Approved
SNA
24/4/24

THIRTEENTH PARLIAMENT (THIRD SESSION)

DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND INNOVATION

………………………………………………………………………………………………

REPORT ON THE CONSIDERATION OF KENYA INFORMATION AND COMMUNICATION (AMENDMENT) BILL, 2022 (NATIONAL ASSEMBLY Bill No. 52 of 2022)

PUBLISHED BY:

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

2024

TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS

CA	Communications Authority of Kenya
CCK	Communication Commission of Kenya
ICT	Information, Communication Technology
KICA	Kenya Information and Communications Act
MP.	Member of Parliament
N.A	National Assembly
NP	Network Experience
QoS	Quality of Service
QoE	Quality of Experience
USF	Universal Service Fund

LIST OF ANNEXURES

Annexure 1	Adoption List
Annexure 2	Minutes of the Committee
Annexure 3	National Assembly Advertisements in the local dailies dated 16th August, 2023
Annexure 4	Written submissions

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Kenya Information and Communications (Amendment) Bill *(National Assembly Bill No. 52 of 2022)*. The Bill was published on 10th November 2022, read the First Time on 9th August 2023 and committed to the Departmental Committee on Communication, Information and Innovation for review and reporting to the House pursuant to Standing Order 127.

The Bill seeks to amend the Kenya Information and Communications Act Cap. 411A to enable persons operating telecommunication systems or providing telecommunication service to engage in any other business and provide for the separation of such other business from the telecommunication business. The Bill also seeks to amend the Act to make provision for quality of service to consumers making calls by compelling licensees in the telecommunication industry to invest in infrastructure that will guarantee the quality of service for consumers making calls. This seeks complement the provisions of Article 46 of the Constitution. The Bill further seeks to amend the Act in order to improve the management of the Universal Service Fund by the Communications Authority of Kenya by expanding the objectives of the Fund, prescribing the requirement for reporting to the Communications Authority on how the Fund is being utilized, enumerating the formula for distribution of monies from the Fund and prescribing offences.

Following the placement of adverts in the print media on 16th August 2023 requesting for comments and memoranda on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from Ministry of Information, Communication and Digital Economy, Safaricom PLC and Communications Authority of Kenya. Upon receipt of the memoranda, the Committee held a total of five (5) meetings to consider the Bill and the submissions which are incorporated in this report. A total of five (5) memoranda were received from institutional stakeholders in the ICT sector. Thereafter, the Committee proceeded for a report writing retreat which provided the opportunity to consider the submissions of the stakeholders and to further draft, consider and approve its report.

On behalf of the Departmental Committee on Communication, Information and Innovation and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the KICA (Amendment) Bill, 2022 (N.A. Bill No. 52 of 2022). The Committee is grateful to Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the Ministry of Information Communication and Digital Economy, the Communications Authority of Kenya and Safaricom PLC Ltd for submitting their comments on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the KICA (Amendment) Bill, 2022 (N.A. Bill No. 52 of 2022) and has the honour to report to the National Assembly with the recommendation that the Bill be should **not be proceeded** with.

Hon. John Kiarie, M.P.
Chairperson, Committee on communication, information and Innovation.

PART ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Communication, Information and Innovation is one of the Departmental Committees of the National Assembly established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows:
   i. ***To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;***

   ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*

   iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*

   iv. *To study and review all legislation referred to it;*

   v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*

   vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*

   vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*

   viii. *To examine treaties, agreements and conventions;*

   ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*

   x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*

   xi. *To examine any questions raised by Members on a matter within its mandate.*

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to oversee: Communication, information, media and broadcasting (except for broadcast of parliamentary proceedings), information technology, communication technology, including development and advancement of technology, data protection and privacy, cyberspace and cyber-security, artificial intelligence, block-chain technology, and other emerging technologies.

