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<i>Act No.</i>	<i>Short Title</i>	<i>Page</i>
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NIGERIAN COMMUNICATIONS ACT, 2003



ARRANGEMENT OF SECTIONS

SECTION :

CHAPTER I—OBJECTIVES, APPLICATION AND SCOPE

1. Objectives of the Act.
2. Application and Scope.

CHAPTER II—ESTABLISHMENT, FUNCTIONS AND MEMBERSHIP OF COMMISSION

PART 1—ESTABLISHMENT AND FUNCTIONS OF COMMISSION

3. Establishment of the Commission.
4. Functions of the Commission.

PART 2—MEMBERSHIP OF THE COMMISSION

5. Establishment of Governing Board.
6. Commissioner's remunerations, allowances, etc.
7. Qualification etc. of the Commission's Board.
8. Appointment and Tenure of Commissioners.
9. Resignation of a Commissioner.
10. Removal of a Commissioner.
11. Vacancy on the Board.

PART 3—MANAGEMENT AND STAFFING OF THE COMMISSION

12. Chief Executive.
13. Executive Commissioners.
14. Commission Secretary.
15. Staff of the Commission.
16. Conditions of Service.

PART 4—FINANCIAL PROVISIONS

17. Fund of the Commission.
18. Borrowing powers, gifts, etc.
19. Budget and expenditure.
20. Financial year and audit of Commission's accounts.
21. Annual reports for National Assembly.
22. Exemption from taxation.

CHAPTER III—FUNCTIONS OF THE MINISTER AND NATIONAL FREQUENCY
MANAGEMENT COUNCIL

PART 1—FUNCTIONS OF THE MINISTER

- 23. Functions of the Minister.
- 24. Formulation of policy.
- 25. Relationship with the Commission.

PART 2—NATIONAL FREQUENCY MANAGEMENT COUNCIL

- 26. Establishment of National Frequency Management Council.
- 27. Membership of NFM Council.
- 28. Functions of NFM Council.
- 29. Meetings and proceedings.
- 30. Funding and staffing of NFM Council.

CHAPTER IV—LICENCES

PART 1—REQUIREMENT FOR AND CLASS OF LICENCES

- 31. Requirement for Licences.
- 32. Classes of licences.
- 33. Licensing processes, etc.

PART 2—LICENCE CONDITIONS

- 34. Commission's declaration.
- 35. Affected licensees.
- 36. Register of declarations.
- 37. Expiration, modification or revocation of declarations.
- 38. Assignment of licence and compliance with licence conditions.

PART 3—INDIVIDUAL LICENCES

- 39. Application for individual licence.
- 40. Additional information.
- 41. Processing of applications.
- 42. Licence Undertakings.
- 43. Renewal of individual licence.
- 44. Surrender of individual licence.
- 45. Suspension or revocation of individual licence.
- 46. Effect of suspension of licence.
- 47. Effect of surrender, revocation, etc.
- 48. Register of individual licences.

PART 4—CLASS LICENCE

- 49. Class licence and conditions.
- 50. Registration of class licensee.
- 51. De-registration of class licensee.
- 52. Register of class licences.

CHAPTER V—POWERS AND PROCEDURES OF THE COMMISSION

PART I—DIRECTIONS

- 53. Issuance of directions.
- 54. Modification of direction.
- 55. Non-compliance with direction.
- 56. Register of directions.

PART 2—INQUIRY

- 57. Inquiry.
- 58. Public inquiry.
- 59. Private inquiry.
- 60. Publication of report.

PART 3—INVESTIGATION FOR PURPOSES OF ADMINISTRATION, INQUIRY, ETC.

- 61. Investigation.
- 62. Complaint.
- 63. Conduct of investigation.

PART 4—INFORMATION-GATHERING POWERS

- 64. Information-gathering powers.
- 65. Non-compliance.
- 66. Evidence of compliance.
- 67. Record and publication of information, etc.

PART 5—REGISTER

- 68. Register.
- 69. Access to Register by public.

PART 6—REGULATIONS, GUIDELINES, ETC.

- 70. Commission's Regulations, Guidelines, etc.
- 71. Rule-making process.
- 72. Regulatory review.

PART 7—NOTIFICATION AND RESOLUTION OF DISPUTES

- 73. Commission's powers to resolve disputes.
- 74. Resolution of disputes by parties.
- 75. Notification of disputes.
- 76. Resolution of disputes by Commission.
- 77. Register of decisions.
- 78. Enforcement of Commission's decision.

PART 8—REGISTRATION OF AGREEMENTS

- 79. Registration of agreements.
- 80. Register of agreements.

PART 9—UNDERTAKINGS

- 81. Undertakings.
- 82. Registration of undertakings.
- 83. Rules of undertakings.
- 84. Withdrawal of undertakings.
- 85. Enforcement of undertakings.

PART 10—REVIEW OF DECISIONS

- 86. Reasons for decisions.
- 87. Review of decision by Commission.
- 88. Judicial review of decision.

PART 11—MONITORING AND REPORTING

- 89. Monitoring and reporting.

CHAPTER VI—ECONOMIC REGULATION

PART 1—GENERAL COMPETITION PRACTICES

- 90. Commission's exclusive competence on competition laws.
- 91. Anti-competition practices.
- 92. Dominant operator.
- 93. Exemptions.
- 94. Legal action against default.
- 95. Regulation relating to foreign operators.

PART 2—INTERCONNECTION

- 96. Obligation to interconnect.
- 97. Interconnection agreements.
- 98. Registration of interconnection agreements.
- 99. Interconnection regulations and agreements.
- 100. Disconnection of interconnection.

PART 3—ACCESS

- 101. Provision of access.
- 102. Access list and register.
- 103. Regulations, discontinuance of access, etc.

CHAPTER VII—CONSUMER AFFAIRS

PART I—CONSUMER PROTECTION AND QUALITY OF SERVICE

- 104. Quality of service.
- 105. Resolution of consumer disputes.
- 106. Consumer Code.

PART 2—REQUIRED APPLICATIONS SERVICES

- 107. Required applications services.

PART 3—TARIFF RATE REGULATION

- 108. Approval of tariffs and charges by Commission.
- 109. Exemptions.
- 110. Tariff rates, rules and regulations.
- 111. Penalty for operating unapproved tariffs, charges, etc.

PART 4—UNIVERSAL SERVICE PROVISION

- 112. Universal service provision.
- 113. Unserved areas, underserved areas, and underserved groups.
- 114. Universal Service Provision Fund.
- 115. USP Board.
- 116. Membership of USP Board.
- 117. USP Board Proceedings.
- 118. USP Secretariat.
- 119. USP Fund Managers.
- 120. USP Regulations.

CHAPTER VIII—TECHNICAL REGULATION

PART I—SPECTRUM ASSIGNMENT

- 121. Management and administration of frequency spectrum.
- 122. Illegal use of spectrum.
- 123. Regulations.
- 124. National frequency plan.
- 125. Frequency Licence.
- 126. Compulsory acquisition of spectrum assignment.
- 127. Forfeiture of spectrum assignment.

PART 2—NUMBERING AND ELECTRONIC ADDRESSING

- 128. Administration and planning of numbering, electronic addressing.
- 129. Delegation of responsibility.

PART 3—TECHNICAL STANDARDS

- 130. Technical code and specifications.
- 131. Offences.
- 132. Type approval.
- 133. Type approval offences, etc.
- 134. Regulations.

CHAPTER IX—GENERAL

PART 1—INSTALLATION OF NETWORK FACILITIES, ACCESS TO NETWORK FACILITIES, ETC.

- 135. Required approvals for network installations, etc.
- 136. Duty of Care.
- 137. Access to network facilities.

PART 2—JURISDICTION, OFFENCES, POWERS OF ENTRY, ETC.

- 138. Competent Court.
- 139. Offences by corporate persons.
- 140. General penalties.
- 141. Powers of entry and investigation by inspectors.

PART 3—ACTIONS AGAINST COMMISSION ETC.

- 142. Limitation of suits against Commission, etc.
- 143. Service of court processes on Commission.
- 144. Restriction on execution against Commission's property.
- 145. Indemnity of Commission's officials.

PART 4—NATIONAL INTEREST MATTERS

- 146. General duty of licensees.
- 147. Network interception capability.
- 148. Emergency provisions.
- 149. Disaster plan.

CHAPTER X—REPEAL AND TRANSITIONAL PROVISIONS

PART 1—REPEAL AND SAVINGS

- 150. Repeal of 1992 No. 75, 1998 No. 30, 1995 No. 21.
- 151. Existing rights, interests, etc. under repealed Acts.
- 152. Outstanding obligations and liabilities under repealed Acts.
- 153. Pending proceedings or causes of actions under repealed Acts.
- 154. Commission's assets, funds, etc. pursuant to repealed Acts.
- 155. Office holders pursuant to repealed Acts.

PART 2—TRANSITIONAL PROVISIONS FOR LICENCES, DEFINITIONS AND SHORT TITLE

- 156. Old licences.
- 157. Interpretation.
- 158. Short title.

FIRST SCHEDULE : Supplementary Provisions Relating to the Board of Commissioners.

SECOND SCHEDULE : Conflict of Interest.

NIGERIAN COMMUNICATIONS ACT, 2003

2003 ACT No. 19

AN ACT TO ESTABLISH THE NATIONAL FREQUENCY MANAGEMENT COUNCIL
AND THE UNIVERSAL ACCESS FUND AND TO REFORM THE
NIGERIAN COMMUNICATIONS COMMISSION AND REPEAL
THE NIGERIAN COMMUNICATIONS COMMISSION ACT 1992 ;
AND FOR RELATED MATTERS

[8th July, 2003]

Commence-
ment.

ENACTED by the National Assembly of the Federal Republic of Nigeria—

CHAPTER I—OBJECTIVES, APPLICATION AND SCOPE

1. The primary object of this Act is to create and provide a regulatory framework for the Nigerian communications industry and all matters related thereto and for that purpose and without detracting from the generality of the foregoing, specifically to—

Objectives of
the Act.

(a) promote the implementation of the national communications or, telecommunications policy as may from time to time be modified and amended ;

(b) establish a regulatory framework for the Nigerian communications industry and for this purpose to create an effective, impartial and independent regulatory authority ;

(c) promote the, provision of modem, universal, efficient, reliable, affordable and easily accessible communications services and the widest range thereof throughout Nigeria ;

(d) encourage local and foreign investments in the Nigerian communications industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends ;

(e) ensure fair competition ill all sectors of the Nigerian communications industry and also encourage participation of Nigerians in the ownership, control and management of communications companies and organisations ;

(f) encourage the development of a communications manufacturing and supply sector within the Nigerian economy and also encourage effective research and development efforts by all communications industry practitioners ;

(g) protect the rights and interest of service providers and consumers within Nigeria ;

(h) ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of communications services ; and

(i) ensure an efficient management including planning, coordination, allocation, assignment, registration, monitoring and use of scarce national resources in the communications sub-sector, including but not limited to frequency spectrum,

numbers and electronic addresses, and also promote and safeguard national interests, safety and security in the use of the said scarce national resources.

Application and scope.

2. This Act applies to the provision and use of all communications services and networks, in whole or in part within Nigeria or on a ship or aircraft registered in Nigeria.

CHAPTER II—ESTABLISHMENT, FUNCTIONS AND MEMBERSHIP OF COMMISSION

PART 1—ESTABLISHMENT AND FUNCTIONS OF COMMISSION

Establishment of the Commission.

3.—(1) There is established a Commission to be known as the Nigerian Communications Commission with responsibility for the regulation of the communications sector in Nigeria.

(2) 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—

(a) enter into contracts and incur obligations ;

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

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

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

Functions of the Commission.

4.—(1) The Commission shall have the following functions—

(a) the facilitation of investments in and entry into the Nigerian market for provision and supply of communications services, equipment and facilities ;

(b) the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities ;

(c) ensuring that licensees implement and operate at all times the most efficient and accurate billing system ;

(d) the promotion of fair competition in the communications industry and protection of communications services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities providers or equipment suppliers ;

(e) granting and renewing communications licences whether or not the licences themselves provide for renewal in accordance with the provisions of this Act and monitoring and enforcing compliance with licence terms and conditions by licensees ;

(f) proposing and effecting amendments to licence conditions in accordance with the objectives and provisions of this Act ;

(g) fixing and collecting fees for grant of communications licences and other regulatory services provided by the Commission ;

(h) the development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators ;

(i) making and enforcement of such regulations as may be necessary under this Act to give full force and effect to the provisions of this Act ;

(j) management and administration of frequency spectrum for the communications sector and assisting the National Frequency Management (NFM) Council in developing a national frequency plan ;

(k) development, management and administration of a national numbering plan and electronic addresses plan and the assignment of numbers and electronic addresses therefrom to licensees ;

(l) proposing, adopting, publishing and enforcing technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and systems ;

(m) the formulation and management of Nigeria's inputs into the setting of international technical standards for communications services and equipment ;

(n) carrying out type approval tests on communications equipment and issuing certificates therefor on the basis of technical specifications and standards prescribed from time to time by the Commission ;

(o) encouraging and promoting infrastructure sharing amongst licensees and providing regulatory guidelines thereon ;

(p) examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration ;

(q) preparation and implementation of programmes and plans that promote and ensure the development of the communications industry and the provision of communications services in Nigeria ;

(r) designing, managing and implementing Universal Access Strategy and programme in accordance with Federal Government's general policy and objectives thereon ;

(s) advising the Minister on the formulation of the general policies for the communications industry and generally on matters relating to the communications industry in the exercise of the Minister's functions and responsibilities under this Act ;

(t) implementation of the Government's general policies on communications industry and the execution of all such other functions and responsibilities as are given to the Commission under this Act or are incidental or related thereto ;

(u) generally advising and assisting communications industry stakeholders and practitioners with a view to the development of the industry and attaining the objectives of this Act and its subsidiary legislation ;

(v) representation of Nigeria at proceedings of international organisations and fora on matters relating to regulation of communications and matters ancillary and connected thereto ; and

(w) general responsibility for economic and technical regulation of the communications industry.

(2) The Commission shall at all times carry out its functions and duties and exercise its powers hereunder efficiently, effectively and in a non-discriminatory and transparent manner and in a way that is best calculated to ensure that there are provided throughout Nigeria, subject to the regulatory controls specified in this Act, all forms of communications services, facilities and equipment on such terms and subject to such conditions as the Commission may from time to time specify.

PART 2—ESTABLISHMENT OF THE GOVERNING BOARD, AND ITS MEMBERSHIP

Establishment of the Governing Board, and its membership.

5.—(1) There is established for the Commission a Governing Board (in this Act referred to as “the Board”) charged with the administration of the affairs of the Commission.

