

Telecommunications Corporation, Liberian (Amending Titles 12 & 30) Act

AN ACT TO AMEND THE PUBLIC AUTHORITIES LAW CREATING THE LIBERIA TELECOMMUNICATIONS CORPORATION AND THE EXECUTIVE LAW CREATING THE MINISTRY OF POSTS AND TELECOMMUNICATIONS, AND TO ESTABLISH AN INTERIM FRAMEWORK FOR TELECOMMUNICATIONS REGULATION

PART I: INTERPRETATION

1. Definitions

In this Act, the following terms have the identified meanings:

"**Accra Agreements**" means the "Comprehensive Peace Agreement between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties" signed at Accra, Ghana, 18 August, 2003;

"**Chairman**" as used in this Act, means the chairman of the Interim Regulatory Authority appointed pursuant to Section 3;

"**Dominant Service Provider**" means any telecommunications service provider designated by the Interim Regulatory Authority as being a dominant service provider in one or more telecommunications service markets. The Interim Regulatory Authority may publish other criteria or processes for finding dominance; failing which, dominance may be found where a service provider has gross revenues in a specific telecommunications market that constitute 40% or more of the total gross revenues of all service providers in that market;

"**Head of State**" means the Transitional Chairman of the NTGL, the head of the NTGL established under the Accra Agreements;

"**Interconnection**", as used in Section 4(b)(v) of this Act, means the physical and logical linking of telecommunications networks used by the same or a different service provider in order to allow the users of one service provider to communicate with users of the same or another service provider, or to access the facilities and/or services of another service provider. The rights and obligations of interconnection are also addressed in the Transitional Licenses;

"**Interim Period**" means the period that begins with the effective date of this Act, and that expires on the date that the Regulator first exercises its powers under the New Law;

"**Interim Regulatory Authority**" means the authority established under Part II of this Act;

"Minister" means the Minister of Posts and Telecommunications within the NTGL;

"Ministry" means the Ministry of Posts and Telecommunications;

"Ministry of Posts and Telecommunications Act" means the Act to Create the Ministry of Posts and Telecommunications, approved September 19, 1978 and published June 4, 1979;

"New Law" means the law to be passed by the newly elected Government of Liberia, which will succeed the NTGL and NTLA, establishing a longer term regulatory framework for the telecommunications sector in Liberia;

"Regulator" means the telecommunications regulatory authority established under the New Law;

"Selection Committee" means a committee to be formed consisting of the Minister and representatives of the Presidential Telecommunications Committee, the Governance Reform Commission and the Contract and Monopolies Commission;

"Telecommunications network" means any wire, radio, optical or other electromagnetic system for routing, switching or transmitting telecommunications services between network termination points;

"telecommunications service" means any form of transmission of signs, signals, text, images or other intelligence by means of a telecommunications network, but does not include a broadcasting service;

"Transitional License" means any operating license issued to a telecommunications network operator or telecommunications service provider in the Interim Period;

"Transitional Authorization" means any assignment or other authorization for the use of radiofrequency spectrum by any holder of a Transitional License.

2. Priority of this Act

In the event of any conflict or inconsistency between this Act, the Ministry of Posts and Telecommunications Act, or any other Liberian law or executive order, the provisions of this Act shall be given priority and shall be interpreted to prevail.

PART II: INTERIM REGULATORY AUTHORITY

3. Creation of Interim Regulatory Authority:

(a) There is hereby established an Interim Regulatory Authority, to be known as the "Liberia Telecommunications Authority" which shall have and exercise the responsibilities, functions and powers identified in this Act during the Interim Period. The exercise by the Interim Regulatory Authority of its responsibilities, functions and powers

shall be subject to the procedural and other requirements of this Act.

(b) The Interim Regulatory Authority shall consist of a Chairman and two commissioners.

(c) The Chairman and the commissioners shall be appointed following a competitive selection process, to be prescribed and undertaken by the Selection Committee. The Selection Committee shall select one candidate as its recommended choice of Chairman. The Selection Committee shall compile a list, with a maximum of five (5) candidates, as its approved and recommended candidates for selection as commissioners by the Chairman.