3. In executing its mandate, the Committee oversees the State Department for ICT and the Digital Economy.

1.2 Committee Membership

4. The Departmental Committee on Communication, Information and Innovation was constituted by the House on Thursday, 27^{th} October 2022 and comprises the following Members:

Chairperson
Hon. John Kiarie Waweru, MP
Dagoretti South Constituency
UDA Party

Vice Chairperson
Hon. Alfah Miruka Ondieki, MP
Bomachoge Chache Constituency
UDA Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu East Constituency
Independent Member

Hon. Erastus Kivasu Nzioka, MP
Mbooni Constituency
WDM-K Party

Hon. Joseph Kipkosgei Tonui, MP
Kuresoi South Constituency
UDA Party

Hon. Bensuda Joyce Atieno Osogo, MP
Homabay County
ODM Party

Hon. Bernard Kibor Kitur, MP
Nandi Hills Constituency
UDA Party

Hon. Geoffrey Wandeto Mwangi, MP
Tetu Constituency
UDA Party

Hon. Gideon Kipkoech Kimaiyo MP
Keiyo South Constituency
UDA Party

Hon. Flowrence Jematiah Sergon, MP
Baringo County
UDA Party

Hon. Irene Nyakerario Mayaka, MP
Nominated Member
ODM Party

Hon. Kakuta Maimai Hamisi, MP
Kajiado East Constituency
ODM Party

Hon. Khalif Ali Abdisirat MP
Nominated Member
UDA Party

Hon. Mumina Gollo Bonaya, MP
Isiolo County
Jubilee Party

Hon. Umulkher Harun Mohamed, MP
Nominated Member
ODM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff secretariat:

Ms. Nuri Kitel Nataan
Clerk Assistant II

Mr. Sakana Saoli
Clerk Assistant III

Ms. Marlene Ayiro **Principal Legal Counsel**	Mr. Githinji Wanjohi **Research Officer III**
Mr. Thomas Ogwel **Fiscal Analyst I**	Mr. Boaz Chebiego **Research Officer III**
Ms. Winfred Kizia **Media Relations Officer**	Ms. Pauline Njuguna **Hansard Reporter**
Mr. Manuel Leparachao **Sergeant At Arms**	Mr. Kelvin Lengasi **Audio Officer**

PART TWO

2 BACKGROUND OF THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2022

2.1 SITUATIONAL ANALYSIS

6. The Kenya Information and Communications Act (KICA) Cap. 411A is a law that regulates the information and communications sector in Kenya, including broadcasting, multimedia, telecommunications, postal services and electronic commerce. The act was first enacted in 1998 as the Kenya Information Communications Act (KICA) to replace the Kenya Posts and Telecommunications Corporation Act of 1977. KICA was amended in 2009 as the Kenya Communications (Amendment) Act (KCAA) to address issues such as media freedom, content regulation, competition and consumer protection. The KCAA was further amended in 2013 as the Kenya Information and Communications (Amendment) Act (KICAA) to align the ICT sector with the new constitution of 2010, rename the Communications Commission of Kenya (CCK) to the Communications Authority of Kenya (CA), and give the CA additional mandate of managing the country's cyber security.

7. KICA has been instrumental in facilitating the development of the ICT sector in Kenya, which has witnessed significant growth and innovation over the years. Some of the achievements of KICA include:

   i. Promoting competition and diversity in the ICT market, leading to lower prices, improved quality and increased access for consumers
   ii. Establishing a Universal Service Fund to support the provision of ICT services to underserved and marginalized areas
   iii. Enhancing consumer protection and empowerment through mechanisms such as complaints handling, quality of service monitoring, tariff regulation and SIM card registration
   iv. Supporting the development of local content and culture through broadcasting licensing, programme codes and access to public interest programmes
   v. Strengthening the independence and autonomy of the CA as the regulator of the ICT sector, as well as ensuring its accountability and transparency
   vi. Enhancing the security and resilience of the ICT infrastructure and systems, as well as combating cybercrime and safeguarding online rights.

2.2 COMPARATIVE ANALYSIS

2.2.1 South Africa

On Universal Service

8. The **Universal Service and Access Fund (USAF)** was established under the Electronic Communications Act (ECA) to fund projects and programmes that strive to achieve universal service and access to ICTs by all South African citizens.

