appointed by the appointing authority through a competitive and transparent selection procedure.
- (2) Candidates for appointment shall be selected and forwarded to the appointing authority by an Appointments Recommendation Committee which shall consist of-
 - (a) a nominee of the Ministry of Communications;
 - (b) a nominee of the Ministry of Finance;
 - (c) a nominee of the Attorney-General’s Chambers; and
 - (d) a nominee of the Ministry of Trade.
- (3) Subject to this Act, a member of the Board shall hold office for a term not exceeding 3 years and shall be eligible for re-appointment upon the expiry of his term of office:

Provided that the initial appointment to the Authority upon its establishment shall be for terms of 1, 2 and 3 years respectively.

- (4) The appointing authority shall, in appointing members of the Board, appoint persons who collectively have knowledge or qualifications or experience in the fields of economics, accounting, telecommunications technology, engineering, public policy, business practice, finance, law or any other relevant experience.
- (5) In the appointment of the members of the Board of Authority, the Minister may specify whether the appointment is on a full time or part time basis being guided by the requirements of the business of the Authority.
- (6) Where appointments are on a full time basis, remuneration of the Board members of the Authority shall be determined by the Minister after consultation with the Minister responsible for finance.

Disqualification for appointment as a member of the Board

6. No person shall be appointed to hold office as a member of the Board who has in terms of any law in force in any country –
 - (a) been adjudged or otherwise declared insolvent and has not been rehabilitated or discharged;
 - (b) made an assignment to or arrangement or composition with, his creditors which has not been rescinded or set aside;
 - (c) who has been convicted of a criminal offence of which dishonesty is an element thereof;
 - (d) who holds or has a direct interest in a licence issued under this Act;
 - (e) whose spouse holds or has an interest in a licence issued under this Act; or
 - (f) is a member of Parliament.

Vacancy in the office of a member of the Board

7. A member of the Board shall vacate his office and that office shall become vacant-
 - (a) if he becomes disqualified in terms of this Act;
 - (b) if he is declared insolvent;
 - (c) if he is absent from 3 consecutive meetings of the Board without a valid excuse;
 - (d) upon termination of his services in accordance with this Act;
 - (e) upon dismissal;
 - (f) upon conviction for a criminal offence of which dishonesty is an

element thereof or is sentenced to imprisonment for 6 months without the option of a fine;

- (g) if he becomes mentally or physically incapable of performing his duties as a member of the Board;
- (h) if that member or his spouse acquires a direct interest in a licence or becomes a holder of a licence

Removal from office for misconduct

- 8. (1) Members of the Board shall conduct themselves in accordance with the rules of conduct to be prescribed by the Minister.
- (2) A member of the Board may be removed from office for misconduct, physical or mental incapacity.
- (3) Where the appointing authority becomes aware of a misconduct of a member, the appointing authority shall appoint a tribunal, headed by a judge or person qualified to hold judicial office, to investigate the alleged misconduct.
- (4) The appointing authority shall act in accordance with the recommendations of the tribunal.

Resignation of a member

- 9. (1) A member may resign from his office by giving notice of not less than 3 months to the appointing authority, with a simultaneous copy of the notice to the Board.
- (2) The appointing authority shall, pursuant to section 5, appoint a person to serve the unexpired term of office of the resigning member.

Suspension

- 10. The appointing authority shall, in writing, suspend from office, a member of the Board against whom an investigation by a tribunal has been set up or criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed.

Filling of vacancies

- 11. (1) Where a vacancy occurs in the membership of the Board either due to the death, resignation or removal from office of a Board member, the Minister shall, pursuant to section 5, appoint a person to take the place of the Board member who has been removed or has died or resigned, for the length of period that would otherwise have been served had such member not resigned, died or been removed.
- (2) Where 3 or more Board members have recused themselves with regard to any one or more pending matters, or where 3 or more Board members have been duly suspended for any reason, or where 3 or more Board members are unavailable to hear any specifically designated matters due to any combination of recusals or suspensions, then the Minister shall,

pursuant to section 5, appoint persons to hear such specifically designated matters in the place and stead of the recused or suspended members

- (3) A person appointed pursuant to subsection (2) shall have the power, authority and responsibility of a member with regard to specifically designated matters only

Remuneration

12. (1) A Board member shall be paid such allowances and travelling expenses incurred in the performance of his duties as the Minister may, after consultation with the Minister responsible for finance, determine.
- (2) The allowances of a Board member shall not be reduced during his tenure of office.

Chief Executive

13. (1) There shall be a Chief Executive of the Authority who shall be appointed by the Minister pursuant to section 5(1) on such terms and conditions as the Minister may determine.
- (2.) The Chief Executive shall be the Secretary of the Board and shall hold office for a period of 3 years and shall be eligible for re-appointment.

Functions of the Chief Executive

14. The Chief Executive shall be responsible for the execution of the policy of the Authority, and the transaction of its day-to-day business, and the exercise of such powers as may be delegated to him by the Board subject to section 16 of this Act.

