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REPUBLIC OF VANUATU

Assent: 01/06/89
Commencement: 01/06/89

THE TELECOMMUNICATION ACT NO. 10 OF 1989

Arrangement of Sections

PART I

1. Interpretation

PART II

**Constitution, Objects, Regulatory Powers and
Functions of the Telecommunications Authority**

2. Establishment of the Telecommunications Authority
3. Chairman and Vice-Chairman of the Authority

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- 22. Power of Authority to require information and to inspect
- 23. Annual report and audited statement of accounts of operator and annual report of Authority
- 24. Authority to inquire into complaints
- 25. Authority to be the sole authority to manage radio frequency spectrum
- 26. Enforcement of licence conditions

**PART IV
Radio communication Services**

- 27. Control of Radio communication Services

**PART V
Staff of the Authority**

- 28. Appointment etc. of the staff of the Authority

**PART VI
Finance**

- 29. The Fund of the Authority
- 30. Audit of account of the Authority
- 31. Annual Budget

**PART VII
Transfer of all property rights, assets and liabilities
of the Department of Telecommunications**

- 32. Vesting of property of Telecommunications Department in a company
- 33. Transfer and vesting of contracts, rights, etc
- 34. Vesting of assets and liabilities
- 35. Third party rights not to be prejudiced

**PART VIII
Provisions relating to employees
of the Department of Telecommunications**

- 36. Employment by the company of certain employees of the Department of Telecommunications, etc

**PART IX
Right to Use Land for the Installation and
Maintenance of Telecommunication Services**

- 37. Acquisition of interest in land on behalf of an operator
- 38. Power of the operator to place and maintain telecommunication lines and posts

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REPUBLIC OF VANUATU

Assent: 01/06/89
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THE TELECOMMUNICATION ACT NO. 10 OF 1989

An Act to make new provisions with respect to the operation and control of telecommunications services and for matters connected therewith.

BE IT ENACTED by the President and Parliament as follows: -

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- (2) The Authority shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Authority shall consist of the following members appointed by the Prime Minister, on recommendation of the Council of Ministers: -
 - (a) a representative of the Ministry responsible for Finance nominated by the Minister of Finance;
 - (b) a representative of the Ministry responsible for Telecommunications, nominated by the Minister;
 - (c) three other members from among persons appearing to the Prime

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- (a) if he is a member of Parliament;
- (b) if he has in anyway, directly or indirectly any interest in any contract made or proposed to be made by or on behalf of an operator; or
- (c) if he has any financial or other interest as is likely to affect prejudicially the discharge by him of his duties as a member of the Authority.

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- (e) comply with such general policy directions as may be given from time to time by the Minister regarding the performance of the duties and exercise of the powers of the Authority, and furnish such information as may be needed for his official purposes;
- (f) take such regulatory steps as may be prescribed to comply with any general or specific directions that may be given from time to time by the Government of Vanuatu in the interests of national security, public order and the defence of the country;
- (g) make it obligatory for any operator to comply with requirements laid down by the International Telecommunication Union and other relevant International Organisations in respect of both equipment and technical standards;
- (h) ensure compliance of operators with international or other obligations incurred by the Government of Vanuatu in its foreign relations;
- (i) assist the relevant Ministries in the conduct of negotiations to establish agreement with the International Telecommunications Union, other international bodies and foreign telecommunication operators, regarding standards and procedures for telecommunications;
- (j) where so required or at the request of the Minister or of any other relevant Ministry represent the Government in international conferences or international and foreign bodies concerned with telecommunications;
- (k) to lay down the tariff rates, call charges and any other charges taking into account Government policy and the requirements of the operators in respect of the telecommunication services provided by the operators;
- (l) approved interconnection charges and charges for calls between licensed interconnected telecommunication systems where operators of those systems are able to agree on such charges, and the determination of such charges where operators are unable to agree;
- (m) require licensed operators of telecommunication systems to implement accounting systems which will permit the Authority to carry out its duties and provide the Authority with access to all books and records necessary to carry out its functions;

