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Communication (Amendment) Act 2016

REPUBLIC OF KIRIBATI
(No. of 2017)

I assent

Beretitenti
2017

An ACT
Entitled

**An ACT TO AMEND THE COMMUNICATION ACT 2013 AND FOR MATTERS CONNECTED
THEREWITH**

Commencement
2016

MADE by the Maneaba ni Maungatabu and assented to by Te Beretitenti.

Short Title

1. This Act may be cited as the [Communication \(Amendment\) Act 2016](#)

Meaning of 'principal Act'

2. In this Act ‘principal Act’ means the *Communication Act 2013*.

Amendment of section 2

3. Section 2 of the principal Act is amended by:

- a. inserting after the definition of “associated company” the definition of “bill and keep” as follows:

“bill and keep” means an interconnection pricing methodology for the exchange of traffic between peer networks under which either party makes any payment based on traffic flows to the other party;

- b. inserting in the definition of “communications facility” the phrase ‘or cabinet’ between the words ‘building’ and ‘including’.

- c. inserting after the definition of “inspector” the definition of “ITU” as follows:

“ITU” means the International Telecommunication Union;

- d. inserting after the definition of “user” the definition of “wholesale service” as follows:

“wholesale service” means a communication service provided by a person who holds a license issued under section 32 to a second person who holds a license issued under section 32, which the second person uses to provide a communication service to an end-user.

Amendment of section 6

4. Section 6 of the principal Act is amended as follows:

- a. at subsection (1), by deleting the word ‘fixed’ and repealing the number ‘5’ and substituting the number “4”
- b. at subsection (3), by repealing the words ‘other than as Chairman’
- c. at subsection (4), by
 - i. inserting in paragraph (a) after the word ‘incapacity’ the phrase “to the extent that such physical incapacity would impair that person’s fulfilment of responsibilities as a member of the Commission”
 - ii. inserting after paragraph (f) the following new paragraph:

“(g) is persistently absent from the meetings of the Commission without reasonable excuse”.

Amendment of section 7

5. Section 7 of the principal Act is repealed and substituting the following:

“7. (1) The Commission shall pay to each of its members, in respect of his office as such, remuneration and/or allowances as prescribed by law and in the absence of any law as determined by the Minister and approved by Cabinet.

(2) In determining the remuneration and allowances to be paid under subsection (1), different provisions may be made as regards the Chairman and the other members but not as between the other members.”

Amendment of section 9

6. Section 9 of the principal Act is amended in the first line of subsection (1) by inserting the word “greater” between the words ‘such’ and ‘number’ and also inserting the number “11” after the word ‘section’.

Amendment of section 16

7. Section 16(1) of the principal Act is amended by inserting the phrase “when he sees fit” between the words ‘Minister’ and ‘shall’.

Amendment of section 18

8. Section 18(4) (d) of the principal Act is amended by inserting the phrase “or when required,” between the words ‘year,’ and ‘submit’.

Amendment of section 21

9. Section 21 of the principal Act is amended as follows:
 - a. at subsection (5) (d), by repealing the number 7 and substituting the number (30)
 - b. at subsection (7), by inserting before the word ‘sensitive’ the phrase “Notwithstanding the provisions in any contract”

Amendment of section 26

10. Section 26 of the principal Act is amended by repealing the number ‘20’ in the first lines of subsection (3) and (4) and substituting the number “30” respectively.

Amendment of section 31

11. Section 31 of the principal Act is amended as follows:
 - a. at subsection (1) (c), by inserting the words “if any” between the words ‘fees’ and ‘to’.
 - b. at subsection (2), by repealing the phrase ‘including promoting sustainable and workably competitive communications markets’.

Amendment of section 32

12. Section 32(7) of the principal Act is amended by repealing it and substituting the following:

“32. (7) (a) A licensee must comply with the provisions of the [Foreign Investment Act 1985](#) before operating a communications network or operating a communication services.

(b) For the purpose of this subsection, and despite any provisions of the [Foreign Investment Act 1985](#) to the contrary, a licensee registered prior the commencement of this provision must be issued with a permit forthwith under the [Foreign Investment Act](#).”

Amendment of section 34

13. Section 34 of the principal Act is amended as follows:

- a. At subsection (1), by inserting the phrase “Having regards to the International Radio Regulation published by the ITU,” in the first line before the words ‘The Commission’,
- b. by repealing the whole of paragraph (f) and substituting the following:

(f) the application fees, if any, to be paid to the Commission.

