

ARTICLE 19

# Somalia: Draft Communications Act

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March 2012

Legal analysis



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# About the Article 19 Law Programme

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The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this analysis further, please contact Barbora Bukovska, Senior Director for Law at [Barbora@article19.org](mailto:Barbora@article19.org). Additionally, if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org) or call us at +44 20 7324 2500.

# Introduction

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On 22 March 2012, the Council of Ministers of the Transitional Federal Government of Somalia (TFG) adopted the Communications Act 2012,<sup>1</sup> a major piece of legislation intended to lay the groundwork for regulation of both the telecommunications industry and broadcasting sector in Somalia. The adoption, which was unanimous, followed a drafting process managed by the Ministry of Information, Posts and Telecommunications, which benefited from input from national and international experts and a public consultation process. A central objective of the Act is the establishment of a converged regulatory body, the National Communications Commission (NCC). The Act takes a framework approach; it goes into some detail regarding the powers and procedures of the NCC, but leaves many of the substantive rules governing the telecommunications and broadcasting sectors to be elaborated in subsequent laws or regulations adopted by the NCC.

ARTICLE 19 welcomes the adoption of the Act as well the process followed in reaching this point. The TFG expressed a commitment to adhere to international standards and this intention is clearly in evidence in many parts of the Act. Particularly notable are the strong guarantees for transparency in the NCC's operations, which set a good example for the region and indeed the world at large. At the same time, ARTICLE 19 considers that in spite of the many positive features, the Act also has a number of significant weaknesses, particularly in terms of the safeguards for the NCC's independence. In this analysis, ARTICLE 19 provides a brief assessment of the Act, focusing on those parts relevant to the establishment and functioning of the NCC and the regulation of broadcasting.

At the same time, ARTICLE 19 regrets that the process of drafting of this important piece of legislation was conducted without broad and extensive consultations with the stakeholders in the country. It has been reported that the drafting process has not been transparent and the possibility of the stakeholders' input and views has been extremely limited. Additionally, the draft version of the Act has allegedly not been publically available and important stakeholders have not been able to contribute to the discussion on the text of the Act. ARTICLE 19 observes that the lack of such process has led to criticism of the draft Act as such and questions of its legitimacy.

Therefore, ARTICLE 19 suggests that these issues should be addressed prior the draft Act being discussed and approved by the Parliament. Important stakeholders, such as telecommunication industry, journalists and civil society, should be consulted in this process, including those living outside of the capital, and should be given sufficient opportunity to raise their concerns and suggestions about the Act.

The ARTICLE 19's analysis is based on international standards on freedom of expression, in particular the standards set Article 19 of the International Covenant on Civil and Political Rights, Article 9 of the African Charter on Human and Peoples' Rights, and the Declaration of

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<sup>1</sup> The text of the Act is reproduced in the Annex to this analysis.

Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights.

### **Summary of recommendations**

- The process of finalizing the Communications Act prior to its approval in the Parliament should be inclusive and important stakeholders should be given an opportunity to comment and input to the Communication Act.
- The Communications Act should contain a specific and explicit guarantee of the NCC's institutional autonomy and independence, prohibiting all persons and entities from influencing the NCC in the discharge of its duties or from interfering with its activities, except as specifically permitted by the Act or legislation adopted pursuant to it.
- The Communications Act should make the promotion of diversity and the availability of a wide range of information and ideas explicit objectives of broadcast regulation by the NCC.
- Diversity should be defined as including pluralism of broadcasting organisations, of ownership of those organisations, and of voices, viewpoints and languages within broadcast programming as a whole
- The President and Council of Ministers should play no role in the selection of Commissioners. Nominations should be solicited from civil society, professional organisations or the public at large, and appointments made by a qualified majority of Parliament, after an open process allowing for public comment.
- The NCC's membership should, as far as possible, represent a broad cross-section of Somali society.
- Employees of political parties, civil servants and persons who hold a position in or have significant direct or indirect financial interests in the broadcasting or telecommunications sector should not be eligible to serve on the NCC.
- Commissioners should be limited to a maximum of two terms.
- The Act should allow Commissioners to be removed based on loss of any of the requirements for appointment.
- Decisions to remove a Commissioner should be subject to judicial review.
- The NCC should be able to accept gifts, loans, grants and other contributions from outside sources only if such funding is not inconsistent with the objectives, functions and independence of the NCC.
- The annual report which the NCC produces pursuant to Sec. 313 should be published on its website.
- Parliamentary approval should not be required for the NCC's budget.
- The NCC should be made responsible for the development, following the open and participatory process established Sections 331-334 of the Act, of a frequency plan for those frequencies allocated for broadcasting. That plan should ensure that the available frequencies are shared equitably and in the public interest among the three tiers of broadcasting (public, commercial and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national, regional and local).
- Decisions whether to grant a licence should be based on objective criteria set out in advance.
- A schedule should be set out in advance establishing the duration of different types of broadcasting licences.
- The presumption of licence renewal established in Sec. 606(b) should be capable of being overcome when renewal of the licence is not in the public interest.



# Analysis of the Somali Communications Act

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## Guarantee of independence of the NCC

One of the most essential requirements under international standards relevant to broadcasting and telecommunications is that regulatory bodies should be independent, both from the government and the sector they regulate. This requirement is expressed, for example, in Principle VII(1) of the *Declaration of Principles on Freedom of Expression in Africa*:

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.<sup>2</sup>

In press releases and other statements on the Act, the TFG has indeed referred to the National Communications Commission (NCC) as a body that will be independent and shielded from political interference.

Against this background, it is surprising that the Act does not contain any specific and explicit guarantee of the NCC's autonomy. There are, without a doubt, various provisions in the Act which may help secure its independence in practice, such as the rule in Sec. 302(c) precluding MPs and government officials from serving on the NCC. The closest thing to an explicit recognition of the NCC's independence however is Sec. 403(b), which provides that the Minister of Information, in exercising the functions attributed to him under the Act, "shall at all times ensure that the independence of the Commission ... is protected and not compromised in any manner whatsoever". This clearly falls short of an overall guarantee of independence from any other person or entity.

ARTICLE 19 recommends the addition of such a guarantee to the Act. While there is no particular form of words that must be used for this purpose, the ARTICLE 19 publication *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*<sup>3</sup> provides the following example clause:

The [name of body] shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies. This autonomy shall be respected at all times and no person or entity shall seek to influence the members or staff of the [name of body] in the discharge of their duties, or to interfere with the activities of the [name of body], except as specifically provided for by law.

## Recommendations:

- The Communications Act should contain a specific and explicit guarantee of the NCC's institutional autonomy and independence, prohibiting all persons and entities from

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<sup>2</sup> *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002, Banjul, The Gambia.

<sup>3</sup> London, March 2002. See <http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

influencing the NCC in the discharge of its duties or from interfering with its activities, except as specifically permitted by the Act or legislation adopted pursuant to it.

## Broadcast policy

A number of provisions of the Act cast some light on the policy objectives underpinning the Act.

Most obviously, Title 1, entitled “Purpose”, sets out a number of goals, including the development of an information society, the development and use of the Internet, the facilitation of convergence, and the development of an “open, free and vibrant broadcast sector”. Also relevant is Sec. 502, which lists the broad objectives the NCC is required to pursue in the performance of its functions relating to the management of the radio frequency spectrum. These include the orderly development and efficient use of the spectrum; the development of innovative services; ensuring competition; and satisfying current and anticipated demand. Finally, mention may be made of Sec. 802 which enjoins the NCC to adhere at all times to “international principles on freedom of speech” as articulated in the International Covenant on Civil and Political Rights and international law more broadly, while also recognising the values of Somalia.

These objectives are to be applauded. The express incorporation of international law will, if properly implemented, ensure that the NCC’s decision-making is always tested against and brought in conformity with international standards. At the same time, there are a number of objectives of broadcast regulation that are considered particularly important internationally, which should be mentioned expressly in the Act.

Foremost is the promotion of diversity. The radio frequency spectrum is a public resource that should be managed for the benefit of society as a whole, and this should be an explicit objective for the NCC’s work. Diversity implies that the NCC should strive for pluralism of broadcasting organisations, of ownership of those organisations, and of voices, viewpoints and languages within broadcast programming as a whole, such that all parts of society are well-served, including vulnerable or marginalised groups.

Although it is part of the broader notion of diversity, separate mention should also be made of promoting the availability a wide range of opinions and information to the public. One of the biggest risks of regulation is always capture of the broadcasting sector by the ruling party or a dominant business group. Ensuring that all social and political groups have equitable access to the broadcasting sector should be an explicit objective for the NCC.

ARTICLE 19 notes that Principle III of the *Declaration of Principles on Freedom of Expression in Africa*<sup>4</sup> deals with the obligation of States to ensure diversity and the availability of a wide range of viewpoints, as follows:

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things-:

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<sup>4</sup> See note 2.



- availability and promotion of a range of information and ideas to the public;
  - pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- [...]

**Recommendations:**

- The Communications Act should make the promotion of diversity and the availability of a wide range of information and ideas explicit objectives of broadcast regulation by the NCC.
- Diversity should be defined as including pluralism of broadcasting organisations, of ownership of those organisations, and of voices, viewpoints and languages within broadcast programming as a whole.

**Membership and appointments process of the NCC**

A broadcast regulatory body is only as independent as its members are. It is therefore essential that the nomination and appointments process is set up in a way which minimises the risk of political or commercial interference. As will be discussed further below, the Communications Act contains a range of safeguards to shield the NCC's membership from interference or conflicts of interest. Their potential usefulness is largely negated, however, by the appointments process, which risks making the NCC little more than an extension of the government.

Pursuant to Sec. 302(a), the nine Commissioners who make up the Board of the NCC will be nominated by the President and approved by a majority vote of the Council of Ministers. Moreover, the President also has the right to identify one of his nominees to serve as Chairman of the NCC's Board. There is, in effect, little to stop a government bent on controlling the broadcasting or telecommunications sector from stacking the NCC with its allies.

Admittedly, it is not unheard of in democracies for appointments to the broadcast regulator to be made by the government or, more commonly, the head of state. However, in those countries where this is provided for, it is generally a mere formality and the actual decision is taken by a body which is independent from government. The arrangement currently foreseen in the Act is clearly out of step with international standards, as reflected for example in Principle VII(2) of the *Declaration of Principles on Freedom of Expression in Africa*:

The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.

ARTICLE 19 recommends a significant overhaul of the appointments process. Nominations should not be made by the government but should be solicited from civil society or professional organisations. Alternatively, nominations could be invited from the public at large through advertisements in leading media. The appointments should be made by a qualified majority vote of the plenary Parliament, or of a cross-party committee. Prior to making the final selections, a shortlist should be published and public comment should be sought on the candidates, to ensure maximum transparency. Consideration should also be given to putting

in place a requirement to ensure that the NCC membership represents, as far as possible, a broad cross-section of Somali society.

However they are nominated, candidates for appointment to the NCC should possess relevant qualifications. Sec. 302(b) sets out a sensible list of fields and professions from which Commissioners may be drawn. Moreover, Sec. 302(c) establishes a series of 'rules of incompatibility': a person may not be appointed or remain in office as a Commissioner who, amongst others, is a serving member of Parliament or of a national or local governmental body; is physically or mentally incapacitated; has been convicted of a felony; or has been removed from an office of trust on account of misconduct. These rules are positive, but we believe further incompatibilities should be added. In particular, persons who hold a position in or have significant direct or indirect financial interests in the broadcasting or telecommunications sector should not be eligible to serve. It is true that Sec. 336 already bars Commissioners from working on any specific matter in which they face a financial conflict of interest, but persons who are invested in the sectors which the NCC regulates should not be appointed at all since they face a permanent conflict of interest. Furthermore, employees of political parties and civil servants should be disqualified. To ensure that these rules do not narrow the field of qualified candidates too far, the Act could provide that any candidate who makes it to the shortlist will be given a reasonable time to eliminate any barrier to his or her appointment.

Commissioners are appointed for staggered five-year terms (Sec. 302(d)), a sensibly chosen duration that should ensure sufficient stability and insulation from political pressure without sacrificing too much dynamism. We do believe Commissioners should be limited to a maximum of two terms; the Act seems to allow indefinite reappointment.

The process by which a Commissioner can be removed is almost as important in terms of safeguarding the NCC's independence as the appointments process. Here, the Act offers a strong guarantee: according to Sec. 302(h), removal requires a two-thirds vote of Parliament and may only be based on illness, conviction of a crime punishable by imprisonment, or knowing and continued violations of the Act's conflict of interests provisions. While we support the high bar to removal, it should be possible to remove a Commissioner based on loss of *any* of the requirements for appointment. As it stands, the Act would not allow removal of a Commissioner who, for example, was elected an MP. Furthermore, any decision to remove a Commissioner should be subject to judicial review.

Finally, ARTICLE 19 applauds the rule, found in Sec. 302(g), that the Parliament will set the level of remuneration and that a Commissioner's salary may not be reduced during his or her term in office. This will prevent the threat of pay cuts being used as a means to influence Commissioners.

#### **Recommendations:**

- The President and Council of Ministers should play no role in the selection of Commissioners. Nominations should be solicited from civil society, professional organisations or the public at large, and appointments made by a qualified majority of Parliament, after an open process allowing for public comment.
- The NCC's membership should, as far as possible, represent a broad cross-section of Somali society.

- Employees of political parties, civil servants and persons who hold a position in or have significant direct or indirect financial interests in the broadcasting or telecommunications sector should not be eligible to serve on the NCC.
- Commissioners should be limited to a maximum of two terms.
- The Act should allow Commissioners to be removed based on loss of any of the requirements for appointment.
- Decisions to remove a Commissioner should be subject to judicial review.

## **Funding and accountability of the NCC**

Funding for the NCC may come from a number of different sources listed in Sec. 311. These include monies appropriated by the Parliament; licence fees collected by the NCC; and gifts, loans and grants from national, bilateral and multilateral organisations or other outside sources.

ARTICLE 19 welcomes these arrangements, in particular the fact that the NCC will have a number of sources of income of its own, reducing its dependence on allocations from the national budget and thereby increasing its independence. We note that acceptance of funds or other assistance from national and international organisations is subject to the requirement “that such gifts are not inconsistent with the objectives and functions of the Commission” (Sec. 311(d)). The same requirement should apply to any financial support from other outside sources as referred to in Sec. 311(a)(iii). Moreover, we would welcome a more explicit statement that outside funding should not be inconsistent with the NCC’s independence.

Given that it exercises public authority and operates with public funds, the NCC should be properly accountable to the public. Section 313, which requires the NCC to submit an annual report on its activities to Parliament, including its audited accounts, is positive in this regard. The Act should also expressly require the NCC to publish and disseminate this report, for example through its website. Somewhat concerning is Sec. 312(a), according to which the NCC must present its budget to Parliament by the end of each September for approval. We believe the NCC should be held accountable only after the fact – an annual discussion in Parliament about its budget could easily turn into a debate on what it should be doing over the coming year, and thus undermine its independence.

### **Recommendations:**

- The NCC should be able to accept gifts, loans, grants and other contributions from outside sources only if such funding is not inconsistent with the objectives, functions and independence of the NCC.
- The annual report which the NCC produces pursuant to Sec. 313 should be published on its website.
- Parliamentary approval should not be required for the NCC’s budget.

## **Licensing of broadcasters**

Title VI of the Act provides a general – and broadly positive – framework for the issuance of licences by the NCC. We particularly welcome the weight given to public participation and

transparency in the licensing process, for example when conducting a licence action under Sec. 604(b) or deciding on an application for renewal of a licence under Sec. 606(b).

As far as licensing of broadcasters specifically is concerned, the Act provides only minimal rules. Perhaps a decision was taken to leave the elaboration of a more detailed licensing process to the NCC; Sec. 802(a) in any event grants it the authority to adopt regulations in the area of licensing of broadcasters. Against this background, we limit ourselves to a few general observations on what a proper licensing process for broadcasters should include.

