

No. 57 of 1996.

Telecommunications Act 1996.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 57 of 1996.

Telecommunications Act 1996.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Telecommunications Act 1996,

Being an Act relating to telecommunications,

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

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1)¹ ²This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution* namely—

- (a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and

¹ Section 1 Subsection (1) substituted by No. 26 of 2002, s. 7.

² Section 1 Subsection (1) substituted by No. 26 of 2002, s. 7.

- (f) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49 of the *Constitution*; and
- (g) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

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

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

(2)³ ⁴This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of under privileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the Constitution.

(3)⁵ ⁶For the purposes of –

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

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

(4)⁷ ⁸Insofar as this Act involves a compulsory taking of possession of property or compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the Constitution –

- (a) the purposes and reasons for each such taking acquisition are declared and described to be –

³ Section 1 Subsection (2) substituted by No. 26 of 2002, s. 7.

⁴ Section 1 Subsection (2) substituted by No. 26 of 2002, s. 7.

⁵ Section 1 Subsection (3) substituted by No. 26 of 2002, s. 7.

⁶ Section 1 Subsection (3) substituted by No. 26 of 2002, s. 7.

⁷ Section 1 Subsection (4) inserted by No. 26 of 2002, s. 7.

⁸ Section 1 Subsection (4) inserted by No. 26 of 2002, s. 7.

- (i) to facilitate and maintain the efficient and economical provision of telecommunications services; and
 - (ii) to maintain the peace and good order in Papua New Guinea,
and each of those purposes and reasons is hereby also declared and described as –
 - (iii) a public purpose; and
 - (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,
for the purposes of Section 53 of the Constitution and for the purposes of any other relevant law; and
- (b) for the purposes of Section 53(2) of the Constitution, just compensation will be made on just terms for compulsory taking of possession of property or the compulsory acquisition of an interest in or right over property in accordance with the terms set out in Section 58A and such terms shall constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

2. GENERAL OBJECTIVES OF ACT.

The objectives of this Act include–

- (a)⁹ ensuring that the standard telephone service –
 - (i) is supplied as efficiently and economically as practicable; and
 - (ii) is supplied commercially at performance standards and technical standards that reasonably meet the social, industrial and commercial needs of the Papua New Guinea community; and
- (b) ensuring that the carrier or carriers achieve high levels of accountability and responsiveness to customer and community needs; and
- (c)¹⁰ achieving optimal rates of expansion and modernization for Papua New Guinea's telecommunications infrastructure and network; and
- (d) creating a regulatory environment for the supply of telecommunications services which promotes fair and efficient market conduct; and
- (e) promoting the development of Papua New Guinea's telecommunications capabilities, industries and skills, for use in Papua New Guinea and overseas.

⁹ Section 2 Amended by No. 26 of 2002, s. 8.

¹⁰ Section 2 Amended by No. 26 of 2002, s. 8.

PART II. – INTERPRETATION.

*Division 1.**General.*

3. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**access agreement**” means an agreement made between two or more licensees entered into pursuant to Part XI;

“**accredited test house**” means a test house in relation to which there is in operation an accreditation granted under regulations made under Section 98;

¹¹“**apparatus**”, for the application of Part XIV, includes a satellite, a satellite television receiver only, an earth station, a satellite dish, an antenna, a television receiver set, a video cassette recorder, a video tape recorder, a radio frequency amplifier and any other equipment used for the provision of cable television service;

¹²“**Appeal Panel**” has the same meaning as in the Independent Consumer and Competition Commission Act 2002;

“**appropriate fee**” in relation to an application, means the fee for the application that is payable under this Act;

“**boundary**”, in relation to a telecommunications network, has a meaning affected by Division II.2;

“**business day**” means a day that is not a Saturday, a Sunday or a public holiday in the place concerned;

“**cable television service**” means a service provided by using a cable television system;

“**cable television system**” means a system whereby images and/or sound signals that–

(a) originate from a source apparatus; or

(b) are received by an apparatus,

are re-transmitted by a cable or cable distribution network for reception by apparatus;

“**cabling licence**” means a licence issued under Section 101 to perform customer cabling work;

“**carrier**” means a general carrier or a mobile carrier;

“**carry**” includes transmit, switch and receive;

¹¹ Section 3 Amended by No. 26 of 2002, s. 9.

¹² Section 3 Amended by No. 26 of 2002, s. 9.

“Chairman” means the Chairman of PANGTEL and includes any acting Chairman of PANGTEL;

“charge” includes—

- (a) any charge or fee (whether payable periodically, in instalments or otherwise); and
- (b) a nil charge or nil fee; and
- (c) in relation to a telecommunications service, includes—
 - (i) any charge or fee (including one of a kind referred to in Paragraph (a) or (b)) for or in relation to a facility used, or intended for use, in relation to the supply of the service; and
 - (ii) any other charge or fee (including one of a kind referred to in Paragraph (a) or (b)) for or in relation to the supply of the service;

“Chief Executive” means the Chief Executive of PANGTEL;

¹³**“Code”** means a Code of Practice determined by the Commission or by PANGTEL under Part XVIII;

¹⁴**“Commission”** means the Independent Consumer and Competition Commission established by the Independent Consumer and Competition Commission Act 2002;

¹⁵**“Commission direction”** means a direction given by the Commission to a licensee under any provision of this Act;

“communication” includes any communication—

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether—
 - (i) in the form of—
 - (A) speech, music or other sounds; or
 - (B) data; or
 - (C) text; or
 - (D) visual images, whether or not animated; or
 - (E) writing, signs or signals; or
 - (ii) in any other form or in any combination of forms;

¹³ Section 3 Amended by No. 26 of 2002, s. 9.

¹⁴ Section 3 Amended by No. 26 of 2002, s. 9.

¹⁵ Section 3 Amended by No. 26 of 2002, s. 9.

“condition” means, in relation to a licence, a condition or restriction to which the licence is subject, or will be subject, as the case requires;

¹⁶**“convention”** means a convention to which Papua New Guinea is a party or an agreement or arrangement between the Commission or Papua New Guinea and a foreign country, and includes, for example, an agreement, arrangement or understanding between PANGTEL and an official or authority of a foreign country;

“Corporation” means the Post and Telecommunication Corporation;

“customer cabling” means a line that—

- (a) is, or is intended to be, connected to a telecommunications network operated by a carrier; and
- (b) is used, or intended for use, beyond the boundaries of any such telecommunications network;

“customer equipment” means equipment that is, or is intended to be, connected to a telecommunications network operated by a carrier, other than equipment that is used, or intended for use, within the boundaries of such a network;

“defence organization” means—

- (a) the Department of Defence or any part of it; or
- (b) the Defence Force or any part of it; or
- (c) an organization or body of a foreign country, so far as the organization or body—
 - (i) has functions corresponding to functions of, or of a part of, the Department of Defence or the Defence Force; and
 - (ii) is authorized to operate or train in Papua New Guinea; or
- (d) a part of such an organization or body;

“defence purposes” means any one or more of the following:—

- (a) the operation of command and control systems;
- (b) the operation, direction or use of a defence organization;
- (c) the operation of intelligence systems;
- (d) the collection or dissemination of information relevant to the security or defence of Papua New Guinea or of a foreign country that is allied to or associated with Papua New Guinea;
- (e) the operation or control of weapons systems, including any thing that, by itself or together with any other thing or things, is intended for defensive or offensive use in combat;

¹⁶ Section 3 Amended by No. 26 of 2002, s. 9.

(f) any other prescribed matter;

“**device**” means an appliance that can be used for the purpose of receiving, transmitting, processing and converting radiocommunication;

“**distinct places**” has the meaning given by Division II.3;

¹⁷“**eligible corporation**” means a body corporate that is incorporated in Papua New Guinea and is in compliance with the *Investment Promotion Act 1992*;

“**equipment**” means any apparatus or equipment used, or intended for use, in or in connection with a telecommunications network, but does not include a line;

“**facility**”–

(a) in the case of a reference to a facility ancillary to a line link–has the meaning given by Section 13; or

(b) otherwise–means–

(i) any part of the infrastructure of a telecommunications network; or

(ii) any line, equipment, tower, mast, antenna, tunnel, hole, pit, pole or other structure or thing used, or intended for use, in or in connection with a telecommunications network; or

(iii) without limiting Subparagraph (i) or (ii), a facility ancillary to a line link (as defined by Section 14);

“**general carrier**” means the holder of a general telecommunications licence in force under Part VI;

“**Government Policy**” means the general policy from time to time relating to telecommunications of the State of Papua New Guinea as approved by the National Executive Council, as amended with the approval of the National Executive Council;

“**install**” include alter, move, remove and replace;

“**interference**” means the process of impairing the fidelity or discernment of radiocommunication;

¹⁸“**International Arbitrator**” means a member of the Panel of Experts who satisfies the requirements set out in Section 41(3) of the Independent Consumer and Competition Commission Act 2002;

¹⁷ Section 3 Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9; Amended by No. 26 of 2002, s. 9.

- “**international service**” means a telecommunications service between a place within Papua New Guinea and a place outside Papua New Guinea;
- “**international telecommunications operator**” means a person (other than a carrier) who operates a telecommunications network outside Papua New Guinea for or in relation to the supply of international services, or who supplies such services;
- “**licence**” means a licence granted under this Act;
- “**licensee**” means a person who is the holder of a licence issued under this Act and, for the avoidance of doubt, includes a carrier;
- “**line**” means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or intended for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy;
- “**line link**” has the meaning given by Section 13;
- “**maintain**” includes adjust and repair;
- “**market**” means the market for telecommunications services—
- (a) when used in relation to telecommunications services between places within Papua New Guinea—in Papua New Guinea; and
 - (b) when used in relation to telecommunications services between Papua New Guinea and a place outside Papua New Guinea—between Papua New Guinea and any other place;
- “**member**” means a member of PANGTEL, and includes the Chief Executive;
- “**microwave facilities**” means radio equipment, power supplies and external structures such as antennas, towers and feeder cabling to radio equipment used for the operation of a telecommunications network;
- “**mobile carrier**” means the holder of a public mobile licence in force under Part VI;
- “**modifications**” includes variations, additions, omissions and substitutions;
- “**national numbering plan**” means the plan prepared under Part X in force from time to time;
- “**network**” means—
- (a) a telecommunications network to supply telecommunications services between places within Papua New Guinea; and
 - (b) a telecommunications network to supply telecommunications services between places within Papua New Guinea and places outside Papua New Guinea;
- “**network matter**” means a matter relating to—

¹⁸ Section 3 Amended by No. 26 of 2002, s. 9.

- (a) the operation of telecommunications networks; or
- (b) the operation of facilities connected to, and within the boundaries of, telecommunications networks; or
- (c) the supply of telecommunications services by means of telecommunications networks;

¹⁹**“PANGTEL”** means the Papua New Guinea Radiocommunications and Telecommunications Technical Authority;

“payphone” means a fixed telephone that—

- (a) is connected directly or indirectly to a telecommunications network operated by a general carrier; and
- (b) when in normal working order, cannot be used to make a telephone call (other than a free call or a call made with operator assistance) unless, as payment for the call, or to enable payment for the call to be collected—
 - (i) money, or a token or card has been put into a device that forms part of, is attached to, or is located near, the telephone; or
 - (ii) an identification number, or a code or other information (in numerical or any other form), has been input into a device that forms part of, is attached to, or is located near the telephone; or
 - (iii) a prescribed act has been done;

“permit” means a permit issued under Division XIII.1 for connection of customer equipment to a telecommunications network;

“Post PNG” means Post PNG Ltd., a company incorporated or to be incorporated under the *Companies Act* (Chapter 146);

“public access cordless telecommunications service” has the meaning given by Section 17;

“public mobile licence” means a licence to supply, install and maintain a public mobile telecommunications service issued pursuant to Part VI;

“public mobile telecommunications service” has the meaning given by Section 16;

“public payphone” means a payphone located in a public place;

“public place” means a place to which the public usually has access, or usually has access except during particular hours of the day or particular days of the week, but does not include—

¹⁹ Section 3 Amended by No. 26 of 2002, s. 9.

- (a) a place to which a person (other than a government, a public authority or an officer or employer of a government or of a public authority) is entitled to deny the public entry; or
- (b) a vehicle, vessel, aircraft or other means of transport;

“public telecommunications network” means a telecommunications network operated by a carrier;

“radiocommunication” has the same meaning as the *Radio Spectrum Act 1996*;

²⁰**“receiver”** means electronic device capable of receiving and transforming radiocommunication to a useable form;

²¹**“registered access agreement”** means an access agreement registered by the Commission under Section 85 or Section 86(4);

²²**“regulated entity”** has the same meaning as in the Independent Consumer and Competition Commission Act 2002;

²³**“regulated goods and regulated services”** have the same meaning as in the Independent Consumer and Competition Commission Act 2002;

²⁴**“regulated industry”** has the same meaning as in the Independent Consumer and Competition Commission Act 2002;

²⁵**“regulated contract”** has the same meaning as in the Independent Consumer and Competition Commission Act 2002;

“reserved line link” has the meaning given by Section 15;

“reserved service” means a telecommunication service reserved to a carrier under Part V;

“standard telephone service” means—

- (a) unless Paragraph (b) applies—a public switched telephone service that—
 - (i) is supplied by a carrier; and
 - (ii) is supplied by means of a telephone handset that does not have switching functions; or
- (b) where the regulations prescribe a telecommunications service, or telecommunications services, for the purposes of this definition—that telecommunications service or any of those telecommunications services;

²⁰ Section 3 Amended by No. 26 of 2002, s. 9.

²¹ Section 3 Amended by No. 26 of 2002, s. 9.

²² Section 3 Amended by No. 26 of 2002, s. 9.

²³ Section 3 Amended by No. 26 of 2002, s. 9.

²⁴ Section 3 Amended by No. 26 of 2002, s. 9.

²⁵ Section 3 Amended by No. 26 of 2002, s. 9.

²⁶**“tariff”**, in relation to a carrier means a tariff given to PANGTEL or to the Commission by a carrier under Section 78 and in force for the time being, whether or not it has been varied under Section 79 but does not include a document that the Commission has disallowed under Section 78(4);

²⁷**“Telikom”** means Telikom PNG Ltd, a company incorporated under the *Companies Act* (Chapter 146);

“telecommunications” means the emission, transmission or reception, through the agency of electricity or electromagnetism, or any sounds, signs, signals, writing, images or intelligence of any nature by wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other process by any means in the course of their transmission, emission or reception;

“telecommunications network” means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both;

“telecommunications service” means a service for carrying communications by means of guided or unguided electromagnetic energy or both;

“terms and conditions”, in relation to supplying telecommunications services, includes–

- (a) discounts, allowances, rebates or credits given or allowed in relation to supplying the services; and
- (b) the supply of goods, or of other services, in respect of the telecommunications services; and
- (c) the making of payments for goods, or for other services, supplies in respect of the telecommunications;

²⁸**“value added services”** means a service, other than a reserved service, which is identified in Government Policy as being suitable for the grant of a value added service licence under Part VI.

²⁹**“value added services”** means a service, other than a reserved service, determined by the Commission to be suitable for the grant of a value added service licence under Part VI.

²⁶ Section 3 Amended by No. 26 of 2002, s. 9.

²⁷ Section 3 Amended by No. 26 of 2002, s. 9.

²⁸ Section 3 Amended by No. 26 of 2002, s. 9.

²⁹ Section 3 Amended by No. 26 of 2002, s. 9.

Division 2.

Boundaries of telecommunications networks.

4. END FACILITIES.

(1) An end facility is—

- (a) a main distribution frame; or
- (b) a telephone socket.

(2) An end facility is on a line link where, and only where, the end facility is connected to a line that is, or forms part of, the line link.

5. REGULATIONS MAY DETERMINE NETWORK BOUNDARIES.

The regulations may make provision for or in relation to—

- (a) defining the boundaries of a telecommunications network; or
- (b) determining the equipment, lines and other facilities that are to be taken to be beyond, or not beyond, the boundaries of a telecommunications network.

Division 3.

Distinct places.

6. BASIC RULES.

(1) Places are distinct unless they are all in the same area because of Subsection (2) or (3).

(2) Places are in the same area if they are all situated in the same property as defined by Section 7.

(3) Places are in the same area if they are situated in properties each of which forms part of a combined area as determined under Section 8 and—

- (a) the same person or persons is or are the principal user (as defined by Section 9) of all the properties that together constitute that combined area; or
- (b) because of a determination in force under Section 10, that combined area is an eligible combined area for the purposes of this paragraph.

(4) The later provisions of this Division have effect only for the purposes of this Division.

7. PROPERTIES.

(1) In this section:

“**land**” includes premises and a part of premises;

“**State Lease**” has the same meaning as defined in the *Land Act 1996*.

(2) An area of land is a property if there is a State lease in relation to that area.

8. COMBINED AREAS.

(1) Two contiguous properties form a combined area.

(2) Where—

(a) a property is contiguous with another property; and

(b) the other property forms part of a combined area,

the first-mentioned property, and the combined area referred to in Paragraph (b), together form a combined area.

(3) Subsection (2) is recursive, that is, the reference in Subsection (2) (b) to a combined area is a reference to something that is a combined area because of any other application or applications of this section.

9. PRINCIPAL USER OF A PROPERTY.

(1) Subject to Subsection (2), the principal user of a property is the person who—

(a) occupies the property; or

(b) uses the property for a purpose that is the sole or principal purpose for which the property is used.

(2) Where two or more persons—

(a) together occupy a property; or

(b) together use a property for a purpose that is the sole or principal purpose for which the property is used,

they are taken together to be the principal user of the property.

10. ELIGIBLE COMBINED AREAS.

(1)³⁰ ³¹The Commission may by writing determine that specified combined areas are eligible combined areas for the purposes of Section 6(3)(b).

(2)³² ³³The Commission may make or vary a determination under Subsection (1) only where—

(a)³⁴ the Commission has consulted each general carrier whose interests may, in the opinion of that carrier, be affected by the determination, or by the determination as varied, as the case may be; and

³⁰ Section 10 Subsection (1) amended by No. 26 of 2002, s. 10.

³¹ Section 10 Subsection (1) amended by No. 26 of 2002, s. 10.

³² Section 10 Subsection (2) amended by No. 26 of 2002, s. 10.

³³ Section 10 Subsection (2) amended by No. 26 of 2002, s. 10.

³⁴ Section 10 Subsection (2) amended by No. 26 of 2002, s. 10.

- (b)³⁵ in the Commission's opinion, the determination, or the determination as varied, as the case may be, will not erode unduly the practical value of the general carrier's rights under Sections 45 and 46.

11. EQUIPMENT ETC, CONNECTED TO NETWORK.

Equipment, or a line or other facility, is connected to a telecommunications network where the equipment, line or other facility (either by itself or in conjunction with any other thing) is being used to supply, or is installed or connected for use to supply, telecommunications services by means of the network, whether or not the equipment, line or other facility is comprised in, or is in physical contact with any part of, the network.

12. MEANING OF CUSTOMER EQUIPMENT OF SAME TYPE.

An item of customer equipment is of the same type as another item of customer equipment where—

- (a) the items were produced to specifications that differ in no material respect; and
- (b) the respective ways in which the items were produced differ in no material respect; and
- (c) the form and functions of the one item differ in no material respect from the form and functions of the other item.

13. LINE LINKS.

(1) A line constitutes a line link.

(2) Where—

- (a) a line is connected to another line; and
- (b) the other line constitutes, or forms part of, a line link,

the first-mentioned line, and the line link referred to in Paragraph (b), together constitute a line link.

(3) Subsection (2) is recursive, that is, the reference in Subsection (2)(b) to a line link is a reference to something that is a line link because of any other application or applications of this section.