Amendment of section 40

14. Section 40 of the principal Act is amended as follows:

- a. at subsection (1) (a), by deleting the words ‘economically and’ and the phrase ‘where interconnection would not affect the security, performance or efficiency of the first licensee’s network’.
- b. by inserting a new subsection (3) after subsection (2) as follows:

“(3) The Commission shall publish copies of all interconnection and access agreement.”

Amendment of section 42.

15. Section 42 of the principal Act is amended as follows:

- a. at subsection (1), by inserting after paragraph (d) the new paragraph as follows:

“(e) the manner in which the cost of interconnection links should be borne or shared between the parties”

- b. at subsection (4), by inserting the phrase “and the bill and keep methodology” after the word ‘cost’.

Amendment of section 45

16. Section 45 (2) of the principal Act is amended by inserting the phrase “or require amendment of” between the words ‘reject’ and ‘the reference offer’.

17. Section 45 (4) of the principal Act is amended by inserting number “28” after the word ‘section’.

18. Section 45 (5) of the principal Act is amended by deleting the word ‘section’ and substituting the phrase “subsection 2 above”.

Amendment of section 47

19. Section 47 of the principal Act is amended as follows:
- a. by repealing the title and substituting it with “Sharing of Communication facilities”
 - b. at subsection (4), by inserting at the beginning of paragraph (a) the phrase “design characteristics of the communication facility so that, to”
 - c. at subsection (4)(b), by repealing the phrase “design characteristics of the communication facility so that to” between the word ‘such’ and ‘person’
 - d. at subsection (5), by inserting after the word ‘arbitrator’ the phrase “or determine the terms for sharing the communication facility”
 - e. by inserting after subsection (5) the following new subsections:

“(6) If a person makes a request to share an existing communication facility of a licensee, and if such sharing is practical and feasible, taking into consideration the foreseeable needs of the licensee, the parties shall negotiate in good faith commercial terms for the maintenance, ownership and ongoing use of the communication facility by the licensee and the person requesting sharing.

(7) If the parties are unable to agree the commercial terms described in subsection (6) within 14 days, or if the licensee claims that sharing is not practical and feasible in the light of its reasonably foreseeable needs, the Commission may, on written request by either party to the negotiations, and by written notice to each party –

- a. direct the parties to take specified action to reach agreement (such as to engage an arbitrator);
- b. determine the terms for sharing the communication facility; or
- c. disallow the person’s request.

The parties shall comply with such direction.”

Amendment of section 48

20. Section 48(2)(a) of the principal Act is amended by deleting the word ‘cost’ between the words ‘below’ and ‘for’ and substituting the phrase “variable cost (or such other cost standard as is established by the Commission)”

Amendment of section 51

21. Section 51 of the principal Act is amended by inserting the following new subsection after subsection (3):

“(4) Notwithstanding the requirement of subsection (1) and (2) a licensee may make special price offers for any communications service without further notification, provided that:-

- a. the service and its price have already been notified and published in accordance with subsection (1) and (2);

- b. the special price offer is of limited duration; and
- c. the price for the service under the special price offer is less than that published under subsection (1) and (2).”

Amendment of section 60

22. Section 60(1) of the principal Act is amended by inserting a new subsection after subsection (d) as follows:

“(e) submit regular reports to the Commission showing actual performance for the key performance indicators.”

Amendment of section 64

23. Section 64 of the principal Act is amended as follows:

- a. at subsection (1)(a), by inserting the phrase “made in accordance with the requirement of the ITU” after the word ‘services’.
- b. at subsection (1)(b), by inserting the phrase “including short codes” after the word ‘numbers’.
- c. after subsection (1)(d) a new subsection is inserted as follows;

“(e) international co-ordination and notification of numbering changes”.

Amendment of section 104

24. Section 104 of the principal Act is amended as follows:

- a. by renumbering the existing “section 104 (1)” as “section 104”, and
- b. by adding before the definition of “computer” the following;

“child pornography” means material that;

- a. depicts or presents a minor engaged in sexually explicit conduct;
- b. depicts or presents a person appearing to be a minor engaged in sexually explicit conduct; or
- c. realistically represents a minor appearing to be a child engaged in sexually explicit conduct

this includes, but not limited to, any visual (images, animations or videos), audio or text material.

- c. by inserting after the definition of “data” the following;

“device” means any hardware or equipment which performs one or more specific functions and operates on any form or combination of electrical energy and includes but not limited to:

- a) components of electronic systems such as computer, graphic cards, mobile phones, memory, chips;
- b) storage component such as hard drives, memory cards, compact discs, tapes;

- c) input devices such as keyboards, mouse, track pad, scanner, digital cameras; and
- d) output devices such as printer and screens.

d. by repealing the definition of 'distribute'

e. by adding after the definition of 'function' the following:

“hinder” in relation to a computer includes but not limited to;

- a) cutting the electricity supply to a computer;
- b) causing electromagnetic interference to a computer;
- c) corrupting a computer by any means; and
- d) inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing data.

f. By repealing the whole of part(b) of the definition of 'obscene matter' and substituting the following;

(b) includes child pornography.

g. by repealing the whole part of subsections (2), (3), (4), (5), (6), (7) and (8).

Amendment of section 107

25. Section 107 of the principal Act is amended by repealing the whole of the section and substituting the following:

107. Any person who knowingly and without authority, access the whole or any part of a computer commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

New section 107A

26. After section 107 of the principal Act the following section is inserted:

Unauthorised access to or obtaining of data

107A. Any person who knowingly and without authority access or obtains, for himself or for another, data which are not meant for him and which are specially protected against unauthorised access commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 108

27. Section 108 of the principal Act is amended by repealing the whole of subsection (1) and substituting the following:

108. (1) Any person who commits an offence as defined by section 107 and section 107A with intent to commit a subsequent offence to which this section applies commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both.

Amendment of section 109

28. Section 109 of the principal Act is amended by repealing the whole provision and substituting the following:

109. Any person who knowingly and without authority, does any of the following acts:

- a) damages or deteriorates computer data;
- b) deletes computer data;
- c) alter computer data;
- d) renders computer data meaningless, useless or ineffective;
- e) obstructs, interrupts or interferes with the lawful use of computer data;
- f) obstructs, interrupts or interferes with any person in the lawful use of computer data;
- g) denies access to computer data to any person authorised to access it

commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 110

29. Section 110 of the principal Act is amended by repealing the whole of subsection (1) and (2) and substituting the following:

“Unauthorised use of computer service

110. Any person who knowingly and without authority secure access to any computer for the purpose of obtaining, directly or indirectly, any computer service commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.”

New section 110A , 110B, 110C, and 110D.

30. After section 110 of the principal Act the following new sections are inserted as follows:

“Unauthorised interception.

110A. Any person who knowingly and without authority intercepts by technical means;

- a) any non-public transmission to, from or within a computer; or
- b) electromagnetic emissions from a computer

commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.”

Unauthorised computer interference

110B. Any person who knowingly and without authority hinders without authority any computer by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing data commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Computer-related forgery

110C. Any person who knowingly and without authority inputs, alters, deletes or suppresses data, resulting in inauthentic data, with the intent that it be considered or acted upon for legal purposes as if it were authentic commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Computer-related fraud

110D. Any person who knowingly and without authority inputs, alters, deletes or suppresses data or interferes with the functioning of a computer with fraudulent or dishonest intent to procure an economic

benefit for the person or another person without authority commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 111

31. Section 111 of the principal Act is amended by repealing the whole section and substituting the following:

Unauthorised devices

111. Any person who knowingly and without authority produces, sells, procures for use, imports, export, distributes or otherwise makes available:

- a) a device or program designed or adapted primarily for the purpose of committing an offence under this Part; or
- b) a password, access code or similar data by which a computer may be accessed

with the intent that it be used to commit an offence under this Part commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 112

32. Section 112 of the principal Act is amended as follows:

- a) by renumbering the existing 'section 112' as "section 112 (1)"; and
- b) by inserting the phrase "for commercial purposes" between the word 'person' and 'by' and
- c) by adding a new section 112(2) as follows –

(2) For purposes of subsection (1) the term "commercial purposes" excludes fair use for academic or research purposes.

Amendment of section 114

33. Section 114 of the principal Act is amended

- a. by inserting after the word ‘knowingly’ the phrase “and without authority”, and
- b) by adding a new paragraph after paragraph (e) as follows –

- f) obtain access, through information and communication technologies, to child pornography.