Sec. 504 mandates the NCC to develop a national frequency allocation table, reserving frequency bands for a number of user groups, including broadcasters. A similar table should be developed allocating the frequencies available for broadcasters among the three tiers of broadcasting (public, commercial and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national, regional and local). In drawing up the broadcast frequency table, the NCC should follow the transparent public consultation procedure established in Sections 331-334 of the Act.

Decisions whether to grant a licence should be based on objective criteria set out in advance, such as whether the proposed service fits in the broadcasting table and will contribute to the availability of a wide range of viewpoints; whether granting the licence is consistent with the goal of avoiding undue concentration of ownership; whether the applicant has the financial and technical capacity to deliver a quality service; and so on.

A schedule should be set out in advance establishing the duration of different types of broadcasting licences. The time limits should be sufficient to enable licence holders to recoup their investment, yet short enough to ensure periodic review of the quality and diversity of the service provided. The time limits for licences may differ depending on the tier and type of broadcaster. We also believe broadcasters should benefit from a presumption of licence renewal; Sec. 606(b) indeed provides for such a presumption, which arguably even goes too far, since it appears that only a material breach of the applicable licence terms or legislation may overcome that presumption. A reasoned finding that licence renewal is not in the public interest should also justify a decision not to renew.

#### **Recommendations:**

- The NCC should be made responsible for the development, following the open and participatory process established Sections 331-334 of the Act, of a frequency plan for those frequencies allocated for broadcasting. That plan should ensure that the available frequencies are shared equitably and in the public interest among the three tiers of broadcasting (public, commercial and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national, regional and local).
- Decisions whether to grant a licence should be based on objective criteria set out in advance.
- A schedule should be set out in advance establishing the duration of different types of broadcasting licences.
- The presumption of licence renewal established in Sec. 606(b) should be capable of being overcome when renewal of the licence is not in the public interest.

## Content and sanctions

The Act does not set out any rules on the permissible content of broadcasts as such, but vests the NCC with the power to establish regulations on advertising and sponsorship, election broadcasting, protection of copyrights and content issues more generally. These regulations must at all times be in conformity with international law on freedom of expression, and must follow a public consultation (Sec. 802). Moreover, the NCC is prohibited from engaging in prior censorship (Sec. 803).

ARTICLE 19 warmly welcomes these provisions, which are in line with international standards. They could be further improved by stipulating that the NCC will refrain from imposing regulations where an effective system of self-regulation has been implemented. As Principle IX(3) of the *Declaration of Principles on Freedom of Expression in Africa* states, effective self-regulation is the best system for promoting high standards in the media. We also believe that consultation with broadcasters themselves, in addition to public consultation, should precede the adoption of any content rules.

With regard to sanctions, the Act contains two, potentially contradictory, provisions.

- Section 608 sets out four circumstances in which the NCC may suspend or revoke licence. These are, briefly put, failure to pay a fee or fine; failure to comply with the Act, licence terms or regulations adopted by the NCC; breach of any other relevant law; or failure to comply with “any instrument issued, made or given” by the NCC.
- Section 901(c), on the other hand, gives the NCC the authority to adjudicate any complaint against a licence holder and to impose a fine, restitution, or any other appropriate sanction, provided it is proportionate, non-discriminatory and transparent. Both provisions require the sanction to follow a transparent procedure as set out in Sections 331-334 of the Act.

In the area of broadcasting, the most important requirement is that sanctions should be proportionate and designed to protect the public interest. In most cases sanctions should be applied in a graduated fashion, for example starting with a warning or fine. Suspension or revocation of a licence is a very heavy sanction and should be used as a last resort. Section 608 seems to permit suspension or revocation in response to any kind of breach of legal obligations. We recommend consolidating Sections 608 and 901(c) into a single provision that reflects the principles of proportionality and graduation.

Any decision to impose a sanction on a broadcaster should be subject to judicial review. In principle, a procedure before an administrative appeals board, as foreseen by Sec. 335(c), could be a suitable and efficient alternative to litigation before a court. However, it is an essential requirement that the review body be independent from the government. Since the members of the Appeals Board mentioned in Sec. 335(c) would be appointed by the President, this requirement is clearly not met.

### Recommendations:

- Section 802 should stipulate that the NCC will not adopt any content rules on a subject where the broadcasting sector has implemented an effective system of self-regulation.
- Adoption of any content rules pursuant to Section 802 should be preceded by consultation with the licensed broadcasters.

- Sections 608 and 901(c), which deal with sanctions for non-compliant licence holders, should be consolidated into one provision.
- Sanctions imposed on broadcasters should be proportionate and applied as far as possible in a graduated manner. Suspension and revocation of the licence should be defined as a last resort.
- Any decision to impose a sanction on a broadcaster should be subject to judicial review, either before a court or an independent administrative body. The Appeals Board mentioned in Sec. 335(c) does not qualify as an independent body since its members are appointed by the President.

# Annex: Somali Communications Act of 2012

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## TRANSITIONAL FEDERAL GOVERNMENT OF SOMALIA

### SOMALI COMMUNICATIONS ACT OF 2012

#### I. PURPOSE

##### Sec. 101

(a) The object of this Act is to provide for development of telecommunications and broadcast policy and regulation for the Republic of Somalia and the establishment and management of the Somali Communications Commission. This Act may be cited as the Somali Communications Act of 2012.

(b) The specific purposes of this Act are the regulation and facilitation of information and communication technologies and services sector including:

- (i) Telecommunications;
- (ii) The enhanced development of an information society together with the facilitation of online services;
- (iii) The protection and security of data;
- (iv) Facilitation of the development and use of the Internet;
- (v) The facilitation of convergence;
- (vi) The facilitation and development of electronic transactions;
- (vii) The development of information and communication technologies for the promotion of a knowledge-based society;
- (viii) The institutionalization of a legal framework to manage a liberalized and competitive market in the telecommunication sector;
- (ix) The licensing and regulation of broadcasting and the development of an open, free, and vibrant broadcast sector for Somalia.

#### II. DEFINITIONS

“Act” shall mean the Somali Communications Act of 2012.

“Allocation” shall mean the official designation of radio frequency bands, as reflected in the Frequency Allocation Table.

“Appeals Board” shall mean the body established by this Act for the purpose of adjudicating appeals of Decisions of the Commission.

“Assignment” shall mean the official grant of right to use specific radio frequencies, made by the Commission to Telecommunications Service Providers or Broadcasters.

“Board” shall mean the Governing Board of the Commission.

“Broadcasting” shall mean the emission and dissemination of radio or television programming, including public service broadcasting, intended for reception by the public. Broadcasting is a one-directional service that does not include a return path from the user to the Broadcaster.

“Chairman” shall mean the Commissioner so designated by the President.

“Class License” shall mean a telecommunications License (as distinct from the Individual License) subject to standard conditions for all Licensees concerning every type of License granted in accordance with the provisions of Title VI of this Act.

“Code of Conduct” shall mean a set of regulations, rules, or standards governing the actions of Broadcasters licensed by the Commission.

“Commission” shall mean the Somali Communications Commission as established and further described in this Act.

“Commissioner” shall mean a member of the Board of the Somali Communications Commission.

“Council of Ministers” shall mean the Council of Ministers of the Transitional Federal Government of Somalia or its successor institution.

“Decision” shall mean any written decision, order, ruling, determination or other similar pronouncement issued by the Commission, that disposes in whole or in part and on a temporary or permanent basis, of any matter before the Commission.

“Director General” shall mean the Director General of the Somali Communications Commission.

“Financial Year” shall mean the annual period used by the Commission for budgeting purposes.

“Frequency Allocation Table” shall mean the document by which the Commission adopts and publishes allocation of radio frequency spectrum among various communications services.

“Individual License” shall mean a Telecommunications License granted to a particular entity on terms specific to that entity in accordance with the provisions of Title VI of this Act.

“Information Services” shall mean the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

“Interconnection” shall mean the physical, technical and logical linking of the Telecommunications Networks used by the same or a different service provider in order to allow the users of one service provider to communicate with users of the same or another service provider, or to



access services provided by another service provider. Services may be provided by the persons involved or by other persons who have access to the telecommunications network.

“License” shall mean the authorization issued by the Commission that allows Broadcasters and Telecommunications Service Providers to use radio frequency spectrum resources and to provide the specified service to the public.

“Licensee” shall mean a holder of a License issued by the Commission.

“Minister” shall mean the Minister of Information of the Transitional Federal Government or its successor institution.

“Ministry” shall mean the Ministry of Information of the Transitional Federal Government or its successor institution.

“National Numbering Plan” shall mean the document by which the Commission specifies allocation of telephone numbering resources.

“Parliament” shall mean the Parliament of the Transitional Federal Government or its successor institution.

“President” shall mean the President of the Transitional Federal Government or its successor institution.

“Public Consultation” shall mean the transparent process by which the Commission formulates policies and Decisions in matters under its jurisdiction.

“Public Notice” shall mean the document by which the Commission initiates a Public Consultation.

“Public Telecommunications Network” shall mean the facilities by which a Telecommunications Service Provider makes Telecommunications Services available to all or a substantial portion of the public.

“Radio Frequency Spectrum” shall mean the range of electromagnetic frequencies below 3000 GHz used for Broadcasting or Telecommunications.

“Right of Way” shall mean legal permission to use the property of a public or private entity for the construction, maintenance, or operation of a Telecommunications Network.

“Secretary” shall mean the Secretary of the Somali Communications Commission.

“Service Provider” shall mean an entity authorized by the Commission pursuant to Title VI of this Act to provide Services.

“Significant Market Power” shall mean the ability to materially affect the price supply in the relevant market for telecommunications services as a result of either control over essential facilities; or use of its position in the market.

“Telecommunications” shall mean the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

“Telecommunications Frequency” shall mean any portion of the Radio Frequency Spectrum that the Commission allocates for the provision of Telecommunications.

“Telecommunications Network” shall mean the facilities by which a Telecommunications Service Provider makes Telecommunications Services available to the public or to a private network.

“Telecommunications Service” shall mean the provision by a Licensee of the conveyance of Telecommunications for a fee directly to the public.

“Telecommunications Service Provider” shall mean an entity authorized by the Commission pursuant to Title VI of this Act to provide Telecommunications Services.

“Universal Access” shall mean the availability to all users, regardless of their geographic location, of Telecommunications Services of a quality specified by the Commission and at suitable prices.

“Universal Access Fund” shall mean the mechanism that the Commission may prescribe to support the provision of Universal Access of a quality and price that the Commission determines to be acceptable.

### III. THE COMMISSION

#### Sec. 301

(a) In order to achieve the purposes set out in Title I of this Act, the Somali Communications Commission is hereby established.

(b) Except to the extent otherwise provided in this Act, the Commission shall have plenary authority to license and regulate Telecommunications and Broadcasting services throughout the territory of the Republic of Somalia, in accordance with the terms of this Act.

(c) The Commission shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and shall have the power to do the following:

(i) enter into contracts and incur obligations;

(ii) acquire, hold, mortgage, purchase and deal howsoever with property, whether movable or immovable, real or personal; and

(iii) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act.

(d) The Commission shall be structured into departments as the Board may from time to time deem appropriate for the effective discharge of its functions.

(e) The headquarters of the Commission shall be in Mogadishu.

(f) The Commission shall enjoy all advantages enjoyed by ministries, governmental entities, and official public sector organizations in Somalia, provided, however, that the Commission shall not be a member of the Council of Ministers.

#### Sec. 302

(a) The affairs of the Commission shall be administered by a Governing Board (“the

Board”). The Board shall consist of 9 Commissioners who shall be nominated by the President and approved by a majority vote of the Council of Ministers. The Board shall have the authority to make orders for the transparent regulation of its proceedings and meetings, provided that such orders shall be in accordance with the procedural requirements of Sections 331-334 of this Act. The President shall specifically identify one of his nominees to serve as Chairman of the Board.

(b) Commissioners shall be persons of recognized standing, qualifications, and experience in one or more of the following fields:

- (i) finance or accounting;
- (ii) law;
- (iii) consumer affairs;
- (iv) telecommunications engineering;
- (v) broadcasting;
- (vi) journalism;
- (vii) information technology;
- (viii) economics; and
- (ix) public administration.

(c) A person shall not be appointed or remain in office as a Commissioner who:

- (i) is not a citizen of Somalia;
- (ii) is not ordinarily resident in Somalia;
- (iii) is a serving member of Parliament, any State governmental body, or local governmental body;
- (iv) is incapacitated by any physical illness;
- (v) has been certified by competent authorities to be of unsound mind;
- (vi) has been convicted in Somalia or elsewhere of a felony criminal offense; or
- (vii) has at any time been removed from an office of trust in Somalia or elsewhere on account of misconduct.

(d) Commissioners shall serve staggered terms of five years so that no more than two Commissioners' terms shall expire in the same year. A Commissioner's term shall end on June 30 of the year in which his term of office expires but may continue to serve for up to one year pending the appointment of his successor. A Commissioner may be reappointed upon the completion of his term of office.

(e) The initial Board of the Commission shall draw lots to determine the tenure of their initial terms in order to ensure that the expiration of the Commissioners' terms shall be staggered. The Commissioners that shall draw the numbers 1 and 2 shall serve a full five-year term. The Commissioners that shall draw the numbers 3 and 4 shall serve a four-year term. The Commissioners

that shall draw the numbers 5 and 6 shall serve a three-year term. The Commissioners that shall draw the numbers 7 and 8 shall serve a two-year term. The Commissioner that shall draw the number 9 shall serve a one-year term.

(f) In the event that a vacancy arises on the Board due to the death, resignation, or removal of a Commissioner or upon the expiration of a Commissioner's term, the President shall fill such vacancy in accordance with the appointment process contained in subsection (a) of this section.

(g) Commissioners shall be entitled to compensation for their service at a rate to be set by law by the Parliament, but in no event less than the amount paid to a Minister. A Commissioner's compensation shall not be reduced during his term in office, but may be increased.

(h) A Commissioner may only be removed from office upon a two-thirds vote of the Transitional Federal Parliament, or its successor institution. Such removal may only occur for the following reasons:

- (i) The Commissioner's incapacity to perform his duties due to illness;
- (ii) The Commissioner's conviction by a court of competent jurisdiction of a crime punishable by a term of imprisonment (regardless of whether the court shall impose a sentence of imprisonment);
- (iii) The Commissioner's knowing and continued violation of the conflict of interest provisions of this Act.

#### Sec. 303

(a) The Board shall meet at least once per month in order to consider the business of the Commission and to hear such reports as the Director General and staff of the Commission may present.

(b) The Chairman shall have the power to schedule meetings, upon not less than fourteen days' advance notice to the Board and to the public; provided, however, that in the event of exigent circumstances that require that the Board meet upon less than fourteen days' advance notice the Chairman may call such a meeting of the Board with the concurrence of at least five other Commissioners. A quorum to conduct the business of the Board shall consist of a majority of the number of members of the Board then serving. In the absence of the Chairman, the Chairman may designate another Commissioner to act as Chairman. In the event of the death, resignation, or removal of the Chairman, the remaining Commissioners may, by majority vote, designate one of their number to act as Chairman pending an appointment of a new Chairman by the President.

(c) The Board shall act by majority vote of the Commissioners present. In the event that the Commissioners are evenly divided on a matter that is put to a vote of the Board, the Chairman shall cast the deciding vote.

#### Sec. 304

(a) The Director General shall be primarily responsible for the execution of the policies and decisions of the Board and for the day-to-day management and supervision of the activities of the Commission. In particular, the Director General shall supervise the work of the staff and shall propose to the Board such organization of the staff of the Commission as shall seem to him best suited to the proper execution of the Commission's functions. The Director General shall have primary responsibility for hiring qualified staff and for ensuring the staff's proper training and capable performance in office.