9. In accordance with the ECA, this fund is utilised exclusively for payment of subsidies for:

   i. Assistance of needy persons towards the cost of the provision to or the use by them of broadcasting and electronic communications services,

ii. Financing the construction or extension of electronic communications networks in under-serviced areas,
iii. The procurement of broadcasting and electronic communications network services and access to electronic communications networks for schools and further education and training institutions,
iv. The establishment and operation of broadcasting services and the establishment and operation of, including training of and the payment of allowances to personnel of centres where access to electronic communications networks can be obtained.
v. Every holder of a license granted or deemed to have been granted in terms of the ECA is mandated to make prescribed contributions to the USAF

10. The South African Electronic Communications Act, 2005 provides for two types of licenses for electronic communications services and networks:
    i. Individual licenses for services or networks that need to use scarce resources, such as radio frequency spectrum or telephone numbers. These resources are limited and need to be allocated efficiently and fairly. Individual licenses are more specific and tailored to the needs and obligations of the licensee.
    ii. Class licenses for services or networks that do not need to use scarce resources, such as internet service providers or community broadcasters. These services or networks are more general and common, and do not need special allocation or regulation. Class licenses are more generic and flexible for the licensee.

On telecommunication companies engaging in other business

11. The South African Electronic Communications Act, 2005 regulates the licensing of electronic communications services and networks by the Independent Communication Authority of South Africa (ICASA).

12. The law also allows licensees to provide other services that are incidental to their licensed services, such as value-added services or content services. These services are not regulated by ICASA, but by other laws and authorities.

13. The South African Electronic Communications Act, 2005 empowers ICASA to prescribe quality of service standards and obligations for electronic communications services and networks 2. It also obliges electronic communications service licensees to provide consumers with information on the quality of service they offer and the procedures for lodging complaints.

2.2.2 Namibia

14. The Communications Act, 2009 was enacted by the Parliament of Namibia on 16th November 2009 and came into force on 18th May 2011. The Act promote the development of a competitive, efficient and accessible communications industry that serves the social, economic and cultural needs of Namibia and its people.

On telecommunication companies engaging in other business

15. The Nambian Communication Act allows telecommunication operators to engage in other businesses, subject to the approval of the Namibian Communications Commission (NCC). This is to promote competition and innovation in the telecommunications sector.

16. The Nambian Communication Act also provides a regulatory framework for telecommunication operators that engage in other businesses, to ensure there is no abuse of the market power.

On Quality of Service (call drops)

17. The NCA requires telecommunication operators to invest in infrastructure ensuring adequate coverage and quality of service for consumers. The NCA also sets quality of service standards that telecommunication operators must meet.

18. The NCA establishes a Universal Service Fund (USF) to provide financial assistance to telecommunications operators to help them expand their networks to underserved areas. The NCA also sets out the rules for managing and utilizing the USF.

2.2.3 Nigeria

19. The mandate of the Nigerian Communications Commission is established in the Nigerian Communications Act 2003, which was enacted on July 2003. The Act provides the NCC with the capacity to properly carry out its Regulatory functions and activities.

On telecommunication companies engaging in other business

20. The NCA allows telecommunication operators to engage in other businesses, but it also imposes certain restrictions. For example, the Act requires telecommunication operators to obtain the approval of the Nigerian Communications Commission (NCC) before they can engage in any other business.

21. The NCA also sets out several rules and regulations that telecommunication operators must follow when they engage in other businesses.

On Quality of Service (call drops)

22. The NCA requires telecommunication operators to invest in infrastructure to improve the quality of service for consumers. The Act sets out several Quality of Service (QoS) standards that telecommunication operators must meet. For example, the Act requires telecommunication operators to ensure that their networks are available 95% of the time.

23. The NCA establishes a Universal Service Fund (USF) to provide financial assistance to telecommunications operators to help them expand their networks to underserved areas. The Act sets out several rules and regulations that govern the management and utilization of the USF.

2.2.4 India

On Quality of Service (call drops)

24. The Telecom Regulatory Authority of India (TRAI), the telecommunication regulatory body in India published the Telecom Consumers Protection (Ninth Amendment) Regulations, 2015. This regulation was set to offer consumers one Rupee (INR 1) compensation for every call drop with a daily cap of 3 calls.

25. The regulation was challenged in court and the Supreme Court of India decided in 2016 to strike down penalties levied by the regulator on call drops. The Supreme Court said the following about the regulation, "We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable.

26. Also, the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such a consumer, is also manifestly arbitrary and unreasonable."

2.2.5 United States

27. The Telecommunications Act of 1996 (TCA) is the principal law governing the telecommunications sector in the United States. It has provisions allowing telecommunication operators to engage in other businesses, improving the quality of service for consumers making calls, and enhancing the management and utilization of the Universal Service Fund.

