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**THE KENYA INFORMATION AND COMMUNICATIONS
(AMENDMENT) BILL, 2019**

A Bill for

AN ACT of Parliament to amend the Kenya Information and Communications Act, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Information and Communications (Amendment) Act, 2019. Short title.

2. The Kenya Information and Communications Act, (in this Act referred to as the “principal Act”), is amended by inserting the following new section immediately after section 25— Insertion of new section 25A in Cap. 411A.

Licensee may operate other businesses.

25A. (1) In addition to operating a telecommunication system or providing a telecommunication service as may be specified in the licence granted under section 25, a person may engage in any other business provided that such person shall—

- (a) obtain the relevant licences from the respective regulators of any industry or sector ventured into;
- (b) legally split or separate the telecommunication business from such other business; and
- (c) provide separate accounts and reports in respect of all businesses carried out.

(2) A person who provides any service without the relevant licence under this section commits an offence.

(3) A person convicted of an offence under this section shall, on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding two years, or to both.

(4) A person who, at the commencement date of this section, was operating a business that does not comply with the requirements of this section shall ensure that the business is compliant within six months of the coming into force of this section.

(5) The Commission, shall, within six months of the coming into force of this section and thereafter annually, report to Parliament on the extent to which this section has been implemented.

3. The principal Act is amended by inserting the following new section immediately after section 34—

Insertion of new section 34A in Cap. 411A.

34A. (1) A licensee is liable to credit a consumer who initiates a call that gets cut out after a connection by Kenya Shillings ten shillings worth of airtime for each call drop within its network for a maximum of three call drops per day.

Compensation
for call-drops.

(2) Despite subsection (1), a licensee shall not be liable to compensate a consumer, where a call gets cut out due to third party interference on the licensee's connection lines, inevitable accident or *force majeure*.

5. Section 84J of the principal Act is amended—

Amendment of section 84J of Cap. 411A.

- (a) by deleting sub-section (2) and substituting therefor the following new sub-section—
- (2) The object and the purpose of the Fund shall be to—
- (a) promote the availability of quality services at just, reasonable and affordable rates for all consumers;
- (b) increase nationwide access to advanced telecommunications services;
- (c) advance the availability of such services to all consumers, including those in low income, and rural areas;
- (d) increase access to telecommunications and

advanced services in schools, libraries and rural health care facilities;

- (e) provide equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs; and
- (f) support capacity building and promote innovation in information and communications technology services.

(c) by inserting the following new sub-sections immediately after sub-section (3) —

(4) The Commission shall in each financial year submit to the National Assembly a report indicating —

- (a) the total amount of money that was collected for the respective financial year;
- (b) the activities the Commission undertook to implement the objectives of the Fund; and
- (c) the extent to which the objectives of the Fund were achieved.

(5) The Universal Fund shall be utilized by the Commission as follows—

- (a) six-percent of the Fund shall be used for ensuring the availability of telecommunication services to all consumers, including those in low income and rural areas;
- (b) twenty percent of the Fund shall be used for increasing access to telecommunications and advanced services in schools, libraries and rural health care facilities.
- (c) ten percent of the Fund shall be used for ensuring increased nationwide access to advanced telecommunications services; and
- (d) ten percent of the Fund shall be used for furthering the other objectives of the Fund as the Commission may determine.

(6) A person who fails to utilize or utilizes the Universal Fund in a manner that does not promote the

objectives of the Fund, commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the Kenya Information and Communications Act Cap. 411A to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for the separation of such other businesses from the telecommunication business. The amendments will provide for a regulation framework for such businesses as the proposed amendment provides for reporting by the Communications Authority on compliance with the proposed provision and penalty for non-compliance. The amendment will further aid in control of anti-competitive practices by the large industries in the sector.

The Bill further seeks to amend provisions of the Kenya Information and Communications Act to make provision for quality of service to consumers making calls by compelling licensees in the telecommunications industry to invest in infrastructure that will guarantee quality of service for consumers making calls. The Bill also seeks to amend section 84J of the Act in order to improve on the management of the Universal Service Fund by the Commission by expanding the objectives of the Fund, prescribing the requirement for reporting by the Commission on how the Fund is utilized in every financial year, enumerating the formula for distributing the Fund and prescribing an offence for a person who fails to utilize or utilizes the Universal Fund in a manner that does not promote the objectives of the Fund.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement of how the Bill concerns county governments

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 28th February, 2019

ELISHA ODHIAMBO,
Member of Parliament.

Section 25 of the Kenya Information and Communications Act which the Bill proposes to amend—

Telecommunication licences.

25. (1) The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licences under this section authorising all persons, whether of a specified class or any particular person to—

- (a) operate telecommunication systems; or
- (b) provide telecommunication services,
of such description as may be specified in the licence.

(2) A licence granted under subsection (2)(a) may authorise—

- (a) the provision, by means of any telecommunication system to which the licence relates, of any telecommunication services of a description specified in the licence; and
- (b) the connection to any telecommunication system to which the licence relates of—
 - (i) any other telecommunication systems of a description specified in the licence; and
 - (ii) any telecommunication apparatus of a description specified in the licence.

(3) A licence granted under this section may include conditions requiring the licensee—

- (a) to provide the telecommunication services specified in the licence or of a description so specified;
- (b) to interconnect to the telecommunication system to which the licence relates, or to permit the connection to such system, of such other telecommunication systems and apparatus as are specified in the licence or are of a description so specified, either without charge or subject to a reasonable charge to be determined in accordance with the method specified in the licence;
- (c) to permit the provision by means of the telecommunication system or telecommunication apparatus connected thereto of such services as are specified or of a description so specified;
- (d) to pay such fees as the Commission may prescribe; and
- (e) to fulfil such other conditions as the Commission may prescribe.

(3A) A licensee shall maintain a register of all persons to whom telecommunications services are provided under the licence, in such form as may be prescribed.

(4) A licence granted under this section shall, unless earlier revoked in accordance with any term in that regard contained in the licence, continue in force for such period as may be specified in the licence.

(5) The Commission may renew, vary, modify or revoke any licence granted under this Act in accordance with the provisions of this Act.

Section 84J of the Kenya Information and Communications Act which the Bill proposes to amend—

Establishment of the Fund

84J. (1) There is hereby established a fund to be known as the Universal Service Fund which shall be managed and administered by the Commission.

(2) The object and the purpose of the Fund shall be to support widespread access to, support capacity building and promote innovation in information and communications technology services.

(3) There shall be a universal service levy (in this Part referred to as the “levy”) that shall be charged by the Commission on the licensees under this Act for purposes of the Universal Service Fund.