Amendment of section 115

34. Section 115 of the principal Act is amended by inserting the phrase “for which no penalty is expressly provided” between the word ‘Part’ and the word ‘shall’.

Amendment of section 119

35. Section 119 of the principal Act is amended as follows:

- a. by renumbering the existing ‘section 119’ as “section 119 (1)”, and
- b) by adding a new section 119 (2) as follows :

“119 (2). Part XIV of the Act applies to an act done or an omission made –

- a) in the territory of the Republic of Kiribati; or
- b) on a ship or aircraft registered in the Republic of Kiribati; or
- c) by a national of the Republic of Kiribati outside the territory of the Republic of Kiribati if the person’s conduct would also constitute an offence under a law of the country where the offence was committed; or
- d) by a national of the Republic of Kiribati outside the jurisdiction of any country.”

COMMUNICATION (AMENDMENT) ACT 2017

EXPLANATORY MEMORANDUM

The [Communications Act 2012](#) that was passed in 2013 is the basis for the creation of the Communication Commission of Kiribati (CCK) which aimed to provide neutral regulatory role in the Telecommunication industry, ensure effective competition among licensees, protection of consumers and regulation of prices.

After two years of implementation of the principal Act, perceptible shortfalls were realised by the CCK and other concerned stakeholders leading to the need for urgent improvements to be made to the principal Act.

In summary the content of this Act are as follows:-

Section 3 amends section 2 to incorporate new definitions of words already existing in the principal Act or are being imported through these amendments.

Section 4 amends section 6(1) by reducing the number of years of appointment of the Commissioners of the CCK from five to four and removing the word 'fixed', so that the appointment is consistent with other Government entities. It also amends section 6(3) by removing the words "other than as Chairman" to ensure consistence with other laws in particular the SOE Act. This section also amends section 6(4)(a) by expressly defining physical incapacity to mean the incapacity that would impair a person's fulfilment of responsibilities under the Act. A new paragraph is also inserted to deal with the persistent absent of members of the CCK from their meetings without reasonable excuse.

Section 5 repeals section 7 and substituting a new but similar section that divides the original section into two subsections to make it simpler and clearer.

Section 6 amends section 9(1) by allowing the Commission to increase their quorum when the need arises. It also amends by inserting the incomplete reference to the section at the end of the paragraph.

Section 7 amends section 16(1) by giving a discretion to the Minister to do a consultation with the CCK, the licensees and other interested parties before recommending general policies to Cabinet. The original clause expresses a mandatory need for this consultation.

Section 8 amends section 18(4)(d) by softening the compulsory requirement of report submission on the part of the Commission to the Minister. The report would only be submitted to the Minister when required. This is in regards to the performance and efficiency of the communications sector.

Section 9 amends section 21(5)(d) by extending the period of the notice to be given to the sender of the information, from 7 to 30 days from the date of receipt. It also amends subsection (7) by expressly stating that the definition of sensitive information in this section, which does not include the terms of an interconnection and access agreement including prices for interconnection and access services, remains unaffected even if the provisions in any contracts state otherwise.

Section 10 amends section 26(3) and (4) by extending the period of 20 to 30 days in which the Commission would consider the application for reconsideration and to notify the applicant of its decision, and in the absence of this reply within the 30 days, the Commission would be deemed to have reaffirmed that decision.

Section 11 amends section 31(1)(c) by inserting an optional phrase for the fixing of application fees, which means that there could be application fees or no fees at all.

Section 12 amends section 32(7) by allowing the application of a [Foreign Investment Act 1985](#) to foreign communication businesses wishing to operate in Kiribati.

Section 13 amends section 34 by requiring the Commission to consider the International Radio Regulation published by ITU when exercising their power to make radiocommunications rules. It also corrects the type of fee payable under subsection (f) from licence to application and also allows an optional phrase for the fixing of this fee.

Section 14 amends section 40(1)(a) by deleting the word ‘economically’ as it is not directly relevant to the negotiation of interconnection and access agreement. A new subsection (3) gives a mandatory requirement for the publication of all interconnection and access agreements by the Commission.

Section 15 inserts a new paragraph (e) at section 42(1) that specifies that cost of interconnection links must be borne and shared between the parties. Section 42(4) is also amended by extending the scope of consideration to include the bill and keep methodology when the Commission is specifying interconnection and access prices or pricing principles.