(4) For the purposes of Subsection (2), a line is connected to another line where, and only where—

- (a) the lines are connected to each other; or
- (b) each of the lines is connected to the same facility (other than a line),

³⁵ Section 10 Subsection (2) amended by No. 26 of 2002, s. 10.

in such a way that a communication can be carried, by means of the two lines, or by means of facilities including the two lines, in the same way as if the two lines were a single line.

(5) A facility other than a line does not form part of any line link.

14. FACILITIES ANCILLARY TO A LINE LINK.

A reference to a facility ancillary to a line link is a reference to—

- (a) a tunnel, hole, pit, duct, pipe, sheath, conduit or similar thing; or
- (b) a pole, tower, mast or similar structure,

so far as it is used, or intended for use, to contain, support or protect—

- (c) a line or lines constituting, or forming part of, the line link; or
- (d) equipment connecting two or more such lines.

15. RESERVED LINE LINKS.

(1) Subject to Subsection (2), a reserved line link is—

- (a) a line link between distinct places within Papua New Guinea; or
- (b) a line link between a place within Papua New Guinea and a place outside Papua New Guinea;

whether or not installed or maintained by a general carrier or by a secondary public licence holder.

(2) Where—

- (a) but for this subsection, the whole of a line link would be a reserved line link; and
- (b) a line that forms part of that line link is beyond the boundary of a reserved line link that also forms part of the first mentioned line link,

that line is not, and does not form part of, a reserved line link.

16. PUBLIC MOBILE TELECOMMUNICATIONS SERVICE.

(1) A telecommunications service is a public mobile telecommunications service where, and only where—

- (a) it is not a public access cordless telecommunications service; and
- (b) it is offered to the public generally; and
- (c) a person can use it while moving continuously between places; and
- (d) customer equipment used for or in relation to the supply of the service is not in physical contact with any part of the telecommunications network by means of which the service is supplied; and

- (e) a facility that is used for or in relation to supplying the service is connected to a telecommunications network operated by a general carrier; and
- (f) neither Subsections (2) nor (3) prevents the service from being a public mobile telecommunications service.

(2) A telecommunications service is not a public mobile telecommunications service where—

- (a) it is supplied by means of a telecommunications network (in this subsection called the “**primary network**”) that is connected to—
 - (i) a telecommunications network (in this subsection called a “**general network**”) operated by a general carrier; or
 - (ii) each of two or more general networks; and
- (b) the principal function of the primary network is to supply telecommunications services between equipment connected to the primary networks and other such equipment; and
- (c) the supply of telecommunications services between such equipment and equipment connected to a general network is at most an ancillary function of the primary network; and
- (d) despite the connection or connections referred to in Paragraph (a), the primary networks cannot be used in carrying a communication, as a single transaction, between equipment connected to a general network and other such equipment.

17. PUBLIC ACCESS CORDLESS TELECOMMUNICATIONS SERVICES.

(1) A telecommunications services that, but for Section 16 (1)(a), would be a public mobile telecommunications service is a public access cordless telecommunications service unless—

- (a) the service is supplied by the use of facilities that include at least two fixed facilities (called “**base stations**”) each of which transmits and receives signals to and from customer equipment (called “**mobile equipment**”) that is—
 - (i) used for or in relation to the supply of the service; and
 - (ii) located within a particular area (called a “**cell**”); and
- (b) the service includes the functions necessary to do the following while the service is carrying a communication made to or from particular mobile equipment:—
 - (i) determine in which cell the equipment is located and cause the base station in that cell to transmit and receive signals to and from the equipment;

- (ii) when the equipment moves from one cell to another, cause the base station in the one cell to stop, and the base station in the other cell to start, transmitting and receiving signals to and from the equipment.
- (2) The regulations may provide that—
- (a) Subsection (1)(a) and (b) shall be disregarded in determining whether prescribed telecommunications services are public access cordless telecommunications services; and
 - (b) prescribed telecommunications services are not public access cordless telecommunications services; and
 - (c) the supply of prescribed equipment is not a public access cordless telecommunications service.

PART III. – APPLICATION OF ACT.

18. ACT BINDS THE STATE.

This Act binds the State.

19. ACT SUBJECT TO *RADIO SPECTRUM ACT 1996*.

(1) This Act has effect subject to the *Radio Spectrum Act 1996*.

(2) For the avoidance of doubt it is hereby declared that a licence under the *Radio Spectrum Act 1996* which authorizes a person to do something does not entitle the person to do that thing where he or she is prohibited by or under this Act from doing it, unless a condition of the licence requires the person to do it.

PART IIIA. – FUNCTIONS AND POWERS OF THE COMMISSION.**19C. COMMISSION IS THE PRINCIPAL REGULATOR.**

³⁶The Commission, established under the Independent Consumer and Competition Commission Act 2002, is the principal regulatory agency in respect of the provisions of this Act, except those provisions relating to technical regulation where PANGTEL is designated by this Act to be the principal regulatory agency.

19D. THE COMMISSION AND PANGTEL.

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

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

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

19E. TRANSFER OF PANGTEL STAFF AND ASSETS.

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

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

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

³⁶ Section 19C Inserted by No. 26 of 2002, s. 12.

³⁷ Section 19D Inserted by No. 26 of 2002, s. 12.

³⁸ Section 19E Inserted by No. 26 of 2002, s. 12.

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

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

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

19F. FUNCTIONS OF THE COMMISSION.

³⁹The Commission has (in addition to its functions under the Independent Consumer and Competition Commission Act 2002) the following functions: –

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

³⁹ Section 19F Inserted by No. 26 of 2002, s. 12.

- (k) determining Codes of Practice for telecommunications carriers and licenses including, in consultation with PANGTEL, Codes of Practice on technical telecommunications matters;
- (l) in consultation with PANGTEL acting as the duly appointed representative of the State at all international bodies or authorities which have the purpose of regulating or administering telecommunications services;
- (m) monitoring access agreements and assisting in the resolution of any disputes relating thereto;
- (n) in consultation with PANGTEL, monitoring the use of telecommunications services on any ship or aircraft; and
- (o) consulting, where appropriate, with commercial, industrial and consumer organizations about any matter relating to the supply of telecommunications services;
- (p) monitoring, and reporting on, charges paid by consumers;
- (q) in consultation with PANGTEL, developing and monitoring a number plan for Papua New Guinea;
- (r) the licensing functions conferred by this Act;
- (s) performing such other functions as are assigned to the Commission under this Act or any other law.

19G. POWERS OF THE COMMISSION.

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

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

19H. GENERAL GOVERNMENT OBLIGATIONS OF THE COMMISSION.

⁴¹Subject to Section 19G(2), the Commission shall perform its functions under this Act in a manner consistent with –

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

⁴⁰ Section 19G Inserted by No. 26 of 2002, s. 12.

⁴¹ Section 19H Inserted by No. 26 of 2002, s. 12.

19I. GOVERNMENT POLICIES.

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

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

19J. CHARGES FOR SERVICES PROVIDED BY THE COMMISSION.

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

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

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

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

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

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

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

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

(7) In this section, “administration costs” means –

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

⁴² Section 19I Inserted by No. 26 of 2002, s. 12.

⁴³ Section 19J Inserted by No. 26 of 2002, s. 12.

19A. TELECOMMUNICATIONS IS A REGULATED INDUSTRY.

⁴⁴The telecommunications industry is declared to be a regulated industry for the purposes of the Independent Consumer and Competition Commission Act 2002.

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

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

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

⁴⁴ Section 19A Inserted by No. 26 of 2002, s. 11.

⁴⁵ Section 19B Inserted by No. 26 of 2002, s. 11.

PART IV. – ESTABLISHMENT, FUNCTIONS AND POWERS OF PANGTEL.***Division 1.******Establishment and Membership etc., of PANGTEL.*****20. ESTABLISHMENT, ETC, OF PANGTEL.**

(1)⁴⁶ ⁴⁷There is established the Papua New Guinea Radiocommunications and Telecommunications Technical Authority, to be known as PANGTEL.

(2) PANGTEL–

- (a) is a body corporate with perpetual succession; and
- (b) is to have a common seal; and
- (c) may sue and be sued in its corporate name.

21. MEMBERSHIP.

(1) PANGTEL consists of the following members:–

- (a) the Chairman;
- (b) the Chief Executive, *ex-officio*;
- (c) three other members.

(2) The Chairman and members (other than the *ex officio* member)–

- (a) shall be appointed by notice in the National Gazette by the Head of State, acting on advice, given after consideration of recommendations by the Minister; and
- (b) shall be appointed for such period not exceeding five years as is specified in the instrument of appointment; and
- (c) are eligible for re-appointment; and
- (d) hold office on a part-time basis on such terms and conditions of employment as are determined by the Minister or, in the absence of any determination, as are prescribed.

(3) A person who has attained the age of 65 years shall not be appointed as the Chairman or as a member, and a person shall not be appointed as the Chairman or as a member for a period that extends beyond the day on which he will attain the age of 65 years.

(4) A person is not qualified to be appointed as Chairman or a member unless he is qualified or experienced in one or more of the following:–

- (a) industry;
- (b) commerce;

⁴⁶ Section 20 Subsection (1) substituted by No. 26 of 2002, s. 13.

⁴⁷ Section 20 Subsection (1) substituted by No. 26 of 2002, s. 13.

- (c) technology;
- (d) consumer affairs;
- (e)⁴⁸ [*Repealed.*]
- (f) law;
- (g) public administration.

22. LEAVE OF ABSENCE.

The Minister may grant to the Chairman or to a member (other than an *ex officio* member) leave in writing to be absent from a meeting or meetings of PANGTEL.

23. VACATION OF OFFICE.

(1) The Chairman or a member (other than an *ex officio* member) may resign his office by writing signed by him and delivered to the Minister.

(2) Where the Chairman or a member (other than an *ex officio* member)—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office in accordance with Subsection (1); or
- (c) is absent, except with the written consent of the Minister from three consecutive meetings of PANGTEL; or
- (d) fails to comply with Section 26; or
- (e) engages in paid employment that, in the Minister's opinion, conflicts with the proper performance of his duties under this Act or any other law; or
- (f) becomes bankrupt or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (g) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to death or imprisonment,

the Head of State, acting on advice, given after considering a recommendation by the Minister, shall terminate his appointment.

(3) The Minister may, at any time, by written notice, advise the Chairman or a member (other than an *ex officio* member) that he intends to recommend the termination of his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(4) Within 14 days of receipt of a notice under Subsection (3), the Chairman or member may reply in writing to the Minister who shall consider the reply and where

⁴⁸ Section 21 Subsection (4) amended by No. 26 of 2002, s. 14.

appropriate recommend to the National Executive Council that the appointment be terminated.

(5) The Head of State, acting on advice, given after considering a recommendation under Subsection (4), may terminate the appointment.

(6) Where the Chairman or member referred to in Subsection (3) does not reply in accordance with Subsection (4) his appointment is terminated.

24. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of PANGTEL is not invalidated by reason only of a vacancy in the membership of PANGTEL.

Division 2.

Meetings of PANGTEL.

25. MEETINGS OF PANGTEL.

(1) PANGTEL shall meet—

- (a) subject to Subsection (2), as often as is necessary to ensure the efficient performance of its functions; and
- (b) at such times and places as PANGTEL determines.

(2) The Chairman—

- (a) may call a meeting of PANGTEL at any time; and
- (b) shall call a meeting of PANGTEL where requested to do so in writing by two other members.

(3) Each member is entitled to receive three business days' notice of a meeting of PANGTEL but this requirement may be waived where each member consents in writing to waive the requirement.

(4) At a meeting of PANGTEL—

- (a) a majority of the members constitutes a quorum; and
- (b) the Chairman shall preside and where the Chairman is unable to attend a meeting the members present shall appoint one of their number to preside; and
- (c) a member may participate in a meeting by telephone or other means of communication and in this event is considered to be present and shall be counted towards a quorum and may vote; and
- (d) matters arising shall be decided by a majority of votes of those present and voting; and
- (e) the person presiding has a deliberative and in the event of an equality of votes on a matter, also a casting vote.

(5) PANGTEL shall cause minutes of its meetings to be recorded and kept.

(6) Subject to this Act, the procedures of PANGTEL are as determined by PANGTEL.

26. DISCLOSURE OF INTERESTS.

(1) A member who has a direct or indirect pecuniary interest in a matter being considered by PANGTEL shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of PANGTEL.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting and the member shall not, unless the Chairman otherwise determines—

- (a) be present during any deliberation by PANGTEL about that matter; or
- (b) take part in any decision of PANGTEL relating to that matter.

(3) For the purpose of the Chairman making such a determination in relation to a member who has made a disclosure, a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation by PANGTEL for the purpose of making the determination; or
- (b) take part in making this determination.

Division 3.

Finance.

27. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995.*

Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to PANGTEL.

28. APPLICATION OF *AUDIT ACT 1989.*

The *Audit Act 1989* applies to and in relation to PANGTEL.

29. MONEYS OF PANGTEL.

(1) The activities of PANGTEL shall be funded from the following sources:—

- (a) sums appropriated by the National Budget;
- (b) fees and other charges payable to PANGTEL in the performance of its functions under this Act;
- (c) grants, donations or other contributions;
- (d) loans raised by PANGTEL.

(2)⁴⁹ [*Repealed.*]

⁴⁹ Section 29 Subsection (2) omitted by No. 26 of 2002, s. 15.

30. APPLICATION AND INVESTMENT OF MONEYS.

(1) Subject to Subsection (2), the moneys of PANGTEL may be applied—

- (a) in the payment or discharge of the expenses, obligations including international obligations, or liabilities incurred in connection with the performance of its functions or exercise of its powers under this Act; and
- (b) in the payment of any remuneration or allowances payable under this Act.

(2) The moneys of PANGTEL that are not immediately required for the purposes of PANGTEL may be invested—

- (a) on fixed deposit with a bank approved by the Minister; or
- (b) in securities of the Government; or
- (c) in such other manner as may be approved by the Minister.

31. LIABILITY TO TAXATION.

PANGTEL is not subject to taxation under any other Act and in particular, sales tax is not payable to or by PANGTEL, or by any other person, on goods that are for use by, or services provided to, or by PANGTEL.

Division 4.***Functions and Powers of PANGTEL.*****32. FUNCTIONS OF PANGTEL.**

(1) PANGTEL shall be responsible for—

- (a)⁵⁰ providing technical inspection and technical regulation of the telecommunications industry; and
- (b) implementing the Government Policy notified to PANGTEL in accordance with Section 36; and
- (c) establishing technical standards for the telecommunications industry; and
- (d) ensuring that this Act is implemented with due regard to the public interest; and
- (e)⁵¹ in consultation with the Commission, establishing performance standards for any carrier and monitoring compliance with those standards; and

(f - i)⁵²[*Repealed.*]

⁵⁰ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵¹ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵² Section 20 Subsection (1) substituted by No. 26 of 2002, s. 13.

- (j) developing and monitoring procedures for ensuring the safety and quality of telecommunications services and, for that purpose, determining technical standards for network matters, issuing permits for the connection of customer equipment to telecommunications networks and the performance of cabling; and
- (k)⁵³ [*Repealed.*]
- (l) authorizing any person to conduct such technical tests or evaluations relating to telecommunication as PANGTEL thinks fit; and
- (m)⁵⁴ in consultation with the Commission, determining Codes on technical telecommunications matters; and
- (n)⁵⁵ in consultation with the Commission, acting as the duly appointed representative of the State at all international bodies or authorities which have the purpose of designating international technical standards; and
- (o)⁵⁶ [*Repealed.*]
- (p)⁵⁷ in consultation with the Commission, monitoring the use of telecommunications services on any ship or aircraft; and
- (q)⁵⁸ [*Repealed.*]
- (q) controlling the importation of any apparatus capable of being used for purposes of telecommunications; and
- (r) regulating types of telecommunications equipment which may be connected to a telecommunications network; and
- (s)⁵⁹ consulting, where appropriate, commercial, industrial and consumer organizations about any technical matter relating to the supply of telecommunications services; and
- (t)⁶⁰ [*Repealed.*]
- (u)⁶¹ in consultation with the Commission, developing and monitoring a numbering plan for Papua New Guinea; and
- (v)⁶² granting of cabling licences under this Act; and
- (w)⁶³ [*Repealed.*]

⁵³ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵⁴ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵⁵ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵⁶ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵⁷ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵⁸ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁵⁹ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁶⁰ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁶¹ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁶² Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁶³ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

- (x) in accordance with the provisions of the *Radio Spectrum Act 1996*—
 - (i) controlling and licensing the operations of radiocommunication stations; and
 - (ii) regulating the use of radiocommunication generally; and
- (y)⁶⁴ [*Repealed.*]
- (z) performing functions assigned to PANGTEL under any other law.

(2) When developing standards under Subsection (1)(e), PANGTEL shall have regard to the best international practice performance indicators available to it in this context of the development of telecommunications in Papua New Guinea.

33. POWERS OF PANGTEL.

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

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

34. THE COMMISSION, PANGTEL, CARRIERS AND LICENSEES TO PREVENT USE OF NETWORKS AND FACILITIES IN COMMISSION OF OFFENCES.

(1)⁶⁶ ⁶⁷The Commission, PANGTEL, carriers and licensees, shall, in exercising their respective powers and rights, do their best to prevent telecommunications networks and facilities operated by carriers, or by such persons, from being used in, or in relation to, the commission of an offence against the laws of Papua New Guinea.

(2)⁶⁸ ⁶⁹The Commission, PANGTEL, carriers and licensees shall give to officers and authorities of the State such help as is reasonably necessary for any of the following purposes:—

- (a) enforcing the criminal law and laws imposing pecuniary penalties;
- (b) protecting the public revenue;
- (c) safeguarding national security.

(3)⁷⁰ ⁷¹Neither the Commission nor PANGTEL is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith

⁶⁴ Section 32 Subsection (1) amended by No. 26 of 2002, s. 16.

⁶⁵ Section 33 Substituted by No. 26 of 2002, s. 17.

⁶⁶ Section 34 Subsection (1) substituted by No. 26 of 2002, s. 18.

⁶⁷ Section 34 Subsection (1) substituted by No. 26 of 2002, s. 18.

⁶⁸ Section 34 Subsection (2) substituted by No. 26 of 2002, s. 18.

⁶⁹ Section 34 Subsection (2) substituted by No. 26 of 2002, s. 18.

⁷⁰ Section 34 Subsection (3) substituted by No. 26 of 2002, s. 18.

in performance or purported performance of the duty imposed by Subsection (1) or (2).

(4)⁷² ⁷³The Commission, carrier or licensee is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith—

- (a) in performance or purported performance of the duty imposed by Subsection (1) or (2); or
- (b) in compliance or purported compliance with a condition of a general telecommunications licence or public mobile licence held by the carrier, being a condition that is expressed to have the purpose of giving effect to Subsection (1) or (2); or
- (c) in compliance or purported compliance with a direction that the Commission or PANGTEL has given in good faith in performance or purported performance of the duty imposed by Subsection (1) or (2).

(5)⁷⁴ ⁷⁵An officer, employee or agent of the Commission or of PANGTEL or of a carrier or licensee, is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the Commission, PANGTEL, the carrier, or the licensee as mentioned in Subsection (2), (3) or (4), as the case may be.

35. GENERAL GOVERNMENT OBLIGATIONS OF PANGTEL.

⁷⁶Subject to Section 33(2), PANGTEL shall perform its functions in a manner consistent with—

- (a) any Government Policy notified by the Minister under Section 36; and
- (b) Papua New Guinea's obligations under any convention.

36. MINISTER MAY NOTIFY PANGTEL OF POLICIES OF THE GOVERNMENT.

(1)⁷⁷ ⁷⁸Subject to Section 19B, the Minister may notify PANGTEL in writing of any Government Policy.

