# THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2023

**AN ACT** of Parliament to amend the Kenya Information and Communications Act, 1998; and for connected purposes.

**ENACTED** by the Parliament of Kenya as follows—

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| Short title. | **1.**This Act may be cited as the Kenya Information and Communications (Amendment) Bill, 202332023 | | |
| Amendment to Long title of *No. 2 of 1998.*  . | 2.The Kenya Information and Communications (Amendment) Bill, 2023 in this Act referred to as the “principal Act” is amended in the long title—   1. by deleting the word “Commission” appearing immediately after the word “Communications” and substituting therefor with the following word “Authority” 2. by deleting the words “provide for the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication Corporation to the Commission, the Telcom Kenya Limited and the Postal Corporation of Kenya, and for connected purposes” | | |
| Amendment to section 2 of *No. 2 of 1998.*  *No. 5 of 2018.*  *No. 5 of 2018.* | 1. The principal Act, is amended in section 2— 2. by deleting the definition of “Commission” and substituting therefor with the word “Authority”; 3. by deleting the definition of “former Commission”; 4. by deleting the definition “community broadcasting service” and substituting therefor the following new definition—   “Community broadcasting service” means a broadcasting service, which meets the following requirements—   1. is for, by and concerns a community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit; 2. is independent of control by government, commercial institutions and political parties; 3. has voluntary participation of members of the community in the development and management of programmes; 4. has activities aimed at social gain or community benefit; 5. has ownership by and accountable to the interest of the community it serves and promotes and inclusivity and the community’s cultural practices; 6. may be funded by donations, grants, sponsorships or membership fees, or by any combination thereof; 7. by inserting the word “courier” in the definition of post immediately after the words “when used with reference to the transmission of postal articles by post” 8. by inserting in proper alphabetical sequence the following new definitions—   “critical infrastructure” has the meaning assigned under the Computer Misuse and Cybercrime Act, 2018;  “critical infrastructure assets” means designated physical and virtual assets or facilities, whether owned by private or public entities which are designated under the Computer Misuse and Cybercrime Act, 2018 as essential to the provision of vital services to Kenyans for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable would impact on the social or economic well-being of the nation or affect Kenya’s ability to conduct national defense or security;  “critical infrastructure owner” means a private or public entity that has legal or beneficial ownership or control of acritical infrastructure;  “message” means any sign, signal, writing, image, sound, intelligence or information of any nature transmitted by telecommunications;  “national roaming” means a service which enables a mobile subscriber to use, in making and receiving voice calls, sending and receiving data, or accessing other services, including home data services another network in geographical areas where his operator does not have coverage, using a visited network within the country;  “subscriber” means a person or entity to whom residential or commercial telecommunication services are provided;  “subscriber number” means a unique subscriber identification number used to identify mobile subscribers within a telecommunications system. | | |
| Amendment to section 6A of No.2 of 1998. | **4.**Section 6A of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (v)—  (va) public finance management or accounting; | | |
| Amendment to section 7 of No. 2 of 1998 | 5.The principal Act is amended in section 7 by deleting paragraph (f) and substituting therefor the following new paragraph—  (f) establish such committees as may be necessary to carry out its functions; | | |
| Amendment to section 12 of No. 2 of 1998. | **6.**The principal Act is amended by inserting the following new section immediately after section 11— | | |
|  | Corporation secretary. | **12.** (1) The Board shall, through an open and transparent process appoint a suitably qualified person to be the corporation secretary.  (2) A person shall be qualified to be appointed as the Corporation Secretary if that person—   1. holds a degree in a relevant field from a university recognized in Kenya; 2. is a certified secretary and is a member of the Institute of Certified Public Secretaries of Kenya in good standing; and 3. satisfies the requirements of Chapter Six of the Constitution.   (3) The Corporation Secretary shall—   * 1. in consultation with the chairperson of the Board and the Director General, issue notices for meetings of the Board;   2. keep custody of the records of the deliberations, decisions and resolutions of the Board;   3. transmit decisions and resolutions of the Board to the Director General for execution, implementation and other relevant action;   4. provide guidance to the Board on their duties and responsibilities on matters relating to governance; and   5. perform such other duty as the Board may direct.   (4) In the performance of his duties under this Act, the Corporation Secretary shall be responsible to the Director General.  (5) The Board may in the absence of the Corporation Secretary appoint any qualified member staff of the Authority to temporarily perform the functions of the Secretary.  (6) Any functions delegated under sub-paragraph (5) may be so delegated subject to such conditions or restrictions as the Board may either generally or specifically determine. | |
| Amendment to section 23 of *No. 2 of 1998.* | **7.**Section 23 of the principal Act is amended—   1. in subsection (1), by deleting the words “in particular emergency, public telephone and directory information” appearing immediately after the words “such telecommunication services” and substituting therefor the words “including public emergency telecommunication services” 2. in subsection (2), by inserting the following paragraph immediately after paragraph (ee)―   (f)respect and comply with intellectual property rights in respect of any work or material.   1. by inserting the following new section immediately after section 23— | | |
|  | Guidelines on critical national infrastructure assets. | | **23A.** (1) The Authority shall formulate Guidelines on critical infrastructure assets. |
| Amendment to section 24 of *No. 2 of 1998.* | **9.**Section 24 is amended in subsection (2) (b) by inserting the words “or express license exemption” appearing immediately after the words “except in accordance with a valid license granted” and “in line with the prevailing licensing structure” appearing immediately after the words “under this Act”. | | |
| Amendment to section 25 of *No. 2 of 1998*. | **10.**Section 25 of the principal Act is amended—   1. in subsection (3) (c) by inserting the words “or approved by the Authority” appearing immediately after the words “or of a description so specified”; 2. in subsection (3A), by inserting the words “in line with section 27A ” immediately after the words “under the licence”. | | |
| Amendment to section 25A of *No. 2 of 1998.* | **11.** Section 25A of the principal Act is amended—   1. in subsection 3, by inserting the words “wards” immediately after the words “five hundred”; 2. by inserting a new subsection immediately after subsection (3) ―   (4) For purposes of this section—  “ward means an electoral unit within a constituency delimited in accordance with Article 89 of the Constitution and any other relevant law”;   1. by renumbering subsection (4) as subsection (5); and 2. by renumbering subsection (5) as subsection (6). | | |
| Repeal to the title of SIM-Card Registration of *No. 2 of 1998.* | **12.** The heading Registration of SIM-Cards appearing immediately before section 27A of the principal Act is amended by repealing the heading and replacing it with the following new title―  **Subscriber and Subscriber Number Registration** | | |
| Amendment to section 27 of *No. 2 of 1998.* | **13.**Section 27 of the principal Act is amended in subsection 2 (d) by deleting the word “messages” and substituting therefor the word “record”**.** | | |
| Amendment to section 27A of *No. 2 of 1998*. | **14.**Section 27A of the principal Act is amended by deleting subsections (1) and (2). | | |
| Amendment to section 27B of *No. 2 of 1998.* | **15.**Section 27B of the principal Act is amended—   1. by deleting subsection (1) and substituting therefor the following new subsection—   Before a telecommunications operator sells a subscriber number or otherwise provides telecommunication services to a person, it shall obtain—   1. by deleting the subsection (3) and substituting therefor with the following new subsection―   (3) A registration agent shall duly register subscriber number being sold. | | |
| Repeal of section 27D of No. 2 of 1998. | **16.**The principal Act is amended by repealing section 27D. | | |
| Amendment to section 28 of No. 2 of 1998 | **17.**The Principal Act is amended by inserting the following new section immediately after section 28— | | |
|  | Illegal origination or termination of international traffic. | | **28A.** A person who illegally originates or terminates international traffic without proper origination and termination agreements with local players commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both. |
| Amendment to section 35 of No. 2 of 1998 | **18.**Section 35 of the principal Act is amended—   1. in subsection (1) by inserting the words “possess, install” immediately after the word “shall”; and 2. in subsection (2), — 3. by deleting the word “five” and substituting therefor the word “ten”; and 4. by deleting the word “three” and substituting therefor the word “five”. | | |