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- (n) to require any operator to submit transmission plans, signaling plans, switching and numbering plans and to approve or modify such plans as well as to publish and require compliance with such plans;
- (o) establish technical standards and procedures for the provision of telecommunication services;
- (p) establish standards for the education and training of technical manpower in telecommunications;
- (q) approve types of telecommunication apparatus which may be connected to telecommunication systems;
- (r) take such regulatory steps including the issue of directives as may be deemed necessary so as to monitor the quality of services provided by operators so as to conform to reasonable quality of service standards specified under this Act;
- (s) promote, in co-operation with the operators, or otherwise research and development in telecommunications at educational and research institutes in Vanuatu;
- (t) establish such advisory bodies as it sees fit for the purpose of advising it in respect of any matter pertaining to the exercise of its powers, functions and duties under this Act;
- (u) to negotiate with any person where appropriate action is deemed necessary for the prevention of any obstruction or interference with a radio beam or for the removal of any such obstruction or interference;
- (v) ensure the conservation and proper utilization of the radio frequency spectrum by operators and other organizations and individuals who need to use radio frequencies;
- (w) make and enforce compliance with rules to minimize electromagnetic disturbances produced by electrical apparatus and all unauthorized radio frequency emissions.

PART III
Licensing of Telecommunication Systems

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NO PERSON TO RUN TELECOMMUNICATION SYSTEM WITHOUT LICENCE

16. (1) Subject to section 19, no person shall operate a telecommunication system in Vanuatu except under the authority of a licence granted in accordance with subsection (2) of this section by the Minister.
- (2) The Minister may, subject to the provision of subsection (6), grant the licence referred to in subsection (1).
- (3) Every application for a licence to operate a telecommunication system shall be in writing and shall be made to the Minister.
- (4) Where the Authority considers it in the public interest so to do, the Authority may, recommend to the Minister the grant of a licence.
- (5) Before the grant of a licence the Minister shall satisfy himself that the applicant is capable of providing the telecommunication services it has applied to provide.
- (6) Subject to the other provisions of this section, in the case of an application for a licence to operate a telecommunication system to provide Public International Telecommunication Service or in the case of an application for a licence to operate a telecommunication system to provide Public National Telecommunication Service, the Minister shall grant such licence with the prior approval of the Council of Ministers, subject to such terms and conditions as may be determined by the Council of Ministers and published in the Gazette:

Provided that at one time in Vanuatu there shall be no more than one telecommunication system in operation to provide Public International Telecommunication Service and no more than one telecommunication system in operation to provide public national telecommunication service.

- (7) A licence granted under this section -
- (a) shall specify the period for which the licence is granted;
- (b) shall fix the fees payable for the licence;
- (c)

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- (e) shall require the provision of such telecommunication services as are specified in the licence.

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(v)

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- (c) to refer for determination by the Minister such questions arising under the licence as are specified in the licence or are of a description so specified;
 - (ix) conditions requiring any person authorized by the licence to run a telecommunication system to adopt a just and reasonable system of tariffs and pricing;
 - (x) conditions requiring the connection to any telecommunication system to which the licence relates or permit the connection to any such system and such apparatus as are specified in the licence or are of a description so specified;
 - (xi) conditions requiring an operator to develop and publish a plan to restore service during emergencies;
 - (xii) conditions specifying acceptable economic criteria in accordance with which the Minister shall approve tariff adjustments proposed by an operator.
- (8) A licence granted under this section shall be published in such manner as the Minister may decide.
- (9) All sums paid as fees under this section for the grant of a licence shall be paid into the Revenue Fund.

MODIFICATION OF LICENCE GRANTED UNDER SECTION 16

17. (1) The Minister may, subject to subsection (2), modify any condition of a licence granted under section 16.
- (2) The Minister may, subject to subsection (3), recommend to the Council of Ministers, the modification of any condition of a licence granted under subsection (6) of section 16, and such recommendation if approved by the Council of Ministers may be duly effected by the Minister.

OFFENCE TO RUN TELECOMMUNICATION SYSTEM WITHOUT LICENCE

18. (1) A person who operates a telecommunication system in Vanuatu without the licence required under section 16(2) shall be guilty of an offence.
- (2) A person who holds a licence under section 16(2) to run a telecommunication system in Vanuatu shall be guilty of an offence if -
- (a) there is connected to the system -
 - (i) any other telecommunication system; or

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(ii) any apparatus,

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- (b) everything conveyed by it within the meaning of paragraphs (a) to (d) of the definition of the expression “telecommunication system” is conveyed solely for his own domestic purposes; or
- (c) for the provision of value added network services over a telecommunication system run by the operator; or
- (d) for the connection of approved terminal equipment to the public switched network of an operator; or
- (e) for a person who carries on a business to run a telecommunication system for the purposes of that business where that telecommunication system is not connected to another telecommunication system and in respect of which the following conditions are satisfied, namely -
 - (i) that no person, other than the person carrying on the business, is concerned in the control of the apparatus comprised in that system;
 - (ii) that, in so far as sounds or visual images are conveyed by that system, they are not so conveyed for the purpose of their being heard or seen by persons, other than the person, carrying on the business or any employees of his engaged in the conduct of that business;
 - (iii) that in so far as such signals are mentioned within the meaning of paragraphs (a) to (d) of the definition of the expression “telecommunication system” are conveyed by the system are not conveyed for the purpose of imparting matter, other than to the person carrying on the business,

