THE UNITED REPUBLIC OF TANZANIA



No. 15 OF 2001

I ASSENT,

President

24th August ,2001

An Act to amend the Tanzania Communications Act, 1993

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Tanzania Communications (Amendment) Act, 200 1, and shall come into operation on the first day of September, 200 1, in this Act referred to as "the effective date" — Short title and corn-mence-ment

2. This Act shall be read as one with the Tanzania Communications Act, 1993, in this Act referred to as the "principal Act". — Construc-tion Act No. 18 of 1993

3. The principal Act is amended in section 2 by inserting in its appropriate alphabetical order the following definition- — Amend-ment of' section 2

"user" means any person or body of persons who uses or operates a radio communication channel or frequency or runs telecommunication systems or services referred to in the provisions of this Act,"

4. Section I 0 of the principal Act is amended by adding the following subsections immediately after subsection (5) - — Amend-ment of section I 0

"(6) With effect from the effective date, and notwithstanding the provisions of any written law, compact, concession, contract, deed, deed of settlement. licence, memorandum of understanding or any other kind of agreement or provision providing to the contrary, the Commission shall, in the maintenance of its control over radio communication channels and frequencies, have power, subject to this Act, to allocate, reallocate,

assign, reassign, issue, reissue, redistribute, retrieve, suspend, cancel, or otherwise modify the distribution amongst users or licensees of any radio communication channels or frequencies.

(7) The Commission may exercise the powers conferred by subsection (6) only if-

(a) as a result of any investigations or inquiry carried out by it or by any other public authority; or

(b) in the ordinary course of performing its functions, under this Act, pursuant to subsection (10);

the Commission is of the view that it is necessary or desirable in the public interest that it exercises such powers in. relation to any user or licensee of any radio communication channel or frequency,

(8) Where the Commission carries out an investigation or inquiry pursuant to subsection (7)(a) and it is proved to its satisfaction that a user or licensee of a radio communication channel or frequency, who has had the Opportunity to be heard by the Commission, is-

(a) utilizing the said radio communication channels or frequencies for purposes other than those originally permitted; or

(b) not utilizing the frequencies efficiently or effectively; or

(c) misusing, abusing or hoarding the radio communication channels or frequencies; or

(d) engaging in practices intended to drive competitors out of business or deter any other licensee or user from establishing a competitive business in the country or in any specific area or location within the country;

(e) carrying out acts intended or likely to hurt, injure, infringe, harm or interfere with the radio communication channels or frequencies of 'other users or licensees;

(f) using or operating a radio communication channel or frequency without a licence issued under this Act;-

(9) contravening any other conditions in relations to the,,,assigned frequencies;

the Commission shall decide to exercise the power conferred by subsection (6) and shall in writing notify the user or licensee of a radio communication channel or frequency the decision of the Commission and direct him as to what he is to do to comply with that decision,

(9) When the Commission takes the measures under subsection (6) in pursuance of subsection (8), no compensation shall be paid by the Commission or any other authority. to the user or licensee of radio communication channel or frequency.

(I 0) Where in the ordinary course of performing its functions tinder this Act, pursuant to subsection (7)(b) or upon complaint to the Commission by a. user or licensee of a radio communication channel or frequency or by any other authority, the Commission thinks it desirable to consider whether or not it shall exercise any of the powers under subsection (6) in relation to any user or licensee, it shall by notice in writing notify to any person intended or likely to be affected by the exercise, stating-

(a) the measure that it proposes to institute;

(b) the time not exceeding twenty eight days within which any party affected or likely to be affected may make representations to the Commission..

(I 1) Where no representations are submitted by any person in response to any notice specified in subsection (I 0), the Commission shall. proceed to institute measures under subsection (6) and subsection (I 2)(d).