| Amendment to section 37 of No. 2 of 1998 | **19.**Section 37 of the principal Act is amended by deleting the marginal note and substituting therefor the following new marginal note “Licenses for scientific, research or trials for new technologies”. | | |
| Amendment to section 38 of No. 2 of 1998 | **20.**Section 38 of the principal Act is amended in subsection (2)—   1. by deleting the word “five” and substituting therefor the word “ten” 2. by deleting the word “five” and substituting therefor the word “three” | | |
| Amendment to section 45 of No. 2 of 1998 | **21.**Section 45 of the principal Act is amended—   1. by deleting the word “one” and substituting therefor the word “five”; 2. by deleting the word “five” and substituting therefor the word “three”. | | |
|  | (3) An appointment under subparagraph (2)(a) or (e) shall be by notice in the *Gazette*. | | |
| Amendment to the title to Part IVA of No. 2 of 1998 | **22.**The principal Act is amended in the title to Part IVA by deleting the words “and cyber security”. | | |
| Amendment to section 46A of No. 2 of 1998 | **23.**Section 46A of the principal Act is amended—   1. in the marginal note by deleting the word “Commission” and substituting therefor the word “Authority”; 2. in paragraph (j) by deleting the word “media” and substituting therefor the word “broadcasting”. | | |
| Amendment to section 46B of No. 2 of 1998 | **24.**Section 46B of the principal Act is amended in subsection (1) (b) by deleting the word “private” and substituting therefor the word “commercial”. | | |
| Amendment to section 46G of No. 2 of 1998 | **25.**Section 46G of the principal Act is amended in the marginal note, by deleting the word “private” and substituting therefor the word “commercial”. | | |
| Amendment to section 46H of No. 2 of 1998 | **26.**Section 46H of the principal Act is amended in subsection (2)—   * 1. in paragraph (a) by inserting the words “and related industry guidelines” immediately after the word “code”;   2. in paragraph (b)—      1. by inserting the words “and related industry guidelines” immediately after the word “code”;      2. in paragraph (b) by deleting the word “two” and substituting therefor the word “five”. | | |
| Amendment to section 46I of No. 2 of 1998 | **27.**Section 46I of the principal Act is amended—   1. in subsection (1) by — 2. deleting paragraph (h) and substituting therefor the following new paragraph—   “(h) retain unedited archive of machine-readable recording of its aired programming complete with time-date stamp feature for a period of at least one year after the date of broadcasting;”   1. inserting the following new paragraphs immediately after paragraph (j)—   (k) put in place appropriate mechanisms for facilitating accessibility to the broadcasting services by Persons with disabilities.  (l) ensure content aired during watershed period is appropriately classified and suitable for the period;  (m)ensure that programming on betting and gaming activities is duly authorized by Betting Control and Licensing Board   1. in subsection (2) (a) by— 2. deleting the words “cinematograph film” and substituting therefor the words “audio or audio visual content”; 3. deleting the words “or censorship” and substituting therefor the words “and rating”; 4. inserting the words “airing, streaming or” immediately after the words “approved for” 5. in paragraph (b)— 6. by deleting the word “film” and substituting therefor the word “audio or audio visual”; 7. in subparagraph (i) by deleting the word “film” wherever it appears and substituting therefor the word “audio or audio visual”; 8. in subparagraph (ii) by deleting the word “film” wherever it appears and substituting therefor the word “audio or audio visual”; 9. by deleting the word “Censorship” and substituting therefor the word “Classification” 10. by inserting the following new subsection immediately after subsection (3)—   (4) On provision of online content, all licensed broadcasters shall—   1. ensure that online content is safe, secure and does not contravene the provisions of any written law; 2. take into account trends and cultural sensitivities of the general public; 3. take corrective measures for objectionable or prohibited content; 4. ensure that prohibited content is removed immediately upon being directed by the Authority; 5. be responsible and accountable for the information published; and 6. comply with any other regulatory requirements as may be directed. | | |
| Amendment to section 46J of No. 2 of 1998. | **28.**The principal Act is amended by deleting section 46J and substituting therefor the following new section— | | |
|  | Revocation of licenses. | **46J.** If at any time the Authority determines that a Licensee —   * 1. is in breach of the provisions of the Act or regulations made thereunder;   2. is in breach of the conditions of a broadcasting licence; or   3. fails to utilize the assigned broadcasting frequencies within such period as the stipulated in the licence,   the Authority may—   1. issue an order to such a Licensee to correct the deficiency; 2. impose a penalty on such company pursuant to the Act; or 3. suspend or revoke the License. | |
| Amendment to section 46N of No. 2 of 1998. | **29.**Section 46N of the principal Act is amended in the marginal note, by deleting the word “distribution” and substituting therefor the word “distribution” | | |
| Amendment to section 46O of No. 2 of 1998. | **30**.Section 46O of the principal Act is amended—   1. in the marginal note, by deleting the word “distribution” and substituting therefor the word “distribution” 2. in subsection (2)— 3. by deleting paragraph (a) and substituting it therefor the following new paragraph—   (a) provide signal distribution services as—   * + - * 1. a common carrier to broadcasting licensees; or         2. self - provide;  1. in paragraph (b) by inserting the words “in the case of common carrier broadcast signal distributor” immediately after the word “manner”; 2. in paragraph (d) by inserting the words “free to air channel” immediately after the word “networks”. | | |
| Amendment to section 47 of No. 2 of 1998 | **31.**Section 47 of the principal Act is amended—   1. in the marginal note by inserting the words “and courier” immediately after the word “postal”; 2. in subsection (1)— 3. in paragraph (c) by inserting the words “and courier” immediately after the word “postal”; 4. in paragraph (d) by inserting the words “and courier” immediately after the word “postal”; 5. in paragraph (e) by deleting the words “fixing of”; 6. in paragraph (h) by inserting the words “and courier” immediately after the word “postal”; 7. in paragraph (i) by inserting the words “and courier” immediately after the word “postal”; 8. in paragraph (j) by inserting the words “and courier” immediately after the word “postal”; 9. in paragraph (k) by inserting the words “and courier” immediately after the word “postal”; 10. in section (2)— 11. by deleting paragraph (b) and substituting therefor the following new paragraph—   “(b) the provision of postal and courier services within the country and collaborate with the Universal Postal Union, other countries, and other regional and international organizations”;   1. in paragraph (c) by inserting the words “and courier” immediately after the word “postal”; 2. in paragraph (e) by inserting the words “and courier” immediately after the word “postal”; 3. in paragraph (f) by inserting the words “and courier” immediately after the word “postal”; | | |
| Amendment to section 48 of No. 2 of 1998 | **32**.Section 48 of the principal Act is amended—   1. in the marginal note by inserting the words “and courier” immediately after the word “postal”; 2. in subsection (1) by deleting paragraph (l). | | |
| Amendment to section 49 of No. 2 of 1998 | **33.**Section 49 of the principal Act is amended in subsection (1) by inserting the words “and courier” immediately after the word “postal”. | | |
| Amendment to section 50 of No. 2 of 1998 | **34.**Section 50 of the principal Act is amended by inserting the words “in consultation with the ministry immediately after the word “Authority”. | | |
| Amendment to section 51 of No. 2 of 1998 | **35.**Section 51 of the principal Act is amended—   1. in the marginal note by inserting the words “and courier” immediately after the word “postal”; 2. in subsection (1), in paragraph (c) by inserting the words “and courier” immediately after the word “postal”; | | |
| Amendment to section 52 of No. 2 of 1998 | **36**.Section 52 of the principal Act is amended—   1. in paragraph (c), by inserting the words “and courier” immediately after the word “postal”; 2. in paragraph (e),by inserting the words “and courier” immediately after the word “postal”; 3. in paragraph (f), by deleting the words “with the applicant for renewal of its licence” and substituting therefor the words “as and when required by the Authority” 4. in paragraph (g)— 5. by inserting the words “and courier” immediately after the word “postal”; and 6. by deleting the words “seek approval” and substituting therefor the word “notify”. 7. in paragraph (i)— 8. by inserting the words “and courier” immediately after the word “postal”; and 9. by deleting the words “with the application for renewal of its licence” and substitute therefor the words “As and when required by the Authority”. | | |
| Amendment to section 66 of No. 2 of 1998 | **37**.Section 66 of the principal Act is amended—   1. in the marginal note by inserting the words “and courier” immediately after the word “postal”; 2. inserting the following new paragraph immediately, after paragraph (f)—   “(fa) access and interconnection for postal and courier systems and services”. | | |
| Amendment to section 70 of No. 2 of 1998 | **38**.Section 70 of the principal Act is amended in the introductory statement by deleting the words “public postal” appearing immediately after the words “employee of the”. | | |
| Amendment to section 72 of No. 2 of 1998 | **39.**Section 72 of the principal Act is amended—   1. by deleting the words “public postal” appearing immediately after the words “employee of the”; 2. by inserting the words “and courier” immediately after the word “postal”; | | |
| Consequential amendment to No. 2 of 1998 | **40.**The provisions of the principal Act specified in the first column of the First Schedule are amended in the manner specified in second column thereof. | | |
| Amendment of section 78 of  No.2 of 1998. | **41.**Section 78 of the principal Act is amended by inserting the following subsection immediately after subsection (2) –  (3) The Authority shall, at least thirty days before granting a telecommunication, mobile access radio-frequency and broadcast radio-frequency licences under this Act, give notice in the Gazette and in such other manner as the Authority considers appropriate. | | |
| Amendment of section 81 of  No.2 of 1998. | **42.**Section 81 of the principal Act is amended by inserting the word “compliance and” immediately after the words “and subject to”. | | |
| Insertion of new section 82A in  No.2 of 1998. | **43.**Section 82 of the principal Act is amended by inserting the following new sections immediately after section 82 by –  **82A.** If at any time the Authority determines that a Licensee ceased to meet any of the conditions required for such a License, the Authority may, after notice and opportunity for a hearing—   * 1. issue an order to such a Licensee to correct the deficiency;   2. impose a penalty on such company pursuant to the Act; or   3. suspend or revoke such a License. | | |
| Amendment of section 83A of  No.2 of 1998. | **44.**Section 83A of the principal Act is amended by inserting the following subsection immediately after subsection (2) –  (3) The Authority may make Regulations under this section providing for penalties of up to one million shillings that shall be applicable to telecommunication equipment dealers, distributors, vendors, installers and any other relevant licence category. | | |
| Amendment of section 83C of  No.2 of 1998. | **45**.Section 83C of the principal Act is amended by inserting the following subsection immediately after subsection “h”-  (i) “Develop a framework for facilitating and promoting national cyber readiness and resilience. | | |
| Amendment of section 84U of  No.2 of 1998. | **46**.Section 84U of the principal Act is amended by inserting the word “including another licensee” immediately after the words “a customer”. | | |
| Amendment of section 84W of  No.2 of 1998. | **47.**Section 84W of the principal Act is amended -   1. by inserting the following paragraph immediately after paragraph 2(g)―   (h) to provide for salient aspects of Presumption of dominance and factors to be considered in determining significant market power;   1. by deleting subsection 3; 2. in section 7 by deleting subsection (4) and substituting therefor with the following subsection―   (4) The Authority may, by notice in the Gazette, declare a person or institution to be a “dominant telecommunications service provider” for the purposes of this Act.   1. by deleting section (5) and substituting therefor with the following new subsection –   (5) In making a declaration under subsection (4), the Authority shall consider —   * 1. the market shares of the telecommunications service provider being at least fifty per cent of the total revenue of the entire telecommunications market;   2. significant market power enjoyed by the telecommunications service provider; and   3. any other consideration the Authority may determine. | | |
| Amendment of section 85 of  No.2 of 1998. | **48.**The principal Act is amended in section 85A by—   1. inserting the words “and infrastructure sharing” immediately after the heading “co-location; 2. section 85A of the principal Act is amended by inserting the following subsection immediately after subsection 3―   (4)The Authority in consultation with the National Treasury and on the recommendation of the Cabinet Secretary may waive spectrum fees where appropriate, to facilitate the provision of universal service in unserved and underserved areas of Kenya. | | |
| Amendment of section 87 of  No.2 of 1998. | **49.**The principal Act is amended by deleting section 87. | | |
| Amendment of section 89 of  No.2 of 1998. | **50**.The principal Act is amended in section 89 by inserting the following new subsection after subsection 5—  **89.** (6) Without prejudice to the foregoing provisions, the provisions of sections 118, 119 and 120 of the Criminal Procedure Code (Cap. 75) shall, so far as may be, apply to search warrants issued under this section. | | |

**MEMORANDUM OF OBJECTS AND REASONS**

The purpose of the Bill is to amend the Kenya Information And Communications Act in order to *inter alia* address emerging issues in the Act.

The Bill contains 50 clauses , and in particular:

**Clause 1 of the Bill**

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

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

**Statement on how the Bill concerns county governments**

The Bill is one that concerns county governments in terms of Article 110(1)(a) of the Constitution.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution**

This is a money Bill within the meaning of Article 114 of the Constitution.

**Dated the …………………………………………………, 2023.**

**ELIUD OWALO, FIHRM**

***Cabinet Secretary for Information, Communications and The digital Economy***