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SCHOOL OF LAW

**A CRITICAL ANALYSIS OF PART III OF THE ICT ACT NO.15 OF 2009
(LICENSING OF ELECTRONIC COMMUNICATIONS OTHER THAN RADIO
COMMUNICATIONS)**

BY

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**An Obligatory essay submitted to the University of Lusaka in partial fulfilment
of the requirement for the award of the Bachelor of laws (LLB) Degree**

2025

DECLARATION

I, **SIBESO CHOTA** do hereby declare that this dissertation titled “**A CRITICAL ANALYSIS OF PART III OF THE ICT ACT NO.15 OF 2009 (LICENSING OF ELECTRONIC COMMUNICATIONS OTHER THAN RADIO COMMUNICATIONS)**”.

which is hereby submitted to the School of Law at the University of Lusaka as part of the requirements for the award of the Bachelor of Laws (LLB) degree is my own original work and that it has not been submitted for a degree at any other tertiary institution.

The sources that have been used or quoted have been indicated and duly acknowledged as complete references.

Signature: _



Date: 12th November 2025

SUPERVISORS RECOMMENDATION

I, **Thomas Malama** do recommend that the dissertation titled “**A CRITICAL ANALYSIS OF PART III OF THE ICT ACT NO.15 OF 2009 (LICENSING OF ELECTRONIC COMMUNICATIONS OTHER THAN RADIO COMMUNICATIONS)**”, authored by **Sibeso Chota** with Student Number LLB19218208 was done under my supervision, be admitted by the University. I have checked and I am satisfied that it meets necessary requirements pertaining to the format as laid down by the University regulations governing directed research.



Supervisor: _____

Date: 12th November 2025

DEDICATION

This dissertation is dedicated to my beloved parents, whose unwavering support, guidance, and sacrifices have made this journey possible. Your love and encouragement have been a source of strength and inspiration.

To my siblings thank you for believing in me, cheering me on, and reminding me of what truly matters you have carried me with such loving and supporting statements and encouragements, thank you for your endless support, through it all.

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ABSTRACT

This dissertation examined the information communications technologies (ICT) Sector in Zambia, focusing particularly on the licensing rules set out in the information communications and technologies Act No 15. Of 2009. The Act plays a crucial role in regulating ICT Services, particularly through part III, which addresses licensing for electronic communications excluding radio communications.

This research assessed how these licensing rules serve Zambia's ICT in terms of effectiveness. The study opened with an overview of the ICT Act and its function in shaping the sectors regulatory landscape. It then looks at the concept of licensing in general before zooming in on how licensing functions. Furthermore, the research explored the ICT Acts goals and the framework it sets for electronic communications

By analysing part III this dissertation explores whether the licensing system encourages innovation, competition, protects consumers, and supports broad access to ICT services. It Highlights the licensing regime in the ICT Act, and the definition of terms pertaining to licenses.

The conclusion finds that while the ICT Act offers a strong regulatory base, some aspects need updating to be more adaptable, the study finishes by suggesting improvements to the legal and institutional framework to help Zambia's ICT sector stay competitive, inclusive, and well positioned for ongoing digital growth.

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LIST OF STATUTES

Information and Communication Technologies Act No 15. of 2009

Telecommunications Act 1994 (Repealed)

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 INTRODUCTION

This chapter enlightens the Information and communication Technologies Act No.15 of 2009. The Information Communication Technology (ICT), sector has emerged as a significant driver of innovation, social progress, and economic development across the globe. As such, it is imperative that there is proper legal regulatory framework to oversee and regulate this sector - and this cannot be overstated. In Zambia, the ICT sector is primarily governed by the Information and Communication Technologies Act No.15 of 2009 (ICT Act). Among its provisions, Part III regulates the licensing of electronic communications, which are supposed to foster a robust and accountable ICT environment.

1.1 BACKGROUND OF THE STUDY

The ICT Act No.15 of 2009 ("ICT Act" or "the Act" – the latter depending on the context) was enacted with the aim of fostering the growth of and regulating the rapidly evolving ICT sector in Zambia. This Act replaced the Telecommunications Act of 1994¹, continued the existence of the ICT regulator - renaming it the Zambia information and communications Technology Authority (ZICTA.) The regulator is responsible for, among other functions, overseeing electronic communication services, promoting competition protecting consumer rights, and ensuring equitable access to ICT services. The Act introduced a licensing framework for electronic communications, prohibiting the operation of network and or services without a license. It also provides mechanisms for suspension or cancellation of licenses, exemptions for certain activities as well as obligations for licenses.

The framework is aimed at fostering transparency, efficiency, and innovation in the ICT sector while addressing challenges such as spectrum allocation and market competition. Part III of the Act is focused on licensing requirements relating to electronic communications rather than radiocommunications. While the provision for

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such regulations is present and welcome, the part itself has a few shortcomings which are vague, overly broad, or inadequately defined leading to potential regulatory uncertainty.

This research proposes to determine whether the existing legal framework under the said Part III is appropriate, adequate, and sufficiently supports of the objectives of ICT regulation in Zambia.

1.2 STATEMENT OF THE PROBLEM

While the intent of the Part III ICT Act No. 15 of 2009 is to create a licensing framework that ensures effective regulation of electronic communications, its implementations is undermined by legal ambiguities, regulatory gaps and improprieties. The failure to regulate network operation under the scope of network license, vague classifications of licence types, and excessive discretionary powers granted to ZICTA are some of the key issues that could hamper regulatory effectiveness and investor confidence in the sector. The lacuna and vagueness relating to the regulation of network operation led to a potential dispute relating to mobile service providers outsourcing the operation of their networks and ZICTA ordering them to take back such operation of networks from third parties. This raised the questions about the legality and enforceability of such administrative decisions.

Section 10(1)² of the Act mandates the Zambia Information and Communications Technology Authority (ZICTA), to issue a network license – entitling holders to construct, own, or make available an electronic communications network or provide a network service. However, the provision does not make mention of the operation of a network, rather it overlooks the fact that a network license should also allow the holder to operate the network. There is, thus, a legislative gap whose implications include uncertainty whether unlicensed third parties require a licence to operate networks of licenced network licence holders. This is pertinent because ZICTA alluded to the above scenario as contributing to poor quality of service.

Section 10(2)³ also compels the Authority to issue categories of network and service licenses referred to as individual and class licenses. Considering that the issuance of

² Act No. 15 of 2009

³ *ibid*

such licenses is mandatory, the Act does not effectively define what these categories are. According to section 2,⁴ an individual license and a class license are defined by what is stated in section 10(2) – which is not a definition at all. The Act, therefore, does not indicate what exactly constitutes individual and class licenses, despite making their issuance mandatory under section 10(2)⁵ of the Act.

Section 13(1)⁶ of the Act directs that licenses shall contain terms and conditions. This provision in its current format, seems irrelevant considering that licences by nature contain terms and conditions. In fact, the whole reason behind licensing is to authorize as well as delimit the scope of such authorization. The Act also does not expressly indicate who determines the said terms and conditions – opening up the potential of disputes.

Section 14(3)⁷ of the Act empowers the Authority being ZICTA to vary terms and conditions of the license where it is necessary in the public interest or to address the concerns of members of the public, yet it fails to specify the threshold for such public concern, thereby potentially undermining the legal certainty and investor confidence. As it is, even concerns of twenty numbers of the public could entice ZICTA to invoke the power to vary a license.

1.3 GENERAL OBJECTIVES

The study will generally be to critically analyze Part III of the ICT Act No.15 of 2009 with a focus on the licensing of electronic communications other than radiocommunications, assessing the adequacy, clarity, appropriateness and practicality of its provisions.

1.4 SPECIFIC OBJECTIVES

1. To explore the concept of licensing in the regulation of the ICT sector.
2. To explore the primary piece of legislation governing the ICT sector in Zambia.

⁴ibid

⁵ ibid

⁶ ibid

⁷ Ibid

3. To critically analyse the licensing provisions in the legal framework governing the ICT sector in Zambia.

1.5 RESEARCH QUESTIONS

1. What is the concept of licensing in the regulation of the ICT sector?
2. What are select provisions of the primary piece of legislation governing the ICT sector in Zambia?
3. How adequate and appropriate are the licensing related provisions in the primary legal framework governing the ICT sector in Zambia?

1.6 SIGNIFICANCE OF THE STUDY

This study is of significance as it aims to address the legal and regulatory shortcomings within Part III of the Information Communications and Technologies Act No. 15 of 2009. It aims to illuminate areas where the current legal framework falls short, such as the omission of network operation from licensing requirements, vague definitions of license categories, and the broad discretionary powers granted to ZICTA.

1.7 SCOPE OF STUDY

This study will cover the analysis of the Information and Communication Technologies Act No.15 of 2009 specifically Part III that addresses the licensing of electronic communications rather than radio communications. The study will also look at various pieces of writings of different scholars pertaining to this dissertation.

1.8 DEFINITION OF KEY TERMS AND ACRONYMS

I. Information Communication Technology (ICT): Refers to technologies that provide access to information through telecommunications, including the internet, wireless networks, cell phones, and other communication mediums⁸. Section 2 of the ICT Act defines it as the application of modern communications and computing technologies to the creation, management and the use of information through the

⁸ https://www.unapcict.org/site/default/files/2019-01/ICT_Glossary-draft.pdf?utm_source

utilisation of hardware, software, networks, and media for the collection, storage, processing, transmission and presentation of information and related services.