28. The TCA is a federal law that was enacted to promote competition and innovation in the telecommunications industry. The TCA has provisions for:

   i. Deregulating the telecommunications industry: The TCA repealed many of the restrictions that were imposed on the telecommunications industry by the 1934 Communications Act. This allowed telecommunications companies to compete more freely with each other.
   ii. Reducing the number of regulatory agencies: The TCA created the Federal Communications Commission (FCC) as the primary regulator of the telecommunications industry. This reduced the number of regulatory agencies that telecommunications companies had to deal with.
   iii. Promoting competition in the long-distance market: The TCA allowed long-distance companies to compete for the first time. This led to lower prices and better service for consumers.
   iv. Promoting competition in the local telecommunications market: The TCA required local telephone companies to open their networks to competition. This allowed other companies to offer long-distance, internet, and other services over the local telephone network.
   v. Protecting consumers: The TCA established the Universal Service Fund (USF) to ensure that all Americans have access to affordable telecommunications services. The USF is funded by a surcharge on all telecommunications bills.

On Universal Service Fund provisions

29. Section 254 of the Telecommunications Act of 1996 broadened the conventional objective of universal service by encompassing enhanced accessibility to telecommunications and cutting-edge services, such as high-speed Internet, for all consumers at fair, equitable, and economical rates.

30. Funding for the Universal Service Fund is derived from contributions made by telecommunications providers, which are determined through an assessment of their interstate and international end-user revenues. It is used to provide financial assistance to telecommunications operators to help them expand their networks to underserved areas.

31. The FCC has established four programs within the USF to implement the statute. The programs are:
   i. Connect America Fund for rural areas
   ii. Lifeline for low-income consumers including initiatives to expand phone service for residents of Tribal lands.
   iii. Schools and libraries (E-rate) - provides subsidies for Internet access and general telecommunications services to schools and libraries

iv. Rural health care - provides subsidies to health care providers for telehealth and telemedicine services.

PART THREE

3 OVERVIEW OF THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2022

3.1 Introduction of the Bill

32. Section 2 of the Kenya Information and Communication Act, 1998 (hereinafter referred to as the Act), defines both telecommunication systems and telecommunication services as—

*"**Telecommunication system**" means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of—*

i. speech, music and other sounds;
ii. visual images;
iii. data;
iv. signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sound, visual images or data; or
v. signals serving for the activation or control of machinery or apparatus and includes any cable for the distribution of anything falling within (i) to (iv) above;

*"**Telecommunication service**" means any of the following—*

i. a service consisting of the conveyance by means of a telecommunication system of anything falling within subparagraphs (i) to (v) in the definition of "telecommunication system";
ii. a service consisting of the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system; or
iii. a directory information service, being a service consisting of the provision by means of a telecommunication system of directory information for the purposes of facilitating the use of a service falling within subparagraph (i) above and provided by means of that system;

33. Section 25 of the Act mandates the Communications Authority of Kenya to license a person to either operate a telecommunication system or provide telecommunication services. Further, section 83 of the Act requires the Communications Authority of Kenya to maintain registers for licenses issued under the Act. In line with this provision, the Communications Authority has published a telecommunications services registry in its website, which includes inter alia, Safaricom PLC, Airtel Networks Kenya Limited, Telkom Kenya Limited, Jamii Telecommunications Limited and Seacom Kenya Limited.

34. These telecommunication operators and services providers are licensed to either operate telecommunication systems or provide telecommunication services as described above. However, they also engage in other businesses which are not described as telecommunication services. These businesses include financial businesses such as mobile transfer services and mobile money lending services which are not regulated by the relevant regulators thereby leading to anti-competitive practices.

35. This Bill therefore seeks to allow telecommunication operators or service providers to engage in other businesses, other than telecommunication services, subject to regulation.

3.2 Purpose of the Bill

36. The principal object of the Bill is to amend the Kenya Information and Communications Act Cap. 411A to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for the separation of such other business from the telecommunication business.

37. The amendments will provide for a regulatory framework for such business as the proposed amendment provides for reporting by the Communication Authority of Kenya on compliance with the proposed provision and penalty for non-compliance. The amendment will further aid in control of anti-competitive practices by the large industries in the sector. This complies with *Article 27* of the Constitution which provides for freedom from discrimination.