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

(3)⁷⁹ [*Repealed.*]

⁷¹ Section 34 Subsection (3) substituted by No. 26 of 2002, s. 18.

⁷² Section 34 Subsection (4) substituted by No. 26 of 2002, s. 18.

⁷³ Section 34 Subsection (4) substituted by No. 26 of 2002, s. 18.

⁷⁴ Section 34 Subsection (5) amended by No. 26 of 2002, s. 18; Subsection (5) amended by No. 26 of 2002, s. 18.

⁷⁵ Section 34 Subsection (5) amended by No. 26 of 2002, s. 18; Subsection (5) amended by No. 26 of 2002, s. 18.

⁷⁶ Section 35 Substituted by No. 26 of 2002, s. 19.

⁷⁷ Section 36 Subsection (1) substituted by No. 26 of 2002, s. 20.

⁷⁸ Section 36 Subsection (1) substituted by No. 26 of 2002, s. 20.

⁷⁹ Section 36 Subsection (3) omitted by No. 26 of 2002, s. 20.

37. CONSULTATION.

In performing its functions and exercising its powers, PANGTEL shall, where it is appropriate and practicable to do so, consult with—

- (a) government, commercial, industrial, consumer and standards bodies and organizations (for example, carriers); and
- (aa)⁸⁰ the Commission; and
- (b) other relevant bodies and organizations.

38. ADVISORY COMMITTEES.

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

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

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

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

- (a) the way in which the committee is to carry out its functions; and
- (b) the procedures to be followed in relation to meetings.

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

Division 5.***Staff of PANGTEL.*****39. CHIEF EXECUTIVE.**

(1) There shall be a Chief Executive of PANGTEL who—

- (a) shall be appointed by notice in the National Gazette by the Head of State, acting on advice, given after considering recommendations by the Minister; and
- (b) shall be appointed for a term not less than three years and not exceeding five years and is eligible for re-appointment; and
- (c) shall be known by such designation as PANGTEL may determine; and
- (d) shall be head of the staff of PANGTEL.

⁸⁰ Section 37 Amended by No. 26 of 2002, s. 21.

⁸¹ Section 38 Substituted by No. 26 of 2002, s. 22.

(2) The terms and conditions of appointment and services of the Chief Executive are as determined by the National Executive Council after consideration of recommendations by the Minister.

40. QUALIFICATION OF CHIEF EXECUTIVE.

(1) A person shall not be appointed as the Chief Executive unless he appears to the Head of State, acting on advice, to be qualified for appointment because of his knowledge of, or experience in, one or more of the following fields:—

- (a) industry;
- (b) commerce;
- (c) technology;
- (d - e)⁸² [Repealed.]
- (f) law;
- (g) public administration.

(2) Subject to Subsections (3) and (4), a person shall not be eligible to be appointed or to continue as the Chief Executive of PANGTEL where—

- (a) directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, he—
 - (i) is engaged in a telecommunications business or corporate organization which operates telecommunications systems or provides telecommunications services in Papua New Guinea; or
 - (ii) has a financial or propriety interest in any firm or corporate body referred to in Subparagraph (i) or in the manufacture or distribution of telecommunications equipment anywhere in the world; or
- (b) he is an undischarged bankrupt; or
- (c) he is convicted of a criminal offence which would disqualify him from becoming a director under the *Companies Act 1997*.

(3) A Chief Executive who, at the time of his appointment has an interest prohibited under Subsection (2)(a), shall dispose of it within three months of the appointment.

(4) The Chief Executive in whom any interest prohibited under Subsection (1) vests by will or succession for the Chief Executive's benefit shall, within three months from such vesting, absolutely dispose of the interest.

41. FUNCTIONS, ETC, OF CHIEF EXECUTIVE.

- (1) The Chief Executive shall—

⁸² Section 38 Substituted by No. 26 of 2002, s. 22.

- (a) manage PANGTEL and shall, in relation to the management of PANGTEL, act in accordance with the policy and direction of the Board and this Act; and
- (b) advise the Board on any matters concerning PANGTEL referred to him by the Board.

(2) The Chief Executive has such other functions as the Board from time to time determines.

(3) The Chief Executive may in writing, delegate to any officer of PANGTEL all or any of his powers and functions under this Act, except this power of delegation.

42. STAFF.

(1) PANGTEL may employ such persons as are necessary or desirable for the efficient performance of the functions of PANGTEL under this Act.

(2) Subsection (3) applies to any person who transfers employment from any of—

- (a) Telikom; or
- (b) Post PNG.

(such person being referred to as “**transferred employee**”).

(3) In respect of each transferred employee—

- (a) the transferred employee shall be deemed to have accrued with PANGTEL entitlements to benefits equivalent to the benefits which he had accrued immediately prior to the date of transfer to employment by PANGTEL; and
- (b) the transfer to employment shall not, and shall not be taken to, be a breach of any contract of any employment or interrupt the period of employment.

(4) The Chief Executive may—

- (a) in consultation with the Board, appoint such persons to be the Senior Executives of PANGTEL as he thinks fit and necessary for the purposes of PANGTEL; and
- (b) appoint such other persons as he thinks necessary for the purpose of PANGTEL.

(5) Subject to Subsection (7), each transferred employee or a person appointed under Subsection (4) shall be known by such designation as the Chief Executive may determine and on specific such terms and conditions as the Chief Executive determines.

(6) The Chief Executive, officers and employees appointed under this Division constitute the staff of PANGTEL.

(7) PANGTEL may determine the general terms and conditions of employment for its staff and employees.

(8) PANGTEL may make an arrangement with an authority, instrumentality or eligible Corporation of the State for the services of officers or employees of that authority, instrumentality or eligible Corporation to be made available for the purposes of PANGTEL on such terms and conditions as may be negotiated with such authority, instrumentality or eligible Corporation.

43. ACCESS TO INFORMATION.

(1) Subject to Subsection (2), PANGTEL shall make available for public inspection information submitted to it in the course of the performance of its functions under this Act except information that is designated 'confidential' by the person who submits it.

(2) No member of or person employed by PANGTEL, shall knowingly disclose or knowingly allow to be disclosed information designated 'confidential' to any person in any manner that is calculated or likely to make it available for the use of any person who may benefit from such information or use such information to the detriment of the person to whose business or affairs the information relates, and the provisions of this subsection shall apply whether or not the person who discloses such information has ceased to be a member or employee of PANGTEL.

(3) Where information designated 'confidential' is submitted in the course of public hearing or in response to a direction by PANGTEL, PANGTEL may disclose or require its disclosure if it determines, after considering any representations from interested persons, that the disclosure is in the public interest.

44. CHARGES FOR SERVICES PROVIDED BY PANGTEL.

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

(2) Without limiting the generality of Subsection (1) PANGTEL may levy charges or fees—

(a)⁸³ for publications made generally available by PANGTEL; and

(b)⁸⁴ for consultancy services performed by PANGTEL; and

(c)⁸⁵ [*Repealed.*]

(3) Without limiting the generality of Subsection (1) PANGTEL may—

(a) make a scheme or schemes of determining rates of charges or fees for any service provided by it; or

(b) by regulations, prescribe the rate of charges and fees or the method of calculating charges or fees for services provided by PANGTEL.

⁸³ Section 44 Subsection (2) amended by No. 26 of 2002, s. 24.

⁸⁴ Section 44 Subsection (2) amended by No. 26 of 2002, s. 24.

⁸⁵ Section 44 Subsection (2) amended by No. 26 of 2002, s. 24.

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

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

PART V. – RESERVED RIGHTS.***Division 1.******Reserved Rights.*****45. RIGHTS TO RESERVE LINE LINKS AND ANCILLARY FACILITIES.**

(1) Subject to this Section and to Section 50 a person shall not install or maintain a reserved line link.

(2)⁸⁶ ^{87A} A general carrier may install or maintain a reserved line link in any area in which it is permitted by its licence to operate as a general carrier..

(3) A person may, together with or for or on behalf of, a person who is, or persons one of whom is, a general carrier, install or maintain a reserved line link between a place within Papua New Guinea and a place outside Papua New Guinea.

(4) A person shall not install or maintain a facility ancillary to a reserved line link unless the person is authorized by or under this Act to install or maintain that line link.

46. SUPPLY OF TELECOMMUNICATIONS SERVICES BY SATELLITE BASED FACILITIES OR MICROWAVE FACILITIES.

A person other than a general carrier shall not supply a telecommunications service—

- (a) between distinct places within Papua New Guinea; or
- (b) between a place within Papua New Guinea and a place outside Papua New Guinea,

by the use of satellite based facilities or microwave facilities.

47. PROVISION OF PUBLIC PAY PHONES.

^{88A} A person may supply, install and maintain a public payphone that is connected to a network operated by a carrier within Papua New Guinea.

48. SUPPLY OF PUBLIC MOBILE TELECOMMUNICATIONS SERVICES.

A person, other than a mobile carrier, shall not supply a public mobile telecommunications service—

- (a) for carrying communications within distinct places within Papua New Guinea; or
- (b) for carrying communications between Papua New Guinea and places outside Papua New Guinea.

⁸⁶ Section 45 Subsection (2) amended by No. 26 of 2002, s. 25.

⁸⁷ Section 45 Subsection (2) amended by No. 26 of 2002, s. 25.

⁸⁸ Section 47 Substituted by No. 26 of 2002, s. 26.

48A. TELIKOM MOBILE CARRIER OPERATIONS.

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

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

49. ACTION TO ENFORCE THIS PART.

(1) Where a person has engaged, or is proposing or is likely to engage in conduct that involves, or would involve, a contravention of Section 45, 46 or 47, a general carrier may apply to the National Court for relief.

(2) Where a person has engaged, or is proposing to engage in conduct that involves, or would involve contravention of Section 48, a mobile carrier may apply to the National Court for relief.

(3) The relief that may be granted under this Section includes an injunction, and, at the plaintiff's option either damages or an account of profits.

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

Division 2.***Exceptions.*****50. ACTS DONE ON BEHALF OF A CARRIER.**

⁹⁰This Part does not prevent a person from doing anything for or on behalf of a carrier which that carrier would be entitled to do itself under this Act or under the provisions of its licence.

51. LINE LINKS USED BY TRANSPORT AUTHORITIES.

Notwithstanding Section 45, the Director of Civil Aviation or the Departmental Head of the Department responsible for transport matter may install or maintain a reserved line link for the purpose of using it to carry communications necessary or desirable for the workings of aviation services or transport services for which the Director of Civil Aviation or the Departmental Head of the Department responsible for transport matters has responsibility.

⁸⁹ Section 48A Inserted by No. 26 of 2002, s. 27.

⁹⁰ Section 50 Substituted by No. 26 of 2002, s. 28.

52. LINE LINKS USED BY BROADCASTER.

(1)⁹¹ ⁹²Notwithstanding Sections 45 and 46, a broadcaster may install or maintain a reserved line link for the sole purpose of using it for or in relation to—

- (a) the supply of radio or television broadcasting services by that or another broadcaster to members of the public; or
- (b) the supply by the broadcaster or prescribed telecommunications services by means of facilities that include radio communications transmitter in relation to which the broadcaster holds a licence of a prescribed kind that is in force under the *Radio Spectrum Act 1996*.

(2) In this section—

“**broadcaster**” means the National Broadcasting Corporation established under the *Broadcasting Corporation Act 1973*.

53. LINE LINKS FOR DEFENCE PURPOSES.

Notwithstanding Sections 45 and 46, a defence organization may install or maintain a reserved line link for the purpose of using it to carry communications necessary or desirable for defence purposes.

⁹¹ Section 52 Subsection (1) amended by No. 26 of 2002, s. 29.

⁹² Section 52 Subsection (1) amended by No. 26 of 2002, s. 29.

PART VI. – LICENSING AND GENERAL OBLIGATIONS OF LICENSEES.***Division 1.******Objectives of this Part.*****54. OBJECTIVES.**

The objectives of this Part are to help achieve the objectives of this Act and to implement Government Policy by–

- (a) establishing a system for licensing of one or more general carriers, on the basis that it or they are to be–
 - (i) the primary providers of Papua New Guinea’s line-based and satellite-based public telecommunications capacity; and
 - (ii) the primary suppliers of telecommunications services by the use of line links and satellite-based facilities or microwave facilities; and
- (b) establishing a system for licensing one or more mobile carriers on the basis that it or they are to be the primary suppliers of public mobile telecommunications services; and
- (c)⁹³ *[Repealed.]*
- (d) establishing a system for licensing of value added services where Government Policy provides for such licensing; and
- (e)⁹⁴ *[Repealed.]*
- (f) providing for a Code of Practice that–
 - (i) relates to dealing by carriers with international telecommunications operators and with other persons; and
 - (ii) is to operate to prevent the misuse of market power by international telecommunications operators; and
- (g) establishing a system for licensing the supply, installation, operation and maintenance of cable television services.

55. LICENCES AND REGULATORY CONTRACTS.

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

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

⁹³ Section 54 Amended by No. 26 of 2002, s. 30.

⁹⁴ Section 54 Amended by No. 26 of 2002, s. 30.

⁹⁵ Section 55 Substituted by No. 26 of 2002, s. 31.

- (a) for a defined period; or
- (b) in relation to defined areas or between defined obligations,

in each case as specified in the regulatory contract.

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

Division 2.

Grant of licence.

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

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

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

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

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

57. DECISION ON APPLICATION.

(1)⁹⁷ ⁹⁸On receipt of an application for a licence under Section 56, the Commission—

- (a) may defer consideration of the application for as long as it thinks appropriate; and
- (b) subject to Subsection (2), may, in its absolute discretion, either grant the licence or refuse the application.

(2)⁹⁹ ¹⁰⁰The Commission shall refuse the application where the applicant is not a citizen or an eligible corporation or where the grant of the licence applied for would not be in accordance with this Act or with Government Policy or with any regulatory contract or licence in force under the Act.

⁹⁶ Section 56 Substituted by No. 26 of 2002, s. 32.

⁹⁷ Section 57 Subsection (1) amended by No. 26 of 2002, s. 34.

⁹⁸ Section 57 Subsection (1) amended by No. 26 of 2002, s. 34.

⁹⁹ Section 57 Subsection (2) substituted by No. 26 of 2002, s. 34.

¹⁰⁰ Section 57 Subsection (2) substituted by No. 26 of 2002, s. 34.

58. REVOCATION OF LICENCE.

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

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

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

(3) A suspension of a licence under this section may be –

- (a) for a specified period; or
- (b) until the fulfilment of specified conditions; or
- (c) until further order of the Commission.

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

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

59. TRANSFER OF LICENCE.

(1)¹⁰² ¹⁰³A licence granted under Section 57 shall not be transferred without the approval of the Commission.

(2)¹⁰⁴ ¹⁰⁵The holder of a licence may apply to the Commission, in a manner and form approved by the Commission, to transfer the licence to another eligible corporation or to a citizen.

(3)¹⁰⁶ ¹⁰⁷An application under Subsection (2) shall be accompanied by an application under Section 56 by the other citizen or eligible corporation for a general telecommunications licence or a public mobile licence or a value added services licence, as the case requires.

¹⁰¹ Section 58 Substituted by No. 26 of 2002, s. 35.

¹⁰² Section 59 Subsection (1) amended by No. 26 of 2002, s. 37.

¹⁰³ Section 59 Subsection (1) amended by No. 26 of 2002, s. 37.

¹⁰⁴ Section 59 Subsection (2) amended by No. 26 of 2002, s. 37.

¹⁰⁵ Section 59 Subsection (2) amended by No. 26 of 2002, s. 37.

¹⁰⁶ Section 59 Subsection (3) amended by No. 26 of 2002, s. 37.

¹⁰⁷ Section 59 Subsection (3) amended by No. 26 of 2002, s. 37.

(4)^{108 109}The Commission may require an applicant under Subsection (2) or (3) to give the Commission such further information in relation to the application as it thinks necessary.

60. DECISION ON APPLICATION.

(1)^{110 111}Where the holder of a licence applies under Section 59 to transfer the licence to another person or eligible corporation the Commission may, subject to Subsection (2), in PANGTEL's absolute discretion, either grant or refuse the application.

(2)^{112 113}The Commission shall refuse an application under Section 59 where the proposed transferee is not an eligible corporation or a citizen or the grant of the application would not be in accordance with Government Policy.

Division 3.

Licence conditions.

61. CONDITIONS TO WHICH A LICENCE IS SUBJECT.

¹¹⁴(1) A licence is subject to –

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

¹⁰⁸ Section 59 Subsection (4) amended by No. 26 of 2002, s. 37; Subsection (4) amended by No. 26 of 2002, s. 37.

¹⁰⁹ Section 59 Subsection (4) amended by No. 26 of 2002, s. 37; Subsection (4) amended by No. 26 of 2002, s. 37.

¹¹⁰ Section 60 Subsection (1) amended by No. 26 of 2002, s. 38.

¹¹¹ Section 60 Subsection (1) amended by No. 26 of 2002, s. 38.

¹¹² Section 60 Subsection (2) amended by No. 26 of 2002, s. 38.

¹¹³ Section 60 Subsection (2) amended by No. 26 of 2002, s. 38.

¹¹⁴ Section 61 Substituted by No. 26 of 2002, s. 39.

(g) such special conditions as may be specified by the Commission.

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

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

62. CONDITIONS.

(1) A licence may include any one or more of the following conditions:–

(a)¹¹⁵ [*Repealed.*]

(b) that the holder shall not supply specified telecommunications services except for carrying communications–

(i) within a specified geographical area; or

(ii) between a specified geographical area and places outside that area; or

(iii) by means of a technology specified in the licence;

(c)¹¹⁶ that the holder shall comply with any international convention or agreement to which Papua New Guinea, the Commission, PANGTEL or the holder is a party and which has been notified to the licensee;

(d - e)¹¹⁷ [*Repealed.*]

(f) that the holder maintain quality standards and technical standards in connection with its supply of telecommunications services;

(g) that the holder is to deal with inquiries and complaints from the persons to whom it supplies telecommunications services in a specified manner;

(h)¹¹⁸ [*Repealed.*]

(i) that the holder shall comply with technical standards determined by PANGTEL under Section 87;

(j)¹¹⁹ that the holder shall operate telecommunications services only in Papua New Guinea;

(k)¹²⁰ relating to any matter within the Commission's powers under this or any other Act.

¹¹⁵ Section 62 Subsection (1) amended by No. 26 of 2002, s. 40.

¹¹⁶ Section 62 Subsection (1) amended by No. 26 of 2002, s. 40.

¹¹⁷ Section 61 Substituted by No. 26 of 2002, s. 39.

¹¹⁸ Section 62 Subsection (1) amended by No. 26 of 2002, s. 40.

¹¹⁹ Section 62 Subsection (1) amended by No. 26 of 2002, s. 40.

¹²⁰ Section 62 Subsection (1) amended by No. 26 of 2002, s. 40.

(2) Nothing in this Section limits the generality of anything else in it, or of Section 63.

63. DECLARATION OF CONDITIONS OF LICENCES.

(1)¹²¹ ¹²²The Commission may by writing declare that—

- (a) all licences; or
- (b)¹²³ all general telecommunications licences; or
- (c) all public mobile licences; or
- (d) all value added service licences; or
- (e) particular licences specified in the declaration,

are subject to conditions specified in the declaration with effect from the date specified in the declaration.

(2) PANGTEL may by writing vary or revoke a declaration in force under this section.

64. NOTIFICATION AND DATE OF EFFECT OF INSTRUMENT UNDER SECTION 63.

¹²⁴The Commission shall cause a copy of any declaration made under Section 63 to be published promptly in the National Gazette and shall give a copy to any carrier affected by the declaration at least 14 days prior to the date specified in the declaration as the date when the conditions come into effect..