II. Electronic Communications: According to section 2 of the ICT Act, electronic communications refers to a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by radio, electro- magnetic, photo electronic or photo optical system, but does not include-

- (a) any wire or direct oral communication.
- (b) any communication from a tracking device; or
- (c) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.⁹

III. License: This is a legal authorization granted by a regulatory authority to an entity or an individual, allowing them to perform specific activities. License typically define the scope of operations, obligations, and rights of the licensee, and may include conditions related to compliance, security, and economic considerations. For example, licenses can cover network installation, service provision, or content delivery through communication networks.¹⁰

IV. Licensee: Means a holder of a network license, service license, class license, or individual license according to section 2 of the ICT Act.¹¹

V. Radiocommunication: According to section 2 of the ICT Act is the transmission and reception sounds, graphic images or impulses, wholly or partly, by means of hertzian waves.¹²

VI. Network license: Refers to the authorization required to construct, own or make available an electronic communications network, or to provide a network service according to section 10(1) of the ICT Act.¹³

⁹ Act No.15 of 2009

¹⁰ <https://digitalpolicyalert.org/event/26758-law-no242016-governing-information-and-communicatipn-technologies-including-operational-license-requirement-entered-into-force>

¹¹ Act No. 15 of 2009

¹² ibid

¹³ ibid

VII. Service License: Typically refers the authorization of the holder thereof to provide one or more electronic communications services using a network.¹⁴

VIII. Individual License: The information Communication Technology Act does not adequately define this term as it states in the interpretation section 2, that it is what is referred to in section 10(2) of the Act. In other jurisdiction, an individual licence is generally tailored to activities that require significant regulation due to their economic or social impact. This includes services such as public telecommunications, fixed, voice services, international data communications and operation of public telecommunications networks.¹⁵ According to Thomas Katuma Malama, in practice, an individual license is, in Zambia, generally understood to be one associated with high capital outlay and social impact while the definitive categorization as “Individual Licence” will depend on whether ZICTA in its Licensing Guidelines, has categorized a licence as such.¹⁶

IX. Class License: A class license, like the individual license, is not defined adequately in the ICT Act. However, a class license, in other jurisdictions, allows multiple entities within the same category to provide ICT services or operate networks without requiring individual approval for each licensee. Such licences cover less critical services like internet services provision (ISP), value added network services, public payphones, and private networks.¹⁷ In practice, an individual license is, in Zambia, generally understood to be one associated with low capital outlay and social impact while the definitive categorization as “Class” or otherwise, will depend on ZICTA’s categorization in its Licensing Guidelines.¹⁸

¹⁴ Act No.15 of 2009

¹⁵ https://www.cst.gov.za/en/RulesandSystems/RegulatoryDocuments/Licenses/BylawProvisionsForTelecommunicationsLicenses/Pages/Article11.aspx?utm_source

¹⁶ Thomas Katuma Malama, (IT Law Lecturer University of Zambia) 4th Year IT Lecture notes August 2025

¹⁷ https://trc.gov.ao/EchoBusV3.0/SysemAssets?pdf%201/029b69ad-6cf5-29de-a73b-128bde71c525_LicencingRulesFinal-207-12-2024.pdf?utm_source

¹⁸ Thomas Katuma Malama, (IT Law Lecturer University of Zambia) 4th Year IT Lecture notes August 2025

1.9 LITERATURE REVIEW

1.9.1 RESEARCH GAP

Authors from both Zambia and other jurisdictions, have written about licensing. How such a particular aspect of it can and must be conducted as well as the processes and procedures of licensing too, which has in turn provided various insights. They have touched on the law as it is with regards to licensing of electronic communications and radio communications now as well as what is yet to emerge. Some have also touched on the legal and regulatory challenges of ICT licensing under the law. This research therefore seeks to add to the already existing body of knowledge while ensuring it takes a distinct and new approach.

Lawrence Lessig's work emphasizes the interplay between legal frameworks and technological innovation. His theory of "Code as Law" highlights how regulations can either hinder or foster technological progress.¹⁹ The above referred to work brings valuable insight crucial for understanding how inadequacies and ambiguities in Zambia's ICT sector legislation may impact innovation and compliance in the sector.

While the author of this dissertation agrees with Lawrence's views indicated above, this dissertation differs from Lawrence's work in that the dissertation is centred specifically on Zambia's particular piece of legislation. This study aims at providing specific recommendations to specific shortcomings in specific Zambian legislation. This study is, while essential, very different from the work cited above.

Christopher T. Marsden, researching on net neutrality, underscored challenges regulators face in ensuring equitable access to communication networks. His analysis is relevant to this study particularly considering Zambia's licensing framework's failure or omission to adequately define the scope of a network licence under section 10(1) of the ICT Act. As observed, such omission may have the effect of adversely affecting Quality of Service and equality and fairness with respect to affordable access to quality electronic communication services.²⁰ This dissertation will, while being in general agreement with Christopher T. Marsden, seek to consider the current subject from the perspective of the shortcomings in the licensing – related provisions under the ICT Act.

¹⁹ L Lessig, *Code and Other Law of Cyberspace* (Basic Books 1999)

²⁰ CT Marsden, *Net Neutrality: towards a co-regulatory solution* (Bloomsbury 2017)

Malama Morgan Mukonde in evaluating the licence regime under the ICT Act takes note of the necessity of having in place a strong regulatory framework indicating his work examines the licensing regime under the ICT Act seeking to advance recommendations on how it may be reformed so as to address technological developments in Zambia.²¹

While the title and stated goals of this dissertation seems to be a duplication of Malama Morgan Mukonde's work, nothing can be further from fact. The title of the above referred to author is slightly misleading as the work does not centre on the licensing framework but also dwells and extends to consideration of consumer protection, independence of the regulator, tariffs, and dispute resolution – matters with very little to do with licensing. The shortcomings in the ICT Act, the author raises include lack of autonomy of the regulator per se (as opposed for example to how autonomy affects licensing) and composition of the ZICTA board. The author also unduly criticizes the ICT Act for not expressly indicating who determines licence fees. Section 11(1) of the ICT Act indicates that a person intending to operate a network or provide a service under this Act shall apply for an individual licence or a for licence class licence in the prescribed manner upon payment of the prescribed fee. The word “prescribed” in statutory interpretation makes reference to the fact that such would be in regulations – which are issued by the Minister as provided for in Section 91 of the Act.

This current study differs from the above in that it is based on clear objectives while also being definitively centred on shortcomings that relate to ICT Act licensing provisions – indirectly if not directly.

Olufunmilayo Arewa wrote on Regulating Telecommunications Infrastructure Sharing in Africa²², where the author examined infrastructure sharing as a regulatory tool to reduce costs and enhance service delivery. Inadequate or inappropriate licensing regimes can have a direct effect on infrastructure sharing. This because unduly strict licensing regime may force service providers to have no choice but seek infrastructure

²¹ Malama Morgan Mukonde, An Evaluation of the Licensing Regime under the Information and Communication Technologies Act No. 15 of 2009 page (iv)
<https://dspace.unza.zm/server/api/core/bitstreams/aef89052-c5ff-42f2-9c65-1dbc71dc90cc/content>

²² https://law.temple.edu/wp-content/uploads/Arewa_CV-9.2021.pdf

sharing even where that is not cost effective. This work, highlighting the importance of clear, adequate and appropriate licensing frameworks, offers lessons for Zambia's ICT sector. The author of this dissertation, thus, finds the above work essential in the conduct of the current study in this dissertation. This dissertation will, however, differ from the above work in that it specifically conducts a case study of Zambia's licensing regime.

United Nations Economic Commission for Africa (UNECA) authored a publication entitled Review of the Legal and Regulatory Frameworks in the Information and Communications Technology Sector in a Subset of African Countries: What Lessons Can We Learn? The publication noted that sound policies and enabling efficient legislative and regulatory frameworks were identified as some of the critical issue for ICT development in Africa.²³

This dissertation is in agreement with the above position and shall adopt it throughout the study of the subject matter. This dissertation will, of course, dwell on the subject as it relates to the legal and regulatory framework governing licensing of electronic communication services under the ICT Act in Zambia.

Shuller Habennzu in his report - Zambia ICT Sector Performance Review 2009/2010: Towards Evidence-based ICT Policy and Regulation takes note of the fact that the, then, new legal and regulatory environment was at that time considered a significant improvement on the previous legislation and that it, over time, would enable the emergence of a competitive market place.²⁴

This dissertation totally agrees with the above position while, however, also taking note of the fact that it brought with it licensing – related challenges and shortcomings which this dissertation hopes to address.

Natasha Banda, in a dissertation titled “The Regulation of Telecommunication in Zambia: An Assessment of the Impact of Zambia's Institutional Framework on Effective Regulation,” highlights the importance of private investment providing an example of

²³ Page 3 <https://repository.uneca.org/server/api/core/bitstreams/321e58c5-7892-5a86-a509-073c8f4c61a4/content> Accessed 28th September 2025

²⁴ Shuller Habeenzu, Zambia ICT Sector Performance Review 2009/2010: Towards Evidence-based ICT Policy and Regulation. Volume Two, Policy Paper 17, 2010 Page 4 <https://idl-bnc-idrc.dspacedirect.org/server/api/core/bitstreams/d1f76b2f-f294-4fb1-ac54-976f83f99582/content>

the ICT sector in which Zamtel introduced new technology apparently in response to the licensing of private sector competitors. Natasha in the same place in her dissertation, then highlights the importance of ensuring the protection of such private sector investment.²⁵

The author of this dissertation agrees with the above stated opinion and will adopt it throughout this dissertation. Hence this dissertation dealing with the need for clarity regarding when a licence can be varied at the instance of complaints from the public.