Part III

Functions of the Authority

General duties of the Authority

15. (1) The Authority shall promote, develop and supervise the provision of efficient local, national, regional and international telecommunication services in Lesotho.
- (2) The Authority shall, without limiting the generality of subsection (1) –
- (a) take all reasonable steps to promote network development, universal service and access to telecommunication services;
 - (b) take all reasonable steps to ensure the efficient and effective use of the radio frequency spectrum;
 - (c) promote the range and quality of telecommunication services and other consumer interests;
 - (d) promote efficient management and human resource development

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- within the industry;
- (e) promote private ownership of telecommunication operations;
 - (f) promote sustainable and fair competition between telecommunication service providers;
 - (g) collect and disseminate information for use by the industry, consumers and prospective investors;
 - (h) take reasonable steps to promote telecommunication services that will satisfy reasonable demands of least advantaged members of the communities for the provision of services such as emergency services, public call box services and directory information services;
 - (i) establish advisory committees composed of individuals with appropriate expertise to fairly represent the views and interests of users, consumers and operators and to advise the Authority on specific or technical issues and such advisory committees shall be appointed and conduct their business according to rules as the Authority may issue;
 - (j) represent Government, in consultation with the Minister, in international matters relating to telecommunications

General powers of the Authority

- 16 (1) The Authority shall, without limiting its powers, issue such administrative orders and rules as are necessary to-
- (a) appoint promote, remove and discipline staff;
 - (b) conduct the administrative operations of the Authority;
 - (c) establish its own internal organisation, including creation of bureaux, divisions and offices as it may deem necessary for the exercise of its powers;
 - (d) delegate its authority, which shall not extend to licensing, to the Chief Executive and the bureaux, divisions and offices of the Authority;
 - (e) grant, amend and revoke licences;
 - (f) oversee the overall management, administration and enforcement of numbering schemes;
 - (g) assign frequencies, manage the use of the radio frequency spectrum and satellite orbital locations;
 - (h) set technical standards and procedures to monitor adherence to such standards;
 - (i) contract for services of professional outside consultants and advisors as may be necessary and prudent to the conduct of the business of the Authority;

- (j) establish the procedures and principles of interconnection;
 - (k) establish and, as required, amend the fees and other charges applicable under this Act; and
 - (1) investigate possible violations and otherwise enforce the provisions of this Act.
- (2) The Authority shall, by notice published in the Gazette, issue such other administrative orders and rules as are necessary for exercising its powers and performing its duties in the implementation of policies under this Act.

Powers of the Authority in relation to international matters

17. (1) The Authority may perform all such acts and do all such things as are reasonably necessary, ancillary, incidental or supplementary to the performance of any of its functions in relation to international matters and obligations.
- (2) Without derogating from the generality of subsection (1), the Authority shall-
- (a) be responsible for any inter-governmental telecommunications agreements and conventions as may be signed, ratified, approved or acceded to by the Government of Lesotho;
 - (b) represent Lesotho in international meetings and negotiations in matters relating to telecommunications, radio frequency spectrum or any other related matters;
 - (c) designate one or more operators or service providers to participate in and be signatory to operating agreements relating to international telecommunication organisations to which Lesotho is a party.
- (3) A designated operator or service provider referred to in subsection (2)(c) shall fulfil any financial obligation placed upon the signatory to the operating agreement, and in the event the Authority designates more than one signatory for any one organisation, the Authority shall specify the relative financial shares of such signatories
- (4) The Authority may, at any time after giving 3 months prior notice, revoke the signatory designation to an operating agreement of any organisation should it find that this Act would be best served by designation of another operator.

Personal liability

18. (1) No Board member, officer, or employee of the Authority shall be liable for any damages in respect of any act or omission or thing done by the Board member, officer or employee in good faith in the execution of the duties or exercise of the powers under this Act.

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- (2) The Authority may contract with an insurance company or other body for liability insurance

Part IV

Finances of the Authority

Funds of the Authority

19. (1) The Authority's funds shall consist of-
- (a) such monies as may be appropriated by Parliament;
 - (b) such fees as the Authority may impose for services provided under this Act;
 - (c) such fees as the Authority may impose for licenses issued under this Act;
 - (d) such other fees or monies as the Authority may, by virtue of this Act, raise or impose;
 - (e) fines and other monetary sanctions imposed by the Authority under this Act;
 - (f) grants, contributions or endowments from any other source; and
 - (g) loans
- (2) The Authority shall use the funds raised under this Act to meet the cost of its operations and shall use any surplus accrued for the promotion and development of telecommunications.
- (3) The funds of the Authority shall be administered through a bank account approved by the Minister after consultation with the Minister responsible for finance.
- (4) The Authority shall issue policies and procedural rules necessary to administer the funds, with approval of the Minister responsible for finance.

Annual budget

20. The Authority shall, not less than 2 months before the beginning of its financial year, which shall be April 1, submit a budget for its annual operations to the Minister.

Accounts and audit

21. (1) The Authority shall keep proper accounts of its operations in compliance with international accounting standards
- (2) The Auditor-General shall appoint an independent, qualified and internationally recognised accounting firm to audit the accounts of the Authority annually.
- (3) The Authority shall, within 3 months after the end of the financial year,

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- submit the auditor's report to the Minister.
- (4) The accounts of the Authority and the annual audit report of such accounts shall be publicly available.

Annual report of activities

22. (1) The Authority shall, within 6 months after the end of the financial year or such other period as the Minister may approve, submit a comprehensive report on its operations to the Minister.
- (2) The Minister shall cause a copy of the report, within 30 days of its receipt, together with the auditor's report and the audited accounts to be laid before Parliament.