(d) The Chairman shall be appointed by the Head of State, acting on the recommendation of the Selection Committee. The commissioners shall be selected and appointed by the Chairman, from the list of candidates approved and recommended by the Selection Committee. The appointment of the commissioners by the Chairman shall be subject to confirmation by the NTLA.

(e) The Chairman shall be a person with international telecommunications regulatory experience; the commissioners shall be persons with telecommunications sector or other relevant experience.

(f) The Chairman and commissioners may not be removed from their position prior to the completion of the Interim Period unless the person:

(i) At the time of appointment or while holding the position, has a conviction or is convicted for any offence, in Liberia or elsewhere

A. Under criminal law, involving dishonesty or corruption; or

B. Where the penalty for such offence includes imprisonment for one year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction);

(ii) Acts contrary to Section 3(h) below, and does not remedy the default to the satisfaction of the NTLA;

(iii) Is an undischarged bankrupt; or

(iv) Is determined by two medical practitioners to be unable to perform his or her responsibilities, functions, duties and powers due to any physical or mental incapacity.

(g) If it becomes necessary to replace the Chairman or the commissioners during the Interim Period, as a result of death, resignation or where the person is removed as permitted by Section 3(f) above, the replacement will be appointed using the process described in this Section 3 for the first appointment of the Chairman and commissioners

or such other process as is approved by the NTLA.

(h) Members of the Interim Regulatory Authority shall ensure that, throughout the Interim Period, they do not, as owner, shareholder, director, officer, partner or otherwise, have any direct or indirect pecuniary or proprietary interest in:

(i) A network operator or other telecommunications service provider; or

(ii) A manufacturer or supplier of telecommunications equipment

and shall also ensure they have no other interests and undertake no other activities that are contrary to the proper exercise of their responsibilities as members of the Interim Regulatory Authority, and shall not engage in any other employment or receive any other form of compensation or other remuneration while they are members of the Interim Regulatory Authority without the prior approval of the NTLA.

4. Exercise of Powers and Functions by the Interim Regulatory Authority-

(a) All decisions of the Interim Regulatory Authority shall be by simple majority. A minimum of two members must participate in any decision. All decisions of the Interim Regulatory Authority shall be supported by a statement of reasons or other written explanation sufficient to explain the basis of the decision.

(b) The Interim Regulatory Authority shall carry out its responsibilities, functions and powers under this Act with a view to implementing the following objectives:

(i) Facilitating development of the telecommunications sector in order to promote national social and economic development;

(ii) Promoting the efficient and reliable provision of telecommunications services, relying as much as possible on market forces such as competition and private sector investment to achieve this objective;

(iii) Promoting the introduction of advanced and innovative information and communications technologies to meet the needs of the people of Liberia;

(iv) Encouraging ongoing investment in the telecommunications sector by licensed network operators and service providers;

(v) Promoting efficient interconnection arrangements between service providers:

(vi) Protecting the interests of subscribers and other customers of telecommunications services;

(vii) Promoting efficient management and use of radiofrequency spectrum and other scarce resources; and

(viii) Establishing a fair, objective, efficient and transparent regulatory regime for network operators, service providers and other market participants.

(c) The Interim Regulatory Authority shall have the power to:

(i) Implement this Act, regulations made under this Act and other elements of the legal and regulatory framework for the telecommunications sector established by this Act;

(ii) Issue Transitional Licenses and Transitional Authorizations, in accordance with the processes for issuance of such licenses and authorizations published by the Interim Regulatory Authority;

(iii) Monitor and enforce compliance with the conditions of Transitional Licenses and Transitional Authorizations;

(iv) Establish quality of service requirements or other service requirements for the benefit of subscribers;

(v) Prescribe service requirements or other obligations relevant to public emergency and national security;

(vi) Prescribe procedures for the approval of telecommunications equipment for attachment to telecommunications networks in Liberia, using the least onerous method available, such as approval of equipment previously approved for attachment in specified countries or regions;

(vii) Establish a radiofrequency spectrum plan and manage radiofrequency spectrum allocated to the telecommunications sector, including assigning radio frequencies under Transitional Authorizations and responding to harmful interference;

(viii) Regulate interconnection between the telecommunications networks of service providers;