This current study differs from that conducted by Natasha, referred to above in that the scope of this current one is specifically restricted to critical analysis of licensing – related provisions under the ICT Act.

The SADC Communications Environment Assessment: An Assessment of Communications Policies, Laws and Regulations²⁶ takes note of the fact that Zambia's licensing framework is largely technology neutral, distinguishing primarily between “network” and “service” licences, but with some technology-specific sub-categories.

This dissertation will critically analyse the above position with respect to Zambia's licencing regime and accordingly commend or criticize the findings.

As may be observed from the above literature review, while authors may have touched on the subject matter of this dissertation, they have done so either in a mere passing manner, from a very broad and international perspective or inadequately so. This leaves a gaping void this dissertation has come to fill.

²⁵ Natasha Banda, The Regulation of Telecommunications in Zambia: An Assessment of the Impact of the Zambian Institutional Framework in Effective Regulation Page 18
<https://dspace.unza.zm/server/api/core/bitstreams/674a20ed-da1c-463c-ba94-ff4141724359/content>

²⁶ GFA Consulting Group GmbH, October, 2013, <https://www.wits.ac.za/media/wits-university/faculties-and-schools/humanities/research-entities/link/documents/publications/Lewis-Abrahams-2013-SADC-Communications-Environment.pdf> Accessed 28th September 2025

1.10 METHODOLOGY

1.10.1 RESEARCH APPROACH

This research will adopt a qualitative methodological approach to analyse and comprehend the perspectives surrounding the subject. This will enable an in-depth critical analysis of the topic facilitating the generation of new insights, and the uncovering of nuanced interpretations while contributing meaningfully to the existing body of knowledge.

1.10.2 RESEARCH TYPE

This will be an Analytical Research, in which the researcher will use pre-existing data and facts and analyze the same to develop a hypothesis for evaluation.

1.10.3 RESEARCH DESIGN

The research design adopted for this study is Descriptive and case study by which the ICT sector legal framework regulating licensing in Zambia will be analysed.

1.10.4 SAMPLING TECHNIQUE

Deliberate, purposive sampling will be adopted in this study. This method consists of purposely selecting particular persons out of the universal population as representative of the whole population.

1.10.5 STUDY POPULATION

The study population will consist of Zambia's main ICT sector service providers, registration agencies, experts in Information Communication Technology, and the members of the regulatory body, Zambia Information Communication Technology Authority (ZICTA).

1.10.6 DATA COLLECTION

The Information of this dissertation sought to be used will be secondary information being Information gathered from books, Acts Journals articles and regulations as well

as primary data collected through interviews conducted on the targeted study population.

1.10.7 ETHICAL CONSIDERATION

To maintain ethical standards and considerations, the author of this dissertation aims at seeking permission from the university of Lusaka prior to the commencement of the research. This includes obtaining consent that is informed and protecting the confidentiality of the participants. Furthermore, all scholarly works shall be thoroughly referenced and well acknowledged.

CHAPTER TWO

AN EXPLORATION OF THE CONCEPT OF LICENSING IN THE REGULATION OF THE ICT SECTOR

2.0 INTRODUCTION

This Chapter will explore the concept of licensing at large and as it relates to regulation of the ICT sector. The chapter seeks to understand what licensing is, what are its origins, history and evolution as well as principles associated with it. The chapter will consider whether licensing can be categorized into general types and what those are.

The chapter will zero in on licensing in the ICT sector to consider the subject matter from that perspective. The chapter will seek to understand nuances of the subject matter as perceived from the ICT Sector.

The chapter will be followed by one which will seek to provide a run through the primary legal framework governing the ICT sector in Zambia – the Information and Communications Technologies Act No. 15 of 2009 (ICT Act.) These two chapters combined will set the stage for a critical analysis of the adequacy and appropriateness of licence – related provisions under the ICT Act.

2.1 THE CONCEPT OF LICENSING

Definition of the Term Licensing

The term “licence” may be and has, indeed, been defined in various ways by various people. It can be defined as an official authorisation to provide services or operate networks with a licence being a regulatory code that defines the terms and conditions under which the licensee may operate.²⁷

²⁷ Windsor Place Consulting. What, Who and How to Regulate: Best Practice Licensing Frameworks in Asia and Globally. https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/Documents/Events/2015/March-DigitalEconomy/Session1-1_Scott_Minehane.pdf or <https://share.google/tCAyPRVfxKhJJsXJz> Accessed 12th October 2025

Licences are known by various terms, such as permissions, approvals, authorisations, or permits, and carry different definitions depending on the jurisdiction.²⁸

Elsewhere licensing has been said to include any regulatory instrument that gives permission or allows an entity to undertake a particular activity. It has been stated that this is a broad definition which encompasses all possible licensing schemes even if they only exhibit limited characteristics that are traditionally associated with licensing. Licensing has specifically, been said to includes any of the following instruments:

- ☐ licence
- ☐ registration
- ☐ notification
- ☐ authorisation
- ☐ accreditation
- ☐ approval
- ☐ certification
- ☐ permit.²⁹

The above notwithstanding, it has been stated that licencing in its simplest form and by its simplest definition is the issuance of permissions, grant of discretion or authorization to lawfully engage in a given act or carryout a given action meaning that to licence is simply to permit.³⁰

History of Licensing

²⁸ OECD. Managing Risks and Incentivising Growth: Draft Best Practice Principles for Licensing and Permitting December 2024
<file:///C:/Users/user/Downloads/Draft%20Best%20Practice%20Principles%20for%20Licensing%20and%20Permitting.pdf> or <https://share.google/rNfcHnbtKvQERBDSo> Accessed 12th October 2025

²⁹ PricewaterhouseCoopers. A Best Practice Approach to Designing and Reviewing Licensing Schemes
https://www.ipart.nsw.gov.au/sites/default/files/documents/pwc_-_a_best_practice_approach_to_licensing_schemes_-_guidance_material_-_march_2013.pdf or <https://share.google/1hJHZd7F2pVxgxNzr> Accessed 12th October 2025

³⁰ Thomas Katuma Malama (Lecturer), Information Technology Law Fourth Year Class Notes, University of Lusaka 2025

It has been proposed that licensing (at least as it relates to professionals) can be traced back to the Middle Ages with the trade guilds. Guilds controlled the regulation of “Crafts and Trade”, whereas only members of that particular guild were allowed to practice their profession.³¹

It is said that Guilds gained privileges from reigning monarchs or lords to exclusively practice their trades. These privileges were given in the form of proclamations, or “Charters.” This was the earliest recorded form of licensing used mostly to monopolize and control professions and trade. It was also a source of revenue for local government.³²

Essential Nature of Licensing

Licensing is a core and pertinent aspect and element of any sector in any jurisdiction. It forms part of the legal and regulatory framework of any sector of the economy of any modern democratically operated state. Licensing is integrally tied to the structure of the market in a sector playing a major role in determining the degree of competition between regulated service providers.³³

Where licences attract fees, as is usually the case, licensing can have a telling impact on the economic and social wellbeing of the nation considering such fees often make up part of finances the Government relies upon for financial resources needed to run the economy.

Considerations Related to Introduction, Review and Implementation of Licensing

PricewaterhouseCoopers proposes a framework designed to allow quickly and easy determination of whether licensing is:

- ☐ an appropriate option to consider (Stage 1)
- ☐ well designed (Stage 2)

³¹ Davron. History of Professional Licensure (January 2020) <https://www.davron.net/the-history-of-professional-licensure/> or <https://share.google/RAYlwS981rOxifqBF>

³² Ibid

³³ Davron. History of Professional Licensure (January 2020) <https://www.davron.net/the-history-of-professional-licensure/> or <https://share.google/RAYlwS981rOxifqBF>

- administered effectively and efficiently (Stage 3)
- ultimately the best response to address identified problems or objectives³⁴

The above framework proposes considerations conveyed in question form including the following:

Is Licensing Appropriate?

- (a) Is there an ongoing need for the government to intervene?
- (b) Does something else address the problem?
- (c) Is there an ongoing need for specific regulation in this area?
- (d) Is licensing still required to address the policy objectives?

Is Licensing Well Designed?

- (a) Is the coverage the minimum necessary?
- (b) Is the duration the maximum possible?
- (c) Are fees and charges appropriate?
- (d) Are conduct rules the minimum necessary?

Is Licensing Administered Effectively/Efficiently?

- (a) Are registering and licensing activities efficient?
- (b) Are stakeholders well informed?
- (c) Is monitoring and enforcing compliance best practice?

Is The Licensing Scheme The Best Response?