38. The Bill further seeks to amend the Act to make provision for quality of service to consumers making calls by compelling licensees in the telecommunication industry to invest in infrastructure that will guarantee quality of service for consumers making calls. This implements the provisions of **Article 46** of the Constitution.

39. The Bill also seeks to amend the Act to improve the management of the **Universal Service Fund** by the Communications Authority of Kenya by expanding the objectives of the Fund, prescribing the requirement for reporting by the Communications Authority on how the Fund is utilized, enumerating the formula for distribution of monies from the Fund and prescribing offences.

3.3 Overview of the Bill

40. The Bill contains 4 clauses.

41. The Bill therefore proposes the following——

(a) To amend the Bill by inserting a new section after section 25.

42. This new section provides that a person operating a telecommunication system or providing a telecommunication service may engage in any other business provided that such person shall—

(i) obtain the relevant licenses from the respective regulators of any industry or sector ventured into;
(ii) legally split or separate the telecommunication business from such other business; and
(iii) provide separate accounts and reports in respect of the business carried out.

43. The amendment also provides for an offence for any person who provides any service without the relevant licence.

44. The amendment also requires any person who was operating a business that does not comply with the section to comply within 6 months of coming into force of the section.

Further, the Communication Authority shall, within 6 months of coming into force of the section, report to Parliament on the extent to which this section has been implemented.

(b) To amend the Bill by inserting a new section after section 34.

45. This new section provides that a licensee is liable to credit a consumer who initiates a call that gets cut out after a connection by **ten shillings worth of airtime** for each call drop within its network for a maximum of three call drops per day.

46. This amendment ensures quality control over telecommunication operators and service provides by compensating consumers for experiencing multiple call drops.

(c) To amend section 84J.

47. This amendment deletes subsection (2) and substitutes therefor a new subsection which provides that the objects and purpose of the Universal Service Fund shall be to—

    (i) promote the availability of quality services at just, reasonable and affordable rates for all consumers;
    (ii) increase nationwide access to advanced telecommunications services;
    (iii) advance the availability of such services to all consumers, including those in low income, and rural areas;
    (iv) increase access to telecommunications and advances services in schools, libraries and rural health care facilities;
    (v) provide equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs; and
    (vi) support capacity building and promote innovation in information and communication technology services.

48. The amendment also provides that the Communications Authority of Kenya shall submit to the National Assembly a report on the total amount of money collected in a financial year, activities undertaken to implement objectives of the Fund and the extent to which the objectives were achieved.

49. The amendment further provides for a formula of utilization of the Fund in the following way—

    (i) sixty percent of the Fund to be used for ensuring the availability of telecommunication services to all consumers, including those in low income and rural areas;
    (ii) twenty percent of the Fund to be used for increasing access to telecommunications and advanced services in schools, libraries and rural health care facilities;
    (iii) ten percent of the Fund to be used for ensuring increased nationwide access to advanced telecommunications services; and
    (iv) ten percent of the Fund to be used for furthering the objectives of the Fund.

50. The amendment also provides for an offence for any person who fails to utilize the Fund in the prescribed manner.

3.4 Consequences of the Bill

51. The Bill seeks to put in place a legal framework that allows telecommunication operators and service provides to engage in other businesses. The Bill also seeks to protect consumers from call drops thereby guaranteeing quality service. Lastly, the Bill seeks to expand the objects of the Universal Service Fund and prescribe the utilization of monies from the Fund.

PART THREE

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

52. Following the call for memoranda from members of the public through the placement of adverts in the print media on 16th August 2023 requesting comments on the Bill and invitation of stakeholders vide letter Ref: NA/DDC/CII/2023/033 and Ref: NA/DDC/CII/2023/034 dated 14th September 2023, the Ministry of Information, Communication and Digital Economy, Safaricom PLC Ltd and Communications Authority of Kenya submitted their views on the Bill.

53. The stakeholders submitted as follows:

3.1 THE SAFARICOM PLC LTD

The Safaricom PLC Ltd through a letter Ref: R&PP/Policy-Submissions/KICA/08-23 dated 22nd August 2023 submitted as follows:

Section 25A(1)

54. Safaricom PLC Ltd proposes the deletion of the section in its entirety since with continued advances in technology, traditional barriers separating industries and services have continued to be eliminated. Globally, telecommunication companies are evolving into technology companies as a means of innovation to offer a portfolio of services to customers that provide ease of access at a central point.