(2) The Board consists of 9 Commissioners made up of—

(a) a chairman,

(b) a chief executive who shall also be the Executive Vice-Chairman,

(c) 2 Executive Commissioners, and

(d) 5 non-executive Commissioners,

who shall be appointed by the President of the Federal Republic of Nigeria.

(3) Notwithstanding any other provision of this Act, the President shall ensure at all times that there is a duly constituted Board of Commissioners and that there are a minimum of 6 serving Commissioners on the Board at any and all times, made up of—

(a) the Chief Executive ;

(b) 2 Executive Commissioners ; and

(c) 3 non-executive Commissioners.

First Schedule.

(4) The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters contained therein.

(5) Subject to Subsection (4) of this section, the Board shall have capacity to make standing orders for the regulation of its proceedings and meetings howsoever and acts of the Board shall be deemed to be acts of the Commission.

Commissioner’s remunerations, allowances, etc.

6. The remunerations and allowances, payable to the Commissioners, including the Chief Executive and Executive Commissioners, shall at the instance of the Board be determined and reviewed from time to time by the National Salaries, Incomes and Wages Commission.

Qualification etc. of the Commission’s Board.

7.—(1) Commissioners shall be persons of recognised standing, qualification and experience in one or more of the following fields—

- (a) finance or accounting ;
- (b) law ;
- (c) consumer affairs ;
- (d) telecommunications engineering ;
- (e) information technology ;
- (f) engineering generally ;
- (g) economics ; and
- (h) public Administration.

(2) A person shall not be appointed or remain in office as a Commissioner if—

- (a) he is not a Nigerian citizen ;
- (b) he is not ordinarily resident in Nigeria;
- (c) he is a serving member of the National Assembly, State House of Assembly or any Local Government Council ;
- (d) he is incapacitated by any physical illness ;
- (e) he has been certified to be of unsound mind ;
- (f) he is an undischarged bankrupt ;
- (g) he has been convicted in Nigeria or elsewhere of a criminal offence, being a misdemeanour or felony ; or
- (h) he has at any time been removed from an office of trust on account of misconduct.

(3) The conflict of interest provisions contained in the Second Schedule to this Act shall apply to all Commissioners.

Second
Schedule.

8.—(1) Subject to Subsection (2) of this section, all Commissioners to be appointed after the coming into force of this Act shall be appointed by the President in accordance with section 7 of this Act, from the 6 geo-political zones of Nigeria subject to the confirmation by the Senate.

Appointment
and tenure of
Commissioners.

(2) The Board shall make recommendations to the President on suitably qualified persons for appointment as the Commission's Chief Executive and Executive Commissioners and the President shall take the Commission's recommendations into consideration for the appointment.

(3) All Commissioners, except the Chief Executive and the Executive Commissioners, shall hold office on part-time basis.

(4) Subject to sections 11(3) and 11(4) of this Act, each Commissioner shall serve for a term of 5 (five) years from the date of his appointment at the expiration of which the President may renew his term for a further period of 5 years and no more.

(5) Subject to sections 11(3) and 11(4) of this Act, all Commissioners who were appointed prior to and are still serving as at the commencement date of this Act shall be deemed upon the commencement of this Act to be serving their initial term of 5 (five) years, calculated from the irrespective dates of appointments and shall, subject

to subsection (4) of this section, be eligible thereafter for renewal of their respective tenures.

Resignation of a Commissioner.

9. A Commissioner may resign his office by giving 3 months written notice thereof addressed to the President through the Minister.

Removal of a Commissioner.

10.—(1) Subject to subsections (2), (3) and (4) of this section, a Commissioner may be suspended, or removed from office by the President if he—

(a) is found to have been unqualified for appointment as a Commissioner pursuant to section 7 of this Act or is in breach of section 7(2) hereof after his appointment ;

(b) has demonstrated inability to effectively perform the duties of his office ;

(c) has been absent from 5 (five) consecutive meetings of the Board without the consent of the Chairman except he shows good reason for such absence ;

(d) is guilty of a serious misconduct in relation to his duties as a Commissioner ;

(e) in the case of a person possessed of professional qualifications, he is disqualified or suspended from practising his profession in any part of the world by an order of a competent authority ; or

(f) is in a breach of the conflict of Interest Rules set out in the Second Schedule to this Act.

(2) Prior to the suspension or removal of a Commissioner under subsection (1) of this section, the President shall inform the Commissioner by written notice, as soon as practicable, of his intention to suspend or remove the Commissioner from office and the reasons therefor.

(3) The affected Commissioner under subsection (1) of this section shall be given a reasonable opportunity to make written submissions to the President within a time period specified in the notice and such time period shall not be less than 14 days from the date of the notice.

(4) The affected Commissioner may, within the time period specified in the notice, submit a written submission and the President shall consider the submission in making his final decision on the Commissioner's suspension or removal from office.

Vacancy on the Board.

11.—(1) There is a vacancy in the Board if a Commissioner—

(a) dies ;

(b) is removed from office in accordance with sections 7 or 10 of this Act ; or

(c) resigns from office; or

(d) upon the completion of his tenure of office.

(2) A vacancy in the Board shall be filled by the appointment of another person to the vacant office by the President in accordance with section 8 of this Act, as soon as is reasonably practicable after the occurrence of such vacancy.

(3) Subject to subsection (4) of this section, in the instance of a vacancy on the Board that are created consequent upon death, removal or resignation of a Commissioner, any person so appointed shall hold office for the unexpired period of the term of office of his predecessor.

(4) The provisions of subsection (3) of this section shall not apply to the filling of vacancies in respect of Executive Commissioners howsoever and whenever created.

PART 3—MANAGEMENT AND STAFFING OF THE COMMISSION

12.—(1) The Chief Executive 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.

Chief Executive.

(2) The Chief Executive shall be a person possessing sound knowledge sound ability in the organisation and management of communications matters and subject to sections 8(3) and 8(4) of this Act, he shall hold office for a term of 5 years and may be renewed for another term and no more.

13. The Executive Commissioners shall be persons possessing sound knowledge of and ability in the organisation and management of communications regulatory matters and subject to section 8(4) of this Act, they shall hold office for a term of 5 years and may be renewed for another term and no more.

Executive Commissioners.

14.—(1) There shall be appointed by the Board, for the Commission a secretary who shall not be a Commissioner but shall possess relevant and adequate professional qualifications, with not less than 10 years post-qualification experience.

Commission Secretary.

(2) The Secretary shall keep the corporate records of the Commission and perform such other duties and functions as the Chairman or the Chief Executive may from time to time direct.

15.—(1) The Commission shall have powers to appoint such number of other persons as it deems necessary as staff of the Commission.

Staff of the Commission.

(2) The employment of the Commission’s staff, including the Secretary, shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective staff’s employment contracts.

16.—(1) The Commission shall develop and implement appropriate staff conditions of service for its staff with particular regard to the issues of remuneration, pensions scheme and other fringe service benefits, sufficient for the Commission to attract and retain quality and high calibre manpower.

Conditions of service.

(2) The Board shall consider and, in consultation with the National Salaries, Incomes and Wages Commission determine and review from time to time, the remunerations and allowances, payable to the Commission’s staff.

(3) The conflict of interest provisions contained in the Second Schedule to this Act shall apply to all employees of the Commission.

(4) Notwithstanding the provisions of the Pensions Act, service in the Commission shall be approved service for the purposes of that Act and accordingly,

Cap. 346 LFN.

officers and other persons employed in the Commission shall in respect of their services in the Commission, be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the Civil Service of the Federation, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

(5) For the purposes of the application of the Pensions Act, any power exercisable thereunder by a Minister or other Authority of the Federal Government, other than the power to make regulations under section 23 thereof, is hereby vested in and shall be exercisable by the Commission and not by any other person or authority.

PART IV — FINANCIAL PROVISIONS

Fund of the
Commission.

17.—(1) The Commission shall establish and maintain a fund from which all expenditures incurred by the Commission shall be defrayed.

(2) The Fund shall comprise funds derived from but not limited to the following sources—

(a) such monies as may be appropriated to the Commission from time to time by the National Assembly ;

(b) subject to subsection (3) of this section, fees charged by the Commission under this Act or its subsidiary legislation or under any licence issued pursuant to this Act ;

(c) gifts, loans, grants, aids, etc. ; and

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

(3) The Commission shall pay all monies accruing from the sale of spectrum under Part 1 of Chapter VIII into the Consolidated Revenue Fund.

Borrowing
powers, gifts,
etc.

18.—(1) 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 or its subsidiary legislation.

(2) The Commission may accept gifts or grants of money or aids or other property from national, bilateral and multi-lateral organisations 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.

Budget and
expenditure.

19.—(1) The Commission shall not later than 30th September in each financial year prepare and present to the National Assembly through the President for approval, a statement of estimated income and expenditure for the following financial year.

(2) Notwithstanding the provisions of subsection (1), the Commission may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure to the National Assembly through the President for approval.

(3) Subject to subsections (1) and (2) of this section, the Commission shall apply the proceeds of the Commission's Fund—

(a) to meet the administrative and operating costs of the Commission ;

(b) for the payment of salaries, wages, fees and other allowances, retiring benefits such as pensions and gratuities and, any other remunerations payable to the Commissioners and staff of the Commission ;

(c) 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 ;

(d) for purposes of investment ; and

(e) for or in connection with all or any of the functions of the Commission under this Act or its subsidiary legislation.

20.—(1) The financial year of the Commission shall start on 1st January of each year and end on 31st December of the same year.

Financial year and audit of Commission's accounts.

(2) 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 auditors whose appointment shall be approved by the Board and shall be subject to reappointment on annual basis provided that such auditors are on the list of auditors approved from time to time by the Auditor-General for the Federation.

21.—(1) The Commission shall prepare and submit to the National Assembly annually, through the President, not later than 6 months after the end of its financial year, a report on the activities of the Commission for the preceding financial year and shall include therein the Commission's audited accounts for the year under review together with the auditor's report thereon.

Annual reports for the National Assembly.

(2) The Commission's report under subsection (1) of this section shall have as an attachment thereto the report specified in section 89 of this Act.

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

Exemption from taxation.

CHAPTER III—FUNCTIONS OF THE MINISTER AND NATIONAL FREQUENCY MANAGEMENT COUNCIL

PART 1—FUNCTIONS OF THE MINISTER

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

Functions of the Minister.

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

(b) the negotiation and execution of international communications treaties and agreements, on behalf of Nigeria, between sovereign countries and international organisations and bodies ; and

(c) the representation of Nigeria, in conjunction with the Commission, at proceedings of international organisations and for a on matters relating to communications.

Formulation of policy.

24.—(1) Prior to the formulation or review of the general policy for the Nigerian 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.

(2) 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 (1) of this section.

Relationship with the Commission.

25.—(1) Subject to subsection (2) of this section, the Minister shall, in writing, from time to time notify the Commission or and express his views on the general policy direction of the Federal Government in respect of the communications sector.

(2) 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.

PART 2—NATIONAL FREQUENCY MANAGEMENT COUNCIL

Establishment of National Frequency Management Council.

26. There is established in the Ministry a National Frequency Management Council (NFM) (in this Act referred to as “the Council”) with membership and functions as set out in this Act.

Membership of NFM Council.

27.—(1) The membership of the Council shall be made up of—

- (a) a chairman who shall be the Minister ;
- (b) one representative of the Federal Ministry for the time being charged with the responsibility for communications ;
- (c) one representative of the Federal Ministry of Aviation ;
- (d) one representative of the Federal Ministry of Transport ;
- (e) one representative of the Federal Ministry of Science and Technology ;
- (f) two representatives of the Commission ;
- (g) one representative of the National Broadcasting Commission ; and
- (h) one representative from the security agencies of the Federal Republic of Nigeria.

(2) The organisations that are represented on the Council may at any time, at their discretion or at the instance of the NFM Council, withdraw members who are representing their organisations and simultaneously replace them with some other persons.

Functions of NFM Council.

28. The Council shall have and exercise the following functions—

- (a) assist and advise the Minister on the representation of the Federal

Republic of Nigeria and carrying out ancillary functions at international and regional spectrum allocation bodies including but not limited to International Telecommunications Union (ITU) ;

(b) assist and advise the Minister on the preparation and negotiation of bilateral and multi-lateral spectrum allocation treaties with other sovereign administrations ;

(c) assist and advise the Minister on the preparation, negotiation and adoption of spectrum coordination agreements that are applicable to cross-border spectrum uses involving the Federal Republic of Nigeria and other countries ;

(d) in consultation and conjunction with the Commission, prepare, update and publish on a regular basis a national frequency allocation table and establish a data bank that would assist and facilitate the management of the national spectrum ;

(e) carry out bulk trans-sectoral allocation of spectrum to statutory bodies that are authorised by enabling laws to allocate spectrum to end-users ; and

(f) receive and collate returns and statistics on spectrum allocation to end-users from the statutory bodies specified in paragraph (e) of this section and coordinate their respective activities.

29.—(1) The Minister shall ensure that the Council meets at least four times in every calendar year to transact its businesses.

Meetings and proceedings.

(2) The Council may make standing orders for the regulation of its meetings and proceedings and may establish standing or *ad-hoc* committees to assist it in exercising its functions under this Act.

(3) Membership of the Council Committees may be constituted beyond the members of the Council to include persons and representatives of organisations that are capable in the Council's estimation of assisting the Council in the discharge of its functions provided that such Council Committees shall at all times be headed by the Council Members.

(4) Decisions of the Council Committees shall not be effective binding and valid until they are adopted and agreed upon by the NFM Council.

30.—(1) The Council shall be funded from—

Funding and staffing of the Council.

(a) subventions and budgetary allocations from the Federal Government ; and

(b) grants-in-aid from national, bilateral and multi-lateral agencies.

(2) The Council Secretariat shall be serviced by officials of the Ministry.

CHAPTER IV—LICENCES

PART I—REQUIREMENT FOR AND CLASS OF LICENCES, AND OFFENCE

31.—(1) No person shall operate a communications system or facility nor provide a communications service in Nigeria unless authorised to do so under a communications licence or exempted under regulations made by the Commission under this Act.

Requirement for licences ; and offence.

(2) Any person who acts in breach of sub-section (1) of this section commits an offence and is liable on conviction to—

- (a) a fine not less than the initial fee for the relevant licence ;
- (b) a fine not exceeding 10 (ten) times the initial fee for the relevant licence ;
- (c) imprisonment for a term not exceeding 1 (one) year ; or
- (d) both such fine and imprisonment;

Provided that upon conviction, the person shall also forfeit to the Commission the property, facilities; installations and equipment used by him for the provision and operation of the unlicensed service.

Classes of licences.

32.—(1) The Commission shall issue communications licences for the operation and provision of communications services or facilities by way of class or individual licences on such terms and conditions as the Commission may from time to time determine taking into consideration the objectives of this Act and the provisions of section 33(3) of this Act.