Part V

Meetings and proceedings of the Board

Meetings of the Board

23. (1) The Board shall meet as often as may be necessary or expedient for the discharge of its functions:
Provided that the Board shall meet at least once a quarter.,
- (2) The meetings of the Board shall be held at such places, times and days as it may determine.
- (3) The Minister shall appoint one of the members of the Board to be Chairman but such member shall not be the Chief Executive.
- (4) The meetings of the Board shall be called by the Chairperson and the Chairperson shall call a special meeting of the Board on receipt of a written request of not less than half of the members of the Board for such a special meeting.
- (5) 3 members of the Board shall form a quorum
- (6) The decision of the Board shall be by majority vote and in any meeting of the Board where there is a tie in any voting on any issue the Chairperson shall have both a deliberative and casting vote.
- (7) The Chairperson shall preside at any meeting of the Board, and in his absence any member of the Board elected from their number shall preside and be chairperson for the purposes of that meeting
- (8) The minutes of each meeting of the Board shall be properly recorded, kept and shall be confirmed at a subsequent meeting.
- (9) The proceedings of the Authority shall not be invalidated by reason of any vacancy in its membership.
- (10) The Board may invite any expert or adviser to sit in its meetings during

its deliberations and the proceedings of the Board shall not be held invalid on that account

- (11) In any licensing meeting, no person may disclose to any other person information or documents where the disclosure may invade personal privacy or injure or harm the security or interests of the State.
- (12) Any other business of the Authority not specifically provided for shall be conducted in accordance with Schedule I.
- (13) Subject to this section, the Board may regulate its own procedure at its meetings.

Disclosure and declaration of interest

24. (1) If at any meeting of the Board, a Board member is aware or becomes aware that a matter which affects that Board member or his spouse directly is to be discussed or under discussion, the Board member shall, forthwith, declare his interest or the interest of his spouse in the matter, and the Board may, if it considers it appropriate, require such Board member to recuse himself from deliberations or discussion on that matter.
- (2) A member who fails to comply with subsection (1) commits an offence and shall be liable, upon conviction, to a fine not less than M6000 or to imprisonment for a period not less than 6 months.

Signification of documents

25. All documents made by and all decisions of the Board may be signified under the common seal and the hand of the Chairperson of the Board or any member or senior officer of the Authority generally or specially authorised in that behalf.

Part VI

Licensing of telecommunication services providers

Classes of providers of services

26. The Authority shall, from time to time, prescribe classes of telecommunication services which may be offered on domestic or international basis and such classes shall include public telecommunication and private telecommunication services.

Licensing of providers

27. (1) No person shall establish or provide telecommunication services in Lesotho except under, and in accordance with, a licence issued pursuant to this Act.
- (2) The Authority shall license such private and public telecommunication service providers as market conditions and the public interest may warrant.

Delisting of licenses

28. (1) The Authority may, from time to time, determine that a class of licensed services shall, in future, be provided without prior approval or licensing and shall base such determination of unlicensed class of service if it reaches a conclusion that no harm to either a service provider or consumer s shall be occasioned by such determination or decision; following such determination, such services shall be deemed “unlicensed services” even if not so classed by the Authority.
- (2) Providers of unlicensed services shall be subject to such reasonable reporting requirements as the Authority may, from time to time, determine.

Records of licensing

29. The records of meetings held to determine the grant of licences shall be made available to members of the public on payment of a fee that may be prescribed by the Authority.

Rules governing licensing

30. The Authority shall make Rules for procedures that govern the grant of licences and may impose conditions on licenses.

Services under licence

31. (1) Each licence that is granted by the Authority shall describe the services that the licensee shall provide.
- (2) Services which a licensee may provide are, but not limited to, the following services-
- (a) exchange services;
 - (b) national long distance services;
 - (c) international public switched voice and data services;
 - (d) international telex and telegraph services;
 - (e) public pay telephone service; and
 - (f) private telecommunications services.

Control of transfer or assignment of licences

32. No licensee may transfer or assign or sell a licence granted to it under this Act or cede control in the operations of the licence or merge with another person or licensee without prior approval, in writing, of the Authority, which approval may not be unreasonably withheld.

Refusal

33. The Authority may-
- (a) refuse a cession, sale or assignation of licence or a merger or take over of a licence holder in accordance with rules governing the

-
- approval of transfer or assignment of licences;
- (b) revoke a license for non compliance with, or violation of, this Act

Review of agreements entered into by service providers

34. (1) Any agreement between licence holders, or any agreement between a licence holder and a foreign correspondent telecommunications carrier, shall be submitted to the Authority for approval and the Authority may review any agreements entered into by licensees to ensure compliance with this Act except that the Authority may exempt certain classes of agreements from this provision.
- (2) Any licence holder who fails to disclose the existence of, and submit an agreement which, may affect competition or the objects of this Act commits an offence and on conviction shall be liable to a fine not exceeding M6000 or to imprisonment for a period not less than 6 months.
- (3) If the Authority does not respond to a submitted agreement within 90 days from the date of submission, the Authority shall be deemed to have given its approval to the terms of such agreement.

Part VII

Duties of telecommunication service providers

Timely provision of service

35. (1) All licensees and operators providing delisted services for which a licence is not required, shall furnish such telecommunication services to consumers upon reasonable request, and all practices and charges with respect thereto shall be reasonable and non-discriminatory.
- (2) The Authority may require any licensee, after affording the licensee an opportunity to be heard, to provide adequate telecommunication facilities for efficient performance of its duties under this Act.
- (3) All public telecommunication services licensees shall, upon request, establish physical connections with other public telecommunication services providers, share networking, signalling and data bases with providers of value added services for the transport and termination of telecommunication and information, and establish and provide the facilities and arrangements for that purpose and establish reasonable charges and rates of service and division of charges thereof.