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- (v) that nothing falling within the meaning of paragraphs (a) to (d) of the definition of the expression “telecommunication system” is conveyed by the system by way of rendering a service to another; or
 - (f) for a person to run a telecommunication system through which he renders service to others where everything conveyed is within the meaning of paragraphs (a) to (d) of the definition of the expression “telecommunication system”; or
 - (g) for the use of telecommunication systems or telecommunication apparatus by the Vanuatu Police Force and Vanuatu Mobile Force and any other services directly employed by the Government for National Security in the performance of their official duties; or
 - (h) for the use of telecommunication systems or apparatus on board any warship or aircraft in the service of any foreign state; or
 - (i) for the use of any telecommunication system or apparatus in any foreign civil aircraft registered outside Vanuatu, if such system or apparatus and the members of the crew of the aircraft who use such system or apparatus have been specially licensed in accordance with the requirements of any international convention for the time being in force as to the installation or use of such system or apparatus in aircraft.
- (2) (a) Where a telecommunication system referred to in paragraphs (e) and (f) of subsection (1) extends beyond the boundaries of the location of such a system every person who on the date of operation of this Act is running such a system or on or after that date proposes to run system shall as a condition to running that system.
- (i) be required to obtain a licence from the Minister for the type of telecommunication system being operated, or proposed to be operated, the location of the system and its boundaries;
 - (ii) be required to comply with any provision of this Act or any Regulations or Rules made there under in respect of such system.
- (b) A peud) ashul F

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- (3) (a) Where there is agreement between a person who is running a telecommunication system referred to in sections 19(1)(b)(iii), 19(1)(e) or 19(1)(f) and an operator, for the interconnection of their telecommunication shall obtain a licence from the Minister for the interconnection.
 - (b) A person who fails to comply with the provisions of paragraph (a) shall be guilty of an offence and may be prohibited by the Minister from continuing to operate such system.
- (4) The operator, may if he so desires, request the Minister to monitor an interconnection referred to in subsection (3) in the interest of operational efficiency and technical standards and the Minister shall where so requested take appropriate measures to comply with such reqpa

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- (i) to furnish to the Authority at a time and place specified in the notice any document specified or described in the notice which is in his custody or control;
- (ii) to produce for inspection any book, return, account or record in his possession or control:

Provided however that a person specified in paragraph (b) shall not be compelled for any such purpose to produce any document which he could not be compelled to produce in civil proceedings before a Court.

ANNUAL REPORT AND AUDITED STATEMENT OF ACCOUNTS OF OPERATOR AND ANNUAL REPORT OF AUTHORITY

23. (1) As soon as may be after the end of its financial year every operator shall prepare a report giving a true and fair account of its activities, and of its income and expenditure during the year together with an audited statements of accounts for that financial year and shall forward such account to the Authority.
- (2) The Authority shall at the end of each year submit to the Minister a report relating to the activities of the Authority and the Minister shall cause such report to be laid before Parliament.

AUTHORITY TO INQUIRE INTO COMPLAINTS

24. (1) Where a subscriber to a telecommunication service or a member of the public makes a complaint to the Authority in relation to the telecommunication service provided by an operator the Authority may make such investigation as is deemed necessary by the Authority and shall take such remedial measures as the circumstances of the case require.

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- (2) The Authority shall be the sole lawful authority to negotiate with the International Telecommunications Union or its affiliated bodies in all

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and shall consider any representation or objection which are duly made and not withdrawn.

- (5) A notice under subsection (1) or subsection (3), shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by such notice and by sending a copy of the notice to the operator affected by it.
- (6) As soon as practicable after an order is made, under subsection (1) or subsection (3), the Authority shall -
 - (a) publish the order in such manner as it considers appropriate for the

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- (4) If the Minister is satisfied that it is necessary in the public interest so to do, he may, with the prior with approval of the Council of Ministers, by order prohibit (whether absolutely, or from time to time, or in certain circumstances) or restrict the use of any or all radio apparatus or radiocommunication, irrespective of whether a licence has or has not been issued under this section.
- (5) Any person failing to comply with, or contravening any of the provisions of this section or any order made, or any condition of a licence issued, thereunder shall be guilty of an offence.
- (6) If a person is convicted of an offence under this section, the court by which he is convicted, may, whether or not in addition to any other penalty, make such order as to the forfeiture or disposal of any apparatus seized in pursuance of subsection (3) as the court thinks fit.