(ix) Establish and manage a numbering plan and allocate numbers to service providers;

(x) Resolve disputes between service providers, and between customers and service providers;

(xi) Issue orders for the purpose of preventing Dominant Service Providers from engaging in or continuing anti-competitive practices;

(xii) Represent Liberia in international telecommunications organizations, in cases where the Minister or the Head of State decides the Interim Regulatory Authority is the appropriate Liberian representative;

(xiii) Publish procedures, guidelines and interpretations to facilitate the implementation

of this Act, and to ensure that all relevant procedures, guidelines and interpretations are publicly available;

(xiv) Require information to be provided to the Interim Regulatory Authority that the Interim Regulatory Authority needs in order to exercise its powers or perform its functions under this Act, including network or service development plans, financial, technical and statistical information, accounting records and any other information that the Interim Regulatory Authority reasonably requires;

(xv) Make rules for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due implementation thereof by the Interim Regulatory Authority;

(xvi) Make orders respecting any matter or thing within the powers of the Interim Regulatory Authority under this Act, including orders to compel a person to comply with or implement this Act, any other decision or order or the terms of any Transitional License or Transitional Authorization, or any related fine, penalty or order of compensation for failure to comply with same;

(xvii) On the initiative of the Interim Regulatory Authority or upon request by another person, investigate complaints against network operators or service providers, and conduct such other investigations as the Interim Regulatory Authority deems necessary to ensure compliance with this Act, any order or the terms of any license or authorization;

(xviii) Subject to Section 6 of this Act, and any other applicable procedures, employ staff and external consultants to assist in the performance of its responsibilities, functions and powers; and

(xix) Perform such other responsibilities, functions, and powers as are conferred on the Interim Regulatory Authority under any other law or executive order.

(d) Notwithstanding any proper exercise of authority by the Minister pursuant to this Act, the Interim Regulatory Authority shall act independently in performing the responsibilities, functions and powers set out in this Act, and in this regard:

(i) The Interim Regulatory Authority shall act in a manner that is separate from, and not accountable to, any telecommunications network operator or telecommunications service provider, including a network operator or service provider owned by the Government of Liberia;

(ii) The orders or directions made and the procedures used by the Interim Regulatory Authority shall be impartial with respect to all network operators, service providers and other market participants, provided however that nothing in this Section shall be interpreted to prevent the Interim Regulatory Authority from:

A. consulting with any person or organization on any matter related to the Interim Regulatory Authority's responsibilities, functions and powers; or

B. making a decision that is in accordance with this Act but that has a different impact on a network operator, service provider or other market participant because of the different circumstances of that network operator, service provider or other market participant.

(e) In granting any Transitional Licenses or Transitional Authorizations under Section 4(c)(ii), the Interim Regulatory Authority shall limit the grant of Transitional Licenses or Transitional Authorizations for cellular mobile public telecommunications networks or cellular mobile public telecommunications services to those network operators offering public services as of the effective date of this Act.

(f) The Interim Regulatory Authority shall ensure that, prior to issuing any order or any other exercise of its authority that is likely to have any substantial impact on network operators, service providers, any other market participant or the general public, it conducts a process of public consultation appropriate to the circumstances and shall take account of the results of the public consultation in the final exercise of its authority.

(g) Orders or any other exercise of authority by the Interim Regulatory Authority shall be subject to review in accordance with Part V of this Act.

(h) For greater certainty, no other person or regulatory authority may exercise the powers and functions described in Section 4(c) of this Act during the Interim Period.

5. Reporting Requirements

(a) The Interim Regulatory Authority shall provide reports of its activities and expenditures with such frequency and in such form as the Minister may direct.

(b) The Interim Regulatory Authority shall maintain financial records and books of account identifying all expenditures made in connection with its exercise of authority under this Act, in accordance with generally accepted accounting principles, and shall submit its records and books of account for inspection or audit as directed by the Minister, the NTLA or any other government authority.

(c) The Interim Regulatory Authority shall maintain records of licenses and license applications, equipment approvals and applications and interconnection agreements and, except where the Interim Regulatory Authority considers it justified for reasons of commercial confidentiality, make the documents and such records available to the public.