(12) If any party makes representations to the Commission in pursuance of subsection (10), the Commission shall within fourteen days of receipt of such representations, consider those representations including whether or not any compensation is payable under section 19, and may-

(a) reject the representations or any of them.; or

(b) amend the proposed measures in response to the representations, or

(c) decide to exercise any of the powers conferred by subsection (6); and

(d) direct in writing the user or licensee of radio communi cation channel or frequency concerned to give effect to the decision of the Commission,

(13) Upon receipt of a decision of the commission on the representations pursuant to subsection (12) the user or licensee to *whom* the decision of the Commission relates shall not institute any action in any court of law in relation to the said decision-

(a) if he has not previously made any representations to the Commission; and

(h) if he institutes any such action, it shall be in the High Court, and the action shall be only on procedural issues or on grounds that the decision of the Commission was based on extraneous factors.

(14) Notwithstanding any of the provisions of section 19, any decision of the commission in exercising powers under subsection (6) shall be given effect to, whether or not a user of licensee institutes any action in any court of law or makes any further representations to the Commission after the decision is made.

(15) In exercising its powers conferred under subsection (6) the Commission may fix or prescribe the minimum or maximum number or amount of radio communication channels or frequencies which any user or licensee may be granted for the purposes of this Act.

(16) In the exercise of any power, the performance of any duty or the discharge of any right, privilege or obligation by any person or authority in pursuance of the provisions of this Act., regard shall always be had to the fact that all radio communication channels and frequencies are a national resource which is held in trust For the people by the Government, and maintained and controlled by the commission for carrying out the purposes and provisions of this Act.

(I 7) Subject to the provisions of this Act, any person who is aggrieved by a decision of the Commission under this section may, within twenty eight days of the notice of the decision of the Commission appeal to the High Court only on procedural issues or on grounds that the decision of the commission was based on extraneous factors."

Addition of sections 1 OA, IOB and 10C

5 The principal Act is amended by adding the following new provisions after section 10-

"Attorney-General to be party to the suit

IOA.-(1) Notwithstanding the preceding provisions of this section, and the commission having the status of a body corporate, the Attorney-General shall have the right to intervene in any suit or matter instituted by or against the Commission if in his opinion the suit Or matter involves important, matters of public policy or national interest.

(2) Where the Attorney-General intervenes in any suit or matter in pursuance of subsection (1), the provisions of the Government Proceedings Act, 1967, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

Offences

.1OB-(I), Any person who fails or refuses to comply with any directions of the Commission given under subsection (8), (11) or (12) of section l 0 commits an offence.

(2) A person who commit an Offence under subsection (I) shall upon conviction be liable to a fine Of 'lot less than the equivalent in Tanzanian Shillings of U SD 1,500,000 and in case of a Continuing Offence to a further fine Of not less than the equivalent in Tanzanian Shillings Of USD- 50,000 for everyday or part thereof during which the offence Continues after conviction.

(3) Notwithstanding the provisions Of subsections (1) and (2), any person Who willfully contravenes or fails to comply with the conditions imposed on his licence granted under this Act in relation to the use of a radio communication

Deposit before conviction

10c.-(1) The commission may require may use or licensee to deposit with it an amount not exceeding the equivalent in Tanzanian Shillings of USD 750,000 or execute a bond to be secured against the assets of a user or licensee of a similar amount to defray any cost or liability incurred by the commission or any Other person which may arise out of any criminal or civil process in relation to this Act,

(2) Refusal or failure to pay the deposit Or execute a bond under subsection (1) shall be deemed to be an offence against subsection (2) of section 10B and shall be Punishable as a continuing Offence.

(3) Where a user or licensee is sentenced to pay a fine under section 10B the court shall order forfeiture to the United Republic any deposit made or bond executed under this Act."

Amend-Ment Of section I 9

6. Section 19 Of the Principal Act is amended by deleting the figure " I 0" appearing under subsection (1).

Amend-ment of section 64

7. Section 64 of the principal Act is amended by adding after subsection (4) the following-

"(5) Any person convicted of an Offence under this section shall be liable to a fine Of not less than the equivalent in Tanzanian Shillings of USD 5,000 or to imprisonment for a term not exceeding one Year or to both that fine and imprisonment".

Passed by the National Assembly on 0"' August,2001

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Clerk of the National Assembly.

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