65. THE COMMISSION TO CONSULT BEFORE CHANGING LICENCE CONDITIONS.

¹²⁵The Commission shall, at least one month before making a declaration under Section 63 in relation to a licence, consult with the holder of the licence and with each carrier that holds a licence which would be affected by the declaration.

Division 4.

International telecommunications operators.

66. CODE OF PRACTICE RELATING TO DEALINGS WITH INTERNATIONAL TELECOMMUNICATIONS OPERATORS.

(1)¹²⁶ ¹²⁷With a view to preventing the misuse of market power by international telecommunications operators, the Commission may by writing

¹²¹ Section 63 Subsection (1) amended by No. 26 of 2002, s. 41.

¹²² Section 63 Subsection (1) amended by No. 26 of 2002, s. 41.

¹²³ Section 63 Subsection (1) amended by No. 26 of 2002, s. 41.

¹²⁴ Section 64 Amended by No. 26 of 2002, s. 42.

¹²⁵ Section 65 Substituted by No. 26 of 2002, s. 43.

¹²⁶ Section 66 Subsection (1) amended by No. 26 of 2002, s. 45.

determine a Code of Practice relating to dealings by holders of licences with such operators and with other persons.

(2) A carrier shall comply with the Code of Practice in force under this section.

(3)¹²⁸ ¹²⁹The Commission may give written directions to a holder of a licence as to how the holder shall comply with the Code of Practice.

(4) Where a provision of an agreement made by a holder of a licence is inconsistent with the Code of Practice, the provision is unenforceable.

¹²⁷ Section 66 Subsection (1) amended by No. 26 of 2002, s. 45.

¹²⁸ Section 66 Subsection (3) amended by No. 26 of 2002, s. 45.

¹²⁹ Section 66 Subsection (3) amended by No. 26 of 2002, s. 45.

PART VIA. – CODES OF PRACTICE.**66A. CARRIER CODES OF PRACTICE.**

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

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

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

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

66B. TECHNICAL CODES OF PRACTICE FOR CARRIERS.

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

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

(3) Without limiting the generality of Subsection (1), technical Codes of Practice may include –

- (a) a Code of Practice for inter-carrier network connections and points of interconnection; and
- (b) a Code of Practice for connection of customer equipment; and
- (c) a Code of Practice for network quality and standards.

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

66C. LICENSEES TO COMPLY WITH CODE.

¹³²A licensee shall, when providing a telecommunications service in accordance with its licence, comply with all relevant Codes of Practice and technical Codes of Practice determined under this Part by the Commission or by PANGTEL, as the case may be.

¹³⁰ Section 66A Inserted by No. 26 of 2002, s. 46.

¹³¹ Section 66B Inserted by No. 26 of 2002, s. 46.

¹³² Section 66C Inserted by No. 26 of 2002, s. 46.

PART VII. – PROTECTION OF COMMUNICATIONS.

67. LICENSEE TO MAINTAIN CONFIDENTIALITY.

(1) Each licensee and its employees, agents and contractors shall treat as confidential any message and any information relating to a message which comes to their knowledge in the course of their duties.

(2) A person who, otherwise than in the proper course of his duties, makes use of, or records, the contents or substance of a message that comes to his knowledge or to which he had access, by reason of his position as an employee, agent or contractor of a licensee, is guilty of an offence.

(3) Nothing in this Section prevents a licensee or any of its employees or agents from withholding any telecommunications message which he considers to be—

- (a) indecent or abusive; or
- (b) in contravention of this Act; or
- (c) of a nature likely to endanger or compromise public order or national security.

(4)¹³³ ¹³⁴Where a message is withheld pursuant to Subsection (3), the licensee must forthwith refer it to the Commission for such directions as it may think fit to give.

¹³³ Section 67 Subsection (4) amended by No. 26 of 2002, s. 47.

¹³⁴ Section 67 Subsection (4) amended by No. 26 of 2002, s. 47.

PART VIII. – POWERS AND DUTIES IN RELATION TO LAND.**68. LAND ACCESS CODE FOR CARRIERS.**

¹³⁵The Commission shall by writing determine a Land Access Code that does one or more of the following:–

- (a) sets out procedures that a carrier shall follow in exercising powers under this Division relating to land;
- (b) sets out procedures that a carrier shall follow in complying with obligations under this Division relating to owners or occupiers of land;
- (c) where there are two or more carriers, sets out procedures to be followed for consultation between carriers concerning the sharing of facilities where carriers propose to install or construct new facilities in the vicinity of existing facilities.

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

¹³⁶(1) In this section –

“Government land” means all land other than –

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

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

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

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

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

at the time when the facilities are erected.

(4) The exercise of the powers conferred by Subsection (2) is subject to the prior approval of –

- (a) the Head of State, acting on advice, in the case of land outside a town; or

¹³⁵ Section 68 Amended by No. 26 of 2002, s. 49.

¹³⁶ Section 68A Inserted by No. 26 of 2002, s. 50.

- (b) the Minister, in the case of land within a town.

68B. OWNERSHIP OF FACILITIES.

¹³⁷Notwithstanding anything in any other law, but subject to any agreement in writing to the contrary, the ownership of facilities erected or operated by a carrier is not affected by their affixation to land.

69. LAND ACCESS CODE BINDING ON CARRIERS.

A carrier shall, when exercising a power in relation to land under this Division, comply with the Land Access Code under Section 68.

70. POWERS TO INSPECT LAND ETC.

A carrier may, for the purpose of determining whether any land is suitable for its purposes—

- (a) after giving reasonable notice to the occupier or the owner of the land, enter on, and inspect, the land and any adjacent land; and
- (b) do anything on the land or on any adjacent land that is necessary or desirable for that purpose, including, for example, making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil.

71. TREES MAY BE CUT ETC.

(1) Where any tree, undergrowth or vegetation on or over land owned or occupied by the State, a Public Authority or a Provincial Government or customary land, obstructs, or is likely to obstruct, the operation of a facility, a carrier may cut down or lop the tree or clear the undergrowth or vegetation.

(2) Before exercising its powers under Subsection (1) in relation to any land, a carrier shall give reasonable written notice of its intention to do so to the person or authority responsible for the care and management of the land.

(3) Where any tree, undergrowth or vegetation on or over any private land obstructs, or is likely to obstruct, the operation of a facility, a carrier may, by written notice served on the owner of the land, require the owner to cut down or lop the tree, or to clear and remove the undergrowth or vegetation, in the manner, and within the period, specified in the notice.

(4) Where the owner referred to in Subsection (3) does not comply with the requirement under that subsection within the specified period, the carrier may enter the land and cut down or lop the tree, or clear and remove the undergrowth or vegetation, in the manner specified in the notice.

¹³⁷ Section 68B Inserted by No. 26 of 2002, s. 50.

72. A CARRIER MAY REPLACE, REPAIR AND MAINTAIN FACILITIES ETC.

(1) Subject to any conditions in its licence, a carrier may, at any time, alter, move, remove, replace or maintain—

- (a) a facility constructed on, over or under any land; or
- (b) a facility attached to a building or other structure.

(2) For the purpose of exercising powers under Subsection (1), a carrier may enter on, and occupy, land and may remove, or erect a gate in, any fence.

(3) Before removing, or erecting a gate in, a fence, a carrier shall take all reasonable steps to give written notice of its intention to do so to the owner of the land on which, or on the boundary of which, the fence is erected.

73. POWER EXTENDS TO CARRIER'S EMPLOYEES ETC.

Where, under a provision of this Division, a carrier is empowered to enter on land, inspect land, occupy land or do anything else on, over or under land, the provision also empowers an employee of the carrier, a person acting for the carrier under a contract, or an employee of such a person, to do that thing.

74. CARRIER TO DO AS LITTLE DAMAGE AS PRACTICABLE ETC.

(1) In exercising its powers under this Division, a carrier shall take all reasonable steps to ensure that it causes as little detriment and inconvenience, and does as little damage, as is practicable.

(2) Where a person suffers financial loss or damage because of anything done by a carrier under Section 71, 72 or 73 in relation to any property owned by the person or in which the person has an interest, there is payable to the person by the carrier such reasonable amount of compensation as is agreed between them or, failing agreement, as is determined by a court of competent jurisdiction.

PART IX. – PROVISION OF TARIFFS.**75. DOMINANT CARRIER NOT TO DISCRIMINATE BETWEEN ACQUIRERS OF TELECOMMUNICATIONS SERVICES.**

(1) A carrier that is in a position to dominate a market for a particular kind of telecommunications services shall not discriminate between persons who acquire in that market telecommunications services of that kind, in relation to—

- (a) the charges for the services; or
- (b) the terms and conditions on which the services are supplied.

(2) Subsection (1) does not apply in relation to telecommunications services supplied under the rural development provisions in Part XV.

(3) In this Section “**a carrier that is in a position to dominate a market**” means a carrier who—

- (a) by virtue of the terms of its licence; or
- (b) by Government Policy; or
- (c) by reason of its share of the market; or
- (d) because of the availability to it of technology, infrastructure or capital,

has a substantial degree of power in the market for the supply of a telecommunications service.

76. EXCEPTIONS.

(1) Section 75(1) does not apply where the discrimination makes only reasonable allowance for differences in the costs or likely costs of supplying services where the differences result from any of the following:—

- (a) the different quantities in which the services are supplied;
- (b) the different transmission capacity needed to supply the services;
- (c) the different places from or to which the services are supplied;
- (d) the different periods for which the services are supplied;
- (e) the different performance characteristics at which the services are supplied;
- (f) such other matters as are prescribed.

(2) Where a discrimination in relation to the charges for telecommunications services would make only reasonable allowance for differences in the other terms and conditions on which the services are supplied, Section 75 does not apply in relation to the discrimination in relation to the charges, or in relation to the differences in the other terms and conditions.

77. ACTION FOR DISCRIMINATION.

(1) Where a carrier contravenes, or proposes to contravene Section 75–

- (a) a person who is, or would be, subjected to discrimination; or
- (b) any other aggrieved person,

may apply to the National Court for relief.

(2) The relief that may be granted under Subsection (1) includes an injunction and damages.

(3) Section 194 applies to an application under Subsection (1).

Division 2.***Tariffs.*****78. TARIFFS.**

(1)¹³⁸ ¹³⁹A carrier shall give to the Commission a written tariff of the carrier's charges for each telecommunications service supplied by the carrier, in a form approved by the Commission and in compliance with the requirements of this section.

(2) In respect of each telecommunication service, the tariff shall include the following details:–

- (a) the term during which the tariff is to apply;
- (b) the description of the telecommunications service;
- (c) the amount of the charges payable for each telecommunications service;
- (d) the quantity in which the service is supplied;
- (e) the transmission capacity needed to supply the service;
- (f) the performance characteristics for the service supplied;
- (h) the terms and conditions on which the service is supplied;
- (g)¹⁴⁰ such other matter as the Commission may direct.

(3)¹⁴¹ ¹⁴²Where requested by the Commission, a carrier shall supply to the Commission such further details relating to proposed tariff as the Commission considers necessary or desirable to enable the Commission to monitor compliance with this Act.

¹³⁸ Section 78 Subsection (1) amended by No. 26 of 2002, s. 53.

¹³⁹ Section 78 Subsection (1) amended by No. 26 of 2002, s. 53.

¹⁴⁰ Section 78 Subsection (2) amended by No. 26 of 2002, s. 53.

¹⁴¹ Section 78 Subsection (3) amended by No. 26 of 2002, s. 53; Subsection (3) amended by No. 26 of 2002, s. 53; Subsection (3) amended by No. 26 of 2002, s. 53.

¹⁴² Section 78 Subsection (3) amended by No. 26 of 2002, s. 53; Subsection (3) amended by No. 26 of 2002, s. 53; Subsection (3) amended by No. 26 of 2002, s. 53; Subsection (3) amended by No. 26 of 2002, s. 53.

(4)^{143 144}The Commission may, by notice in writing to a carrier, disallow any tariff which does not comply with any provision of this Act or with or any code or other instrument made under this Act or under the Independent Consumer and Competition Commission Act 2002 or with carrier's regulatory contract.

(5) A carrier shall not demand or receive payment of a charge for a telecommunications service which exceeds the charge payable under the tariff.

(6) Any tariff of a carrier shall be made available for inspection and for purchase at each of its business offices.

(7) The tariff shall contain sufficient information to be used to work out the nature and amounts of charges payable for the supply of basic carriage services in particular cases.

(8)^{145 146}The Commission may not disallow a tariff or variation of a tariff relating to regulated services provided by a regulated entity, by reason of the changes payable under that tariff where those charges are in accordance with the regulated entity's regulatory contract.

(9) This Section does not apply to the supply of a telecommunications service under a registered access agreement.

79. VARIATION AND REVOCATION OF TARIFF.

(1) Subject to this section, a carrier's tariff is in force for the term stated in the tariff under Section 78(2).

(2)^{147 148}A carrier may vary or revoke its tariff by writing given to the Commission with effect from a date not less than five business days after the date on which the notice is delivered to the Commission.

(3)^{149 150}Section 78 applies to variation or revocation of a tariff made under Subsection (2).

(4) In preparing a variation under this Section a carrier shall have regard to its obligations under this Act and under the conditions of its licence.

80. TERMS AND CONDITIONS IN TARIFF APPLY UNLESS EXCLUDED.

(1)^{151 152}Subject to any express provision of this or another Act or regulatory made under this Act,, the terms and conditions on which a carrier supplies a

¹⁴³ Section 78 Subsection (4) amended by No. 26 of 2002, s. 53; Subsection (4) amended by No. 26 of 2002, s. 53.

¹⁴⁴ Section 78 Subsection (4) amended by No. 26 of 2002, s. 53; Subsection (4) amended by No. 26 of 2002, s. 53.

¹⁴⁵ Section 78 Subsection (8) substituted by No. 26 of 2002, s. 53.

¹⁴⁶ Section 78 Subsection (8) substituted by No. 26 of 2002, s. 53.

¹⁴⁷ Section 79 Subsection (2) amended by No. 26 of 2002, s. 54; Subsection (2) amended by No. 26 of 2002, s. 54.

¹⁴⁸ Section 79 Subsection (2) amended by No. 26 of 2002, s. 54; Subsection (2) amended by No. 26 of 2002, s. 54.

¹⁴⁹ Section 79 Subsection (3) substituted by No. 26 of 2002, s. 54.

¹⁵⁰ Section 79 Subsection (3) substituted by No. 26 of 2002, s. 54.

¹⁵¹ Section 80 Subsection (1) amended by No. 26 of 2002, s. 55.

¹⁵² Section 80 Subsection (1) amended by No. 26 of 2002, s. 55.

telecommunications service to a person (including a person who is not authorized by the carrier to use the service) are—

- (a) so far as the carrier and the person agree on the terms and conditions on which the service is supplied—the agreed terms and conditions; and
- (b) where the carrier and the person do not agree on terms and conditions but terms and conditions are set out in a tariff of the carrier that is in force and in which the service is included—the terms and conditions set out so far as they are applicable to the supply of the service.

(2) To avoid doubt, but without limiting Subsection (1), a reference in that subsection to terms and conditions includes a reference to terms and conditions about charges for a telecommunications service.

PART X. – NATIONAL NUMBERING PLAN.

81. NATIONAL NUMBERING PLAN.

(1) PANGTEL shall, as soon as practicable, prepare and administer a national numbering plan for the numbering of telecommunications services in Papua New Guinea and for the use of numbers in connection with the supply of such services.

(2) The national numbering plan referred to in Subsection (1) shall among other things specify the numbers (if any) that have been allocated by PANGTEL to a carrier and to any other person.

(3) PANGTEL may consult with any carrier in relation to any proposed numbering plan under this section.

(4)¹⁵³ ¹⁵⁴In preparing and administering a national numbering plan, PANGTEL, shall consult the Commission which may give directions to PANGTEL to ensure that, as far as practicable, the national numbering plan provides competitive neutrality for carriers and service providers and is in the best interest of Papua New Guinea consumers.

¹⁵³ Section 81 Subsection (4) inserted by No. 26 of 2002, s. 56.

¹⁵⁴ Section 81 Subsection (4) inserted by No. 26 of 2002, s. 56.

PART XI. – ACCESS TO NETWORKS.**82. RIGHT TO ACCESS.**

(1) A carrier has the right to interconnect its facilities to a network of any other carrier—

- (a) for the purpose of the other carrier carrying communications across the network under Subsection (2); and
- (b)¹⁵⁵ on such terms and conditions as the carriers agree on or, failing agreement, as the Commission determines under Section 84.

(2) Where a carrier's facilities are, or are to be, interconnected as authorized by Subsection (1) to a network of another carrier, the other carrier shall carry communications across the network—

- (a) so far as is necessary or desirable for the purposes of the first-mentioned carrier supplying by means of those facilities—
 - (i) where the first-mentioned carrier is both a general carrier and a mobile carrier—telecommunications services; or
 - (ii) where the first-mentioned carrier is a general carrier but not a mobile carrier—telecommunications services other than public mobile telecommunications services; or
 - (iii) where the first-mentioned carrier is a mobile carrier but not a general carrier—public mobile telecommunications services; and
- (b)¹⁵⁶ on such terms and conditions as the carriers agree on or, failing agreement, as the Commission determines under Section 84.

83. THE COMMISSION'S ROLE IN NEGOTIATIONS OF ACCESS AGREEMENTS.

(1)^{157 158}Where one or two carriers propose to negotiate, or are negotiating, the terms and conditions of an access agreement, or a variation to an access agreement, either or both of them may request the Commission in writing to arrange for a representative of the Commission to attend the negotiations.

(2)^{159 160}The Commission shall comply with a request under Subsection (1) by arranging for a representative of the Commission to attend the negotiations.

¹⁵⁵ Section 82 Subsection (1) amended by No. 26 of 2002, s. 57.

¹⁵⁶ Section 82 Subsection (2) amended by No. 26 of 2002, s. 57.

¹⁵⁷ Section 83 Subsection (1) amended by No. 26 of 2002, s. 58; Subsection (1) amended by No. 26 of 2002, s. 58.

¹⁵⁸ Section 83 Subsection (1) amended by No. 26 of 2002, s. 58; Subsection (1) amended by No. 26 of 2002, s. 58.

¹⁵⁹ Section 83 Subsection (2) amended by No. 26 of 2002, s. 58; Subsection (2) amended by No. 26 of 2002, s. 58.

¹⁶⁰ Section 83 Subsection (2) amended by No. 26 of 2002, s. 58; Subsection (2) amended by No. 26 of 2002, s. 58.

84. ARBITRATION BY THE COMMISSION OF ACCESS TERMS.

(1) Where two carriers cannot agree upon the terms and conditions of an access agreement or a variation to an access agreement either carrier or both carriers may by writing submit the matter to PANGTEL for arbitration under this section.

(2)¹⁶¹ ¹⁶²The Commission shall comply with a submission for arbitration under Subsection (1) and shall promptly take all steps necessary to determine the matter submitted for arbitration.

(3)¹⁶³ ¹⁶⁴A determination by the Commission under this Section shall—

- (a) specify the facilities and the network concerned; and
- (b) set out terms and conditions of the interconnection; and
- (c) be consistent with this Act, with any charging principles determined under Section 86 and with Government Policy.

(4) The terms and conditions set out under Subsection (3)(b) shall relate only to such of the following as are appropriate in the particular case:—

- (a) technical standards for interconnection;
- (b) points of interconnection;
- (c) supply of facilities for the purposes of interconnection or carriage;
- (d) supply by the one carrier to the other of—
 - (i) information about traffic carried on the network concerned; or
 - (ii) any other information necessary to ensure the efficient supply of telecommunications services by means of the facilities and network concerned;
- (e) charges payable for the interconnection or carriage, for the supply of such facilities or information, or for related matters;
- (f)¹⁶⁵ any matter incidental to a matter of a kind referred to this subsection.