(2) Subject to subsection (3) of this section, the Commission shall from time to time determine and publish to the general public the communications services that qualify for class or individual licences or that are exempted from licensing.

(3) The Commission shall, in determining the services that qualify for class or individual licences, at all times ensure that previous holders of licences for such services as at the date of such determination do not suffer any disadvantage except as permitted under this Act and its subsidiary legislation.

Licensing processes, etc.

33.—(1) The Commission shall from time to time determine and cause to be published a regulation on its licensing processes specifying, amongst others, the persons or classes of persons who are eligible generally to apply for licences.

(2) Subject to subsection (3) of this section, the Commission shall from time to time determine and publish its licensing procedures which may include but shall not be limited to auction, selection processes, public tender invitation or competitive bidding processes.

(3) The Commission shall at all times be guided in the formulation of licensing procedures, issuance of communications licences and preparation of licence conditions and terms, by the principles of and consideration for—

- (a) transparency, fairness and non-discrimination ;
- (b) efficient use and management of radio frequencies
- (c) available numbers under the National Numbering Plan ;
- (d) the need to promote fair competition and investment in the communications' industry ;
- (e) the need to provide modern, qualitative, affordable and readily available communications services in all parts of Nigeria ; and
- (f) such other principles and considerations as the Commission may from time to time consider necessary and in the national interest.

PART II—LICENCE CONDITIONS

34.—(1) The Commission may, from time to time, make written declarations that an individual licence, or a classification of individual licences, or a class licence is subject to such terms and conditions, or enjoys such benefits, as the Commission deems fit. Commission's declaration.

(2) Any declaration on the conditions of licence shall be consistent with the objects and provisions of this Act which are relevant to the particular undertaking, matter or activity.

35.—(1) The Commission shall, before making a declaration under section 34 of this Act, give the affected licensees written notice of its intention to do so together with a draft copy of the declaration, and the licensees may make written submissions to the Commission thereon within the time period specified by the Commission but not less than 30 (thirty) days from the date of the written notice. Affected licensees.

(2) The Commission shall, in deciding on the next course of action, take into consideration any submission made by the affected licensees and the principles specified in section 33(3) of this Act.

36. The Commission shall register every declaration as soon as practicable and shall further maintain a register of all such declarations in accordance with Part V of Chapter V. Register of Declarations.

37.—(1) The Commission may at any time amend, modify, vary or revoke any licence condition or a declaration regarding a licence. Expiration, modification or revocation of declarations

(2) The procedures set out in sections 34, 35 and 36 of this Act shall apply *mutatis mutandis* in respect of any amendment, modification, variation or revocation of a licence condition or declaration.

38.—(1) The grant of a licence shall be personal to the licensee and the licence shall not be operated by, assigned, sub-licensed or transferred to any other party unless the prior written approval of the Commission has been granted. Assignment of licence and compliance with licence conditions.

(2) A licensee shall at all times comply with the terms and conditions of his licence and the provisions of this Act and its subsidiary legislation.

PART III—INDIVIDUAL LICENCES

39.—(1) Subject to subsection (2) of this section, a person may apply to the Commission, in writing and in such form as the Commission may prescribe, for an individual licence in respect of any matter requiring an individual licence under this Act. Application for individual licence.

(2) For the purposes of subsection (1) of this section and notwithstanding the provisions of section 33(1) of this Act, the Commission may from time to time specify additional criteria and qualifications that shall be met by persons wishing to apply for individual licences.

(3) The Commission may not grant an individual licence to a person if that person is operating under an existing class licence in respect of the same service or activity.

(4) All applications for individual licences shall be subject to payment of processing fees in such amount as the Commission may from time to time specify

(5) An application under this section may be withdrawn at any time before it is granted or refused.

Additional information.

40.—(1) The Commission may at any time after the application for an individual licence is made, request the applicant to give to the Commission, within the period specified in the request, further information in support of the application.

(2) If any additional information or document required under Subsection (1) of this section is not provided by the applicant within the time specified in the request or any extension of time granted by the Commission, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

Processing of applications.

41.—(1) The Commission shall, within 90 days of receiving an application for an individual licence under this Chapter, that is not the subject of a competitive bid process, howsoever called or designed, inform the applicant by written notice.

(a) whether or not the individual licence has been granted ;

(b) in the event of a grant, of any special or additional conditions that apply to the licence ; and

(c) in the event that the application has been refused, the reasons for the refusal.

(2) If the Commission neither grants nor refuses to grant an individual licence within 90 days from the receipt of an application, the Commission shall be deemed, at the end of the period, to have refused to grant the individual licence unless the applicant receives a written notice approving the application for the individual licence after the period.

Licence undertakings.

42.—(1) The grant of certain individual licences may be conditional on the registration of undertakings by a prospective licensee.

(2) The Commission may, in granting individual licences, declare specified benefits only for licensees who have current registered undertakings under this section.

Renewal of individual licence.

43.—(1) The licensee may apply for the renewal of an individual licence not later than 6 months' before its expiry and the renewal fee to be determined by the Commission shall be payable upon approval of the application.

(2) If the Commission has no intention of renewing the individual licence, the Commission shall—

(a) inform the licensee by written notice not later than 3 months from the date of receipt of the renewal application from the licensee, of its refusal to renew the individual licence ; and

(b) notify and publish, at least 30 days before the expiry of the individual licence such intention in at least one national daily newspaper.

(3) The Commission may refuse an application for the renewal of an individual licence if the Commission determines that the licensee has—

- (a) failed to comply with the terms and conditions of the individual licence ;
- (b) failed to comply with the provisions of this Act or its subsidiary legislation ; or
- (c) failed to comply with any instrument issued, made or given by the Commission.

(4) The affected licensee shall be given a reasonable opportunity to make written submissions to the Commission within a time period specified in the notice and such time period shall not be less than 14 days from the date of the notice.

(5) The affected licensee may within the time period specified in the notice submit a written submission and the Commission shall consider the submission.

44.—(1) A licensee may, by written notice, surrender his individual licence to the Commission at any time or in accordance with the requirements set out in the individual licence.

Surrender of individual licence.

(2) The surrender shall take effect on the date the Commission receives the individual licence and the notice under subsection (1) of this section, or where a latter date is specified in the notice, on that date.

(3) The surrender of an individual licence shall be irrevocable unless it is expressed to take effect on a later date and before that date the Commission by notice in writing to the licensee allows the surrender to be withdrawn.

45.—(1) The Commission may, by declaration suspend or revoke an individual licence granted under this Act in any of the following circumstances—

Suspension or revocation of individual licence.

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

(b) the licensee has failed to comply with the provisions of this Act or its subsidiary legislation or the terms and conditions of the individual licence ;

(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 ;

(e) if the licensee—

(i) is unable to pay its debts within the meaning of that expression as defined in the Companies and Allied Matters Act,

Cap. 59 LFN 1990.

(ii) enters into receivership or liquidation,

(iii) takes any action for its voluntary winding-up or dissolution or enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Commission) or if any order is made by a competent court or tribunal for its compulsory winding-up or dissolution ; or

(f) the suspension or revocation is in the public interest.

(2) Notwithstanding any contrary provision in this Act, an individual licence may be suspended or revoked under subsections (1)(a), (b), (c) or (d) of this section only after—

(a) the Commission shall by written notice have informed the licensee of its breach under the said subsection and demanded that the breach be rectified, (if it is capable of rectification), within 60 days from the date of the notice; and

(b) the licensee has failed to rectify the breach within the said time-frame.

(3) Prior to the suspension or revocation of an individual licence under subsection (1)(a), (b), (c) or (d) of this section, the Commission shall inform the licensee by written notice, as soon as practicable, of its intention to suspend or revoke the licence and the reasons therefor.

(4) The affected licensee shall be given a reasonable opportunity to make written submissions to the Commission within a time period specified in the notice and such time period shall not be less than 14 days from the date of the notice.

(5) The affected licensee may, within the time period specified in the notice, submit a written submission and the Commission shall consider the submission in making its final determination and declaration on the suspension or revocation of the individual licence.

(6) Subject to subsections (4) and (5) of this section, the suspension or revocation of an individual licence shall take effect on the expiration of 30 days from the date on which the notice of the Commission's declaration under subsection (3) of this section in respect of the suspension or revocation is served on the licensee.

(7) Where the suspension or revocation of an individual licence has taken effect, the Commission shall, as soon as practicable, cause the suspension or cancellation to be published in at least one national daily newspaper.

(8) Any delay or failure to publish the notice of suspension or revocation shall not in any manner affect the validity of the suspension or revocation.

Effect of
suspension of
licence.

46.—(1) In the event of the suspension of a licence, the Commission shall determine and communicate to the licensee the duration of the suspension and the penalties that shall be attendant therefor which may include but shall not be limited to withdrawal of assigned spectrum allocation.

(2) In determining the duration of and penalties consequent upon suspension of a licence, the Commission shall take into consideration, amongst other factors, the gravity of the breach that necessitated the suspension and any mitigating circumstances or conduct thereof.

Effect of
surrender,
revocation,
etc.

47.—(1) Where the revocation of an individual licence under section 45 of this Act or the surrender of an individual licence under section 44 hereof, has taken effect, or where the individual licence has expired, the licensee shall immediately lose the right to provide any service in respect of which the individual licence was granted.

(2) Notwithstanding the provisions of subsection (1) of this section and without prejudice to specific individual licence conditions, the Commission may authorise the licensee in writing to carry on providing any facility or service for such duration as the Commission may specify in the authorisation for the purpose of—

(a) winding up the licensee's affairs ;

(b) relocating the licensee's consumers to some other licensee as the Commission may determine and on such terms and conditions as the Commission may specify ;

(c) making or effecting such other arrangements as the Commission may specify for the continued provision of services to the licensee's customers ; and

(d) carrying out such other ancillary and related activities as the Commission may consider necessary.

(3) Notwithstanding the provisions of subsection (1) of this section, the licensee whose individual licence has expired shall be entitled to carry on providing a service as if his individual licence had not expired upon proof being submitted to the Commission that the licensee has applied for the renewal of the individual licence in accordance with section 43 of this Act and that such application is pending determination by the Commission.

(4) Subject to subsections (2) and (3) of this section, a person who continues to provide service after the coming into effect of the provisions of subsection (1) of this section in respect of his licence commits an offence and, on conviction, is liable to the punishment prescribed in section 31(2) of this Act.

48.—(1) The Commission shall maintain a register of all individual licences that have been granted under this Act.

Register of individual licences.

(2) The Commission shall maintain a separate register containing—

(a) any special or additional conditions specified in the individual licence ;

(b) any written notice varying, revoking or imposing any special or additional conditions specified in the individual licence ;

(c) any written notice by the licensee surrendering his individual licence ;

(d) Any written notice by the Commission suspending or cancelling the individual licence ; and

(e) any written notice approving-the transfer of an individual licence.

(3) The Commission shall maintain the registers in accordance with Part V of Chapter V of this Act.

PART IV — CLASS LICENCE

49.—(1) The Commission may grant a class licence in respect of any matter requiring a class licence under this Act.

Class licence and conditions.

(2) A class licence granted under subsection (1) of this section shall contain such standard terms and conditions as the Commission may from time to time declare.

50.—(1) A person who intends to operate under a class licence shall register with the Commission by submitting a registration notice to the Commission in such form and manner as the Commission may from time to time prescribe.

Registration of class licensee.

(2) A registration fee, to be prescribed by the Commission, shall be payable by the person to the Commission as a condition precedent to the registration of that person.

(3) Subject to the exceptions provided in this Act, no person shall operate under any class licence unless the Commission duly registers the person.

De-registra-
tion of class
licensee.

51.—(1) The Commission may de-register any person subject to a class licence under this Chapter in any of the following circumstances—

(a) the person has failed to pay any amount required by this Act or the licence ;

(b) the person has failed to comply with the provisions of this Act or its subsidiary legislation or the terms and conditions of the licence ;

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

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

(e) the de-registration is in the public interest.

(2) The person whose registration has been cancelled shall immediately lose the right to provide any service covered by the relevant class licence until such time as the Commission may decide to de-register the person.

Register of
class licenses.

52. The Commission shall in accordance with Part V of Chapter V of this Act maintain a register of—

(a) all class licences ;

(b) all persons who are registered by the Commission to provide services under class licences ;

(c) all declarations by the Commission varying or revoking conditions or imposing other standard conditions as specified in the licence ; and

(d) all written notices by the Commission cancelling any registration.

CHAPTER V—POWERS AND PROCEDURES OF THE COMMISSION

PART I—DIRECTIONS

Issuance of
directions.

53.—(1) The Commission may, from time to time, issue directions in writing to any person regarding the compliance or non-compliance of any licence conditions or provisions of this Act or its subsidiary legislation, including but not limited to the remedy of a breach of any licence condition or the provisions of this Act or its subsidiary legislation.

(2) The Commission shall, before issuing a direction under subsection (1) of this section, issue a notice in writing to the person specifying the nature of required compliance and the person shall be granted an opportunity to be heard or may submit a written submission within a reasonable time period specified in the notice on the reasons for his conduct or activity.

(3) The Commission shall, after the expiry of the notice specified in Subsection (2) of this section, take into consideration any reasons provided by the person before making a decision in relation to the relevant conduct or activity of the person.

(4) After due consideration of any reasons provided by the person, the

Commission may issue a direction under subsection (1) of this section requiring the person to take specified action directed towards ensuring that the person does not contravene or continue to contravene any of the conditions of his licence or any of the provisions of this Act or its subsidiary legislation.

(5) The Commission shall give the person written notice of its direction not later than 30 days from the date the decision was made on the direction and the person shall comply with the direction issued by the Commission.

54. The Commission may modify, vary or revoke a direction and the procedure set out in section 53 of this Act shall apply *mutatis mutandis* in respect of any modification, variation or revocation of a direction.

Modification of direction.

55. Without prejudice to any other provision of this Act or a licence condition, a person who fails to comply with a direction of the Commission shall be liable to the payment of fine to the Commission in such amount as the Commission may at its discretion impose.

Non-compliance with direction.

56. The Commission shall maintain a register of all directions issued by the Commission, including any written instruments modifying, varying or revoking a direction, in accordance with Part V of this Chapter.

Register of directions.

PART II—INQUIRY

57.—(1) The Commission may hold a public inquiry on any matter of a general nature that relates to the administration of this Act or its subsidiary legislation which will serve the objects of this Act.

Inquiry.

(2) Subject to subsection (3) of this section, the Commission may hold a public inquiry under subsection (1) of this section—

- (a) in response to a written request from a person ; or
- (b) on its own initiative,

only if it is satisfied that the matter is of significant interest to either the public or to current or prospective licensees under this Act.

(3) The Commission shall hold a public inquiry in all instances that it is mandatorily required to hold an inquiry under this Act or its subsidiary legislation.