(b) The Director General shall be a person possessing sound knowledge and ability in the organization and management of communications matters. The Board shall appoint the Director General and shall fix his compensation and terms of service.

(c) The Board may delegate in writing any of its functions to the Director General or to such other members of the Commission staff as it may deem appropriate; provided, however, that the Board shall not delegate review of actions taken by the Board to the Director General or any member of the staff.

(d) In the event of a vacancy in the office of Director General, the Chairman, another Commissioner, or another member of the staff of the Commission designated by the Board may serve as Director General until the Commission shall appoint a new Director General. The new Director General shall not be a current member of the Board, but may be a member of the staff of the Commission.

#### Sec. 305

(a) The Board shall appoint a Secretary who shall not be a Commissioner but shall possess relevant and adequate professional qualifications.

(b) The Secretary shall keep the corporate records of the Commission, shall keep minutes of meetings of the Board, and shall maintain other records of the Commission as directed by the Board or by the Director General. The Secretary shall perform such other duties as the Board or the Director General may from time to time appoint.

#### Sec. 306

(a) The Commission shall have powers to appoint such number of other persons as it deems necessary as staff of the Commission. The employment of the Commission's staff, including Director General and the Secretary, shall be subject to such terms and conditions as the Board may from time to time stipulate and shall be contained in the respective staff's employment contracts.

(b) The Board, or the Director General acting on behalf of the Board, shall develop and implement appropriate conditions of service for the Commission's staff with particular regard to the issues of remuneration, pensions scheme and other employee benefits, sufficient for the Commission to attract and retain employees of the highest quality.

(c) The Board shall consider and review from time to time, the remunerations and allowances payable to the Commission's staff.

(d) The conflict of interest provisions contained in Section 336 of this Act shall apply to all employees of the Commission.

#### Sec. 311

(a) The Commission shall establish and maintain a Fund from which all expenditures incurred by the Commission shall be paid. The Fund shall comprise funds derived from but not limited to the following sources:

(i) such monies as may be appropriated to the Commission from time to time by the Parliament;

(ii) fees assessed by the Commission pursuant to the terms of this Act, the Commission's regulations, or the terms of any license that the Commission may grant pursuant to this

Act;

- (iii) gifts, loans, grants, or other contributions from outside sources; and
- (iv) all other assets that may from time to time accrue to the Commission.

(b) The Commission shall pay all monies accruing from the auction of licenses to use the radio frequency spectrum pursuant to Section 604 of this Act into the General Fund of the Ministry of Finance.

(c) The Commission may, with the consent of, or in accordance with the general authority given by the Minister of Finance, borrow such sums of money as the Commission may require in the exercise of its functions under this Act.

(d) The Commission may accept gifts or grants of money or aids or other property from national, bilateral and multi-lateral organizations and upon such terms and conditions, if any, as may be agreed upon between the donor and the Commission provided that such gifts are not inconsistent with the objectives and functions of the Commission under this Act.

Sec. 312

(a) The Commission shall, not later than 30th September in each year or such other date as the Parliament may by statute determine, prepare and present to Parliament for its approval, a statement of estimated income and expenditure for the following financial year.

(b) Notwithstanding the provisions of subsection (a), the Commission may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure to Parliament for approval.

(c) Subject to subsections (a) and (b) of this section, the Commission shall apply the proceeds of the Commission's Fund:

- (i) to meet the administrative and operating costs of the Commission;
- (ii) for the payment of salaries, wages, fees and other allowances, retirement benefits such as pensions and gratuities and, any other remunerations payable to the Commissioners and staff of the Commission;
- (iii) for the purchase or acquisition of property or other equipment and other capital expenditure and for maintenance of any property acquired or vested in the Commission; and
- (iv) for any of the functions of the Commission under this Act.

(d) The financial year of the Commission shall start on 1st January of each year and end on 31st December of the same year unless Parliament shall by statute establish a different financial year.

(e) The Commission shall keep proper records of its accounts in respect of each year and shall cause its accounts to be audited within 6 months from the end of each financial year by internationally recognized independent auditors whose appointment shall be approved by the Board and shall be subject to reappointment annually.

Sec. 313

(a) The Commission shall prepare and submit to the Parliament annually and not later than 6 months after the end of its financial year, a report (“Annual Report”) on the activities of the Commission for the preceding financial year. The Annual Report shall include the Commission’s audited accounts for the year under review together with the auditor’s report thereon.

(b) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Commission.

#### Sec. 321

(a) The Commission shall perform the following functions in accordance with this Act:

- (i) Supervise and regulate Licensees, including both Telecommunications Service Providers and Broadcasters;
- (ii) Ensure compliance by Service Providers with international obligations entered into by Somalia in the telecommunications sector;
- (iii) Hold Public Consultations on the matters committed to its discretion by this Act;
- (iv) Issue Licenses in accordance with the terms of this Act;
- (v) Prescribe and publish all forms relating to the licensing processes established under this Act;
- (vi) Monitor and investigate compliance with this Act and with conditions of Licenses, and any regulations that the Commission may prescribe pursuant to this Act and make such decisions as are necessary to enforce compliance with the same;
- (vii) Assign radio frequencies to Licensees in accordance with the national frequency allocation table;
- (viii) Modify, renew, suspend or revoke licenses;
- (ix) Respond to and dispose of complaints and disputes involving Telecommunications Service Providers, users and other persons including, but not limited to, matters of interconnection, access to property, eminent domain, access to and quality of service, numbering, unacceptable interference with the networks or services of grantees and privacy;
- (x) Respond to and dispose of complaints and disputes against Broadcasters;
- (xi) Establish and maintain the numbering plan and assign numbers;
- (xii) Establish and supervise contributions to fund such universal access programs as the Commission may establish and administer such programs;
- (xiii) Publish and maintain registries of Licensees, Licenses, interconnection agreements, Commission notices and decisions and, subject to accepted claims of confidentiality or permissible disclosures, make them available to the public for inspection and publish them on the Commission’s official website; and
- (xiv) Such other functions as are consistent with the role of the Commission under this Act.

(b) The Commission may perform any of the functions set out in this section upon its own initiative or, consistent with the provisions of this Act and any other applicable law may contract with outside parties to perform certain functions.

#### Sec. 322

(a) The Commission has the power to require any Licensee, Telecommunications Service Provider, or Broadcaster to provide information that the Commission reasonably finds to be necessary for the proper performance of its functions and the exercise of its powers under this Act, provided that the Commission has provided the Service Provider with at least two (2) weeks prior written notification (“Written Notice”) of such specific information requirements and such Written Notice is accompanied by explanations as to the need for such information.

(b) The Commission shall safeguard commercial secrets and other confidential information collected by it pursuant to this Act.

## Sec. 323

(a) The Commission shall establish and maintain an official website and shall require all Telecommunications Service Providers to cite the website address in all of their user invoices in order to facilitate consumer protection.

(b) The Commission shall publish on a timely basis, all registries established and maintained by it and all public notices, Decisions, Licenses, signed interconnection agreements, documents prescribed by it, including Codes of Conduct and related documents, and other non-confidential documents made by or for it under this Act on its official website and shall make copies of such documents available to any interested party upon payment of a nominal copying fee, that the Commission shall prescribe.

## Sec. 331

(a) The Commission may initiate a public hearing on any substantive matter within its jurisdiction under this Act, either on its own initiative or upon the written request of any interested person. The Commission shall initiate a public hearing on any matter that is specified in a written directive from the Council of Ministers.

(b) Public hearings conducted by the Commission shall be open to all members of the public, except to the extent that the Commission decides otherwise, due to the confidential nature of any specific matter to be addressed during the hearing.

(c) The Commission shall record the entire proceeding of its public hearings and shall make copies of its recordings available to any member of the public, on a cost recovery basis that the Commission shall prescribe.

## Sec. 332

(a) The Commission may hold a Public Consultation, to be conducted in whole or in part by written submissions only.

(b) The Commission shall initiate a Public Consultation by issuing a public notice:

(i) Announcing the commencement of the process;

(ii) Setting out the nature of the matter to which such Public Consultation relates;

(iii) The period within which comments may be submitted, together with all filing requirements;

(iv) Providing any background discussion paper or other information that may assist interested parties in the preparation of their comments; and

(v) Including any other information that the Commission deems appropriate in the circumstances.

(c) The Commission shall ensure that the Public Notice initiating a Public Consultation shall give interested parties adequate notice of the matters that the Commission is considering and the actions that the Commission is likely to take as a result of the Public Consultation.

(d) As a result of a Public Consultation, the Commission may adopt, amend, or repeal any regulation that it is within the Commission's authority to make in accordance with the provisions of this Act. The Commission may also conclude that the purposes of this Act will be best served by not taking formal action or by issuing a report concerning the findings it reaches as a result of the Public Consultation. When the Commission considers it appropriate, it may also present recommendations to Parliament for legislation to address matters that the Commission considers it cannot address pursuant to the terms of this Act, or may take such other action as it considers appropriate in the circumstances.

## Sec. 333

(a) The Commission shall ensure that it shall conduct all of its proceedings in a transparent manner. The Commission shall provide adequate notice to the public, through a Public Notice or other similar instrument, of its proposed action with respect to adoption, amendment, repeal, or enforcement of any regulation or its proposed action to implement any provision of this Act.

(b) The Commission shall allow members of the public, including natural and juridical persons subject to the Commission's jurisdiction, consumers, and other organizations, a reasonable opportunity to submit written or oral presentations addressing any action the Commission proposes to



take. The Commission shall also allow members of the public to respond to written or oral presentations submitted by other members of the public.

#### Sec. 334

(a) In any proceeding before the Commission, the Commission shall render a decision in writing explaining the reasons for its action. The Commission shall base its findings of fact and conclusions of law only upon the information contained in the record of the proceeding before it and on publicly available facts of which the Commission may take official notice. The Commission's decision shall explain in reasonable detail the reasons supporting its action and shall address the positions presented in presentations made by members of the public. The Commission's Decision may take any action that is consistent with the Commission's authority pursuant to this Act.

(b) The Commission's Decision may grant, in whole or in part, any action or relief requested by any party; may deny any action or relief requested by any party; or may fashion such other remedy within the scope of the Commission's authority that may, in the Commission's judgment, best serve the purposes of this Act.

#### Sec. 335

(a) Any person aggrieved by an action of the Commission or the Commission staff may request that the Commission review the original Decision of the Commission or of the Commission's staff. In all cases in which such review is requested, the Commission shall issue a Public Notice informing the public that the Decision is under review and shall allow interested members of the public an opportunity to make written or oral presentations concerning the request for review of the Decision.

(b) The Commission may grant the request for review in part or in whole or may deny the request for review. The Commission shall issue a written Decision in response to the request for review of the original Decision and shall state with particularity the reasons underlying its action.

(c) Any person aggrieved by a Decision of the Commission may appeal said Decision to the Appeals Board. The Appeals Board shall be an independent, three-member body that shall be empowered to hear appeals of Decisions taken by the Board of the Commission or by the Director General. Members of the Appeals Board shall be appointed by the President for staggered terms of three years. Members of the Appeals Board shall have experience in law, telecommunications, broadcasting or other relevant disciplines. The members of the Appeals Board shall elect one of their members as Chairman and shall establish transparent rules of procedure for hearing and adjudicating matters brought before them. The Appeals Board shall issue its decisions in writing, explaining its reasons for either affirming or overruling the Commission's action. In the event that the Appeals Board overrules a Commission action, it must refer the matter to the Commission for further proceedings. Members of the Appeals Board shall be remunerated by the Ministry of Justice.

(d) Any request for review or appeal of a Commission Decision must be filed with the relevant authority within thirty (30) days of the effective date of the Commission's Decision. For purposes of this subsection, a Decision of the Commission shall be effective upon its public release unless the Commission shall specify a different effective date in writing. Further, a Decision of the Commission shall be effective during the pendency of any request for review or appeal, unless the Commission shall determine that the interests of justice and the purposes of this Act shall be better served by delaying the effectiveness of such Decision.

#### Sec. 336

Neither the Director General nor any member of the Board, the Appeals Board, nor any member of the Commission's staff, may work on any Commission matter that will affect

- (a) his personal financial interests;
- (b) the financial interests of his spouse or minor child;
- (c) the financial interests of his business partner;
- (d) the financial interests of any organization in which he serves as an officer, director, general partner, employee or trustee; or
- (e) the financial interests of any entity with whom he has an arrangement for employment or with whom he is negotiating for employment.

In such case, he may either divest himself of the interest causing the conflict of interest or recuse himself from any involvement in the matter.

#### IV. ROLE OF THE MINISTER

##### Sec. 401

The Minister shall have the following responsibilities and functions pursuant to this Act—

- (a) the formulation, determination and monitoring, of the general policy for the communications sector in Somalia with a view to ensuring, amongst others, the utilization of the sector as a platform for the economic and social development of Somalia;
- (b) the negotiation and execution, in collaboration with the Commission, of international communications treaties and agreements, on behalf of Somalia, between sovereign countries and international organizations and bodies; and
- (c) the representation of Somalia, in conjunction with the Commission, at proceedings of international organizations and fora on matters relating to communications.
- (d) For one year following the entry into force of this Act, the Minister shall have responsibility for providing material assistance to the Commission in the establishment of its operations. Such assistance shall include direct financial as the Commission may require; assistance in procurement of property and equipment; and assistance in the recruitment and training of the Commission's staff.

##### Sec. 402

- (a) Prior to the formulation or review of the general policy for the Somali communications sector, the Minister shall cause the Commission on his behalf to first carry out a public consultative process on the proposed policy formulation or modification.
- (b) In formulating and determining the policy or amendments thereto, the Minister and the Council shall take into consideration the findings of the consultative process under subsection (a) of this section.

##### Sec. 403

- (a) Subject to subsection (b) of this section, the Minister may, in

writing, from time to time notify the Commission or express his views on the general policy direction of the Federal Government in respect of the communications sector.

(b) In the execution of his functions and relationship with the Commission, the Minister shall at all times ensure that the independence of the Commission, in regard to the discharge of its functions and operations under this Act, is protected and not compromised in any manner whatsoever.

## V. SPECTRUM MANAGEMENT

### Sec. 501

As used in this Act, the allocation of radio frequency spectrum shall refer to the policy of harmonizing certain frequency bands pursuant to international standards and according to broad categories of user groups. Assignment shall refer to the process of granting permits to use specific radio frequencies in accordance with this Law.

As provided in Section 401 of this Act, the Commission shall, in coordination with the Minister, represent Somalia and negotiate on its behalf with international and regional radiocommunication bodies on all matters relating to radio frequency spectrum.

The Commission shall be the sole authority in Somalia to plan, manage, and allocate the use of radio frequency spectrum, provided that the authority granted in this section shall be exercised in conformity with established and applicable international and regional radiocommunication plans and in coordination with other affected branches of the Government of Somalia.

### Sec. 502

The Commission shall, in performing its functions relating to the management of radio frequency spectrum, be responsible for the following:

- (a) The promotion of the orderly development and efficient use of the radio frequency spectrum;
- (b) The development of innovative services using radio frequency spectrum;
- (c) Competition in the provision of services using radio frequency spectrum;
- (d) Current and anticipated demand; and
- (e) Such other factors as it may consider to be relevant.

### Sec. 503

The Commission shall maintain all relevant information related to the allocation of radio frequency spectrum and such other information that it concludes is required to manage the radio frequency spectrum. Except for information that is related to the requirements of national security or defense, the Commission shall make the information specified in this Article available to the public for inspection and shall publish it on the Commission's official website.

### Sec. 504

(a) The Commission shall develop and manage a national frequency allocation table (referred to in this Chapter as the "Table"), which shall conform to international and regional

standards. Without limiting the foregoing power, the Commission shall allocate frequency bands to the following user groups:

- (i) National security, military and emergency preparedness;
- (ii) Civil administration and public safety;
- (iii) Broadcasting;
- (iv) Telecommunications; and

Such other user groups as the Commission may determine from time to time. The Minister may at any time request the Commission to prepare a more detailed Table, in accordance with any instructions that he may provide. The Table, and any amendments thereto, shall become effective upon approval by the Commission, and shall be made available by the Commission to the public for inspection and published on the Commission's official website.