- (a) Does a preliminary assessment suggest licensing will result in a net benefit?
- (b) Are there other alternative options that could deliver policy objectives?
- (c) Does a cost benefit analysis show licensing is the optimal option?³⁵

Principles of Licensing

³⁴ PricewaterhouseCoopers. A Best Practice Approach to Designing and Reviewing Licensing Schemes. https://www.ipart.nsw.gov.au/sites/default/files/documents/pwc_-_a_best_practice_approach_to_licensing_schemes_-_guidance_material_-_march_2013.pdf Or <https://share.google/1hJHZd7F2pVxgxNzr> Accessed 12th October 2025

³⁵ Ibid

It has been stated that to develop, maintain and execute an adequate and appropriate licensing framework effectively one should -

- (a) Focus on achieving ultimate policy outcomes and objectives, base licensing framework – related decisions on evidence, constantly evaluate and assess the performance of the framework and ensure adequate resources are allocated to framework – related activities.
- (b) Ensure the licensing is proportionate to risks, limiting it to where it is necessary.
- (c) Licensing should always go hand in hand with enforcement – using incentives and sanctions to promote compliance.
- (d) Licensing processes should be as user-friendly as possible with all components of the licensing framework being clear, unambiguous, and related information easily accessible.
- (e) Ensure fairness and integrity in licensing with decisions being transparent, equitable and predictable. The licensing framework should have inbuilt checks and balances with decisions being capable of being appealed against.³⁶

2.2 REGULATION

2.2.1 Types of Regulation

Types of regulation that may be used to oversee a sector may be categorized in many ways. One such categorization³⁷ distinguishes regulatory types as follows:

2.2.1.1 Command and Control Regulation

Under this approach, the regulatory agency lays down means and processes by which those regulated should operate by. This approach may be said to foster predictability for stakeholders - the government, the public and those regulated and

³⁶ OECD. Managing Risks and Incentivising Growth: Draft Best Practice Principles for Licensing and Permitting December 2024
<file:///C:/Users/user/Downloads/Draft%20Best%20Practice%20Principles%20for%20Licensing%20and%20Permitting.pdf> or <https://share.google/rNfcHnbtKvQERBDSo>

³⁷ Wendell Pritchett. Types of Regulation April 2016 <https://www.theregreview.org/2016/04/05/pritchett-types-of-regulation/> or <https://share.google/zXkmKZZsY327hHf2g> Accessed 12th October 2025

is considered efficient. Such approach eases the agency's regulatory burden especially determining compliance.

2.2.1.2 Performance Based Regulation

In this method, the regulator does not dictate the methods and processes those regulated should adopt to achieve the purpose of regulation. The regulator is, rather, more concerned with whether or not the ultimate standard or goal is met. Those regulated are provided with discretion regarding choice of the means by which the standard or goal is met.

2.2.1.3 Management Based Regulation

This approach seems to attract more attention from sectors with highly heterogeneous institutions, and where regulatory goals not easy to measure. In this approach, the government requires the regulated to “self-regulate” – implementing a critical assessment and charting means by which the goal and objective will be achieved.

2.3 REGULATION OF THE ICT SECTOR

2.3.1 Regulatory Principles

Specific principles relating to the regulation of the Information Communication Technology sector have, over the years, emerged and evolved into what is now best international practice supported by international organizations such as the International Telecommunication Union (ITU.) These principles and rules may, of course, also be applicable to other sectors as well.

2.3.1.1 Autonomy

One such principle considered absolutely essential and adopted as best international practice is autonomy of the regulator. This autonomy has three facets –

- (a) Structural Autonomy;
- (b) Financial Autonomy; and
- (c) Operational Autonomy.³⁸

³⁸ International Telecommunication Union. ICT Regulatory Tracker https://www.itu.int/net4/itu-d/irt/assets/metadata/ITU_ICT-Regulatory-Tracker_About_the_tracker_tab.pdf or <https://share.google/VIUa4gAo1hNcDHnI9> Accessed 12th October 2025

2.3.1.1.1 Structural Autonomy

This relates to whether or not the regulator is structurally a department, section or other unit in the government structure such as a ministry or department. Autonomy is almost impossible to express and exhibit when one is a cardinal part of the organisation structure – reporting to someone administratively on a day-to-day basis. The ideal situation is where the regulator is a separate, autonomous, body created by law as such with power to exist and act on its own.

2.3.1.1.2 Financial Autonomy

Financial autonomy relates both the source of funding as well as its adequacy to adequately fund the discharge of the regulator's functions including all associated expenses such as training of its staff and acquisition of essential equipment it may require.

2.3.1.1.3 Operational Autonomy

Autonomy of the Regulator relates to the fact that the regulator should be accorded the discretion to make decisions that are not unduly interfered with. With such decisions only reviewed on appeal as provided for in the law.

2.3.1.2 Accountability³⁹

While the regulator should be autonomous, it also being accountable is a very essential. Accountability entails the regulator being answerable to the public and other stakeholders. This may be through a legal requirement to submit a annual report to the legislature as is the case in some countries.

2.3.1.3 Public Consultation

Public consultation is a cardinal component of regulation⁴⁰ which assures and guarantees stakeholders of their concerns and interventions being at least hard if not taken into account by the regulator in making decisions. Public consultation is vital and essential for various reasons including but not limited to the following:

- (a) The regulator is not the only base of knowledge on ICT – related matters or even regulatory matters. Knowledge resides not only in experts employed by

³⁹ Ibid

⁴⁰ Ibid

the regulator, but also in many others who may not be in the regulator's employment.

- (b) Because stakeholders are affected by decision of the regulator, it only follows that their voices should be heard and input at least considered if not implemented.
- (c) Regulating a sector whose stakeholders are consulted is definitely much easier than one where their participation is denied.

2.3.1.4 Enforcement Powers

The regulator, to be effective, requires to be accorded adequate enforcement powers⁴¹ by the legal and regulatory framework under which the said regulator operates. A toothless regulator is of absolutely no value to the sector which, in that case, will be as good as unregulated. It is the threat or actual implementation of sanctions that acts as a deterrent to those regulated from contravening the law or breaching terms of their licences.

2.3.1.5 Mandate to Regulate Quality of Service

Regulators' mandate should extend to regulating the quality of goods and services service providers provide to consumers. Consumers dependent on the regulator to ensure that they receive value for money with respect to ICT goods, services and products they pay for.

2.3.1.6 Mandate to Licence

One of the absolutely essential functions of an ICT regulator is the power to licence. This involves, among others, the development of a licensing regime complete with licence terms and conditions as provided for by the law.

The mandate to licence also involves, among others, power to receive application for licences, scrutinize such applications against set criteria, and either issue or reject such applications. Regulators should, of course, also enforce licence conditions.

2.3.1.7 Mandate to Regulate Interconnection

Regulators should have as one of their functions, regulation of interconnection of service providers' networks. This is largely for two reasons –

⁴¹ Ibid

- (a) without interconnection, consumers on one network can, typically, not be able to call individuals on another network. Interconnection of networks is what enables seamless conveyance of phone calls between different networks.
- (b) Interconnection or denial of it may be used by dominant operators, to facilitate the obliteration of competition from other licensees – especially new entrants that do not hold a dominant position in the sector.

2.3.1.8 Mandate to Regulate Tariffs

Tariffs, like interconnection, may be used by dominant service providers to extinguish competition. Predatory pricing is a practice by which typically a dominant service provider lowers tariffs (amounts the provider charges consumers in exchange for services) to below costs. Almost everyone will turn to such provider leaving service providers that are able to also reduce tariffs to that level without going into liquidation. Typically, the predator, then raises tariffs back to what they ordinarily are, if not higher if authorized.

The above is reason enough for the ICT regulator to be mandated to regulate tariffs charged to consumers by service providers. Another reason is merely that service providers, would, if they had their way, raise tariffs as high as they can, provided they do not lose customers.

2.3.1.9 Mandate to Regulate Scarce Resources

Scarce resources in the ICT sector include spectrum, numbers and electronic addresses. Scarce resources are invisible, finite resources that are essential in the provision by service providers, of services to consumers.

Because scarce resources are extremely essential and rare, the regulator should have the mandate of regulating the allocation and assignment of such resources. This is, in part, to avoid licensees hoarding spectrum and numbers – for instance – as way of denying new entrants access to them which would place such new entrants in a precarious position with respect to their ability to affordably provide services.

Ensuring the avoidance of frequency spectrum interference is another reason for regulating scarce resources. This is especially so when one considers that some of the scarce resources including spectrum, are used by the defence and security agencies making it a matter of national security.

2.3.1.10 Mandate to Regulate Consumer Protection

Consumer protection cannot be overemphasized in a liberalized atmosphere such as the ICT sector, where left to themselves, service providers may be more interested in making profits at the expense of the consumer. The consumer would, in the absence of the regulator in charge of protecting such consumer's interest, be at the mercy of the service providers.

2.3.1.11 Mandate to Regulate Competition

While the country may have a national entity specializing in regulating competition across all sectors in the economy, the ICT regulator is typically the body in charge of competition within the ICT sector. To avoid confusion of roles, some jurisdictions such as Zambia⁴², compel the ICT sector regulator to liaise with the national cross sectoral competition regulator.

2.4 Convergence

The ICT sector has experienced convergence – a coming together of technology and services that used to be separate. One, in the past, required to have various gadgets a television, radio, calculator, watch, phone and calendar. These days the above are all converged into one gadget the mobile phone.