PART V

Staff of the Authority

APPOINTMENT ETC.OF THE STAFF OF THE AUTHORITY

28. (1) The Authority may, subject to the other provisions of this Act –
- (a) appoint, dismiss and exercise disciplinary control over such staff as may be deemed necessary by the Authority to carry out the functions of the Authority;
 - (b) fix the wages of salary or other remuneration of such staff;
 - (c) determine the terms and conditions

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- (b) all sums of money received by the Authority in the exercise, performance and discharge of its powers, duties and functions;
 - (c) all other sums of money as are required by this Act or any regulation made thereunder to be paid to such Fund under this Act;
 - (d) annually by way of percentage of the turnover of an operator such as may be specified in its licence.
- (3) There shall be paid out of the Fund of the Authority all such sums of money as may be required to defray any expenditure incurred by the Authority in the exercise, performance and discharge of its powers, duties and functions.
- (4) The net surplus moneys for any year, of the Fund if any, after defraying

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company which is the operator licensed to provide Public National Telecommunication Service (hereinafter referred to as “the Company”) being a company registered under the Companies Act No. 12 of 1986 for the purpose of providing telecommunication services.

- (2) At anytime before the transfer date, the Minister with the approval of the Council of Ministers, may enter into a written agreement with the Company, to the effect that the provisions of subsection (1) shall not be applicable in relation to any property, rights, assets and liabilities specified in that agreement.

TRANSFER AND VESTING OF CONTRACTS, RIGHTS, ETC.

33. Except as otherwise excluded by the agreement referred to in subsection (2) of section 32, with effect from the transfer date -

- (a) all contracts, leases or tenancy agreements entered into by, with or

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VESTING OF ASSETS AND LIABILITIES

34. (1) Notwithstanding subsection (1) of section 71 and with effect from transfer date, the property rights, assets and liabilities of the Department of Telecommunications shall vest in the Company without further authority and without the necessity for further acts except the making of such entries as may be required in any register kept in attendance with any laws.
- (2) Entries under subsection (1) shall be made by an appropriate registrar on receipt of a direction in writing made by the Minister.

THIRD PARTY RIGHTS NOT TO BE PREJUDICED

35. The transfer to the Company of all the property rights, assets and liabilities of the Department of Telecommunications (other than those excluded by the agreement referred to in subsection (2) of section 32) shall not in any way be deemed to affect prejudicially the rights of a third party to any contract or agreement subsisting between such third party and the Department of Telecommunications on the day immediately preceding the

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ACQUISITION OF INTEREST IN LAND ON BEHALF OF AN OPERATOR

37. (1) Where any interest in or over any land is required by an operator for any of its purposes and such operator has failed after negotiation with the holder of the interest to acquire such interest for the purposes for which it is so required it may report such fact to the authority.
- (2) Where a report under subsection (1) is made to the Minister the shall, if the Minister shall, if he considers it necessary or desirable so to do, and with the consent of the minister responsible for land matters acquire the interest for or on behalf of the operator.

POWER OF THE OPERATOR TO PLACE AND MAINTAIN TELECOMMUNICATION LINES AND POSTS

38. For the purposes of the establishment and maintenance of telecommunication services, the operator may from time to time place and maintain a telecommunication line under, over, along or across, and posts in or upon, any immovable property, and for that purpose it shall be lawful for any officer in the employment of the operator, and for the servants, workmen, and labourers employed by or under such officer -

- (a) at all times on reasonable notice, and with all necessar.5(f7(9(r)-26.3(016 2.4(lmff

(a)

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- (i) an operator shall not exercise the powers conferred by this section except with the written consent of the custom owner, after negotiation with him, of the property under,

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RIGHT TO REQUEST REMOVAL OR ALTERATION OF TELECOMMUNICATION LINE OR POST

40. (1) Where, under the provisions of this Act, a telecommunication line or post has been placed by an operator under, over, along, across, in, or upon any property, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telecommunication line or post should be removed to any other part of that property or to a higher or lower level or altered in form, he may require the operator to remove or alter the line or post accordingly:

Provided that, if compensation has been paid to such person under paragraph (v) of the proviso to section 38 he shall, when making the request, tender to the operator an amount sufficient to defray the expenses of the removal or alteration.