Section 16 to 18 amend section 45(2) by expanding the Commission’s option to require the applicant to amend the reference offer when considering proposals for new investments. It also inserted a missing reference at subsection (4) in relation to the power of the Commission to hear applications for a rehearing. Subsection (5) is also amended by correcting a reference made therein to a subsection instead of a section.

Section 19 amends section 47 by substituting its title with ‘Sharing of Communication Facilities’. Subsection (4)(a) is also amended by including the requirement that the design characteristics of the communication facility must be negotiated in good faith between a licensee who proposes to construct such facility and the persons who have expressed their interest for its use. In the event that no agreement is reached between the parties for the design characteristics and commercial terms, the amendment to subsection 5 empowers the Commission to determine such terms of agreement for the sharing of the communication facility. A new subsection is also inserted after subsection 5 to cater for the sharing of existing communication facility.

Section 20 amends section 48(2)(a) by deleting the word ‘cost’ to extend it to variable cost or such other cost standard as is established by the Commission.

Section 21 amends section 51 by inserting a new subsection after subsection (3) to allow the licensee to make special price offers without further notification but to comply with certain prescribed conditions.

Section 22 inserts a new subsection (e) after section 60(1)(d) that requires licensees to submit a regular report to the Commission in relation to their actual performance using their key performance indicators.

Section 23 amends section 64 by inserting a new phrase in subsection (1)(a) to specify the requirement that rules for numbering plans must be made in accordance with the requirement of ITU. Subsection (1) (b) requires that there should also be rules regarding short codes, together with rules for the assignment and use of numbers. A new subsection (e) is also inserted to cater for international co-ordination and notification of numbering changes.

Section 24 amends section 104 by renumbering the existing 104(1) as 104. New definitions such as child pornography, device, hinder are inserted while some are deleted or changed. The amendment also repeals subsections (2) – (8) as they are no longer relevant.

Section 25 inserts a new section to replace section 107 that reworded the original section by limiting the scope of application to include only offences of unauthorised access to all or any part of the computer. The original section also dealt with unauthorised access to programs and data held in a computer.

Section 26 inserts a new section (s.107A) that deals with an offence of unauthorised access or obtaining of data.

Section 27 repeals section 108(1) and substitutes a new section that deals with committing an offence as defined in s.107 and 107A with the intent to commit a subsequent offence. The amendment reflects a heavy penalty of \$50,000 or 10 years imprisonment or both.

Section 28 inserts a new section 109 to replace the original section. The new section deals with offences relating to unlawful activities affecting or in connection with computer data.

Section 29 repeals subsections (1) and (2) of section 110 and substitutes a new section that deals with an offence that are related to unauthorised use of computer service.

Section 30 inserts new sections of 110A, 110B, 110C and 110D. The new sections deal with offences relating to Unauthorised interception, Unauthorised computer interference, Computer related forgery and Computer related fraud.

Section 31 repeals section 111 and substitutes a new section that deals with offences relating to the production, selling, procuring for use, importation, exportation, distribution or otherwise making available unauthorised devices.

Section 32 amends section 112 by renumbering the existing section as 112(1), by inserting a phrase “for commercial purposes” to specify that an offence of copyright infringements must be for commercial purposes and by adding a new subsection 112(2) that defines ‘commercial purposes’ to exclude fair use for academic or research purposes.

Section 33 amends section 114 by expanding the requirement of an offence of child pornography to include ‘without authority’ when one produces, offers, distributes, procures, and possesses child pornography. It also amends by inserting a new subsection (f) to deal with offences that are related to acts of obtaining access, through information and communication technologies, to child pornography.

Section 34 amends section 115 by specifying that the penalty stated in that section covers offences under Part XIV for which no penalty is expressly provided.

Section 35 amends section 119 by renumbering the existing section as 119(1) and by adding a new subsection (2) that defines the jurisdictional scope of application of offences under Part XIV, which includes acts done or omissions made in the territory of the Republic of Kiribati, on ships or aircrafts registered in Kiribati, by a national of Kiribati outside the jurisdiction of Kiribati or any other country.

TETIRO MAATE SEMILOTA
Attorney General

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression of the Communication (amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 13th April 2017 and is found by me to be a true and correctly printed copy of the said Bill.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this day of
..... 2017.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu