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By the Chair, Joint
Committee on Energy,
Communications and
Information and House
Broadcasting Committee
on 4/10/2012

TENTH PARLIAMENT – FOURTH SESSION - 2012

REPORT OF THE JOINT COMMITTEE ON
ENERGY, COMMUNICATIONS AND INFORMATION
AND
THE HOUSE BROADCASTING COMMITTEE
ON THE
INTERFERENCE OF AVIONIC COMMUNICATIONS FREQUENCIES BY LOCAL RADIO
STATIONS

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,

NAIROBI

SEPTEMBER, 2012

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LIST OF ACRONYMS AND ABBREVIATIONS

AG	- Attorney General
ATC	- Air Traffic Control
CAT	- Communications Appeals Tribunal
CCK	- Communications Commission of Kenya
CG	- Capital Group
COK	- Constitution of Kenya
DCA	- Directorate of Civil Aviation
DL	- Digitopia Ltd.
GCL	- Go Communications Ltd.
ICM	- International Christian Ministries
ICT	- Information and Communications Technology
IRTVM	- Imani Radio and TV Ministries
ITU	- International Telecommunication Union
JKIA	- Jomo Kenyatta International Airport
KCAA	- Kenya Civil Aviation Authority
MOA	- Media Owners Association
MoSD	- Ministry of State for Defence
NCCCK	- National Council of Churches of Kenya
NDBL	- Neural Digital Broadcasters Ltd.
NFAT	- National Frequency Allocation Table
NMG	- Nation Media Group
NSAC	- National Security Advisory Committee
NSIS	- National Security Intelligence
PS	- Permanent Secretary
RAL	- Radio Africa Ltd.
RHIL	- Radio Holdings International Ltd.
RMS	- Royal Media Services
RRL	- Regional Reach Ltd.
SEL	- Sirino Enterprises Ltd.
TWRK	- Trans World Radio Kenya
UN	- United Nation
VP	- Vice President
WML	- West Media Ltd.

PREFACE

Mr. Speaker Sir,

It is my honour and pleasure to present to this August House, the report of the Joint Committee on Energy, Communications and Information and the House Broadcasting Committee on the interference with Avionic Communications Frequencies by local radio broadcasting stations.

On Tuesday 7th August 2012, the Hon. John H. Mwau CBS, OGW, HSC, CFE, MP, asked a question by private Notice to the Minister for Information and Communications concerning the interference with avionic communications frequencies by local radio stations. In particular, The Hon. John H. Mwau CBS, OGW, HSC, CFE, MP, wanted the Minister to:-

- a) Explain whether he was aware of the complaints that some local radio broadcasting stations are interfering with international and local avionic communications frequencies thereby putting the lives of air passengers in danger;
- b) provide full information including the dates when each company applied for and received approval for radio licences and the frequencies assigned, including the list of all assigned frequencies to each company; and
- c) provide a full list of all companies which have approval and no frequencies assigned, including the dates when the approval was granted and the reason why no frequencies have been assigned, including copies of avionic interference complaints and copies of any investigation and/or report.

Mr. Speaker Sir,

Following the failure by the Ministry of Information and Communications to satisfactorily respond to the question, the Chair directed that the matter be referred to the Joint Committee on Energy, Information and Communications and the House Broadcasting Committee.

Subsequent to this ruling, the joint Committee held a meeting on Thursday 9th August, 2012 to deliberate on its programme of business.

Joint Committee Composition

The Joint Committee comprises the following Members:

- | | |
|---|--|
| 1. The Hon. (Eng.) James Rege, M.P. | - Co. Chairman |
| 2. The Hon. (Eng.) Nicolas Gumbo, M.P | - Co. Chairman |
| 3. The Hon. Clement Wambugu. M.P | - Vice Chairman, House
Broadcasting Committee |
| 4. The Hon. Maina Kamau, M.P | - Vice Chairman, Energy, Information
and Communications Committee |
| 5. The Hon. Emillio Kathuri, M.P | |
| 6. The Hon. William Kabogo, MP | |
| 7. The Hon. Joshua Kutuny, M.P | |
| 8. The Hon. Charles Keter, M.P | |
| 9. The Hon. David Koech, M.P | |
| 10. The Hon. Cyprian Omollo, M.P | |
| 11. The Hon. Aden Duale, M.P | |
| 12. The Hon. Prof. Philip Kaloki, M.P | |
| 13. The Hon. Adan Keynan M.P | |
| 14. The Hon. Ekwee Ethuro, M.P | |
| 15. The Hon. Edwin O. Yinda, M.P | |
| 16. The Hon. Peter Kiilu, M.P | |
| 17. The Hon. Benjamin Jomo Washali, M.P | |
| 18. The Hon. Gedion Mbuvi, M.P | |
| 19. The Hon. Evans Akula, M.P | |

Joint Committee sittings

The joint Committee held a total of 12 sittings and received oral and written submissions from the following stakeholders:-

- i) The Minister for Information and Communications;
- ii) The Permanent Secretary, Information and Communications;
- iii) Kenya Civil Aviation Authority (KCAA)
- iv) Communication Commission of Kenya (CCK)
- v) Office of the Prime Minister
- vi) The Permanent Secretary Ministry of State for Defence
- vii) National Security Intelligence Service
- viii) Office of the Attorney General

SUMMARY OF COMMITTEE OBSERVATIONS AND FINDINGS

The Committee established the following:-

1. There was indeed interference with avionic communications frequencies by some local radio stations;
2. The reasons why there were emissions interfering with critical aeronautical communications was as a result of absence of Band Pass Filters, installation of non-type approved FM transmitters, broadcast from non-designated sites and transmitting beyond the maximum authorized radiated power;
3. Some local radio broadcast stations had not relocated to the designated transmission sites;
4. There were genuine applicants who had not been allocated frequencies;
5. Broadcasters have not been prompt in responding to the notices of violations issued by the regulator particularly on the installation of Band Pass filters while the regulator on the other hand had failed to enforce compliance with the transmission parameters as specified in each broadcaster's license;
6. Installation of band pass filters is one of the most effective and practical solution in addressing interferences with avionic communications frequencies;
7. There were several consultations among stakeholders who are represented at the National Security Advisory Council with directives to ensure the safety of Kenya's Airspace;
8. The Permanent Secretary Ministry of Information and Communications and the management of the Communications Commission of Kenya lack the zeal and commitment to address the problem. Their delay in taking action after obtaining Court warrants as directed by NSAC created a loophole which the Committee was not able to determine whether it was deliberate or an erroneous omission;
9. The claims by the PS Ministry of Information and Communications that his hands were tied as CCK was an independent regulator were not valid considering CCK could not work in isolation of its parent Ministry. The Committee noted that the Minister represents CCK in the Cabinet while the PS represents CCK within Government bureaucracy;
10. The Commission did not lack the requisite institutional memory to implement the regulations as argued by the PS Ministry of Information and Communications. Although there have been changes in the Office of Director General the Commission is not the Director General. The office has

always been in existence and the current PS has served the same Ministry for many years and therefore aware of the problems based on complaints by KCAA and CCK through his office;

11. The tone of the notices of violations from CCK was too polite or "business-like", such that the regulator seemed to be pleading with the violators to stop the violations. The Committee observed that this could be the reason behind continued violations;
12. There are Court orders restraining the Commission from cancelling frequencies or licences held by media houses; the regulator's efforts to deal with the problem has resulted in protracted litigations that have hampered its work;
13. Continued operations of broadcasters using permits under the old licensing regime had rendered ineffective the necessary oversight of their operations by the regulator and has resulted in both technical and content related problems;
14. Article 34 of the Constitution of Kenya 2010 anticipates an independent regulator to regulate the airwaves and other forms of signal distribution; independent of control by government, political interest or commercial interests. There were however challenges in the transition to the new broadcasting licensing regime that need urgent redress;
15. Some frequencies considered by CCK to be unauthorized have been in use for many years and regretted that the confusion in the sector had been due to failure by the regulator to regularize the broadcasting sector;
16. The delay of Court Cases related to the ICT and telephony industry could partly be attributed to lack of legal training on the subject matter, little or no availability of information on the sector and failure to seek competent professional legal advice.
17. The office of the Prime Minister and the office of the Attorney General were not well briefed on the safety concerns resulting from interference with avionic communications frequencies. Consequently the Commission is faced with external interferences in discharging its mandate. This has hampered its ability to enforce the law and effectively regulate the ICT sector; However the interventions of the two Offices and other stakeholders could help address the matter;
18. The EB 100 Mini-port receiver used by the Commission during surveillance exercises has not been calibrated for the last ten years this has posed the challenges of accuracy.

SUMMARY OF COMMITTEE RECOMMENDATIONS

1. All broadcasters whose FM stations are interfering with avionic communications must install suitable band pass filters that are type approved by the Commission within the next 30 days while CCK should ensure that power transmitted by local radio stations is within the approved limits.
2. All broadcasters should within 30 days relocate to the designated transmission sites.
3. The Commission and the Attorney General should find a way of resolving the disputes without protracted litigations and the Ministry should fast track the legislation on broadcasting to establish the independent regulator provided for by the Constitution of Kenya 2010.
4. The Communications Appeals Tribunal (CAT) should seek to entrench itself more authoritatively, and work closely with the Judiciary to become the first port of call on all disputes in the communications sector.
5. The regulator (CCK) should enforce compliance with the transmission parameters as specified in each broadcaster's license and enforce penalties as provided for by law.
6. Based on the Committee observations that there were genuine applicants who had not been allocated frequencies, the Committee recommends that CCK should assign frequencies to genuine applicants.
7. The PS Ministry of Information and Communications has failed to discharge his duties diligently despite the fact that he has served in the same Ministry for a long time; he should therefore take responsibility and make a report to Parliament within 30 days on his policy actions and the results therein.
8. The regulator should conduct a country-wide radio monitoring and surveillance exercise within the next thirty (30) days to determine the level of compliance. The relevant Parliamentary Committee should be furnished with a copy of the status report once the exercise is complete.
9. The regulator (CCK) should issue broadcast permits within the new broadcasting licensing framework before the election date.
10. Based on the Committee's observation that the frequency spectrum needed urgent harmonization and that some of the frequencies considered by CCK to be unauthorized have been in use since 2002, the Committee recommends that the frequencies be regularized within 30 days. The regularization should also include identification of all idle frequencies held in speculation in the sub-sector. The same to be reported to Parliament at the end of the 30 days.

11. The Ministry of Information and Communication through CCK should work with the local universities to design a Curriculum that offer LLM programmes in ICT and MSc in Telecommunications services. The Ministry should further spear-head regular forums that will allow the Judiciary appreciate the complexities of the telecommunication industry and enable all stakeholders appreciate the legal environment under which the industry operates.
12. Pursuant to the Committee's finding that there were instances of external interference with the work of the Commission, the Committee recommends that the Executive desist from interfering with the work of the Commission. The Commission should also give regular briefing to key decision makers in the Executive on the regulatory framework in the sector, especially on matters related to avionic safety.
13. Based on the Committee's observation that the Commission's EB 100 Mini-port receiver used during surveillance exercises has not been calibrated for the last ten years, the Committee recommends that the equipment be calibrated yearly.

ACKNOWLEDGEMENTS

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support and services extended to the Committee to execute its work.

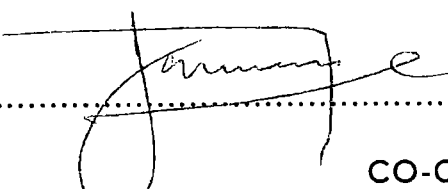
The Chairpersons, thank the Members of the two Committees for their patience, sacrifice, and hard work despite their other commitments and tight schedules, in their endeavor to deliberate on this matter.

We must also thank the staff of the National Assembly for their steadfast support to the Committee.

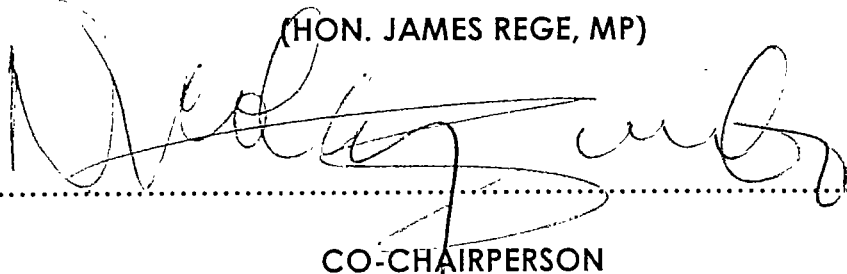
Mr. Speaker, Sir,

On behalf of the joint Committee, I now have the honour and pleasure to present the Report and Recommendations to the House.

Thank You,

Signed

CO-CHAIRPERSON

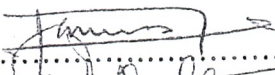
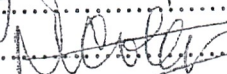
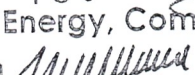
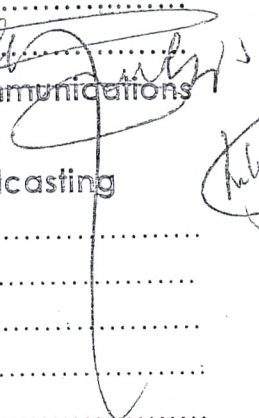
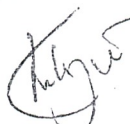


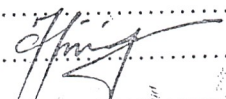
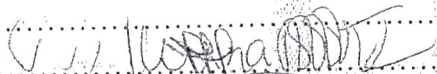
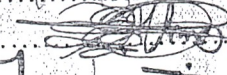


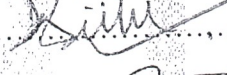


(HON. JAMES REGE, MP)

Signed

CO-CHAIRPERSON

(HON. NICOLAS GUMBO, MP)

Date: Oct. 3, 12

The Report was countersigned by the following Members of the Joint Committee:-

1. The Hon. (Eng.) James Rege, M.P.- Co-Chairman..... 
2. The Hon. (Eng.) Nicolas Gumbo, M.P- Co-Chairman..... 
3. The Hon. Maina Kamau, M.P - Vice Chairman, Energy, Communications and Information   
4. The Hon. Clement Wambugu. M.P- Vice Chairman, House Broadcasting 
5. The Hon. Emillio Kathuri, M.P.....
6. The Hon. Joshua Kutuny, M.P.....
7. The Hon. Charles Keter, M.P..... 
8. The Hon. David Koech, M.P.....
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11. The Hon. Prof. Philip Kaloki, M.P..... 
12. The Hon. Adan Keynan M.P..... 
13. The Hon. Ekwere Ethuro, M.P..... 
14. The Hon. Edwin O. Yinda, M.P..... 
15. The Hon. Peter Kiilu, M.P..... 
16. The Hon. Gedion Mbuvi, M.P.....
17. The Hon. Benjamin Jomo Washiali, M.P..... 
18. The Hon. Evans Akula, M.P.....
19. The Hon. William Kabogo, M.P..... 

CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.0 INTRODUCTION

Frequency spectrum is a global resource that does not recognise national boundaries. As a result, frequency allocation is done at the global and national levels. At the international level, which is the first step in frequency spectrum management, the International Telecommunication Union (ITU), which is a specialized agency of the United Nations (UN), allocates frequency spectrum to three defined regions of the world. Subsequently, each nation in the defined regions undertakes frequency planning at a national level. In its frequency allocation process, Kenya takes into account the requirements of all services that use frequency spectrum, and exercises due caution to ensure that key services that are adjacent to each other in the National Frequency Allocation Table (NFAT) do not interfere with one another.

The Kenya Civil Aviation Authority (KCAA), which is the regulatory authority for the aviation industry in Kenya, operates several radio-communications and radio-navigation systems countrywide to provide critical aeronautical services to airlines flying over Kenya's air space.

1.1. Background

There have been numerous incidences of avionic frequency interferences (copies of some complaint letters from KCAA are attached hereto as **Annex 1**), most of which operate within the frequency 118-136 MHz, adjacent to the FM broadcasting band 87.5-108 MHz band, due to proliferation of unauthorized FM radio broadcasting stations countrywide. These radio broadcasting stations do not adhere to stipulated technical parameters and the designated broadcasting sites.

1.2 Terms of reference

The Committee reviewed its powers under the Powers and Privileges Act, Cap.6 of the Laws of Kenya and set out to achieve the following terms of references with regard to the inquiry:

1. To confirm that Communications Commission of Kenya has received complaints from Kenya Civil Aviation Authority (KCAA) on reported incidents of harmful interference with avionic communications frequency by local radio stations and establish the causes of the interferences;

2. To establish the causes of interference with avionic communication frequencies;
3. To detail a list of avionic frequencies interfered with by local radio broadcasting stations including the local radio stations that have been reported to cause interferences, copies of notices of violation issued by the CCK to those stations and the actions taken;
4. To detail information including the dates when each company applied for and received approval for radio licences and the frequencies assigned, including the list of all assigned frequencies to each company;
5. To detail a full list of all companies which have approval for frequencies but no frequencies assigned, including the dates when the approval was granted and the reason why no frequencies have been assigned. Further, to obtain copies of avionic interference complaints and copies of any investigation and/or report;
6. To establish the criteria used to allocate frequencies and to access letters of offer for each frequency allocated; and whether there is use of unauthorized frequencies in Kenya;
7. To establish whether there was compliance with the transmission parameters as specified in each broadcaster's licence and the level of enforcement by the regulator;
8. To establish the level of consultation between stakeholders in addressing the problem if it exists, actions taken by various stakeholders to address the problem.
9. To receive proposals on how to address the problem and make recommendations for the adoption by the House.

According to the evidence received by the Committee, it revealed that the broadcasting sector has witnessed an increase in use of unauthorized frequencies as well as non-adherence to the terms and conditions of spectrum licences by broadcasters. The Committee also established that the Communications Commission of Kenya (CCK) has in the past from time to time, issued notices of violations to broadcasters, to cease their unauthorised operations on the spectrum with little success.

The Committee adequately interrogated the safety concerns raised by interference with avionic communications frequencies and observes that the circumstances necessitating the above question were serious and needed urgent redress. The Committee therefore appreciates the wise and timely decision by the Speaker to refer this question by Hon. John Harun Mwau CBS, OGW, HSC, CFE, to the Joint Committee.

CHAPTER TWO: SUBMISSIONS BY STAKEHOLDERS

2.0 INTRODUCTION

The Committee received oral and written submissions from various Stakeholders and confirmed the complaints by the Kenya Civil Aviation Authority (KCAA) that there was interference with avionic communications frequencies by local radio stations.

The Committee also received written submissions including detailed information on the dates when each company applied for and received approval for radio licences and the frequencies assigned, the list of all assigned frequencies to each company; a full list of all companies which have approval and no frequencies assigned, indicating the dates when the approval was granted and the reason why no frequencies have been assigned; and copies of avionic interference complaints and investigation reports. (**Annex 2**)

The details of the submissions received from the Stakeholders are presented here below.

2.1 MEETING WITH THE KENYA CIVIL AVIATION AUTHORITY (KCAA)

The joint Committee held a meeting with the Director Kenya Civil Aviation Authority who was accompanied by other KCAA officers on Tuesday, August 14th, 2012.

The joint Committee was informed as follows:-

- (i) The reports received by KCAA on interference with communication frequencies from pilots are normally recorded in KCAA log books and then reported to CCK for action
- (ii) There was indeed interference with avionic communications frequencies by local radio stations. KCAA presented several detailed correspondences showing the complaints received from pilots and communications between KCAA and CCK, including a list of avionic communications frequencies that have been interfered with by local radio stations and the proposed remedial actions.
- (iii) VHF and HF Aeronautical Frequency bands are safety related bands and are exclusive to aeronautical users and where other users are allowed, they are supposed to ensure non-interference with aeronautical services. Any interference could jeopardize avionic safety especially during landing;

- (iv) The interference on following frequency bands have been reported 121.3MHz, VHF Frequency 118.7 MHz, 119.7 MHz and 122.3 MHz.
- (v) Interference with avionic communications frequencies was due to use of higher transmitter power and failure to install band pass filters by local radio broadcasting stations.
- (vi) The most affected HF frequencies are: 8870 KHz, 8879 KHz and 11300 KHz. The enforcement could be exercised by taking some measures as follows:-
- Requiring all JKIA based users of 2-way radios to register them with the office of the General Manager-JKIA;
 - Detailing the frequency range of such 2 way radios;
 - Issuing a cautionary circular from the General Manager J.K.I.A to all holders of 2-way radios at JKIA to respect the ITU protocol and CCK rules that govern the use of radio frequencies and provides for the protection and non-interference with avionic frequencies; and
 - Enlisting the assistance and support of the CCK for purposes of dealing with culprits.
- (vii) KCAA proposed a review of the existing legal framework and particularly recommended that the KCAA Act should be reviewed to empower KCAA to disable any interference with avionic communications frequencies.

2.2 MEETING WITH THE COMMUNICATIONS COMMISSION OF KENYA (CCK)

During its sittings held on Tuesday August 14th, 2012 and Wednesday August 15th, 2012, the Director General CCK and other officers informed the joint Committee as follows:-

2.2.1 Conditions for frequency assignment

The Committee heard that the conditions of frequency assignment require broadcasters to:-

- i) Operate under an annual licence which must be kept in force at all times by making the payment of requisite frequency licence fee.
- ii) Seek type approval from the Commission of the equipment they intend to use prior to installation and use.
- iii) Put the frequencies assigned to use within 12 months from the date of assignment. If this is not the case, the Commission reserves the right to repossess the frequencies and re-assign them to another broadcaster without further reference to them.

- iv) Transmit from the sited specified geographical coordinates and at all times conform to the given technical parameters.
- v) Neither relocate the transmitter nor alter the assigned technical parameters without express authorization of the Commission.
- vi) Use the frequencies assigned for purposes of FM sound broadcasting only and not for any other services. Further, broadcasters are prohibited from using the frequencies to provide any value added services without prior authorization from the Commission.
- vii) Comply with the requirements of the Civil Aviation and Local Authorities with regard to all aspects of the transmission mast.
- viii) Notify the Commission at least 2 weeks in advance prior to initiating test transmissions on the assigned frequency and facilitate the requisite inspection of the broadcaster's installations and facilities by the Commission.
- ix) The Commission reserves the right to modify some of the assigned technical parameters including the assigned frequency, should the channels cause interference with other Channels in neighboring broadcast sites. In the event of such modification, a broadcaster shall be required to effect the change within a reasonable timeframe at no cost whatsoever to the Commission.

2.2.2 Conditions for revocation of the frequency licence

The Committee heard that a frequency license could be withdrawn in the event a broadcaster fails to comply with the conditions of frequency assignment such as failing to utilize the frequency within a period specified by the Commission, broadcasting by using equipment that is not type approved and modification of the authorized parameters among others. The regulatory instruments available to the Commission are the Kenya Information and Communications (Radio and Communications and Frequency Spectrum) Regulations, 2010 attached as **Annex 3**.

2.2.3 Challenges faced by the regulator during surveillance exercises

The Commission is faced with constraints of logistics to accessing, with regard to broadcast inspections, firms fail to facilitate access to the room where the transmitters are reported to be installed. The EB 100 Mini- port receiver that is used during the exercise was last calibrated more than ten years ago and may therefore not be very accurate. (**Annex 4**)

2.2.4 Unauthorised Use of Broadcasting Frequencies

Unauthorised use of broadcast frequencies results to interference with other public safety entities such as police, fire fighters, medics and other organizations that use

radios as their primary source of communication. Unauthorized use of frequencies could result in harmful interferences with the provision of aeronautical and broadcasting services and thus compromise safety of air travellers.

Further, the Communications Commission of Kenya (CCK) earns revenue through allocation of frequencies and therefore unauthorised use of frequencies denies the Commission the resources urgently needed to address the need for plurality, diversity and devolution including the 47 Counties.

The Commission complained of cases of non-adherence to the terms and conditions of spectrum licences. In response, the Commission has from time to time where necessary, notified violators to cease all unauthorised operations on the spectrum. CCK complained of broadcasters ignoring or taking too long to respond to the notices of violations.

The Committee heard that RMS was using some frequencies without authorizations by the Commission as published by the Commission vide a Public Notice in the press on 17th May 2012. **(Annex 5).**

2.2.5 Harmful Interference with Avionic Communications Frequencies

The Commission receives complaints from KCAA and conducts inspection and surveillance exercises during which if any action in contravention of the Kenya Communications Act, 1998, and the Kenya Communications (Amendment) Act, 2009 is detected, the broadcaster is deemed to be in violation and is required pursuant to section 41 of the Act to cease the broadcasts and dismantle the unauthorized facilities or take necessary action upon receiving a notice of violation from the Commission. In many occasions, the Commission holds meetings with the broadcaster to provide advice on the necessary action.

- Following a report on 19th October 2006 by the Kenya Civil aviation Authority (KCCA) on intermittent interference from FM radio stations on the VHF frequency 121.300MHz at their air navigation facilities at Ngong Hills and Poror, the Commission carried out surveillance visits on the area. The findings, which were communicated to the KCAA, indicated that no broadcast signals were affecting the aviation frequencies.
- On 11th June 2007, KCAA submitted 26 incidence reports from the aircraft pilots for the period March –May 2007, which indicated an increase in the reports of

frequency interference on frequency 121.300MHz in areas north of Nairobi- Eldoret, Lodwar. On 2nd August 2007, KCAA was concerned that the interference reported on frequency 121.3 MHz continued to persist. KCAA again wrote to the Commission on 10th March 2008 and 14th October 2008 regarding interference on the north-western tip of the country. On 4th November 2008, officers from the Commission boarded a flight to Juba for surveillance of the area. However, the investigations were unsuccessful due to the heavy shielding of the aircraft which implied that no external radio signals could be received by the Commission receivers on board the aircraft.

The Commission then carried out terrestrial spectrum monitoring on the aeronautical bands 108-136MHz at Menengai, Kisumu, Webuye, Eldoret and Kapenguria on diverse dates between 8th and 12th December 2008. The exercise confirmed the presence of FM broadcast intermodulation products affecting the concerned band. A similar exercise was conducted in Kibwezi, Mtito, Voi (Sagala), Mazaras, Malindi, Mamburi, Taveta and Vuria which confirmed the presence of FM broadcast intermodulation products affecting this band.

The Commission also embarked on countrywide inspection exercise of the broadcast transmission facilities to verify compliance with license conditions, key among which was the installation of band pass filter, which mitigates against harmful interference.

Arising from the exercise, it was noted that most FM broadcasters had not installed the said band pass filters and the commission notified the concerned broadcasters to remedy the anomalies.

- On 9th July 2007, KCAA further reported interference on frequency 119.700MHz used for air traffic control at JKIA.

The Commission carried out investigations and established that there was interference on frequency 119.700 in Nairobi area. The interference was as a result of intermodulation products between two broadcasting frequencies.

- On the 18th December 2007, the Commission directed the concerned broadcasters to reduce their powers to the authorized limits. The broadcasters reduced their transmission power and KCAA confirmed on 4th June 2008 that the interference had ceased.

- On 4th February 2011, KCAA notified the Commission of interference on 120.3MHz in Mombasa. The Commission conducted investigations and resolved the problem in Mombasa.
- On 27th April and 20th May 2011, KCAA notified the Commission of inference on frequency 110.3 MHz in Nairobi. On investigations, it was observed that the frequency suffered interference from two broadcasting transmitters at Kisekini. The Commission wrote to the concerned broadcaster to carry out corrective measures. Our follow up inspection in May 2012 verified that a band pass filter has been installed in one of the transmitters. The Commission is following up the installation of a banpass filter in the other transmitter.
- No interference has been reported by KCAA since then.

The Copies of notices of violations requiring the broadcasters to take remedial action are detailed below (**Annex 6**):

a. Trans World Radio Kenya (TWRK)

Following KCAA complaints regarding interference with aeronautical services, the Commission carried out investigations in Vuria and identified an FM transmitter at Vuria broadcasting on frequency 107.7 MHz (*Sifa fm*) as causing harmful interference to the KCAA aeronautical frequencies. Subsequently CCK wrote a Notice of violation ref. No. DF: 4785/CCK/FSM/BC/76 dated 14th July 2010 to Trans World Radio Kenya. In the correspondence CCK regretted that the matter of absence of band-pass filter had been communicated to the broadcaster many times in the past and had chosen to ignore the directives of the Commission. The following non-conformities were also noted during the exercise;

- Installation of a non type approved FM transmitter – FM Broadcast MOS- FET Model ES 100
- Non installation of a band pass filter

In their reply dated 28th September 2010 TWRK indicated that they had successfully completed the installation of external band pass filter at their transmitter.

b. Nation Media Group (NMG)

Following the Commissions inspections carried out in Eldoret and Limuru on 16th April and 8th April respectively on the Nation Media Group FM and TV broadcast installations, the Commission wrote a Notice of violation Ref. No. CCK/RMS/ BD/ 14 Vol. III.

Commission further identified RMS FM sound broadcasts in Mazeras as causing interference to the KCAA aeronautical radio communications. Subsequently CCK wrote a Notice of Violation ref. No. DF: 4785/CCK/FSM/BC/5 dated 8th March 2010 to RMS Ltd. In the correspondence CCK regretted that the matter of absence of band-pass filter had been communicated to the broadcaster. In their reply letter dated 7th September 2010, RMS informed the Commission that RMS had received the entire Band-pass Filters that were agreed upon in a meeting held with CCK's on 12th February 2010. They proposed that the technical documents be type approved by the Commission and suggested a meeting to be held after the installation of the Band pass filters.

e. Capital Group (CG)

Following KCAA complaints regarding interference with aeronautical services, the Commission carried out investigations and identified an FM at Vuria Broadcasting on frequency 104.9 MHz (*Capital fm*) as causing harmful interference to the KCAA aeronautical frequencies. CCK wrote a Notice of violation ref. No. DF: 4785/CCK/FSM/BC/8 dated 14th July 2010 to Capital Group. In the correspondence CCK regretted that the matter of absence of band- pass filter had been communicated to the broadcaster many times in the past and they had chosen to ignore the directives of the Commission. The Commission directed that Capital Group install external band pass filters and seek type-approval for FM transmitters at Vuria Hill and Menengai Hill and wrote an invitation letter ref. No. DF: 4785/CCK/FSM/BC/8 dated 2nd September 2010 to Capital Group for a meeting to discuss the same.

f. Neural Digital Broadcasters Ltd. (NDBL)

Following KCAA complains regarding interference with aeronautical services the Commission carried out investigations and identified an FM transmitter at Mazeras broadcasting on frequency 94.7 MHz (Radio Umoja) as causing harmful interference to the KCAA aeronautical frequencies, CCK wrote a Notice of violation ref. No. DF: 4785/CCK/FSM/BC/68 dated 14th July 2010 to Neural Digital Broadcasters Ltd. In the correspondence CCK regretted that the matter of absence of band- pass filter had been communicated to the broadcaster many times in the past and had chosen to ignore the directives of the Commission.

g. Radio Holdings International Ltd (RHIL)

Following KCAA complaints regarding interference with aeronautical services the Commission carried out investigations and identified an FM transmitter at Vuria broadcasting on frequency 105.7 MHz (*Radio Jambo*) as causing harmful interference with the KCAA aeronautical frequencies. Subsequently CCK wrote a Notice of violation ref. No. DF: 4785/CCK/FSM/BC/51 dated 14th July 2010 to Radio Holdings International Ltd. In the correspondence CCK regretted that the matter of absence of band-pass filter had been communicated to the broadcaster many times in the past and had chosen to ignore the directives of the Commission.

h. Sirwo Enterprises Ltd (SEL)

Following KCAA complaints regarding interference with aeronautical services the Commission carried out investigations in Eldoret and identified Sirwo Enterprises FM as causing harmful interference to the KCAA aeronautical frequencies. Subsequently CCK wrote a Notice of violation ref. No. DF: 4785/CCK/FSM/BC/80 dated 14th July 2010 to Sirwo Enterprises Ltd. In the correspondence CCK regretted that the matter of absence of band-pass filter had been communicated to the broadcaster many times in the past and had chosen to ignore the directives of the Commission.

i. West Media Ltd (WML)

Following KCAA complaints regarding interference with aeronautical services, the Commission carried out investigations in Webuye and Kapenguria and identified West Media FM transmitters at Webuye broadcasting on frequency 94.9 MHz (*west fm*) as causing harmful interference to the KCAA aeronautical frequencies. Subsequently CCK wrote a Notice of violation ref. No. DF: 4785/CCK/FSM/BC/64 dated 14th July 2010 to West Media Ltd. In the correspondence CCK noted that the situation was endangering safety of life services and the corrective action was to obtain a type approval for the transmitters within 30 days.

j. International Christian Ministries (ICM)

Following KCAA complaints regarding interference with aeronautical services the Commission identified an FM broadcast installation at Kapkoris Hill in Kapenguria on 5th November 2009 and wrote a Notice of violation ref. No. DF: 4785/CCK/FSM/BC/71 dated 9th April 2010. During the exercise the Commission had established that International Christian Ministries (ICM) had not installed a band pass filter as required by the frequency assignment conditions and directed that a corrective action be taken within 60 days.

k. Imani Radio & T.V Ministries

In reference to the inspection of Imani Radio & TV Ministries the Commission regretted that its Kapenguria Facility had been emitting harmful interferences to aeronautical services and on the letter dated 16th July, 2010 the Commission recommended that the issue be addressed. Through its response letter dated 6th September, 2010 the broadcaster had fixed the aviation light on the tower, painted the tower in the red and white colors, reinforced the tower foundation by concreting and redoing the earthlings of the tower. The Broadcaster had further installed a band pass filter on 16th September, 2010 and requested the Commission to carry out an inspection exercise on the works.

l. Go Communications Ltd

Following the Commission's inspection of Go Communications Ltd FM broadcast installation at Limuru carried out on 17th May 2012; the following non conformities were noted;

- Installation of non type approval for the FM transmitter – ELENOS Model ETG 3500 and non installation of a band pass filter.

m. Radio Africa Ltd

Following the Commission's inspection of Radio Africa Ltd FM broadcast installation at Eldoret carried out on 17th April 2012, an installed non type approved FM transmitter (89.1 MHz) – ELENOS Model ETG 1000 in use in Eldoret and installed a non type approved FM transmitter (104.7 MHz)– ELENOS Indium series in use in Webuye. In addition, it was also noted that Radio Africa continues to broadcast from a non- broadcast designated site near Kenya Pipeline Depot in Eldoret.

The Commission is concerned that despite being notified of the latter on 25th February 2011, Radio Africa has continued to broadcast from this non-broadcast designated site. They were directed to take a corrective measure within 30 days.

n. Regional Reach Ltd (RRL)

Following the Commission's inspection of Regional Reach Ltd FM broadcast installation at Limuru carried out on 7th May 2012, an installed non type approved FM transmitter – Broadcast Electronics Model STX – LP was noted. Further Regional Reach Ltd had not fitted a band pass filter on the FM transmitter. They were directed to take a corrective measure within 30 days.

to obtain type Approval for the transmitter and to install the band pass filter of the following characteristics

- Return loss > 26dB over the frequency range $f_c \pm 100\text{kHz}$
- Return loss > 0.5dB outside the frequency range $f_c \pm 1\text{MHz}$

Arising from the said notices of violations the Committee heard that most broadcasters had complied and although no complaints have been reported by KCAA after the corrections, the broadcasters had taken too long to respond.

The scrutiny of the letters of violations to the Broadcasters indicated that the reasons for interference with critical aeronautical communications was as a result of absence of band pass filters, installation of non-type approved FM transmitters, broadcast from non-designated sites and transmitting at powers beyond the maximum authorized radiated power.

2.2.6 Status of Court cases on broadcasting

The Committee heard that the Commission is faced with legal battles on the matter and received details on some of the Court cases as follows:- **(Annex 7)**

I. Media owners Association Vs. Communications Commission of Kenya, Attorney General (AG) & Minister of Information and Communications, Petition No. 244 of 2011;

That on 5th August, 2011 the Commission issued a public notice in the daily Nation newspaper and sent out letters to existing broadcasters, inviting them to apply for licenses under the new regulatory framework stipulated in the Kenya Information and Communications Act, 1998. The deadline for receipt of applications was to be 15th November 2011. A repeat publication of the public notice was issued on 11th November 2011 with a rider that the notice did not apply to new applicants for broadcasting licenses.

Media Owners Association (MOA) apparently being aggrieved with the content and import of the said publication moved to the High Court on 14th November 2011 by way of a Constitutional petition against the Attorney General, the Minister for Information and Communications and the Commission and sought and obtained the following Ex-parte orders.

- A declaration that their rights under Article 34 of the Constitution had been infringed and threatened with violation by the Commission;

- A declaration that the Constitution contemplates an independent broadcasting authority;
- A declaration that the public notices issued by the Commission on 5th August and 11th November 2011 are null and void as the Commission has no Constitutional mandate to license broadcasters; and
- An injunction restraining the Commission and the Ministry of Information and Communications from cancelling, suspending, restricting or in any way interfering with MOA's members' licenses, frequencies and services.

In this matter, the Court issued a conservatory injunctive order on 14th November 2011 restraining the Ministry of Information and Communications and the Commission from cancelling, suspending restriction or in any way interfering with petitioners' licences, frequencies and services. The orders were issued on an interim basis but have since been extended several times with the latest extension being issued on 27th July, 2012 to 24th September 2012 when the parties shall highlight their submissions as directed by the Court.

II. Republic vs. Communications Commission of Kenya ex-parte Magic Radio Limited, HC Misc. Civil Application No. (JR) 284 of 2011;

Magic Radio Limited contends that the Commission went beyond the eligibility criteria set out under the Act hence infringing on its rights to participate in the broadcasting sector. On 29th November 2010, the Court directed that the matter be consolidated into Petition No. 244 of 2011 to be heard by the same Court. The Court noted that this case and the Media Owners Association petition were substantively raising the same issues. It was noted that both cases challenged the Commission's Public notices on transition to licenses under the Act hence orders given in either would directly affect the other. The judge therefore ruled that the extension interim orders in the consolidated matter (in 1 above) apply to the orders sought in this case as well.

III. Nature Foundation Limited vs. Minister Information and Communications & Communications Commission of Kenya, Civil Appeal No. 214 of 2011;

The High Court in Nakuru rendered its judgment on 2nd September 2011 in a judicial reviews application by Nature Foundation Limited seeking to quash provisions of the broadcasting regulations. The Court dismissed this application to the Commission's favour citing lack of sufficient interest on the applicant's part. The applicant filed an appeal in the Court of Appeal in Nakuru dated 29th September 2011 contesting the decision of the High Court in finding that it had no legal standing because of

insufficient interest in the sector. However, the Court noted the application raised several issues of merit, the main finding of the Court being that the Regulations were *ultra vires* of the Act. The Commission has since instructed its advocates to defend its interest in the appeal.

The Committee was informed that in the meantime, the Commission had held discussions with the AG's office on 2nd December 2011 to discuss the approach to adopt on both matters.

2.2.7 Interferences among Broadcasters

The Committee heard that there was interference among broadcasters and high levels of interference with other licensees on co-channels and adjacent channels at various locations in Kenya. Some of the affected broadcasters have lodged complaints and threatened to sue if the problem is not resolved. The broadcasters who have complained of interference include the following:

- a) Yepchinit Ltd (*Sema FM*) broadcast transmissions in Kericho
- b) Southern Hills Development Ltd (*Kaya FM*) broadcast transmissions in Msambweni and Kilifi
- c) Metropolis Investments Ltd/Pilipili Media Ltd (*pilipili FM*) in Mombasa.
- d) QFM and Citizen Radio, Limuru & Machakos Respectively

Copies of some letters from complainants and minutes of resolutions with the regulator are attached as **Annex 8**.

2.2.8 Technicalities of Enforcement

The Commission informed the Committee of its intentions to shut down all unauthorised installations. However, the Committee heard that despite the regulator's efforts to deal with the problem, the interferences and complaints still continued. The Committee heard that the regulator is faced by the following challenges in implementing its work:-

- i) Considering the large number and the geographical spread of the unauthorized installations the Commission requires Government security support and other logistics.
- ii) the Commission is faced with both verbal and written external interferences in discharging its mandate. **(Evidence Annex 9)**
- iii) The Commission operates under a regulatory framework that does not give it adequate powers to regulate the sector;

The Committee observed that there is lethargy and lack of zeal from both the Ministry of Information and Communications and CCK to address the problem. From the correspondences forwarded by the Permanent Secretary (PS), the Committee observed that though the PS had served in the Ministry for several years, he was not able to demonstrate sufficient effort to address the problem.

The evidence received from both the Office of the Attorney General and the office of the Prime Minister indicates that there is lack of proper brief by the two offices on the matter. The Committee noted that the PS had made a presentation to the National Security Advisory Council (NSAC) on the same and had been directed to take action which the Committee noted with concern that he had not complied with.

2.3 MEETING WITH THE MINISTER OF STATE FOR DEFENCE

The joint Committee held a meeting with the Permanent Secretary Ministry of State for Defence who was accompanied by Col. Michael Munywoki on Tuesday August 21st, 2012.

The joint Committee was informed as follows:-

- i) The Ministry of State for Defence was aware of radio broadcasting stations which were transmitting using masts erected on unauthorized sites.
- ii) The mast in Nanyuki is not within the Barracks it is actually 3 Km away.
- iii) The interference with Avionic Communications was raising safety concerns that could cost the country reputation and foreign investment.
- iv) The Ministry was aware of a directive by the National Security Advisory Committee to the PS Ministry of Information and Communications on 2nd July 2012 to ensure CCK repossesses all frequencies allocated to private investors that are interfering or likely to interfere with aeronautical and security frequencies.
- v) There were other two masts near the Moi airbase Nairobi that have not been authorized by the Ministry for Defence.

2.4 MEETING WITH THE CHAIRMAN ROYAL MEDIA SERVICES

The joint Committee held a meeting with the Chairman of Royal Media Services Dr. S.K Macharia accompanied by his personal secretary on Wednesday August 22nd, 2012.

The Chairman Royal Media Services was informed that his local radio stations had been mentioned by the regulator (CCK) during the inquiry into the interference with

avionic communications frequencies. The Committee therefore invited him to provide evidence in response to the allegations of interferences with Civil Aviation Frequencies, use of unauthorized frequencies and lack of respect for regulatory framework.

The Chairman of RMS took the Committee through the company's background as follows:-

- i) Royal Media spend 4 years in Court battling for broadcasting permit. The other broadcasters followed suit later.
- ii) RMS has suffered several closures of Citizen Television, confiscation and destruction of equipments. That equipments worth over Shs. 400 million was destroyed and others confiscated and have never been returned or paid for by CCK or by government to date.
- iii) RMS was issued a license in 1997 to broadcast private radio and TV by the Kenya Post and Telecommunications Corporation. CCK did not exist then.
- iv) On January 2000 RMS was shut down and in about March 2000 a Court order was issued directing the Government to reopen RMS this did not happened until October 2000 when the retired president's directed that RMS be reopened.
- v) RMS was reopened and the frequencies used were those early allocated by the Kenya Post Telecommunications Corporation. During that period the frequency fee was paid to the Kenya Post and Telecommunications. Upon reopening, RMS operated for only about 3-4 months and in April 2001 it was again closed down. Through several interventions RMS was later reopened.
- vi) To reopen the station, RMS needed equipment as the old ones both installed and uninstalled had been confiscated by the government. RMS received financial grants to restart the station. By the time the country was proceeding to hold elections in 2002, RMS was operating in Nairobi, Nyeri, Nyambene, Mombasa, Londiani (Nakuru), Eldoret and Kisumu. Television service was however only in Nairobi.
- vii) In January 2003, the new Government issued RMS with a new licence to operate both Radio and Television nationally (to cover the whole of Kenya with both Radio and Television).
- viii) Upon the issuance of the licence, RMS proceeded to construct broadcasting facilities for both Radio and Television all over the country through borrowed funds.
- ix) Citizen Radio was constructed all over the country and converted to a wholly Swahili station whilst television was also constructed in the whole country with a medium of both Swahili and English. During the construction, Citizen Radio

realized that Swahili and English were not appealing to a majority of the listeners. They understood information better in their mother tongues.

- x) It is with this realization that RMS tried vernacular stations Inooro FM in Nairobi and Nyeri; Ramogi FM in Londiani, Kisumu, Homabay, Migori and Siaya; and Musyi FM in Machakos and Kitui. Following this, other vernacular stations were opened and this has proved that vernacular stations are the best medium in Kenya to receive information for self development.

2.4.1 Interference with Avionic Communications Frequencies

The Committee was informed as follows:-

i) If interference with Civil Aviation occurs it happens on Air Space routes. In Kenya, an FM frequency can only be located around Timboroa, Londiani and Mazeras. The solution to the problem of interference is technical. The reason for interference is either a transmitter's internal Band Pass Filter is not working well and/or the Plane's communication is not working well. In cases like this, the KCAA writes to inform CCK, after which CCK checks on the frequency and informs the operator in writing. A meeting is then scheduled between CCK, DCA (KCAA) and the operator to verify the concerns and obtain a technical solution.

ii) Normally and in seldom cases where a repeated interference occurs on specific frequency, the FM operator is required to install an external band pass filter which is usually the quickest method to solve the problem. This problem can be resolved by a change of a transmitter as well.

iii) RMS was informed through a letter dated 8th March 2010 by CCK that nine (9) of their frequencies were interfering with Civil Aviation around Londiani, Timboroa and Mazeras in Mombasa. In the letter CCK called for a specific Band Pass Filter which RMS ordered and received. **(Annex 10)** Details with regard to the matter include the order from the manufacturer, a letter dated 3/5/2010 to CCK informing them that the order has been placed **(Annex 10)**, custom documents as well as a letter dated 7/9/2010 informing CCK that the Band Pass Filters have been received and that CCK can inspect them before or after installation. CCK wrote a letter dated 9/9/2010 to RMS informing them to supply the technical documentation and proceed with installation. **(Annex 10)** After installation, CCK carried out an inspection there has been no recurred interference and it is not expected to.

iv) RMS has not received any other communication from CCK or KCAA who have the authority to write to the broadcasters in the event that any avionic frequency interference is detected.

2.4.2 Use of unauthorized frequencies

The Committee was informed as follows:-

- i) Royal media does not use illegal or unauthorized frequencies.
- ii) Some frequencies used by RMS are not registered with CCK. However, these frequencies have been in operation since 1997.
- iii) All the frequencies that were being used before the closure of the station in 2001 are still in use while during the closure they had been cancelled. After the retired President reopened the station, RMS continued using the former 1997/2001 frequencies and the new ones to develop the station.

- iv) At the meeting held between Dr. Bitange Ndemo the PS Ministry of Information and Communications, Mr. Charles Njoroge the then Director General of CCK and Mrs. Gathoni Macharia Vice Chairman Royal Media Services, all frequencies in use by RMS were listed down and initialed by the Permanent Secretary. The DG, Mr. Njoroge was expected to have written a letter having recorded in CCK's books all the frequencies as contained in the list.

2.4.3 Allegations of lack of respect for the regulatory framework and installation of non type approved band pass filters.

- i. RMS Chairman disputed the allegations that he does not respect the regulatory framework, stating that if anything RMS has always participated in all meetings called by the regulator (CCK). RMS challenged CCK to demonstrate whether RMS had failed to turn up for any meeting called to address the sector's issues.
- ii. RMS claimed that CCK closed them down with allegations that they had built a mast in Karen that interferes with Civil Aviation. RMS produced an approval date 2/2/2002 which forced CCK to write a backdated letter asking DCA to withdraw the approval. The doctored document was presented in Court.
- iii. He informed the Committee that for every violation notified to them by CCK, RMS always complied and corrected as advised by the regulator.

- iv. That RMS had send the technical documents to CCK for type approval and had no reason not to comply after procuring the same.
- v. That interference with avionic Communications frequencies was a risk to everyone including members of RMS as they are frequent air travelers.
- vi. That CCK had misled the Committee on the matter and that he had complied with all the specifications that were directed by the regulator.
 - a) He informed the Committee that CCK had once requested RMS to supply Band pass filter to Kiss in Nyeri when there was interference with avionic Communication frequencies and that RMS uses the same Band pass filters.
 - b) A request letter from CCK to RMS requesting RMS to supply a band pass filter to Kiss FM in Nyeri.
 - c) Frequency fee reconciliation upto 2002
 - d) The manual with a covering letter, invoices and shipping documents for the band pass filters
 - e) An email correspondence with the supplier seeking a confirmation that the specifications in CCK's letter are the same as the ones in the supplier's letter.

The Committee appreciated RMS Chairman's written evidence of his submission and notified him of CCK's claim that RMS had not submitted technical documentation of the said filters for evaluation and type – approval. He was further informed of CCK's inspection of June 2012 which found that RMS had only installed non type-approved Band Pass filters at Londiani for the transmitters broadcasting on frequencies 89.8 MHz 95.4 MHz 100.5 MHz and 102.5 MHz.

The Committee scrutinized the documentation by RMS and noted they were in order. The Committee however observed that there was a breakdown in communication between CCK and RMS on the matter. RMS was directed to resubmit the technical documents to CCK for type approval and send a copy of the same to the Committee. The Committee observed that RMS sending a copy of the technical documents to CCK for type approval will help jump-start the mechanisms of resolving the misunderstanding.

The Committee sought to receive from RMS a receipt of payment of 12,000 Shillings to customs & Exercise KRA JKIA, as demanded by KCAA letter to RMS

Ref. No. KCAA/OPS/2406/10 Vol. V (75). The Chairman RMS tabled a Miscellaneous Receipt No. 5001691, being the payment on account for inspection and approval, and of the Mast in Nanyuki to the pay office Kenya Civil Aviation Authority Headquarters. **(Annex 10)**

2.5 MEETING WITH THE PERMANENT SECRETARY OFFICE OF THE PRIME MINISTER

The joint Committee held a meeting with the PS office of the Prime Minister on Tuesday August 21st 2012 and on Thursday August 23rd, 2012.

The Committee sought clarifications on the letter dated 14th June 2012 from the office of the Prime Minister by the PS which was provided by CCK as a case example of external inferences faced by the Commission in discharging its duties.

The PS further appraised the Committee has follows:-

- i) The Office of the Prime Minister has not been briefed accordingly by the Ministry of Information and Communication on the security nature of the matter.
- ii) The letter was written earlier before NSAC meeting and although the PS office of the Prime Minister attends NSAC meetings, he was absent during the said NSAC.
- iii) That quite often OPM which is charged with the responsibility of coordinating the functions of the Government including those of Ministries receive petitions and complaints involving Ministries, Government Agencies and other parties including individual persons on matters that require redress or arbitration in order to demonstrate fairness and respect for the law.
- iv) It is in light of this background that when Royal Media Services complained of the ultimatum issued by CCK on 17th May, 2012 in spite of the existence of Court order No.244, the Office of the Prime Minister sought to have the status quo maintained so that the matter could be resolved through consultations.
- v) Although the letter to Dr. Ndemo may appear to have been strongly worded, the intention was to give room for round table discussions to avoid creating an impression that the Judiciary and an agency of the Executive (CCK) were working at cross purposes if the CCK was to defy the Court order.

- vi) The OPM had taken cognizance of the fact that previously, two media houses (the British Broadcasting Corporation and (Neoro)?? Digital) had breached the use of communication frequencies but the matter was rectified.
- vii) In his letter to Dr. Ndemo, he concluded by stating that should there be any need for consultations on the subject, he (Dr. Ndemo) should inform his office.
- viii) Subsequently, after consultation with the NSAC and upon the committee's advice, Dr. Ndemo wrote to PS OPM requesting for a meeting with the Prime Minister which the PS convened for the 31st July, 2012.
- ix) The meeting could however not take place because the Ministry of Information informed OPM on 27th July that both the Hon. Minister and Permanent Secretary for Information and Communication were out of the Country.
- x) Another meeting scheduled for 20th August, 2012 was rescheduled to take place on the 24th August, and 2012 as 20th August, 2012 was declared a Public Holiday.
- xi) That the essence of the scheduled meeting was to ensure that CCK sits with RMS and discuss the way forward in addressing the security concerns without crippling RMS operations.

The Committee observed that the PS for Information and Communications needed to be more diligent on the matter and had reduced his role to that of passing letters from one stakeholder to the other, most of which have conflicting directives.

2.6 MEETING WITH THE NSIS

The Committee sought to hear from the National Security Intelligence Service (NSIS) whether there have been cases of interference with avionic communications frequencies by local radio stations. NSIS confirmed that some media houses have erected unauthorized transmitters that are likely to interfere with avionic Communications frequencies.

The Deputy Director, Analysis and Production who represents Director General NSIS at NSAC meetings appraised the Committee as follows:-

- i) During NSAC's meeting which was held on Tuesday, 6th April, 2010, the PS Ministry of Information and Communications apprised NSAC on the activities of certain broadcasters who were broadcasting using higher power than the permitted limit of 10 KHz, while others were switching to frequencies which had not been allocated to them by CCK. NSAC was then briefed by the PS that KCAA had reported 26 instances of violations in the use of radio frequencies during the months of June and July, 2012.
- ii) Further, during the NSAC meeting held on Wednesday, 27th June, 2012, NSAC directed CCK through the PS , Ministry of Information and Communications to repossess all frequencies allocated to investors interfering or likely to interfere with aeronautical and security frequencies. CCK was required to secure frequency bands that have security implications especially those that are likely to interfere with aircraft performance. According to NSAC this would safeguard against aircraft malfunctions or accidents.
- iii) During the said meeting, the PS- Ministry of Information and Communications was asked to make a presentation to NSAC on the matter which he did during NSAC's subsequent meeting.
- iv) NSAC was informed that interference with avionic communications frequencies pose a threat to the avionic safety as its likely to interfere with both navigation instruments for aircrafts and instrument landing systems.
- v) The Committee learned that the proposed National Intelligence Service Bill, 2012 provides powers to NSIS to work beyond just availing intelligent information to the actors. It gives the power to sanction non-complying entities if they fail to act on availed intelligence information. This in their view will empower NSIS to deal with the matter.
- vi) The Committee expressed disappointment on the fact that the PS Ministry of Information and Communication through CCK had not complied with NSAC recommendations and directives made on Wednesday, 27th June, 2012. The Committee observed that compliance to those directives would have addressed the problem.

The Committee recommended the following:-

- i) CCK should instruct the broadcasters to install band pass filters with immediate effect to address the problem of emissions that interfere with aircraft performance, this will safeguard against interferences with avionic Communications frequencies.

2.7 MEETING WITH THE MINISTER AND THE PERMANENT SECRETARY MINISTRY OF INFORMATION AND COMMUNICATIONS

The joint Committee held a meeting with the Minister for Information. Hon. Samuel Poghishio, EBS, MP and Dr. Bitange Ndemo, the Permanent Secretary on both Thursday August 22nd and Tuesday 28th, 2012.

The PS stated the following:-

- i) The Ministry informed the Committee that on most occasions CCK has written notices of violations to the violators with majority of them responding and making corrections. The matter has also been discussed within the highest levels of government.
- ii) The frequencies considered unauthorized have been in use for many years some even before CCK was established and some even before the regulations 2009 and hence the advice to regularize from the office of the Prime Minister.
- iii) The erection of masts in unauthorized sites and the use of high transmitter power were major causes of avionic communications frequencies and could be addressed through installation of band pass filters.
- iv) He had acted on the matter of unauthorized installation of masts by instructing CCK to shut them down.
- v) His responsibility is only restricted to giving the Ministry's directives to the sector's operators. CCK is the body mandated by law to carry out the actual implementation.
- vi) There was no interference from the Ministry or the Prime Minister's Office to frustrate CCK's efforts to discharge her mandate. The Prime Minister had been provided with a copy of a Court order barring CCK from executing the same.
- vii) The licensing powers of CCK should be re-introduced and the legal framework should be strengthened.

The Committee made the following observations:-

- i) The matter at hand touched on the safety of air travelers. The claim by the PS that the Ministry's and CCK's hands were tied was not valid. The Committee was of the opinion that the Minister should have raised the matter with the Cabinet as it had already been discussed at the National Security Council meetings. His further claim that his hands were tied as CCK was an independent institution was dismissed considering CCK cannot work in isolation of its parent Ministry because the Minister represents CCK in the Cabinet while the PS represent CCK within Government bureaucracy.

- ii) The Committee noted that the role of Constitutional Courts is to interpret the Constitution and tribunals are instrumental in resolving conflicts. The Committee therefore requested the office of the Attorney General to assist CCK and the Ministry on the matter.
- iii) The Committee was dissatisfied with the fact that neither the Ministry nor CCK had briefed the office of the Attorney General on the magnitude of repercussions of unauthorized mast installations or the details of the suits against CCK. CCK should have furnished the AG's office with sufficient information regarding the safety concerns raised by the interference with avionic communications by local broadcasters.
- iv) The Committee further observed that both CCK and the PS lacked zeal and commitment on the matter following the numerous missteps which had allowed the sector to be poorly regulated and observed that they both had failed to take stringent measures to restore order in the broadcasting sector.
- v) The interferences experienced were not only on the avionic communications frequencies but also among the broadcasters themselves and meetings have always been held by the regulator to resolve the interferences.
- vi) CCK as a regulator should emulate other regulators in the developed world and develop zeal in discharging their mandate. The Committee observed that the tone of CCK letters to the violators was too polite or "business-like and that this could be the reason behind the continued violations.
- vii) The delay of cases that touch on Information Communication Technology (ICT) and telephony industry can be attributed to lack of legal training on the subject matter.

From the following observations, the Committee recommends that:-

- i) The Ministry of Information and Communications through CCK work with the local universities to offer LLM programmes in ICT and also organize interactive forums and trainings with the judiciary to enable the stakeholders appreciate the legal environment under which the industry operates.
- ii) The Minister should urgently seek an appointment with the Prime Minister and the Office of the President to raise the issue and explain to them the impending consequences of interference with Avionic Communications frequencies by the local radio stations.
- iii) The set up tribunal should be able to address the conflicts that surround the matter. The Ministry should also spear head forums that allow Judges and lawyers to understand the complexities of the telecommunication industry to resolve the problem of Court case delays expressed under this matter.

- iv) CCK should hire experienced lawyers who have knowledge on telecommunication/ICT law to help them argue their cases knowledgeably.
- v) The Committee finds that the PS has failed to discharge his duties diligently despite the fact that he has been in the Ministry for a long time.

2.8 MEETING WITH THE OFFICE OF THE ATTORNEY GENERAL

The joint Committee held a meeting with the Office of the Attorney General on Tuesday August 28th, 2012. The Committee sought advice from the office of the Attorney General on the matter and was appraised as follows. That:-

- i) The Office of the Attorney General is not well briefed on the matter and regretted that the matter touched on safety of air travelers.
- ii) The Courts have not suspended the law but issued injunctions barring the regulator from taking any action until the matter is heard and resolved.
- iii) The existing Court orders have largely contributed to creating an inefficient sector regulator.
- iv) There is no lacuna in law as the old Constitution still applies pending the passage of the implementation acts according to the time schedules defined by the Constitution of Kenya 2010. Therefore, there are always legal provisions that will allow CCK to carry out its mandate especially on matters relating to serious security concerns.
- v) The Office of the Attorney General committed itself to provide support to CCK to deal with the legal environment that governs the ICT sector.
- vi) The Committee heard that Constitutional interpretations are done by Constitutional Courts. However there is a specialized Communications Appeals Tribunal established under section 102 of the Kenya Information and Communications Act 2008. This is the Court of first resort whenever there is a conflict within the sector.

CHAPTER THREE: SUMMARY OF COMMITTEE OBSERVATIONS AND FINDINGS

The Committee established the following:-

19. There was indeed interference with avionic communications frequencies by some local radio stations;
20. The reasons why there were emissions interfering with critical aeronautical communications was as a result of absence of Band Pass Filters, installation of non-type approved FM transmitters, broadcast from non-designated sites and transmitting beyond the maximum authorized radiated power;
21. Some local radio broadcast stations had not relocated to the designated transmission sites;
22. There were genuine applicants who had not been allocated frequencies;
23. Broadcasters have not been prompt in responding to the notices of violations issued by the regulator particularly on the installation of Band Pass filters while the regulator on the other hand had failed to enforce compliance with the transmission parameters as specified in each broadcaster's license;
24. Installation of band pass filters is one of the most effective and practical solution in addressing interferences with avionic communications frequencies;
25. There were several consultations among stakeholders who are represented at the National Security Advisory Council with directives to ensure the safety of Kenya's Airspace;
26. The Permanent Secretary Ministry of Information and Communications and the management of the Communications Commission of Kenya lack the zeal and commitment to address the problem. Their delay in taking action after obtaining Court warrants as directed by NSAC created a loophole which the Committee was not able to determine whether it was deliberate or an erroneous omission;
27. The claims by the PS Ministry of Information and Communications that his hands were tied as CCK was an independent regulator were not valid considering CCK could not work in isolation of its parent Ministry. The Committee noted that the Minister represents CCK in the Cabinet while the PS represents CCK within Government bureaucracy;
28. The Commission did not lack the requisite institutional memory to implement the regulations as argued by the PS Ministry of Information and Communications. Although there have been changes in the Office of Director General the Commission is not the Director General. The office has

always been in existence and the current PS has served the same Ministry for many years and therefore aware of the problems based on complaints by KCAA and CCK through his office;

29. The tone of the notices of violations from CCK was too polite or "business-like", such that the regulator seemed to be pleading with the violators to stop the violations. The Committee observed that this could be the reason behind continued violations;
30. There are Court orders restraining the Commission from cancelling frequencies or licences held by media houses; the regulator's efforts to deal with the problem has resulted in protracted litigations that have hampered its work;
31. Continued operations of broadcasters using permits under the old licensing regime had rendered ineffective the necessary oversight of their operations by the regulator and has resulted in both technical and content related problems;
32. Article 34 of the Constitution of Kenya 2010 anticipates an independent regulator to regulate the airwaves and other forms of signal distribution; independent of control by government, political interest or commercial interests. There were however challenges in the transition to the new broadcasting licensing regime that need urgent redress;
33. Some frequencies considered by CCK to be unauthorized have been in use for many years and regretted that the confusion in the sector had been due to failure by the regulator to regularize the broadcasting sector;
34. The delay of Court Cases related to the ICT and telephony industry could partly be attributed to lack of legal training on the subject matter, little or no availability of information on the sector and failure to seek competent professional legal advice.
35. The office of the Prime Minister and the office of the Attorney General were not well briefed on the safety concerns resulting from interference with avionic communications frequencies. Consequently the Commission is faced with external interferences in discharging its mandate. This has hampered its ability to enforce the law and effectively regulate the ICT sector; However the interventions of the two Offices and other stakeholders could help address the matter;
36. The EB 100 Mini-port receiver used by the Commission during surveillance exercises has not been calibrated for the last ten years this has posed the challenges of accuracy.

CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

14. All broadcasters whose FM stations are interfering with avionic communications must install suitable band pass filters that are type approved by the Commission within the next 30 days while CCK should ensure that power transmitted by local radio stations is within the approved limits.
15. All broadcasters should within 30 days relocate to the designated transmission sites.
16. The Commission and the Attorney General should find a way of resolving the disputes without protracted litigations and the Ministry should fast track the legislation on broadcasting to establish the independent regulator provided for by the Constitution of Kenya 2010.
17. The Communications Appeals Tribunal (CAT) should seek to entrench itself more authoritatively, and work closely with the Judiciary to become the first port of call on all disputes in the communications sector.
18. The regulator (CCK) should enforce compliance with the transmission parameters as specified in each broadcaster's license and enforce penalties as provided for by law.
19. Based on the Committee observations that there were genuine applicants who had not been allocated frequencies, the Committee recommends that CCK should assign frequencies to genuine applicants.
20. The PS Ministry of Information and Communications has failed to discharge his duties diligently despite the fact that he has served in the same Ministry for a long time; he should therefore take responsibility and make a report to Parliament within 30 days on his policy actions and the results therein.
21. The regulator should conduct a country-wide radio monitoring and surveillance exercise within the next thirty (30) days to determine the level of compliance. The relevant Parliamentary Committee should be furnished with a copy of the status report once the exercise is complete.
22. The regulator (CCK) should issue broadcast permits within the new broadcasting licensing framework before the election date.
23. Based on the Committee's observation that the frequency spectrum needed urgent harmonization and that some of the frequencies considered by CCK to be unauthorized have been in use since 2002, the Committee recommends that the frequencies be regularized within 30 days. The regularization should also include identification of all idle frequencies held in speculation in the sub-sector. The same to be reported to Parliament at the end of the 30 days.

24. The Ministry of Information and Communication through CCK should work with the local universities to design a Curriculum that offer LLM programmes in ICT and MSc in Telecommunications services. The Ministry should further spear-head regular forums that will allow the Judiciary appreciate the complexities of the telecommunication industry and enable all stakeholders appreciate the legal environment under which the industry operates.
25. Pursuant to the Committee's finding that there were instances of external interference with the work of the Commission, the Committee recommends that the Executive desist from interfering with the work of the Commission. The Commission should also give regular briefing to key decision makers in the Executive on the regulatory framework in the sector, especially on matters related to avionic safety.
26. Based on the Committee's observation that the Commission's EB 100 Mini-port receiver used during surveillance exercises has not been calibrated for the last ten years, the Committee recommends that the equipment be calibrated yearly.

Appendix One: Minutes of the Proceedings

Appendix Two: Hansard Report

Minutes of the Proceedings

1. Adoption of the Agenda
2. **Meeting with the Chairman Royal Media Services**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 43/2012:

Deliberations on the Interference with Avionic Communications Frequencies by Local Radio Stations- Meeting with the Chairman Royal Media Services

The joint Committee held a meeting with the Chairman of Royal Media Services Mr. S.K Macharia accompanied by his personal secretary on Wednesday August 22nd, 2012.

The Chairman Royal Media Services was informed that his local radio stations had been mentioned by the regulator (CCK) during the inquiry into the interference with avionic communications frequencies. The Committee therefore invited him to provide evidence in response to the allegations of interferences with Civil Aviation Frequencies, use of unauthorized frequencies and lack of respect for regulatory framework.

A. The Chairman of RMS took the Committee through the company's background as follows:-

- i) Royal Media spent 4 years in Court battling for broadcasting permit the other broadcasters followed suit later.
- ii) RMS has suffered several closures of Citizen Television, confiscation of, and destruction of equipments. That equipments worth over Shs. 400 million was destroyed and others confiscated have never been returned or paid for by CCK or by government to date.
- iii) RMS was issued a license in 1997 to broadcast private radio and TV by the Kenya Post and Telecommunications, CCK did not exist then.
- iv) On January 2000 RMS was shut down and in about March 2000 a Court order was issued directing the government to reopen RMS this did not happened until October 2000 when the retired president's directed that RMS be reopened.

- v) RMS was reopened and the frequencies used were those early allocated by the Kenya Post Telecommunications. During that period the frequency fee was paid to the Kenya Post and Telecommunications. Upon reopening, RMS operated for only about 3-4 months and in April 2001 it was again closed down. Through the intervention of the American's Foreign Secretary Powell; National Council of Churches of Kenya (NCCK) led by Hon. Mutava Musyimi; and His Excellency President Mwai Kibaki RMS was reopened.
- vi) To reopen the station, RMS needed equipment as the old ones both installed and uninstalled had been confiscated by the government. RMS received financial grants to restart the station. By the time the country was proceeding to hold elections in 2002, RMS was operating in Nairobi, Nyeri, Nyambene, Mombasa, Londiani (Nakuru), Eldoret and Kisumu. Television service was however only in Nairobi.
- vii) In January 2003, the new Government issued RMS with a new licence to operate both Radio and Television nationally (cover the whole Kenya with both Radio and Television).
- viii) Upon the issuance of the licence, RMS proceeded to construct broadcasting facilities for both Radio and Television all over the country through borrowed funds.
- ix) Citizen Radio was constructed all over the country and converted to a wholly Swahili station whilst television was also constructed in the whole country with a medium of both Swahili and English. During the construction, Citizen Radio realized that Swahili and English were not appealing to a majority of the listeners they understood information better in their mother tongue language.
- x) It is with this realization that RMS tried vernacular stations Inoro FM in Nairobi and Nyeri; Ramogi FM in Londiani, Kisumu, Homabay, Migori and Siaya; and Musyi FM in Machakos and Kitui. Following this, other vernacular stations were opened and this has proved that vernacular stations are the best medium in Kenya to receive information for self development.

B. Interference with Avionic Communications Frequencies

The Committee was informed as follows:-

i) If interference with Civil Aviation occurs it happens on Air Space routes. In Kenya, an FM frequency can only be located around Timboroa, Londiani and Mazaras. The solution to the problem of interference is technical. The reason for interference is either a transmitter's internal Band Pass Filter is not working well and/or the Plane's communication is not working well. In cases like this, the KCAA writes to inform CCK, after which CCK checks on the frequency and informs the operator in writing. A meeting is then scheduled between CCK, DCI (KCAA) and the operator to verify the concerns and obtain a technical solution.

ii) Normally and in seldom cases where a repeated interference occurs on specific frequency, the FM operator is required to install an external band pass filter which is usually the quickest method to solve the problem. This problem can be resolved by a change of a transmitter as well.

iii) RMS was informed through a letter dated 8th March 2010 by CCK that nine (9) of their frequencies were interfering with Civil Aviation around Londiani, Timboroa and Mazaras in Mombasa. In the letter CCK called for a specific Band Pass Filter which RMS ordered and received. Details with regard to the matter include the order from the manufacturer, a letter dated 3/5/2010 to CCK informing them that the order has been placed, custom documents as well as a letter dated 7/9/2010 informing CCK that the Band Pass Filters have been received and that CCK can inspect them before or after installation. CCK wrote a letter dated 9/9/2010 to RMS informing them to supply the technical documentation and proceed with installation. After installation, CCK carried out an inspection and this has been a regular annual inspection that has seen CCK visit these two stations.

iv) That interference has never recurred again and it is not expected to.

v) RMS has not received any other communication from CCK or DCI who have the authority to write to the broadcasters in the event that any avionic frequency interference is detected.

C. Use of unauthorized frequencies

The Committee was informed as follows:-

- i) Royal media does not use illegal or unauthorized frequencies.
- ii) Some frequencies used by RMS are not registered with CCK. However, these frequencies have been in operation since 1997.
- iii) All the frequencies that were being used before the closure of the station in 2001 are still in use while during the closure they had been cancelled. After the retired President reopened the station, RMS continued using the former 1997/2001 frequencies and the new ones to develop the station.
- iv) At the meeting held between Dr. Bitange Ndemo the PS Ministry of Information and Communications, Mr. Charles Njoroge the then Director General of CCK and Mrs. Gathoni Macharia Vice Chairman Royal Media Services, all frequencies in use by RMS were listed down and initialed by the PS. Mr. Njoroge was expected to have written a letter having recorded in CCK's books all the frequencies as contained in the list.

D. Allegations of lack of respect for the regulatory framework and installation of non type approved band pass filters.

- i. RMS Chairman disputed the allegations that he does not respect the regulatory framework, stating that if anything RMS has always participated in all meetings called by the regulator (CCK). RMS challenged CCK to demonstrate whether RMS had failed to turn up for any meeting called to address the sector's issues.
- ii. RMS claimed that CCK closed them down with allegations that they had built a mast in Karen that interferes with Civil Aviation. RMS produced an approval date 2/2/2002 which forced CCK to write a backdated letter asking DCI to withdraw the approval. The doctored document was presented in court.

- iii. He informed the Committee that for every violation notified to them by CCK, RMS always complied and corrected as advised by the regulator.
- iv. That RMS had send the technical documents to CCK for type approval and had no reason not to comply after procuring the same.
- v. That interference with avionic Communications frequencies was a risk to everyone including members of RMS as they are frequent air travelers.
- vi. That CCK had misled the Committee on the matter and that he had complied with all the specifications that were directed by the regulator.
- vii. He informed the Committee that CCK had once requested RMS to supply Band pass filter to Kiss in Nyeri when there was interference with avionic Communication frequencies and that RMS uses the same Band pass filters.
- viii. RMS Chairman undertook to do the following:
 1. To enable the Committee to satisfy itself that RMS was using the same band pass filters recommended by CCK for Kiss in Nyeri RMS will furnish the Committee with the letter from CCK to RMS requesting that RMS assists Kiss on the matter.
 2. RMS should clear their records so that the cases in court can be cleared to minimize protracted litigations.
 3. RMS should send the following documents to enable the Committee compile its report and copy to CCK for type approval of the band pass filters:-
 - ✓ A list of all the frequencies used by RMS and when they were approved.
 - ✓ Frequency fee reconciliation upto 2002.
 - ✓ The manual with a covering letter, invoices and shipping documents.
 - ✓ Supplier's specifications and CCK's specifications of the band pass filters.
 - ✓ Communicate with the supplier to write back to confirm that the specifications in CCK's letter are the same as the ones in the suppliers letter and the invoice.

The Committee raised concerns over the frequency fees arrears and heard that the matter was Sub- Judge.

The Committee appreciated RMS Chairman's written evidence of his submission and notified him of CCK's claim that RMS had not submitted technical documentation of the said filters for evaluation and type –approval. He was further informed of CCK's inspection of June 2012 which found that RMS had

only installed non type – approved Band Pass filters at Londiani for the transmitters broadcasting on frequencies 89.8 MHz 95.4 MHz 100.5 MHz and 102.5 MHz.

The Committee sought to receive from RMS a receipt of payment of 12,000 Shillings to customs & Exercise KRA JKIA, as demanded by KCAA letter to RMS Ref. No. KCAA/OPS/2406/10 Vol.V(75). The Chairman RMS tabled a Miscellaneous Receipt No. 5001691, being the payment on account for inspection and approval, and of the Mast in Nanyuki to the pay office Kenya Civil Aviation Authority Headquarters.

Min. No. 44/2012:

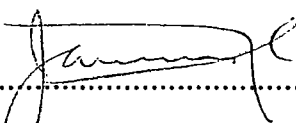
Committee Concerns

The Committee scrutinized the documentation by RMS and noted they were in order. The Committee however observed that there was a breakdown in communication between CCK and RMS on the matter. RMS was directed to resubmit the technical documents to CCK for type approval and send a copy of the same to the Committee. The Committee observed that RMS sending a copy of the technical documents to CCK for type approval will help jam start the mechanisms of resolving the misunderstanding.

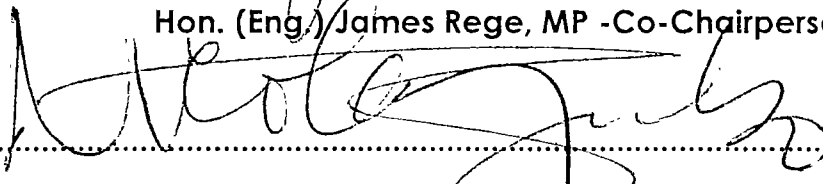
Min No. 45/2012:

Adjournment

There being no other business and the time being thirty minutes past 6.00 O'clock, the meeting adjourned.

SIGNED:


Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:


Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE:
Oct 3, 12

MINUTES OF THE 9TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON THURSDAY, AUGUST 23RD 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 10.00AM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. (Eng.) Nicolas Gumbo, M.P - Co. Chairman
3. The Hon. Charles Keter, M.P
4. The Hon. David Koech, M.P
5. The Hon. Aden Duale, M.P
6. The Hon. Edwin O. Yinda, M.P
7. The Hon. Joshua Kutuny, M.P
8. The Hon. Cyprian Omollo, M.P
9. The Hon. Emillio Kathuri, M.P
10. The Hon. Ekwere Ethuro, M.P

Absent With Apology

1. The Hon. Peter Kiilu, M.P
2. The Hon. (Prof) Philip Kaloki, M.P
3. The Hon. Clement Wambugu, M.P
4. The Hon. Benjamin Jomo Washiali, M.P
5. The Hon. Adan Keynan M.P
6. The Hon. William Kabogo, M.P
7. The Hon. Gedion Mbuvi, M.P
8. The Hon. Evans Akula, M.P
9. The Hon. Maina Kamau, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Rose Omutere

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

In Attendance:

Dr. Mohamed Isakhakia, CBS

Office of the Prime Minister

-PS Office of the Prime Minister

Min. No.46/2012:

Preliminaries

The proceedings commenced with a prayer at 10.28 am.

Min. No.47/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
- 2. Meeting with the PS Office of the Prime Minister**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 48/2012:

Deliberations on the Interference with Avionic Communications Frequencies by Local Radio Stations- Meeting with the PS Office of the Prime Minister

The Chair informed the sitting that the meeting was a follow-up of the sitting held on the 21st August, 2012 in which the PS was represented by his officers.

The Committee informed the PS of the Committee's inquiry into the alleged interference with avionic Communication frequencies by local Radio Stations and the Complaint by the regulator (CCK) that its work has been hampered by weak legal framework and political interference.

The Committee sought clarifications on the letter dated 14th June 2012 from the office of the Prime Minister by the PS which was provided by CCK as a case example of external interferences faced by the Commission in discharging its duties.

The sought clarifications on the matter expressed concern that the letter between government offices was being copied to a private operator.

The PS further appraised the Committee has follows:-

- i) the Office of the Prime Minister had not been briefed according by the Ministry of Information and Communications on the security nature of the matter.
- ii) the letter was written earlier before NSAC meeting and although the PS office of the Prime Minister attends NSAC meetings he was absent during the said NSAC.
- iii) That quite often OPM which is charged with the responsibility of coordinating the functions of the Government including those of Ministries receive petitions and complaints involving Ministries, Government Agencies and other parties including individual persons on matters that require redress or arbitration in order to demonstrate fairness and respect for the law.

- iv) It is in light of this background that when Royal Media complained of the ultimatum issued by CCK on 17th May, 2012 in spite of the existence of court order No.244, the Office of the Prime Minister sought to have the status quo maintained so that the matter could be resolved through consultations.
- v) Although the letter to Dr. Ndemo may appear to have been strongly worded, the intention was to give room for round table discussions to avoid creating an impression that the Judiciary and an agency of the Executive (CCK) were working at cross purposes if the CCK was to defy the court order.
- vi) The OPM had taken cognizance of the fact that previously, two media houses (the British Broadcasting Commission and Neoro Digital) had breached the use of communications frequencies but the matter was rectified.
- vii) In his letter to Dr. Ndemo, he concluded by stating that should there be any need for consultations on the subject, he (Dr. Ndemo) should inform his office".
- viii) Subsequently, after consultation with the NSAC and upon the committee's advice, Dr. Ndemo wrote to PS OPM requesting for a meeting with the Prime Minister which the PS convened for the 31st July, 2012.
- ix) The meeting could however not take place because the Ministry of Information informed OPM on 27th July that both the hon. Minister and Permanent Secretary for Information and Communications were out of the Country.
- x) Another meeting scheduled for 20th August, 2012 was rescheduled to take place on the 24th August, and 2012 as 20th August, 2012 was declared a Public Holiday.

Min No. 49/2012:

Committee Observations/Concerns

The Committee observed that the PS for Information and Communications needed to be more diligent on the matter and had reduced his role to that of passing letters from one stakeholder to the other most of which had conflicting directives.

The Committee expressed the following observations and concerns: that -

- The reasons for emissions interfering with critical aeronautical communications was as a result of absence of Band Pass Filters, installation of non-type approved FM transmitters, broadcast from non-designated sites and transmitting beyond the maximum authorized

radiation power. Installation of band pass filters was identified to be the most effective and practical solution in addressing this problem.

- The Committee was concerned that the PS for information and Communications had reduced his role to that of passing letters from on stakeholder to the other some of which have conflicting directives.
- That the Ministry of Information especially the PS even after being directed by NSAC had failed to act.
- The Committee observed that although CCK has had several changes of personalities in the office of the Director General in the last 10 years. The current PS had served the same Ministry for many years and has always known the problem based on complains by KCAA and CCK through his office.
- The Committee was disappointed that the PS had not done enough to address the problem and had not even once briefed the Office of the Prime Minister on the matter except through a letter dated 2nd July 2012 seeking audience with the office of the Prime Minister for a meeting on the 20th August 2012.
- The Committee exonerated the PS office of the Prime Minister stating that he had not been thoroughly briefed by the sector operators.
- The Committee observed that RMS had a lion share in the frequency allocations and regretted that some of the frequencies have been in operations since 2002 and will be imprudent to withdraw. The Committee noted that although the regulations 2009 had not been passed the regulations were not sufficient to regularize the sector.

Committee's Recommendations

1. All broadcasters whose FM stations are interfering with avionic communications should install suitable band pass filters that are type approved by the Commission within the next 30 days while CCK should ensure that power transmitted by local radio stations is within the approved limits.
2. The Committees observed that there were instances of external interference with the work of the, hampering its ability to enforce the law and effectively regulate the ICT sector. The Committee recommends that the Executive desist from interfering with the work of the Commission.

Min No.50/2012:

Any Other Business

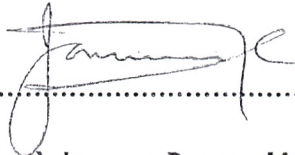
The Committee resolved to hold a joint sitting with the Minister, the PS Ministry of Communications and Information and CCK on the Tuesday 28th August, 2012 at 10.00am.

Min No. 51/2012:

Adjournment

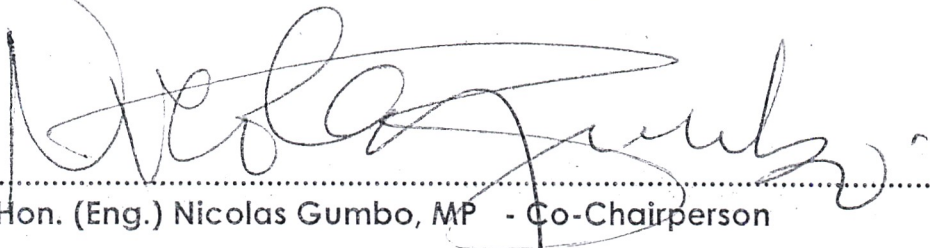
There being no other business and the time being thirty minutes past 5.00 O'clock, the meeting adjourned.

SIGNED:



Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:



Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE:

Oct 3, 12

MINUTES OF THE 10TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON THURSDAY, AUGUST 23RD 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 11.30AM.

Present

1. **The Hon. (Eng.) James Rege, M.P.** - Co. Chairman
2. **The Hon. (Eng.) Nicolas Gumbo, M.P** - Co. Chairman
3. The Hon. Charles Keter, M.P
4. The Hon. David Koech, M.P
5. The Hon. Aden Duale, M.P
6. The Hon. Edwin O. Yinda, M.P
7. The Hon. Emilio Kathuri, M.P
8. The Hon. Joshua Kutuny, M.P
9. The Hon. Cyprian Omollo, M.P
10. The Hon. Ekwee Ethuro, M.P

Absent With Apology

1. The Hon. Peter Kiilu, M.P
2. The Hon. (Prof) Philip Kaloki, M.P
3. The Hon. Clement Wambugu, M.P
4. The Hon. Benjamin Jomo Washiali, M.P
5. The Hon. Adan Keynan M.P
6. The Hon. William Kabogo, M.P
7. The Hon. Gedion Mbuvi, M.P
8. The Hon. Evans Akula, M.P
9. The Hon. Maina Kamau, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Rose Omutere

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

National Security Intelligence Service

1. Mr. Peter M. Mweleli'nds' (K), MBS - Deputy Director, Analysis and Production, NSIS
2. Major (Rtd) R.K Kosen - Director ICT NSIS

Min. No. 52/2012:

Preliminaries

The proceedings commenced with a prayer at 12.18 pm.

Min. No.53/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
2. **Meeting with the Director NSIS**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 54/2012:

Deliberations on the Interference with Avionic Communications Frequencies by Local Radio Stations- Meeting with the Director NSIS

The Committee sought to hear from the National Security Intelligence Service (NSIS) whether there have been cases of interference with avionic communications frequencies by local radio stations. NSIS informed the Committee that erected unauthorized transmitters had been discussed during NSAC meeting.

The Deputy Director, Analysis and Production who represents Director General NSIS at NSAC meetings appraised the Committee as follows:-

- i) During NSAC's meeting which was held on Tuesday, 6th April, 2010, the PS Ministry of Information and Communications appraised NSAC on the activities of certain broadcasters who were broadcasting using higher power than the permitted limit of 10 KHz, while others were transmitting from unauthorized transmission sites. NSAC was then briefed by the PS that KCAA had reported 26 instances of violations in the use of radio frequencies during the months of June and July, 2012.
- ii) Further, during the NSAC meeting held on Wednesday, 27th June, 2012, NSAC directed CCK through the PS, Ministry of Information and Communications to repossess all frequencies allocated to investors interfering or likely to interfere with aeronautical and security frequencies. CCK was required to secure frequency bands that have security implications especially those that are likely to interfere with aircraft performance. They were directed to obtain court warrants to this would then provide legal grounds to take action.
- iii) During the said meeting, the PS- Ministry of Information and Communications was asked to make a presentation to NSAC on the matter which he did during NSAC's subsequent meeting.
- iv) NSAC was informed that interference with avionic communications frequencies pose a threat to National Security and safety of air travelers as its

likely to interfere with both navigation instruments for aircrafts and instrument landing systems.

- v) The Committee learned that the proposed National Intelligence Service Bill, 2012 provides powers to NSIS to work beyond just availing intelligent information to the actors. It gives the power to sanction non complying entities if they fail to act on availed intelligent information. This in their view will empower NSIS to deal with the matter.
- vi) The Committee expressed disappointment on the fact that the PS Ministry of Information and Communications through CCK had not complied with NSAC recommendations and directives made on Wednesday, 27th June, 2012. The Committee observed that compliance to those directives would have addressed the problem.

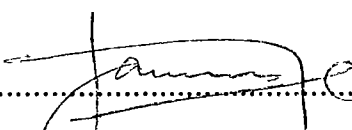
The Committee recommended the following:-

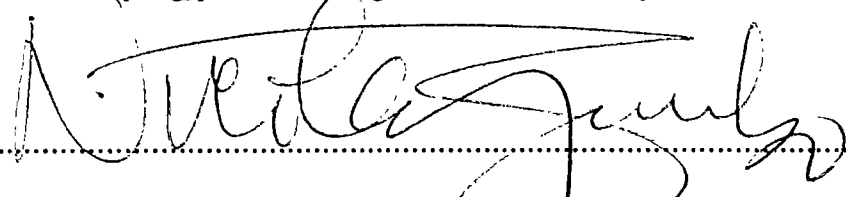
- i) CCK should instruct the broadcasters to install band pass filters with immediate effect to address the problem of emissions that interfere with aircraft performance to safeguard against aircraft malfunctions or accidents.

Min No. 55/2012:

Adjournment

There being no other business and the time being forty five minutes past 1.00 O'clock, the meeting adjourned.

SIGNED:

Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:

Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE: Oct 3, 12

MINUTES OF THE 11TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON TUESDAY, AUGUST 28TH 2012, AT SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS AT 9.30AM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. (Eng.) Nicolas Gumbo, M.P - Co.Chairman
3. The Hon. Aden Duale, M.P
4. The Hon. Charles Keter, M.P
5. The Hon. Edwin O. Yinda, M.P
6. The Hon. Peter Kiilu, M.P
7. The Hon. Clement Wambugu, M.P
8. The Hon. David Koech, M.P
9. The Hon. Joshua Kutuny, M.P

Absent With Apology

1. The Hon. Cyprian Omollo, M.P
2. The Hon. Emillio Kathuri, M.P
3. The Hon. (Prof) Philip Kaloki, M.P
4. The Hon. Benjamin Jomo Washiali, M.P
5. The Hon. Adan Keynan M.P
6. The Hon. William Kabogo, M.P
7. The Hon. Gedion Mbuvi, M.P
8. The Hon. Evans Akula, M.P
9. The Hon. Maina Kamau, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Rose Omutere

National Assembly

- Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

Ministry of Information and Communications

1. Hon. Samwuel Poghisho, M.P Minister
2. Dr. Bitange Ndemo, CBS Permanent Secretary
3. Mr. Francis Wagusi Director General CCK
4. Mr. Peter Ngige Njoroge CCK Management
5. Stanley K. Kibe Director Frequency Spectrum

Office of the Attorney General

6. Ms. Muthoni Kimani, MBS Senior Solicitor – General AG's Office

7. Joshua Too

Ministry of internal Security
Kenya Police ACP (Police)

Min. No.56/2012:

Preliminaries

The proceedings commenced with a prayer at 9. 45am

Min. No.57/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
2. **Meeting with the Ministry of Information and Communications**
3. **Meeting with the Office of the Attorney General**
4. **Meeting with Ministry Internal Security**
5. Any Other Business
6. Date of the Next Sitting

Min. No. 58/2012:

**Deliberations on the Interference with
Avionic Communications Frequencies by
Local Radio Stations**

1. Briefs from the Ministry of Information and Communications

The Committee heard that CCK has not been facilitated by the Ministry of Internal Security to act on NSAC's directives. The Committee observed that the response was not satisfactory as there were no letters tabled to confirm that CCK had requested for security.

The Committee was taken through the various court cases and court orders that have become an impediment to the work of the regulator. One such case was with the Media owners Association. The Committee heard that there were two group of Media owners association each claiming and operating under the same name. The Committee further heard that the Media Owners Association that had sued CCK was not registered under the law and therefore was a non legal entity.

The Committee further heard that there is a court battle between the *de jure* Media Owners Association of Kenya and the *de facto* Media Owners Association, and their main bone of contention was who really represents the interests of the media owners.

The Committee was informed by CCK that the legal suits filed by the Media Owners Association and court injunctions sought by the Royal Media Services on

Constitutional interpretations are mainly meant to deter CCK from taking action on its installed non type approved band pass filters.

The Committee expressed disappointment that it had previously dealt with MOA which has been operating as a legal entity and had appeared several times before the Committees of Parliament to respond on matters on behalf of the Media Owners and sought to establish the relationship between Media Owners Association of Kenya (MOAK) and Media Owners Association (MOA).

The Committee learned that CCK had received a correspondence from the PS directing them to execute NSAC decision and pull down masts erected in unauthorized sites. The Committee heard that CCK had obtained court warrants but failed to execute as Royal Media moved to Court barring CCK from executing the Court warrants.

This Committee demanded convincing reasons why the sector was not well regulated and why the life of air travelers was being put to risk at the expense of commercial and political interests while the Ministry and the regulator has failed to take firm action against broadcasters who fail to install Band Pass Filters.

2. Briefs from the Office of the Attorney General

The Committee sought advice from the Office of the Attorney General on the matter and heard the following:-

- i. The Office of the Attorney General is not well briefed particularly on the security concerns raised by issue.
- ii. There are Court orders restraining the Commission from cancelling frequencies or licences held by media Houses; the regulator's efforts to deal with the problem has resulted to protracted litigations that have hampered its work; The Court's cannot suspend the law however they can issue an injunction barring the regulator not to take action until the matter is heard and resolved.
- iii. There is always a legal provisions that will allow CCK to carry out it's mandate especially when it touches on serious security concerns. This is because there is no lacuna in law as the old constitution still applies pending the passage of the implementation act according to the time schedules defined by the new Constitution.
- iv. The Office of the Attorney General has committed itself to provide support to CCK to deal with the legal environment that govern ICT sector. The Committee learned that neither the Ministry nor CCK had briefed the office of the Attorney General on the magnitude of the suits nor they had learnt of the repercussions of illegal mast installations.

- v. The Committee learned that the impending cases should be dismissed on the basis that the first option to address the issues was through the already established tribunal.

3. Meeting with the Ministry of Internal Security

The Committee informed the assistant Deputy Commandant of Police that the matter before the Committee was of a serious nature and he could not represent the office of the president on the matter he was therefore send to go and come back with the PS internal security.

The Committee observed that CCK had complained of lack of security accompaniment to pull down masts erected in unauthorized sites and noted that CCK had not provided sufficient evidence of having written to the Ministry of internal security requesting for police services.

The Committee however observed that it was the duty of the Ministry of Internal Security to provide security support to the regulator will be enough and there was no need for a meeting with this office as the time given by the Speaker to carry out the inquiry had lapsed.

- i. The process of closing down these illegal mast installations can easily be mate with hostile reception.
- ii. Their hands were tied down by the numerous suits filed by the in Courts.
- iii. Some FM frequencies considered by CCK to be in use irregularly have been operation for so many years.
- iv. Payment of frequencies would provide the Commission with revenue to run its duties.

The P.S stated the following:-

- i. He had acted on the matter of unauthorized installed masts by instructing CCK in a letter to begin the process of shutting them down.
- ii. His mandate is limited to only giving ministry's direction but the actual implementation is the work of the independent regulator (CCK).
- iii. There was no external interference from the Ministry or the Prime Minister's Office to frustrate CCK's efforts of shutting down the unauthorized masts and the Prime Minister acted from the point of lack of information.
- iv. The licensing powers of CCK should be re-introduced and strengthened in order to adequately curb the illegal hoarding of frequencies.

Committee Observations and Concerns

- i. It is true there is interference with avionic communications frequencies by local radio stations.
- ii. The broadcasting sector is poorly regulated.
- iii. The Committee expressed disappointment that the PS did not table the letter from the Office of the Vice President citing the PS's statements recorded in the Hansard of the day which confirmed the undertaking.
- iv. The PS was informed that the Office of the Prime Minister and the Attorney General had not been able to assist the Ministry of Information because they were not aware of the challenges faced by the regulator in implementing the regulations. He was further apprised that the PS OPM had informed the Committee that he wrote a letter without a brief on the security implications of the interference with avionic Communications frequencies.
- v. The Committee observed that there were Court orders restraining the Commission from cancelling frequencies or licences held by media Houses. Despite the regulator's efforts to deal with the problem, protracted litigations has hampered the work of the regulator.
- vi. The Committee was concerned that neither the Ministry nor CCK had briefed the office of the Attorney General on the magnitude of the suits repercussions of illegal mast installations and observed that both CCK and the PS lacked zeal on the matter and had failed to regularize the sector.
- vii. The Committee observed that the Ministry and CCK's had failed to regulate the sector and their delay in taking action after obtaining court warrants had delayed the implementations of the NSAC directives.
- viii. The Committee observed that CCK should have furnished the AG's office with enough information regarding the magnitude of installation of illegal masts and the security threat it posed on air travelers.
- ix. The Committee observed that interferences experienced were not only on the avionic communications frequencies but also among broadcasters.
- x. The claim by the P.S that his hands were tied as CCK was an independent institution was dismissed by the Committee urging that the Minister represents CCK in the Cabinet while the PS represents CCK within Government bureaucracy.
- xi. CCK as a regulator should emulate other such regulators in the developed world and develop zeal in discharging their mandate. The Committee observed that the tone of CCK letters to the violators was too polite "business-like", they are almost begging the violators to stop the violations. The Committee observed that this could be the reason behind continued violations.

- xii. The Committee observed that the delay of cases that touch on ICT and telephony industry could be attributed to lack of legal training in the country on the subject matter.

Committee Recommendations

- a) The Committee recommends that the Ministry of Information and Communication through CCK work with the local universities to offer LLM programmes in ICT and also organize interactive forums and trainings with the Judiciary to enable the stakeholders appreciate the legal environment under which the industry operates.
- b) The Minister should urgently seek an appointment with the Prime Minister and also the Office of the President to appraise them on the issue and explain to them the impending consequences of interference with avionic communications frequencies by local radio stations.
- c) The set up tribunal should be able to address that surround the matter. The Ministry should also sphere head forums that allow Judges and laws to understand the complexities of the telecommunication industry to resolve the problem of delays of court cases.
- d) CCK should hire experienced lawyers who have knowledge on telecommunication/ICT law to help them argue their cases knowledgeably.
- e) The Committee therefore observed that the PS had failed to discharge his duties diligently despite the fact that he has worked in the Ministry for Many years.

Min No. 59/2012:

Any other business

- i. Papers laid

The following papers were laid before the Joint Committee

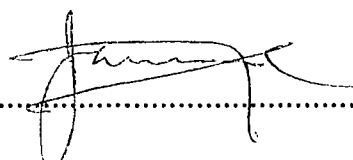
- Copies of court warrants sought by CCK.
- Copies of court documents detailing court cases against CCK.

Min No. 60/2012:

Adjournment

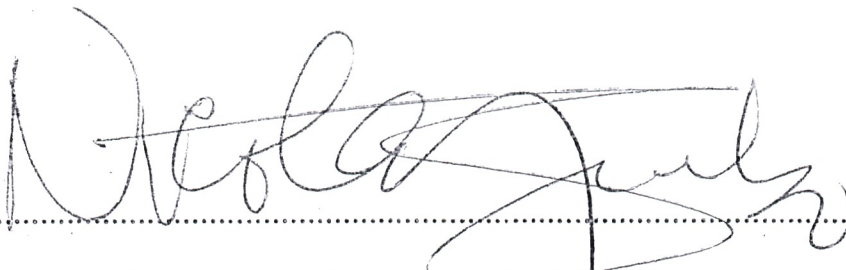
There being no other business and the time being forty five minutes past 1.00 O'clock, the meeting adjourned.

SIGNED:



Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:

A handwritten signature in black ink, appearing to read 'Nicolas Gumbo', written over a horizontal dotted line. The signature is fluid and cursive.

Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE:

Oct 3, 12

MINUTES OF THE 12TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON THURSDAY, SEPTEMBER 6TH 2012, AT THE MEDIA CENTRE, MAIN PARLIAMENT BUILDINGS AT 10.30AM.

Present

1. **The Hon. (Eng.) James Rege, M.P.** - Co. Chairman
2. The Hon. Charles Keter, M.P -AG. Co. Chairman
3. The Hon. David Koech, M.P
4. The Hon. Clement Wambugu, M.P
5. The Hon. Aden Duale, M.P
6. The Hon. Edwin O. Yinda, M.P
7. The Hon. Cyprian Omollo, M.P
8. The Hon. Ekwere Ethuro, M.P
9. The Hon. Maina Kamau, M.P
10. The Hon. Peter Kiilu, M.P
11. The Hon. Joshua Kutuny, M.P

Absent With Apology

1. **The Hon. (Eng.) Nicolas Gumbo, M.P** - Co.Chairman
2. The Hon. Emillio Kathuri, M.P
3. The Hon. Adan Keynan M.P
4. The Hon. (Prof) Philip Kaloki, M.P
5. The Hon. Benjamin Jomo Washiali, M.P
6. The Hon. William Kabogo, M.P
7. The Hon. Gedion Mbuvi, M.P
8. The Hon. Evans Akula, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. Denis Mutua

National Assembly

Third Clerk Assistant
Parliamentary Intern

Min. No. 61/2012:

Preliminaries

The proceedings commenced with a prayer at 10.28 am.

Min. No.62/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
2. **Confirmation of the Minutes of the Previous Sittings**
3. **Matters Arising and Deliberations on Observations and Recommendations**

4. Any Other Business
5. Date of the Next Sitting

Min. No. 63/2012: Confirmation of the Minutes of the Previous Sittings

Minutes of the following sittings were read and confirmed as the true record of the sittings proceedings and signed by the Co- chairpersons

- i. Minutes of the 1st sitting of the joint Committee were proposed by Hon. Maina Kamau, M.P and Seconded by Hon. Charles Keter, M.P.
- ii. Minutes of the 2nd sitting of the joint Committee were proposed by Hon. Peter Kiilu, M.P and Seconded by Hon. Charles Keter, M.P
- iii. Minutes of the 3rd sitting of the joint Committee were proposed by Hon. Edwin Yinda, M.P and Seconded by Hon. Charles Keter, M.P.
- iv. Minutes of the 4th sitting of the joint Committee were proposed by Hon. James Rege, M.P and Seconded by Hon. Charles Keter, M.P. (for the purposes of confirmation of the minutes hon. Cyprian Omollo, M.P chaired the meeting).
- v. Minutes of the 5th sitting of the joint Committee were proposed by Hon. Edwin Yinda, M.P and Seconded by Hon. Cyprian Omollo, M.P.
- vi. Minutes of the 6th sitting of the joint Committee were proposed by Hon. Charles Keter, M.P and Seconded by Hon. Cyprian Omollo, M.P.
- vii. Minutes of the 7th sitting of the joint Committee were proposed by Hon. Peter Kiilu, M.P and Seconded by Hon. Charles Keter, M.P.
- viii. Minutes of the 8th Sitting of the joint Committee were proposed by Hon. Peter Kiilu and Seconded by the Hon. Charles Keter, M.P

Min No. 64/2012: Matters Arising

A. The Committee pointed out the following observations during the confirmation of the Minutes.

1. There was indeed interference with avionic communications frequencies by some local radio stations;
2. The reasons why there were emissions interfering with critical aeronautical communications was as a result of absence of Band Pass Filters, installation of non-type approved FM transmitters, broadcast from non-designated sites and transmitting beyond the maximum authorized radiation power;
3. Some local radio broadcast stations had not relocated to the designated transmission sites;
4. There were genuine applicants who had not been allocated frequencies;
5. Broadcasters have not been prompt in responding to the notices of violations issued by the regulator particularly on the installation of Band Pass filters while

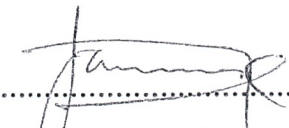
- the regulator on the other hand had failed to enforce compliance with the transmission parameters as specified in each broadcaster's license;
6. Installation of band pass filters is the most effective and practical solution in addressing interferences with avionic communications frequencies;
 7. There were several consultations among stakeholders who are represented at the National Security Advisory Council with directives to ensure the safety of the Kenya's Airspace;
 8. The Permanent Secretary Ministry of Information and Communications and the management of the Communications Commission of Kenya lack the zeal and commitment to address the problem. Their delay in taking action after obtaining Court warrants as directed by NSAC created a loophole which the Committee was not able to determine whether it was deliberate or an erroneous omission;
 9. The claims by the PS Ministry of Information and Communications that his hands were tied as CCK was an independent regulator were not valid considering CCK could not work in isolation of its parent Ministry. The Committee noted that the Minister represents CCK in the Cabinet while the PS represents CCK within Government bureaucracy;
 10. The Commission did not lack the requisite institutional memory to implement the regulations as argued by the PS Ministry of Information and Communications. Although there have been changes in the Office of Director General the Commission is not the Director General. The office has always been in existence and the current PS has served the same Ministry for many years and therefore aware of the problems based on complaints by KCAA and CCK through his office;
 11. The tone of the notices of violations from CCK was too polite or "business-like", such that the regulator seemed to be pleading with the violators to stop the violations. The Committee observed that this could be the reason behind continued violations;
 12. There are Court orders restraining the Commission from cancelling frequencies or licences held by media houses; the regulator's efforts to deal with the problem has resulted in protracted litigations that have hampered its work;
 13. Continued operations of broadcasters using permits under the old licensing regime had rendered ineffective the necessary oversight of their operations by the regulator and has resulted in both technical and content related problems;

14. Article 34 of the Constitution of Kenya 2010 anticipates an independent regulator to regulate the airwaves and other forms of signal distribution; independent of control by government, political interest or commercial interests. There were however challenges in the transition to the new broadcasting licensing regime that need urgent redress;
15. Some frequencies considered by CCK to be unauthorized have been in use for many years and regretted that the confusion in the sector had been due to failure by the regulator to regularize the broadcasting sector;
16. The delay of Court Cases related to the ICT and telephony industry could partly be attributed to lack of legal training on the subject matter, little or no availability of information on the sector and failure to seek competent professional legal advice.
17. The office of the Prime Minister and the office of the Attorney General were not well briefed on the safety concerns resulting from interference with avionic communications frequencies. Consequently the Commission is faced with external interferences in discharging its mandate. This has hampered its ability to enforce the law and effectively regulate the ICT sector; However the interventions of the two Offices and other stakeholders could help address the matter;
18. The EB 100 Mini-port receiver used by the Commission during surveillance exercises has not been calibrated for the last ten years this has posed the challenges of accuracy.

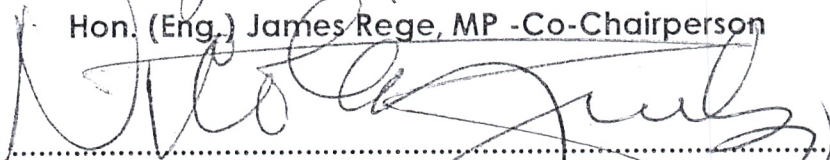
Min No. 65/2012:

Adjournment

There being no other business and the time being ten minutes past 1.00 O'clock, the meeting adjourned.

SIGNED: 

Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED: 

Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE: Oct 3, 12

MINUTES OF THE 13TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON WEDNESDAY 3RD OCTOBER 2012, AT COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 3.30PM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. (Eng.) Nicolas Gumbo, M.P - Co.Chairman
3. The Hon. Charles Keter, M.P
4. The Hon. (Prof) Philip Kaloki, M.P
5. The Hon. Clement Wambugu, M.P
6. The Hon. Edwin O. Yinda, M.P
7. The Hon. Cyprian Omollo, M.P
8. The Hon. Maina Kamau, M.P
9. The Hon. Peter Kiilu, M.P
10. The Hon. Joshua Kutuny, M.P
11. The Hon. Benjamin Jomo Washiali, M.P

Absent With Apology

1. The Hon. Emillio Kathuri, M.P
2. The Hon. Adan Keynan M.P
3. The Hon. William Kabogo, M.P
4. The Hon. Gedion Mbuvi, M.P
5. The Hon. Evans Akula, M.P
6. The Hon. Aden Duale, M.P
7. The Hon. Ekwere Ethuro, M.P
8. The Hon. David Koech, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. Denis Mutua

National Assembly

Third Clerk Assistant
Parliamentary Intern

Min. No. 66/2012:

Preliminaries

The proceedings commenced with a prayer at 10.28 am.

Min. No.67/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
2. Confirmation of the Minutes of the Previous Sittings
3. Matters Arising and Deliberations on Observations and Recommendations

4. Any Other Business
5. Date of the Next Sitting

Min. No. 68/2012: Confirmation of the Minutes of the Previous Sittings

Minutes of the following sittings were read and confirmed as the true record of the sittings proceedings and signed by the Co- chairpersons

- ix. Minutes of the 9th sitting of the joint Committee were proposed by Hon. Peter Kiilu, M.P and Seconded by Hon. Cyprian Omollo, M.P.
- x. Minutes of the 10th sitting of the joint Committee were proposed by Hon. Edwin Yinda, M.P and Seconded by Hon. Charles Keter, M.P
- xi. Minutes of the 11th sitting of the joint Committee were proposed by Hon. Edwin Yinda, M.P and Seconded by Hon. Charles Keter, M.P.
- xii. Minutes of the 12th sitting of the joint Committee were proposed by Hon. Peter Kiilu, M.P and Seconded by Hon. Edwin Yinda, M.P
- xiii. Minutes of the 13th sitting of the joint Committee were proposed by Hon. Benjamin Jomo Washiali, M.P and Seconded by Hon. Prof. Phillip Kaloki, M.P.

Min No. 69/2012: Consideration and adoption of the Committee Report

The Committee considered its report and adopted with the following recommendations. The Adoption of the Report was proposed by Hon. Edwin Yinda, M.P and Seconded by Hon. Peter Kiilu, M.P

1. All broadcasters whose FM stations are interfering with avionic communications must install suitable band pass filters that are type approved by the Commission within the next 30 days while CCK should ensure that power transmitted by local radio stations is within the approved limits.
2. All broadcasters should within 30 days relocate to the designated transmission sites.
3. The Commission and the Attorney General should find a way of resolving the disputes without protracted litigations and the Ministry should fast track the legislation on broadcasting to establish the independent regulator provided for by the Constitution of Kenya 2010.
4. The Communications Appeals Tribunal (CAT) should seek to entrench itself more authoritatively, and work closely with the Judiciary to become the first post of call on all disputes in the communications sector.

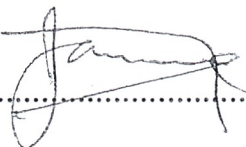
5. The regulator (CCK) should enforce compliance with the transmission parameters as specified in each broadcaster's license and enforce penalties as provided for by law.
6. Based on the Committee observations that there were genuine applicants who had not been allocated frequencies, the Committee recommends that CCK should assign frequencies to genuine applicants.
7. The PS Ministry of Information and Communications has failed to discharge his duties diligently despite the fact that he has served in the same Ministry for a long time; he should therefore take responsibility and make a report to Parliament within 30 days on his policy actions during his tenure and the results therein.
8. The regulator should conduct a country-wide radio monitoring and surveillance exercise within the next thirty (30) days to determine the level of compliance. The relevant Parliamentary Committee should be furnished with a copy of the status report once the exercise is complete.
9. The regulator (CCK) should issue broadcast permits within the new broadcasting licensing framework before the election date.
10. Based on the Committee's observation that the frequency spectrum needed urgent harmonization and that some of the frequencies considered by CCK to be unauthorized have been in use since 2002, the Committee recommends that the frequencies be regularized within 30 days. The regularization should also include identification of all idle frequencies held in speculation in the sub-sector. The same to be reported to Parliament at the end of the 30 days.
11. The Ministry of Information and Communication through CCK should work with the local universities to design a Curriculum that offer LLM programmes in ICT and MSC in Telecommunications services. The Ministry should further spear-head regular forums that will allow the Judiciary appreciate the complexities of the telecommunication industry and enable all stakeholders appreciate the legal environment under which the industry operates.
12. Pursuant to the Committee's finding that there were instances of external interference with the work of the Commission, the Committee recommends that the Executive desist from interfering with the work of the Commission. The Commission should also give regular briefing to key decision makers in the Executive on the regulatory framework in the sector, especially on matters related to avionic safety.
13. Based on the Committee's observation that the Commission's EB 100 Mini-port receiver used during surveillance exercises has not been calibrated for the last

ten years, the Committee recommends that the equipment be calibrated yearly.

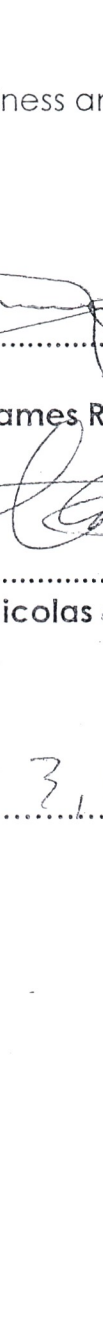
Min No. 70/2012:

Adjournment


There being no other business and the time being ten minutes past 1.00 O'clock, the meeting adjourned.

SIGNED: 

Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED: 

Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE: 

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 7th August, 2012

The House met at 2.30 p.m.

[*Mr. Speaker in the Chair*]

INTERFERENCE WITH AVIONIC COMMUNICATIONS FREQUENCIES BY LOCAL RADIO STATIONS

Mr. Mwau: Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware of the complaints that some local radio broadcasting stations are interfering with international and local avionic communications frequencies thereby putting the lives of air passengers in danger?

(b) Could the Minister provide full information including the dates when each company applied for and received approval for radio licences and the frequencies assigned, including the list of all assigned frequencies to each company?

(c) Could the Minister also provide a full list of all companies which have approval and no frequencies assigned, including the dates when the approval was granted and the reason why no frequencies have been assigned, including copies of avionic interference complaints and copies of any investigation and/or report?

Mr. Speaker: Minister for Information and Communications! Leader of Government Business, what is happening to your Minister? Maybe the Member for Sirisia wants to offer an explanation to the House.

The Minister for Trade (Mr. Wetangula): Mr. Speaker, Sir, I can possibly offer an apology, but not an explanation because I do not know where the Minister is. But on his behalf, I regret his absence and implore the Chair to perhaps hold the Question in abeyance as we deal with other Questions.

Mr. Speaker: Fair enough! In the absence of any explanation at all, let alone a plausible one, and given the urgency of the information sought in this Question, and from the position of the Speaker, I have a brief to the effect that perhaps there is a deliberate effort to avoid answering this Question. I want, therefore, to refer this matter to the Committee responsible for Broadcasting. I think they can do it jointly with the Committee on Energy. They more or less have common ground in some respects. I will want the two Committees to inquire into this matter and file a report in the House within the next ten days. It is an urgent matter. Ten days from today, the two Committees, please, note. Let the Minister be aware.

The Minister for Trade (Mr. Wetangula): Much obliged, Mr. Speaker, Sir. I will communicate to the Minister.

Mr. Speaker: Very well! Member for Kilome, please, note that this matter, will, perhaps, be exhaustively dealt with by the Committee.

Mr. Mwau: Mr. Speaker, Sir, I would ask you to maybe order the Minister to provide me with any reports that have been made, so that I can communicate with the Committee and participate in the Committee from a point of information.

Mr. Speaker: Your next stop must be the Committee and you can interrogate the Minister, including prevailing over the Committee to call for those documents. They have powers to do so under the Powers and Privileges Act, Cap.6 of the Laws of Kenya. So, you have a remedy somewhere readily available.

(Question deferred)

MINUTES OF THE 1ST JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON THURSDAY, AUGUST 9TH 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 3.30PM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. (Eng.) Nicolas Gumbo, M.P - Co.Chairman
3. The Hon. Clement Wambugu
4. The Hon. Maina Kamau
5. The Hon. Charles Keter, M.P
6. The Hon. David Koech, M.P
7. The Hon. Peter Kiilu, M.P
8. The Hon. Emillio Kathuri, M.P
9. The Hon. Benjamin Jomo Washali, M.P
10. The Hon. William Kabogo, M.P.

Absent With Apology

1. The Hon. Joshua Kutuny, M.P
2. The Hon. Ekwee Ethuro, M.P
3. The Hon. Edwin O. Yinda, M.P
4. The Hon. Evans Akula, M.P
5. The Hon. Gedion Mbuvi, M.P
6. The Hon(Prof) Philip Kaloki, M.P
7. The Hon. Aden Duale, M.P
8. The Hon. Adan Keynan M.P
9. The Hon. Cyprian Omollo, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono

National Assembly

Third Clerk Assistant
Third Clerk Assistant

Min. No. 1/2012:

Preliminaries

The proceedings commenced with a word of prayer at 3.35pm.

Min. No. 2/2012: Adoption of the Agenda

The Agenda was adopted as follows:

1. Adoption of the Agenda

2. Deliberation on the mandate following the Speakers directive to carryout an Inquiry on the Interference with Avionic Communications Frequencies by Local Radio Stations
3. Deliberation on the Work programme
4. Any Other Business
5. Date of the Next Sitting

Min. No. 3/2012: Deliberations on the Joint Committee Mandate

The Chair brought to the attention of the joint Committee a Question by Private notice presented to the House by the Hon. Aaron Mwau, M.P, on the 7th August 2012; on the interference with avionic communications frequencies by local radio stations.

Further, the Chair briefed the Committee on the Speaker's directive to the two Committees to jointly investigate the matter and report to the House within 10 days.

Min. No. 4/2012: Deliberations on the Question by Private Notice

The Joint Committee deliberated on the following Question by Private Member;

(a) Is the Minister aware of the complaints that some local radio broadcasting stations are interfering with international and local avionic communications frequencies thereby putting the lives of air passengers in danger?

(b) Could the Minister provide full information including the dates when each company applied for and received approval for radio licences and the frequencies assigned, including the list of all assigned frequencies to each company?

(c) Could the Minister also provide a full list of all companies which have approval and no frequencies assigned, including the dates when the approval was granted and the reason why no frequencies have been assigned, including copies of avionic interference complaints and copies of any investigation and/or report?

The Joint Committee reviewed its powers under the Powers and Privileges Act, Cap.6 of the Laws of Kenya and set to achieve the following objectives:

1. To confirm that Communications Commission of Kenya has received complaints from Kenya Civil Aviation Authority (KCAA) on reported incidents of harmful

- interference with avionic communications frequency by local radio stations and establish the causes of the interferences;
2. To establish the causes of interference with avionic communication frequencies;
 3. To detail a list of avionic frequencies interfered with by local radio broadcasting stations including the local radio stations that have been reported to cause interferences, copies of notices of violation issued by the CCK to those stations and the actions taken;
 4. To detail information including the dates when each company applied for and received approval for radio licences and the frequencies assigned, including the list of all assigned frequencies to each company;
 5. To detail a full list of all companies which have approval for frequencies but no frequencies assigned, including the dates when the approval was granted and the reason why no frequencies have been assigned. Further, to obtain copies of avionic interference complaints and copies of any investigation and/or report;
 6. To establish the criteria used to allocate frequencies and to access letters of offer for each frequency allocated; and whether there is use of unauthorized frequencies in Kenya;
 7. To establish whether there was compliance with the transmission parameters as specified in each broadcaster's licence and the level of enforcement by the regulator;
 8. To establish the level of consultation between stakeholders in addressing the problem if it exists, actions taken by various stakeholders to address the problem.
 9. To receive proposals on how to address the problem and make recommendations for the adoption by the House.

Min. No. 5/2012: Committee Work Programme

The Committee developed a draft work Programme to include the following:

- I. Meeting with the Kenya Civil Aviation Authority (KCAA)
- II. Meeting With Communications Commission of Kenya (CCK)
- III. Meeting with the PS and the Minister for Communications and Information
- IV. Meeting with the PS Ministry of State for Defence
- V. Meeting with any other relevant office that will facilitate the joint Committee to conduct the inquiry successfully.

The Committee adopted its programme with a resolution to hold its first sitting on the 14th August 2012 at 10.00am and 3.30pm with the Kenya Civil Aviation Authority (KCAA) and the Communications Commission of Kenya (CCK) respectively.

The Committee noted that the circumstances necessitating the above question were serious and unless addressed with urgency it was raising security concerns.

Min No.6/2012:

Any Other Business

The Committee noted that a proper investigation and interrogation of the problem at hand would require authentic documentations. It was then resolved that both KCAA and CCK furnish the Joint Committee with copies of the following documents and information;

i) From KCAA:

- Copies of all complaints received from airlines and/or pilots and responses thereto by CCK.
- Copies of all reports made as a result of the complaints and assignment of frequencies.
- Any other information, documents and agreements relevant to the subject matter.

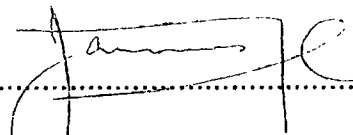
ii) From CCK:

- A full list confirming all companies which have had Ministerial approval and no frequencies have been assigned, indicating the dates of the approval and the reason why the frequencies have not been assigned.
- A full list of all companies which have Ministerial approval for broadcasting and have been assigned broadcasting frequencies, including the dates of the application for approval, the date of the assignment of frequencies, and when each company was incorporated.
- A full list of Directors of the Companies assigned the frequencies.
- Confirmation of location of the transmitting masts of each company engaged in broadcasting, the type of equipment and transmission power of each transmitter.
- Copies of any correspondence from CCK to the broadcasting companies relating to the above concern including the misuse of frequencies and transmitters to interfere with avionic communications frequencies and other frequencies and their responses.
- Copies of CCK's policy and remedial measures which might arise out of the danger posed by the interference with avionic communications frequencies.
- Any other information, documents and agreements relevant to the Committee on the subject matter

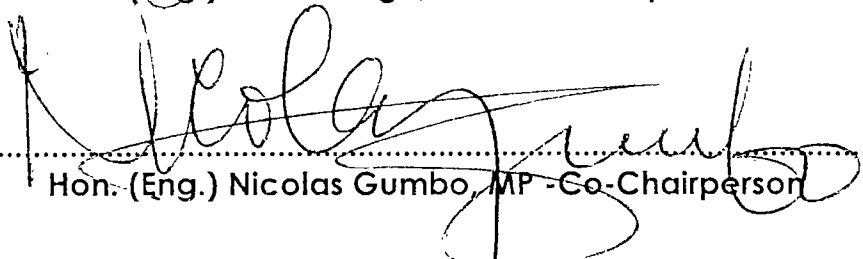
Min No.7/2012:

Adjournment

There being no other business and the time being twenty five minutes past One O'clock, the meeting adjourned until Tuesday August 2012, at 10.00am

SIGNED: 

Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED: 

Hon. (Eng.) Nicolas Gumbo, MP -Co-Chairperson

DATE: *Oct 3, 12*

MINUTES OF THE 2ND JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON TUESDAY, AUGUST 14TH 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 10.00AM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. (Eng.) Nicolas Gumbo, M.P - Co. Chairman
3. The Hon. Maina Kamau, M.P
4. The Hon. (Prof) Philip Kaloki, M.P
5. The Hon. Aden Duale, M.P
6. The Hon. Emillio Kathuri, M.P
7. The Hon. Charles Keter, M.P
8. The Hon. William Kabogo, M.P.
9. The Hon. Peter Kiilu, M.P

Absent With Apology

1. The Hon. Clement Wambugu, M.P
2. The Hon. David Koech, M.P
3. The Hon. Adan Keynan M.P
4. The Hon. Ekwee Ethuro, M.P
5. The Hon. Gedion Mbuvi, M.P
6. The Hon. Edwin O. Yinda, M.P
7. The Hon. Joshua Kutuny, M.P
8. The Hon. Cyprian Omollo, M.P
9. The Hon. Evans Akula, M.P
10. The Hon. Benjamin Jomo Washiali, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Jacob Ngwele
4. Mr. Samwuel Maira

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

In Attendance:

Col(rtd) Hilary K. Kioko
Eng. R.J. Lubanga
Eng. S. Wesechere
Patrick Kinuthia
Erick T. Meli

Kenya Civil Aviation

Director General
Director ANS
Manager Engineering
Manager Air Navigation
Chief Technical Officer

Min. No. 8/2012:

Preliminaries

The proceedings commenced with a prayer at 10.22am.

Min. No. 9/2012:

Adoption of the Agenda

The agenda was adopted as follows:

1. Adoption of the Agenda
- 2. Meeting with the Kenya Civil Aviation Authority**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 10/2012:

Deliberations on the Interference with Avionic Communications Frequencies by Local Radio Stations

1. The Committee sought to understand the following:

- i. Whether there have been incidences of interference with the avionic Communication Frequencies by the Local Radio Stations;
- ii. The implications of interference with the Avionic Communication frequencies;
- iii. What KCAA has done to address the incidences;
- iv. What can be done to address the problem if indeed it exists;

2. The joint Committee was informed as follows:-

- (i) The reports received by KCAA on interference with communication frequencies from pilots are normally recorded in KCAA log books and then reported to CCK for action
- (ii) There was indeed interference with avionic communications frequencies by local radio stations. KCAA presented several detailed correspondences showing the complaints received from pilots and communications between KCAA and CCK, including a list of avionic communications frequencies that have been interfered with by local radio stations and the proposed remedial actions.
- (iii) VHF and HF Aeronautical Frequency bands are safety related bands and are exclusive to aeronautical users and where other users are allowed, they are supposed to ensure non-interference with aeronautical services. Any interference could jeopardize avionic safety especially during landing;
- (iv) The interference on following frequency bands have been reported 121.3MHz, VHF Frequency 118.7 MHz, 119.7 MHz and 122.3 MHz.

- (v) Interference with avionic communications frequencies was due to use of higher transmitter power and failure to install band pass filters by local radio broadcasting stations.
- (vi) The most affected HF frequencies are: 8870 KHz, 8879 KHz and 11300 KHz. The enforcement could be exercised by taking some measures as follows:-
- Requiring all JKIA based users of 2-way radios to register them with the office of the General Manager-JKIA;
 - Detailing the frequency range of such 2 way radios;
 - Issuing a cautionary circular from the General Manager J.K.I.A to all holders of 2-way radios at JKIA to respect the ITU protocol and CCK rules that govern the use of radio frequencies and provides for the protection and non- interference with avionic frequencies; and
 - Enlisting the assistance and support of the CCK for purposes of dealing with culprits.
- (vii) KCAA proposed a review of the existing legal framework and particularly recommended that the KCAA Act should be reviewed to empower KCAA to disable any interference with avionic communications frequencies.

The Committee sought to understand if there was anything KCAA could do to stop the interference with avionic communication frequencies and heard that the role of the allocation of frequencies and monitoring of the same is the duty of CCK and KCAA has no powers apart from informing the regulator to take action.

The Committee observed that the problem could be addressed by revisiting the existing legal framework including KCAA Act to empower KCAA to disable any interference with avionic communications frequencies.

Min No.11/2012:

Committee Observations

The following were observed as technical causes of interference with avionic communications frequencies:-

- i. Use of unauthorized frequencies
- ii. Use of higher transmitter power

The joint Committee confirmed that it is true there is interference with avionic communication frequencies by local radio stations although CCK is a well funded regulator it had totally failed to regulate the sector. The Committee therefore resolved to establish the challenges faced by the regulator in performing its duties.

Min No.12/2012:

Any Other Business

- i) The Joint Committee reviewed documents delivered to the Committee by both KCAA and CCK.
- ii) The Committee received communication from CCK requesting for the deferment of the afternoon sitting citing the absence of the Minister who had expressed interest in attending the Committee's proceedings.
- iii) The request was turned down in view of the (10 days) short notice given by the Speaker and the already adopted Committee work programme.
- iv) The Committee observed that Royal Media had been mentioned by regulator adversely on the interference with avionic communication frequencies and resolved to invite the Chairman to provide information on the matter.
- v) The following Papers were laid:
 - copies of all complaints received from airlines and/or pilots and responses thereto by CCK;
 - Copies of all reports made as a result of the complaints and assignment of frequencies.
 - Information and documents relevant to the subject matter including Minutes of the sitting between KCAA, CCK and Royal Media Services.

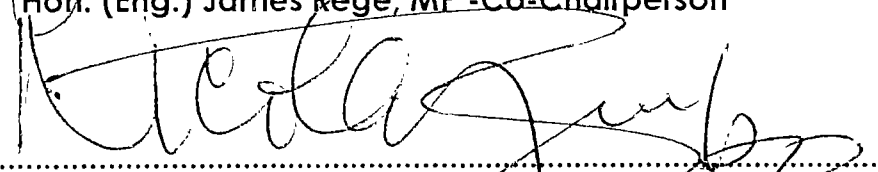
Min No.13/2012:

Adjournment

There being no other business and the time being fifteen minutes past 1.00pm, the meeting adjourned until 3.00pm 15th August 2012.

SIGNED:


Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:


Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE:
Oct 3, 12

MINUTES OF THE 3RD JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON TUESDAY, AUGUST 14, 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 3.00PM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. Charles Keter, M. - AG. Co Chairman
3. The Hon. Aden Duale, M.P
4. The Hon. Emillio Kathuri, M.P
5. The Hon. Ekwere Ethuro, M.P
6. The Hon. Edwin O. Yinda, M.P
7. The Hon. David Koech, M.P
8. The Hon. William Kabogo, M.P
9. The Hon. Peter Kiilu, M.P

Absent With Apology

1. The Hon. (Eng.) Nicolas Gumbo, M.P - Co.Chairman
2. The Hon. (Prof) Philip Kaloki, M.P
3. The Hon. Gedion Mbuvi, M.P
4. The Hon. Joshua Kutuny, M.P
5. The Hon. Cyprian Omollo, M.P
6. The Hon. Evans Akula, M.P
7. The Hon. Benjamin Jomo Washiali, M.P
8. The Hon. Maina Kamau, M.P
9. The Hon. Clement Wambugu, M.P
10. The Hon. Adan Keynan M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Samwuel Maira

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

In Attendance:

1. Mr. Francis Wangusi
2. Mr. Peter Ngige Njoroge
3. Stanley K. Kibe
4. Mr. John Omo

Royal Media Services

- Director General CCK
- Management
- Director Frequency Spectrum
- Commission Secretary

Min. No. 14/2012:

Preliminaries

The proceedings commenced with a prayer at 3.29pm.

Min. No. 15/2012:

Adoption of the Agenda

The agenda was adopted as follows:

1. Adoption of the Agenda
- 2. Meeting with the Communication Commission of Kenya (CCK)**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 16/2012:

**Deliberations on the Interference with
Avionic Communication Frequencies by
Local Radio Stations**

The Joint Committee received the following confirmations from CCK: that-

1. Yes, they have received reports from KCAA on reported incidents of harmful Avionic communications interferences;
2. Yes, the interferences with avionic and all aeronautical land communications by radio stations cause danger which may result in loss of life and property;
3. That they are not sure who would be liable in the event that there is an aircraft crashing due to harmful interference with avionic Communications frequencies;
4. Yes, there are unauthorized transmitters transmitting higher power than authorized;
5. Yes, some broadcasting stations transmit using Masts which are erected on unauthorized sites.;
6. **The Joint Committee made reference to the correspondence between KCAA and CCK dated 14th October 2008, Ref No. KCAA/TELS/6034 VOL. 2(121) which read in part ".it has been reported to your attention on several occasions that frequency 121.300 MHz is experiencing interference and particularly on the Northwestern tip of our country. The interference is particularly imminent from between 3am and 9 am local time. The problem also occurs at other times but not intensively.....kindly expedite response because the frequency interference is raising safety concerns..."**
 - The Committee learned that CCK carried out investigations in Menengai, Kisumu, Eldoret and Kapenguria and confirmed the presence of FM broadcast intermodulation products affecting the aeronautical band. A similar exercise was conducted in Kibwezi, Mtito, Voi (Sagala), Mazeras, Malindi, Mamburi, Taveta and Vuria which

confirmed the presence of FM broadcast intermodulation products affecting this band.

- The Committee was then informed that CCK embarked on countrywide inspection exercise of the broadcast transmission facilities to verify compliance with license conditions, key among which was the installation of band pass filter, which militates against harmful interference.
- Arising from the exercise the Committee was heard that most FM broadcasters had not installed the said band pass filters and the commission notified the concerned broadcasters to remedy the anomalies **(correspondences to that effect were laid before the Joint Committee)**

7. **The Committee was further taken through the following:**

- i) Conditions for frequency assignment
- ii) Conditions for revocation of the frequency licence
- iii) Challenges faced by the regulator during surveillance exercises
- iv) Issues of unauthorised Use of Broadcasting Frequencies
- v) Harmful Interference with Avionic Communications Frequencies and
- vi) List of broadcasters who have been reported to interfere with avionic frequencies
- vii) Status of Court cases on broadcasting
- viii) Issues of technical enforcement

8. CCK further confirmed that there have been specific reports of interferences with the following frequencies

- (a) 110.3 MHZ
- (b) 118.5 MHZ
- (c) 119.5 MHZ
- (d) 119.7 MHZ
- (e) 119.8 MHZ
- (f) 120.3 MHZ
- (g) 120.4 MHZ
- (h) 121.3 MHZ

The Committee therefore directed that a list of all the radio and television stations which have been emitting signals causing harmful interference with avionic communications frequencies be tabled before the Committee during its next sitting.

9. The Committee sought to understand why CCK had not sufficiently managed to regulate the sector and heard that:-

- CCK's attempts to the media House had been met with resistance. Impediment by the Court Cases was cited as one of the reasons why the regulator cannot perform its duties effectively.
- External interference with the work of the regulator ; on such a case a letter from the Office of the Prime Minister written to the Permanent Secretary Ministry of Information and Communication and copied to the Chairman RMS was cited. The letter forwarded to CCK directed the regulator not to interfere with the operations of RMS and to respect the Court Order.
- CCK admitted that it lacked a strong regulatory legal framework to regulate the media houses.

Min No.17/2012:

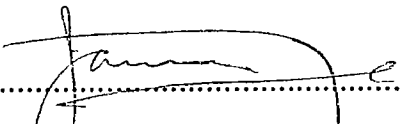
Any Other Business

- I. CCK was requested to furnish the Joint Committee with the following documents in its next sitting.
- II. CCK was asked to appear before the Committee on Wednesday 15th August 2012 to provide more evidence on the interference with avionic communication systems by local radio stations.
- III. The Committee received several apologies from Members who were unable to attend the sitting on the Wednesday August 27th 2012 and constituted a sub- committee of not less than five members to receive evidence on behalf of the Committee.

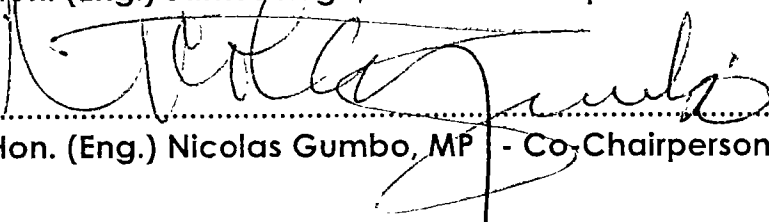
Min No.18/2012:

Adjournment

There being no other business and the time being twenty minutes past 6.00 O'clock, the meeting adjourned.

SIGNED:


Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:


Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE:
Oct 3, 12

MINUTES OF THE 4TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON WEDNESDAY, AUGUST 15TH 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 3.00PM.

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. Charles Keter, M.P. - Ag. Co. Chairman
3. The Hon. Joshua Kutuny, M.P.
4. The Hon. Aden Duale, M.P.
5. The Hon. Emillio Kathuri, M.P.
6. The Hon. Peter Kiilu, M.P.
7. The Hon. David Koech, M.P.
8. The Hon. Ekwee Ethuro, M.P.
9. The Hon. Edwin O. Yinda, M.P.

Absent With Apology

1. The Hon. (Eng.) Nicolas Gumbo, M.P.
2. The Hon. (Prof) Philip Kaloki, M.P.
3. The Hon. Gedion Mbuvi, M.P.
4. The Hon. Cyprian Omollo, M.P.
5. The Hon. Evans Akula, M.P.
6. The Hon. Benjamin Jomo Washiali, M.P.
7. The Hon. Maina Kamau, M.P.
8. The Hon. Clement Wambugu, M.P.
9. The Hon. Adan Keynan M.P.
10. The Hon. William Kabogo, M.P.

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Samwuel Maira

National Assembly

- Third Clerk Assistant
- Third Clerk Assistant
- Hansard Reporter

In Attendance:

1. Mr. Francis Wangusi
2. Mr. Peter Ngige Njoroge
3. Stanley K. Kibe
4. Ms. Nelly Mwathi

Communication Commission of Kenya

- Director General CCK
- Management
- Director Frequency Spectrum
- Commission Secretary

Min. No. 19/2012:

Preliminaries

The proceedings commenced with a prayer at 3.29pm.

Min. No. 20/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
- 2. Meeting with the Communication Commission of Kenya (CCK)**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 21/2012:

**Deliberations on the Interference with Avionic
Communication Frequencies by Local Radio
Stations**

The Committee was appraised as follows:

Following a report on 19th October 2006 by the Kenya Civil aviation Authority (KCCA) on intermittent interference from FM radio stations on the VHF frequency 121.300MHz at their air navigation facilities at Ngong Hills and Poror, the Commission carried out surveillance visits on the area. The findings, which were communicated to the KCAA, indicated that no broadcast signals were affecting the aviation frequencies.

On 11th June 2007, KCAA submitted 26 incidence reports from the aircraft pilots for the period March –May 2007, which indicated an increase in the reports of frequency interference on frequency 121.300MHz in areas north of Nairobi- Eldoret, Lodwar. On 2nd August 2007, KCAA was concerned that the interference reported on frequency 121.3 MHz continued to persist. KCAA again wrote to the Commission on 10th March 2008 and 14th October 2008 regarding interference on the north-western tip of the country. On 4th November 2008, officers from the Commission boarded a flight to Juba for surveillance of the area. However, the investigations were unsuccessful due to the heaving shielding of the aircraft which implied that no external radio signals could be received by the Commission receivers on board the aircraft.

The Commission then carried out terrestrial spectrum monitoring on the aeronautical bands 108-136MHz at Menengai, Kisumu, Webuye, Eldoret and Kapenguria on diverse dates between 8th and 12th December 2008. The exercise confirmed the presence of FM broadcast intermodulation products affecting the concerned band.

A similar exercise was conducted in Kibwezi, Mtito, Voi (Sagala), Mazeras, Malindi, Mambui, Taveta and Vuria which confirmed the presence of FM broadcast intermodulation products affecting this band.

The Commission also embarked on countrywide inspection exercise of the broadcast transmission facilities to verify compliance with license conditions, key among which was the installation of band pass filter, which mitigates against harmful interference.

Arising from the exercise, it was noted that most FM broadcasters had not installed the said band pass filters and the commission notified the concerned broadcasters to remedy the anomalies.

- On 9th July 2007, KCAA further reported interference on frequency 119.700MHz used for air traffic control at JKIA.
The Commission carried out investigations and established that there was interference on frequency 119.700 in Nairobi area. The interference was as a result of intermodulation products between two broadcasting frequencies.
- On the 18th December 2007, the Commission directed the concerned broadcasters to reduce their powers to the authorized limits. The broadcasters reduced their transmission power and KCAA confirmed on 4th June 2008 that the interference had ceased.
- On 4th February 2011, KCAA notified the Commission of interference on 120.3MHz in Mombasa. The Commission conducted investigations and resolved the problem in Mombasa.
- On 27th April and 20th May 2011, KCAA notified the Commission of inference on frequency 110.3 MHz in Nairobi. On investigations, it was observed that the frequency suffered interference from two broadcasting transmitters at Kisekini. The Commission wrote to the concerned broadcaster to carry out corrective measures. Our follow up inspection in May 2012 verified that a band pass filter has been installed in one of the transmitters. The Commission is following up the installation of a banpass filter in the other transmitter.
- No interference has been reported by KCAA since then.

Min No.22/2012:

Any Other Business

I. Papers laid:

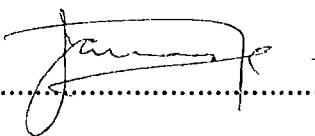
- Letters to the Office of the Prime Minister seeking audiences on the deliberations on the issues related to interference of avionic

communications. The Meeting was intended to inform the Office of the Prime Minister on the correct position over the matter.


Min No.23/2012:

Adjournment

There being no other business and the time being twenty minutes past 6.00 O'clock, the meeting adjourned.

SIGNED: 

Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED: 

Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE: Oct 3, 12

MINUTES OF THE 5TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON TUESDAY, AUGUST 21ST 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 3.00PM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. Charles Keter, M.P. - Ag. Co. Chairman
3. The Hon. Aden Duale, M.P.
4. The Hon. Cyprian Omollo, M.P.
5. The Hon. Emillio Kathuri, M.P.
6. The Hon. Edwin O. Yinda, M.P.
7. The Hon. Joshua Kutuny, M.P.
8. Hon. Peter Kiilu, M.P.
9. The Hon. David Koech, M.P.

Absent With Apology

1. The Hon. (Eng.) Nicolas Gumbo, M.P. - Co.Chairman
2. The Hon. (Prof) Philip Kaloki, M.P.
3. The Hon. Gedion Mbuvi, M.P.
4. The Hon. Ekwee Ethuro, M.P.
5. The Hon. Maina Kamau, M.P.
6. The Hon. Clement Wambugu, M.P.
7. The Hon. Adan Keynan M.P.
8. The Hon. William Kabogo, M.P.
9. The Hon. Evans Akula, M.P.
10. The Hon. Peter Kiilu, M.P.
11. The Hon. Benjamin Jomo Washiali, M.P.

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Samwuel Maira

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

In Attendance:

Amb. Nancy Kirui, CBS
Col Michael Munywoki
Major (Rtd) R.K Kosen

Ministry of State for Defence

- PS
- Communication/ IT
- Director ICT NSIS

Min. No. 24/2012:

Preliminaries

The proceedings commenced with a prayer at 3.20pm.

Min. No. 25/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
2. **Meeting with the PS Ministry for State for Defence**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 26/2012:

Deliberations on the Interference with Avionic Communications Frequencies by Local Radio Stations- Meeting with the PS Ministry of State for Defence

The Joint Committee received the following confirmations from Ministry of State for Defence as follows:-

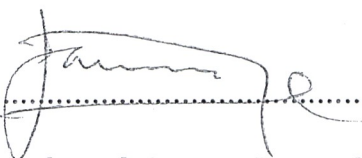
- a) The Ministry of State for Defence was aware of radio broadcasting stations which were transmitting using Masts erected on unauthorized sites.
- b) There was no written notification of authorization on the erected mast near Defence facilities 3KM in the outskirts of Nanyuki.
- c) They had written to Kenya Civil Aviation Authority to take action on the matter.
- d) The interference with Avionic Communication was a security threat as it could easily cause an accident and also result to the country loss of both reputation and foreign investment.
- e) The Ministry was aware of directive by National Security Advisory Committee (NSAC) to the PS Ministry of Information and Communication on 2nd July 2012 to CCK to repossess all frequencies allocated to private investors that are interfering or likely to interfere with aeronautical and security frequencies.

Min No. 27/2012:

Adjournment

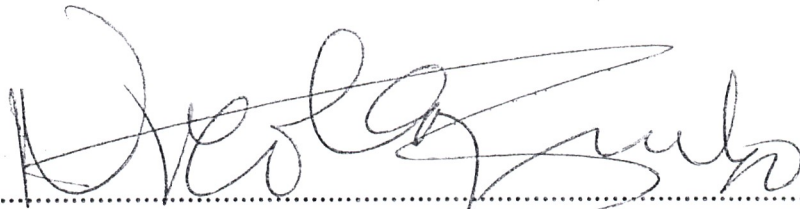
There being no other business and the time being thirty minutes past 4.00 O'clock, the meeting adjourned.

SIGNED:



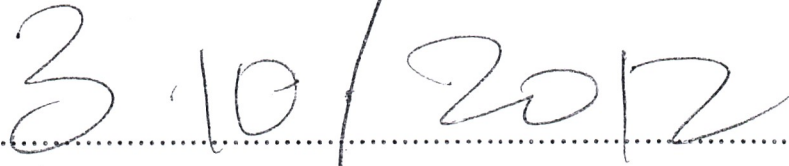
Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:



Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE:



MINUTES OF THE 6TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON WEDNESDAY, AUGUST 22ND 2012, AT THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00AM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. (Eng.) Nicolas Gumbo, M.P - Co.Chairman
3. The Hon. Charles Keter, M.P
4. The Hon. David Koech, M.P
5. The Hon. Aden Duale, M.P
6. The Hon. Edwin O. Yinda, M.P
7. The Hon. Joshua Kutuny, M.P
8. The Hon. Cyprian Omollo, M.P
9. The Hon. Peter Kiilu, M.P
- 10.The Hon. Emillio Kathuri, M.P
- 11.The Hon. Ekwwe Ethuro, M.P

Absent With Apology

1. The Hon. (Prof) Philip Kaloki, M.P
2. The Hon. Clement Wambugu, M.P
3. The Hon. Benjamin Jomo Washiali, M.P
4. The Hon. Adan Keynan M.P
5. The Hon. William Kabogo, M.P
6. The Hon. Gedion Mbuvi, M.P
7. The Hon. Evans Akula, M.P
8. The Hon. Maina Kamau, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Rose Omutere

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

In Attendance:

Hon. Samwuel Poghisho, CBS -Minister
Mr. Bitange Ndemo, CBS - PS

Ministry of Information and Communications

Min. No.35/2012:

Preliminaries

The proceedings commenced with a prayer at 10.19am.

Min. No.36/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
2. **Meeting with the Ministry of Information and Communication**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 37/2012:

Min. No. 37/2012: Deliberations on the Interference with Avionic Communication Frequencies by Local Radio Stations- Meeting with the Ministry of Information and Communications

- i) The Committee sought to establish whether the Ministry was aware of the interference with avionic Communications by local radio stations. The Committee heard that the Ministry was aware as it had received several communications from KCAA to CCK on various occasions.
- ii) The Ministry informed the Committee that on most occasions CCK has written notices of violations to the violators with majority of them responding and making correcting. The matter has also been discussed within the highest levels of government
- iii) The frequencies considered unauthorized have been in use for many years and hence the advice to regularize from the office of the Prime Minister.
- iv) The erection of masts in unauthorized sites and the use of high transmitter power were major causes of avionic communications frequencies and could be addressed through installation of band pass filters.
- v) He had acted on the matter of unauthorized installation of masts by instructing CCK to shut them down.
- vi) His responsibility is only restricted to giving the Ministry's directives to the sector's operators. CCK is the body mandated by law to carry out the actual implementation.
- vii) There was no interference from the Ministry or the Prime Minister's Office to frustrate CCK's efforts of shutting down illegally installed masts and that the Prime Minister had been provided with a copy of a court order barring CCK from executing the same.
- viii) The licensing powers of CCK should be re-introduced and the legal framework should be strengthened.

The Committee made the following observations:-

- i) The matter at hand touched on the country's national security. The claim by the PS that the Ministry's and CCK's hands were tied was not valid. The Committee was of the opinion that the Minister should have raised the matter with the Cabinet as it had already been discussed at the National Security Council meetings. His further claim that his hands were tied as CCK was an independent institution was dismissed considering CCK cannot work in isolation of its parent Ministry because the Minister represents CCK in the Cabinet while the PS represent CCK within Government bureaucracy.
- ii) The Committee noted that the role of Constitutional Courts is to interpret the Constitution and tribunals are instrumental in resolving conflicts. The Committee therefore requested the office of the Attorney General to assist CCK and the Ministry on the matter.
- iii) The Committee was dissatisfied with the fact that neither the Ministry nor CCK had briefed the office of the Attorney General on the magnitude of repercussions of illegal mast installations or the details of the suits against CCK. CCK should have furnished the AG's office with sufficient information regarding the security threats posed by interference with avionic communications by local broadcasters.
- iv) The Committee further observed that both CCK and the PS lacked zeal and commitment on the matter following the numerous missteps which had allowed the sector to be poorly regulated and observed that they both had failed to take stringent measures to restore order in the broadcasting sector.
- v) The interferences experienced were not only on the avionic communications frequencies but also among broadcasters.
- vi) CCK as a regulator should emulate other regulators in the developed world and develop zeal in discharging their mandate. The Committee observed that the tone of CCK letters to the violators was too polite or "business-like and that this could be the reason behind the continued violations.
- vii) The delay of cases that touch on Information Communications Technology (ICT) and telephony industry can be attributed to lack of legal training on the subject matter.

From the following observations, the Committee recommends that:-

- i) The Ministry of Information and Communications through CCK work with the local universities to offer LLM programmes in ICT and also organize interactive forums and trainings with the judiciary to enable the stakeholders appreciate the legal environment under which the industry operates.
- ii) The Minister should urgently seek an appointment with the Prime Minister and the Office of the President to raise the issue and explain to them the impending consequences of interference with Avionic Communications frequencies by the local radio stations.
- iii) The set up tribunal should be able to address the conflicts that surround the matter. The Ministry should also spear head forums that allow Judges and

- lawyers to understand the complexities of the telecommunication industry to resolve the problem of court case delays expressed under this matter.
- iv) CCK should hire experienced lawyers who have knowledge on telecommunication/ICT law to help them argue their cases knowledgeably.
 - v) The Committee finds that the PS has failed to discharge his duties diligently despite the fact that he has been in the Ministry for a long time.

The PS informed the Committee that a political decision would solve the problem. He appraised the Committee on his presentations to NSAC over the matter and the court orders that created a set back on the work of the regulator.

The Meeting heard that the Ministry had received the same complains but cannot do anything over the matter because the court had suspended the law on frequency allocations by CCK.

The Committee sought to understand why a matter which has been raised since 2003 had not been addressed; and heard that CCK suffers from lack of institutional memory and follow up has been weak due to constant changes of in the office of the Director General. The Committee disregarded the explanation and reminding informed the PS there was no institutional memory gap in CCK as the PS had served the same Ministry for so many years.

The Committee directed that the Ministry be accompanied by the office of the Attorney General to appraise the Committee on the suspension of the law and the Constitutional interpretation on the creation of an independent regulator under the COK 2010.

Min. No. 38/2012:

Committee Concerns

The Committee expressed concerns that the Ministry had not done much to support the regulator to do its job. The Committee was dismayed to hear from the PS that the Court had powers to suspend the law passed by Parliament and directed that the Ministry tables before the Committee a copy of the suspension on Tuesday 28th August 2012.

The Committee expressed disappointment that even after the PS was directed by the National Security Advisory Committee (NSAC) on 2nd July 2012 to take action and through CCK to proceed to repossess all frequencies allocated to private investors but interfering or likely to interfere with aeronautical and security frequencies, the PS had done nothing except write to see the Prime Minister.

Min No. 39/2012:

A.O.B

MINUTES OF THE 7TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON WEDNESDAY, AUGUST 22ND 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 3.00PM.

Present

1. The Hon. (Eng.) James Rege, M.P. - Co. Chairman
2. The Hon. (Eng.) Nicolas Gumbo, M.P - Co. Chairman
3. The Hon. David Koech, M.P
4. The Hon. Aden Duale, M.P
5. The Hon. Emillio Kathuri, M.P
6. The Hon. Charles Keter, M.P
7. The Hon. Edwin O. Yinda, M.P
8. The Hon. Joshua Kutuny, M.P
9. The Hon. Cyprian Omollo, M.P
10. The Hon. Ekwere Ethuro, M.P

Absent With Apology

1. The Hon. Peter Kiilu, M.P
2. The Hon. (Prof) Philip Kaloki, M.P
3. The Hon. Clement Wambugu, M.P
4. The Hon. Benjamin Jomo Washiali, M.P
5. The Hon. Adan Keynan M.P
6. The Hon. William Kabogo, M.P
7. The Hon. Gedion Mbuvi, M.P
8. The Hon. Evans Akula, M.P
9. The Hon. Maina Kamau, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Rose Omutere

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

In Attendance:

Abdul Mwassarah

-Sec. Admin. Office of the Prime Minister

Min. No.28/2012:

Preliminaries

The proceedings commenced with a prayer at 10.28 am.

Min. No.29/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

1. Adoption of the Agenda
- 2. Meeting with the PS Office of the Prime Minister**
3. Any Other Business
4. Date of the Next Sitting

Min. No. 30/2012:

Deliberations on the Interference with Avionic Communication Frequencies by Local Radio Stations - Meeting with the PS Office of the Prime Minister

The Officers from the office the Prime Minister informed the Joint Committee that the PS was indisposed due to other official duties and were present to represent him.

The Committee sought to understand if the Office of the Prime Minister was aware that Royal Media Services has been seeking political protection from that office to shield itself from regulations.

The Committee further sought answers as to whether the office of the PM was aware of the local broadcaster's actions of allocating themselves frequencies and erecting transmitters on illegal sites.

The officers from the office of the Prime Minister informed the Committee that they were not aware of RMS allocating itself frequencies; however they were aware of the visit by the Chairman RMS to the Prime Minister complaining of CCK's politically motivated harassments.

The Committee sought clarifications on the letter dated 14th June 2012 from the office of the PS RMS which read in part '..... I wish to inform you that the Prime Minister has directed that you immediately withdraw the NOTICE referred to above and obey the Court Order as well referred to above. This therefore means you do not at all interfere with any frequencies and licenses issued and being used by Royal Media Services Ltd as contained in your Notice. Please confirm in writing to M/S Royal Media Services Ltd that the Notice is withdrawn and you will take no further action until such a time that the matter disputed is resolved. Mean while where there may be discrepancies (if any) of frequencies being used by Royal Media Services please regularize as is necessary..."

The Committee took issue with the letter which seemed to intimidate the regulator from performing its duties.

The Officers informed the Committee that they were not in a position to answer to on behalf of the PS and they were therefore directed to notify the PS of a meeting between him and the Committee scheduled for Thursday 23rd August, 2012 to respond on the letter.

Min. No. 31/2012:

Deliberations on the Interference with Avionic Communication Frequencies by Local Radio Stations- Meeting with the Director NSIS

The representative of the Director General NSIS informed the Committee that NSIS was not aware of Avionic Communication Frequency interference by Local Radio Stations. The Committee therefore directed him to inform the DG to appear either in person or sent someone who represents him at NSAC meetings.

The Committee noted that NSIS is represented at the NSAC and therefore preview to the matter under Committee's inquiry.

Min No.32/2012:

Committee Concerns

The Committee expressed the following concerns that:-

- the PS had sent officers who were unable to facilitate the Committee's inquiry.
- the Committee noted that the PS was a member of NSAC and was aware of the NSAC meeting which directed CCK to carry out regulations on the sector and expressed disappointment that the PS had overstepped his mandate by trying to gag the regulator.

Min No.33/2012:

Any Other Business

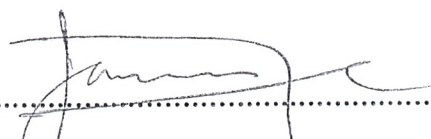
The Committee directed that the PS Ministry of Internal Security be invited to appraise the Committee on whether he has facilitated CCK to pull down illegal erected Masts.

Min No. 34/2012:

Adjournment

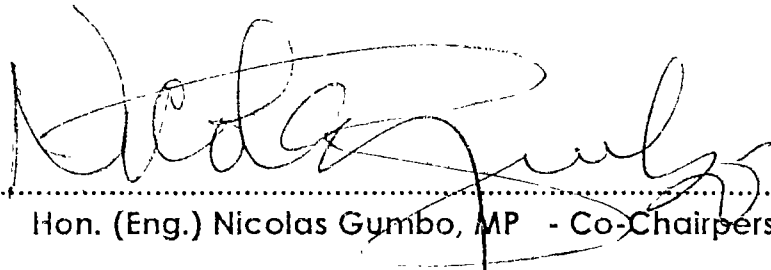
There being no other business and the time being thirty minutes past 6.00 O'clock, the meeting adjourned.

SIGNED:



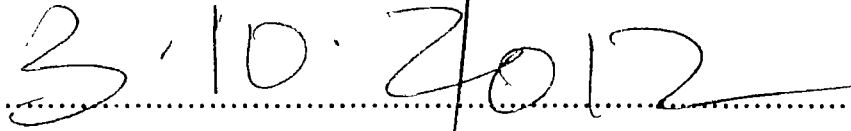
Hon. (Eng.) James Rege, MP -Co-Chairperson

SIGNED:

A handwritten signature in black ink, appearing to read 'Nicolas Gumbo', written over a horizontal dotted line. The signature is fluid and cursive.

Hon. (Eng.) Nicolas Gumbo, MP - Co-Chairperson

DATE:

A handwritten date '3.10.2012' in black ink, written over a horizontal dotted line. The date is written in a simple, clear style.

MINUTES OF THE 8TH JOINT SITTING OF THE DC (E) ON ENERGY, COMMUNICAITONS & INFORMATION AND THE COMMITTEE ON HOUSE BROADCASTING HELD ON WEDNESDAY, AUGUST 22ND 2012, AT THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 4.00 PM.

Present

1. The Hon. Charles Keter, M.P
2. The Hon. Aden Duale, M.P
3. The Hon. David Koech, M.P
4. The Hon. Edwin O. Yinda, M.P
5. The Hon. Joshua Kutuny, M.P
6. The Hon. Cyprian Omollo, M.P
7. The Hon. Ekwere Ethuro, M.P

- AG. Co. Chairman

Absent With Apology

1. The Hon. Emillio Kathuri, M.P
2. The Hon. Peter Kiilu, M.P
3. The Hon. (Prof) Philip Kaloki, M.P
4. The Hon. Clement Wambugu, M.P
5. The Hon. Benjamin Jomo Washiali, M.P
6. The Hon. Adan Keynan M.P
7. The Hon. William Kabogo, M.P
8. The Hon. Gedion Mbuvi, M.P
9. The Hon. Evans Akula, M.P
10. The Hon. Maina Kamau, M.P

In Attendance:

1. Ms. Emmy Chepkwony
2. Mr. James Ginono
3. Mr. Rose Omutere

National Assembly

Third Clerk Assistant
Third Clerk Assistant
Hansard Reporter

In Attendance:

Dr. S.K Macharia
Peggy Wambui Waweru

-Chairman RMS
- Secretary

Min. No. 41/2012:

The proceedings commenced with a prayer at 4.15 pm.

Min. No.42/2012:

Adoption of the Agenda

The Committee adopted the Agenda as follows:

