BRIEF COMMENTS ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2013 07072013

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| CLAUSE | PROPOSED | COMMENTS | PROPOSAL |
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| **2(a)** | deleting the Definition of “Commission” and by inserting, in its proper alphabetical position, the following new definition of “Authority | CCK is already a well-established brand with over 1,000,000 hits on the internet. What is driving the need to rename? Globally either of the words is used. See http://en.wikipedia.org/wiki/List\_of\_telecommunications\_regulatory\_bodies |  |
| **2(c )** | new definition of “telecommunication service” by inserting a new paragraph (iv) at the end thereof as follows—  (iv) any transaction, including banking, money transfers or similar service carried out through a communication system. | The definition of telecommunication is given in the EAC Treaty, Comesa Treaty; and ITU Constitution and Convention is different.  Will online banking be part of this proposed new and therefore subject to regulation by the Commission/Authority? | Not supported |
| **5** | New section 5A (2)( b):  --implement public policy--- | What is the meaning of public policy? | Delete proposed 5A(2)(b) |
| **6B(1)(b)(iii)** | Selection panel to include Board of the Authority | Should Board members should interview themselves? | Delete |
| **6B(1)(b)(vii)** | Private Sector | Who is private sector and how do you determine the representative from “private sector”? | Be specific on which organisation from the private sector or delete. |
| **6D(3)** | Removal procedure for Board members | The Cabinet Secretary is being given sole discretion to remove Board Members? | Constitute a panel to consider complaint filed against Board and act on recommendation of the panel |
| **9(a)** | Amendment of Section 23 of the Act in subsection (1) by deleting the words “telecommunication services and in particular, emergency, public payphone and directory information services” appearing immediately after the word such and substituting therefor the words “basic communication products and services”; | What is the definition of “basic communication products and services”. | Maintain original text and perhaps amend to include what is current and exclude what is redundant. |
| **9(b)(i)** | Amendment of Section 23 of the Act in subsection (2) by deleting the word “telecommunications’ appearing in paragraphs (a) and (b) and substituting therefor the words ‘basic products and services”; | What are “basic products and services”? They cannot have the same meaning as telecommunications | Retain original text |
|  | Amendment of Section 23 of the Act in subsection (2) by deleting the word “telecommunications’ appearing in paragraph(c) and substituting therefor the word “communications” | Communications does not mean telecommunications  Definition of **TELECOMMUNICATIONS**: Technology and science associated with communications over distances.- Black's Law Dictionary   Definition of  **COMMUNICATIONS:** symbolic or verbal means to send a message  "telecommunications" means any form of transmission, emission or reception signals, writing, images  and sounds or intelligence of any nature by wire, radio, optical or other electro-magnetic systems; EAC,COMESA,ITU. | Retain original text |
| **17** | Section 48 of the principal Act is amended in subsection (1) by deleting the word “shall” and substituting thereof the words “may”. | This a new way to open up duplicate and/or parallel for providing postal services such as P.O. Boxes, Zip Codes, etc. And who know what goods will be carried in the parallel postal systems? | Retain original text. |
| **19.** | The principal Act is amended by inserting the words “AND CYBERCRIME” in the heading to Part IVA. | Cybercrime is an offence and should not appear in the title | Retain original heading |
| **20(b)(h)** | Section 83C of the principal Act is amended by inserting a new paragraph immediately after paragraph (f) as follows:  (h) “develop a framework for facilitating the investigation and prosecution of cybercrime offences” | Investigation and prosecution of crimes if the work of law enforcement agencies and this role should not be assigned to the regulator. |  |
| **21** | The principal Act is amended by deleting sections 83E (2), | Electronic certification service providers will be responsible for issuing electronic/  Digital signatures. They cannot be allowed to operate as they wish without any regulation | Retain original text |
| **21** | The principal Act is amended by deleting sections 83U to 84I, both sections inclusive | These sections (83U-83I) are the provisions for potential cybercrimes. Deleting them creates a gap in prosecution of cyber offences. | Retain original text |
| **30** | Section 84W of the principal Act is amended by deleting the word “telecommunication” wherever it appears and substituting therefor the word “communication” | Communications does not mean telecommunications | Retain original text |
| **31** | Section 102 of the principal Act is amended by deleting subsection (1) and substituting the following new subsection…… | By deleting the whole of subsection (1), we remove the provisions for establishment and composition or the Tribunal | Retain Section 1 with amendments to meet the requirements of the Constitution |
| **32(3)** | there shall be three slots for representatives from the broadcasting, telecommunications and postal sectors to attend Council meetings as observers | The IT subsector is an important one in the ICT industry | Include a representative from the IT sector |
| **35** | The Second Schedule to the principal Act is amended by deleting paragraph 1 | Deleting paragraph 1 of Second Schedule removes the provision for how long Tribunal members will serve | Retain original text with amendments, if any. |