55. According to the company, the proposal is a hindrance/barrier to innovation and does not reflect international best practices.

56. Furthermore, they observed that the law should evolve to support and facilitate the market players to compete with other global technology companies. The amendment does not consider the constantly evolving digital world where innovation becomes the differentiator that enables players to remain relevant and hence will curtail innovation, investment and hamper continued growth and innovation of the sector.

57. Equally, failure to obtain other licenses as required by other regulators other than the Communications Authority of Kenya have their consequent penalties/ offences.

58. Finally, the Authority has the power to renew, vary, modify or revoke any license granted under the principal Act and that would be sufficient as a correcting/guiding mechanism in so far as licensing.

Committee Observations/ Recommendations

The Committee agreed with this proposal as the ICT Sector was evolving with each passing day and there was no need to come up with laws that would stiffle innovations.

Section 34A (1)&(2)

59. The amendment proposes that the principal Act be amended by inserting a new section immediately after section 34.

60. The Safaricom PLC proposes the deletion of the section in toto stating that the provision is unclear as there are no definitions given for "call drop", "cut out after a connection",

and "inevitable accident". Safaricom noted that the reason for call drops were varied and, in many instances, had no correlation to the performance of a licensed service provider's network. They observed that the amendment was bound to result in frivolous disputes between Mobile Network Operators and their customers.

61. Equally, the they observed that the aspect of dropped calls is sufficiently covered under the telecommunications regulatory framework in Kenya, specifically, the Quality of Service (QoS) Framework by the Communications Authority of Kenya ("CA") and the licences issued to service providers. This makes the amendment duplicitous.

Committee Observations/ Recommendations

The Committee agreed with this proposal as there was already in existence a telecomunications regulatory framework on provision of quality services.

Section 84J

62. In the Bill it is proposed that an amendment be made on section 84J of the principal Act–

a) by deleting sub-section (2) and substituting therefore the new sub- section (2)

63. The Safaricom observed that **Section 84J of the principal Act is amended by inserting the following new sub-sections immediately after sub- section (3)- The Authority shall in each financial year submit to the National Assembly a report indicating-**

(a) **the total amount of money that was collected for the respective financial year;**
(b) **the activities the Authority undertook to implement the objectives of the Fund;**
(c) **the extent to which the objectives of the Fund were achieved.**

Committee Observations/ Recommendations

The Committee adopted this recommendation.

64. The objective of the Universal Service Fund (USF) is currently provided under the Kenya Information and Communications (Universal Access and Service Fund) Regulations, 2010. To avoid being prescriptive in the principal Act, Safaricom PLC Ltd proposes that these are maintained in the Regulations to allow for flexibility in reviewing the same from time to time.

65. Further Safaricom noted that these objectives were agreed upon following extensive public and stakeholder consultations prior to the implementation of the Fund. It is on this basis that the Communications Authority of Kenya (CA) (who is the manager and administrator of the USF) conducted an Access Gap Studies in 2010 and a subsequent study in 2015. It is also on this basis that the CA commenced the implementation of the USF.

66. They suggest that the proposed new sub-sections (5) and (6) apportioning the distributions of the USF be removed.

Committee Observations/ Recommendations

The committee agreed with this proposal as amendments on the USF objectives were best done in the regulations that can be amended easily from time to time.

67. Safaricom PLC ltd informed the Committee that they had objection to the proposed new sub-section (4) as it would enhance governance and accountability of the USF.

Committee Observations/ Recommendations
The Committee adopted this proposal.

3.2 The Ministry of Communication, Information and the Digital Economy (State Department of Broadcasting and Telecommunications)

The Ministry of Communication, Information and the Digital Economy (State Department of Broadcasting and Telecommunication) and the Communication Authority submitted as follows:

Section 25A – Structural Separation

68. The State Department through the Communications Authority of Kenya as the regulator of ICT encourages innovation in the industry. The State Department noted that ICTs have proliferated the convergence of services, by providing a platform through which other services are facilitated. In this regard, the Ministry did not desire to cripple this by mandating the telecommunication service providers to have each innovation running on different platforms by splitting the business. They were, however, not opposed to the separation of accounts.

