

**IN THE FOURTH SESSION OF THE FOURTH PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA**

**REPORT OF THE SELECT COMMITTEE ON COMMUNICATIONS ON THE
ELECTRONIC COMMUNICATIONS BILL**

1.0 INTRODUCTION

- 1.1 In accordance with the Constitution of the Republic of Ghana and Order 182 of the House, the Electronic Communications Bill was referred to Select Committee on Communications on 4th July 2008 for consideration and report.
- 1.2 The Committee met on the 12th July 2008 to consider the bill. The Hon. Minister Dr. Benjamin Aggrey Ntim led the team from the Ministry of Communications to assist the Committee in its deliberations. Officials from Attorney Generals Department, National Communications Authority and other stakeholders from the Communications Industry were also present.

2.0 REFERENCE DOCUMENTS

- i. The 1992 Constitution of the Republic of Ghana
- ii. The National Communications Authority Act, 1996 (Act 524)
- iii. The National Communications Authority Bill
- iv. The National Telecommunication Policy, 2005
- v. The Standing Orders of the House

3.0 PURPOSE OF THE BILL

The purpose is to provide for the regulation and control of electronic communications and broadcasting services in accordance with the National Electronic Communications and Broadcasting Policy of 2005. This involves the decoupling of operational and regulatory functions.

4.0 CONTENTS OF THE BILL

Clause 1 deals with the fact that the bill does not apply to the private use of electronic communication systems under specified conditions.

Clause 2 deals with broadcasting services. The Authority is to control and regulate the radio spectrum designated and allocated for use by broadcasting organisations in accordance with international standards applicable to the Republic.

Clause 3 – 19 deals with the important matter of licences and frequency authorisations. It also deals with the all important use of licences in emergency situations.

Clause 20 is on interconnection and imposes an obligation on operators or service providers to interconnect their network with the network of other operators.

Clauses 21 and 22 provide for access to facilities and international transmission capacity. Shared access is an obvious requirement for the smooth operation of the electronic communications sector.

Clause 23-24 deals with universal service, access and tariffs. Universal access in clause 24 includes access to community based broadband information, signal coverage of a mobile telephone and broadcast network and access by educational institutions and other public related institutions.

Clause 25 provides for tariffs for electronic communications services to be determined by providers in accordance with the principles of demand and supply on the market.

Clause 26 – 28 contains a number of clauses on consumer protection. It imposes a duty on the Authority to establish and maintain effective arrangements for consultations with consumers on the performance of service providers and network operators.

Clause 29 establishes an Industry Forum which will bring together stakeholders in the communications industry to deliberate on matters of interest for the progress of their industry.

Clause 30 among other things provides that the industry forum may on its own initiative, or on request by the Authority prepare a voluntary industry code to deal with any matter.

Clause 31 establishes The Ghana Investment Fund for Electronic Communications which will replace the current GIFTEL to reflect the new development in the industry.

Clause 32-45 contains standard provisions for management of the Fund. Clause 46 provides a framework for the prioritisation of projects to be funded.

Clause 47 and 48 provides for the monitoring and evaluation of projects to be funded from the Investment Fund.

Clause 49 the Authority as manager of radio spectrum is to cater for rural communication services and the trustees may recommend the waiver in part of the frequency fees for rural service provision.

Clause 54-57 deals with road works and access to land where a network operator requires installing or removing a facility over a road, public ground, on the shore or the bed of the sea as well as ancillary matters concerned with road works and access to land.

Clause 58-63 provides for spectrum management.

Clause 64 creates the National Electronic Communications Numbering Plan. This plan is to set out conditions for the use of different numbers for different kinds of service including emergency services.

Clause 65 and 66 provides for terminal equipment and technical standards.

Clause 67-70 contains the provisions on testing and inspection.

Clause 71 deals with the enforcement power of the Authority

Clause 72-80 provides for offences

Clause 81 empowers the Authority to charge fees for licences and frequency authorisations.

Clause 82 deals with the fees payable to the Authority and spells out mechanisms where by the Authority can recover these fees when they are not paid within a stipulated time.

Clause 83-86 deals with the Authority's mandate in dispute resolution

Clause 84 establishes a Dispute Resolution Committee.

Clause 87 proposes the establishment of the Electronic Communications Tribunal which will be an administrative appeal tribunal to be convened when necessary to resolve appeals from the Dispute Resolution Committee.

Clause 93-101 deals with general matters. Some of the matters include electronic communications during a state of emergency and powers of the President under those circumstances.

Clause 101 repeals the Telecommunications Frequency Registration and Control Decree, 1977 (S.M.C.D. 71)

5.0 OBSERVATIONS

The Committee observed that the communication sector is changing at a fast rate and that the urgent need to create a legal framework to take cognisance of this growth and change necessitates the current bill. It is in that framework that legislation is needed to provide for close relationship between and among all players in the industry. Thus the current situation where service providers are not interconnected with network operators has been addressed with a provision that interconnection between them may now be done with the passage of the bill and upon license of the service operators.

The Committee also observed that the Electronic Communication sector as a fast growing sector needs a forum to all stakeholders to be in active

participation in shaping the growth of the industry and to cater for their needs and for the advancement of the industry.

The Committee also noted that the bill has taken into cognisance the need to legislate for consumer's protection to save innocent consumers from the possible "smart" practices of some service providers.

A key observation by the Committee was the fact that this bill is essentially linked to other bills to provide a holistic environment for the information communication and Technology especially the National Communication Authority Bill, National Information Technology Agency Bill and Electronic Transaction Bill which arise out of the adoption of the National Telecommunication Policy of 2005. The passage of all the four bills would help transform the Communication Information Technology Sector of the country.

6.0 AMENDMENTS PROPOSED

- i. **Long Title** – amendment proposed delete "and control"
- ii. **Clause 1** – amendment proposed sub-clause (2) (c), delete "line"
- iii. **Clause 2** – amendment proposed sub-clause (1) line 1, delete "control and"
- iv. **Clause 2** – amendment proposed sub-clause (6) (e), rephrase to read "for the determination of breaches of the Regulations or conditions of the frequency authorization and the nature of sanctions and impositions, warnings and other penalties in respect of the breaches"
- v. **Clause 5** – amendment proposed delete the whole clause (subsequent numbering of clauses to change accordingly)
- vi. **Clause 7** – amendment proposed sub-clause (1) (a), substitute " that concerns" with "relates to"
- vii. **Clause 8** – amendment proposed – sub-clause (2), delete "and registration requirement under subsection (4)".
- viii. **Clause 8** – amendment proposed – delete sub-clause (4) and (5)
- ix. **Clause 9** – amendment proposed – Head note, delete "telecommunication" and insert "communication" (this applies to subsequent "telecommunication" in the bill)

- x. **Clause 10** – amendment proposed - sub-clause (1) - delete "Except as may be provided under this Act or directed by the Minister "
- xi. **Clause 11** – amendment proposed - sub-clause (1) (d), line 3 - delete "Internal" and insert "National"
- xii. **Clause 14** – amendment proposed - Sub-clause (1) (d), delete " or" after "service"
- xiii. **Clause 14** – sub-clause (1) (e) after "security" insert "or". Create a new clause (f) to read "imposition of a fine under the Act would be sufficient under the circumstances"
- xiv. **Clause 15** – – amendment proposed – delete sub-clause (6)
- xv. Insert a new clause after 15 with its head note to read "Emergency licences"
- xvi. The new Clause inserted after Clause 15 would read "section 15 does not preclude from amending a license or a frequency authorization without notice where there is, or there is likely to be, a risk to national security, or where immediately amendment is essential in the public interest"
- xvii. **Clause 16** – amendment proposed - sub-clause (2), insert after "shall" the phrase "have the power to"
- xviii. **Clause 16** – amendment proposed – sub-clause (2), line 3 delete all the words after "Act".
- xix. **Clause 19** – amendment proposed - sub-clause (4), line 5 delete "one" and insert "two"
- xx. **Clause 20** – amendment proposed –sub-clause (1) (b), line 1 delete "in addition" and insert "subject to"
- xxi. **Clause 20** – amendment proposed –sub-clause (3). insert after "interconnection" the phrase "and transmission and routing of service"
- xxii. **Clause 20** – amendment proposed – sub-clause (7) (c), line 2 delete "telephone numbers" and "and directory listing"
- xxiii. **Clause 20** – amendment proposed – sub-clause (8), delete " under paragraph (d)"
- xxiv. **Clause 22** – amendment proposed – line 3 after "may" insert "as determined"
- xxv. **Clause 33** – amendment proposed – after "operators" insert "and service providers"