Similarly, whereas providers of internet were, in some cases, different from those providing telephone services, providers of telecommunication services can, typically also provide internet services.

Considering the above, some countries have moved to having a converged regulator regulating both broadcasting as well as telecommunication and internet services among others.

The above has the advantage of an applicant for broadcasting services not having to deal with more than one regulator.

2.5 CONCLUSION

This chapter explored the concept of regulation and licensing, touching on, among other matters, its nature, importance and history.

⁴² Section 8 ICT Act No. 15 of 2009

The chapter also considered principles associated with licensing as well as essential considerations when developing a licence regime.

The chapter delved into regulation at large before considering regulation in the ICT sector specifically.

The following chapter will explore salient provisions of the ICT Act in readiness for a critical analysis of some of its provisions in chapter four.

CHAPTER THREE

THE PRIMARY LEGISLATION GOVERNING THE ICT SECTOR IN ZAMBIA

3.1 INTRODUCTION

The Information Communication technology sector is a critical driver of socio economic development in Zambia. This Chapter examines and provides an overview of the Information and Communication Technologies Act No 15. of 2009, which is the primary piece of legislation governing the ICT sector in Zambia. It, among others, regulates the licensing of electronic communications other than radiocommunications in the Zambian ICT sector. The purpose of this chapter is to provide an overview and general consideration of legislative framework. The ICT Act plays a pivotal role in the regulation of the establishment, operation as well as management of electronic communication networks and services within Zambia. The ICT Act represents Zambia's primary legal instrument for the regulation of the ICT sector.

3.2 Consideration of Salient provisions of the ICT Act

3.2.1 Object of the ICT Act

The preamble of the ICT Act informs that the Act was enacted to, among others, continue the existence of the Communications Authority and re-name it as the Zambia Information and Communication Technology Authority; provide for the regulation of information and communication technology; facilitate access to information and communication technologies; protect the rights and interests of service providers and consumers as well as repeal the Telecommunications Act, 1994, and the Radiocommunications Act, 1994.

The Act provides the legal basis for licensing, enforcement and regulation of the sector at large, while also promoting the development of infrastructure, universal access, and consumer rights too.

3.2.2 Supremacy

The Information and Communications Technologies Act No. 15 of 2009 provides, in section 3, that the ICT Act shall be supreme and override other pieces of legislation other than the Constitution in the event of a contradiction. The section provides:

“Subject to the Constitution, where there is any inconsistency of Act between the provisions of this Act and the provisions of any other written law relating to the regulation of information and communication technologies, the provisions of this Act shall prevail to the extent of the inconsistency”⁴³

3.2.3 The Regulator - ZICTA

Section 4 provides for continuation of the existence of the Authority and its change of name from Communications Authority to the Zambia Information and Communications Technology Authority (ZICTA.) It reads;

4.(1) The Communications Authority established under the and renaming repealed Act shall continue to exist as if established under this Act Authority and is, for purposes of this Act, hereby re-named the Zambia Information and Communications Technology Authority.

The section indicates that the Authority shall be a body corporate with a common seal, capable of suing and of being sued and, subject to the provisions of this Act, capable of performing all such acts and things as a body corporate may, by law, do or perform.

3.2.4 Autonomy of ZICTA

Section 5 provides for the independence of the Authority, stating that ZICTA shall be an autonomous body not subject to the control or direction of any person or authority. The section reads:

Except as otherwise provided in this Act, the Authority shall of Authority be an autonomous body and shall not be subject to the direction of any other person or authority.

3.2.5 Functions of the Authority

Section 6(1) provides for the functions of the Authority in a net while section 6(2) does so in detail. Section 6(1) indicates that the Authority shall regulate the provision of electronic communication services and products and monitor the performance of the sector, including the levels of investment.

⁴³ Information and Communications Technologies (ICT) Act No. 15 of 2009

Section 6(2) outlines the above functions in greater detail, indicating that such functions include to -

- (a) implement and administer the licensing and assignment schemes provided for under this Act, including setting standards for the sector;*
- (b) provide for national frequency and numbering plans and facilitate the efficient use and allocation of numbers and frequencies;*
- (c) promote and facilitate the provision, in urban and rural areas, of such information and electronic communication services that meets all reasonable demand including, in particular, emergency services, directory information services and maritime services;*
- (d) approve the sites at which all transmitting stations, other than aircraft stations, mobile stations or ship stations, are to be established and at which all radio station apparatus used in connection with the transmitting station is to be erected;*
- (e) disseminate information and promote the participation of the public in the provision of electronic communications services;*
- (f) promote the interests of consumers, purchasers and other users of information and electronic communications services, including, in particular, persons with disabilities and the aged in respect of the accessibility, quality and variety of the services and equipment;*
- (g) promote competition among persons engaged in commercial activities relating to, or in connection with, the provision of information and communication technology and efficiency and economy on the part of persons so engaged;*
- (h) promote research, development and the use of new and appropriate technologies in the sector and promote the manufacturing and production of relevant apparatus;*
- (i) attract and encourage local and foreign investment in information and communication technology and promote the provision of international transit services;*
- (j) administer the country code top level domain and electronic addresses;*

- (k) allocate the frequency on which all radio transmitting stations and apparatus shall be worked;*
- (l) approve-*
 - (i) the mode of transmission to be adopted in connection with all transmitting stations and the power to be radiated therefrom;*
 - (ii) the classes, types and standards of transmitting stations and the radio station apparatus to be used in connection with different classes of radio communication services; and*
 - (iii) the classes, types and standards of receiving stations and radio and other apparatus to be used in connection with diffusion services; and*
- (m) perform any other functions as are necessary or incidental to the performance of its functions under this Act.*

3.2.6 Power of Minister to Direct ZICTA

Section 6(3) narrows the scope of independence accorded to ZICTA by section 5 by empowering the Minister to issue general directives to the Authority with respect to the discharge of its functions under this Act as the Minister considers necessary. The section indicates that the Authority shall be compelled to follow and give effect to such directives.

3.2.7 ZICTA's Power to Assume Position of Service Provider

Section 6(4) provides ZICTA with the discretion to undertake and carry on, without a license, work or activities - such as those associated with licenses - which, if performed by anyone else, would require such other person to be in possession of a licence or authorization from ZICTA.

3.2.8 ZICTA's Obligation to Consult on Competition – Related Matters

Section 8 requires the Authority to consult the Zambia Competition Commission on all competition – related matters in the sector.

3.2.9 Requirement for a Licence or Assignment

Section 9 prohibits the operation of an electronic communications network or provision of an electronic communication service without a licence issued under the Act. Section

53, on the other hand, prohibits the use of frequency spectrum, electronic addresses or numbers without an assignment.

Section 9 establishes a fundamental requirement that no person shall operate and electronic communications service without obtaining a license from the authority.⁴⁴ The provision serves as the cornerstone of licencing framework, ensuring that all participants in the ICT sector are subject to regulatory oversight. It also provides for penalties in cases where non-compliance is present, which may include fines or imprisonment. This provision underscores the government's commitment to maintain a structured and controlled ICT environment.

Furthermore, Section 9 promotes accountability and transparency amongst service providers by mandating formal authorization prior to operation. It ensures that only qualified and compliant entities can participate in the provision of communication services, thereby seeking to safeguard consumers from unregulated and substandard operators. Section 53, likewise, also supports the efficient management of scarce resources including radio frequency spectrum and numbers.

The enforcement of this section empowers the authority to monitor evaluate and enforce adherence to national and international standards, which fosters fair competition and advancement. The above reflects best practice by establishing a foundation that deters illegal operations, promotes and supervises service providers.

3.2.10 Categories of Licences

Section 10 outlines the two main categories of licenses that may be issued under the Act - network licenses and service licence. A network license authorises the holder to construct own or operate an electronic communications network, while a service license allows the provision of one or more electronic services. The section also distinguishes between an individual and class license, with individual licenses typically attracting more capital associated with greater economic and social impact than class licences. Individual licences are in practice, more associated with complex operations with class licenses associated with standardised services. This classification facilitates efficient regulation by allowing ZICTA to tailor licensing requirements to the scale and nature of the operation.

⁴⁴Act No. 15 of 2009

It is pertinent to note that the objectives of licensing, including that envisaged by the ICT Act, include among others -

- (a) Ensuring that service provision is consistent with national development priorities.
- (b) Promoting Competition and preventing Monopolistic practices.
- (c) Facilitating investment in the ICT sector.
- (d) Protecting consumers by imposing standards of quality as well as accountability.

The licensing framework distinguishes between different types of licenses, including individual, class, and general authorizations, each with specific eligibility criteria and obligations. This approach is designed to balance regulatory oversight with industry growth and innovation.

3.2.11 Application for a License

Matters relating to the mode and procedure of application for the above licences are provided for in section 11. According to this section any person intending to operate a network and or service license must apply for either an individual or class license.⁴⁵ The application should be made in a manner prescribed with payment of the relevant fee. The provision ensures procedural uniformity in the licensing process and provides ZICTA with the necessary documentation to assess the suitability of applicants. The section emphasizes transparency and due process in the issuance of licenses.