(b) In adopting or revising the Table the Commission shall follow the procedures set forth in Sections 331-334 of this Act. In addition to providing an opportunity for any interested party to comment on proposed revisions to the Table, the Commission shall specifically solicit the views of the Minister on such proposed revisions.

## VI. LICENSING

### A. Requirement For And Class Of Licenses

#### Sec. 601

(a) No Person shall operate a Public Telecommunications Network, any Telecommunications Network using a Telecommunications Frequency, any Broadcast station, or provide a Telecommunications Service in Somalia unless authorized to do so under a communications license, or unless exempted from licensing under regulations made by the Commission pursuant to this Act.

(b) The Commission shall issue communications licenses for the operation and provision of Telecommunications Services by way of Class or Individual Licenses on such terms and conditions as the Commission may from time to time determine taking into consideration the objectives of this Act.

(c) The Commission shall from time to time determine and publish to the general public the communications services that qualify for Class or Individual Licenses or that are exempted from licensing. The Commission shall, in determining the services that qualify for Class or Individual Licenses, at all times ensure that previous holders of licenses for such services as at the date of such determination do not suffer any disadvantage except as permitted under this Act or the Commission's rules.

#### Sec. 602

(a) The Commission may grant either a Class License or an Individual License for the operation of a Telecommunications Network or for the provision of Telecommunications Services for a finite period of time in accordance with the provisions of this Act.

(b) An application for a License shall be in writing addressed to the Commission in the form prepared by the Commission for this purpose and accompanied by such information and evidence

of payment of the application fees as may be required by the Commission in accordance with the provisions of this Act. The Commission shall notify the applicant in writing within 14 days of its receipt of the application.

(c) The Commission shall, if it decides not to grant the License, notify the applicant of its decision in writing and shall explain the reasons for its decision in reasonable detail.

#### Sec. 603

(a) The Commission shall issue Licenses for Telecommunications Services, for Broadcasting and for other services requiring a License pursuant to this Act in writing. Such License, unless revoked, shall continue in full force and effect for such period as may be specified in the License. No License that the Commission issues pursuant to this Act may be transferred or assigned to a third party without the prior written consent of the Commission. The sale or other transfer of a sufficient interest in a Licensee as to amount of a change of management or control of the Licensee shall require the advance approval of the Commission.

(b) A License may include:

- (i) such terms as the Commission determines are necessary and reasonable; and
- (ii) terms requiring the Licensee to provide to the Commission, in such manner and at such times as may be reasonably required, such documents, data, accounts, estimates, returns or other information as the Commission may require for the purpose of exercising its powers and fulfilling its duties under this Act.

#### Sec. 604

(a) The Commission may only grant an Individual License on the recommendation of the Director General and following ratification thereof by the Commission within thirty days after the date on which the Director General submits his recommendation to the Commission. When the Commission refuses to ratify his recommendation or when such 30 day period expires without the Commission's ratification, the Director General may resubmit the matter within 30 days to the Commission for a final decision by the Commission within 30 days of the re-submission. In all cases in which the Commission refuses the Director General's recommendation, the Commission shall, in all cases, indicate the grounds of such refusal in writing.

(b) Whenever the Commission has received more applications for Licenses than it can grant the Commission shall hold an auction for Individual Licenses in accordance with rules and procedures that the Commission shall establish pursuant to the procedure set forth in Sections 331-334 of this Act. Such auction shall be announced in such manner as the Commission deems appropriate at least thirty days prior to the date of holding such auction. The License shall in this case be granted without requiring ratification of the Commission.

(c) The Commission shall, before giving a final decision with respect to any applications for an Individual License, ensure that the applicant satisfies any and all conditions provided for in this Act and in any regulations that the Commission may adopt pursuant to this Act.

(d) The Commission shall, within no more than ninety days of such application, decide as to the application for a License and if the Commission considers it necessary to obtain any further information, the Commission shall notify the applicant of such matter within a period not exceeding thirty days after date of the submission of the application.

(e) The Commission shall standardize Individual Licenses as far as practicable, and any

differences shall be for objectively justifiable reasons. Notwithstanding the foregoing, the Commission may grant to an applicant that does not possess Significant Market Power a License on terms that are more favorable than the Licensed Operator that possesses Significant Market Power.

(f) Within seven days of the grant of a License, the Commission shall notify the applicant that the License is available for collection. Such notice shall be sent to the address specified by the applicant. The Commission shall publish the License on its website as soon as is practicable after granting it.

(g) Any Person that directly or indirectly acquires five percent or more of the equity of an Individual Licensee shall notify the Commission of this fact within seven days as of the date of the acquisition of such share.

#### Sec. 605

(a) The Commission may, from time to time, issue a Class License for a Telecommunications Service that does not require the use of radio frequency spectrum or of numbering resources from the National Numbering Plan.

(b) The Commission shall grant a Class License to any applicant that meets the conditions prescribed by the Commission for such License.

#### Sec. 606

(a) The Commission shall renew a License upon request of the Licensee provided that the Licensee has, at all times during the term of the License, complied with all material terms of the License, of this Act, and of any regulation that the Commission may prescribe pursuant to this Act. The Licensee must apply for renewal not later than 90 days prior to the expiration of the then current License term. In the event that the Commission has not acted upon the renewal application prior to the expiration date of the then current License term, the Licensee may continue to operate in accordance with the terms of the License until such time as the Commission acts upon the renewal application.

(b) In the event that the Commission concludes that the Licensee has committed a material breach of the terms of the License, of this Act, or of any regulation that the Commission may prescribe pursuant to this Act, the Commission may, in its discretion, deny the renewal application or impose such lesser penalty as it may deem appropriate. The Commission shall at all times follow a transparent process in accordance with Sections 331-334 of this Act in determining whether to grant or deny the renewal application. In any case in which the Commission denies a renewal application or imposes another penalty as a consequence of a material breach of the terms of the License, of this Act, or of any regulation that the Commission may prescribe pursuant to this Act, the Commission shall issue its decision on the matter, in writing, explaining in detail the reasons for its action.

#### Sec. 607

(a) A licensee may, by written notice, surrender its Individual License to the Commission at any time or in accordance with the requirements set out in the Individual License. The surrender shall take effect on the date the Commission receives the written notice expressing the licensee's intention to surrender its Individual License.

#### Sec. 608

The Commission may, by written order, suspend or revoke an Individual License granted under this Act in any of the following circumstances:

(a) the licensee has failed to pay any amount or fine required by or imposed pursuant to this Act or the Individual License;

(b) the licensee has failed to comply with the provisions of this Act or any regulation that the Commission may prescribe pursuant to this Act or the terms and conditions of the Individual License;

(c) the licensee has contravened the provisions of any other written law relevant to the communications industry;

(d) the licensee has failed to comply with any instrument issued, made or given by the Commission.

The Commission may only suspend or revoke an Individual License pursuant to a public hearing conducted in accordance with the procedures that the Commission may prescribe pursuant to Sections 331-334 of this Act.

## VII. TELECOMMUNICATIONS REGULATION

### A. Interconnection

#### Sec. 701

If a Telecommunications Service Provider receives a request for interconnection from another Telecommunications Service Provider, then the first Telecommunications Service Provider shall have an obligation to interconnect its communications system with the other licensee's network at technically feasible locations, in accordance with the principles specified in section 702 of this Act and pursuant to terms and conditions negotiated between the parties in good faith.

#### Sec. 702

(a) All interconnection agreements between licensees shall be in writing and shall comply with this Act, and the regulations and guidelines published from time to time by the Commission pursuant to this Act.

(b) The terms and conditions of interconnection agreements shall primarily be agreed upon between the parties thereto; however, the Commission may intervene and make binding rulings at its own instance or at the instance of either or both parties to the agreement:

(i) if the Commission determines that the agreement or any provision thereof is inconsistent with the provisions of this Act or any regulation that the Commission has adopted; or

(ii) in the event of a failure of consensus between the parties on specific issues or a delay in reaching such consensus; or

(iii) if the Commission considers it in the public interest for it to so intervene at its own instance and without any invitation from either or both parties to the agreement.

#### Sec. 703

(a) All Telecommunications Service Providers shall file each of their interconnection agreements with the Commission within 30 (thirty) days from the date of execution thereof.

(b) The parties shall furnish the Commission with any additional information that the Commission may require in respect of such interconnection agreement.

(c) The Commission may, upon evaluating the terms and conditions and the charges set out in the interconnection agreement, require the parties thereto to revise the agreement if, in the Commission's opinion, the agreement is inconsistent with this Act or the Commission's regulations.

#### Sec. 704

(a) The Commission shall make interconnection regulations as it may deem necessary, but shall not be limited to model terms and conditions for interconnection agreements between service providers.

(b) Matters that the interconnection regulations may address include but are not limited to:

- (i) the time frame and procedures for negotiations and the concluding of interconnection agreements;
- (ii) quality and levels of service;
- (iii) rate methodologies;
- (iv) protection of intellectual property;
- (v) protection of commercial information;
- (vi) provisioning of facilities; and
- (vii) sharing of technical information.

#### Sec. 705

Notwithstanding the terms and conditions of any interconnection, a party thereto shall not at any time and in any circumstance disconnect or discontinue interconnection to any interconnecting party without the prior written approval of the Commission.

#### Sec. 706

The Commission shall have authority, pursuant to the procedures established by Sections 331-334 of this Act, to adopt and enforce rules to require Telecommunications Service Providers to grant competing Telecommunications Service Providers access to their facilities in order to provide a licensed telecommunications service. The facilities to which the Commission may require that a Telecommunications Service Provider grant competing service providers access may include switching facilities, ducts, conduits, and other facilities that may be necessary for the provision of a licensed service. Such rules as the Commission may prescribe pursuant to this Section shall also provide for the recovery of the reasonable costs of providing such access.

### B. Tariff Regulation



## Sec. 711

(a) All licensed telecommunications service providers shall charge lawful tariffs for their services. Lawful rates shall be just, reasonable, and not unduly discriminatory among users or classes of users.

(b) All tariffs of licensed telecommunications service providers that have not been found by the Commission to possess Significant Market Power, as defined in this Act or by Commission regulation, shall be presumed lawful. Licensed telecommunications service providers that have not been found by the Commission to possess Significant Market Power shall not be required to file their tariffs with the Commission.

(c) Any licensed telecommunications service provider that the Commission determines possesses Significant Market Power in one or more relevant product markets shall publish its tariffs. The Commission may direct that a licensed telecommunications service provider that the Commission has determined possesses Significant Market Power delay the effectiveness of any tariff until the Commission has approved said tariff. The Commission may, by rule adopted pursuant to the procedure established in Sections 331-334 of this Act, establish the standards and procedures by which it shall determine the lawfulness of any tariff filed by a licensed telecommunications service provider that the Commission has determined possesses Significant Market Power. Such standards shall, *inter alia*, include the cost basis on which the tariff was established. In assessing cost, the Commission shall use a forward-looking incremental cost methodology.

## Sec. 712

(a) Notwithstanding the provisions of Section 711(b) of this Act, the Commission shall have the authority to review and control tariffs of any licensed telecommunication service provider and to develop rules for setting tariffs in order to ensure that such tariffs are lawful.

(b) The Commission may, on its own motion, or in response to a petition filed by any interested party, initiate a proceeding to determine whether the tariffs of any licensed telecommunications service provider are lawful. In making such a determination, the Commission may rely on standards that it may develop pursuant to Section 711(c) of this Act.

## C. Competition

## Sec. 721

Notwithstanding the provisions of any other written law, the Commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Somali communications market.

## Sec. 722

(a) It shall be unlawful for any licensed telecommunications service provider that the Commission determines has Significant Market Power to engage in any conduct that has the purpose or effect of substantially lessening competition in any Somali telecommunications market.

(b) It shall be unlawful for any licensed telecommunications service provider to enter into an agreement or arrangement with any other person that has the purpose or effect of substantially lessening competition in any Somali telecommunications market.

(c) The Commission may, on its own motion, or in response to a petition filed by any interested party, initiate a proceeding to determine whether one or more licensed telecommunications service providers has engaged in any conduct that has the purpose or effect of substantially lessening competition in any Somali telecommunications market.

(d) In the event that the Commission finds, pursuant to a hearing conducted in accordance with the procedures established in Sections 331-334 of this Act, that any licensed telecommunications service provider has engaged in any conduct that has the purpose or effect of substantially lessening competition in any Somali telecommunications market the Commission shall

(i) Order such licensed telecommunications service provider or providers to refrain from such conduct in the future; and

(ii) Impose such fine or other sanction, as prescribed in Section 901 of this Act as it deems appropriate in the circumstances.

D. Access to and Use of Scarce Resources

Sec. 731

(a) The Commission shall have plenary authority to manage the Nation's radio frequency spectrum resources pursuant to Title V of this Act for purposes of the provision of Telecommunications Services.

(b) The Commission may conduct one or more Public Consultation pursuant to Sections 331-334 of this Act to establish regulations governing the licensing and use of the radio frequency spectrum for the provision of Telecommunications Services.

Sec. 732

(a) The Commission shall prescribe such regulations as will best further the purposes of this Act to establish fees for the use of radio frequency spectrum resources for the provision of Telecommunications Services.

(b) Such regulations as the Commission may prescribe pursuant to subsection (a) of this Section shall, at a minimum, ensure that fees:

(i) recover from commercial providers of Telecommunications Services a measure of the value of the radio frequency spectrum resources for the benefit of the People of Somalia;

(ii) shall be reasonable, non-discriminatory, and administered in a transparent manner;

(iii) shall encourage the development and expansion of Telecommunications Services to all areas of the Nation.

Sec. 733

(a) The Commission shall have authority to manage and regulate the use of numbering and addressing resources for the provision of Telecommunications Services and Information Services in the Republic of Somalia. This shall include the National Numbering Plan, Internet domain registration, and all other numbering and addressing resources of the Nation. All Licensed Telecommunications Service Providers shall be entitled to obtain numbering and addressing resources for the provision of Telecommunications Services pursuant to such regulations as the Commission may prescribe pursuant to the terms of this Act.

(b) The Commission may conduct one or more Public Consultations pursuant to Sections 331-334 of this Act to establish regulations governing the administration and use of numbering and addressing resources. In particular, the Commission shall specify the procedures by which Licensed Telecommunications Service Providers may obtain access to numbering and addressing resources for the provision of Telecommunications Services. Such regulations shall include provisions for the rejection, in whole or in part, of an application for the use of numbering or addressing resources in the event that:

- (i) the applicant is not a Licensed Telecommunications Service Provider;
- (ii) the proposed use of numbering or addressing resources is not compatible with the National Numbering Plan;
- (iii) the proposed use of numbering or addressing resources is inconsistent with the provisions of this Act, the Commission's rules, or any other law then in force in the Republic of Somalia;
- (iv) the proposed use of numbering or addressing resources may pose a risk to national security or public order;
- (v) the applicant would not make timely or efficient use of numbering or addressing resources.

(c) In any case in which the Commission shall reject an application for use of numbering or addressing resources in accordance with regulations adopted pursuant to this Act, the Commission shall issue its Decision in such matter in writing and shall explain, with particularity, the reasons for rejecting the application. An applicant may submit a revised application for use of numbering or addressing resources that corrects any legal or technical deficiencies that the Commission has identified in its Decision rejecting the original application. An applicant may also request review by the Commission of its Decision rejecting the application or may file an appeal of the Decision with the Appeals Board pursuant to the provisions of this Act.