(4) The Commission may combine two or more inquiries into a single inquiry and an inquiry under this Chapter shall be conducted as and when the Commission deems fit.

(5) The Commission may, for the purposes of an inquiry, exercise any or all of its investigation and information-gathering powers under Parts III and IV of this Chapter.

58.—(1) Subject to section 57 of this Act, if the Commission decides to hold a public inquiry, the Commission shall publish, in the manner that it deems appropriate, notice of—

Public inquiry.

- (a) the fact that it is holding the inquiry ;
- (b) the period during which the inquiry is to be held ;

(c) the nature of the matter to which the inquiry relates ;

(d) the period, of at least 21 days, within which, and the form in which, members of the public are invited to make submissions to the Commission about the subject matter of the inquiry ;

(e) the matters that the Commission would like the submissions to deal with ; and

(f) the address or addresses to which the submissions may be sent.

(2) the Commission does not need to publish at the same time or in the same manner the notice of all matters referred to in subsection (1) of this section.

(3) the Commission shall consider any submissions received within the time limit as specified in the notice and the submissions made by the members of the public shall be in the form and of the nature as specified in the notice.

Private
inquiry.

59.—(1) Notwithstanding the provisions of section 58 of this Act, an inquiry or a part of an inquiry may be conducted in private if the Commission is satisfied that—

(a) the documents or information that may be given, or a matter that may arise during the inquiry or a part of the inquiry, is of a confidential nature ; or

(b) the inquiry or part of the inquiry or a matter, or part of a matter, in public would not be conducive to the due administration of this Act.

(2) If an inquiry takes place in public and the Commission is of the opinion that—

(a) the evidence or other material presented to the inquiry ; or

(b) the material in written submissions lodged with the Commission is of a confidential nature, the Commission may direct that—

(i) the evidence or material should not be published ; or

(ii) Its disclosure be restricted.

(3) A person shall not without an excuse that is considered reasonable by the Commission fail to comply with a direction under subsection (2) of this section.

(4) If an inquiry or part of an inquiry takes place in private, the Commission—

(a) shall give a direction as to the persons who may be present at the inquiry or part of the inquiry ; and

(b) may give a direction restricting the disclosure of evidence or other material presented at the inquiry or part of the inquiry.

(5) Notwithstanding the provisions of section 55 of this Act, a person who without reasonable excuse fails to comply with a direction given under Subsection (4) of this section shall be liable to the payment of fine to the Commission in such amount as the Commission may at its discretion impose.

Publication
of report.

60.—(1) The Commission shall publish a report setting out its findings as a result of any inquiry it conducts and the report shall be published within 45 days of the conclusion of the inquiry.

(2) The Commission shall not include in the report any material—

- (a) that is, in the Commission’s opinion, of a confidential nature ; and
- (b) the disclosure of which is likely to prejudice the fair trial of a person ; and
- (c) which would involve the unreasonable disclosure of personal information about any individual (including a deceased individual).

(3) Civil proceedings shall not lie against a person in respect of any loss, damage or injury of any kind suffered by another person because of any of the following acts—

- (a) the making of a request under section 57 of this Act ; or
- (b) the making of a statement, or giving of a document or information to the Commission in relation to an inquiry under this Chapter.

(4) The Commission shall maintain a register of all reports made pursuant to an inquiry under this Part, in accordance with the provisions in Part V of this Chapter.

PART III—INVESTIGATION FOR PURPOSES OF ADMINISTRATION, INQUIRY, ETC.

61. Notwithstanding the provisions of any other written law, the Commission may investigate any matter pertaining to the administration of this Act or its subsidiary legislation if the Commission has grounds to believe that an infringement, civil or criminal, of the provisions of this Act or its subsidiary legislation was, is or will be committed.

Investigation.

62.—(1) The Commission may conduct an investigation on a matter referred to in section 61 of this Act upon a written complaint by a person and the complaint shall specify the person against whom the complaint is made.

Complaint.

(2) If a complaint has been made to the Commission under this section, the Commission may make inquiries of the respondent for the purpose of deciding whether the Commission should, in its discretion, investigate the matter.

(3) If the Commission decides not to investigate, or not to investigate further, a matter to which a complaint relates, it shall not later than 60 days from the date of receipt of the complaint and in such manner as it thinks fit, inform the complainant and the respondent of the decision and the reasons for the decision.

63.—(1) The Commission shall before beginning an investigation of a matter to which the complaint relates, inform the respondent that the matter is to be investigated.

Conduct of investigation.

(2) An investigation under this Part shall be conducted as the Commission thinks fit and the Commission may, for the purposes of an investigation, obtain information from such persons as it thinks fit.

(3) Subject to subsection (4) of this section, a complainant or respondent may, at the Commission’s discretion, be given an opportunity to appear before the Commission in connection with an investigation.

(4) The Commission shall not, as a result of the investigation, make a finding that is adverse to a complainant or a respondent unless it has given the complainant or respondent an opportunity to make written submissions about a matter to which the investigation relates within a time period of not less than 21 days.

(5) The Commission shall consider the submissions made by the complainant or the respondent under subsection (4) of this section before making its decision.

(6) The Commission may, after concluding an investigation, prepare and publish a report which shall cover—

- (a) the conduct of the investigation concerned ;
- (b) any findings that the Commission has made as a result of the investigation ;
- (c) the evidence and other material on which those findings were based ; and
- (d) such other matters relating to, or arising out of, the investigation as the Commission thinks fit.

PART IV—INFORMATION-GATHERING POWERS

Information gathering powers.

64.—(1) This section applies to any person who is subject to this Act and who the Commission has reason to believe :

- (a) has any information including but not limited to accounts and records or any document that is relevant to the exercise of the Commission's powers and functions under this Act or its subsidiary legislation ; or
- (b) is capable of giving any evidence which the Commission has reason to believe is relevant to the exercise of the Commission's powers and functions under this Act or its subsidiary legislation.

(2) The Commission may, by a written notice, direct any person who is subject to this Act to :

- (a) give the Commission; within the period and in the manner and form specified in the notice, any such information ;
- (b) produce to the Commission, within the period and in the manner specified in the notice, any such documents, whether in a physical form or in an electronic media ; or
- (c) make copies of any such documents and to produce those copies to the Commission within the period and in the manner specified in the notice.

(3) The Commission shall allow the person so directed under subsection (2) of this section a reasonable time to give and to produce any information or documents specified in the notice.

(4) Any person who is subject to this Act and who is required to provide information under subsection (2) of this section shall ensure that the information provided is true, accurate and complete and such person shall provide a representation to that effect, including a representation that he is not aware of any other information which would make the information provided untrue or misleading.

Non-compliance.

65.—(1) Notwithstanding the provisions of section 55 of this Act, a person who is subject to this Act and who fails to comply with a direction of the Commission under this Part shall be liable to the payment of fine to the Commission in such amount as the Commission may at its discretion impose.

(2) Notwithstanding the provisions of sections 55 of this Act and subsection (1) of this section, a person who is subject to this Act and who fails to disclose or omits to give any relevant information or evidence or document, or provides information or evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission commits an offence and on conviction is liable to a fine not exceeding ₦100,000.00 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

66.—(1) A person who is subject to this Act shall, if at any time called upon in writing by the Commission to do so, produce to the Commission all such evidence and provide all such information as the person may have relating to his compliance with any of the provisions of this Act or its subsidiary legislation, as the Commission may generally, or in relation to any particular case, require.

Evidence of compliance.

(2) The Commission may take, and retain for as long as is necessary, possession of a document produced under this Chapter and the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy.

(3) Notwithstanding the provisions of any other written law, all courts and tribunals shall receive the certified copy as evidence as if it were the original.

(4) Until a certified copy is supplied, the Commission shall, at such times and places as the Commission thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from the document.

67.—(1) The Commission shall maintain a record of all information, evidence or documents received pursuant to the directions given under section 64 (2) of this Act.

Record and publication of information, etc.

(2) The Commission may publish information received in the course of exercising its powers and functions under this Chapter if it is satisfied, that the publication is consistent with the objects of this Act Provided that the Commission shall consider the commercial interests of the parties to whom the information relates before publishing the information.

PART V—REGISTER

68.—(1) The Commission shall maintain a register, in both physical form and electronic media, of all matters that are required to be registered under this Act and its subsidiary legislation.

Register.

(2) The Commission may, at its discretion, summarise the contents of a material for inclusion in the register and exclude therefrom aspects of the material if it considers such exclusion necessary and justified on grounds of public interest or safety, amongst others.

69.—(1) A person may, on payment of the charge, if any, to be decided by the Commission ;

Access to Register by public.

(a) inspect the register ; and

(b) make a copy of, or take extracts from the Register.

(2) If a person requests that a copy be provided in an electronic media, the Commission may provide the relevant information.

(a) on a data processing device ; or

(b) by way of electronic transmission.

(3) The Commission shall from time to time publish guidelines in regard to its various registers giving details of the registers and indicating, amongst others, access processes and procedures for members of the public.

PART VI—REGULATIONS, GUIDELINES, ETC.

Commission's
regulations,
guidelines,
etc.

70.—(1) The Commission may make and publish regulations for all or any of the following issues :

(a) written authorisations, permits, assignments and licences granted or issued under this Act ;

(b) assignment of rights to the spectrum or numbers under Chapter VIII, including mechanisms for rate-based assignment ;

(c) any fees, charges, rates or fines to be imposed pursuant to or under this Act or its subsidiary legislation ;

(d) a system of universal service provision under Chapter VII, including but not limited to the quality of service standards ;

(e) communications and related offences and penalties ;

(f) any matter for which this Act makes express provision ; and

(g) such other matters as are necessary for giving full effect to the provisions of this Act and for their due administration.

(2) The Commission may also make and publish guidelines on any matter for which this Act makes express provision and such other matters as are necessary for giving full effect to the provisions of this Act and for their due administration.

Rule-making
process.

71.—(1) The Commission shall, prior to making any regulation under this Act, conduct an inquiry in the manner specified in Part II of this Chapter on the subject matter of the proposed regulation.

(2) The Commission shall, in making the regulation, take into consideration the findings of the inquiry under subsection (1) of this section.

(3) The Commission may prior to making any guideline, at its discretion, conduct an inquiry in the manner specified in Part II of this Chapter on the subject matter of the proposed guideline and if the Commission considers it necessary to hold such an inquiry, it shall in making the guideline take into consideration the findings of the inquiry.

Regulatory
review.

72.—(1) Subject to subsection (2) of this section, the Commission may review, as at when it deems necessary, any rules, guidelines and regulations made under this Act that are in effect at the time of the review and may in the process modify or vary, or repeal any such rules or regulations :

(a) which are no longer necessary in the national interest ;

(b) which are no longer necessary to ensure the objects of this Act or its subsidiary legislation ; or

(c) for any other reason that the Commission thinks is relevant.

(2) The procedures set out in section 71 of this Act shall apply *mutatis mutandis* in respect of any modification, variation or revocation of a regulation or guideline.

PART VII—NOTIFICATION AND RESOLUTION OF DISPUTES

73. The Commission shall have powers to resolve disputes between persons who are subject to this Act (“the parties”) regarding any matter under this Act or its subsidiary legislation.

Commission’s powers to resolve disputes.

74.—(1) An attempt shall first be made by the parties to resolve any dispute between them through negotiation before the involvement of the Commission.

Resolution of disputes by parties.

(2) If one of the parties to the dispute has provided an undertaking that is relevant to the subject matter of the dispute and the Commission in accordance with Part IX of this Chapter has registered the undertaking, the parties may adopt the conditions of the undertaking for the purposes of resolving the dispute.

75.—(1) A party to a dispute may, in writing, notify the Commission of the dispute and the Commission may only resolve a dispute under this Part if it is notified in writing of the dispute and requested by either or both parties to intervene thereon.

Notification of disputes.

(2) The Commission may publish guidelines setting out the principles and procedures that it may take into account in resolving disputes or a class of disputes under this Part.

(3) The Commission shall, upon receipt of the notification of the dispute referred to in Subsection (1) of this section, as soon as practicable, convene to decide the dispute.

(4) The Commission shall convene to decide a dispute if it is satisfied that :

(a) an agreement shall not be reached, or will not be reached within a reasonable time ;

(b) the notification of the dispute is not trivial, frivolous or vexatious ; and

(c) the resolution of the dispute would promote the objects of this Act or its subsidiary legislation.

76.—(1) Subject to the objects of this Act and any guidelines issued by the Commission under this Part, the Commission may resolve the dispute in such manner including but not limited to Alternative Dispute Resolution processes and upon such terms and conditions as it may deem fit.

Resolution of disputes by Commission.

(2) The Commission, in carrying out its functions under Subsection (1) of this section, shall always be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and that shall not be bound by technicalities, legal form or rules of evidence and that shall at all times act according to the ethics of justice and the merits of each case.

(3) The terms and conditions of any resolution of a dispute by the Commission under this Part shall be accompanied with reasons and be in writing and the Commission shall provide the parties to the dispute with a copy of its decision as soon as practicable.

Register of decisions.

77.—(1) The Commission shall register all decisions it makes under this Part, in accordance with Part V of this Chapter.

(2) The register shall contain :

- (a) the names of the parties to the dispute ;
- (b) a general description of the matter pertaining to the decision ; and
- (c) the date of the decision,

but not the terms and conditions of the decision.

Enforcement of Commission's decision.

78.—(1) The decision of the Commission shall be binding on the parties and the Commission may direct a party to a dispute to abide by the decision of the Commission in that dispute.

(2) A decision made by the Commission under this Part may be enforced by the Court as if the decision is a judgment of such Court provided that the Commission has issued a certificate to the complainant for leave to proceed to the Court for the enforcement of the decision.

(3) No certificate under subsection (2) of this section is required if an action is taken by the Commission under this section.

PART VIII—REGISTRATION OF AGREEMENTS

Registration of agreements.

79.—(1) A party to a written agreement who is subject to this Act shall apply to the Commission for the registration of the Agreement, if this Act or its subsidiary legislation requires such registration.

(2) The Commission shall register the written agreement if the Commission is satisfied that the agreement is consistent with :

- (a) the objects of this Act ;
- (b) any relevant instrument under this Act ; and
- (c) any relevant provisions of this Act or its subsidiary legislation.

Register of agreements.

80.—(1) The Commission shall maintain a register of all agreements required to be registered under this Act, in accordance with Part V of this Chapter.

(2) the register shall contain ;

- (a) the names of the parties to the agreement,
- (b) a general description of the matter pertaining to the agreement, and
- (c) the date of the agreement,

but not the terms and conditions of the agreement.

PART IX—UNDERTAKINGS

81.—(1) A person may provide an undertaking to the Commission regarding any matter for which this Act makes express provision. Undertakings.