(5)¹⁶⁶ ¹⁶⁷The Commission may include in a carrier's licence any condition necessary or desirable to give effect to any determination made under this Section and may, by notice in writing to a carrier, vary that carrier's licence by inserting such a condition.

¹⁶¹ Section 84 Subsection (2) amended by No. 26 of 2002, s. 59.

¹⁶² Section 84 Subsection (2) amended by No. 26 of 2002, s. 59.

¹⁶³ Section 84 Subsection (3) amended by No. 26 of 2002, s. 59.

¹⁶⁴ Section 84 Subsection (3) amended by No. 26 of 2002, s. 59.

¹⁶⁵ Section 84 Subsection (4) amended by No. 26 of 2002, s. 59.

¹⁶⁶ Section 84 Subsection (5) amended by No. 26 of 2002, s. 59.

¹⁶⁷ Section 84 Subsection (5) amended by No. 26 of 2002, s. 59.

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

¹⁶⁸A determination made under Section 84 because of an arbitration—

- (a) is taken to be an access agreement between the carriers who were parties to the arbitration; and
- (b) shall be registered by PANGTEL; and
- (c)¹⁶⁹ subject to compliance with this Act, may be varied by these carriers, and enforced by each of them, as if it were a contract between them.

86. CHARGING PRINCIPLES.

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

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

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

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

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

¹⁶⁸ Section 85 Amended by No. 26 of 2002, s. 60.

¹⁶⁹ Section 85 Amended by No. 26 of 2002, s. 60.

¹⁷⁰ Section 86 Substituted by No. 26 of 2002, s. 61.

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

(5) The Commission shall register an access agreement submitted under Subsection (3) where the access agreement –

(a) complies with any charging principles then in force; and

(b) complies with this Act,

but otherwise the Commission shall not register the access agreement.

PART XII. – TECHNICAL REGULATION.

87. DETERMINATION OF TECHNICAL STANDARDS.

(1) PANGTEL may, by notice in the National Gazette, determine technical standards relating to telecommunications network, to customer equipment or to customer cabling that is connected to a telecommunications network.

(2) Subject to Subsection (3), PANGTEL may only determine a standard under Subsection (1) where it believes it necessary or desirable to do so in order to–

- (a) protect the integrity of a telecommunications network or the safety of persons working on, or using services supplied by means of, a telecommunications network; and
- (b) ensure the interoperability of customer equipment, or customer cabling, with a telecommunications network to which it is connected; or
- (c) ensure that customer equipment, or customer cabling, connected to a telecommunications network complies with recognized international standards; or
- (d) maintain or improve the end-to-end quality of telecommunications services; or
- (e) reduce or limit interference to radiocommunications or to any uses or functions of devices; or
- (f) establish an adequate level of immunity from electromagnetic disturbance.

(3) PANGTEL may consult with any carrier prior to determining a technical standard under this section.

PART XIII. – CUSTOMER EQUIPMENT AND CABLING.***Division 1.******Permits for customer equipment.*****88. APPLICATION FOR PERMITS.**

(1) A person may apply to PANGTEL in a form approved by PANGTEL for a permit to connect customer equipment, or a type of customer equipment, to a telecommunications network.

(2) An application under Subsection (1) shall–

- (a) give a detailed description of the customer equipment, or type of customer equipment; and
- (b) be accompanied by–
 - (i) a report issued by an accredited test house on compliance by the equipment with the technical standards determined by PANGTEL under Part XII; and
 - (ii) such other information as PANGTEL requires the applicant to provide; and
- (c) be accompanied by payment of the prescribed fee.

89. ISSUE OF NEW PERMITS.

Where an application has been made under Section 88, PANGTEL may, by notice in writing to the applicant, issue a permit for the connection of customer equipment or a type of customer equipment to the telecommunications network subject to such conditions as PANGTEL shall determine including, for example, one or both of the following:–

- (a) requiring the customer equipment to be labelled in a manner specified by PANGTEL;
- (b) requiring the customer equipment to be inspected by any carrier before being connected to a telecommunications network operated by that carrier.

90. VARIATION OF PERMITS BY PANGTEL.

(1) PANGTEL may, by written notice to the holder of a permit, vary the permit.

(2) The power to vary the permit under Subsection (1) includes the power to–

- (a) vary the conditions of the permit; or
- (b) add further conditions; or
- (c) revoke any of the conditions.

(3) The holder of a permit may apply in a form approved by PANGTEL to vary a permit under this section.

91. ISSUE AND VARIATION OF PERMITS.

(1) PANGTEL shall not issue or vary a permit unless it is satisfied that—

- (a) connection of the customer equipment specified in the permit to a telecommunications network in accordance with the conditions in the permit would comply with the technical standards determined by PANGTEL under Part XII; and
- (b) the issue of a permit or its variation would not be contrary to Government Policy.

(2) Where PANGTEL decides not to issue a permit or not to vary a permit it shall give to the applicant written notice that the application is refused together with the reasons for refusal.

(3) Notice under Subsection (2) shall include a statement to the effect that the applicant may within 21 days of receiving the notice apply to PANGTEL for reconsideration of the refusal.

(4) In deciding whether it is satisfied as to whether connection of customer equipment to a telecommunications network would comply with technical standards determined under Part XII, PANGTEL may reach a conclusion contrary to any conclusion reached on that matter in a report, by an accredited test house, that accompanied the application for the permit concerned.

(5) Where PANGTEL issues or varies a permit, it shall include in the notice under Subsection (1) a statement to the effect that the applicant may, within 21 days after receiving the notice, apply to PANGTEL for reconsideration of the conditions included in the permit.

(6) Where PANGTEL decides not to issue a permit, it shall give to the applicant written notice that the application is refused, together with—

- (a) its reasons for the refusal; and
- (b) a statement to the effect that the applicant may, within 21 days after receiving the notice, apply to PANGTEL for reconsideration of the refusal.

92. REGISTER OF CUSTOMER EQUIPMENT.

PANGTEL shall maintain a register of permits for the connection of customer equipment, or types of customer equipment, and shall ensure that such register is open to public inspection.

93. OFFENCES RELATING TO CUSTOMER EQUIPMENT.

(1) A person, who knowingly or recklessly connects to a telecommunications network customer equipment in respect of which a permit under this part is not in force, is guilty of an offence.

Penalty: A fine not exceeding K15,000.00 or imprisonment for a term not exceeding 10 years or both.

(2) A person, who sells or supplies, or offers to sell or supply, to another customer equipment that the person knows or ought reasonably to know is customer equipment for which a permit under this part is not in force without first notifying the other person that there is no permit for the connection of the equipment to a telecommunications network, is guilty of an offence.

Penalty: A fine not exceeding K15,000.00 or imprisonment for a term not exceeding 10 years or both.

94. DISCONNECTION OF CUSTOMER EQUIPMENT FOR WHICH THERE IS NO PERMIT.

(1) Where—

- (a) a person has under his control customer equipment connected to a telecommunications network; and
- (b) there is no permit in force for connection of the customer equipment to a telecommunications network; and
- (c) PANGTEL gives to the person a written notice stating that—
 - (i) there is no permit in force for the connection of the customer equipment to a telecommunications network; and
 - (ii) the person is to disconnect the customer equipment from any telecommunications network to which it is connected within seven days, or such longer period as is specified in the notice, after the notice is given,

the person shall comply with notice.

(2) A person, who fails or refuses to comply with a notice under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K15,000.00 or imprisonment for a term not exceeding 10 years or both.

95. CANCELLATION OF PERMITS.

(1) PANGTEL may cancel a permit, by written notice given to the holder of the permit, where—

- (a) PANGTEL is satisfied that the holder of a permit has contravened the conditions of the permit; or

(b) the cancellation is authorized by Government Policy.

(2) Where PANGTEL cancels a permit under Subsection (1), it shall include in the notice under that subsection—

(a) PANGTEL's reasons for the cancellation; and

(b) a statement to the effect that the applicant may, within 21 days after receiving the notice, apply to PANGTEL for reconsideration of the cancellation.

96. REPRESENTATIONS CONCERNING CANCELLATION OF PERMITS.

(1) Before cancelling a permit under Section 95, PANGTEL—

(a) shall give to the holder of the permit; and

(b) may give to such other persons as PANGTEL considers to have an interest in the permit,

written notice—

(c) stating that it proposes to cancel the permit; and

(d) inviting each person to whom the notice is given to make representations to PANGTEL, within 21 days after receiving the notice, concerning the proposed cancellation.

(2) A person who receives a notice under Subsection (1) may, within 21 days after receiving the notice, make such representations to PANGTEL as he considers relevant.

(3) PANGTEL shall give due consideration to any representations made under Subsection (2).

(4) Where PANGTEL decides not to proceed with the cancellation of a permit, it shall give to the holder of the permit written notice to that effect.

(5) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a cancellation of a permit, where there is substantial compliance with the requirements of that subsection.

97. TRANSFER OF PERMITS.

(1) The holder of a permit may, at any time, transfer the permit to another person.

(2) The transfer of a permit does not have effect before PANGTEL has been given written notice—

(a) stating that the permit has been transferred; and

(b) specifying the name and address of the person to whom the permit has been transferred.

98. ACCREDITATION ETC, OF TEST HOUSES.

The regulations may prescribe—

- (a) the accreditation of test houses by PANGTEL; and
- (b) the testing of customer equipment by accredited test houses; and
- (c) the removal of the accreditation of a test house; and
- (d) the review of administrative decisions made in connection with the accreditation, or the removal of the accreditation, of test houses; and
- (e) the payment of the appropriate fee for applications for the accreditation of test houses; and
- (f) any matter related to a matter referred to Paragraph (a), (b), (c), (d) or (e).

99. PANGTEL MAY LIMIT APPLICATION OF DIVISION IN RELATION TO CUSTOMER EQUIPMENT.

(1) PANGTEL may, by written notice in the National Gazette, declare that this Division, or specified provisions of it, do not apply in relation to specified classes of customer equipment.

(2) A notice under Subsection (1) may specify a class of customer equipment—

- (a) by reference to the technical characteristics of the equipment; or
- (b) by reference to the functions of the equipment.

(3) This Division has effect in accordance with a declaration in force under Subsection (1).

(4) PANGTEL may make a declaration under Subsection (1) on its own initiative or at the request of any person.

Division 2.***Licensing of cabling providers.*****100. APPLICATION FOR CABLING LICENCES.**

(1) A natural person may apply to PANGTEL in a form approved by PANGTEL for a cabling licence.

(2) An application under Subsection (1) shall—

- (a) give a detailed description of the applicant's qualifications, knowledge and experience of cabling work; and
- (b) be accompanied by payment of the prescribed fee.

101. ISSUE OF CABLING LICENCES.

Where an application has been made under Section 100, PANGTEL may, by notice in writing to the applicant, issue a cabling licence subject to such conditions as PANGTEL shall determine including, for example, all or any of the following conditions:—

- (a) relating to the geographic areas in which the licensee may perform cabling work;
- (b) relating to the types of premises in or on which the licensees may perform cabling work;
- (c) requiring cabling work which has been carried out by the licensee to be inspected by PANGTEL or by carriers.

102. VARIATION OF CABLING LICENCES BY PANGTEL.

(1) PANGTEL may, by written notice to the holder of a cabling licence, vary the cabling licence.

(2) The power to vary under Subsection (1) includes the power to—

- (a) vary the conditions of the cabling licence; or
- (b) add further conditions; or
- (c) revoke any of the conditions.

(3) The holder of a cabling licence may apply in a form approved by PANGTEL to vary a cabling licence under this section.

103. ISSUE AND VARIATION OF CABLING LICENCES.

(1) PANGTEL shall not issue or vary a cabling licence unless it is satisfied that—

- (a) the licensee has the necessary qualifications, knowledge and experience to perform cabling work in accordance with the licence; and
- (b) the issue of the licence or its variation would not be contrary to Government Policy.

(2) Where PANGTEL decides not to issue or not to vary a licence it shall give to the applicant written notice that the application is refused.

(3) Notice under Subsection (2) shall include PANGTEL's reasons for the refusal and a statement to the effect that the applicant may within 21 days of receiving the notice apply to PANGTEL for reconsideration of the refusal.

104. REGISTER OF CABLING LICENCES.

PANGTEL shall maintain a register of cabling licences and shall ensure that such register is open to public inspection.

105. OFFENCES RELATING TO UNLICENSED CABLING WORK.

(1) A person other than a carrier or a licensee, who performs cabling work without a cabling licence, is guilty of an offence.

Penalty: A fine not exceeding K15,000.00 or imprisonment for a term not exceeding 10 years or both.

(2) A licensee, who knowingly or recklessly contravenes the conditions of his cabling licence, is guilty of an offence.

Penalty: A fine not exceeding K15,000.00 or imprisonment for a term not exceeding 10 years or both.

106. DEEMED REFUSAL OF CABLING LICENCES.

Where, at the end of 30 days after an application for the issue of a cabling licence has been made under Section 100, PANGTEL has not issued the licence, PANGTEL is taken, for the purposes of Section 114–

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

107. REPRESENTATIONS CONCERNING VARIATION OF CABLING LICENCES.

(1) Before varying a cabling licence, PANGTEL shall give to the licensee a notice–

- (a) setting out the text of the proposed variation; and
- (b) inviting the licensee to make representations to PANGTEL, within 21 days after receiving the notice, concerning the proposed variation.

(2) The licensee may, within 21 days after receiving the notice under Subsection (1), make such representations to PANGTEL.

(3) PANGTEL shall give due consideration to any representations made under Subsection (2).

(4) Where PANGTEL decides not to proceed with the variation, it shall give to the licensee written notice to that effect.

(5) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a variation of a cabling licence, if the requirements of that subsection are substantially complied with.

108. CANCELLATION OF CABLING LICENCES.

(1) Where PANGTEL is satisfied that a licensee has contravened the conditions of his cabling licence, PANGTEL may cancel the licence by written notice given to the licensee.

(2) Where PANGTEL cancels a cabling licence under Subsection (1), it shall include in the notice under that subsection—

- (a) PANGTEL's reasons for the cancellation; and
- (b) a statement to the effect that the licensee may, within 21 days after receiving the notice, apply to PANGTEL for reconsideration of the cancellation.

(3) The cancellation of a cabling licence has effect on and from the day on which notice of the cancellation is given to the licensee.

109. REPRESENTATIONS CONCERNING CANCELLATION OF CABLING LICENCE.

(1) Before cancelling a cabling licence under Section 108, PANGTEL shall give to the licensee a written notice—

- (a) stating that it proposes to cancel the licence; and
- (b) inviting the licensee to make representations to PANGTEL, within 21 days after receiving notice, concerning the proposed cancellation.

(2) The licensee may, within 21 days after receiving the notice under Subsection (1), make such representations to PANGTEL.

(3) PANGTEL shall give due consideration to any representations made under Subsection (2).

(4) Where PANGTEL decides not to proceed with the cancellation, it shall give to the licensee written notice to that effect.

(5) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a cancellation of a cabling licence, where the requirements of that subsection are substantially complied with.

110. SURRENDER OF CABLING LICENCES.

A licensee may, at any time, surrender his cabling licence by giving PANGTEL written notice that it is surrendered and returning the licence to PANGTEL.

111. PANGTEL MAY LIMIT APPLICATION OF DIVISION IN RELATION TO CUSTOMER CABLING.

(1) PANGTEL may, by written notice in the National Gazette, declare that this Division, or specified provisions of it, do not apply in relation to specified kinds of customer cabling.

- (2) A notice under Subsection (1) may specify a kind of customer cabling—
 - (a) by reference to the technical characteristics of the cabling; or
 - (b) by reference to the functions of the cabling.

(3) This Division has effect in accordance with a notice in force under Subsection (1).

(4) PANGTEL may make a declaration under Subsection (1) on its own initiative or at the request of any person.

Division 3.

Connection of customer equipment and customer cabling to telecommunications networks.

112. DISCONNECTION ETC, OF CUSTOMER EQUIPMENT OR CUSTOMER CABLING.

(1) A carrier may cease supplying a service to a person by means of a telecommunications network operated by the carrier where, through the use of the service, there is connected to the network customer equipment or customer cabling that is a threat to—

- (a) the safety or proper functioning of the network; or
- (b) the safety of any person.

(2) A carrier may refuse to supply to a person a service of a kind normally provided by the carrier by means of a telecommunications network operated by the carrier where the carrier is satisfied that the person intends, through the use of the service, to connect or have connected to the network customer equipment or customer cabling that is a threat to—

- (a) the safety or proper functioning of the network; or
- (b) the safety of any person.

(3) Where a carrier stops providing a service to a person under Subsection (1) or refuses to provide a service to a person under Subsection (2), the person may apply to PANGTEL for an order under Subsection (6).

(4) PANGTEL shall, by notice in writing; in respect of an application under Subsection (3)—

- (a) inform the carrier concerned of the making of the application ; and
- (b) invite the carrier to make representations to PANGTEL, within 7 days after receiving the notice, as to whether an order should be made under Subsection (6).

(5) In deciding whether to make an order under Subsection (6), PANGTEL shall give due consideration to any representations made under Subsection (4).

(6) Where, on an application having been made under Subsection (3), PANGTEL is satisfied that the connection to a telecommunications network, operated by the carrier concerned, of the customer equipment or customer cabling to which the application relates is not a threat to—

- (a) the safety or proper functions of the network; or

- (b) the safety of any person;

PANGTEL shall, by written notice—

- (c) order the carrier to supply the service that is necessary for connection of the customer equipment or customer cabling to the network; and
- (d) inform the applicant that the order has been made.

(7) Where PANGTEL decides not to make an order under Subsection (6), it shall give to the applicant written notice that the application is refused, together with—

- (a) its reasons for the refusal; and
- (b) a statement to the effect that the person may, within 21 days after receiving the notice, apply to PANGTEL for reconsideration of the refusal.

(8) Where, at the end of 30 days after an application for the making of an order under Subsection (6) has been made, PANGTEL has not made such an order, PANGTEL is taken, for the purposes of Section 114—

- (a) to have decided, on the last of the 30 days, not to make such an order; and
- (b) to have informed the person accordingly on that day.

113. ACTION FOR UNAUTHORIZED CONNECTION TO TELECOMMUNICATIONS NETWORK OF CUSTOMER EQUIPMENT OR CUSTOMER CABLING.

(1) Where—

- (a) a person—
 - (i) connects customer equipment to a telecommunications network contrary to Section 93; or
 - (ii) has under his control customer equipment connected to a telecommunications network that was so connected by another person contrary to Section 93; or
 - (iii) has under his control customer equipment connected to a telecommunications network that, contrary to Section 94, has not been disconnected from the network; or
 - (iv) connects customer cabling to a telecommunications network contrary to Section 105; or
 - (v) has under his control customer cabling connected to a telecommunications network that was so connected by another person contrary to Section 105; or

- (vi) has under his control customer cabling connected to a telecommunications network that, contrary to Section 112 has not been disconnected from the network; and
- (b) as a result of—
 - (i) the connection of the customer equipment or customer cabling to the network; or
 - (ii) the customer equipment or customer cabling being used while it was so connected; or
 - (iii) the customer equipment not being disconnected from the network; or
 - (iv) the customer equipment being used after it was required to be disconnected from the network,

damage is caused to the network, or the carrier operating the network suffers a loss or incurs a liability,

the carrier operating the network may apply to the National Court for relief.