(d) The Commission may also, at the request of any person or on its own motion, revoke any authorization to use numbering or addressing resources, or prohibit any use of numbering or addressing resources that was commenced prior to the entry into force of this Act, if the Commission finds, pursuant to a transparent process consistent with Sections 331 to 334 of this Act, that such use of numbering or addressing resources would be inconsistent with the terms of subsection (b) of this Section. In any case in which the Commission shall revoke an authorization to use numbering or addressing resources or shall prohibit any use of numbering or addressing resources that commenced prior to the entry into force of this Act, the Commission shall issue its Decision in writing and shall state with particularity the reasons for its action. The party whose authorization for use of numbering resources is revoked or prohibited may request review by the Commission of its Decision or may file an appeal of the Decision with the Appeals Board pursuant to the provisions of this Act.

(e) The Commission shall have authority to contract with one or more outside organizations for the management, subject to the Commission's supervision, of the Nation's numbering and addressing resources.

Sec. 734

(a) The Commission may prescribe such regulations as will best further the purposes of this Act to establish fees for the use of numbering and addressing resources for the provision of Telecommunications Services and Information Services.

(b) Such regulations as the Commission may prescribe pursuant to subsection (a) of this Section shall, at a minimum, ensure that fees:

(i) recover from commercial providers of Telecommunications Services a measure of the value of the numbering and addressing resources for the benefit of the People of Somalia;

(ii) shall be reasonable, non-discriminatory, and administered in a transparent manner;

(iii) shall encourage the development and expansion of Telecommunications Services and Information Services to all areas of the Nation.

#### Sec. 735

(a) Licensed Telecommunications Service Providers shall have the right to reasonable access to and use of all Public Rights of Way throughout the Nation for the construction, maintenance, and operation of facilities necessary for the provision of Licensed Telecommunications Services.

(b) Licensed Telecommunications Service Providers shall have the right to reasonable access to and use of Private Rights of Way with the consent of the owner or, failing such consent, pursuant to such regulations as the Commission may from time to time prescribe.

(c) Licensed Telecommunications Service Providers shall be obligated to repair any damage to Public or Private Rights of Way that their construction, maintenance, or operation of facilities necessary for the provision of Licensed Telecommunications Services may cause. The Commission may prescribe regulations for the establishment of appropriate compensation for any damaged caused by such use of Public or Private Rights of Way. The Commission shall have authority to hear and resolve any disputes arising out of such use of Public or Private Rights of Way.

#### E. Universal Access

#### Sec. 741

(a) The Commission shall, pursuant to Public Consultation, develop annual objectives for Universal Access to Telecommunications Services in Somalia. In developing its Universal Access objectives, the Commission shall seek to ensure that Telecommunications Services are accessible to the largest number of users possible, particularly in rural and remote areas of the Nation.

(b) The Commission shall, pursuant to Public Consultation, establish a Universal Access Fund that shall be used to support the Commission's Universal Access objectives. The Commission shall prescribe regulations that shall specify the amounts and sources of funding for the Universal Access Fund and the manner in which monies collected by the Universal Access Fund shall be disbursed to support the Commission's Universal Access objectives.

(c) The Commission shall also prescribe regulations, pursuant to Public Consultation that shall specify the types of Telecommunications and Information Services that are to be supported by the Universal Access Fund.

#### F. Consumer Protection

#### Sec. 751

(a) The Commission shall have authority to adopt such rules as it shall deem necessary in order to ensure that the interests of consumers of Telecommunications Services are protected. The

Commission shall adopt such rules through Public Consultation pursuant to Sections 331-334 of this Act.

(b) Without limiting the authority contained in subsection (a) of this Section, the Commission shall in particular require each Licensed Telecommunications Service Provider to establish a Code of Conduct that shall specify the rights of consumers. The Commission shall approve each Licensed Telecommunications Service Provider's Code of Conduct by a written Decision that the Commission shall adopt through Public Consultation pursuant to Sections 331-334 of this Act. The Commission may require a Licensed Telecommunications Service Provider to make such changes to its Code of Conduct as the Commission, pursuant to Public Consultation, concludes are necessary in order to protect the interests of consumers.

(c) A Licensed Telecommunications Service Provider shall include in its Code of Conduct the following items:

- (i) A concise statement of rates and charges for services;
- (ii) A concise statement of billing practices for both pre-paid and post-paid customers;
- (iii) A statement of the Licensed Telecommunications Service Provider's complaint process that it shall make available to all customers;
- (iv) The Licensed Telecommunications Service Provider's policies for protection of customer information;
- (v) Any other matters that the Licensed Telecommunications Service Provider deems necessary to provide full information to customers or that the Commission may direct the Licensed Telecommunications Service Provider to include.

#### Sec. 752

(a) The Commission may, through a Public Consultation pursuant to Sections 331-334 of this Act, determine a list of services that Licensed Telecommunications Service Providers shall be required to provide to their customers. Such services may include, among others:

- (i) Emergency services;
- (ii) Directory assistance services;
- (iii) Operator assistance services;
- (iv) Services for disabled customers; and
- (v) Any other services that the Commission shall deem necessary.

(b) In the event that the Commission shall determine that Licensed Telecommunications Service Providers shall be required to provide access to emergency services to their customers, the Commission shall promote public safety through the use of a specific number that shall be designated as the national emergency assistance number for telephone services throughout Somalia. The Commission shall also take action to encourage the prompt deployment throughout Somalia of the necessary infrastructure for the provision of access to emergency services.

#### Sec. 753

(a) Licensed Telecommunications Service Providers shall take all reasonable steps to ensure the confidentiality of their customers' Telecommunications.

(b) Notwithstanding the requirement of subsection (a) of this Section, Licensed Telecommunications Service Providers shall comply with all lawful orders of the Government of Somalia or of any court of competent jurisdiction to provide such information relating to a customer's Telecommunications as the Government of Somalia or a court of competent jurisdiction shall, pursuant to the laws of Somalia, require. Further, Licensed Telecommunications Service Providers shall provide access to their network to permit duly authorized agents of the Government of Somalia to carry out lawful surveillance of Telecommunications in the conduct of a criminal investigation or national security investigation in accordance with the terms stipulated by a court of competent jurisdiction.

#### G. Type Approval Sec. 761

(a) The Commission shall have plenary authority over the approval of equipment to be deployed in the networks of any Licensed Telecommunications Service Provider, including equipment to be provided to end users of Telecommunications Services.

(b) In exercising the authority granted it in subsection (a) of this Section, the Commission shall designate one or more recognized testing bodies whose authorization of equipment shall be presumptively lawful in Somalia. Such bodies may include, among others, the European Telecommunications Standards Institute and the Telecommunications Industry Association. The Commission may conduct one or more Public Consultations pursuant to Sections 331-334 of this Act to identify recognized testing bodies whose authorizations of equipment shall be presumptively lawful in Somalia.

(c) The Commission shall maintain a register of recognized testing bodies, whose authorization of equipment shall be presumptively lawful in Somalia. Any person may petition the Commission to add or delete one or more organizations from the Commission's register of recognized testing bodies. In reviewing any such petition, the Commission shall conduct a Public Consultation pursuant to Sections 331-334 of this Act.

### VIII. BROADCASTING

#### Sec. 801

The Commission shall have plenary and exclusive authority to license and regulate Broadcasting and to manage Somalia's radio frequency spectrum resources pursuant to Title V of this Act for purposes of the provision of Broadcasting.

#### Sec. 802

The Commission may issue regulations, codes and rules applicable to Broadcasters concerning the following, after conducting Public Consultations in accordance with the provisions of Sections 331-334 of this Act as appropriate:

- (a) Licensing and use of the radio frequency spectrum for the provision of Broadcasting Services;
- (b) Broadcasting content;
- (c) Advertising and sponsorship;
- (d) Special rules for election periods;
- (e) Protection of copyrights;
- (f) Any other issue necessary for ensuring efficient and effective use of radio frequency

spectrum by Broadcasters.

In doing so, the Commission shall at all times adhere to international principles of freedom of speech and of the press as articulated in the International Covenant of Civil and Political Rights and international law. All Commission regulations, codes and rules shall respect the right to freedom of expression, while also recognizing the social, cultural, moral, and religious values that apply generally within Somalia.

#### Sec. 803

The Commission shall have no authority to:

- (a) Regulate any media other than Broadcasters as set out herein; or
- (b) Engage in prior censorship.

### IX. ENFORCEMENT

#### Sec. 901

(a) The Commission shall have authority to enforce the provisions of this Act and of any regulation that the Commission may prescribe pursuant to the provisions of this Act.

(b) The Commission shall have authority to monitor compliance with the terms of this Act and of any regulation that the Commission may prescribe pursuant to the provisions of this Act. Such monitoring may consist of regular activities of the Commission's staff or may arise as a result of information or complaints submitted to Commission by any interested party.

(c) The Commission shall have authority, pursuant to a transparent procedure consistent with the terms of Sections 331-334 of this Act, to adjudicate all complaints against any Licensee and shall have authority to assess appropriate remedies for any violation of the terms of this Act, of any License issued pursuant to this Act, or of any regulation, Order, or Decision that the Commission may issue pursuant to the terms of this Act. Such remedies as the Commission may prescribe may include fines or restitution to be paid by any Person who violates the terms of this Act, of any License issued pursuant to this Act, or of any regulation, Order, or Decision that the Commission may issue pursuant to the terms of this Act, or may include other appropriate sanctions as well, provided, however, that such remedies shall be proportionate, non-discriminatory, and transparent.

### X. TRANSITIONAL PROVISIONS

#### Sec. 1001

(a) The Commission shall have authority to require all Telecommunications Service Providers and Broadcasters who are operating at the time this Act takes effect to obtain Licenses pursuant to the terms of this Act.

(b) All Licensees shall be required to comply with the terms of this Act as of the date of its entry into force, including, without limitation, requirements of this Act or of any regulation that the Commission may prescribe pursuant to the terms of this Act, to pay any fee required by a License or the Commission's regulations.

(c) Notwithstanding the provisions of subsection (b) of this Section, no Licensee that is in operation at the time that this Act takes effect shall be required to pay an initial License fee or to obtain pursuant to auction the rights to use of radio frequency spectrum resources that said Licensee is



using pursuant to any authorization previously granted by any entity that has exercised governmental authority in the territory of Somalia prior to the entry into force of this Act.

Sec. 1002

No person shall be liable for any penalty as a consequence of actions that may be prohibited by this Act to the extent that such actions were committed prior to the entry into force of this Act.

Sec. 1003

This Act shall enter into force thirty (30) days after its signature by the President.

## **TRANSITIONAL FEDERAL GOVERNMENT OF SOMALIA**

### **SOMALI COMMUNICATIONS ACT OF 2012**

### **SOMALI COMMUNICATIONS ACT OF 2012**

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## I. PURPOSE

### Sec. 101

(a) The object of this Act is to provide for development of telecommunications and broadcast policy and regulation for the Republic of Somalia and the establishment and management of the Somali Communications Commission. This Act may be cited as the Somali Communications Act of 2012.

(b) The specific purposes of this Act are the regulation and facilitation of information and communication technologies and services sector including:

- (i) Telecommunications;
- (ii) The enhanced development of an information society together with the facilitation of online services;
- (iii) The protection and security of data;
- (iv) Facilitation of the development and use of the Internet;
- (v) The facilitation of convergence;
- (vi) The facilitation and development of electronic transactions;
- (vii) The development of information and communication technologies for the promotion of a knowledge-based society;
- (viii) The institutionalization of a legal framework to manage a liberalized and competitive market in the telecommunication sector;
- (ix) The licensing and regulation of broadcasting and the development of an open, free, and vibrant broadcast sector for Somalia.

## II. DEFINITIONS

“Act” shall mean the Somali Communications Act of 2012.

“Allocation” shall mean the official designation of radio frequency bands, as reflected in the Frequency Allocation Table.

“Appeals Board” shall mean the body established by this Act for the purpose of adjudicating appeals of Decisions of the Commission.

“Assignment” shall mean the official grant of right to use specific radio frequencies, made by the Commission to Telecommunications Service Providers or Broadcasters.

“Board” shall mean the Governing Board of the Commission.

“Broadcasting” shall mean the emission and dissemination of radio or television programming, including public service broadcasting, intended for reception by the public. Broadcasting is a one-directional service that does not include a return path from the user to the Broadcaster.

“Chairman” shall mean the Commissioner so designated by the President.

“Class License” shall mean a telecommunications License (as distinct from the Individual License) subject to standard conditions for all Licensees concerning every type of License granted in accordance with the provisions of Title VI of this Act.

“Code of Conduct” shall mean a set of regulations, rules, or standards governing the actions of Broadcasters licensed by the Commission.

“Commission” shall mean the Somali Communications Commission as established and further described in this Act.

“Commissioner” shall mean a member of the Board of the Somali Communications Commission.

“Council of Ministers” shall mean the Council of Ministers of the Transitional Federal Government of Somalia or its successor institution.

“Decision” shall mean any written decision, order, ruling, determination or other similar pronouncement issued by the Commission, that disposes in whole or in part and on a temporary or permanent basis, of any matter before the Commission.

“Director General” shall mean the Director General of the Somali Communications Commission.

“Financial Year” shall mean the annual period used by the Commission for budgeting purposes.

“Frequency Allocation Table” shall mean the document by which the Commission adopts and publishes allocation of radio frequency spectrum among various communications services.

“Individual License” shall mean a Telecommunications License granted to a particular entity on terms specific to that entity in accordance with the provisions of Title VI of this Act.

“Information Services” shall mean the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

“Interconnection” shall mean the physical, technical and logical linking of the Telecommunications Networks used by the same or a different service provider in order to allow the users of one service provider to communicate with users of the same or another service provider, or to access services provided by another service provider. Services may be provided by the persons involved or by other persons who have access to the telecommunications network.

“License” shall mean the authorization issued by the Commission that allows Broadcasters and Telecommunications Service Providers to use radio frequency spectrum resources and to provide the specified service to the public.

“Licensee” shall mean a holder of a License issued by the Commission.

“Minister” shall mean the Minister of Information of the Transitional Federal Government or its successor institution.

“Ministry” shall mean the Ministry of Information of the Transitional Federal Government or its successor institution.

“National Numbering Plan” shall mean the document by which the Commission specifies allocation of telephone numbering resources.

“Parliament” shall mean the Parliament of the Transitional Federal Government or its successor institution.

“President” shall mean the President of the Transitional Federal Government or its successor institution.

“Public Consultation” shall mean the transparent process by which the Commission formulates policies and Decisions in matters under its jurisdiction.

“Public Notice” shall mean the document by which the Commission initiates a Public Consultation.

“Public Telecommunications Network” shall mean the facilities by which a Telecommunications Service Provider makes Telecommunications Services available to all or a substantial portion of the public.

“Radio Frequency Spectrum” shall mean the range of electromagnetic frequencies below 3000 GHz used for Broadcasting or Telecommunications.

“Right of Way” shall mean legal permission to use the property of a public or private entity for the construction, maintenance, or operation of a Telecommunications Network.

“Secretary” shall mean the Secretary of the Somali Communications Commission.

“Service Provider” shall mean an entity authorized by the Commission pursuant to Title VI of this Act to provide Services.

“Significant Market Power” shall mean the ability to materially affect the price supply in the relevant market for telecommunications services as a result of either control over essential facilities; or use of its position in the market.

“Telecommunications” shall mean the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

“Telecommunications Frequency” shall mean any portion of the Radio Frequency Spectrum that the Commission allocates for the provision of Telecommunications.

“Telecommunications Network” shall mean the facilities by which a Telecommunications Service Provider makes Telecommunications Services available to the public or to a private network.

“Telecommunications Service” shall mean the provision by a Licensee of the conveyance of Telecommunications for a fee directly to the public.

“Telecommunications Service Provider” shall mean an entity authorized by the Commission pursuant to Title VI of this Act to provide Telecommunications Services.

“Universal Access” shall mean the availability to all users, regardless of their geographic location, of Telecommunications Services of a quality specified by the Commission and at suitable prices.