(2) An undertaking provided by a person under subsection (1) shall set out the terms and conditions of the undertaking and may include the effective date of the undertaking or the date of its expiry.

82.—(1) Subject to section 84 of this Act, all undertakings given by any person to the Commission in any circumstance whatsoever shall be deemed as duly registered and shall remain valid and enforceable at all times. Registration of undertakings.

(2) The Commission shall maintain a register of all existing undertakings, in accordance with Part V of this Chapter.

83.—(1) The Commission may make and publish rules in respect of undertakings and the rules shall bind the party making the undertakings and all other persons relying on such undertakings as if they were respectively signed by each person and contained agreements on the part of each person for himself and for his successors to observe all the provisions of the rules. Rules of undertakings.

(2) The Commission may direct a person referred to in subsection (1) of this Section to comply with the rules made under subsection (1) of this section and any registered undertakings issued under this Part.

84. A person providing an undertaking may apply to withdraw the undertaking at any time by notifying the Commission in writing and the undertaking shall only be withdrawn upon such terms and subject to such conditions as the Commission may specify. Withdrawal of undertakings.

85. The Commission or a directly affected person may apply to a court for the enforcement of an undertaking against the person providing the undertaking if an undertaking has not been complied with. Enforcement of undertakings.

PART X—REVIEW OF DECISIONS

86.—(1) A person who is aggrieved or whose interest is adversely affected by any decision of the Commission made pursuant to the exercise of the powers and functions under this Act or its subsidiary legislation (“aggrieved person”) may request in writing to the Commission for a statement of the reasons for the decision. Reasons for decisions.

(2) The Commission shall, upon such written request by an aggrieved person, provide a copy of a statement of reasons for the decision and any relevant information taken into account in making the decision.

(3) The Commission is not required to publish, or to disclose to the aggrieved person, a statement of reasons or a part of a statement of reasons if the publication or disclosure would—

(a) disclose a matter that is, in the opinion of the Commission, of a confidential character ;

(b) be likely to prejudice the fair trial of a person ; or

(c) involve the unreasonable disclosure of personal information about any individual (including a deceased person).

(4) In this Chapter, “decision” includes any action, order, report, direction.

Review of
decision by
Commission.

87.—(1) An aggrieved person may at any time within but not later than 30 days after the date of receipt of the Commission’s statement of reasons specified in section 86(2) of this Act request the Commission in writing for a review of the Commission’s decision and specify therein the reasons and basis for his request.

(2) Subject to subsection (4) of this section, upon receipt of the aggrieved person’s written submissions the Commission shall meet to review its decision taking into consideration the submissions of the aggrieved person under subsection (1) of this section.

(3) The Commission may, in carrying out the review of its decision under this Part, use and exercise any of its powers under this Chapter.

(4) The Commission shall not later than 60 days from the date of receipt of the aggrieved person’s written submissions, conclude its review of the decision and inform the aggrieved person in writing of its final decision thereon and the reasons therefor.

Judicial
review of
decision.

88.—(1) Subject to section 87 of this Act and subsections (2) and (3) of this section, an aggrieved person may appeal to the Court for a judicial review of the Commission’s decision or other action.

(2) The decision or direction of the Commission that is the subject matter of an application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgement or order of the Court.

(3) A person shall not apply to the Court for a judicial review unless that person has first exhausted all other remedies provided under this Act.

PART XI—MONITORING AND REPORTING

Monitoring
and reporting.

89.—(1) The Commission shall monitor all significant matters relating to the performance of all licensees and publish annual reports thereon at the end of each financial year of the Commission.

(2) In performing its functions under subsection (1) of this section, the Commission shall—

(a) use any of its powers under this Chapter and in particular but without limitation, its powers of investigation and information-gathering pursuant to Parts III and IV of this Chapter ; and

(b) have regard to such industry performance indicators as the Commission considers appropriate.

(3) Matters upon which the Commission shall monitor and report include but are not limited to the following—

(a) the operation and administration of this Act and its subsidiary legislation ;

(b) the efficiency in which licensees provide facilities and services ;

- (c) the quality of services ;
- (d) industry statistics generally including but not limited to service provisioning, traffic patterns, industry operators, etc. ;
- (e) the tariff rates and charges paid by consumers for services ;
- (f) the development of industry self-regulation ;
- (g) the adequacy and availability of services in all parts of Nigeria ;
- (h) any deficiencies in the scope or operation of this Act and its subsidiary legislation ; and
- (i) other matters that the Commission is satisfied are relevant.

(4) The Commission shall publish the report, in the manner it deems appropriate, provided that it is made publicly available.

CHAPTER VI—ECONOMIC REGULATION

PART I—GENERAL COMPETITION PRACTICES

90. 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 Nigerian communications market.

Commission's exclusive competence on competition laws.

91.—(1) A licensee shall not engage in any conduct which has the purpose or effect of substantially lessening competition in any aspect of the Nigerian communications market.

Anti-competition practices.

(2) The Commission may from time to time publish guidelines or regulations which clarify the meaning of “substantial lessening of competition” in the Nigerian communications market and such guidelines or regulations may include references to—

- (a) the relevant economic market ;
- (b) global trends in the relevant market;
- (c) the impact of the conduct on the number of competitors in a market and their market shares ;
- (d) the impact of the conduct on barriers to entry into the market ;
- (e) the impact of the conduct on the range of services in the market ;
- (f) the impact of the conduct on the cost and profit structures in the market ; and
- (g) any other matters which the Commission is satisfied are relevant.

(3) A licensee shall not enter into any understanding, agreement or arrangement, whether legally enforceable or not, which provides for :

- (a) rate fixing ;
- (b) market sharing ;
- (c) boycott of another competitor ;
- (d) boycott of a supplier of apparatus or equipment; or

(e) boycott of any other licensee.

(4) A licensee shall not, at any time or in any circumstance, make it a condition for the provision or supply of a product or service in a communications market that the person acquiring such product or service in the communications market is also required to acquire or not to acquire any other product or service either from himself or from another person.

Dominant
operator.

92.—(1) The Commission may determine that a licensee is in a dominant position in any aspect of the Nigerian communications market.

(2) The Commission may publish guidelines and regulations which clarify how it shall apply the test of “dominant position” to licensees.

(3) The guidelines and regulations in subsection (2) of this section may specify the matters which the Commission may take into account, including—

(a) the relevant economic market ;

(b) global technology and commercial trends affecting market power ;

(c) the market share of the licensee ;

(d) the licensee’s power to make independent rate setting decisions ;

(e) the degree of product or service differentiation and sales promotion in the market ; and

(f) any other matters which the Commission is satisfied are relevant.

(4) The Commission may direct a licensee in a dominant position in the communications market to cease a conduct in that market which has or may have the effect of substantially lessening competition in any communications market and to implement appropriate remedies.

Exemption.

93.—(1) A licensee may apply to the Commission prior to engaging into any conduct which may be construed to have the purpose or effect of substantially lessening competition in any aspect of the Nigerian communications industry, for authorisation for the conduct.

(2) Notwithstanding the provisions of this Chapter, the Commission may authorise the conduct if the Commission is satisfied that the authorisation is in the national interest.

(3) The Commission may, before authorising the conduct, require the licensee to submit an undertaking regarding his conduct in any matter relevant to the authorisation.

(4) A licensee may withdraw an application made under subsection (1) of this section at any time prior to authorisation by the Commission.

(5) Subject to section 84 of this Act, an authorisation granted by the Commission under subsections (2) or (3) of this section may only be withdrawn upon such terms and subject to such conditions as the Commission may specify.

(6) The Commission shall maintain a register of current authorisations of conducts under this Part in accordance with Part V of Chapter V.

94.—(1) The Commission or a person may seek an interim or interlocutory injunction against any conduct prohibited in this Part.

Legal action against default.

(2) A person shall obtain a certificate from the Commission for leave to proceed to the court for enforcement of the provisions of this Part except in the case of an injunction.

95.—(1) Subject to subsection (2) of this section, the Commission may make regulations or rules in respect of agreements between licensees under this Act and foreign network facilities providers or network service providers.

Regulations etc. relating to foreign operators.

(2) The Commission shall only make the rules under subsection (1) of this section which are intended to prevent or mitigate :

(a) any conduct by foreign network facilities providers or network service providers that shall or is likely to lead to a substantial lessening of competition in any aspect of the Nigerian Communications market; or

(b) the misuse of market power in any aspect of the Nigerian communications market.

PART II—INTERCONNECTION

96. If a network services or facilities provider receives a request for interconnection from another licensee, then the service or facilities 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 97 of this Act and pursuant to terms and conditions negotiated between the parties in good faith.

Obligation to interconnect.

97.—(1) All interconnection agreements between licensees shall be in writing and shall comply with :

Interconnection agreements.

(a) this Act, the regulations and guidelines published from time to time by the Commission pursuant to this Act ; and

(b) the principles of neutrality, transparency, non-discrimination, fair competition, universal coverage, access to information, equality of access and equal terms and conditions.

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

(a) if the Commission determines that the agreement or any provision thereof is inconsistent with the provisions of this Act or its subsidiary legislation ; or

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

(c) 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.

Registration of interconnection agreements.

98.—(1) All interconnection agreements shall be registered with the Commission, by either or both parties thereto, within 30 (thirty) days from the date of execution thereof in accordance with Part VIII of Chapter V.

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

(3) 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, the regulation or the interconnection guidelines or the integrity of the public network.

Interconnection regulation and agreement.

99.—(1) The Commission shall make interconnection regulations which may specify but shall not be limited to model terms and conditions for interconnection agreements between service providers.

(2) Matters which the interconnection regulations shall address include but are not limited to :

- (a) the time frame and procedures for negotiations and the concluding of interconnection agreements ;
- (b) quality and levels of service ;
- (c) rate methodologies ;
- (d) protection of intellectual property ;
- (e) protection of commercial information ;
- (f) provisioning of facilities ; and
- (g) sharing of technical information.

Disconnection of interconnection.

100. 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.

PART III—ACCESS

Provision of access.

101.—(1) Subject to such exemptions as may be determined by the Commission and duly published, a network facilities provider and a network service provider shall provide access to their network facilities or network services listed in the access list to any other :

- (a) network facilities provider,
- (b) network services provider,
- (c) applications service provider, or
- (d) content applications service provider,

who makes a written request for access to such network facilities provider or network service provider on reasonable terms and conditions.

(2) The access provided by one provider (“the first provider”) to another provider under subsection (1) of this section shall be of at least the same or more favourable technical standard and quality as the technical standard and quality provided on the first provider’s network facilities or network services.

102.—(1) The list of facilities and services which may be included in the access list, as determined by the Commission under this Chapter, are :

Access list and register.

(a) network facilities ;

(b) network services ; and

(c) other facilities and services that facilitate the provision of network services or applications services, including content applications services.

(2) The Commission shall maintain a register of :

(a) network facilities,

(b) network services, and

(c) other facilities and services which facilitate the supply of network services or applications services, including content applications services,

included in the access list.

103. The provisions of sections 97, 98, 99 and 100 of this Act, including but without limitation, the powers of the Commission thereunder shall apply *mutatis mutandis* and extend to access provision and issues ancillary thereto pursuant to this Part.

Regulations, discontinuance of access, etc.

CHAPTER VII—CONSUMER AFFAIRS

PART I—CONSUMER PROTECTION AND QUALITY OF SERVICE

104. All service providers shall, in respect of their specific services—

Quality of service.

(a) meet such minimum standards of quality of service as the Commission may from time to time specify and publish ;

(b) deal reasonably with consumers ; and

(c) adequately address consumer complaints.

105.—(1) The Commission may use any of its powers under this Act in the resolution of complaints received from consumers in relation to matters of customer service and consumer protection including but not limited to quality of service or the failure by a licensee to comply with a consumer code prepared under this Chapter.

Resolution of consumer disputes.

(2) The Commission shall establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees and may, at its discretion, institute alternative dispute resolution processes for the resolution of the complaints or disputes provided that the licensee’s dispute resolution procedures shall first have been exhausted by the consumer without resolution of the complaint before presentation of the complaint to the Commission.

106.—(1) Subject to the provisions of subsection (2) of this section, the Commission may designate an industry body to be a consumer forum and to prepare a consumer code for the purposes of this Chapter and the consumer code

Consumer code.

prepared by such industry body shall be subject to the prior approval of and ratification by the Commission.

(2) Without prejudice to the provisions of subsection (1) of this section, the Commission may require licensees to prepare individual consumer code for their respective customers and such consumer code shall be subject to the prior approval of and ratification by the Commission.

(3) A consumer code prepared by a consumer forum, the Commission or licensees shall include model procedures for :

(a) reasonably meeting consumer requirements ;

(b) the handling of customer complaints and disputes including an inexpensive arbitration process other than a court, and procedures for the compensation of customers in case of a breach of a consumer code ; and

(c) the protection of consumer information.

(4) Other matters which the consumer code shall address include but are not limited to :

(a) further recourse available to a consumer who is dissatisfied with the licensee's complaints-handling procedures together with specific details of compensation and refund schemes offered by licensee to its customers ;

(b) the provision of information to customers regarding services, rates and performance ;

(c) the provisioning and fault repair of services ;

(d) the advertising or representation of services ;

(e) customer charging, billing, collection and credit practices ; and

(f) any other matter which, in the opinion of the Commission, may be of concern to consumers.

(5) After the preparation of a consumer code and subsequent ratification by the Commission, the consumer code shall be published by the licensee and the Commission and notice of it shall be advertised in at least one national daily newspaper.

(6) A consumer code prepared pursuant to this Chapter shall be subject to annual review and ratification by the Commission prior to publication by the licensee and the Commission.

PART II—REQUIRED APPLICATIONS SERVICES

Required applications services.

107.—(1) For the purposes of this Chapter, the Commission may determine a list of required applications services.

(2) The list referred to in subsection (1) of this section may include but is not limited to :

(a) emergency services (including access to controlled network facilities and network services for the purposes of providing emergency services) ;

(b) directory assistance services (including access to controlled network facilities, network services and relevant databases) ;

- (c) operator assistance services ; and
- (d) services for disabled consumers.

(3) The Commission shall, in specific regard to emergency services, take immediate steps upon the commencement of this Act to :

(a) promote and enhance public safety through the use of a particular number which shall be designated as the universal safety and emergency assistance number for telephone services generally ; and

(b) encourage and facilitate the prompt deployment throughout Nigeria of a seamless, ubiquitous and reliable end-to-end infrastructure for emergency communications needs.

(3) The Commission may determine the classes of network service providers who shall provide any or all of the applications services on the list of required applications services and shall direct them to provide the required applications services.

(4) Notwithstanding any provision to the contrary in this Act or any instrument made, issued or given under this Act, a direction by the Commission issued under subsection (3) of this section may provide for or specify operational details relating to a required applications service.