Additionally, this section serves as a critical mechanism through which the authority maintains control over the market entry and makes sure that only competent and financially stable entities are allowed to participate in the ICT Sector. It allows for the standardisation of information submitted by potential operators and facilitates regulatory efficiency. It further allows ZICTA to ensure that only those with the required capacity to meet service and delivery as well as quality standards are granted operating right. The mandatory payment of application fees contributes to the sustainability of the regulatory framework with the fee supporting the administrative and monitoring functions of the Authority.

⁴⁵ ibid

Ultimately this section establishes a structured gateway into the ICT market. It provides a foundation for accountability, ensures proper documentation and verification of operators, thereby contributing to Zambia's communications regulatory framework.

3.2.12 Minimum Qualification to Hold a Licence

Section 12 compels ZICTA to only issue a licence in circumstances where the applicant is financially and technically capable of meeting the applicant's licence obligations.

3.2.13 Issue of Licence

Section 12 empowers the authority to grant or reject license applications. It requires ZICTA to communicate its decision within sixty days of receiving a complete application.⁴⁶ The inclusion of a time frame basically protects applicants and promotes administrative efficiency and predictability for applicants. It also mandates that the authority provide reasons for rejecting an application, reinforcing accountability in the decision-making process.

3.2.14 Conditions of a Licence

Section 13 states that licenses may be issued subject to specific conditions determined by the authority⁴⁷. Such conditions may include quality standards, reporting requirements, consumer protection measures as well as obligations regarding universal access. These conditions are essential to ensure that licenses operate responsibly and in alignment with national ICT policy Objectives.

Beyond this, Section 13 serves as an important regulatory tool through which ZICTA can tailor obligations to the nature, scale, as well as scope of each operators' business activities. The imposition of specific conditions allows the authority to ensure that operators remain accountable and responsive. The inclusion of conditions in licenses also act a safeguard. The authority's ability to impose and enforce such conditions ensures that licenses remain aligned with best practices. The conditions also provide a legal basis for intervention where operates fail to meet their obligations. Ultimately it

⁴⁶ ibid

⁴⁷ ibid

underscores the privilege of holding a licence in the ICT sector carries with it ongoing responsibilities.

3.2.15 Variation of a Licence

The Authority is, by Section 14, empowered to vary terms and conditions of a licence where necessary to address concerns of members of the public or consumers or in public interest. According to section 14, variations may be initiated either by the authority or upon application by the licensee.⁴⁸ The changes and or variations to licenses are not arbitrary but are rather allowed where necessary or where there is valid enough reason for the variation which must relate to regulation and public interest or concerns.

3.2.16 Surrender of Licence

Under section 15, a licensee may voluntarily surrender its license.⁴⁹ The section indicates that the procedure for surrender shall be by mere notification of the Authority, in writing. The provision, however, provides that a licensee surrendering its licence shall agree with the Authority on the terms and conditions of the surrender of the licence, with reference to anything done or any benefit obtained under the licence. This ensures that the cessation of operations does not disrupt users of the network.

Surrender refers to a voluntary termination of a license by the licensee which, unlike revocation, is generally initiated by the authority due to non-compliance or breach. Surrender is initiated by the licensee who chooses to discontinue the licensed activity with the licensee and the Authority, however, having to agree terms and conditions of the said surrender to facilitate and ensure a controlled, orderly and responsible exit.

3.2.17 Transfer of Licence

A licence may, under section 16, be transferred to another person, subject to the approval of the Authority.⁵⁰ This prevents unauthorised changes in ownership and ensures continuity of regulatory compliance. Although this provision allows for the transfer of a license it only does so only with the explicit approval of the Authority.

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ *ibid*

The core reason and principle of requiring approval is to ensure regulatory control as well as consider whether such transfer has any effect of competition in the sector. Also, imperative is for the Authority to ensure that the transferee is not only licenced but also financially and technically capable of discharging the obligations of the licence in question.

3.2.18 Amendment of Licence

Section 17 enables the amendment of licence terms after issuance.⁵¹ Amendments may reflect changes in the regulatory environment or operational circumstances. An amendment with regards to a license and the power to amend by the authority ensures adaptation to evolution of the regulatory environment, particular set of circumstances and the change in demands of both service providers and consumers.

Technology and the ICT sector ecosystem and environment evolve by far more rapidly than the legal and regulatory framework – of which licences with their terms and conditions are a part. The power accorded to the regulator to amend licences is one tool essential in the attempt to keep the ICT sector abreast the rapidly evolving environment.

It allows for and seeks to ensure licenses can adapt to rapidly evolving legal standards, technological developments, and public needs by providing flexibility to adapt to operational realities.

3.2.19 Suspension and Cancellation of a Licence

The Authority has, by virtue of section 18, power to suspend or cancel a licence for reasons such as where the licensee –

- (a) obtained the licence by fraud or submission of false information or statements.
- (b) has contravened any written law relating to the licence or its terms and conditions.
- (c) fails to comply with a decision or guidelines made by the Authority.
- (d) enters receivership or liquidation or takes any action for voluntary winding up or dissolution.

⁵¹ ibid

- (e) enters into any scheme of arrangement, other than for the purpose of reconstruction or amalgamation, upon terms and within such period as may previously have been approved in writing by the Authority.
- (f) is the subject of any order that is made by a court or tribunal for its compulsory winding up or dissolution.
- (g) has ceased to fulfil the eligibility requirements under this Act; or
- (h) The suspension or cancellation is in the public interest.

The Authority is, by this same section, required to, prior to suspension or cancellation of the licence, provide the licensee with the right to be heard and chance to remedy the default.

It may, therefore, be said that section 18 empowers the authority to suspend or cancel a licence, if the license breaches the law, the licence conditions, guidelines or fails to meet operational standards.⁵² The section provides the Authority with necessary enforcement power to sanction non-compliance with provisions of the relevant legal and regulatory framework. The above serves as a mechanism to ensure license holders remain accountable, maintain required standards, and operate in a manner consistent with the provisions of the law.

3.2.20 Renewal of licence

Section 19 provides for licences to be renewable upon expiry, subject to the licensee having continues to fulfil the eligibility requirements of holding a licence and not, during the term of the licence, contravened the provisions of this Act, the terms and conditions of the licence, the guidelines issued by the Authority or any other relevant law.⁵³

Licences are, therefore, granted for a fixed period, after which they expire unless the licence is formally renewed taking the above conditions into account.

3.2.21 Exemption from Requiring a Licence

The Authority may, by virtue of section 20, exempt a person, class of persons or activity from requiring a licence for such period as the Authority may determine.

⁵² ibid

⁵³ ibid

Certain persons and or activities may, thus, be exempted from the requiring a license.⁵⁴ This happens typically where their operations pose minimal regulatory or public interest concerns. This is an approach to regulation that allows the authority to exclude low risk activities from licensing requirements while it retains overall control. The licensing framework remains efficient, proportional, and adaptive, aligning with modern regulatory best practices.

3.2.22 Obligations of Exempt Persons

Even where exemptions apply, section 21 requires exempt persons to comply with other obligations and requirements of the Act. This ensures regulatory oversight is not entirely done away with.⁵⁵

3.3 CONCLUSION

This chapter provided a run through, overview and exploration of ICT Act. Noted among others was the fact that the ICT Act may be considered to be the primary piece of legislation governing the ICT sector. Among provisions considered were those relating to the continuation and re-naming of the Authority, its functions, licensing, grant of assignment for scarce resources, economic regulation, technical regulation, and consumer affairs

The exploration of the ICT Act in this chapter, sets the stage for the critical analysis of select provisions of the said piece of legislation to be conducted in the following chapter.

⁵⁴ *ibid*

⁵⁵ *ibid*

CHAPTER FOUR

A CRITICAL ANALYSIS OF THE LICENSING PROVISIONS IN THE LEGAL FRAMEWORK GOVERNING THE ICT SECTOR IN ZAMBIA

4.0 INTRODUCTION

As already established, licensing serves as a regulatory tool to ensure that market participants operate within established standards of quality, safety as well as consumer protection. It also promotes and supports the attainment of universal access objectives. It, thus, becomes essential that the adequacy and appropriateness of Zambia's ICT licensing legal framework be scrutiny. This chapter will, therefore, examine the licensing framework as provided under the ICT Act No.15 of 2009, identifying both its strengths and weaknesses in promoting sustainable ICT development. This analysis focuses on Part III of the ICT Act, which provides for the licensing of electronic communications other than radio communications, evaluating whether the existing provisions effectively facilitate innovation, competition and consumer protection, while also seeking to address key shortfalls and or challenges, such as regulatory overlap, and barriers to market entry.

4.1 CRITICAL ANALYSIS OF ICT ACT PROVISIONS

4.1.1 Section 9: Requirement for a License

Section 9 establishes the general requirement for any person or entity **operating an electronic communication network** or providing an electronic communications service to be in possession of a valid license issued by the regulatory authority (ZICTA). This ensures that only qualified operators participate in the ICT Market. This provision serves as a regulatory measure, imposing this license requirement promotes technical competence, operational efficiency, and adherence to standards. It also enhances consumer protection ensuring that all service providers operate under ZICTAs regulatory oversight, thereby safeguarding users against exploitation and substandard service delivery.

However, despite these merits, it is argued that the provision, when considered in the light of section 10, projects contradiction and fuels uncertainty.

Section 10 provides:

(1) The Authority shall issue the following licences for Licences purposes of this Act:

(a) network licence, to allow the holder thereof to **construct, own or make available** an electronic communications network, or to provide a network service; and

(b) service licence, to allow the holder thereof to provide one or more electronic communications services.