“Universal Access Fund” shall mean the mechanism that the Commission may prescribe to support the provision of Universal Access of a quality and price that the Commission determines to be acceptable.

### III. THE COMMISSION

#### Sec. 301

(a) In order to achieve the purposes set out in Title I of this Act, the Somali Communications Commission is hereby established.

(b) Except to the extent otherwise provided in this Act, the Commission shall have plenary authority to license and regulate Telecommunications and Broadcasting services throughout the territory of the Republic of Somalia, in accordance with the terms of this Act.

(c) The Commission shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and shall have the power to do the following:

(i) enter into contracts and incur obligations;

(ii) acquire, hold, mortgage, purchase and deal howsoever with property, whether movable or immovable, real or personal; and

(iii) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act.

(d) The Commission shall be structured into departments as the Board may from time to time deem appropriate for the effective discharge of its functions.

(e) The headquarters of the Commission shall be in Mogadishu.

(f) The Commission shall enjoy all advantages enjoyed by ministries, governmental entities, and official public sector organizations in Somalia, provided, however, that the Commission shall not be a member of the Council of Ministers.

#### Sec. 302

(a) The affairs of the Commission shall be administered by a Governing Board (“the Board”). The Board shall consist of 9 Commissioners who shall be nominated by the President and approved by a majority vote of the Council of Ministers. The Board shall have the authority to make orders for the transparent regulation of its proceedings and meetings, provided that such orders shall be in accordance with the procedural requirements of Sections 331-334 of this Act. The President shall specifically identify one of his nominees to serve as Chairman of the Board.

(b) Commissioners shall be persons of recognized standing, qualifications, and experience in one of more of the following fields:

(i) finance or accounting;

- (ii) law;
  - (iii) consumer affairs;
  - (iv) telecommunications engineering;
  - (v) broadcasting;
  - (vi) journalism;
  - (vii) information technology;
  - (viii) economics; and
  - (ix) public administration.
- (c) A person shall not be appointed or remain in office as a Commissioner who:
- (i) is not a citizen of Somalia;
  - (ii) is not ordinarily resident in Somalia;
  - (iii) is a serving member of Parliament, any State governmental body, or local governmental body;
  - (iv) is incapacitated by any physical illness;
  - (v) has been certified by competent authorities to be of unsound mind;
  - (vi) has been convicted in Somalia or elsewhere of a felony criminal offense; or
  - (vii) has at any time been removed from an office of trust in Somalia or elsewhere on account of misconduct.
- (d) Commissioners shall serve staggered terms of five years so that no more than two Commissioners' terms shall expire in the same year. A Commissioner's term shall end on June 30 of the year in which his term of office expires but may continue to serve for up to one year pending the appointment of his successor. A Commissioner may be reappointed upon the completion of his term of office.
- (e) The initial Board of the Commission shall draw lots to determine the tenure of their initial terms in order to ensure that the expiration of the Commissioners' terms shall be staggered. The Commissioners that shall draw the numbers 1 and 2 shall serve a full five-year term. The Commissioners that shall draw the numbers 3 and 4 shall serve a four-year term. The Commissioners that shall draw the numbers 5 and 6 shall serve a three-year term. The Commissioners that shall draw the numbers 7 and 8 shall serve a two-year term. The Commissioner that shall draw the number 9 shall serve a one-year term.
- (f) In the event that a vacancy arises on the Board due to the death, resignation, or removal of a Commissioner or upon the expiration of a Commissioner's term, the President shall fill such vacancy in accordance with the appointment process contained in subsection (a) of this section.
- (g) Commissioners shall be entitled to compensation for their service at a rate to be set by law by the Parliament, but in no event less than the amount paid to a Minister. A Commissioner's compensation shall not be reduced during his term in office, but may be increased.

(h) A Commissioner may only be removed from office upon a two-thirds vote of the Transitional Federal Parliament, or its successor institution. Such removal may only occur for the following reasons:

- (iv) The Commissioner's incapacity to perform his duties due to illness;
- (v) The Commissioner's conviction by a court of competent jurisdiction of a crime punishable by a term of imprisonment (regardless of whether the court shall impose a sentence of imprisonment);
- (vi) The Commissioner's knowing and continued violation of the conflict of interest provisions of this Act.

#### Sec. 303

(a) The Board shall meet at least once per month in order to consider the business of the Commission and to hear such reports as the Director General and staff of the Commission may present.

(b) The Chairman shall have the power to schedule meetings, upon not less than fourteen days' advance notice to the Board and to the public; provided, however, that in the event of exigent circumstances that require that the Board meet upon less than fourteen days' advance notice the Chairman may call such a meeting of the Board with the concurrence of at least five other Commissioners. A quorum to conduct the business of the Board shall consist of a majority of the number of members of the Board then serving. In the absence of the Chairman, the Chairman may designate another Commissioner to act as Chairman. In the event of the death, resignation, or removal of the Chairman, the remaining Commissioners may, by majority vote, designate one of their number to act as Chairman pending an appointment of a new Chairman by the President.

(c) The Board shall act by majority vote of the Commissioners present. In the event that the Commissioners are evenly divided on a matter that is put to a vote of the Board, the Chairman shall cast the deciding vote.

#### Sec. 304

(a) The Director General shall be primarily responsible for the execution of the policies and decisions of the Board and for the day-to-day management and supervision of the activities of the Commission. In particular, the Director General shall supervise the work of the staff and shall propose to the Board such organization of the staff of the Commission as shall seem to him best suited to the proper execution of the Commission's functions. The Director General shall have primary responsibility for hiring qualified staff and for ensuring the staff's proper training and capable performance in office.

(b) The Director General shall be a person possessing sound knowledge and ability in the organization and management of communications matters. The Board shall appoint the Director General and shall fix his compensation and terms of service.

(c) The Board may delegate in writing any of its functions to the Director General or to such other members of the Commission staff as it may deem appropriate; provided, however, that the Board shall not delegate review of actions taken by the Board to the Director General or any member of the staff.

(d) In the event of a vacancy in the office of Director General, the Chairman, another Commissioner, or another member of the staff of the Commission designated by the Board may serve as

Director General until the Commission shall appoint a new Director General. The new Director General shall not be a current member of the Board, but may be a member of the staff of the Commission.

Sec. 305

(a) The Board shall appoint a Secretary who shall not be a Commissioner but shall possess relevant and adequate professional qualifications.

(b) The Secretary shall keep the corporate records of the Commission, shall keep minutes of meetings of the Board, and shall maintain other records of the Commission as directed by the Board or by the Director General. The Secretary shall perform such other duties as the Board or the Director General may from time to time appoint.

Sec. 306

(a) The Commission shall have powers to appoint such number of other persons as it deems necessary as staff of the Commission. The employment of the Commission's staff, including Director General and the Secretary, shall be subject to such terms and conditions as the Board may from time to time stipulate and shall be contained in the respective staff's employment contracts.

(b) The Board, or the Director General acting on behalf of the Board, shall develop and implement appropriate conditions of service for the Commission's staff with particular regard to the issues of remuneration, pensions scheme and other employee benefits, sufficient for the Commission to attract and retain employees of the highest quality.

(c) The Board shall consider and review from time to time, the remunerations and allowances payable to the Commission's staff.

(d) The conflict of interest provisions contained in Section 336 of this Act shall apply to all employees of the Commission.

Sec. 311

(a) The Commission shall establish and maintain a Fund from which all expenditures incurred by the Commission shall be paid. The Fund shall comprise funds derived from but not limited to the following sources:

(i) such monies as may be appropriated to the Commission from time to time by the Parliament;

(ii) fees assessed by the Commission pursuant to the terms of this Act, the Commission's regulations, or the terms of any license that the Commission may grant pursuant to this Act;

(iii) gifts, loans, grants, or other contributions from outside sources; and

(iv) all other assets that may from time to time accrue to the Commission.

(b) The Commission shall pay all monies accruing from the auction of licenses to use the radio frequency spectrum pursuant to Section 604 of this Act into the General Fund of the Ministry of Finance.

(c) The Commission may, with the consent of, or in accordance with

the general authority given by the Minister of Finance, borrow such sums of money as the Commission may require in the exercise of its functions under this Act.

(d) The Commission may accept gifts or grants of money or aids or other property from national, bilateral and multi-lateral organizations and upon such terms and conditions, if any, as may be agreed upon between the donor and the Commission provided that such gifts are not inconsistent with the objectives and functions of the Commission under this Act.

#### Sec. 312

(a) The Commission shall, not later than 30th September in each year or such other date as the Parliament may by statute determine, prepare and present to Parliament for its approval, a statement of estimated income and expenditure for the following financial year.

(b) Notwithstanding the provisions of subsection (a), the Commission may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure to Parliament for approval.

(c) Subject to subsections (a) and (b) of this section, the Commission shall apply the proceeds of the Commission's Fund:

- (i) to meet the administrative and operating costs of the Commission;
- (ii) for the payment of salaries, wages, fees and other allowances, retirement benefits such as pensions and gratuities and, any other remunerations payable to the Commissioners and staff of the Commission;
- (iii) for the purchase or acquisition of property or other equipment and other capital expenditure and for maintenance of any property acquired or vested in the Commission; and
- (iv) for any of the functions of the Commission under this Act.

(d) The financial year of the Commission shall start on 1st January of each year and end on 31st December of the same year unless Parliament shall by statute establish a different financial year.

(e) The Commission shall keep proper records of its accounts in respect of each year and shall cause its accounts to be audited within 6 months from the end of each financial year by internationally recognized independent auditors whose appointment shall be approved by the Board and shall be subject to reappointment annually.

#### Sec. 313

(a) The Commission shall prepare and submit to the Parliament annually and not later than 6 months after the end of its financial year, a report ("Annual Report") on the activities of the Commission for the preceding financial year. The Annual Report shall include the Commission's audited accounts for the year under review together with the auditor's report thereon.

(b) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Commission.

#### Sec. 321



(a) The Commission shall perform the following functions in accordance with this Act:

- (i) Supervise and regulate Licensees, including both Telecommunications Service Providers and Broadcasters;
- (ii) Ensure compliance by Service Providers with international obligations entered into by Somalia in the telecommunications sector;
- (iii) Hold Public Consultations on the matters committed to its discretion by this Act;
- (iv) Issue Licenses in accordance with the terms of this Act;
- (v) Prescribe and publish all forms relating to the licensing processes established under this Act;
- (vi) Monitor and investigate compliance with this Act and with conditions of Licenses, and any regulations that the Commission may prescribe pursuant to this Act and make such decisions as are necessary to enforce compliance with the same;
- (vii) Assign radio frequencies to Licensees in accordance with the national frequency allocation table;
- (viii) Modify, renew, suspend or revoke licenses;
- (ix) Respond to and dispose of complaints and disputes involving Telecommunications Service Providers, users and other persons including, but not limited to, matters of interconnection, access to property, eminent domain, access to and quality of service, numbering, unacceptable interference with the networks or services of grantees and privacy;
- (x) Respond to and dispose of complaints and disputes against Broadcasters;
- (xi) Establish and maintain the numbering plan and assign numbers;
- (xii) Establish and supervise contributions to fund such universal access programs as the Commission may establish and administer such programs;
- (xiii) Publish and maintain registries of Licensees, Licenses, interconnection agreements, Commission notices and decisions and, subject to accepted claims of confidentiality or permissible disclosures, make them available to the public for inspection and publish them on the Commission's official website; and
- (xiv) Such other functions as are consistent with the role of the Commission under this Act.

(b) The Commission may perform any of the functions set out in this section upon its own initiative or, consistent with the provisions of this Act and any other applicable law may contract with outside parties to perform certain functions.

Sec. 322

(a) The Commission has the power to require any Licensee, Telecommunications Service Provider, or Broadcaster to provide information that the Commission reasonably finds to be necessary for the proper performance of its functions and the exercise of its powers under this Act, provided that the Commission has provided the Service Provider with at least two (2) weeks prior written notification ("Written Notice") of such specific information requirements and such Written Notice is accompanied by explanations as to the need for such information.

(b) The Commission shall safeguard commercial secrets and other confidential information collected by it pursuant to this Act.

Sec. 323

(a) The Commission shall establish and maintain an official website and shall require all Telecommunications Service Providers to cite the website address in all of their user invoices in order to facilitate consumer protection.

(b) The Commission shall publish on a timely basis, all registries established and maintained by it and all public notices, Decisions, Licenses, signed interconnection agreements, documents prescribed by it, including Codes of Conduct and related documents, and other non-confidential documents made by or for it under this Act on its official website and shall make copies of such documents available to any interested party upon payment of a nominal copying fee, that the Commission shall prescribe.

## Sec. 331

(a) The Commission may initiate a public hearing on any substantive matter within its jurisdiction under this Act, either on its own initiative or upon the written request of any interested person. The Commission shall initiate a public hearing on any matter that is specified in a written directive from the Council of Ministers.

(b) Public hearings conducted by the Commission shall be open to all members of the public, except to the extent that the Commission decides otherwise, due to the confidential nature of any specific matter to be addressed during the hearing.

(c) The Commission shall record the entire proceeding of its public hearings and shall make copies of its recordings available to any member of the public, on a cost recovery basis that the Commission shall prescribe.

## Sec. 332

(a) The Commission may hold a Public Consultation, to be conducted in whole or in part by written submissions only.

(b) The Commission shall initiate a Public Consultation by issuing a public notice:

(i) Announcing the commencement of the process;

(ii) Setting out the nature of the matter to which such Public Consultation relates;

(iii) The period within which comments may be submitted, together with all filing requirements;

(iv) Providing any background discussion paper or other information that may assist interested parties in the preparation of their comments; and

(v) Including any other information that the Commission deems appropriate in the circumstances.

(c) The Commission shall ensure that the Public Notice initiating a Public Consultation shall give interested parties adequate notice of the matters that the Commission is considering and the actions that the Commission is likely to take as a result of the Public Consultation.

(d) As a result of a Public Consultation, the Commission may adopt, amend, or repeal any regulation that it is within the Commission's authority to make in accordance with the provisions of this Act. The Commission may also conclude that the purposes of this Act will be best served by not taking formal action or by issuing a report concerning the findings it reaches as a result of the Public Consultation. When the Commission considers it appropriate, it may also present recommendations to Parliament for legislation to address matters that the Commission considers it cannot address pursuant to the terms of this Act, or may take such other action as it considers appropriate in the circumstances.

## Sec. 333

(a) The Commission shall ensure that it shall conduct all of its proceedings in a transparent manner. The Commission shall provide adequate notice to the public, through a Public Notice or other similar instrument, of its proposed action with respect to adoption, amendment, repeal, or enforcement of any regulation or its proposed action to implement any provision of this Act.

(b) The Commission shall allow members of the public, including natural and juridical persons subject to the Commission's jurisdiction, consumers, and other organizations, a reasonable opportunity to submit written or oral presentations addressing any action the Commission proposes to take. The Commission shall also allow members of the public to respond to written or oral presentations submitted by other members of the public.

## Sec. 334

(a) In any proceeding before the Commission, the Commission shall render a decision in writing explaining the reasons for its action. The Commission shall base its findings of fact and conclusions of law only upon the information contained in the record of the proceeding before it and on publicly available facts of which the Commission may take official notice. The Commission's decision shall explain in reasonable detail the reasons supporting its action and shall address the positions presented in presentations made by members of the public. The Commission's Decision may take any action that is consistent with the Commission's authority pursuant to this Act.

(b) The Commission's Decision may grant, in whole or in part, any action or relief requested by any party; may deny any action or relief requested by any party; or may fashion such other remedy within the scope of the Commission's authority that may, in the Commission's judgment, best serve the purposes of this Act.