(d) The Interim Regulatory Authority shall provide any other information relevant to its exercise of authority under this Act as the Minister, the NTLA or any other government authority may request.

6. Expenditures and Budget

(a) The Interim Regulatory Authority shall prepare an annual budget for submission to the Minister. The budget and financial records and books of account of the Interim Regulatory Authority shall be available for inspection by the public on request.

(b) The Interim Regulatory Authority shall follow appropriate and transparent procurement practices, including competitive tendering for any expenditure in excess of US\$20,000. The Interim Regulatory Authority shall also be required to obtain prior approval from the Minister of the NTLA for any expenditure in excess of US\$50,000.

(c) All expenditures by the Interim Regulatory Authority, and any compensation or other payments payable to Interim Regulatory Authority members or Interim Regulatory Authority employees, shall be subject to and in accordance with its current budget or any specifically approved expenditure request.

(d) The Minister or the NTLA may require an audit of the financial records, books of account and expenditures of the Interim Regulatory Authority by an independent auditor retained by the Minister or NTLA for that purpose. The Interim Regulatory Authority shall facilitate any such audit, including by meeting the information and reporting requirements identified in Section 5 of this Act. The Minister or the NTLA may issue directions to the Interim Regulatory Authority regarding its expenditures and may modify the budget of the Interim Regulatory Authority where an audit shows any excessive or improper expenditures or financial practices.

PART III: POWERS AND FUNCTIONS OF THE MINISTER

7. The Ministry

The Ministry of Posts and Telecommunications shall continue to exercise the functions and powers provided for in the Ministry of Posts and Telecommunications Act, except as altered by this Act and subject to the exercise of functions and powers transferred to the Interim Regulatory Authority under this Act, until the expiry of the mandate of the NTGL under the Accra Agreements. The functions and powers of the Ministry shall be exercised by the Minister in consultation with the Presidential Telecommunications Committee.

8. Powers and Functions

(a) The Minister may develop policy of general application to the telecommunications sector in accordance with the practices and procedures of the NTGL. The Minister shall ensure that no policy developed for the telecommunications sector is inconsistent with or contrary to this Act.

(b) The Minister may issue directions to the Interim Regulatory Authority regarding the implementation of telecommunications sector policy, but shall not issue any direction that is not of general application to the telecommunications sector.

(c) Prior to adopting any policy or issuing and direction under this Section, the Minister

shall:

- (i) Seek the views and recommendations of the Interim Regulatory Authority; and
 - (ii) Conduct a process of public consultation appropriate to the circumstances, and take account of the results of the public consultation in determining the relevant policy or direction.
- (d) The Minister shall facilitate, and shall not interfere with, the proper exercise of authority by the Interim Regulatory Authority under this Act, including by considering the recommendations of the Interim Regulatory Authority regarding policy development or any other government initiative relevant to the telecommunications sector.

PART IV: DETERMINATION OF LICENCE AND SPECTRUM FEES

9. Power to Set Fees

The Interim Regulatory Authority shall have the power, during the Interim Period, to set license and spectrum authorization fees payable by holders of Transitional Licenses and/or Transitional Authorizations.

10. Special Procedures for Fee Setting

- (a) Prior to setting any license or authorization fee, the Interim Regulatory Authority shall publish its proposed fee formula or methodology for consultation in accordance with Section 4(f) of this Act.
- (b) License fees shall, in the Interim Period, be limited to the recovery of some or all of the expenditures or other costs of the Interim Regulatory Authority in its exercise of regulatory authority under this Act. All such expenditures and costs shall be subject to the budget, procurement and approvals processes described in Section 6 of this Act.
- (c) The formula or methodology for any radiofrequency authorization fees, including any fees associated with Transitional Authorizations or any other fees intended to recover the commercial value of radiofrequencies as a public resource, shall take full and sufficient account of circumstances in Liberia, including economic circumstances, the state of infrastructure development and the operating circumstances of persons operating under transitional Licenses or Transitional Authorizations.
- (d) All fees shall be applied to licensees and users of radiofrequency spectrum in an impartial and competitively neutral manner.
- (e) All fees shall be subject to special reporting, audit and payment rules to be issued by the Minister or the NTLA. The rules shall require that all fees be paid to the Ministry of Finance for deposit into one or more separate accounts with the Central Bank of Liberia. The rules shall require that the payment and deposit of fees, and any subsequent transfer, withdrawal or other transaction involving the fees, be subject to specific reporting, accounting and audit practices. The rules shall, in all other respects, comply

with Executive Order No. NTGL/002 dated October 24, 2003.