(2) The Authority shall, in respect of each of the licences referred to in subsection (1), issue the following classes of licence:

(a) individual licence; and

(b) class licence.

It is very clear that activities network licence holders are authorized to undertake by section 9 are different from those authorized by section 10. While section 10 indicates that a network licence authorizes the holder to **construct, own, or making available an electronic communication network**, Section 9 only prohibits only the **operation of an electronic communications network** without a licence. Section 10, seems to omit the

This fosters uncertainty and perpetuates confusion neither of which regulatory frameworks are, in accordance with best, are supposed to do. Legal and regulatory frameworks are, in accordance with best practice, supposed to reflect and foster predictability, certainty as well as clarity and univocality.

A practical challenge at the Authority when network service providers outsourced the operation of their networks. The question which arose was whether third parties operating licensees' networks on behalf of such networks were, by law, required to be in possession of a licence. While the final settlement of the above question may not be currently verified, the principle is that legal and regulatory frameworks should be so clear, unambiguous and uniform such questions should not even arise in the first place.

4.1.2 Section 10 - Categories of Licenses

Section 10 empowers ZICTA to prescribe two categories of licences – Network Licence and Service Licence with each being subdivided into Individual Licence on the one hand and Class Licence on the other.

4.1.3 Section 10 - Lack of Definition of Individual and Class Licence

The first challenge this provision brings about is that the terms “Individual Licence” and “Class Licence” are not substantially defined with such definition being left to the readers’ imagination. Leaving the definition or determination of what the above licences comprise to the Authority is a sure recipe for disputes, misunderstandings, and accusations relating to lack of transparency on the part of the regulator as well as lack of predictability on the part of the legal and regulatory framework.

4.1.4 Section 10 - Unified Licence or Not

The second challenge associated with section 10 is that the intention seems to have been the introduction of a unified licence framework – at least in as much as telecommunications and internet services are concerned. A Unified licence regime is one in which a licensee obtaining one licence may provide whatever services exist in that sector. Thus, if Zambia had a unified licensing regime in place, all one would require is obtain a service licence to provide whatever services they desired including telecommunications and internet.

The section, however, stops short of expressly providing for such licence and the Authority has, in practice, put in place a licence regime that is not fully unified.

Mobile telecommunication services can only be provided by some as oppose to all holders of service licences. Holders of Internet Service Licences (ISPs) are prohibited from providing mobile telephony services, while those providing mobile telecommunication services can, however, provide internet services.

4.1.5 Convergence

Regional and international best practice explicitly promote converged regulatory regimes. In a fully converged ICT regulatory environment, one authority regulates telecommunication, radio spectrum postal services, broadcasting, and courier services among others.

In Zambia ZICTA regulates telecommunications, radio spectrum, network aspects of broadcasting, and postal as well as courier services. Independent Broadcasting Authority, another entity, regulates broadcasting.

The above scenario promotes duplication of functions, wastage of resources, high cost of doing business, inconvenience, inefficiency and potential conflicts and disputes

between and among regulators. A person wishing to run a radio station is required to obtain a broadcasting licence from Independent Broadcasting Authority and radio spectrum assignment from ZICTA.

This theoretically allows for potential for the Independent Broadcasting Authority to grant an applicant a licence in relation to which ZICTA denies such applicant the necessary radio spectrum due to its unavailability.

The above scenario also means such applicant unnecessarily uses more resources than necessary as he or she is required to apply to two different institutions and has to follow up on both which may be costly considering they are not resident in the same building or on the same premises.

South Africa has a converged regulator – Independent Communications Authority of South Africa (ICASA.) The above South African ICT sector regulator is responsible for regulating the telecommunications, broadcasting and postal industries in the public interest and ensure affordable services of a high quality for all South Africans. The Authority also issues licenses to telecommunications and broadcasting service providers', enforces compliance with rules and regulations, protects consumers from unfair business practices and poor-quality services, hears and decides on disputes and complaints brought against licensees and controls and manages the effective use of radio frequency spectrum.⁵⁶

4.1.6 Section 11 - Application for a Licence

This section outlines the process for applying for a license, requiring applicants to submit relevant information and pay prescribed fees. This provision promotes due diligence and transparency by allowing ZICTA to assess the technical as well as financial capacity of applicants.

Section 11(2) compels the Authority to, within sixty days of receipt of an application, grant or reject the application. This is a welcome provision as it causes ZICTA to be accountable as well as avoids unnecessary delays in considering applications in a rapidly evolving sector where time is always of the essence. Sixty days is a very

⁵⁶ ICASA Our Mandate. <https://share.google/ntY40FQ6vaAfMB0hO> and <https://www.icasa.org.za/pages/our-mandate> Accessed 24th October 2025.

reasonable and adequate amount of time within which to consider an application and failure to do so within the said time would, ordinarily, be cause for concern.

According to Section 11(2,) where there is failure on the part of the Authority to decide within the sixty days, the application shall except as otherwise provided under this Act, be deemed to have been granted.

This provision is one that seeks to safeguard the rights of the applicant to be treated fairly and objectively by the Authority in relation to a licence application it has lodged. The legal compulsion to consider and determine a licence application within the 60 days provides an amount of certainty and predictability at least in terms of when to expect a response. The fact that an application will be deemed granted where no response is received within 60 days, further, ensures that ZICTA cannot disadvantage an applicant by perpetually procrastinating the consideration of the application.

4.1.7 Section 12 - Minimum Qualification to Hold a License

Section 12 compels ZICTA to issue a license in circumstances where the applicant is financially and technically capable of meeting the applicant's license obligations. Despite its merit, Section 12 may draw criticism of being potentially exclusionary, particularly toward small and emerging enterprises by not explicitly defining the benchmarks for financial and technical capacity. This provides ZICTA with discretion whose scope may be said to be too wide. In practice, this can create uncertainty and high compliance burdens for start-ups as well as local innovators, many of whom may have technical expertise but lack substantial capital.

There are, indeed, instances in which incapability to discharge licence obligations may be reasonably obvious seem obvious. Of concern is the fact that instances may arise in which such perceived and apparent inability to discharge license obligations may be erroneous and misplaced.

What perhaps would be of assistance is to compel ZICTA to issue a license in circumstances where ZICTA is of the **reasonable belief** that the applicant is financially and technically capable of meeting the applicant's license obligations.

Section 12 as read with section 11 results in lack of clarity, ambiguity and a potential source of disputes. Section 12 compels ZICTA to issue licences to only such applicants

as are both financially as well as technically capable of discharging obligations of the licence being applied for. Section 11 on the other hand, compels the Authority to render a decision on an application within 60 days. The part of section 11 that raises challenges is the one that is highlighted below:

“(2) The Authority shall, within sixty days of receipt of an application, grant or reject the application.

(3) Where the Authority fails to decide within the period referred to under subsection (2), **except as otherwise provided under this Act**, the application shall be deemed to have been granted.”

The meaning of the above provision is that upon expiry of 60 days the licence shall be considered granted **except where the ICT Act, itself, does not authorize the deeming of the licence as granted**.

Recall that section 12 explicitly prohibits the grant of a licence to an applicant that is not either technically or financially capable of discharging the obligations of the licence. The question is: What happens when an application lodged by an applicant that is not either financially or technically capable of discharging obligations associated with the licence takes more than 60 days to consider?

One view would be that such licence would not be deemed granted because the words **“except where the ICT Act, itself, does not authorize the deeming of the licence as granted”** will apply. The Act has expressly provided that **no licence** shall be issued to an applicant that is not either technically or financially capable of discharging obligations associated with the licence in question.

Another view would be that the application would, in the scenario indicated above, still have to be deemed granted. The reasoning is that the 60 days provided by the Act is the period of time within which the Authority scrutinizes the application for purposes of determining whether or not the applicant is capable of discharging the licence obligation of the licence being applied for. Failure on the part of the Authority to make a decision would suggest ZICTA has not come to a conclusion – one way or another. How then can it be, therefore, be said that a determination of the applicant’s inability to discharge the obligations of the relevant licence has been made?

It, however, does not matter which of the two positions above is correct with the point being that each of the two positions above can be argued with the ultimate decision being in the balance. Legislation should, however, never be ambiguous and equivocal but rather plain, clear and unequivocal fostering predictability of its interpretation.

The fact that we have the two schools of thought represented by the arguments indicated above informs of inadequacy on the part of the law.

4.1.8 Section 13 - Conditions of a license

Section 13 provides that (1) A licence issued under section twelve shall –

- (a) contain the terms and conditions of the licence; and
- (b) be valid for such period as may be prescribed.

- (2) The terms and conditions referred to under subsection (1) may relate to the rights and obligations in respect of interconnection access and facility sharing.

ICT sector licences and associated conditions are essential and in practice often relate to scope of coverage area of services being provided, reporting obligations, payment obligations, and tenure of the licence.

The problem, however, with this provision is that Section 13(1) stating the obvious, does not add any value and is therefore needless, excess and obsolete. It goes without saying that a licence will contain terms and conditions because that what licences contain by nature.

What, perhaps, would have made sense would have been to provide a sample of what kind of conditions may be expected to be found in a licence. Alternatively, indicating that a licence shall contain such terms as the Authority may determine would have made a bit more sense.