#### Sec. 335

(a) Any person aggrieved by an action of the Commission or the Commission staff may request that the Commission review the original Decision of the Commission or of the Commission's staff. In all cases in which such review is requested, the Commission shall issue a Public Notice informing the public that the Decision is under review and shall allow interested members of the public an opportunity to make written or oral presentations concerning the request for review of the Decision.

(b) The Commission may grant the request for review in part or in whole or may deny the request for review. The Commission shall issue a written Decision in response to the request for review of the original Decision and shall state with particularity the reasons underlying its action.

(c) Any person aggrieved by a Decision of the Commission may appeal said Decision to the Appeals Board. The Appeals Board shall be an independent, three-member body that shall be empowered to hear appeals of Decisions taken by the Board of the Commission or by the Director General. Members of the Appeals Board shall be appointed by the President for staggered terms of three years. Members of the Appeals Board shall have experience in law, telecommunications, broadcasting or other relevant disciplines. The members of the Appeals Board shall elect one of their members as Chairman and shall establish transparent rules of procedure for hearing and adjudicating matters brought before them. The Appeals Board shall issue its decisions in writing, explaining its reasons for either affirming or overruling the Commission's action. In the event that the Appeals Board overrules a Commission action, it must refer the matter to the Commission for further proceedings. Members of the Appeals Board shall be remunerated by the Ministry of Justice.

(d) Any request for review or appeal of a Commission Decision must be filed with the relevant authority within thirty (30) days of the effective date of the Commission's Decision. For purposes of this subsection, a Decision of the Commission shall be effective upon its public release unless the Commission shall specify a different effective date in writing. Further, a Decision of the Commission shall be effective during the pendency of any request for review or appeal, unless the Commission shall determine that the interests of justice and the purposes of this Act shall be better served by delaying the effectiveness of such Decision.

#### Sec. 336

Neither the Director General nor any member of the Board, the Appeals Board, nor any member of the Commission's staff, may work on any Commission matter that will affect

- (a) his personal financial interests;
- (b) the financial interests of his spouse or minor child;
- (c) the financial interests of his business partner;
- (d) the financial interests of any organization in which he serves as an officer, director, general partner, employee or trustee; or
- (e) the financial interests of any entity with whom he has an arrangement for employment or with whom he is negotiating for employment.

In such case, he may either divest himself of the interest causing the conflict of interest or recuse himself from any involvement in the matter.

#### IV. ROLE OF THE MINISTER

##### Sec. 401

The Minister shall have the following responsibilities and functions pursuant to this Act—

(a) the formulation, determination and monitoring, of the general policy for the communications sector in Somalia with a view to ensuring, amongst others, the utilization of the sector as a platform for the economic and social development of Somalia;

(b) the negotiation and execution, in collaboration with the Commission, of international communications treaties and agreements, on behalf of Somalia, between sovereign countries and international organizations and bodies; and

(c) the representation of Somalia, in conjunction with the Commission, at proceedings of international organizations and fora on matters relating to communications.

(d) For one year following the entry into force of this Act, the Minister shall have responsibility for providing material assistance to the Commission in the establishment of its operations. Such assistance shall include direct financial as the Commission may require; assistance in procurement of property and equipment; and assistance in the recruitment and training of the Commission's staff.

##### Sec. 402

(a) Prior to the formulation or review of the general policy for the Somali communications sector, the Minister shall cause the Commission on his behalf to first carry out a public consultative process on the proposed policy formulation or modification.

(b) In formulating and determining the policy or amendments thereto, the Minister and the Council shall take into consideration the findings of the consultative process under subsection (a) of this section.

##### Sec. 403

(a) Subject to subsection (b) of this section, the Minister may, in writing, from time to time notify the Commission or express his views on the general policy direction of the Federal Government in respect of the communications sector.

(b) In the execution of his functions and relationship with the Commission, the Minister shall at all times ensure that the independence of the Commission, in regard to the discharge of its functions and operations under this Act, is protected and not compromised in any manner whatsoever.

#### V. SPECTRUM MANAGEMENT

## Sec. 501

As used in this Act, the allocation of radio frequency spectrum shall refer to the policy of harmonizing certain frequency bands pursuant to international standards and according to broad categories of user groups. Assignment shall refer to the process of granting permits to use specific radio frequencies in accordance with this Law.

As provided in Section 401 of this Act, the Commission shall, in coordination with the Minister, represent Somalia and negotiate on its behalf with international and regional radiocommunication bodies on all matters relating to radio frequency spectrum.

The Commission shall be the sole authority in Somalia to plan, manage, and allocate the use of radio frequency spectrum, provided that the authority granted in this section shall be exercised in conformity with established and applicable international and regional radiocommunication plans and in coordination with other affected branches of the Government of Somalia.

## Sec. 502

The Commission shall, in performing its functions relating to the management of radio frequency spectrum, be responsible for the following:

- (a) The promotion of the orderly development and efficient use of the radio frequency spectrum;
- (b) The development of innovative services using radio frequency spectrum;
- (c) Competition in the provision of services using radio frequency spectrum;
- (d) Current and anticipated demand; and
- (e) Such other factors as it may consider to be relevant.

## Sec. 503

The Commission shall maintain all relevant information related to the allocation of radio frequency spectrum and such other information that it concludes is required to manage the radio frequency spectrum. Except for information that is related to the requirements of national security or defense, the Commission shall make the information specified in this Article available to the public for inspection and shall publish it on the Commission's official website.

## Sec. 504

(a) The Commission shall develop and manage a national frequency allocation table (referred to in this Chapter as the "Table"), which shall conform to international and regional standards. Without limiting the foregoing power, the Commission shall allocate frequency bands to the following user groups:

- (i) National security, military and emergency preparedness;
- (ii) Civil administration and public safety;
- (iii) Broadcasting;
- (iv) Telecommunications; and

Such other user groups as the Commission may determine from time to time. The Minister may at any time request the Commission to prepare a more detailed Table, in accordance with any instructions

that he may provide. The Table, and any amendments thereto, shall become effective upon approval by the Commission, and shall be made available by the Commission to the public for inspection and published on the Commission's official website.

(b) In adopting or revising the Table the Commission shall follow the procedures set forth in Sections 331-334 of this Act. In addition to providing an opportunity for any interested party to comment on proposed revisions to the Table, the Commission shall specifically solicit the views of the Minister on such proposed revisions.

## VI. LICENSING

### A. Requirement For And Class Of Licenses

#### Sec. 601

(a) No Person shall operate a Public Telecommunications Network, any Telecommunications Network using a Telecommunications Frequency, any Broadcast station, or provide a Telecommunications Service in Somalia unless authorized to do so under a communications license, or unless exempted from licensing under regulations made by the Commission pursuant to this Act.

(b) The Commission shall issue communications licenses for the operation and provision of Telecommunications Services by way of Class or Individual Licenses on such terms and conditions as the Commission may from time to time determine taking into consideration the objectives of this Act.

(c) The Commission shall from time to time determine and publish to the general public the communications services that qualify for Class or Individual Licenses or that are exempted from licensing. The Commission shall, in determining the services that qualify for Class or Individual Licenses, at all times ensure that previous holders of licenses for such services as at the date of such determination do not suffer any disadvantage except as permitted under this Act or the Commission's rules.

#### Sec. 602

(a) The Commission may grant either a Class License or an Individual License for the operation of a Telecommunications Network or for the provision of Telecommunications Services for a finite period of time in accordance with the provisions of this Act.

(b) An application for a License shall be in writing addressed to the Commission in the form prepared by the Commission for this purpose and accompanied by such information and evidence of payment of the application fees as may be required by the Commission in accordance with the provisions of this Act. The Commission shall notify the applicant in writing within 14 days of its receipt of the application.

(c) The Commission shall, if it decides not to grant the License, notify the applicant of its decision in writing and shall explain the reasons for its decision in reasonable detail.

#### Sec. 603

(a) The Commission shall issue Licenses for Telecommunications Services, for Broadcasting and for other services requiring a License pursuant to this Act in writing. Such License, unless revoked, shall continue in full force and effect for such period as may be specified in the License. No License that the Commission issues pursuant to this Act may be transferred or assigned to

a third party without the prior written consent of the Commission. The sale or other transfer of a sufficient interest in a Licensee as to amount of a change of management or control of the Licensee shall require the advance approval of the Commission.

(b) A License may include:

(i) such terms as the Commission determines are necessary and reasonable; and

(ii) terms requiring the Licensee to provide to the Commission, in such manner and at such times as may be reasonably required, such documents, data, accounts, estimates, returns or other information as the Commission may require for the purpose of exercising its powers and fulfilling its duties under this Act.

#### Sec. 604

(a) The Commission may only grant an Individual License on the recommendation of the Director General and following ratification thereof by the Commission within thirty days after the date on which the Director General submits his recommendation to the Commission. When the Commission refuses to ratify his recommendation or when such 30 day period expires without the Commission's ratification, the Director General may resubmit the matter within 30 days to the Commission for a final decision by the Commission within 30 days of the re-submission. In all cases in which the Commission refuses the Director General's recommendation, the Commission shall, in all cases, indicate the grounds of such refusal in writing.

(b) Whenever the Commission has received more applications for Licenses than it can grant the Commission shall hold an auction for Individual Licenses in accordance with rules and procedures that the Commission shall establish pursuant to the procedure set forth in Sections 331-334 of this Act. Such auction shall be announced in such manner as the Commission deems appropriate at least thirty days prior to the date of holding such auction. The License shall in this case be granted without requiring ratification of the Commission.

(c) The Commission shall, before giving a final decision with respect to any applications for an Individual License, ensure that the applicant satisfies any and all conditions provided for in this Act and in any regulations that the Commission may adopt pursuant to this Act.

(d) The Commission shall, within no more than ninety days of such application, decide as to the application for a License and if the Commission considers it necessary to obtain any further information, the Commission shall notify the applicant of such matter within a period not exceeding thirty days after date of the submission of the application.

(e) The Commission shall standardize Individual Licenses as far as practicable, and any differences shall be for objectively justifiable reasons. Notwithstanding the foregoing, the Commission may grant to an applicant that does not possess Significant Market Power a License on terms that are more favorable than the Licensed Operator that possesses Significant Market Power.

(f) Within seven days of the grant of a License, the Commission shall notify the applicant that the License is available for collection. Such notice shall be sent to the address specified by the applicant. The Commission shall publish the License on its website as soon as is practicable after granting it.

(g) Any Person that directly or indirectly acquires five percent or more of the equity of an Individual Licensee shall notify the Commission of this fact within seven days as of the date of the acquisition of such share.



Sec. 605

(a) The Commission may, from time to time, issue a Class License for a Telecommunications Service that does not require the use of radio frequency spectrum or of numbering resources from the National Numbering Plan.

(b) The Commission shall grant a Class License to any applicant that meets the conditions prescribed by the Commission for such License.

Sec. 606

(a) The Commission shall renew a License upon request of the Licensee provided that the Licensee has, at all times during the term of the License, complied with all material terms of the License, of this Act, and of any regulation that the Commission may prescribe pursuant to this Act. The Licensee must apply for renewal not later than 90 days prior to the expiration of the then current License term. In the event that the Commission has not acted upon the renewal application prior to the expiration date of the then current License term, the Licensee may continue to operate in accordance with the terms of the License until such time as the Commission acts upon the renewal application.

(b) In the event that the Commission concludes that the Licensee has committed a material breach of the terms of the License, of this Act, or of any regulation that the Commission may prescribe pursuant to this Act, the Commission may, in its discretion, deny the renewal application or impose such lesser penalty as it may deem appropriate. The Commission shall at all times follow a transparent process in accordance with Sections 331-334 of this Act in determining whether to grant or deny the renewal application. In any case in which the Commission denies a renewal application or imposes another penalty as a consequence of a material breach of the terms of the License, of this Act, or of any regulation that the Commission may prescribe pursuant to this Act, the Commission shall issue its decision on the matter, in writing, explaining in detail the reasons for its action.

Sec. 607

(a) A licensee may, by written notice, surrender its Individual License to the Commission at any time or in accordance with the requirements set out in the Individual License. The surrender shall take effect on the date the Commission receives the written notice expressing the licensee's intention to surrender its Individual License.

Sec. 608

The Commission may, by written order, suspend or revoke an Individual License granted under this Act in any of the following circumstances:

(a) the licensee has failed to pay any amount or fine required by or imposed pursuant to this Act or the Individual License;

(b) the licensee has failed to comply with the provisions of this Act or any regulation that the Commission may prescribe pursuant to this Act or the terms and conditions of the Individual License;

(c) the licensee has contravened the provisions of any other written law relevant to the communications industry;

(d) the licensee has failed to comply with any instrument issued, made or given by the Commission.



The Commission may only suspend or revoke an Individual License pursuant to a public hearing conducted in accordance with the procedures that the Commission may prescribe pursuant to Sections 331-334 of this Act.

## VII. TELECOMMUNICATIONS REGULATION

### A. Interconnection

#### Sec. 701

If a Telecommunications Service Provider receives a request for interconnection from another Telecommunications Service Provider, then the first Telecommunications Service Provider shall have an obligation to interconnect its communications system with the other licensee's network at technically feasible locations, in accordance with the principles specified in section 702 of this Act and pursuant to terms and conditions negotiated between the parties in good faith.

#### Sec. 702

(a) All interconnection agreements between licensees shall be in writing and shall comply with this Act, and the regulations and guidelines published from time to time by the Commission pursuant to this Act.

(b) The terms and conditions of interconnection agreements shall primarily be agreed upon between the parties thereto; however, the Commission may intervene and make binding rulings at its own instance or at the instance of either or both parties to the agreement:

(i) if the Commission determines that the agreement or any provision thereof is inconsistent with the provisions of this Act or any regulation that the Commission has adopted; or

(ii) in the event of a failure of consensus between the parties on specific issues or a delay in reaching such consensus; or

(iii) if the Commission considers it in the public interest for it to so intervene at its own instance and without any invitation from either or both parties to the agreement.

#### Sec. 703

(a) All Telecommunications Service Providers shall file each of their interconnection agreements with the Commission within 30 (thirty) days from the date of execution thereof.

(b) The parties shall furnish the Commission with any additional information that the Commission may require in respect of such interconnection agreement.

(c) The Commission may, upon evaluating the terms and conditions and the charges set out in the interconnection agreement, require the parties thereto to revise the agreement if, in the Commission's opinion, the agreement is inconsistent with this Act or the Commission's regulations.

#### Sec. 704

(a) The Commission shall make interconnection regulations as it may deem necessary, but shall not be limited to model terms and conditions for interconnection agreements between service providers.

(b) Matters that the interconnection regulations may address include but are not limited to:

- (i) the time frame and procedures for negotiations and the concluding of interconnection agreements;
- (ii) quality and levels of service;
- (iii) rate methodologies;
- (iv) protection of intellectual property;
- (v) protection of commercial information;
- (vi) provisioning of facilities; and
- (vii) sharing of technical information.

#### Sec. 705

Notwithstanding the terms and conditions of any interconnection, a party thereto shall not at any time and in any circumstance disconnect or discontinue interconnection to any interconnecting party without the prior written approval of the Commission.

#### Sec. 706

The Commission shall have authority, pursuant to the procedures established by Sections 331-334 of this Act, to adopt and enforce rules to require Telecommunications Service Providers to grant competing Telecommunications Service Providers access to their facilities in order to provide a licensed telecommunications service. The facilities to which the Commission may require that a Telecommunications Service Provider grant competing service providers access may include switching facilities, ducts, conduits, and other facilities that may be necessary for the provision of a licensed service. Such rules as the Commission may prescribe pursuant to this Section shall also provide for the recovery of the reasonable costs of providing such access.

#### B. Tariff Regulation

#### Sec. 711

(a) All licensed telecommunications service providers shall charge lawful tariffs for their services. Lawful rates shall be just, reasonable, and not unduly discriminatory among users or classes of users.