PART III—TARIFF RATE REGULATION

108.—(1) Holders of individual licences shall not impose any tariff or charges for the provision of any service until the Commission has approved such tariff rates and charges except as otherwise provided in this Part.

Approval of
tariffs and
charges by
Commission.

(2) The licensees specified in subsection (1) of this section shall provide services at the tariff rates and charges so approved by the Commission and shall not depart therefrom without prior written approval by the Commission of such proposed changes in tariff rates and charges.

(3) All licensees mentioned in subsection (1) of this section shall publish the tariff rates charged to customers for their respective services and the modifications thereto as may be approved from time to time by the Commission.

(4) The tariff rates established by a licensee mentioned in subsection (1) of this section shall be on the basis of such principles as the Commission may from time to time stipulate in its guidelines or regulation including the following—

- (a) tariff rates shall be fair and, for similarly situated persons not discriminatory ;
- (b) tariff rates shall be cost-oriented and, in general, cross-subsidies shall be eliminated ;
- (c) tariff rates shall not contain discounts that unreasonably prejudice the competitive opportunities of other providers ;
- (d) tariff rates shall be structured and levels set to attract investments into the communications industry ; and
- (e) tariff rates shall take account of the regulations and recommendations of the international organisations of which Nigeria is a member.

Exemption.

109. Notwithstanding the provisions of Section 108 of this Act, the Commission may intervene in such manner as it deems appropriate in determining and setting the tariff rates for any non-competitive services provided by a provider mentioned in Section 108 (1) of this Act for good cause or as the public interest may require.

Tariff rates rules and regulations.

110.—(1) The Commission may from time to time make rules or regulations on determination and publication of tariff rates for respective services by the licensees specified in section 108 (1) of this Act.

(2) The regulations and rules which may be made by the Commission under subsection (1) of this section may include but are not limited to :

(a) rules about the tariff rates and charges and variation of rates for specified or classes of services ;

(b) rules about the publication or disclosure of tariff rates for specified or classes of services ; or

(c) tariff rate models that may be applicable to specified licensees or classes of licensees or specified or classes of services.

Penalty for operating unapproved tariffs, charges, etc.

111. Notwithstanding any other provision of this Act, the Commission shall prescribe and enforce appropriate financial penalties upon any holder of an individual licence who exceeds the tariff rates duly approved by the Commission for the provision of any of its services.

PART IV — UNIVERSAL SERVICE PROVISION

Universal service provision.

112.—(1) Subject to subsection (2) of this section, the Commission shall consider, design and determine a system which shall promote the widespread availability and usage of network services and applications services throughout Nigeria by encouraging the installation of network facilities and the provision for network services and applications services to institutions and in unserved, underserved areas or for underserved groups within the community (“Universal Service Provision” (USP)).

(2) No universal service provision organ that is created under this Part or pursuant to this Act or its subsidiary legislation shall be or constitute itself howsoever into a communications service provider.

(3) The Commission may make regulations under Part VI of Chapter V for the implementation of subsection (1) of this section.

Unserved areas, underserved areas and underserved groups.

113.—(1) A determination by the Commission under section 112(1) of this Act shall include definitions of “institutions”, “unserved”, “underserved areas” and “underserved groups within a community”.

(2) In determining the definition of ‘unserved’ and “underserved areas”, the Commission may have regard to—

(a) the availability of services in particular areas or places ;

(b) the level of competition in particular areas or places ; and

(c) the commercial viability of installing network facilities or providing network services or applications services in particular areas or places.

(3) The Commission may, in determining the definition of “underserved groups within a community”, have regard to—

- (a) the availability of services to such groups ; and
- (b) any barriers to the use of available services.

(4) The Commission shall, in determining the definition of “institutions”, have regard to the educational, health and other socio-infrastructure needs of Nigerians.

114.—(1) For the purposes of this Act, a fund to be known as the “Universal Service Provision Fund” (“USP Fund”) is established and it shall be controlled and operated in the manner specified in this Chapter.

Universal
Service
Provision
Fund.

(2) The USP Fund shall comprise funds derived from but not limited to the following sources—

- (a) such monies as may be specifically appropriated to the USP Fund from time to time by the National Assembly ;
- (b) contributions from the Commission based on a portion of the annual levies paid to the Commission by licensees ; and
- (c) gifts, loans, aids, and such other assets that may from time to time specifically accrue to the USP Fund.

(3) The administrative and operational expenses for USP shall be funded directly from the USP Fund and such expenses shall include—

- (a) salaries, emoluments, remunerative packages, howsoever called, and allowances for :
 - (i) Universal Service Provision Board Members ;
 - (ii) the Commission staff who are assigned on full-time basis to the USP Secretariat or such other staff of the USP Secretariat howsoever engaged ; and
 - (iii) USP Fund Manager ;
- (b) Operational expenses for the activities of the USP Board, USP Secretariat and USP Fund Managers.

(4) The Commission shall ensure that the USP Fund is at all times totally separated from the Commission’s Fund under Part IV of Chapter II and transparently maintained and operated as such.

(5) Independent auditors appointed for that purpose by the Board shall audit the USP Fund annually and the auditor’s report shall be presented to the National Assembly and published to the public provided that such auditors are on the list of auditors approved from time to time by the Federal Accountant-General for the Federation.

115.—(1) Subject to subsections (2) and (3) of this section, there is hereby established a Board (“USP Board”) that shall supervise and provide broad policy directions for the management of the USP Fund.

USP Board.

(2) The USP Secretariat that is established pursuant to section 118 of this Act shall serve as the Secretariat.

(3) The USP Board shall be constituted by the President based on the recommendations of the Minister and the USP Board shall, in carrying out its functions and duties pursuant to this Act, collaborate and consult at all times with the Commission and be subject to the provisions of this Act.

Membership
of USP Board.

116.—(1) Membership of the USP Board shall be constituted as follows—

- (a) the Minister shall be the USP Board Chairman ;
- (b) the Board Chairman of the Commission shall be the USP Board Vice-Chairman ;
- (c) 2 Commissioners ;
- (d) 1 representative of the Ministry ;
- (e) 1 representative of the Minister of Finance ;
- (f) 1 representative of the Chairman, National Planning Commission ; and
- (g) 4 private sector representatives.

(2) The President, acting on the recommendations of the Minister, shall ensure that the USP Board members in subsection (1)(g) of this section are persons of integrity and professional standing who shall be appointed as USP Board Members either on their own self-recognition or as representatives of organisations who, in the President's judgement, are stakeholders in and can contribute meaningfully towards the attainment of the USP objectives.

(3) The appointment of the USP Board members in subsection (1)(g) of this section shall be subject to confirmation by the Senate

(4) Subject to subsections (5) and (6) of this section, the organisations that are represented on the USP Board may at any time, at their discretion or at the instance of the USP Board, withdraw members who are representing their organisations and simultaneously replace them with some other persons.

(5) USP Board Members who are appointed pursuant to subsection (1)(g) of this section shall serve on such terms and for such periods as shall be indicated in their respective letters of appointment.

(6) In the event of the determination of the appointment of a USP Board member who was appointed under subsection (1)(g) of this section and who was representing an organisation, the Minister may, on the recommendation of the USP Board, request the organisation to immediately send a replacement therefor.

USP Board
Proceedings.

117.—(1) The USP Board shall make standing orders for the regulation of its meetings and proceedings and may establish Standing or *ad-hoc* committees to assist it in exercising its functions under this Act.

(2) Membership of the USP Board Committees may be constituted beyond the members of the USP Board to include persons and representatives of organisations that are capable in the USP Board's estimation of assisting the Commission and the USP Board in the discharge of its USP functions provided that, such USP Board Committees shall at all times be headed by USP Board Members.

(3) Decisions of the USP Board Committees shall not be binding and valid until they are adopted and agreed upon by the USP Board.

118.—(1) The USP Secretariat shall reside in the Commission and shall be responsible for the day-to-day administration of the Universal Service Provision pursuant to section 112 of this Act.

USP
Secretariat.

(2) The functions of the USP Secretariat shall include the following :

(a) receiving applications for loans and grants from eligible persons such as community-based communications operators ;

(b) reviewing the applications in paragraph (a) of this sub-section and making recommendations to the USP Board as to which applications should be funded ;

(c) liaising with other departments of the Commission in processing licences for funded applications ;

(d) providing loan recipients and grantees with technical and managerial assistance, such as resolution of equipment vendor issues and setting up of billing systems ;

(e) evaluation of project performance and effecting such actions as may be necessary to ensure that loan recipients and grantees meet objectives for network expansion and provision of service ;

(f) enforcing standards for quality of service in rural and underserved areas set by the USP Board ;

(g) collecting USP assessments and loan repayments and paying such loan repayments into the USP Fund ;

(h) evaluating the effectiveness of the USP in meeting policy goals as set by Government and USP Board ;

(i) facilitating collaboration between activities that are funded by the USP Fund and other infrastructure and development efforts ; and

(j) liaising between USP Board and USP Fund Managers that will be appointed pursuant to section 119 of this Act.

(3) The Commission shall ensure that the USP Secretariat is staffed with suitably qualified and experienced personnel who may be seconded from the Commission's staff but shall in any case have employment terms, conditions and contracts that are similar to that which obtains for the Commission's staff.

119.—(1) The USP Board shall, in consultation with the Commission, appoint an independent and competent investment management firm as USP Fund Managers with responsibilities ; amongst others, for :

USP Fund
Managers.

(a) maintaining USP Funds financial accounts and records ;

(b) collaborating with USP Secretariat in the collection of USP assessments and loan repayments ;

(c) estimating the amount needed annually to sustain the rate of network expansion determined by the Commission as appropriate to meet USP policy objectives ;

USP
Regulations.

Management
and adminis-
tration of
frequency
spectrum.

Cap. 469 LFN
1990.

Illegal use of
spectrum.

(d) determining the amount of annual revenue required to ensure that the USP Fund remains fiscally sound, and calculation of the corresponding rate of assessment ;

(e) disbursing funds to eligible entities based upon approvals by the USP Board ;

(f) prudently investing USP Funds cash reserves under directions from the USP Board and establishing cash management procedures to ensure maximum return on investments while meeting short-term cash requirements for disbursements ;

(g) regularly reporting on financial performance of the USP Fund to the USP Board ; and

(h) assisting USP Secretariat in evaluating the effectiveness of the USP in meeting policy goals as set by Government and USP Board.

(2) The USP Board shall, in collaboration with the Commission, determine the terms of engagement and the remuneration package for the USP Fund Managers.

120. The Commission may make regulations regarding contributions by licensees, under this Act, to the USP Fund and any other matters related to or incidental to Universal Service Provision and the establishment and operation of the USP Fund.

CHAPTER VIII—TECHNICAL REGULATION

PART I—SPECTRUM ASSIGNMENT

121.—(1) Notwithstanding the provisions of any other written law but subject to the provisions of this Act, the Commission shall have the sole and exclusive power to manage and administer the frequency spectrum for the communications sector and in that regard to grant licences for and regulate the use of the said frequency spectrum.

(2) The powers of the Minister under the Wireless Telegraphy Act so far as they relate to communications are hereby vested in the Commission.

(3) The Wireless Telegraphy Act is hereby amended by substituting—

(a) for the word “Minister” or “Minister’s” wherever it occurs, other than in Sections 9,11(3),13(1),19(1),28 and 29, the word “Commission” or “Commission’s” as the case may be ; and

(b) for the word “he”, “his” or “him” wherever it occurs in relation to the Minister, the word “it”, “its” or “it”, as the case may be.

122.—(1) Subject to such exemptions as are contained in this Act or as may be determined by the Commission, no person shall intentionally transmit in any part of the spectrum to provide a service unless the person holds a frequency licence issued under this Part.

(2) Subject to subsection (3) of this section, a person who contravenes any prohibition under this Chapter commits an offence and on conviction is liable to—

(a) a fine not less than the initial fee for the relevant licence ;

(b) a fine not exceeding 10 times the initial fee for the relevant licence ;

(c) imprisonment for a term not exceeding 1 year ; or

(d) both such fine and imprisonment ;

Provided that upon conviction, the person shall also forfeit to the Commission the property, facilities, installations and equipment used by him for the provision of the service.

(3) Notwithstanding the provisions of subsection (2) of this section, a person who contravenes any prohibition under this Part in consequence whereof he causes the death or any physical harm to a person shall also be subject to prosecution under the criminal laws applicable in the relevant part of Nigeria.

123.—(1) The Commission may make regulations in relation to any matter under this Chapter.

Regulations.

(2) The regulations may include procedures for the assignment of spectrum such as but is not limited to the following—

- (a) auction ;
- (b) tender ; and
- (c) fixed price to be determined by the Commission.

124.—(1) Subject to subsection (2) of this section, the Commission in consultation with and on behalf of the NFM Council shall develop a national frequency plan in respect of any part or all of the spectrum.

National
frequency
plan.

(2) The Commission shall, in developing the national frequency plan, work and liaise with the different users of spectrum in Nigeria including the military, law enforcement and security agencies, maritime and civil aviation authorities.

(3) A national frequency plan shall define how the spectrum shall be used and define the methodology for assignment and reassignment of the spectrum.

(4) The Commission, in exercising the functions under subsections (1), (2) and (3) of this section shall take into account—

- (a) the objects of this Act ;
- (b) the impact of the national frequency plan on existing spectrum users ; and
- (c) any applicable international standards, conventions and agreements including but not limited to the International Telecommunications Union and its radio regulations as agreed to and adopted by Nigeria.

(5) Subject to the payment of such fees as the Commission may from time to time prescribe, the Commission shall, upon application, provide to persons with a need to know, copies of the national frequency plan or such parts of it as do not compromise or prejudice national security.

125.—(1) Subject to the payment of such fees as the Commission may from time to time prescribe, the Commission may issue or renew a frequency licence upon such conditions as the Commission may impose, which confers rights on a person—

Frequency
Licence.

- (a) to use one or more specified frequency bands for any purpose consistent with the assignment conditions ; or
- (b) to use the spectrum to operate a network facility of a specified kind at a specified frequency or in any specified frequency band or bands.

(2) A frequency licence may be issued under this section only—

(a) if it is consistent with the National Frequency Plan ; and

(b) when the Commission has determined under section 124 of this Act the relevant frequency bands for spectrum assignment.

(3) The re-issuance of a spectrum assignment to an existing or new licence holder shall at all times conform to the provisions of subsection (2) of this section.

Compulsory acquisition of spectrum assignment.

126.—(1) The Commission may compulsorily acquire assignments in a determined spectrum—

(a) in accordance with a reassignment of spectrum policy consistent with the national frequency plan ; or

(b) in the national interest.

(2) The Commission may pay a reasonable amount of compensation to the holder of an assignment whose assignment has been acquired by a direction made under this section, prior to its expiry.

Forfeiture of spectrum assignment.