4.1.9 Section 13 - Duration of Licence.

Duration provisions in legal and regulatory frameworks are essential because they foster certainty, predictability and equity. Applicants can, where the tenure of the licence is stipulated in the law, be aware beforehand how long the licence will be granted for which may be very helpful for planning purposes.

Further, there will be no surprises with respect to the tenure of the licence which may potentially lead to suspicion, accusation of bias and corruption. There should be equity in the administration of regulation of any sector and standards play a very important role in fostering trust and sense of equity.

While Section 13 provides that a licence be valid for such period as may be prescribed, it is submitted that duration of especially major licences associate with high capital investments should have a minimum duration period in the principal piece of legislation as opposed to leaving it to the Minister to prescribe through statutory instrument which can easily be revoked and replaced without prior parliamentary knowledge.

This potentially robs the sector of predictability, trust and sense of equity. One licensee may, theoretically be issued with a licence whose tenure is ten years under one statutory instrument while another in similar circumstances may later be issued with one whose tenure is five years under a new one. This unfettered discretion is sure recipe not only for corruption but also unnecessary disputes with the potential of disrupting the smooth running of the sector. This should, by all means, be avoided considering that the ICT sector is the engine and powerhouse of modern economies around the world.

4.1.10 Section 14 – Variation of Licence

Section 14(3) entitles the Authority to vary the terms and conditions of a licence in circumstances where -

- (a) the variation is necessary in the public interest; or
- (b) the variation is necessary to address the concerns of the members of the public or consumers.

The concern raised with respect to the above is that it provides for unfettered discretion without adequate safeguards to hem in such discretion. The Authority is empowered to vary terms and conditions of a licence in the public interest – presumably with the Authority itself, determining when the threshold at which public interest will be said to have been triggered.

Similarly, who determines how many members of the public should raise concern before it may be said that enough individuals have raised concern for them to represent the public?

4.1.11 Section 20 – Exemption from Holding Licence

Section 20 provides:

(1) The Authority may, by declaration -

- (a) exempt a person or class of persons, for a limited or unlimited period of time, from the requirement to hold an individual licence or a class licence under this Part; or
- (b) specify activities for which an electronic communications licence shall not be required.

The above provisions accord the Authority way too much discretion in matters that are at the very core of regulation – licensing. Licences dictate who enters the market and who doesn't, who is allowed to engage in what activity and who isn't.

The section, however, accords ZICTA discretion to, without so much as consulting or following any criteria, exempt any person from the requirement to hold a licence. Such a person may, unlike other service providers, thus enter the market without spending resources the other service providers had to. Such person will, considering the above, be at an advantage as compared to other service providers thereby unduly affecting competition in the sector.

The least the Act would have done was to either spell out limited circumstances in which the Authority could invoke the discretion.

4.1.12 Section 22 – Reserved Services

Section 22 provides the Minister with discretion to, by statutory instrument, declare certain services as reserved services where the Minister considers it necessary to do so. The provision requires the Minister to, in invoking this discretion and power, have regard to strategic and policy considerations related to providing the service.

It is challenging to consider in what circumstances this provision can be justified in the current liberalised economy and sector. Prior to the liberalization of the economy, Zamtel, which is government owned, enjoyed monopoly in the ICT sector market in

Zambia. With liberalization came the provision for a regulator in the sector and licensing of privately owned service providers.

There is clearly, therefore, no room for reservation of provision of select services for a particular service provider.

4.2 CONCLUSION

This chapter critically analysed licence – related provisions falling under Part III of the ICT Act. Observed was the fact that a number of them fall short of being considered adequate and appropriate. While some are vague and ambiguous fostering debate and disputes, others seem out of place considering the digital and liberalized era in which the sector finds itself.

The following chapter will bring the study to a close, summarizing what has been discussed and providing recommendations as well a final conclusion.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This chapter will summarize the contents of preceding chapters, provide recommendations and bring the study to a conclusion.

5.1 SUMMARY OF CHAPTERS

CHAPTER 1

The first chapter merely introduced the research topic and established the context of the study. The chapter provided an introduction as well as background.

The chapter outlined the research problem, which centred on ambiguities and inadequacies in the Act, particularly as they related to licence – related matters as provided for in Part III of the ICT Act. The problem the study indicated it sought to resolve included contradictions and omission such as those relating to scope of service licence as provided for in Sections 9 and 10. Also noted was the fact that some definitions were either inadequate, vague or completely missing such as those relating to Individual and Class licences. Also noted were the excessive unfettered discretionary powers vested in the Zambia Information and Communication Technology Authority (ZICTA). The objectives, research questions, significance, scope, and literature review and methodology were other contents in the chapter which closed with ethical considerations. This chapter laid a solid foundation for the subsequent chapters.

CHAPTER 2

The second chapter examined the theoretical framework of licensing as a regulatory mechanism, tracing its historical evolution, essential principles, and application within the ICT sector. It emphasized that licensing serves not only as a control mechanism but also as a policy tool to ensure quality service, fair competition, and consumer protection. The chapter also analysed various models of regulation including command and control, performance based, and management-based regulation. The chapter, further, discussed regulatory principles such as autonomy, accountability, and public consultation all of which are vital to effective ICT governance. The chapter

concluded by highlighting the importance of technology convergence and the need for adaptive, forward looking regulatory frameworks.

CHAPTER 3

This chapter presented a detailed overview of the ICT Act No. 15 of 2009, outlining its objectives, structure, and salient provisions. It examined the legal status and functions of ZICTA, emphasizing its autonomy and regulatory responsibilities. Sections 9 to 26 were discussed in a bit more depth, covering key issues such as licensing requirements, categories of licences, application procedures, conditions and variation of licences, renewal, suspension, cancellation, and exemptions. The chapter laid the foundation for the critical analysis reserved for the following chapter.

CHAPTER 4

The fourth chapter offered a critical evaluation of Part III of the ICT Act, touching upon its strengths but dwelling more on the weaknesses. The strengths include the establishment of a structured licensing system and promotion of accountability among service providers through the said licences. However, several deficiencies were noted such as lack of explicit inclusion of network operation under Section 10(1) and omissions of definitions including those of individual and class licences. Excessive discretionary powers vested in ZICTA without adequate procedural safeguards and the absence of a converged regulatory environment were observed as other weaknesses.

5.2 RECOMMENDATIONS

Based on the findings and analysis of this research, a legislative review is recommended for the ICT Act to be amended for it to -

(a) define the terms Individual and Class Licence; **(b)** expressly indicate that it is ushering in a unified licence under section 10; **(c)** provide for complete convergence in the ICT sector; **(d)** avoid ambiguity in section 11 relating to whether a licence application which has not been considered within 60 days is to be deemed approved where the applicant is not technically or financially capable of discharging licence obligations; **(e)** make the determination of being financially or technically capable of discharging licence obligations in section 12 more objective. scope of financial capability; **(f)** provide in **Section 13**, a sample of what conditions may be attached to

licences; **(g)** allow ZICTA to vary licences under **Section 14**, where there is breach and provide a list of public concern – related grounds upon which ZICTA may also vary such licence; **(h)** **Section 13** should stipulate the minimum duration of major licences; **(i)** **Section 20** should clearly and expressly indicate special instances when ZICTA may exempt someone from holding a licence; and to not provide for reserved services as **Section 22** currently does.

5.3 CONCLUSION

The study has demonstrated that an effective ICT regulatory framework is central to national development, innovation, and investment growth. Strengthening the licensing framework under Part III of the ICT Act No. 15 of 2009 will not only enhance regulatory efficiency but also position Zambia as a competitive digital economy in the region. Implementation of the above recommendations will ensure a transparent, predictable, and technology-responsive legal regime that supports sustainable development and inclusive participation in the digital era.

Effective Regulation in the ICT Sector Requires clarity predictability, and adaptability to technological change. Zambia's licensing system should therefore evolve toward a more transparent and participatory framework. In summary while the Act has succeeded in establishing a legal framework for the regulation of electronic communications, its adequacy and effectiveness is curtailed by the challenges outlined in this study which may be remedied by implementing the recommendations outlined above.

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L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: SIBESO CHOTA STUDENT NUMBER: LLB22111688

SUPERVISOR: Mr. THOMAS MALAMA TOPIC: A CRITICAL ANALYSIS OF PART III OF THE ICT ACT NO.15 OF 2009 (LICENSING OF ELECTRONIC COMMUNICATIONS OTHER THAN RADIO COMMUNICATIONS)

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12 15 18 19 23 24 26 27 28 31 32 34 . which is hereby submitted to the
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requirements for the award of the Bachelor of Laws (LLB) degree
is my own original work and that it has not been submitted
for a degree at any other tertiary institution. 3 9 12 15 18 19 20 23 24 27 28 31 32
34 The sources that have been used or quoted have been
indicated and duly acknowledged as complete references. 9 17 19 21 22 31
Signature: _____ Date: _____
_____. SUPERVISORS RECOMMENDATION I, Thomas Malama do recommend t
hat the dissertation titled 6 7 8 12 17 "A CRITICAL ANALYSIS OF PART III
OF THE ICT ACT NO. 6 15 OF 2009 (LICENSING OF ELECTRONIC
COMMUNICATIONS OTHER THAN RADIO COMMUNICATIONS), authored by Sibeso