69. Moreover, the proposal placed undue regulatory burden on licensees of a particular sub-sector (telecommunications), yet licensees in the other sub-sectors (i.e. broadcasting, postal, courier) also engage in other services that are not licensed under KICA. There is a regulatory framework for the promotion of fair competition and equal treatment in the sector which provides for protection against abuse of market power and other anti-competitive practices including prohibiting cross-subsidization of one business from another.

70. The Ministry through the State Department of Broadcasting and Telecommunications therefore proposed to the Commitee that these amendment be withdrawn.

Committee observations/Recommendations
The Committee agreed with the Ministry as there was no need of crippling innovations. Further there was a regulatory framework for the promotion of fair competition and equal treatment in the sector.

Section 34A – Compensation for call drops

71. The Ministry submitted that call drops brought concerns about the Quality of Service (QoS) as they are a result of inefficient service delivery on the part of the Mobile Network Operators. This inconveniences consumers and may interfere with business operations or commercial transactions.

72. While they noted that call drops may result from a range of issues, they stated that they were keen on protecting consumers and ensuring licensees adhere to the set quality of service standards. Call drops were said to be just one aspect of quality of service and it forms part of the End-to-End QoS. The End-to-End QoS measurement parameters include:

a) Voice Telephony (Speech) parameters:
- Unsuccessful call ratio
- Dropped call ratio
- Call set up time
- Voice Quality (MOS, POLQA)
- Handover

b) Data parameters: (Local Websites and Common searcch engines like Google)
- Latency (delays and buffering)
- Data transfer failure ratio and throughput of successful data transfer
- Internet Accessibility
- HTTP set-up failure ratio and HTTP set-up time
- HTTP completion failure ratio and HTTP completion time
- HTTP generic scenario availability

c) SMS parameters:
- Successful SMS ratio
- Completion rate for SMS
- End-to-End delivery time for SMS

73. Other than End-to-End QoS, the Authority also assesses Network Performance (NP) QoS and Quality of Experience (QoE) assesment. The proposal of penalising each call drop is therefore very punitive and may become a hinderance to service rollout. Call drops are just one aspect of quality of service.

74. The Ministry therefore proposed that the amendment be withdrawn.

Committee observations/Recommendations

The Committee agreed with the proposal from the Minsitry that penalising each call drop was punitive and if anything call drops was just one aspect of quality service. There is in existence regulations under the Act that regulate the overall aspect of quality.

Section 84J

On this proposal, the Ministry was of the opinion that:

75. The current s84J of KICA is comprehensive and sufficient as is:

S84J (2) provides as follows:
(2) The object and the purpose of the Fund shall be to support widespread access to, support capacity building and promote innovation in information and communications technology services.

76. The Ministry observed that the proposal posed the following challenges:

i. The proposalseeks to mandate the fund to intervene in making all ICT service affordable, which may not be practical to implement given the limited size of the fund. Interventions geared to fostering affordability could be limited to persons living with disability.

ii. The proposal was exclusionary on utilisation of the fund to the broadcasting, postal and courier services sub-sectors who are also contributors.

iii. Detailed objectives of the fund were captured under the USF regulations to ensure flexibility during the administration of the fund. Capturing the specific objectives of the fund under the Act has a risk of slowing the implementation process in the event of emerging needs that would require urgent review. The ministry therefore proposed that the submissions in the proposal be considered during a review of the USF regulations.

Committee observations/Recommendations

The Committee agreed with the proposal from the Minsitry the objectives were well provided for in the USF regualtions

77. Transparency and Accountability on utilisation of the fund:
The new section 4 was said to be in order, however, the Ministry noted that there was already in existence a reporting mechanism to the Auditor General, whose report is usually submitted to the Parliamentary Investments Committee and the Public Accounts Committee. Further, the Authority submits the report to the Cabinet Secretary Ministry of Information, Communications and the Digital Economy. It was their view that the existing reporting requirements were sufficient and in line with the new proposal.