(2) The relief that may be granted under Subsection (1) includes an injunction and, at the option of the carrier, either damages or an account of profits.

(3) Section 194 applies to an application under Subsection (1).

Division 4.

Miscellaneous.

114. RECONSIDERATION OF DECISIONS.

(1) An application may be made to PANGTEL for reconsideration of a decision described in Column 1 of the following table:—

TABLE.		
ITEM NO.	COLUMN 1 DECISION	COLUMN 2 APPLICANT
1	The inclusion, under Section 91, of conditions in a permit.	The person who applied for the permit.
2	A refusal to issue a permit under Section 91.	The person who applied for the permit.
3	A decision to vary a permit under Section 90.	The holder of the permit.
4	A decision not to vary a permit where an application for variation has been made under Section 91(2).	The person who applied for the variation.

ITEM NO.	COLUMN 1 DECISION	COLUMN 2 APPLICANT
5	A decision to cancel a permit under Section 95.	The holder of the permit.
6	The inclusion, under Section 101 of conditions in a cabling licence.	The person who applied for the licence.
7	A refusal to issue a cabling under Section 103.	The person who applied for the licence.
8	A decision to vary a cabling licence under Section 102.	The licensee.
9	A decision not to vary a cabling licence where an application for variation has been made under Section 102(3).	The person who applied for the variation.
10	A decision to cancel a cabling licence under Section 108.	The licensee.
11	A decision refusing an application for an order to be made under Section 113	The person who applied for the order under Section 113(3).

(2) An application for reconsideration of a decision described in Column 1 of an item in the table in Subsection (1) may be made by a person described in Column 2 of the same item (in this Section called “**the applicant**”)

(3) An application shall be made within—

- (a) 21 days after the applicant is informed of the decision concerned; or
- (b) where, as a result of a request made by the applicant within 21 days after being informed of the decision, PANGTEL extends the period within which an application for reconsideration of the decision may be made—the extended period granted by PANGTEL for making the application.

(4) An application under Subsection (3) shall be in the form approved by PANGTEL.

(5) The approved form of application under Subsection (3) may provide for verification by statutory declarations of statements in applications.

(6) PANGTEL shall, in reconsidering the decision concerned, give due consideration to any representations made in relation to the application.

(7) Where an application for reconsideration is made, PANGTEL shall reconsider the decision to which the application relates and may—

- (a) affirm the decision; or
- (b) (where applicable) vary the decision; or

- (c) revoke the decision; or
- (d) (where applicable) revoke the decision and substitute a fresh decision.

(8) PANGTEL's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.

(9) PANGTEL shall not, under Subsection (7), vary the decision, or revoke the decision and substitute a fresh decision, in such a way that the decision as varied, or as substituted, could not have been made under the revision under which the original decision was made.

(10) PANGTEL shall give to the applicant written notice stating its decision on the reconsideration, together with a statement of its reasons for its decision.

115. EFFECT ON OPERATION OF OTHER LAWS.

The fact that—

- (a) a permit is in force for the connection of customer equipment to telecommunications network; or
- (b) cabling work has been performed by a licensee;

does not affect the operation of any law that prohibits or regulates the sale, installation, maintenance, use or disposal of the customer equipment or customer cabling, as the case may be.

116. EVIDENCE.

(1) A certificate issued by PANGTEL stating any matter in relation to customer equipment, customer cabling or a permit or cabling licence is *prima facie* evidence of the matter.

(2) Without limiting Subsection (1), the matters that may be certified under that subsection include—

- (a) whether there is in force a permit for the connection to a telecommunications network of particular customer equipment, or customer equipment of the same type; or
- (b) whether a person is a licensee; or
- (c) whether the performance of particular cabling work contravenes conditions included in a particular cabling licence.

(3) A document purporting to be a certificate under Subsection (1) shall, unless the contrary is established, be taken to be a certificate and to have been properly given.

PART XIV. – LICENSING OF CABLE TELEVISION SERVICE.***Division 1.******Licensing of cable television service.*****117. APPLICATION FOR CABLE TELEVISION SERVICE LICENCE.**

(1)¹⁷¹ ¹⁷²A person may apply to the Commission in a form approved by the Commission for a cable television service licence.

(2) The application shall include–

- (a) a detailed description of the applicant’s qualifications including his technical expertise and financial standing and the financial commitment proposed for the implementation of the cable television service, the experience of cable television systems and services operations; and
- (b) detailed explanatory diagrams and supporting text describing the proposed cable television system and service and the proposed location and geographical coverage that the application proposes; and
- (c) payment of the prescribed fee.

118. ISSUE OF CABLE TELEVISION SERVICE LICENCES.

¹⁷³Where an application has been made under Section 117, the Commission may, by notice in writing to the applicant, issue a cable television service licence subject to such conditions as the Commission shall determine including, for example, conditions–

- (a) relating to the geographic area covered by the cable television service; and
- (b) relating to the types of premises in or on which the licensee may install, operate or maintain the cable television system; and
- (c)¹⁷⁴ requiring the cable television system which has been installed by the licensee to be inspected by the Commission or its duly authorized officers or agents whenever the Commission deem it necessary; and
- (d) the structure of the licence fees payable as prescribed.

119. VARIATION OF CABLE TELEVISION SERVICE LICENCE BY THE COMMISSION.

(1)¹⁷⁵ ¹⁷⁶The Commission may, by written notice to the holder of a cable television service licence, vary the said licence.

¹⁷¹ Section 117 Subsection (1) amended by No. 26 of 2002, s. 62.

¹⁷² Section 117 Subsection (1) amended by No. 26 of 2002, s. 62.

¹⁷³ Section 118 Amended by No. 26 of 2002, s. 63.

¹⁷⁴ Section 118 Amended by No. 26 of 2002, s. 63.

(2) The power to vary under Subsection (1) includes the power to—

- (a) vary the conditions of the licence; or
- (b) add further conditions; or
- (c) revoke any of the conditions.

(3)¹⁷⁷ ¹⁷⁸The holder of a cable television service licence may apply in a form approved by the Commission, to vary such licence under this section.

120. ISSUE AND VARIATION OF CABLE TELEVISION SERVICE LICENCE.

(1)¹⁷⁹ ¹⁸⁰The Commission shall issue or vary a cable television service licence only after it is satisfied that—

- (a) the licensee has the necessary qualifications, knowledge and experience and financial strength to perform the work in accordance with the licence; and
- (b) the issue of the licence or its variation would not be contrary to Government Policy.

(2)¹⁸¹ ¹⁸²Where the Commission decides not to issue or vary a licence it shall give to the applicant written notice that the application is refused and such notice shall include the Commission's reasons for the refusal and a statement to the effect that the applicant may within 30 days of receiving the notice apply to the Commission for reconsideration of the refusal.

121. REGISTER OF CABLE TELEVISION SERVICE LICENCES.

¹⁸³The Commission shall maintain a register of cable television service licences and shall ensure that such register is open to public inspection.

122. OFFENCES RELATING TO UNLICENCED TELEVISION CABLE SERVICES.

(1)¹⁸⁴ ¹⁸⁵A person, who knowingly or recklessly performs, erects, or operates a cable television system, for the provision of cable television services, whether on his own behalf or on behalf of a third party, without a licence issued by the Commission, is guilty of an offence.

¹⁷⁵ Section 119 Subsection (1) amended by No. 26 of 2002, s. 64.

¹⁷⁶ Section 119 Subsection (1) amended by No. 26 of 2002, s. 64.

¹⁷⁷ Section 119 Subsection (3) amended by No. 26 of 2002, s. 64.

¹⁷⁸ Section 119 Subsection (3) amended by No. 26 of 2002, s. 64.

¹⁷⁹ Section 120 Subsection (1) amended by No. 26 of 2002, s. 65.

¹⁸⁰ Section 120 Subsection (1) amended by No. 26 of 2002, s. 65.

¹⁸¹ Section 120 Subsection (2) amended by No. 26 of 2002, s. 65; Subsection (2) amended by No. 26 of 2002, s. 65.

¹⁸² Section 120 Subsection (2) amended by No. 26 of 2002, s. 65; Subsection (2) amended by No. 26 of 2002, s. 65.

¹⁸³ Section 121 Amended by No. 26 of 2002, s. 66.

¹⁸⁴ Section 122 Subsection (1) amended by No. 26 of 2002, s. 67.

¹⁸⁵ Section 122 Subsection (1) amended by No. 26 of 2002, s. 67.

Penalty:

- (a) In the case of a natural person, a fine not exceeding K20,000.00 or imprisonment for a term not exceeding five years or both for the first offence or a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 10 years or both for a subsequent offence.
- (b) In the case of a corporate person, a fine not exceeding K50,000.00 for the first offence or a fine not exceeding K100,000.00 or for a subsequent offence.

(2) A licensee, who knowingly or recklessly contravenes the conditions of his licence, is guilty of an offence.

Penalty:

- (a) In the case of a natural person, a fine not exceeding K20,000.00 or imprisonment for a term not exceeding five years or both for the first offence or a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 10 years or both for a subsequent offence.
- (b) In the case of a corporate person, a fine not exceeding K50,000.00 for the first offence or a fine not exceeding K100,000.00 or for a subsequent offence.

123. DEEMED REFUSAL OF CABLE TELEVISION SERVICE LICENCES.

¹⁸⁶Where, at the end of 30 days after an application for the issue of a licence has been made under Section 117, the Commission has not issued the licence, the Commission is taken, for the purposes of Section 120—

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

124. REPRESENTATIONS CONCERNING VARIATION OF CABLE TELEVISION SYSTEM LICENCES.

(1)¹⁸⁷ ¹⁸⁸Before varying a cable television service licence, the Commission shall give to the licensee a notice—

- (a) setting out the text of the proposed variation; and
- (b)¹⁸⁹ inviting the licensee to make representations to the Commission, within 21 days after receiving the notice, concerning the proposed variation.

¹⁸⁶ Section 123 Amended by No. 26 of 2002, s. 68.

¹⁸⁷ Section 124 Subsection (1) amended by No. 26 of 2002, s. 69.

¹⁸⁸ Section 124 Subsection (1) amended by No. 26 of 2002, s. 69.

¹⁸⁹ Section 124 Subsection (1) amended by No. 26 of 2002, s. 69.

(2)^{190 191}The licensee may, within 21 days after receiving the notice, make such representations to the Commission.

(3)^{192 193}the Commission shall give due consideration to any representation so made.

(4) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a variation of a cable television service licence, where requirements of that subsection are substantially complied with.

125. REPRESENTATIONS PRIOR TO CANCELLATION OF CABLE TELEVISION SERVICE LICENCE.

(1)^{194 195}Before cancelling a licence, the Commission shall give to the licensee a written notice—

(a) stating that it proposes to cancel the licence; and

(b)¹⁹⁶ inviting the licensee to make representations to the Commission, within 21 days after receiving the notice, concerning the proposed cancellation.

(2)^{197 198}The licensee may, within 21 days after receiving the notice, make such representations to the Commission.

(3)^{199 200}The Commission shall give due consideration to any representations so made.

(4)^{201 202}Where the Commission decides not to proceed with the cancellation, it shall give to the licensee written notice to that effect.

(5) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a cancellation of a cable television service licence, if the requirements of that subsection are substantially complied with.

126. CANCELLATION OF CABLE TELEVISION SERVICE SYSTEM LICENCES.

(1)^{203 204}Where the Commission is satisfied that a licensee has contravened the conditions of his licence, the Commission may cancel the licence by written notice given to the licensee.

¹⁹⁰ Section 124 Subsection (2) amended by No. 26 of 2002, s. 69.

¹⁹¹ Section 124 Subsection (2) amended by No. 26 of 2002, s. 69.

¹⁹² Section 124 Subsection (3) amended by No. 26 of 2002, s. 69.

¹⁹³ Section 124 Subsection (3) amended by No. 26 of 2002, s. 69.

¹⁹⁴ Section 125 Subsection (1) amended by No. 26 of 2002, s. 70.

¹⁹⁵ Section 125 Subsection (1) amended by No. 26 of 2002, s. 70.

¹⁹⁶ Section 125 Subsection (1) amended by No. 26 of 2002, s. 70.

¹⁹⁷ Section 125 Subsection (2) amended by No. 26 of 2002, s. 70.

¹⁹⁸ Section 125 Subsection (2) amended by No. 26 of 2002, s. 70.

¹⁹⁹ Section 125 Subsection (3) amended by No. 26 of 2002, s. 70.

²⁰⁰ Section 125 Subsection (3) amended by No. 26 of 2002, s. 70.

²⁰¹ Section 125 Subsection (4) amended by No. 26 of 2002, s. 70.

²⁰² Section 125 Subsection (4) amended by No. 26 of 2002, s. 70.

(2)²⁰⁵ ²⁰⁶Where the Commission cancels a licence, it shall include in the notice under Subsection (1)–

(a)²⁰⁷ the Commission’s reasons for the cancellation; and

(b)²⁰⁸ a statement to the effect that the licensee may, within 21 days after receiving the notice, apply to the Commission for reconsideration of the cancellation.

(3) The cancellation of a licence has effect on and from the day on which notice of the cancellation is given to the licensee.

127. SURRENDER OF CABLE TELEVISION SERVICE LICENCES.

²⁰⁹A licensee may, at any time, surrender his licence by giving the Commission written notice that he is surrendering his licence and by returning the licence to the Commission.

128. DIFFICULTIES WITH PROVISIONS OF THIS PART.

Where a difficulty arises in respect of the provisions of this Part, the Head of State, acting on advice, may by regulation–

(a) make such modifications to those provisions as may appear necessary for preventing anomalies; and

(b) make such incidental, consequential and supplementary provisions as may be necessary for the purpose of giving full effect to the provisions of this Part,

and any such modifications or provisions made by the Head of State, acting on advice, have, and shall be deemed always to have had, the same force and effect as if they had been enacted by way of an amendment to this Part, and on publication of the Regulation in the National Gazette, this Part shall be amended accordingly.

Division 1.

Preliminary.

129. DECLARATIONS OF POLICY.

(1) It is the Parliament’s intention–

(a) that all people in Papua New Guinea will have reasonable access, as far as practicable, to standard telephone services; and

²⁰³ Section 126 Subsection (1) amended by No. 26 of 2002, s. 71.

²⁰⁴ Section 126 Subsection (1) amended by No. 26 of 2002, s. 71.

²⁰⁵ Section 126 Subsection (2) amended by No. 26 of 2002, s. 71.

²⁰⁶ Section 126 Subsection (2) amended by No. 26 of 2002, s. 71.

²⁰⁷ Section 126 Subsection (2) amended by No. 26 of 2002, s. 71.

²⁰⁸ Section 126 Subsection (2) amended by No. 26 of 2002, s. 71.

²⁰⁹ Section 127 Amended by No. 26 of 2002, s. 72.

- (b) that the rural development obligations described in Section 130 shall be fulfilled as efficiently and economically as practicable.

(2) This part provides for a policy to be made for the fulfilment of rural development obligations and the compensation of carriers for work done in relation to rural development obligations, whether by payment, adjustment of rights or obligations, or otherwise.

130. RURAL DEVELOPMENT OBLIGATIONS.

(1) The rural development obligations are the obligations—

- (a) to ensure that the standard telephone service becomes reasonably accessible to all people in Papua New Guinea, wherever they reside or carry on business; and
- (b) to supply the standard telephone service to people in Papua New Guinea.

(2) PANGTEL may determine that it is part of the rural development obligations to supply, install and maintain payphones at specified locations in Papua New Guinea.

(3) A determination under Subsection (2) shall be made by notice published in the National Gazette.

Division 2.

Determination of Rural Development Policy.

131. GOVERNMENT POLICY DIRECTIONS ON RURAL DEVELOPMENT OBLIGATIONS.

The Minister shall, after consultation with PANGTEL, give to PANGTEL such direction by way of Government Policy in relation to the rural development obligations as the Minister consider fit which may include, without limitation—

- (a) specifying the areas to which the rural development obligations will apply in each financial year; and
- (b) specifying principles by which the carriers recover the cost of carrying out the rural development obligations whether by payment, adjustment of rights or obligations, or otherwise; and
- (c) specifying a method for collecting a rural development levy (if any); and
- (d) specifying a method of distribution of the Rural Development Fund (if any), to participating carriers; and
- (e) specifying the information to be supplied by participating carriers about expenditure relating to the rural development obligations; and
- (f) setting out the principles for recovery by participating carriers of costs incurred in fulfilling the rural development obligations; and

- (g) specifying procedures for appeals from decisions by PANGTEL relating to the recovery of costs incurred by carriers in carrying out the rural development obligations.

Division 3.

PANGTEL to determine procedure.

132. PANGTEL TO DETERMINE PROCEDURES.

As soon as practicable after receipt of a rural development policy direction made in accordance with Section 131, PANGTEL shall determine procedures for the implementation of the policy direction.

133. VARIATION OF PROCEDURES.

(1) PANGTEL may vary procedures determined under Section 132 from time to time.

(2) Any variation of procedures under Subsection (1) shall be consistent with any direction made under Section 131 in effect at the date on which the variation is made.

134. AVAILABILITY OF PROCEDURES.

PANGTEL shall make available at its offices, and at such other places as PANGTEL shall determine, copies of the procedures determined under Section 132, and of any variations made under Section 133, at such cost as is determined by PANGTEL.

135. PANGTEL MAY DECLARE UNIVERSAL SERVICE CARRIER AND RURAL DEVELOPMENT SERVICE CARRIERS.

(1) PANGTEL may by writing declare a carrier to be universal service carrier for Papua New Guinea for such period as is specified in the declaration.

(2) PANGTEL may by writing declare a carrier to be rural development service carrier for a specified service area for such period as is specified in the declaration.

(3) PANGTEL shall exercise its powers under this Section in such a way that—

- (a) at any particular time, there is only one declaration in force under Subsection (1); and
- (b) no service area in relation to which a declaration is in force under Subsection (2) overlaps (either wholly or in part) with another such area.

136. EFFECT OF DECLARATION: MEANING OF “UNIVERSAL SERVICE CARRIER” AND “RURAL DEVELOPMENT SERVICE CARRIER.”.

(1) The carrier in relation to which a declaration is in force under Section 135(1) is the universal service carrier for Papua New Guinea, except for each service area in relation to which a declaration is in force under Section 135(2).

(2) A carrier in relation to which a declaration is in force under Section 135(2) in relation to a specified service area is the rural development service carrier for that area.

137. PRESCRIBED CARRIER OBLIGATION OF UNIVERSAL SERVICE CARRIER.

(1) For so long as a carrier is the universal service carrier declared under Section 135(1), a general telecommunications licence or public mobile licence held by the carrier is subject to the condition that the carrier shall fulfil the universal service obligation specified in the declaration.

(2) For so long as a carrier is a rural development service carrier declared under Section 135(2) a general telecommunications licence or a public mobile licence held by the carrier is subject to the condition that the carrier shall fulfil rural development obligations for the service area specified in the declaration.

(3) The conditions for which Subsections (1) and (2) respectively provide are prescribed carrier obligations of the carrier that holds the licence.

138. PANGTEL MUST PROPOSE SERVICE AREAS FOR DECLARATION AS FOR EACH YEAR.

(1) Within the first 90 days of each financial year PANGTEL shall give to each universal service carrier a written notice specifying the service areas for which the carrier is the universal service carrier for that financial year.

(2) PANGTEL may consult with each universal service carrier prior to giving a notice under Subsection (1).

(3) Each notice under Subsection (1) shall be published in the National Gazette.

(4) Failure to comply with Subsection (3) shall not affect the validity of any notice given under Subsection (1).

Division 4.

Assessment of liability for levy and entitlement to distribution.

139. PANGTEL TO DETERMINE ENTITLEMENTS.

(1) PANGTEL shall in each financial year determine the entitlement of participating carriers to a distribution from the Fund for that year in accordance with principles of recovery by participating carriers in the direction by the Minister made under Section 131.

(2) PANGTEL shall notify in writing the participating carriers of the entitlements determined by PANGTEL under Subsection (1).

(3) A participating carrier shall be entitled to appeal against its entitlement notified to it under Subsection (2) within 30 days of the date of notification, and the appeal shall be determined in accordance with the procedures for appeal in the direction by the Minister made under Section 131.

140. ASSESSMENTS AND COLLECTION OF LEVY PAYMENTS.

(1) In each financial year PANGTEL shall publish in the National Gazette the rates of contributions assessed by PANGTEL to be payable for that year for each class of persons liable to pay the rural development levy in accordance with the direction by the Minister made under Section 131.

(2) In each financial year PANGTEL shall collect or arrange for the collection of the rural development levy from each person liable to pay the rural development levy in accordance with the direction by the Minister under Section 131.

(3) Rural development levy that is due and payable but has not been paid may be recovered in a court of competent jurisdiction as a debt due to the State.

Division 5.

Disclosure by PANGTEL of information about the basis and methods of an assessment.

141. PUBLIC MAY REQUEST INFORMATION.

(1) A person may request PANGTEL to make available to the person specified, information or documents on the basis of which PANGTEL has made its assessment under Section 140(1) for a financial year.

(2) Subject to Subsection (3), PANGTEL shall comply with a request as provided in Subsection (1).

(3) PANGTEL shall not make available under this section—

- (a) information (other than information prescribed for the purposes of this paragraph)—
 - (i) that was obtained from, or relates to, a carrier; and
 - (ii) the making available of which under this Section can reasonably be expected to cause substantial damage to the carrier's commercial or other interests; or
- (b) information prescribed for the purposes of this paragraph; or
- (c) so much of a document as sets out information of a kind referred to in Paragraph (a) or (b).

142. CARRIER MAY REQUEST INFORMATION THAT IS UNAVAILABLE UNDER SECTION 141.

(1) A carrier may request PANGTEL to make available to it specified information or documents of a kind referred to in Section 141(1) that Section 141(3) prevents PANGTEL from making available to the carrier under Section 141.

(2) Subject to Subsection (3), PANGTEL shall comply with a request as provided for in Subsection (1).

(3) PANGTEL shall not, under this section, make available to a carrier (in this Section called the “**first carrier**”) information, or so much of a document as sets out information—

- (a) that was obtained from, or relates to, another carrier; and
- (b) the making available of which to the first carrier can reasonably be expected to cause substantial damage to the other carrier’s commercial or other interests;

unless PANGTEL is satisfied—

- (c) that the information could be obtained by the first carrier lawfully, and without the other carrier’s consent, from a source other than PANGTEL; or
- (d) that—
 - (i) the first carrier has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, PANGTEL made the assessment concerned; and
 - (ii) the first carrier’s interest in being able to examine that basis and those methods in order to see how its liability to pay levy, or its entitlement to a payment under Section 147, as the case requires, has been assessed outweighs the other carrier’s interest in avoiding the damage referred to in Paragraph (b).

143. HOW PANGTEL TO COMPLY WITH A REQUEST.

(1) PANGTEL may comply with a request by a person under Section 141 or 142 by—

- (a) communicating information to the person in writing or in some other form; or
- (b) making documents available for the inspection by the person or by an employee, agent or professional adviser of the person; or
- (c) giving to the person copies of, extracts from, or summaries of, documents.

(2) In this Section “**document**” includes a part of a document.

Division 6.
Distribution of Fund.

144. RURAL DEVELOPMENT FUND.

There shall be established for the purposes of this Part a trust fund to be called the Rural Development Fund administered by PANGTEL.

145. PAYMENTS INTO FUND.

The Fund shall be held in a trust account to be known as the Rural Development Fund Trust Account and there shall be paid into the Fund—

- (a) amounts of levy paid under this Part; and
- (b) money appropriated by law for the Fund's purposes; and
- (c) interest from the investment of money in the Fund; and
- (d) overpaid amounts of levy under this Part.

146. PURPOSES OF FUND.

The purposes of the Fund are—

- (a) making payments under Section 147; and
- (b) refunding any overpaid amounts of levy; and
- (c) refunding any other amounts paid into the Fund in error; and
- (d) funding PANGTEL for—
 - (i) the cost or expenses incurred by PANGTEL in administering this Part during any period; and
 - (ii) without limiting Subparagraph (i), costs or expenses incurred in connection with recovering levy; and
 - (iii) costs incurred by PANGTEL during the period in collecting, compiling, analysing and publishing information about the operation of this Part.

147. LEVY DISTRIBUTION TO PARTICIPATING CARRIER.

Where all or part of an entitlement granted to a participating carrier has not been paid by the end of the financial year, the amount payable shall, subject to Section 148, be paid to the participating carrier out of the Fund within 60 days of the end of the financial year.

148. LEVY NOT TO BE DISTRIBUTED UNTIL PAID.

No amount is payable under Section 138 in relation to a financial year unless—

s. 148.

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- (a) PANGTEL has published the assessment under Section 140(1) for that financial year; and
- (b) there are sufficient monies in the Fund for the payment of monies payable to the participating carrier.

PART XVI. – PUBLIC INQUIRIES.**149. WHEN INQUIRY MAY HELD.**

²¹⁰Where the Commission considers that it is appropriate and practicable to hold a public inquiry under this Part into any matter relating to the performance or exercise of any of the Commission's functions and powers, the Commission may hold such an inquiry into that matter.

150. INFORMING THE PUBLIC ABOUT AN INQUIRY.

(1)²¹¹ ²¹²Where the Commission intends to hold a public inquiry, it shall publish, in whatever ways it thinks appropriate, notice of–

- (a) the fact that it is holding the inquiry; and
- (b) the period during which the inquiry is to be held; and
- (c) the nature of the matter to which the inquiry relates; and
- (d)²¹³ the period within which, and the form in which, members of the public may make submissions to the Commission about the matter; and
- (e)²¹⁴ the matters that the Commission would like such submissions to deal with.

(2)²¹⁵ ²¹⁶The Commission need not publish at the same time or in the same way notice of all the matters referred to in Subsection (1).

151. DISCUSSION PAPER.

(1)²¹⁷ ²¹⁸As soon as practicable after deciding to hold a public inquiry under Section 149 into any matter, the Commission shall cause to be prepared a discussion paper that–

- (a)²¹⁹ identifies the issues that, in the Commission's opinion, are relevant to that matter; and
- (b)²²⁰ sets out such background material about, and discussion of, those issues as the Commission thinks appropriate.

²¹⁰ Section 149 Amended by No. 26 of 2002, s. 74.

²¹¹ Section 150 Subsection (1) amended by No. 26 of 2002, s. 75.

²¹² Section 150 Subsection (1) amended by No. 26 of 2002, s. 75.

²¹³ Section 150 Subsection (1) amended by No. 26 of 2002, s. 75.

²¹⁴ Section 150 Subsection (1) amended by No. 26 of 2002, s. 75.

²¹⁵ Section 150 Subsection (2) amended by No. 26 of 2002, s. 75.

²¹⁶ Section 150 Subsection (2) amended by No. 26 of 2002, s. 75.

²¹⁷ Section 151 Subsection (1) amended by No. 26 of 2002, s. 76; Subsection (1) amended by No. 26 of 2002, s. 76.

²¹⁸ Section 151 Subsection (1) amended by No. 26 of 2002, s. 76; Subsection (1) amended by No. 26 of 2002, s. 76.

²¹⁹ Section 151 Subsection (1) amended by No. 26 of 2002, s. 76.

²²⁰ Section 151 Subsection (1) amended by No. 26 of 2002, s. 76.

(2)^{221 222}The Commission shall ensure that copies of the discussion paper under Subsection (1) are available for purchase, at a reasonable price, at the Commission's office and at such other places as the Commission may determine.

152. WRITTEN SUBMISSIONS; PROTECTION FROM CIVIL ACTIONS.

(1)^{223 224}The Commission shall provide a reasonable opportunity for any member of the public to make a written submission to the Commission about the matter into which a public inquiry is to be held.

(2)^{225 226}Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to the Commission in connection with a public inquiry under this Part, whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

153. PUBLIC HEARINGS.

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

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

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

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

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

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

²²¹ Section 151 Subsection (2) amended by No. 26 of 2002, s. 76; Subsection (2) amended by No. 26 of 2002, s. 76; Subsection (2) amended by No. 26 of 2002, s. 76.

²²² Section 151 Subsection (2) amended by No. 26 of 2002, s. 76; Subsection (2) amended by No. 26 of 2002, s. 76; Subsection (2) amended by No. 26 of 2002, s. 76.

²²³ Section 152 Subsection (1) amended by No. 26 of 2002, s. 77; Subsection (1) amended by No. 26 of 2002, s. 77.

²²⁴ Section 152 Subsection (1) amended by No. 26 of 2002, s. 77; Subsection (1) amended by No. 26 of 2002, s. 77.

²²⁵ Section 152 Subsection (2) amended by No. 26 of 2002, s. 77.

²²⁶ Section 152 Subsection (2) amended by No. 26 of 2002, s. 77.

²²⁷ Section 153 Substituted by No. 26 of 2002, s. 78.

154. HEARINGS *IN CAMERA*.

²²⁸A hearing or a part of a hearing before the Commission may, at the request of any interested person, be held in camera where that person establishes to the satisfaction of the Commission, or the Commission determines, that the circumstances of the case so require.

²²⁸ Section 154 Amended by No. 26 of 2002, s. 79.

PART XVII. – INVESTIGATIONS.**155. MATTERS THE COMMISSION AND PANGTEL MAY INVESTIGATE.**

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

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

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

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

156. COMPLAINTS.

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

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

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

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

157. INVESTIGATIONS.

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

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

²²⁹ Section 155 Substituted by No. 26 of 2002, s. 80.

²³⁰ Section 156 Substituted by No. 26 of 2002, s. 80.

²³¹ Section 157 Substituted by No. 26 of 2002, s. 80.

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

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

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

(4) The Commission or PANGTEL shall investigate –

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

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

158²³². [REPEALED.]

159. CONDUCT OF INVESTIGATIONS.

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

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

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

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

160. COMPLAINANT AND CERTAIN OTHER PERSONS TO BE INFORMED OF VARIOUS MATTERS.

²³⁴Where the Commission or PANGTEL decides not to investigate, or not to investigate further, a matter to which a complaint relates, it shall, as soon as practicable and in such manner as it thinks fit, inform the complainant and the respondent of the decision of the reasons for the decision.

²³² Section 158 Repealed by No. 26 of 2002, s. 80.

²³³ Section 159 Substituted by No. 26 of 2002, s. 80.

²³⁴ Section 160 Substituted by No. 26 of 2002, s. 80.

161²³⁵. [REPEALED.]

162. REPORTS ON INVESTIGATIONS.

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

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

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

(4) A report under this Section shall cover—

- (a) the conduct of the investigation concerned; and
- (b) any findings the Commission or PANGTEL, as the case may be, has made as a result of the investigation.

163 - 164²³⁷. [REPEALED.]

163. THE COMMISSION MAY DIRECT CARRIER TO REMEDY BREACH OF LICENCE CONDITION.

(1)²³⁸ ²³⁹This Section applies where, as a result of an investigation under Section 157, the Commission is satisfied that a carrier has contravened a condition of a general telecommunications licence or public mobile licence held by the carrier.

(2)²⁴⁰ ²⁴¹Where the Commission is satisfied that the contravention consists of failure to do an act required by the condition, the Commission may direct the carrier in writing to do that act.

(3)²⁴² ²⁴³Where the Commission is satisfied that the contravention consists of engaging in conduct prohibited by the condition, the Commission may direct the carrier in writing to stop engaging in that conduct, or not to engage in it again, or both, as the case requires.

(4)²⁴⁴ ²⁴⁵The Commission may give a direction under Section (3) whether or not it appears that the carrier intends to continue to engage in that conduct or to engage in it again.

²³⁵ Section 161 Repealed by No. 26 of 2002, s. 80.

²³⁶ Section 162 Substituted by No. 26 of 2002, s. 80.

²³⁷ Section 162 Substituted by No. 26 of 2002, s. 80.

²³⁸ Section 163 Subsection (1) amended by No. 26 of 2002, s. 81.

²³⁹ Section 163 Subsection (1) amended by No. 26 of 2002, s. 81.

²⁴⁰ Section 163 Subsection (2) amended by No. 26 of 2002, s. 81.

²⁴¹ Section 163 Subsection (2) amended by No. 26 of 2002, s. 81.

²⁴² Section 163 Subsection (3) amended by No. 26 of 2002, s. 81.

²⁴³ Section 163 Subsection (3) amended by No. 26 of 2002, s. 81.

²⁴⁴ Section 163 Subsection (4) amended by No. 26 of 2002, s. 81.

(5)²⁴⁶ ²⁴⁷A direction under Subsection (2) or (3) may also direct the carrier to do specified acts that the Commission thinks necessary to help remedy the contravention.

164. THE COMMISSION MAY DIRECT CARRIER TO PRESCRIBED CARRIER OBLIGATION.

²⁴⁸Where, as a result of an investigation under Section 157, the Commission is satisfied that a carrier has unreasonably contravened a prescribed carrier obligation, the Commission may direct the carrier in writing to comply with that obligation, in relation to a specified service or services, in a manner specified in the direction.

165. PROTECTION FROM CIVIL ACTIONS.

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:—

- (a) the making of a complaint under Section 156;
- (b) the making of a statement to, or the giving of a document or information to PANGTEL in connection with an investigation under Section 157;

(c - d)²⁴⁹ [Repealed.]

(2)²⁵⁰ [Repealed.]

166. PUBLIC REGISTER OF INFORMATION ABOUT INVESTIGATIONS.

(1)²⁵¹ ²⁵²The Commission and PANGTEL shall keep a register of its investigations under this Part.

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

(3) For each complaint under Section 156, the register shall set out the following:—

- (a) the name and address of the complainant;
- (b) the name of the respondent;
- (c) a short summary of the nature of the complaint;
- (d)²⁵³ where the Commission or PANGTEL has decided to investigate the complaint—

²⁴⁵ Section 163 Subsection (4) amended by No. 26 of 2002, s. 81.

²⁴⁶ Section 163 Subsection (5) amended by No. 26 of 2002, s. 81.

²⁴⁷ Section 163 Subsection (5) amended by No. 26 of 2002, s. 81.

²⁴⁸ Section 164 Amended by No. 26 of 2002, s. 82.

²⁴⁹ Section 164 Amended by No. 26 of 2002, s. 82.

²⁵⁰ Section 165 Subsection (2) omitted by No. 26 of 2002, s. 83.

²⁵¹ Section 166 Subsection (1) substituted by No. 26 of 2002, s. 84.

²⁵² Section 166 Subsection (1) substituted by No. 26 of 2002, s. 84.

²⁵³ Section 166 Subsection (3) amended by No. 26 of 2002, s. 84.

- (i) the date on which the investigation began; and
 - (ii) the date on which the investigation ended; and
 - (iii) a summary of the outcome of the investigation;
- (e)²⁵⁴ where the Commission or PANGTEL has decided not to investigate the complaint—that the Commission or PANGTEL has so decided.

(4)²⁵⁵ ²⁵⁶For each matter that the Commission or PANGTEL investigates otherwise than because of a complaint, the register shall set out the following:—

- (a) a short summary of the nature of the matter;
- (b) the names of the persons (if any) to whom the matter relates;
- (c) the date on which the investigation began;
- (d) the date on which the investigation ended;
- (e) a summary of the outcome, of the investigation.

(5)²⁵⁷ ²⁵⁸As soon as practicable after it has enough information to enter in the register all of the matters that a provision of Subsection (3) or (4) requires the register to set out, the Commission or PANGTEL, as the case may be, shall so enter that matter.

²⁵⁴ Section 166 Subsection (3) amended by No. 26 of 2002, s. 84; Subsection (3) amended by No. 26 of 2002, s. 84.

²⁵⁵ Section 166 Subsection (4) amended by No. 26 of 2002, s. 84.

²⁵⁶ Section 166 Subsection (4) amended by No. 26 of 2002, s. 84.

²⁵⁷ Section 166 Subsection (5) substituted by No. 26 of 2002, s. 84.

²⁵⁸ Section 166 Subsection (5) substituted by No. 26 of 2002, s. 84.

PART XVIII. – OFFENCES AND PENALTIES.

167. ESTABLISHING A TELECOMMUNICATION NETWORK, ETC, WITHOUT A LICENCE.

A person, who establishes a telecommunications network or supplies a telecommunication service without a licence, is guilty of an indictable offence.

Penalty:

- (a) in the case of an individual, to a fine not exceeding K1,000,000.00 for a first offence or K5,000,000.00 for a subsequent offence.
- (b) in the case of a corporate body, to a fine not exceeding K2,000,000.00 for the first offence, or K10,000,000.00 for a subsequent offence.

168. FRAUDULENT USE OF TELECOMMUNICATIONS NETWORK.

A person, who dishonestly obtains a telecommunications service with intent to avoid payment of any charge applicable to the provision of that service is guilty of an indictable offence.

Penalty: A fine not exceeding K500,000.00 or imprisonment for a term not exceeding 15 years, or both.

169. IMPROPER USE OF TELECOMMUNICATIONS NETWORK.

A person who sends, by means of a telecommunications service a message or other matter—

- (a) that is offensive or of an indecent, obscene or menacing character; or
- (b) for the purpose of causing annoyance, inconvenience or needless anxiety to another person, that he knows to be false or persistently makes use for that purpose of a telecommunications service,

is guilty of an indictable offence.

Penalty: A fine exceeding K20,000.00 or to imprisonment for a term not exceeding 15 years.

170. MODIFICATION ETC, OF MESSAGE.

A person engaged in supplying a telecommunications service, who otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that network, is guilty of an indictable offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 10 years or both.

171. INTERCEPTION AND DISCLOSURE OF MESSAGES.

(1) A person engaged in supplying a telecommunications service, who otherwise than in the course of his duty—

- (a) intentionally intercepts a message sent by means of that service; or
- (b) where a message so sent has been intercepted, intentionally discloses to any person contents of any statement or account specifying the telecommunications services provided for any other person by means of that service,

is guilty of an indictable offence.

(2) A person engaged in supplying a telecommunications service, who otherwise than in the course of his duty intentionally discloses to any person the contents of any statement of account specifying the telecommunications services provided for any other person by means of that service, is guilty of an indictable offence.

(3)²⁵⁹ ²⁶⁰Subsection (1) shall not apply to anything done in obedience to an order of the National Court; and Paragraph (b) of that subsection and Subsection (2) shall not apply to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings.

(4) A person guilty of an indictable offence under this Section shall be liable on summary conviction, to a fine not exceeding K10,000.00.

172. PROTECTION OF TELECOMMUNICATIONS INSTALLATIONS.

A 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 installation or plant or any part thereof belonging to a licensee, is guilty of an offence.

Penalty: A fine not exceeding K20,000.00 or to imprisonment for a term not exceeding 15 years or both.

173. CRIMINAL LIABILITY OF DIRECTORS, OFFICERS ETC, OF BODIES CORPORATE.

Where a corporation commits a crime, an indictable offence or an offence under this Act, any director, officer, employee or agent of the corporation who directed, authorized, assented to or acquiesced or participated in the commission of the crime, the indictable offence or the offence shall be a party to and guilty of the crime, the indictable offence or the offence, and shall be liable to the punishment provided for

²⁵⁹ Section 171 Subsection (3) amended by No. 26 of 2002, s. 85.