(b) All tariffs of licensed telecommunications service providers that have not been found by the Commission to possess Significant Market Power, as defined in this Act or by Commission regulation, shall be presumed lawful. Licensed telecommunications service providers that have not been found by the Commission to possess Significant Market Power shall not be required to file their tariffs with the Commission.

(c) Any licensed telecommunications service provider that the Commission determines possesses Significant Market Power in one or more relevant product markets shall publish its tariffs. The Commission may direct that a licensed telecommunications service provider that the Commission has determined possesses Significant Market Power delay the effectiveness of any tariff until the Commission has approved said tariff. The Commission may, by rule adopted pursuant to the procedure established in Sections 331-334 of this Act, establish the standards and procedures by which it shall determine the lawfulness of any tariff filed by a licensed telecommunications service provider that the Commission has determined possesses Significant Market Power. Such standards shall, *inter alia*, include the cost basis on which the tariff was established. In assessing cost, the Commission shall use a forward-looking incremental cost methodology.

#### Sec. 712

(a) Notwithstanding the provisions of Section 711(b) of this Act, the Commission shall have the authority to review and control tariffs of any licensed telecommunication service provider and to develop rules for setting tariffs in order to ensure that such tariffs are lawful.

(b) The Commission may, on its own motion, or in response to a petition filed by any interested party, initiate a proceeding to determine whether the tariffs of any licensed telecommunications service provider are lawful. In making such a determination, the Commission may rely on standards that it may develop pursuant to Section 711(c) of this Act.

#### C. Competition

#### Sec. 721

Notwithstanding the provisions of any other written law, the Commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Somali communications market.

#### Sec. 722

(a) It shall be unlawful for any licensed telecommunications service provider that the Commission determines has Significant Market Power to engage in any conduct that has the purpose or effect of substantially lessening competition in any Somali telecommunications market.

(b) It shall be unlawful for any licensed telecommunications service provider to enter into an agreement or arrangement with any other person that has the purpose or effect of substantially lessening competition in any Somali telecommunications market.

(c) The Commission may, on its own motion, or in response to a petition filed by any interested party, initiate a proceeding to determine whether one or more licensed telecommunications service providers has engaged in any conduct that has the purpose or effect of substantially lessening competition in any Somali telecommunications market.

(d) In the event that the Commission finds, pursuant to a hearing conducted in accordance with the procedures established in Sections 331-334 of this Act, that any licensed telecommunications service provider has engaged in any conduct that has the purpose or effect of substantially lessening competition in any Somali telecommunications market the Commission shall

(i) Order such licensed telecommunications service provider or providers to refrain from such conduct in the future; and

(ii) Impose such fine or other sanction, as prescribed in Section 901 of this Act as it deems appropriate in the circumstances.

D. Access to and Use of Scarce Resources

Sec. 731

(a) The Commission shall have plenary authority to manage the Nation's radio frequency spectrum resources pursuant to Title V of this Act for purposes of the provision of Telecommunications Services.

(b) The Commission may conduct one or more Public Consultation pursuant to Sections 331-334 of this Act to establish regulations governing the licensing and use of the radio frequency spectrum for the provision of Telecommunications Services.

Sec. 732

(a) The Commission shall prescribe such regulations as will best further the purposes of this Act to establish fees for the use of radio frequency spectrum resources for the provision of Telecommunications Services.

(b) Such regulations as the Commission may prescribe pursuant to subsection (a) of this Section shall, at a minimum, ensure that fees:

(i) recover from commercial providers of Telecommunications Services a measure of the value of the radio frequency spectrum resources for the benefit of the People of Somalia;

(ii) shall be reasonable, non-discriminatory, and administered in a transparent manner;

(iii) shall encourage the development and expansion of Telecommunications Services to all areas of the Nation.

Sec. 733

(a) The Commission shall have authority to manage and regulate the use of numbering and addressing resources for the provision of Telecommunications Services and Information Services in the Republic of Somalia. This shall include the National Numbering Plan, Internet domain registration, and all other numbering and addressing resources of the Nation. All Licensed Telecommunications Service Providers shall be entitled to obtain numbering and addressing resources for the provision of Telecommunications Services pursuant to such regulations as the Commission may prescribe pursuant to the terms of this Act.

(b) The Commission may conduct one or more Public Consultations pursuant to Sections 331-334 of this Act to establish regulations governing the administration and use of numbering and addressing resources. In particular, the Commission shall specify the procedures by which Licensed Telecommunications Service Providers may obtain access to numbering and addressing resources for the provision of Telecommunications Services. Such regulations shall include provisions for the rejection, in whole or in part, of an application for the use of numbering or addressing resources in the event that:

(i) the applicant is not a Licensed Telecommunications Service Provider;

(ii) the proposed use of numbering or addressing resources is not compatible with the National Numbering Plan;

(iii) the proposed use of numbering or addressing resources is inconsistent with the provisions of this Act, the Commission's rules, or any other law then in force in the Republic of Somalia;

(iv) the proposed use of numbering or addressing resources may pose a risk to national security or public order;

(v) the applicant would not make timely or efficient use of numbering or addressing resources.

(c) In any case in which the Commission shall reject an application for use of numbering or addressing resources in accordance with regulations adopted pursuant to this Act, the Commission shall issue its Decision in such matter in writing and shall explain, with particularity, the reasons for rejecting the application. An applicant may submit a revised application for use of numbering or addressing resources that corrects any legal or technical deficiencies that the Commission has identified in its Decision rejecting the original application. An applicant may also request review by the Commission of its Decision rejecting the application or may file an appeal of the Decision with the Appeals Board pursuant to the provisions of this Act.

(d) The Commission may also, at the request of any person or on its own motion, revoke any authorization to use numbering or addressing resources, or prohibit any use of numbering or addressing resources that was commenced prior to the entry into force of this Act, if the Commission finds, pursuant to a transparent process consistent with Sections 331 to 334 of this Act, that such use of numbering or addressing resources would be inconsistent with the terms of subsection (b) of this Section. In any case in which the Commission shall revoke an authorization to use numbering or addressing resources or shall prohibit any use of numbering or addressing resources that commenced prior to the entry into force of this Act, the Commission shall issue its Decision in writing and shall state with particularity the reasons for its action. The party whose authorization for use of numbering resources is revoked or prohibited may request review by the Commission of its Decision or may file an appeal of the Decision with the Appeals Board pursuant to the provisions of this Act.

(e) The Commission shall have authority to contract with one or more outside organizations for the management, subject to the Commission's supervision, of the Nation's numbering and addressing resources.

#### Sec. 734

(a) The Commission may prescribe such regulations as will best further the purposes of this Act to establish fees for the use of numbering and addressing resources for the provision of Telecommunications Services and Information Services.

(b) Such regulations as the Commission may prescribe pursuant to subsection (a) of this Section shall, at a minimum, ensure that fees:

(i) recover from commercial providers of Telecommunications Services a measure of the value of the numbering and addressing resources for the benefit of the People of Somalia;

(ii) shall be reasonable, non-discriminatory, and administered in a transparent manner;

(iii) shall encourage the development and expansion of Telecommunications Services and Information Services to all areas of the Nation.

Sec. 735

(a) Licensed Telecommunications Service Providers shall have the right to reasonable access to and use of all Public Rights of Way throughout the Nation for the construction, maintenance, and operation of facilities necessary for the provision of Licensed Telecommunications Services.

(b) Licensed Telecommunications Service Providers shall have the right to reasonable access to and use of Private Rights of Way with the consent of the owner or, failing such consent, pursuant to such regulations as the Commission may from time to time prescribe.

(c) Licensed Telecommunications Service Providers shall be obligated to repair any damage to Public or Private Rights of Way that their construction, maintenance, or operation of facilities necessary for the provision of Licensed Telecommunications Services may cause. The Commission may prescribe regulations for the establishment of appropriate compensation for any damaged caused by such use of Public or Private Rights of Way. The Commission shall have authority to hear and resolve any disputes arising out of such use of Public or Private Rights of Way.

E. Universal Access

Sec. 741

(a) The Commission shall, pursuant to Public Consultation, develop annual objectives for Universal Access to Telecommunications Services in Somalia. In developing its Universal Access objectives, the Commission shall seek to ensure that Telecommunications Services are accessible to the largest number of users possible, particularly in rural and remote areas of the Nation.

(b) The Commission shall, pursuant to Public Consultation, establish a Universal Access Fund that shall be used to support the Commission's Universal Access objectives. The Commission shall prescribe regulations that shall specify the amounts and sources of funding for the Universal Access Fund and the manner in which monies collected by the Universal Access Fund shall be disbursed to support the Commission's Universal Access objectives.

(c) The Commission shall also prescribe regulations, pursuant to Public Consultation that shall specify the types of Telecommunications and Information Services that are to be supported by the Universal Access Fund.

F. Consumer Protection

Sec. 751

(a) The Commission shall have authority to adopt such rules as it shall deem necessary in order to ensure that the interests of consumers of Telecommunications Services are protected. The Commission shall adopt such rules through Public Consultation pursuant to Sections 331-334 of this Act.

(b) Without limiting the authority contained in subsection (a) of this Section, the Commission shall in particular require each Licensed Telecommunications Service Provider to establish a Code of Conduct that shall specify the rights of consumers. The Commission shall approve each Licensed Telecommunications Service Provider's Code of Conduct by a written Decision that the Commission shall adopt through Public Consultation pursuant to Sections 331-334 of this Act. The Commission may require a Licensed Telecommunications Service Provider to make such changes to its Code of Conduct as the Commission, pursuant to Public Consultation, concludes are necessary in order to protect the interests of consumers.

(c) A Licensed Telecommunications Service Provider shall include in its Code of Conduct the following items:

- (i) A concise statement of rates and charges for services;
- (ii) A concise statement of billing practices for both pre-paid and post-paid customers;
- (iii) A statement of the Licensed Telecommunications Service Provider's complaint process that it shall make available to all customers;
- (iv) The Licensed Telecommunications Service Provider's policies for protection of customer information;
- (v) Any other matters that the Licensed Telecommunications Service Provider deems necessary to provide full information to customers or that the Commission may direct the Licensed Telecommunications Service Provider to include.

Sec. 752

(a) The Commission may, through a Public Consultation pursuant to Sections 331-334 of this Act, determine a list of services that Licensed Telecommunications Service Providers shall be required to provide to their customers. Such services may include, among others:

- (i) Emergency services;
- (ii) Directory assistance services;
- (iii) Operator assistance services;
- (iv) Services for disabled customers; and
- (v) Any other services that the Commission shall deem necessary.

(b) In the event that the Commission shall determine that Licensed Telecommunications Service Providers shall be required to provide access to emergency services to their customers, the Commission shall promote public safety through the use of a specific number that shall be designated as the national emergency assistance number for telephone services throughout Somalia. The Commission shall also take action to encourage the prompt deployment throughout Somalia of the necessary infrastructure for the provision of access to emergency services.

Sec. 753

(a) Licensed Telecommunications Service Providers shall take all reasonable steps to ensure the confidentiality of their customers' Telecommunications.

(b) Notwithstanding the requirement of subsection (a) of this Section, Licensed Telecommunications Service Providers shall comply with all lawful orders of the Government of Somalia or of any court of competent jurisdiction to provide such information relating to a customer's Telecommunications as the Government of Somalia or a court of competent jurisdiction shall, pursuant to the laws of Somalia, require. Further, Licensed Telecommunications Service Providers shall provide access to their network to permit duly authorized agents of the Government of Somalia to carry out lawful surveillance of Telecommunications in the conduct of a criminal investigation or national security investigation in accordance with the terms stipulated by a court of competent jurisdiction.

G. Type Approval  
Sec. 761

(a) The Commission shall have plenary authority over the approval of equipment to be deployed in the networks of any Licensed Telecommunications Service Provider, including equipment to be provided to end users of Telecommunications Services.

(b) In exercising the authority granted it in subsection (a) of this Section, the Commission shall designate one or more recognized testing bodies whose authorization of equipment shall be presumptively lawful in Somalia. Such bodies may include, among others, the European Telecommunications Standards Institute and the Telecommunications Industry Association. The Commission may conduct one or more Public Consultations pursuant to Sections 331-334 of this Act to identify recognized testing bodies whose authorizations of equipment shall be presumptively lawful in Somalia.

(c) The Commission shall maintain a register of recognized testing bodies, whose authorization of equipment shall be presumptively lawful in Somalia. Any person may petition the Commission to add or delete one or more organizations from the Commission's register of recognized testing bodies. In reviewing any such petition, the Commission shall conduct a Public Consultation pursuant to Sections 331-334 of this Act.

VIII. BROADCASTING

Sec. 801

The Commission shall have plenary and exclusive authority to license and regulate Broadcasting and to manage Somalia's radio frequency spectrum resources pursuant to Title V of this Act for purposes of the provision of Broadcasting.

Sec. 802

The Commission may issue regulations, codes and rules applicable to Broadcasters concerning the following, after conducting Public Consultations in accordance with the provisions of Sections 331-334 of this Act as appropriate:

- (g) Licensing and use of the radio frequency spectrum for the provision of Broadcasting Services;
- (h) Broadcasting content;
- (i) Advertising and sponsorship;
- (j) Special rules for election periods;
- (k) Protection of copyrights;
- (l) Any other issue necessary for ensuring efficient and effective use of radio frequency spectrum by Broadcasters.

In doing so, the Commission shall at all times adhere to international principles of freedom of speech and of the press as articulated in the International Covenant of Civil and Political Rights and international law. All Commission regulations, codes and rules shall respect the right to freedom of expression, while also recognizing the social, cultural, moral, and religious values that apply generally within Somalia.

Sec. 803

The Commission shall have no authority to:



- (c) Regulate any media other than Broadcasters as set out herein; or
- (d) Engage in prior censorship.

## IX. ENFORCEMENT

### Sec. 901

- (a) The Commission shall have authority to enforce the provisions of this Act and of any regulation that the Commission may prescribe pursuant to the provisions of this Act.
- (b) The Commission shall have authority to monitor compliance with the terms of this Act and of any regulation that the Commission may prescribe pursuant to the provisions of this Act. Such monitoring may consist of regular activities of the Commission's staff or may arise as a result of information or complaints submitted to Commission by any interested party.
- (c) The Commission shall have authority, pursuant to a transparent procedure consistent with the terms of Sections 331-334 of this Act, to adjudicate all complaints against any Licensee and shall have authority to assess appropriate remedies for any violation of the terms of this Act, of any License issued pursuant to this Act, or of any regulation, Order, or Decision that the Commission may issue pursuant to the terms of this Act. Such remedies as the Commission may prescribe may include fines or restitution to be paid by any Person who violates the terms of this Act, of any License issued pursuant to this Act, or of any regulation, Order, or Decision that the Commission may issue pursuant to the terms of this Act, or may include other appropriate sanctions as well, provided, however, that such remedies shall be proportionate, non-discriminatory, and transparent.

## X. TRANSITIONAL PROVISIONS

### Sec. 1001

- (a) The Commission shall have authority to require all Telecommunications Service Providers and Broadcasters who are operating at the time this Act takes effect to obtain Licenses pursuant to the terms of this Act.
- (b) All Licensees shall be required to comply with the terms of this Act as of the date of its entry into force, including, without limitation, requirements of this Act or of any regulation that the Commission may prescribe pursuant to the terms of this Act, to pay any fee required by a License or the Commission's regulations.
- (c) Notwithstanding the provisions of subsection (b) of this Section, no Licensee that is in operation at the time that this Act takes effect shall be required to pay an initial License fee or to obtain pursuant to auction the rights to use of radio frequency spectrum resources that said Licensee is using pursuant to any authorization previously granted by any entity that has exercised governmental authority in the territory of Somalia prior to the entry into force of this Act.

### Sec. 1002

No person shall be liable for any penalty as a consequence of actions that may be prohibited by this Act to the extent that such actions were committed prior to the entry into force of this Act.

### Sec. 1003

This Act shall enter into force thirty (30) days after its signature by the President.