78. The allocation of sixty per cent to the telecommunications sub-sector was exclusionary on utilisation of the fund to the broadcasting, postal and courier services sub-sectors who were also contributors. They proposed a review of the proposed sub-section 5 (a) to read as follows: "sixty per cent of the fund shall be utilized to facilitate access to and use of communications infrastructure and services throughout the Republic of Kenya, focussing on rural, remote, sparsely populated, unserved and under-served areas including persons with disability in order to promote social and economic development.'

79. The proposed an amendment of the proposed sub-section 5(b) to read as follows: "Twenty per cent of the fund shall be used to facilitate the introduction and expansion of communication services and schools, libraries and health facilities giving priority to rural and low-income areas."

80. Review of the proposed sub-section 5(c) was suggested as follows: "ten per cent of the fund shall be used to facilitate the development of innovations, relevant local content and capacity building programmes to enhance the adoption and use of ICTs."

81. Protection from personal liability. Section 15 of KICA protects personnel from prosecution provided they act in good faith when executing their duties. It states that: "... no matter or thing done by a member of the Board or by any officer, employee or agent of the Commission shall if the matter or thing is done bona fide for executing the functions, powers or duties of the Commission under this Act render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever."

Committee observations/Recommendations

The Committee noted that the proposal from the Minsitry to amend the provisions of sub-section 5, to provide for clarity on how the Universal Service Fund was to be utilized should be adopted in the comprehensive amendments that Ministry was providing.

PART FOUR

4 COMMITTEE OBSERVATIONS

Upon reviewing the Bill, the Committee observed as follows:

82. A similar Bill, sponsored by the same Member, was considered in the 12th Parliament. The Kenya Information Communications (Amendment) Bill, 2019 (National Assembly Bills No. 20 of 2019) it was read for a first time on 25th September, 2019. A report was tabled on 28th November 2019. The Bill was read for a Second Time but the Committee Stage was pending hence it lapsed in the 12th Parliament.

83. Section 25 of the Kenya Information and Communication Act mandates the Communications Authority of Kenya to license a person to either operate a telecommunication system or provide telecommunication services.

84. Further, section 83 of the Act requires the Communications Authority of Kenya to maintain registers for licenses issued under the Act

85. With continued advances in technology, traditional barriers separating industries and services ought to be eliminated so as not to stifle innovations

86. The objectives of the Universal Service Fund (USF) are currently provided for under the Kenya Information and Communication (Universal Access and Services Fund) Regulations 2010.

87. It is easier to amend the objectives of the USF as provided for in the regulations as opposed to amending an Act of Parliament.

88. The Ministry is in the process of formulating a comprehensive review of the Kenya Information and Communication Act Cap. 411A and the same will be forwarded to the Committee.

PART FIVE

5.0 COMMITTEE RECOMMENDATION

The Committee having considered the Kenya Information Communications (Amendment) Bill (N.A. Bill No. 52 of 2022) recommends that the the Bill should **not be proceeded with.** The Ministry of Information, Communication and Digital Economy (Deaprtment of Broadcasting) is in the process of carrying out a comprehensive review of the Kenya Information and Communication Act Cap. 411A, therefore these amendment(s) should be included in the comprehensive amendments once the Bill is submitted to Parliament and published.

SIGNED..DATE..

HON. JOHN KIARIE, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND INNOVATION

REFERENCE

[1] The South African Electronic Communications Act, 2005 empowers ICASA to prescribe quality of service standards and obligations for electronic communications services and networks .

https://koassociates.co.ke/insight/kica-amendment-bill-2022-seeks-to-separate-telecommunication-service-providers-from-businesses-outside-the-licensed-parameters/

[1] The Communications Act, 2009 https://www.lac.org.na/laws/annoSTAT/Communications Act 8 of 2009.pdf

https://www.lac.org.na/laws/annoSTAT/Communications%20Act%208%20of%202009.pdf (https://www.lac.org.na/laws/annoSTAT/Communications%20Act%208%20of%202009.pdf)

[11] Dropped calls may earn you re 1 compensation. The Economic Times. (2016, October 16). https://economictimes.indiatimes.com/industry/telecom/dropped-calls-may-earn-you-re-1-compensation/articleshow/49389019.cms

[1] Telecom Consumers Protection (ninth amendment) regulations, 2015. Telecom Regulatory Authority of India. (2020, September 1).

https://www.trai.gov.in/telecom-consumers-protection-ninth-amendment-regulations-2015