Agreements for interconnection

- 36 (1) Public telecommunication service providers shall enter into agreements governing the interconnection of their facilities, sharing of infrastructure, local number facilities, and other inter networking, and other facilities that

the Authority may deem to be in the public interest, as well as with providers of value added services, on reasonable and non-discriminatory terms

- (2) Copies of agreements referred to in subsection (1) together with a summary of their principal terms shall be submitted to the Authority; and the Authority may publish such agreements in the Gazette.
- (3) Where public telecommunication service providers fail to agree on charges and terms and conditions of interconnection within the time period prescribed by the Authority, the Authority may, on its own motion, or pursuant to a request from one or both operators under section 37, establish binding charges and terms and conditions of interconnection in accordance with this section and the requirements of the Authority.
- (4) Where a completed agreement for interconnection fails substantially to comply with the principles of inter connection established by this Act and the Authority, the Authority may, on its own motion or pursuant to a complaint by an interested party, and after affording the parties an opportunity to be heard, order a modification of the terms.

Submission of interconnection disputes to Authority

37. (1) Any disagreements or disputes over interconnection charges, terms and practices of public telecommunication service providers shall be submitted to the Authority for resolution.
- (2) In resolving such disputes or disagreement the Authority shall be guided by the following principles-
- (a) the terms and practices for interconnection arrangements shall not discriminate between users of interconnection arrangements and similarly situated users;
 - (b) charges for interconnection services and facilities shall reflect the public telecommunication services licensee's costs defined as the incremental cost, and may include allowance for a reasonable return on capital investment;
 - (c) differences in charges between different users may only be justified based on cost differences directly attributable to providing interconnection for those users.

Submission of agreements governing external interconnections

- 38 (1) Any agreement between a local and a foreign public telecommunication service licensee shall be submitted to the Authority for approval or modification of any terms, including accounting rates and settlement arrangements, agreed upon by the parties; but such an agreement shall not be effective until approval or modification by the Authority.
- (2) Public telecommunication service licensees shall comply with international

and bilateral arrangements relating to or governing such arrangements as well as any rules prescribed by the Authority concerning such arrangements.

- (3) In approving or modifying international interconnection arrangements, the Authority shall take into account exclusionary and discriminatory practices of foreign telecommunication service licensees or providers and authorities and ensure that local telecommunication service licensees are not subjected to unreasonable terms or discrimination by non local licensees or service providers or foreign authorities.

Restriction of resale

39. It shall be an offence by a public telecommunication service licensee to restrict the resale of its services, unless the licence permits such restrictions.

Tariffs and rates

40. (1) The Authority may regulate the rates and charges of all public telecommunications services licensees:
Provided that no licensee shall be required to offer services under rates or charges that do not permit it to recover its incremental cost of providing such service plus a reasonable return on capital investment,
- (2) A public telecommunication services licensee shall not offer services unless it has, prior to offering such services, filed its tariff and rates with the Authority; and shall not make changes except as provided in section 41 on rates or charges or other terms of the services after applicable tariffs have been filed with the Authority.
- (3) Where the Authority permits services to be offered under contract as well as under tariff, the tariff provision shall prevail in the event of a conflict or dispute between the tariff and a contract.

Tariffs, rates and charges

41. (1) A public telecommunication services licensee shall submit tariffs proposals, in writing, to the Authority, of the tariffs, rates and charges it intends to apply for the use of its system, facilities and others.
- (2) Tariffs shall contain all relevant information concerning rates, charges for services, including deposits, non recurring charges, monthly charges as well as terms and conditions applicable to the provision of services including rights and remedies available to consumers in the event of unauthorised charges or other disputes or claims over billing or provision of services
- (3) Tariffs proposed by the licensee shall be effective 30 days after filing with the Authority unless, within the 30 day period, the Authority issues a counter proposal or notice of modification to the licensee.
- (4) Notice of any such filing shall be published by the Authority for public

information and allow consumers to comment on the reasonableness of the tariffs.

- (5) Any failure to make a counter proposal, modification or to approve the proposed tariff shall entitle the licensee making the proposal to impose the tariff proposed and the Authority shall be deemed to have approved the proposed tariff and shall publish it in the Gazette.
- (6) Where the Authority and a licensee fail to reach an agreement on the proposed tariff and counter proposal, the decision of the Authority shall be final.
- (7) All tariff proposals approved in terms of this Act shall come into force and effect from the date of such approval.
- (8) A licensed public telecommunication service provider shall make its tariffs available to the public.

Accuracy of rates

42. (1) All tariffs filed with the Authority shall be kept complete, accurate and up to date.
- (2) After a tariff has been filed with the Authority and has entered into force and effect, no changes may be made in the rates, charges or other terms of service relating to all the service offered under the tariff, except upon the filing and review of tariffs as provided in this Act.
- (3) Except as approved by the Authority, no licensed public telecommunication service provider shall charge or offer tariff rates or charges that are below the relevant incremental cost for providing such a service, as determined in accordance with accepted guidelines for accounting principles established for the industry.

Review of tariffs

43. (1) At any time after the tariff takes effect, upon receiving evidence that the tariff may not be reasonable, the Authority may suspend the tariff and investigate its reasonableness.
- (2) The Authority shall conclude any such investigation within 2 months, publish the findings of its investigation, and may require refunds to subscribers where such findings conclude that a tariff was unreasonable.

Costing information

44. Tariff filings shall be accompanied by all accounting and costing information as the Authority may require, and shall comply with all other requirements and conditions as shall be applicable to the corresponding license.

Accounting procedure

45. The Authority shall prescribe reasonable accounting procedures for the costs of operations which procedures shall be followed and implemented by all public telecommunication service providers.

Reporting requirements

46. (1) Any person who provides public telecommunication service shall file with the Authority, his annual reports, any occasional reports that he may issue from time to time, and such other reports as the Authority may require.
- (2) The Authority may require all or any class of telecommunication service providers in filing annual and occasional reports to include in such reports the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid thereof and the manner of payment for the same, dividends paid, any surplus capital, debts of the company and interest payable thereon, the names and addresses of the holders of stock which is one percent or above, the names and addresses of directors and officers and salaries and compensation paid to each, the earnings and expenses from all sources and complete financial statements of the financial operations of such public telecommunication service providers.
- (3) The Authority may require every public telecommunication service provider, including unlicensed providers of delisted services, to file with the Authority copies of all contracts, agreements and other arrangements entered into with other public or private telecommunication service providers or any other persons including resellers.
- 4) Except for agreements covered by section 34, any person who fails to file any document required to be filed with the Authority in terms of this section commits an offence and on conviction shall be liable to a fine not less than M6000 or to imprisonment for a period not less than 6 months.
- (5) In any submission of filing with the Authority, a person may designate:
- (a) any trade secret;
 - (b) financial, commercial, scientific or technical information or;
 - (c) any other business information,
- as confidential:
- Provided that it is or has been treated, consistently, as confidential by the person who submits or files it.
- (6) The Authority may make Rules for the submission and handling of the confidential business information referred to in subsection (5).
- (7) A member, employee or agent of the Authority who discloses the contents of any document submitted to the Authority in terms of the provisions

of this section under cover of confidentiality or which is confidential, commits an offence and upon conviction shall be liable to a fine not less than M6000 or to imprisonment for a period not less than 6 months.

Access restriction and denial

47. (1) The Authority may, in consultation with the Minister, reasonably deny or restrict access to any documents or information requested by any person for the purposes of preserving national security.
- (2) Except to the extent that reports and any documents filed with the Authority under this Act contain confidential business or national security information, such reports and documents shall be open to the public and may be made available to members of the public on payment of a fee to be prescribed by the Authority and may be inspected by interested persons during the normal business hours of the Authority.

Universal access

48. (1) The Authority shall develop annual objectives for services to be provided with the purpose of ensuring that the public telecommunication service, in particular the basic telephone service, is accessible to the widest number of users and shall take into account the work and recommendations of the international and regional organisations of which Lesotho is a member.
- (2) The Authority may establish a fund into which providers of telecommunication services (public and private) shall pay any fees the Authority may prescribe as universal access development fees; or the Authority may make it a condition of a grant of a licence that every provider of public telecommunication services shall establish a universal access fund the proceeds of which shall solely be used with the Authority's approval for the development and expansion of its telecommunication service infrastructure in areas where there are no services and to provide access to widest users including those with disabilities.

Part VIII

Equipment standards, type approval and inspection

Equipment standard

49. The Authority may establish technical standards applicable to telecommunication equipment and customer premises equipment to ensure against harm to telecommunication networks or services or to public health, safety or the environment.

Type approval and inspection

50. (1) The Authority may prescribe Rules specifying the types of telecommunication equipment (hereinafter referred to as "type approval") which may be used for providing a telecommunication service for operating or connecting to a telecommunication system or for terminal equipment.

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- (2) No person who provides a telecommunication service or supplies telecommunication equipment shall use or supply, as the case may be, any telecommunication equipment which does not comply with technical standards prescribed by the Authority.
 - (3) The Authority may, by Rules, type approve any telecommunication equipment by reference to a type approval used in another country.
 - (4) The Chief Executive may delegate, in writing, authority to any staff member or agent to enter and carry out any inspection or investigation permitted under this Act.
 - (5) When probable cause exists to believe that a violation of this Act has been committed, the inspector or agent of the Authority appointed to carry out any inspection or investigation may enter the premises and carry out his inspection or investigation, and may take or seize and document or information he may require from any person under inspection or investigation and the existence of probable cause shall be documented in writing before any inspection.
 - (6) Inspectors of the Authority shall be issued credentials, which they shall be required to present upon seeking entry to premises.
 - (7) Any person who contravenes or impersonates an inspector of the Authority under this section commits an offence and on conviction shall be liable to a fine not less than M6000 or to imprisonment for a period not less than 6 months.
 - (8) The Authority may make Rules pertaining to conduct of inspectors in the course of their duties under this section.

Part IX

Management of the use of the Radio frequency spectrum

Frequency management

51. (1) The Authority, in managing the use of the radio frequency spectrum, including spectrum and orbital locations used by satellite services, shall-
 - (a) establish, in conjunction with all major stakeholders including the sound and television broadcasting industries, a national frequency allocation table which table may be revised, from time to time, according to circumstances;
 - b) assign, using the necessary coordinating procedures, frequencies or groups of frequencies for use by licensees of telecommunication services and other radio-based systems;
 - (c) monitor the use of the spectrum for purposes of eliminating harmful interference, frequency allocation planning and frequency assignment

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- and for making spectrum-occupancy related information available to the industry and consumers;
 - (d) make and publish rules necessary for the management of the use of the spectrum;
 - (e) prescribe, by Rules, licence fees for the use of the radio frequency spectrum;
 - (f) in the allocation and assignment of frequencies, give such priority as may be required to the requirements of national security and public safety and emergency services;
 - (g) where necessary, specify compatibility standards for the interworking of radio frequency equipment and ensure that the standards are adhered to;
 - (h) represent the country in international fora on matters regarding spectrum management.
- (2) In executing the duties under subsection (1), the Authority shall take into account international and regional agreements and conventions.
 - (3) The Authority shall develop and maintain a spectrum plan and manage the spectrum in accordance with all applicable international, regional, and bilateral agreements to which Lesotho is a party.
 - (4) The Authority shall allocate and assign radio frequency spectrum to-
 - (a) commercial and other telecommunication and sound and television broadcasting operations;
 - (b) government departments or organs;
 - (c) private and amateur wireless operations licensees.

Grant of licences

52. (1) No person shall utilise radio frequencies or provide radio communication services except under and in accordance with a licence issued pursuant to this Act.
- (2) The Authority may grant licences to utilise radio frequencies in accordance with the national frequency allocation table and the spectrum management plan.
- (3) Applications for licences to utilise radio frequencies shall include such information as the Authority may, by Rules, prescribe as to character, financial, legal and technical qualifications of the applicant to construct and operate a facility utilising radio frequencies.
- (4) The Authority may require an applicant to provide updated or supplemental information during the pendency of an application, at any time during the licence term and upon application for renewal of the licence.

- (5) The Authority may impose reasonable terms, conditions of a technical nature or restrictions on radio frequency licences and such other conditions as are necessary to ensure that the operations of licensees meet the purposes of this Act.
- (6) The Authority shall not undertake any measures that may adversely affect national security and public safety.
- (7) The Authority shall investigate and determine the validity of complaints by any person regarding harmful interference with duly licensed radio frequencies and shall initiate enforcement actions as required to eliminate the harmful interference,
- (8) The Authority may, by Rules, prescribe procedures for the monitoring, investigation, and enforcement of spectrum usage requirements under this Act, to ensure substantial compliance by licensees, with the provisions of this Act and the terms and conditions of their licenses.

Competitive bidding for licences

53. (1) The Authority may, for the purpose of assigning radio frequency spectrum, use competitive bidding procedures if it determines that it would be in the public interest where-
- (a) a licence is to be granted to a new applicant;
 - (b) competing, mutually exclusive applications have been filed by qualified applicants.
- (2) The Authority shall prescribe Rules and procedures which shall ensure that only bona fide bidders participate in bidding.

Harmful interference

54. Any person who intentionally causes harmful interference to the validly licensed radio communication of another party, or falls to obey an order of the Authority to cease and desist such harmful interference, commits an offence and on conviction shall be liable to a fine not less than M12000 for each separate offence, or to a term of imprisonment not less than 12 months, or both.

Part X

Use of public and private property

Access and use of public property

55. (1) Subject to this section, a public telecommunication service provider may, for the purposes of providing telecommunication service to the public, enter upon any public property, and construct and maintain thereon or alter or remove a telecommunication facility:

Provided that in doing so it does not interfere unduly with the use and enjoyment of such public property.

- (2) Prior to constructing or installing any telecommunication facility on public property, a public telecommunication service provider shall obtain approval of the relevant administrative authority with responsibility for entry, construction or installation of any facilities on property under the responsibility of that authority, which approval shall not be unreasonably denied.
- (3) Where approval is denied or terms and conditions of approval are not acceptable, a telecommunication service provider shall appeal to the Minister responsible for that administrative authority or body and where no administrative authority or body is specifically charged with responsibility for authorising such use, the telecommunication service provider shall appeal to the Minister responsible for land.
- (4) The Authority shall establish procedures and guidelines for approval to use telecommunication facilities on public property and in addition it may establish guidelines for the use of existing conduits, towers and other structures.
- (5) Any authority or body charged with responsibility to approve the use of public property shall, in considering applications to use public property, take into account the following factors-
 - (a) the efficient and economic use of public resources;
 - (b) the security of officials and the records located on such property and operations that take place on such property;
 - (c) public safety and convenience;
 - (d) the economic, social and other benefits of the proposed land use;
 - (e) compliance with applicable environmental laws and policies.
- (6) For the purpose of this section, "public property" includes roads, streets, road reserve, buildings, railways, footpaths, waterways and land reserved for public purposes.

Use of private property

- 56 (1) Where the acquisition of any private property or an interest in any private property by a public telecommunication service provider is reasonably required for the purposes of providing telecommunication services to the public and no reasonable alternatives to such acquisition exist, the provider shall –
- (a) provide notice of the proposed acquisition to the owner of the property and other property owners who reasonably could be expected to be affected by the proposed acquisition, and seek their written

- comments on the proposed acquisition;
- (b) obtain the consent of the property owner to the acquisition or use of such property
- (2) In the absence of such consent or on failure to agree to terms of purchase, the public telecommunication service provider may apply to the relevant authority or body having jurisdiction over such private property to cause such authority to undertake the proposed acquisition under applicable expropriation laws.
 - (3) The public telecommunication service provider shall indemnify the relevant authority or body against all the costs of acquisition of the property under expropriation laws including amounts payable to the owner of the property to be acquired.

Part XI

Offences, penalties and enforcements

Offences and penalties

57. (1) Any person who-
- (a) makes abusive, threatening or obscene calls;
 - (b) obtains a telecommunication service with intent to avoid payment of applicable charges for such service;
 - (c) uses a telecommunication service required to be licensed, knowing it to be unlicensed;
 - (d) provides, without being licensed, telecommunication services required to be licensed;
 - (e) intentionally modifies or interferes with the contents of any message sent by means of a telecommunication service;
 - (f) engages in interception or tracing of telecommunication operations or messages unless authorised by the Authority or other appropriate governmental authority;
 - (g) intentionally damages telecommunication facilities belonging to another person; or
 - (h) contravenes any provision of this Act where a penalty has not been provided,
- commits an offence and on conviction shall be liable to a fine not less than M6000 for each separate offence, or to a term of imprisonment not less than 6 months or both.
- (2) All fines imposed and payable under this Act shall be paid into the funds of the Authority.

Production of books and records

58. (1) The Authority may, by notice in writing, direct a licensee to produce or furnish to the Authority, at a time and place specified in the notice, such accounts, records and other documents or information specified in such notice and relating to any matter in respect of which a duty is imposed on the licensee under this Act.
- (2) A licensee who fails to comply with this section commits an offence.

Inquiries and investigations

59. (1) The Authority may on its own motion or on application by interested persons conduct inquiries and investigations with respect to any activity prohibited or permitted to be done under this Act and the Authority may appoint inspectors for this purpose.
- (2) If it appears to the Authority that a contravention has occurred, the Authority may issue an enforcement order providing the subject of such order 30 days in which to comply with the order or agree with the Authority on a course of action to remedy the contravention and any person who fails to comply with an order issued by the Authority commits an offence.
- (3) The Authority shall have the powers to enforce the provisions of this Act, and notwithstanding the foregoing, nothing in this Act shall oust the jurisdiction of the civil courts:
- Provided that no person shall be punished twice for the same offence.

Powers of enforcement

60. (1) The Authority shall have all the powers of a Magistrates Court of First Class of record necessary to enforce and adjudicate on any matter or proceedings under this Act.
- (2) Any substantive matter which the Authority is empowered to deal with at its own discretion under this Act shall be entitled to be deferred on appellate review of the Authority's decisions in the High Court and may be overturned in the event they are unsupported by the record of the Authority's proceedings, arbitrary and capricious, or an abuse by the Authority of its discretion.

Disputes

- 61 The Authority shall adjudicate disputes and complaints arising between telecommunication service providers, or between telecommunication service providers and subscribers and shall establish procedures for the adjudication of such disputes or complaints.

Part XI**Restructuring of the Lesotho Telecommunications Corporation****Lesotho Telecommunications Corporation**

62. The Lesotho Telecommunications Corporation shall be restructured in accordance with Schedule II.

Transitional provisions

- 63 (1) Any person granted a licence, and lawfully providing telecommunication services consistent with this Act before the effective date of this Act shall be deemed to be a licensee under this Act.
- (2) The material terms of the licence shall be made to conform to this Act and such licence shall be subject, in all respects, to this Act.
- (3) Any person providing telecommunication services for which there was no requirement to be licensed before the commencement of this Act, where such services are required to be licensed under this Act, shall apply for a licence within 30 days of the coming into force and effect of this Act and shall continue to provide services pending the determination of his application
- (4) Any person who fails to apply for a licence within the 30 days period and continues to provide services as before commits an offence and on conviction shall be liable to a fine not less than M6000 or to imprisonment for a period not less than 6 months.
- (5) All applications for licences pending before entry into force of this Act shall be transferred to the Authority for determination and applicants shall be afforded an opportunity to amend their applications to conform to provisions of this Act.
- (6) Pending the appointment of the members of the Board, the Minister shall appoint an acting Chairman of the Board who shall conduct the business of the Authority and such acting Chairman shall be assisted by such staff as he may require for the efficient performance of the functions of the Authority.

Regulations

64. The Minister may, by notice published in the Gazette, and in consultation with the Authority-
- (a) make Regulations for the carrying into effect the provisions of this Act;
- (b) amend the fines and sentences in this Act

Repeals and savings

- 65 (1) The Minister shall, by notice published in the Gazette and after Schedule II has been complied with, repeal the Telecommunications Act 1979.
- (2) Notwithstanding subsection (1), anything done by the Lesotho Telecommunication Corporation under the repealed Act shall be deemed to have been done under this Act.

Note

1. Act No 12 of 1979

SCHEDULE**Business of the Authority****(section 23)****Arrangement of paragraphs**

1. Business of the Authority
2. Privacy
3. Public availability of information
4. Maintenance of public register of licences
5. Procedures for determining applications
6. Public access to information
7. Hearing of applications
8. Written decisions of the Authority
9. Compulsion of attendance
10. Notification of dispute settlements

SCHEDULE I**Business of the Authority****(section 23)****Business of the Authority**

1. The Board of the Authority may, for efficient discharge of its duties, constitute itself into several committees as it deems fit and may establish such advisory committees comprised of experts or individuals possessed of appropriate expertise to fairly represent views and interests of users and operators and to advise Board members and staff of the Authority.

Privacy

2. In any licensing meeting, no person may disclose to any other person information or documents where the disclosure may invade personal privacy or injure or harm the security or interests of the State.

Public availability of information

3. The Authority shall establish and publish, in the Gazette, internal procedures to make the following documents and information publicly available-
 - (a) documents describing its organisation and the places at which the employees from whom, and the methods whereby the public may obtain information, make submissions or requests or obtain copies of decisions;
 - (b) Rules and procedures, description of forms available and places from which they may be obtained.

Maintenance of public register of licences

4. (1) The Authority shall maintain a public register, with such details as it may determine, of all licences it issues, amends or revokes,
- (2) The register shall contain the name of the licensee, directors of the licensee, address of the licensee and other related matters.

Procedures for determining applications

5. (1) The Authority shall establish procedures to be followed in proceedings before it, to determine applications for licences.
- (2) Such procedures shall establish the format of licence applications, full details to be provided, publication of licence application, invitation to objections and time a schedule for replies to objections.

Public access to information

6. (1) The public shall have access to public information (information that is not secret or confidential business information) on payment of such fees as may be charged.
- (2) Upon payment of fees that may be levied, the Authority shall make available copies of documents or information requested by such person.

Hearings of applications

7. (1) Applicants for licences may appear in person or through their representatives and submissions on the application may be either oral or in writing.
- (2) The substance of all oral or written communications shall be placed on public record.
- (3) There shall be no private meetings between members of the Authority or its staff and interested parties relating to the substance of contested proceedings and all hearings on applications for licences shall be held in public.

Written decisions of the Authority

8. (1) In consideration of the application for the licence, the Authority shall take into account any submission, whether written or oral, made by the applicant and interested parties and shall state its decision in writing and incorporate all the rules taken into consideration.

- (2) The decision of the Authority shall be made public and shall become effective 30 days thereafter unless the Authority, for good cause, waives the 30 day period.

Compulsion of attendance

9. The Authority may issue subpoenas for the attendance and examination of witnesses and production of documents at its hearings and shall exercise such powers inherent in the magistrate courts of first class record necessary for the exercise of its powers and performance of its duties.

Notification of dispute settlement by parties

10. All parties involved in disputes before the Authority shall, within 14 days of privately settling their dispute, inform, in writing, the Authority of the terms of the settlement in cases where a dispute is settled privately.

SCHEDULE II
Restructuring of the incumbent National (section 62)
Operator

Arrangement of paragraphs

1. Incorporation of new company
2. Share allotment
3. Classes of shares
4. Transfer of assets and employees
5. Terms and conditions of transfer
6. Rights and privileges
7. Privatisation of the new company
8. Resignation and election of directors

SCHEDULE II
Restructuring of the incumbent National Operator **(section 62)**

Incorporation of new company

1. The Minister shall, within a period of not more than 2 years from the coming into operation of this Act, cause to be incorporated a new public company limited by shares under the Companies Act 1967.

Share allotment

2. In allotting shares, the directors of the new company shall reserve shares for local, national and international telecommunication and related services providers.

Classes of shares

3. The articles of association of the new company referred to in paragraph 1 may establish different classes of shares that have different voting rights relating to the respective functions and responsibilities of each class or the management and governance of the new company.

Transfer of assets and employees

4. (1) The Minister shall determine which assets and liabilities currently owned or controlled by the incumbent national operator, as well as which employees, shall be sold and transferred respectively to the new company.
(2) The Minister shall, by notice published in the Gazette, determine the

date of transfer of the assets and employees of the incumbent national operator to the new company.

- (3) All bonds, deeds, contracts, documents and working arrangements that subsisted immediately before the transfer date and to which the incumbent national operator was a party shall on and after that date be fully effective and enforceable against or in favour of the public company.

Terms and conditions of transfer

5. All employees in the service of the incumbent national operator shall be entitled to be transferred to the new company without losing their period of service and on terms and conditions not less favourable than those enjoyed by them prior to the transfer and any service with the incumbent national operator shall be deemed to be service with the new company.

Rights and privileges

6. The new company shall have the rights and privileges as were granted to the predecessor company subject to the provisions of this Act.

Privatisation of new company

7. The new company shall be privatised in accordance with the Privatisation Act of 1995 (Act No. 9 of 1995).

Resignation and election of directors

- 8 (1) The Minister shall, immediately prior to privatisation, procure the resignation of all the directors of the new company, who shall continue to hold office until their successors are elected.

Lesotho Telecommunications Authority**Bill 2000****Memorandum of objects**

The main object of the Bill is to make provision for the restructuring and the development of the telecommunications industry (sector) in Lesotho within the framework of the Southern African Development Community (SADC) region. This will be achieved by the establishment of an independent regulatory authority which shall be responsible for, inter alia,

- Licensing of telecommunication services providers;
- Management of the use of the radio frequency spectrum;
- Approval and inspection of equipment used;
- Review of tariffs, rates and charges, and
- Universal access

Currently, telecommunications services are basically licensed, regulated and provided by Lesotho Telecommunication Corporation established by Act No. 12 of 1979. Under this Bill, Lesotho Telecommunications Corporation will be restructured into a public company in which citizens will be free to purchase shares, and which company and other telecommunications service providers will have to be licensed and regulated by Lesotho Telecommunications Authority as market conditions and the public interest may warrant.

In granting those licences, the regulatory authority will have to pay particular regard to fairness, transparency, universal service and accountability to the general public.

The Bill also introduces competition in a regulated environment so as to enhance development, quality of service and universal access in the telecommunications sector.