- (2) If an operator fails to comply with the request within a reasonable time, the person making it may appeal to the Authority in writing requesting the Authority to require the operator to remove or alter the line or post.
- (3) Where after any such appeal as is referred to in subsection (2) the person making the request has failed to procure the removal or alteration of the

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PROVISIONS OF THIS ACT EXTENDED TO TELECOMMUNICATION LINES AND POSTS ESTABLISHED BEFORE COMING INTO OPERATION OF THIS ACT

42. Every telecommunication line or post place before the passing of this Act

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- (a) communicates any information which relates to a warrant under subsection (1); or
- (b) communicates any intelligence obtained in pursuance of such warrant,

to any person, other than a person specified in the warrant as provided in subsection (2)(c), shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding ten years.

PART X Offences and Penalties

CONTRAVENTIONS OF PROVISIONS OF THE ACT

44. Every person who contravenes or fails to comply with any provision of this Act or any regulation made under this Act shall be guilty of an offence.

OFFENCES UNDER SECTION 18

45. (1) Every person guilty of an offence under subsection (1) of section 18 shall be liable on conviction to a fine not exceeding 100,000 vatu or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (2) Every person guilty of an offence shall be liable on conviction to a fine not exceeding 100,000 vatu or to

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shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 100,000 vatu and in default of payment of such fine with imprisonment for a term not exceeding six months.

FRAUDULENT USE OF TELECOMMUNICATION SERVICE

47. Every person who dishonestly obtains a telecommunication service provided by an operator with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 200,000 vatu and in

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PENALTY FOR INTRUSION ETC. WITH INTENT TO LEARN CONTENTS OF MESSAGE

52. Every person who does any of the acts mentioned in section 51 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, shall be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding 1 year in addition to the fine prescribed by section 51.

WILFUL INTERCEPTION OF TELCOMMUNICATION TRANSMISSION

53. Every person who willfully seeks to intercept and improperly acquaint himself with the contents of any telecommunication transmission not intended for general reception, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding 200,000 vatu or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

INTERCEPTION AND DISCLOSURE OF MESSAGE ETC

54. (1) Every telecommunication officer or any person having official duties in connection with a telecommunication system who otherwise than in the course of his duty -

(a) intentionally intercepts a message sentf(s).2(e)5-6.4(e)-6(rwis(e)5-TJ6 -1.1ed)7. no8h

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PENALTY FOR ATACHING ANYTHING TO TELECOMMUNICATION LINE, ETC.

55. Every person who climbs up a telecommunication post or attaches anything to any telecommunication line, post or other apparatus without authority, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 200,000 vatu.

TRANSMISSION OF UNPAID MESSAGE PROHIBITED

56. Every telecommunication officer, or other persons having official duties connected with any office used as telecommunication office, who transmits or causes to be transmitted by telecommunication or delivers or causes to be delivered any message on which the charge prescribed by an operator has not been paid, thereby intending to defraud the operator, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 500,000 vatu or with imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

PENALTY FOR MISCONDUCT OF TELECOMMUNICATION OFFICER

57. Every telecommunication officer, or other person having official duties connected with a telecommunication service who is guilty of an act of drunkenness, or while under the influence of drugs not medially prescribed or of carelessness, or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, and every such officer who delays or defaults in the transmission or delivery of any message shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 500,000 vatu or with imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

PENALTY FOR TENDERING OBSCENE OR INDECENT OR SEDITIOUS MESSAGE

58. Every person who by himself or by his agent or servant tenders for transmission at any telecommunication office any message of an indecent, obscene, seditious, scurrilous, threatening, or grossly offensive character, shall be guilty of an offence and shall be liable conviction to a fine not exceeding 200,000 vatu or to imprisonment for a term not exceeding 1 year, or to both such fine and imprisonment.

PENALTY FOR CAUSING ANNOYANCE BY TELEPHONE CALLS

59. Every person who persistently makes telephone calls without reasonable excuse and for the purpose of causing annoyance or inconvenience to any telecommunication officer or any other person, shall be guilty of an offence and shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 100,000 vatu, and, in default of payment of such

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- (2) All rules made by the Authority shall be published in the Gazette and shall come into force on the date of publication or on such later date as may be specified therein.
- (3) No rule made by the Authority shall have effect until it has been approved by the Minister.

POWER OF GOVERNMENT TO PROHIBIT OR RESTRICT THE USE OF TELECOMMUNICATIONS

68. If on the occurrence of any public emergency or in the interest of public safety and tranquility, it is expedient

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- (b) against any member, or officer, servant or agent of the Authority for any act which in good faith is done or purported to be done by