- xxvi. Clause 36** – amendment proposed – sub-clause (1), insert after “Trustee” and insert “excluding the Administrator”
- xxvii. Clause 54** – amendment proposed – sub-clause 2(c), after “permission” insert “,which should not be reasonably withheld,”
- xxviii. Clause 54** – amendment proposed – sub-clause (5), line 2, after “in” delete “at least one newspaper” and insert “both electronic and print media”
- xxix. Clause 54** - – amendment proposed – sub-clause (5), line 2, delete “published”
- xxx. Clause 54** – amendment proposed – sub-clause (5), line 3, delete “region” and insert “locality”
- xxxi. Clause 65** – amendment proposed – sub-clause (5) line 4, delete “telecommunication” and insert “Electronic Communication”
- xxxii. Clause 67** – amendment proposed – paragraph (c), delete “or” after “network”
- xxxiii. Clause 67** – amendment proposed – Create a new sub-clause (e) – “operational and financial information, or”
- xxxiv. Clause 67** – amendment proposed – Create a new sub-clause (f) to read “other information the Authority considers relevant.”
- xxxv. Clause 72** – amendment proposed – sub-clause (1)(j)(ii), after “communication service” insert “ without licence”
- xxxvi. Clause 80** – amendment proposed – Head note- delete “anything” and insert “device”
- xxxvii. Clause 80** – amendment proposed – sub-clause (1) (a), delete “an implement or” and insert “device”
- xxxviii. Clause 82** – amendment proposed – line 1 after “ Authority” insert “or Fund”
- xxxix. Clause 83** - – amendment proposed – sub-clause (2), after “Authority” add “or for settlement by any alternative dispute resolution mechanism”
- xl. Clause 83** – amendment proposed – sub-clause (3) delete whole clause and insert “where parties to a dispute that relates to electronic communications agree that the dispute is to be settled by
- a) the dispute resolution committee established under section 84 or

- b) any alternative dispute mechanism, known of the parties shall not institute an action in court until the dispute resolution procedure has been exhausted"
- xli. **Clause 93** – amendment proposed – Head note – delete "the Country" insert "the Republic"
- xlii. **Clause 93** – amendment proposed – line 2, delete "by a non-resident" and insert "from outside the Republic"
- xliii. **Clause 94** – amendment proposed – sub-clause (1) line 1 – delete " in conjunction with" insert "with approval of"
- xliv. **Clause 96** – amendment proposed – sub-clause (1), line 1 - delete "The Authority may by legislative instrument" and insert "The Minister may on the advice of the Authority by Legislative Instrument"
- xliv. **Clause 100** – amendment proposed – after definition of "district assembly" insert "Electronic Communication" means "any communication through the use of wire, radio, optical or electromagnetic transmission emission or receiving system or any part of these"
- xlvi. **Clause 100** – amendment proposed – substitute the meaning of "significant market power" with "where a network operator or service provider , either individually or jointly with other operators or providers, has a position that allows it to behave in a way that is appreciably independent of its competitors and customers"
- xlvii. **Clause 100** – amendment proposed – definition of Tariff

7.0 RECOMMENDATION AND CONCLUSION

The Committee has carefully examined the provisions of the Bill in accordance with the Constitution and recommends to this Honourable House to adopt this report and pass the Electronic Communications Bill subject to the amendments proposed.


Hon. Kojo Armah
Chairman


Linda Gyekye Boadu
Clerk to the Committee

17th July, 2008