²⁶⁰ Section 171 Subsection (3) amended by No. 26 of 2002, s. 85.

that crime, indictable offence or offence in respect of an individual, whether or not the corporation has been prosecuted or convicted.

174. GENERAL PENALTIES.

A person guilty of a crime, an indictable offence or an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding K10,000.00 or to imprisonment for a term not exceeding 10 years or to both.

175. CONSENT FOR PROSECUTION UNDER ACT.

²⁶¹With the consent of the Public Prosecutor, any crimes, indictable offences or offences under this Act may be prosecuted by such staff or employee of the Commission or persons as the Commission may designate.

176²⁶². [REPEALED.]

177. PROSECUTIONS UNDER OTHER LAWS.

Nothing in this Act shall prevent any person from being prosecuted under any other written law for any act or omission which constitutes a crime, an indictable offence or an offence under this Act or any regulations made under this Act, or from being liable under that other written law to any punishment or penalty higher or other than that prescribed by this Act or the regulations, but no person shall be punished more than once for the same crime, an indictable offence or offence.

²⁶¹ Section 175 Amended by No. 26 of 2002, s. 86.

²⁶² Section 176 Repealed by No. 26 of 2002, s. 87.

PART XIX. – ENFORCEMENT.***Division 1.******Commission directions and conditions of licences.*****178. ENFORCEMENT OF COMMISSION DIRECTIONS AND CONDITIONS.**

(1) This Section applies where a licensee—

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

contravention of—

- (c)²⁶³ a Commission direction; or
- (d) a condition of a licence.

(2)²⁶⁴ ²⁶⁵The Commission may apply to the National Court for—

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

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

(4)²⁶⁶ ²⁶⁷Where the Commission applies under this Section for an injunction, the National Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

179. PECUNIARY PENALTIES FOR CONTRAVENTIONS OF COMMISSION DIRECTIONS OR CONDITIONS.

(1)²⁶⁸ ²⁶⁹Where the National Court is satisfied that a licensee has contravened a the Commission direction or a condition of a licence, the Court may order the licensee to pay to the Commission such pecuniary penalty (not exceeding K2,000,000.00 in respect of each contravention) as the Court determines to be appropriate having regard to all relevant matters including—

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

²⁶³ Section 178 Subsection (1) amended by No. 26 of 2002, s. 89.

²⁶⁴ Section 178 Subsection (2) substituted by No. 26 of 2002, s. 89.

²⁶⁵ Section 178 Subsection (2) substituted by No. 26 of 2002, s. 89.

²⁶⁶ Section 178 Subsection (4) amended by No. 26 of 2002, s. 89.

²⁶⁷ Section 178 Subsection (4) amended by No. 26 of 2002, s. 89.

²⁶⁸ Section 179 Subsection (1) amended by No. 26 of 2002, s. 90.

²⁶⁹ Section 179 Subsection (1) amended by No. 26 of 2002, s. 90.

(2) Where conduct constitutes a contravention of two or more directions or of two or more conditions of a licence, a proceeding may be instituted under this Section against a carrier in relation to the contravention of any one or more of the directions or any one or more of the conditions, but a carrier is not liable to more than one pecuniary penalty under this Section in respect of the same conduct.

180. CIVIL ACTION FOR RECOVERY OF PECUNIARY PENALTIES.

(1)²⁷⁰ ²⁷¹The Commission may apply to the National Court to recover on behalf of the State a pecuniary penalty referred to in Section 179.

(2) A proceeding under Subsection (1) may be commenced within six years after the contravention of the direction concerned.

181. REMEDIES MAY BE PURSUED AT THE SAME TIME.

(1) Nothing in Section 178 prevents the recovery of a pecuniary penalty under Section 180.

(2) Nothing in Section 179 prevents the making of an application, or the granting of relief, under Section 178.

182. CRIMINAL PROCEEDINGS NOT BE BROUGHT FOR CONTRAVENTIONS OF THE COMMISSION DIRECTIONS OR CONDITIONS.

²⁷²Criminal proceedings do not lie against a carrier merely because the carrier has contravened a direction given by the Commission or a condition of a licence.

Division 1A.

Review of Commission Decisions.

182A. REVIEW OF DECISIONS BY COMMISSION.

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

- (a) by an applicant for the issue or variation of the terms or conditions of a licence under Part VI, or for agreement to the transfer of a licence under Section 59, or for review of the decision of the Commission to refuse the application for the issue or variation of the terms or conditions of the licence or the transfer of the licence; or
- (b) by a carrier for review of a decision of the Commission under Part VI to suspend or revoke the carrier's licence or to vary the terms or conditions of the carrier's licence; or

²⁷⁰ Section 180 Subsection (1) amended by No. 26 of 2002, s. 91.

²⁷¹ Section 180 Subsection (1) amended by No. 26 of 2002, s. 91.

²⁷² Section 182 Amended by No. 26 of 2002, s. 92.

²⁷³ Section 182A of Part XIX Inserted by No. 26 of 2002, s. 93.

- (c) by a carrier to whom a direction has been given under this Act by the Commission for review of the decision to give the direction; or
- (d) by a carrier to which a regulatory contract applies of a decision of the Commission to issue a licence under Part VI that the carrier believes is inconsistent with the requirements of Section 55; or
- (e) by a carrier for review of a decision by the Commission under Part XI.

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

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

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

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

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

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

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

182B. MINISTER'S POWERS TO INTERVENE.

²⁷⁴The Minister may intervene, personally or by counsel or other representative, in a review under this Part for the purpose of introducing evidence, or make submissions, on any question relevant to the public interest.

²⁷⁴ Section 182B of Part XIX Inserted by No. 26 of 2002, s. 93.

Division 2.***Powers of entry, search and seizure by PANGTEL.*****183. APPOINTMENT OF INSPECTORS.**

²⁷⁵The Chairman may, by signed writing, appoint members of the staff of PANGTEL or such other persons as PANGTEL shall determine to be PANGTEL inspectors for the purposes of this Act.

184. IDENTITY CARD.

(1)^{276 277}The Chairman shall cause to be issued to each person appointed under Section 183 an identity card that specifies the name and appointment of the person and to which is attached a recent photograph of the person.

(2) A person, appointed under Section 183, who, upon ceasing to be an inspector, fails, without reasonable excuse, to return to the Chairman the identity card issued to him under this section, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months or both.

185. SEARCHES TO MONITOR COMPLIANCE WITH ACT ETC.

(1) Subject to Subsections (2) and (3), an inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether Divisions XIII.1 and 2 have been complied with, enter, at any time during the day or night, any premises that the inspector has reasonable cause to believe are premises to which this Section applies and—

- (a) search the premises; or
- (b) inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises; or
- (c) inspect any book, record or document kept at the premises; or
- (d) remove, or make copies of, any such book, record or document.

(2) An inspector may not, under Subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.

(3) An inspector is not entitled to exercise any powers under Subsection (1) in relation to premises where—

- (a) the occupier of the premises has required the inspector to produce his identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

²⁷⁵ Section 183 Amended by No. 26 of 2002, s. 95.

²⁷⁶ Section 184 Subsection (1) amended by No. 26 of 2002, s. 96.

²⁷⁷ Section 184 Subsection (1) amended by No. 26 of 2002, s. 96.

- (4) This Section applies to premises at which—
 - (a) activities that are the subject of regulation under Division XIII.1 or 2 are engaged in; or
 - (b) records relating to any such activities are kept.

186. OFFENCE-RELATED SEARCHES AND SEIZURES.

(1) Where an inspector has reasonable grounds for suspecting that there may be on or in any premises a particular thing that may afford evidence as to the commission of an offence to which this Section applies, the inspector may—

- (a) with the consent of the occupier of the premises; or
- (b) under a warrant issued under Subsection (2);

enter the premises and—

- (c) search the premises for the thing; and
- (d) where the inspector finds the thing on or in the premises—seize the thing.

(2) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be on or in any premises a particular thing that may afford evidence as to the commission of an offence to which this Section applies and the information sets out those grounds, the magistrate may issue a search warrant in accordance with the form prescribed for the purposes of this subsection authorizing an inspector named in the warrant, with such assistance, and by such force, as are necessary and reasonable, to enter the premises and exercise the powers referred to in Subsections (1)(c) and (d) in respect of the thing.

(3) A Magistrate shall not issue a warrant under Subsection (2) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) There shall be stated in a warrant issued under Subsection (2)—

- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry, search and seizure are authorized; and
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night; and
- (c) a description of the kind of things to be seized; and

(d) a day, not being later than one week after the day of issue of the warrant, upon which the warrant ceases to have effect.

(5) Where in the course of searching, under a warrant issued under this section, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes, on reasonable grounds, to be—

- (a) a thing that will afford evidence as to the commission of the offence, although not the thing specified in the warrant; or
- (b) a thing that will afford evidence as to the commission of another offence to which this Section applies,

and the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or another offence, the warrant is taken to authorize the inspector to seize that thing.

(6) Where an inspector seizes any thing under this section, the inspector may retain the thing until the end of 90 days after the seizure or, where proceedings for an offence to which this Section applies in respect of which the thing may afford evidence are brought within that period, until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

(7) Any thing seized under this Section shall be forfeited to the State and shall be dealt with in such manner as PANGTEL considers appropriate.

(8) In this section—

“offence to which this Section applies” means—

- (a) an offence against Division XIII.1 or 2; or
- (b) an offence against any other Act;

being an offence that relates to an offence against Division XIII.1 or 2.

187. WARRANTS MAY BE GRANTED BY TELEPHONE.

(1) Where, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may apply for a warrant under Section 186(2), by telephone, in accordance with this section.

(2) Before applying for a warrant under Subsection (1), an inspector shall prepare an information of a kind referred to in Section 186(2) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, apply before the information has been sworn.

(3) Where a Magistrate to whom an application under Subsection (1) is made is satisfied—

- (a) after having considered the terms of the information prepared in accordance with Subsection (2); and

- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought,

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would have issued under Section 186 if the application had been made in accordance with that section.

- (4) Where a Magistrate signs a warrant under Subsection (3)–

- (a) the Magistrate shall notify the inspector of the terms of the warrant and the date on which and the time at which it was signed, and write on it the reasons for the granting of the warrant; and
- (b) the inspector shall complete a form of warrant in the terms notified to the inspector by the Magistrate and write on it the name of the Magistrate and the date on which and the time at which the warrant was signed.

(5) Where an inspector completes a form of warrant in accordance with Subsection (4), the inspector shall, not later than the day after the date of expiry or execution, whichever is the earlier, of the warrant send to the Magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.

(6) Upon receiving the documents referred to in Subsection (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information where the application for the warrant had been made in accordance with Section 186.

(7) A form of warrant duly completed by an inspector in accordance with Subsection (4) is, where it is in accordance with the terms of the warrant signed by the Magistrate, authority for any entry, search or seizure that the warrant so signed authorizes.

(8) Where it is material, in any proceedings, for a court to be satisfied that any entry, search or seizure was authorized in accordance with this section, and the warrant signed by a Magistrate in accordance with this section, authorizing the entry, search or seizure is not produced in evidence, the court shall assume, unless the contrary is proved, that the entry, search or seizure was not authorized by such a warrant.

188. POWER TO REQUIRE INFORMATION ETC.

(1) Subject to Subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of ascertaining whether Division XIII.1 and 2 have been complied with, require a person to answer any persons put by the inspector and to produce any books, records or documents requested by the inspector.

(2) An inspector is not entitled to make a requirement of a person under Subsection (1) unless the inspector produces his identity card for inspection by the person.

(3) A person who, without reasonable excuse, (the burden of proof of which lies on him) refuses or fails to comply with a requirement made of the person under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding 5 years or both.

189. RETENTION OF BOOKS, RECORDS AND DOCUMENTS.

²⁷⁸Where an inspector removes a book, record or document from the premises under Section 185(1) or seizes a book, record or document under Section 186 or a person produces a book record or document to an inspector in accordance with a requirement under Section 188(1)–

- (a)²⁷⁹ the inspector may retain possession of the book, record or document for such period as is necessary and reasonable for the purpose of ascertaining whether Division XIII.1 and 2 have been complied with; and
- (b) during that period the inspector shall permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document at all reasonable times.

²⁷⁸ Section 189 Amended by No. 26 of 2002, s. 97.

²⁷⁹ Section 189 Amended by No. 26 of 2002, s. 97.

PART XX. – MISCELLANEOUS.**190. NATURE OF UNENFORCEABILITY OF AGREEMENTS.**

(1) Where an agreement, or a provision of an agreement, is unenforceable because of a provision of this Act, a party to the agreement is not entitled, as against any other party—

- (a) to enforce the agreement or provision, as the case may be, whether directly or indirectly; or
- (b) to rely on the agreement or provision, as the case may be, whether directly or indirectly and whether by way of defence or otherwise.

(2) A party to an agreement to which Subsection (1) applies is not entitled to recover by any means (including, for example, set-off, a quasi-contractual claim or a claim for a restitutionary remedy) any amount that, but for this section, another party would have been liable to pay to the first mentioned party under or in connection with the agreement or provision, as the case may be.

191. REVIEW OF DECISIONS BY NATIONAL COURT.

(1) An application may be made to the National Court for the review of a decision under Section 114 reconsidering a decision of PANGTEL under Part XIII.

(2) Where, at the end of 30 days after an application for the reconsideration of a decision of PANGTEL is made under Section 114, PANGTEL has not informed the applicant of its decision on the reconsideration, PANGTEL is taken, for the purposes of this section—

- (a) to have decided, on the last day of the 30 days, to affirm the decision in respect of which the application for reconsideration was made; and
- (b) to have informed the applicant accordingly on that day.

(3) Where, at the end of 14 days after a request has been made under Section 114 for an extension of the period within which an application for reconsideration may be made under Section 114(3), as the case may be, PANGTEL has not informed the person who made the request of its decision whether to grant an extension of the period, PANGTEL is taken, for the purposes of this section—

- (a) to have decided, on the last day of the 14 days, to refuse to grant an extension to the period; and
- (b) to have informed the person accordingly on that day.

192. STATEMENT TO ACCOMPANY NOTIFICATION OF DECISION.

(1) Where a decision of a kind referred to in Section 191(1) is made and a notice in writing of the decision is given to a person whose interests are affected by the decision, the notice shall include—

- (a) a statement to the effect that application may be made to the National Court for review of the decision; and
- (b) a statement to the effect that a person who is entitled to apply to the National Court for the review of a decision may request a statement that includes reasons for the decision.

(2) A contravention of Subsection (1) in relation to a decision does not affect the validity of the decision.

193. THE COMMISSION TO REVIEW AND REPORT TO MINISTER ON COMPETITIVE SAFEGUARDS AND CARRIER PERFORMANCE.

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

- (a) matters relating to the operation of Parts V, VI, IX and XI; and
- (b) such other matters relating to competition in the telecommunications industry as the Commission thinks appropriate.

(2) The Commission shall review, and report to the Minister on, carrier performance, including in relation to any carrier—

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

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

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

194. NATIONAL COURT POWERS RELATING TO THE INJUNCTIONS.

(1) On an application to which this Section applies because of another provision of this Act, the National Court may, if in its opinion it is desirable to do so, grant an interim injunction pending determination of the application.

²⁸⁰ Section 193 Substituted by No. 26 of 2002, s. 98.

(2) The National Court's power to grant under this Act an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in such conduct; and
- (b) whether or not the person has previously engaged in such conduct; and
- (c) whether or not there is imminent danger of substantial damage to any person where the first-mentioned person engages in such conduct.

(3) The National Court's power to grant under this Act an injunction requiring a person to do an act may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that; and
- (b) whether or not the person has previously refused or failed to do that act; and
- (c) whether or not there is imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act.

195. PANGTEL MAY OBTAIN INFORMATION AND DOCUMENTS FROM CARRIERS.

(1) Where PANGTEL has reason to believe that a carrier has information or a document that is relevant to the performance of any of PANGTEL's functions or the exercise of any of its powers, PANGTEL may by written notice given to the carrier, direct the carrier, within the time specified in the notice, to give the information to PANGTEL in writing, or to produce the document to PANGTEL, as the case requires.

(2) A person, who fails, neglects or refuses to comply with a notice under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

(3) A person, who, in purported compliance with such a notice, knowingly gives information that is false or misleading, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding 2 years.

196. PANGTEL MAY OBTAIN INFORMATION AND DOCUMENTS FROM PERSONS OTHER THAN CARRIERS.

(1) Where PANGTEL has reason to believe that a person other than a carrier has information or a document that is relevant to the performance of any of PANGTEL's functions or the exercise of any of its powers, PANGTEL may by written notice given to the person, require the person, within the time specified in the notice, to give the information to PANGTEL in writing, or to produce the document to PANGTEL, as the case requires.

(2) A person, who fails, neglects or refuses to comply with a notice under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years or both.

(3) A person, who, in purported compliance with such a notice, knowingly gives information that is false or misleading, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years or both.

197. PERSON TO USE PROTECTED NAME OR PROTECTED SYMBOL.

(1) A person, who without the prior written consent of PANGTEL—

- (a) uses in relation to a business, trade, profession or occupation; or
- (b) uses as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or
- (c) applies, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let or hire; or
- (d) uses in relation to—
 - (i) goods or services; or
 - (ii) the promotion, by any means, of supply or use of goods or services,

either—

- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
- (f) the protected symbol, or a symbol so closely resembling the protected symbol as to be likely to be mistaken for it,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for at term not exceeding two years or both.

(2) Nothing in Subsection (1) limits anything else in that subsection.

(3) Nothing in Subsection (1), so far as it applies in relation to a protected name or in relation to the protected symbol, affects rights conferred by law on a person in relation to—

- (a) a trade mark that is registered; or
- (b) a design that is registered,

under the relevant Acts.

(4) In this section—

“**protected name**” means—

(a) “PANGTEL”; or

(b)²⁸¹ “Papua New Guinea Radiocommunications and Telecommunications Technical Authority”;

“**protected symbol**” means the official symbol of PANGTEL, the design of which is set out in the regulations.

198. CONSULTANTS.

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

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

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

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

199²⁸³. [REPEALED.]

200. DELEGATION.

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

(2) A delegation under Subsection (1) –

(a) shall be in writing; and

(b) may be subject to such conditions or restrictions as are specified in the instrument of delegation; and

(c) is revocable at will by resolution of the Commission in writing; and

(d) does not affect or prevent the performance of a function or the exercise of a power by the Commission.

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

(a) a member; or

²⁸¹ Section 197 Subsection (4) amended by No. 26 of 2002, s. 99.

²⁸² Section 198 Substituted by No. 26 of 2002, s. 100.

²⁸³ Section 199 Repealed by No. 26 of 2002, s. 100.

²⁸⁴ Section 200 Substituted by No. 26 of 2002, s. 100.

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

201²⁸⁵. [REPEALED.]

201. SERVICE OF NOTICES.

(1) Unless otherwise expressly provided in this Act, any notice, order or document required or authorized by this Act or any regulations made thereunder to be given or served on any person, may be served on the person concerned—

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

(2) Any notice, order, or document sent by registered post to any person in accordance with Subsection (1) shall be deemed to be duly served on the person to whom the letter is addressed at the time when the letter would, in the ordinary course of post, be delivered and in proving service of the same it shall be sufficient to prove that the envelope containing the notice, order, or document was properly addressed, stamped and posted by registered post.

202. REGULATIONS.

(1) The Head of State may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may make provision for fees and for penalties by way of a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 15 years or both for offences against the regulations.

²⁸⁵ Section 201 Repealed by No. 26 of 2002, s. 100.

s. 202.

Telecommunications 1996

Office of Legislative Counsel, PNG