(f) Fees shall only be paid out or otherwise used to meet the demonstrated and appropriate expenses of the Interim Regulatory Authority (in its exercise of regulatory authority under this Act), or to undertake any specific telecommunications sector project initiated by the NTGL or the newly elected government following a process of public consultation appropriate to the circumstances.

PART V: REVIEW OF AUTHORITY ACTIONS

11. Judicial Review

(a) An appeal from any order or other exercise of authority by the Interim Regulatory Authority on any question of law or jurisdiction may be made to the Supreme Court of Liberia with the leave of that Court. An application for leave to appeal shall be brought within 60 days of the date of the Interim Regulatory Authority's order or other activity that gives rise to the appeal.

(b) Prior to bringing an appeal, the complainant shall notify the Interim Regulatory Authority in writing of its complaint and request a meeting with the Interim Regulatory Authority to discuss the complaint. The complainant shall also prepare a full statement of the nature of the dispute, and deliver the statement to the Interim Regulatory Authority within 30 days of the date of the Interim Regulatory Authority's order or other activity complained of.

12. No civil action or suit for any act or omission in connection with the duties imposed on the Interim Regulatory Authority by this Act shall be brought or maintained against any person who has been or is a member of the Interim Regulatory Authority.

PART VI: ENFORCEMENT AND TRANSITION PROVISIONS

13. Requirement to Hold Transitional License and Transitional Authorization

(a) Any person operating a public telecommunications network or providing a public telecommunications service in the Interim Period shall require and obtain a Transitional License.

(b) Any person using radiofrequencies in connection with operating a public telecommunications network or providing a public telecommunications service shall require and obtain a Transitional Authorization authorizing use of those radio frequencies. All such users shall be subject to and comply with any directions or orders issued by the Interim Regulatory Authority regarding radiofrequency interference or the management of radiofrequency spectrum resources.

(c) Any other operator of a telecommunications network or provider of a telecommunications service may be subject to such other licensing or radiofrequency spectrum authorization requirements as are identified by the Interim Regulatory Authority acting in accordance with Section 4(c) and the other provisions of this Act.

14. Enforcement of Interim Regulatory Authority Orders

The Interim Regulatory Authority may apply to the Supreme Court of Liberia to have any order, direction or any other exercise of its authority under this Act issued and enforced under a Writ of Mandamus or other order of the Court.

15. Effective Date of this Act

This Act shall take effect on 5 September A.D. 2005 Continuation of Interim Regulatory Authority Decisions after Interim Period

(a) All orders, directions or other exercises of authority by the Interim Regulatory Authority, including the grant of Transitional Licenses and Transitional Authorizations, shall continue in accordance with their terms under the New Law.

(b) The continuation of Interim Regulatory Authority orders, directions or other exercises of authority by the Interim Regulatory Authority, including the grant of Transitional Licenses and Transitional Authorizations, shall be subject to any exercise of authority by the Regulator acting under and in accordance with the New Law.

(c) Recognizing the importance of continuity in the regulation of the telecommunications sector, the Presidential Telecommunications Committee, the Interim Regulatory Authority, the newly elected government and the Regulator shall cooperate and shall undertake all appropriate efforts to ensure an orderly transition and transfer of knowledge and experience from the Interim Regulatory Authority to the Regulator, and ongoing continuity and consistency in the regulation of the telecommunications sector.

(d) Any reference to approval or other authority to be exercised under this Act by the Minister, the Head of State the NTLA or any other part of the NTGL or institution established under the Accra Agreements shall be deemed to include any successor authority or institution established by the newly elected government.

This Act shall take effect immediately after publication in hand-bills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

APPROVED: September 5, 2005

PUBLISHED: October 19, 2005