127.—(1) A person who fails to—

(a) utilise his assigned spectrum as at such deadline as the Commission may specify in his frequency licence or assignment document ; or

(b) renew his frequency licence as at when due ;

may, at the Commission's discretion, forfeit his spectrum assignment and in the event of a forfeiture, the same shall revert to the Commission and become available for reassignment.

(2) No compensation shall be paid to a licensee who has forfeited his spectrum assignment under Subsection (1) of this section.

PART II—NUMBERING AND ELECTRONIC ADDRESSING

Administration and planning of numbering, electronic addressing.

128.—(1) The Commission shall solely and exclusively be vested with the control, planning, administration, management and assignment of the numbering and electronic addressing of network services and applications services.

(2) The Commission shall develop a numbering and electronic addressing plan for the numbering and electronic addressing of network services and applications services taking into account the subsisting numbering plan prior to the commencement date of this Act.

(3) The numbering and electronic addressing plan may set out rules which include—

(a) the use of different numbers and electronic addresses for different kinds of services ;

(b) the assignment of numbers and electronic addresses ;

(c) the transfer of assigned numbers and addresses ;

(d) the use of assigned numbers and electronic addresses ;

(e) the portability of assigned numbers and electronic addresses ;

(f) the requirements for network service providers and applications service providers to maintain a plan for assigning and reassigning numbers and electronic addresses ; and

(g) the fees for the assignment and transfer of numbers and electronic addresses which may be determined by the Commission.

(4) The Commission shall make the numbering and electronic addressing plan available to the public for a fee to be decided by the Commission.

129.—(1) The Commission may delegate any or all of its functions under this Chapter to a person it wishes.

Delegation of responsibility.

(2) Without prejudice to the generality of subsection (1) of this section, the Commission may appoint a specified person or organisation to manage or maintain an integrated public number database or an integrated electronic address database.

(3) The Commission or a person or organisation specified under subsection (2) shall provide non-discriminatory commercial access to the database on the same terms and conditions which it offers to itself.

(4) The Commission may direct a person specified under subsection (2) of this section regarding the manner in which he shall discharge his obligation under subsection (3) of this section.

PART III—TECHNICAL STANDARDS

130.—(1) Subject to subsection (2) of this section, the Commission shall specify and publish to the general public, technical code and specifications in respect of communications equipment and facilities that may be used in Nigeria.

Technical code and specification.

(2) The technical code and specifications prepared by the Commission under this section shall include—

(a) requirements for network interoperability, including the provision of certain network capabilities such as calling line identification capability and pre-selection capability ;

(b) the promotion of safety of network facilities ;

(c) the provision of network facilities or services, including requirements for qualified providers and installers ;

(d) the provision of customer equipment and cabling, including requirements for qualified installers ;

(e) the approval of customer equipment and other access devices ; and

(f) the adoption of technical standards promulgated by international bodies.

(3) Prior to specifying and publishing any technical code and specifications under this Act, the Commission shall first conduct an inquiry in the manner specified in Part II of Chapter V on the proposed code or specification provided that such prior inquiry may not be required in regard to technical code or specifications that are mandatorily prescribed by international organisations to which Nigeria belongs

such as the International Telecommunications Union (ITU).

(4) In making the technical code and specifications, the Commission shall take into consideration the findings of the inquiry under subsection (3) of this section.

Offence.

131.—(1) A person who uses any technical equipment or systems which hinder network interoperability, commits an offence and on conviction, is liable to a fine not exceeding ₦100,000.00 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

(2) A person who uses any technical equipment or systems which compromise public safety as defined from time to time by the Commission commits an offence and on conviction, be liable to a fine not exceeding ₦100,000.00 or to imprisonment for a term not exceeding 1 (one) year or to both such fine and imprisonment.

Type approval.

132.—(1) The Commission shall, at the instance of licensed service providers, equipment manufacturers or suppliers, conduct type approval tests and issue certificates therefor in respect of communications equipment and facilities to be used in Nigeria.

(2) Licensed service or facilities providers, equipment manufacturers or suppliers shall obtain type approval certificates from the Commission in respect of their communications equipment or facilities prior to installation or sale in Nigeria.

(3) The Commission shall, in conducting type approval of equipment or facilities, be guided by the technical code and specifications formulated by the Commission under section 130 of this Act.

Type approval offences, etc.

133.—(1) A person who sells or installs any communications equipment or facilities without first obtaining the Commission's type approval test certificate therefor commits an offence and on conviction, is liable to a fine not exceeding ₦100,000.00 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

(2) Notwithstanding the provisions of subsection (4) of this section, a licensee who installs or sells any communications equipment or facilities without first obtaining the Commission's type approval test certificate therefor is liable to pay fine to the Commission in such amount as the Commission may determine.

Regulations.

134.—The Commission may make regulations in regard to the provisions of this Part pursuant to Part VI of Chapter V and may charge such fees as it deems reasonable for carrying out its type-approval functions.

CHAPTER IX—GENERAL

PART I—INSTALLATION OF NETWORK FACILITIES, ACCESS TO NETWORK FACILITIES, ETC.

Required approval for network installations, etc.

135. Licensees under this Act may require approvals of the State Government, Local Government or other relevant authority for installation, placing, laying or maintenance of any network facilities on, through, under or across any land and it shall be the responsibility of such licensees to obtain such approvals.

Duty care.

136.—(1) A licensee shall, in installing its network facilities, take all reasonable steps to ensure that he causes as little detriment and inconvenience, and does as little damage, as is practicable.

(2) If a licensee engages in an activity under this Part in relation to any land, the provider shall take all reasonable steps to restore the land to a condition that is similar to its condition before the activity began.

(3) All licensees shall, in connection with the installation of their respective network facilities, take all reasonable steps to—

- (a) act in accordance with good engineering practice ;
- (b) protect the safety of persons and property ;
- (c) ensure that the activity interferes as little as practicable with—
 - (i) the operations of a public utility ;
 - (ii) public roads and paths ;
 - (iii) the movement of traffic ; and
 - (iv) the use of land ; and
- (d) protect the environment.

(4) All licensees shall take all reasonable efforts to enter into respective agreements with public utilities that make provision for the manner in which the licensees will engage in activities that are—

- (a) covered by this Part ; and
- (b) likely to affect the operations of the utility.

137.—(1) Notwithstanding the provisions of any other written law, a licensee shall provide another licensee with non-discriminatory access to any post, network facilities or right-of-way owned or controlled by him.

Access to
network
facilities.

(2) Notwithstanding the provisions of subsection (1) of this section, a licensee may deny any other licensee access to his post network facilities or right-of-way on a non-discriminatory basis where there is insufficient capacity, or for reasons of safety, security, reliability, or difficulty of a technical or engineering nature.

(3) The Commission shall, in the event of a dispute between licensees in respect of the provisions of subsections (1) and (2) of this section, at the instance of any or all of the parties, intervene and make a binding ruling thereon.

(4) The Commission may regulate the rates, terms and conditions for access to any post, network facilities or right-of-way and provide that such rates, terms and conditions are just and reasonable and may adopt procedures necessary and appropriate to hear and resolve disputes in accordance with Part VII of Chapter V.

(5) Nothing in this section shall be construed to apply to or to give the Commission jurisdiction with respect to access to any posts, network facilities or right-of-way where a State Authority, local authority or other authority regulates such matters.

PART II—JURISDICTION, OFFENCES, POWERS OF ENTRY, ETC.

138. The Federal High Court shall have exclusive jurisdiction over all matters, suits and cases howsoever arising out of or pursuant to or consequent upon this Act or its subsidiary legislation and all references to “Court” or “Judge” in this Act shall be understood and deemed to refer to the Federal High Court or a Judge of the said Court.

Competent
Court.

Offences by
corporate
persons.

139. If a body corporate commits an offence under this Act or its subsidiary legislation a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

(a) may be charged severally or jointly in the same proceedings with the body corporate ; and

(b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge, consent or connivance, and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

General
penalties.

140. Where no specific penalty is prescribed in this Act or its subsidiary legislation for any offence, a person found guilty of such offence shall—

(a) as a first offender, be liable to a fine not exceeding ₦100,000.00 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment ; and

(b) for a subsequent conviction, to a fine not exceeding ₦500,000.00 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

Powers of
entry and
investigation
by inspectors.

141.—(1) The Commission may in writing authorise any of its officials or appoint external-inspectors on its behalf to exercise the powers of monitoring and enforcement vested in the Commission under this Act.

(2) The Commission may direct its authorised officials or appointed inspectors to investigate the activities of a licensee or other person material to his compliance with this Act or its subsidiary legislation pursuant to its information-gathering, monitoring, enforcement and other related powers under this Act.

(3) In exercising any of the powers specified in subsection (2) of this section and notwithstanding any other provision of this Act, an authorised official of the Commission or its appointed inspector—

(a) shall on demand produce to the person against whom he is acting, the authority issued to him by the Commission ; and

(b) may at any reasonable time and without prior notice, enter any affected person or licensee's premises ; and

(i) inspect and make copies of or extracts from books, records, documents or other information storage systems,

(ii) demand the production of and inspect the relevant licence, permit, certificate or authority ; and

(iii) inspect any radio communications station or apparatus or other communications equipment or facilities on the premises.

Provided that the official or appointed inspector shall have in his possession for the purposes of entering any affected person's premises who is not a licensee, a warrant for that purpose obtained from a Magistrate or Judge prior to the entry into such premises.

PART III—ACTIONS AGAINST COMMISSION, ETC.

142.—(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against an official or employee of the Commission.

Limitation of Suits against Commission, etc.

(2) Notwithstanding anything contained in any other law or enactment, no suit shall lie against a Commissioner, the Secretary or any other official or employee of the Commission for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced—

- (a) within 3 months next after the act, neglect or default complained of ; or
- (b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.

(3) No Suit shall be commenced against a Commissioner, the Secretary or any official or employee of the Commission before the expiration of a period of 1 month after written notice of the intention to commence the Suit shall have been served on the Commission by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

143. A notice, summons or other document required or authorised to be served on the Commission under the provisions of this Act or any other law or enactment may be served by delivering it to the Commission or by sending it by registered post addressed to the Chief Executive or Commission Secretary at the principal office of the Commission.

Service of court processes on Commission.

144.—(1) In any action or suit against the Commission, no execution or attachment of process in any nature thereof shall be issued against the Commission unless not less than 3 months notice of the intention to execute or attach has been given to the Commission.

Restriction on execution against Commission's property.

(2) Any sum of money which may by the judgement of any court be awarded against the Commission shall, subject to any direction given by the court where notice of appeal against the judgement has been given, be paid from the Commission's Fund.

145. A Commissioner, the Secretary or any official or employee of the Commission shall be indemnified out of the assets of the Commission against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a Commissioner, Secretary, officer or employee of the Commission.

Indemnity of Commission's officials.

PART IV — NATIONAL INTEREST MATTERS

General duty
of licencees.

146.—(1) A licensee shall use his best endeavour to prevent the network facilities that he owns or provides or the network service, applications service or content application service that he provides from being used in, or in relation to, the commission of any offence under any law in operation in Nigeria.

(2) A licensee shall, upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law in operation in Nigeria or otherwise in enforcing the laws of Nigeria, including the protection of the public revenue and preservation of national security.

(3) Any licensee, shall not be liable in any criminal proceedings of any nature for any damage (including punitive damages), loss, cost or expenditure suffered or to be suffered (whether directly or indirectly) for any act or omission done in good faith in the performance of the duty imposed under subsections (1) and (2).

Network
interconnection
capability.

147. The Commission may determine that a licensee or class of licensee shall implement the capability to allow authorised interception of communications and such determination may specify the technical requirements for authorised interception capability.

Emergency
provisions.

148.—(1) On the occurrence of any public emergency or in the interest of public safety, the Commission may—

(a) suspend the licence of any licensee, take temporary control of any service or network facilities owned or provided by a licensee in any manner as the Commission deems fit ;

(b) withdraw either totally or partially the use of any service or network facilities from any licensee, person or the general public ;

(c) order that any communication or class of communications to or from any licensee, person or the general public, relating to any specified subject shall not be communicated or shall be intercepted or detained; or that any such communication or its records shall be disclosed to an authorised officer mentioned in the order; or

(d) order the taking of possession of any customer equipment.

(2) If the Commission takes possession of any network facilities, service, or customer equipment under subsection (1) of this section, the person licensed under this Act with regard to the facilities, service or equipment shall be paid reasonable compensation which shall be determined by the Commission after giving an opportunity to the licensee to be heard on the matter.

Disaster plan.

149. The Commission may direct a licensee or class of licensees to develop, in consultation with the authorities specified by the Commission, a disaster plan for the survivability and recovery of any services or network facilities in case of a disaster, crisis or civil emergency.

CHAPTER X—REPEAL AND TRANSITIONAL PROVISIONS

PART I—REPEAL AND SAVINGS

150.—(1) The following Acts (“the repealed Acts”) are hereby repealed—

- (a) the Nigerian Communications Commission Act ;
- (b) the Nigerian Communications Commission (Amendment) Act ; and
- (c) the Telecommunications and Postal Offences Decree No. 21 of 1995 and all subsequent amendments thereto.

Repeal of 1992
No. 75, 1998
No. 30, 1995
No. 2.

(2) Any subsidiary legislation made under the repealed Acts shall, in so far as it is not inconsistent with this Act, remain in operation until revoked or replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

151.—(1) The rights, interests, obligations and liabilities of the Commission, existing before the commencement of this Act under any contract or instrument, or in law or in equity shall by virtue of this Act be deemed to have been preserved, assigned to and vested in the Commission established by this Act to the extent that they are not inconsistent howsoever with any of the provisions of this Act.

Existing
rights,
interest, etc.
under
repealed
Acts.

(2) Any such contract or instrument as is mentioned in subsection (1) of this section shall be of the same force and effect against or in favour of the Commission established by this Act and shall be enforceable as fully and effectively as if instead of the Commission existing before the commencement of this Act the Commission established by this Act had been named therein or had been a party thereto provided that such contract or instrument is not inconsistent with any of the provisions of this Act.

152. The Commission established by this Act shall be subject to all the obligations and liabilities to which the Commission existing before the commencement of this Act was subject to immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the Commission established by this Act as they had against the Commission existing before the commencement of this Act provided that such obligations, liabilities, rights, powers and remedies are not inconsistent with any of the provisions of this Act.

Outstanding
obligations
and liabilities
under
repealed
Acts.

153. Any proceeding or cause of action pending or existing immediately before the commencement of this Ad by or against the Commission in respect of any right, interest, obligation or liability of the Commission pursuant to the repealed Acts may be continued or, as the case may be, commenced and any determination of the court of law, tribunal or other authority or person may be enforced by or against the Commission established by this Act as if such proceeding or cause of action or determination was continued, commenced or enforced by or against the Commission under this Act provided that such proceeding or cause of action or determination is not inconsistent with any of the provisions of this Act.

Pending
proceedings
or causes of
actions under
repealed Acts

154. All assets, funds, resources and other movable or immovable property which immediately before the commencement of this Acts were vested in the Commission pursuant to the repealed Acts shall by virtue of this Act and without further assurance, be vested in the Commission established by this Act.

Commission’s
assets, funds,
etc. pursuant to
repealed Acts.

Office holders pursuant to repealed Acts.

155. Any person who immediately before the coming into force of this Act is the holder of any office in the Commission pursuant to the repealed Acts shall on the commencement of this Act continue in office and be deemed to have been appointed to his office pursuant to this Act, unless the authority by which the person was appointed terminates the appointment in accordance with the provisions of this Act.

PART II—TRANSITIONAL PROVISIONS FOR LICENCES, DEFINITIONS AND SHORT TITLE

Old licences.

156.—(1) Subject to Subsection (2) of this section, licences issued under the repealed Act (“old licences”) shall continue to have effect under this Act.

(2) The Commission shall, upon the commencement of this Act, have the powers to modify old licences to conform to the provisions and objectives of this Act.

Interpretation.

157. In this Act—

“Access” means the making available of communications facilities and communications services one licensee to another for the purpose of providing services, and includes the connection of equipment by wire or wireless means, access to physical infrastructure including but not limited to buildings, ducts and masts, access to mobile networks, in particular for roaming, and access to number translation or systems offering equivalent functionality ;

“Access list” means the list of facilities or services established under Part III of Chapter VI ;

“Agreement” means an agreement, whether formal or informal, oral or written, express or implied ;

“Applications service” means a service provided by means of, but not solely by means of one, or more network services ;

“Applications service provider” means a person who provides an application service ;

“Assignment” means the assignment by the Commission of rights to use the spectrum, numbers or electronic addresses and may include conditions to which the exercise of those rights shall be subject ;

“Authorised interception” means interception by the licensee of any network facilities, network service or applications service permitted under section 148 of this Act ;

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

“Class licence” means a licence for any or all persons to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject ;

“Commission” means the Nigerian Communications Commission established under section 3 of this Act ;

“Communications licence” or “licence” means either an individual licence or a class licence issued by the Commission under Chapter IV ;

“Communications” means any communication, whether between persons and

persons, things and things, or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms ;

“Communications sector” or “market” means an economic sector or market for a network service, or an applications service, or for goods or services used in conjunction with a network service or an applications service, or for access to facilities used in conjunction with either a network service or an applications service ;

“Consolidated Revenue Fund” means the Fund established by section 80 of the Constitution of the Federal Republic of Nigeria 1999 ;

“Consumer”, “customer”, or “subscriber” means any person who subscribes to and uses a communication service ;

“Content” means any sound; text, still picture, moving picture or other audiovisual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically ;

“Content applications service” means an applications service which provides content ;

“Council” means the Federal Executive Council of the Federal Republic of Nigeria ;

“Court” means a court of law of competent jurisdiction ;

“Customer equipment” means any equipment, whether hardware or software, or device, used on the customer side of the network boundary ;

“Direction” means a direction issued by the Commission under Part I of Chapter V ;

“Equipment” means any equipment or apparatus used or intended to be used for communications and that is part of or connected to or comprises a communications system ;

“Federal Government” means the Federal Government of the Federal Republic of Nigeria;

“Individual licence” means a licence for a specified person to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject ;

“Instrument” includes a direction, determination or declaration ;

“Intercept” means the aural or other acquisition of the contents of any communications through the use of any electronic, mechanical or other equipment, device or apparatus ;

“Interception capability” means the capability of any network facilities or network service or applications service to intercept communications under section 147 of this Act;

“Interconnection” means the physical and logical linking and connection of communications systems used or operated by the same or different licensees in order to convey messages to and from the respective systems for the provision of services ;

“ITU” means International Telecommunications Union ;

“Licensee” means a person who either holds an individual licence or undertakes activities which are subject to a class licence granted under this Act ;

“Minister” means the Minister for the time being charged with the responsibility for Communications ;

“Minister of Finance” means the Federal Minister for the time being charged with the responsibility for Finance ;

“Ministry” means the Federal Ministry for the time being charged with the responsibility for Communications ;

“National Frequency Plan” means the frequency plan prepared under Part II of Chapter III and Part I of Chapter VIII for the management of any part or all of the national spectrum ;

“Network facilities” means any element or combination of elements of physical infrastructure used principally for or in connection with the provision of services but does not include customer equipment ;

“Network facilities provider” means a person who is an owner of any network facilities ;

“Network service” means a service “for carrying communications by means of guided or unguided electromagnetic radiation ;

“Network service provider” means a person who provides network services ;

“NFM Council” means National Frequency Management Council ;

“Number” means a number, letter or symbol ;

“Numbering and electronic addressing plan” means the numbering and electronic addressing plan developed under Part II of Chapter VIII ;

“Owner” means the legal or beneficial owner ;

“Person” includes a corporate body or partnership and where an individual is required to represent a corporate body or partnership in any circumstance pursuant to this Act or its subsidiary legislation it shall be sufficient if in the case of a—

(a) corporate body, it is represented by its competent officer ; and

(b) partnership, it is represented by a partner in the partnership or a competent employee of the partnership ;

“President” means the President of the Federal Republic of Nigeria ;

“Publication” of any information by the Commission pursuant to this Act or its subsidiary legislation, except otherwise specified in any particular section of this Act, shall be deemed as sufficiently effected if it is posted at the Commission’s website and published in at least two widely circulating national newspapers ;

“Publication” of any information by a licensee pursuant to this Act or its subsidiary legislation, except otherwise specified in any particular section of this Act, shall be deemed as sufficiently effected if it is—

(a) officially sent to the Commission ;

(b) published at the licensee’s website ;

(c) made publicly and readily available to any member of the public at the

licensee's offices that deal with or relate howsoever with its consumers ; and

(d) if the Commission so directs, published in at least one national newspaper ;

“Register” means anyone of the registers established or maintained by the Commission for the purposes of this Act ;

“Service”, except where the context otherwise requires, means applications, content, network or facilities services or any combination of these services ;

“Spectrum” means the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz ;

“Spectrum assignment” means the assignment issued under Part I of Chapter VIII ;

“Telecommunication” means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, visual or other electro-magnetic systems ;

“Transmit” or “transmission” means to cause any emission of unguided electromagnetic energy in any part of the spectrum ;

158. This Act may be cited as the Nigerian Communications Act 2003.

Short title.

FIRST SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD OF COMMISSIONERS

Proceedings of the Board

1. Subject to the provisions of this Act and section 27 of the Interpretation Act, the Board may make standing orders regulating its proceedings or that of any of its Committees.

2. The Chairman shall preside at every meeting of the Board and in his absence, the Executive Vice-Chairman shall preside at the meeting and in the absence of the Chairman and Executive Vice-Chairman, the members present at that meeting shall appoint one of their numbers to preside at the meeting.

3. The quorum for any meeting of the Board shall be a simple majority of the Members for the meantime constituting the Board provided that, such simple majority shall include a minimum of 2 Executive Commissioners.

4. The Board shall meet to transact its business pursuant to this Act whenever it is summoned by the Chairman and if so required by notice given to him by not less than 4 other members of the Board specifying, amongst others, an agenda for the meeting, the Chairman shall summon a meeting of the Board that shall be held within 14 days from the date on which the notice is served on him to discuss the items specified in the notice ; Provided that the Board shall for the purposes of this Act meet not less than 4 times in each calendar year.

5. A member of the Board who directly or indirectly has an interest of a personal nature (including but not limited to financial interests) in any matter being deliberated

upon by the Board, or is personally interested in any contract made or proposed to be made by the Commission, Council or the Access Fund shall, so soon after the facts of the matter of his interests have come to his knowledge disclose his interest and the nature thereof at a meeting of the Board.

6. A disclosure under paragraph 5 of this Schedule shall be recorded in the minutes of meetings of the Board and the member concerned—

(a) shall not, after the disclosure, take part in any deliberation or decision of the board or vote on the matter ; and

(b) shall be excluded for the purpose of constituting a quorum of any meeting of the Board for any deliberation or decision, with regard to the subject matter in respect of which his interest is so disclosed.

Committees

7.—(1) Subject to its standing orders, the Board may appoint such number of standing or ad hoc committees as it thinks fit to consider and report on any matter with which the Commission is concerned.

(2) A committee appointed under this paragraph shall—

(a) consist of such number of persons who may not necessarily be members of the Board as may be determined by the Board, provided that the appointment of a non-Board member as a Committee member shall be subject to such terms as would be indicated in his letter of appointment ; and

(b) be presided over by a member of the Board.

(3) The quorum of any Committee set up by the Board shall be as may be determined from time to time by the Board.

(4) A decision of a Committee of the Board shall be of no effect until it is confirmed by the Board.

Miscellaneous

8. The fixing of the seal of the Commission shall be authenticated by the signature of the Secretary and that of the Chairman or any other Board Member generally or specifically authorised by the Board to act for that purpose.

9. Any contract or instrument which, if made by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Commission, Council or Access Fund by any person generally or specially authorised by the Board to act for that purpose.

100. Any document purporting to be a contract, instrument or other document duly signed or sealed on behalf of the Commission shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof to have been so signed or sealed.

11. Subject to the provisions of this Act, the validity of any proceedings of the Board or of any of its Committees shall not be affected by—

(a) any vacancy in the membership of the Board, or Committee

(b) any defect in the appointment of a member of the Board or Committee ; or Section 5(4).

(c) reason that any person not entitled to do so took part in the proceedings of the Board or Committee.

12. No member of the Board or the Board's Committee shall be personally liable for any act or omission done or made in good faith while engaged on the business of the Commission. Cap. 192 LFN 1990.

SECOND SCHEDULE

CONFLICT OF INTEREST

1. Subject to the provisions of this Schedule, no Commissioner or staff of the Commission shall have a direct or indirect financial interest or investment in any Nigerian communications company throughout the tenure of his office or employment with the Commission.

2. Subject to paragraphs 3 and 4 hereof, each Commissioner or staff of the Commission shall on an annual basis present a written declaration affirming the nonexistence of any such interest as is specified in paragraph 1 and shall pledge to disclose and inform the Commission of any such relationship or interest that arises or is likely to arise during his tenure or employment with the Commission.

3. Serving Commissioners and staff of the Commission as at the commencement date of this Act shall be entitled to a maximum of 6 months from the said commencement date within which to divest themselves of their direct or indirect financial interests or investment in any Nigerian communications company, if any.

4. All newly appointed Commissioners and staff of the Commission after the commencement of this Act shall be entitled to a maximum of 6 months from their respective dates of appointments within which to divest themselves of their direct or indirect financial interests or investments in any Nigerian communications company, if any.

5. Each Commissioner or staff of the Commission shall declare on appointment or at the commencement of employment and annually thereafter, for as long as he serves the Commission, any interest or investment that he—

(a) knowingly has ; or

(b) knows any member of his immediate family to have in any aspect of the Nigerian communications industry.

6. If a Commissioner or staff of the Commission contravenes the provisions of paragraphs 1 and 2 of this Schedule, or gives false information under paragraph 5 of this Schedule, he shall be liable, on conviction, to the payment of a fine not exceeding ₦100,000.00 or imprisonment of a term not exceeding 1 year or to both.

7. Subject to paragraph 8 of this Schedule, the Board may from time to time waive the application of the prohibitions specified in paragraph 1 and 2 of this Schedule to any Commissioner or staff of the Commission if the Board determines that the financial

interest of the relevant person is not of a material nature or is minimal.

8. The Commission in determining whether or not the interest of a Commissioner or staff of the Commission is minimal or not of a material nature shall consider factors including but not limited to the following—

(a) the revenues, investments, profits and managerial efforts of the relevant company or other entity in regard to its communications activities compared with other aspects of the company's or such entity's businesses ;

(b) the extent to which the Commission regulates and oversees the activity of such company or entity ;

(c) the degree to which the economic interests of such company or other entity may be affected by an action of the Commission ; and

(d) the perceptions held or likely to be held by the public regarding the relevant person's financial interest or investment in that company or other entity.

9. The Board may at any time review and reverse its determination under paragraph 7 of this Schedule and direct the application of the prohibitions contained in this Schedule to the affected Commissioner or staff of the Commission and the Board shall not be under an obligation to disclose the reason or basis for its review to the affected Commissioner or staff member.

10. In any case in which the Commission exercises the waiver authority or the review thereof as specified in paragraphs 7 and 9 of this Schedule, the Commission shall so soon thereafter publish the details thereof and such publication shall include information regarding the identity of the person who has been granted the waiver or whose waiver grant has been reviewed, the position held by such person and, the nature of the financial interests which are the subject of the waiver or the review thereof.

11. For the purposes of this Schedule—

(a) "company" includes partnerships and undertakings ;

(b) "immediate family" means a person's spouse and children who are under the age of 18 years.

I certify, in accordance with section 2(1) of the Acts Authentication Act, Cap. 4, Laws of the Federation of Nigeria 1990, that this is a true copy of the bill passed by both Houses of the National Assembly.

IBRAHIM SALIM, CON
Clerk to the National Assembly
30th day of June, 2003

EXPLANATORY MEMORANDUM

This Act provides, amongst other things, for the—

- (a) repeal of the Nigerian Communications Commission Act 1992 as amended ;
- (b) reform of the Nigerian Communications Commission as an independent regulatory body for the Communications Sub-sector ;
- (c) establishment of the National Frequency Management Council ; and
- (d) establishment of the Universal Service Fund.

SCHEDULE TO THE NIGERIAN COMMUNICATIONS BILL, 2003

(1) <i>Short Title of the Bill</i>	(2) <i>Long Title of the Bill</i>	(3) <i>Summary of Contents of the Bill</i>	(4) <i>Date passed by Senate</i>	(5) <i>Date passed by House of Representatives</i>
The Nigerian Communications Bill, 2003.	An Act to establish the National Frequency Management Council and the Universal Access Fund and to reform the Nigerian Communications Commission and repeal the Nigerian Communications Commission Act 1992 ; and for related matters.	This Bill seeks to provide, amongst other things, for the — (a) repeals of the Nigerian Communications Commission Act, 1992 as amended ; (b) reform of the Nigerian Communications Commission as an independent regulatory body for the communications Sub-sector ; (c) establishment of the National Frequency Management Council ; and (d) establishment of the Universal Service Fund.	27-5-2003	12-3-2003

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. 4, Laws of the Federation of Nigeria 1990.

I Assent



IBRAHIM SALIM, CON
Clerk to the National Assembly
30th June, 2003

CHIEF OLUSEGUN OBASANJO, GCFR
President of the Federal Republic of Nigeria
8th July, 2003