

TELECOMMUNICATIONS ORDINANCE 2004

(Ordinance 12 of 2004)

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TURKS AND CAICOS ISLANDS
TELECOMMUNICATIONS ORDINANCE 2004
(Ordinance 12 of 2004)

Assent.....*August 17, 2004*
Publication in Gazette*August 20, 2004*
Commencement..... *August 20, 2004*

AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT OF A TELECOMMUNICATIONS COMMISSION; TO PROVIDE FOR THE FUNCTIONS OF THE COMMISSION: AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Telecommunications Ordinance 2004 and shall come into operation on such date as the Governor may appoint by notice published in the Gazette and different dates may be appointed for different purposes.

Interpretation

2. In this Ordinance -

“affiliate”, for the purposes of Part III of this Ordinance, includes in relation to another company, a company which directly or indirectly controls, is controlled by or is under common control with, another company;

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“Belonger” has the same meaning as in the Immigration Ordinance;

“broadcasting”, for the purposes of Part VI of this Ordinance, means the transmission of programmes whether or not encrypted, by any means of telecommunications, for reception by the public, including sound, radio, television and other types of transmissions, such as those on a point to multipoint basis;

“bypass” means the commercial use or supply of –

(a) the passing of an international voice service, including the carriage of reconstructable voice channel within a data or mixed voice/data service, without passing through the international gateway facilities of licensed telecommunications network operator;

- (b) the termination of international voice services over the domestic switched telecommunications network by a person who does not originate the call or possess a valid interconnection agreement with that domestic network operator with respect to international voice services; or
- (c) international simple resale, meaning the provision of international public telecommunications services to any person, with or without compensation, using a private line facility or service connected to the public telecommunications network without a licence to provide an international public telecommunications service.

“carrier” means a person who has been granted a licence under this Ordinance to own and operate a telecommunications network;

“Chief Auditor” means the Chief Auditor appointed by the Governor under section 45 of the Finance and Audit Ordinance;

"confidential information" means information which is a trade secret or information which is financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the person who submitted it; or information the disclosure of which could reasonably be expected to (a) result in material financial loss or gain to any person; (b) prejudice significantly the competitive position of any person; or (c) affect contractual or other liabilities of any person;

“customer premises equipment” means telecommunications equipment and inside wiring located at a customer’s premises and connected to a public telecommunications network termination point;

“Director General” means the Director General of Telecommunications appointed under section 6;

“dominant”, for the purposes of Part III of this Ordinance, in relation to a licensee, means that a licensee enjoys, either individually or jointly with others, a position of economic strength that enables it to behave independently of competitors and customers in any relevant market for telecommunications services;

“Governor” means Governor in Council;

“interconnection” means the physical linking of public telecommunications networks to allow users of one licensed carrier to communicate with users of another licensed carrier;

“international service” means a telecommunications service between points in the Islands and points outside the Islands, or is passing in transit through the Islands and from or to ships at sea and small vessels in territorial waters;

- “licensee” means a person who has been granted a licence under this Ordinance;
- "message" means data, laser signal, sound, speech, video, visual image or writing or a combination of them;
- “Minister” means the Minister responsible for Communications;
- “network termination point” means the network interface device designated by a carrier for connection by a customer of equipment to that carriers network;
- “public telecommunications service” means a telecommunications service which is available to the public or to any part thereof, or to such classes of users as to be effectively available to the public including services provided to or managed by user groups which directly or indirectly share or access telecommunications services or network;
- “public telecommunications network” means a network owned and operated by a carrier for the provision of public telecommunications services;
- “radiocommunications” means the emitting or receiving, over paths which are not provided by a material substance and which are constructed or arranged for that purpose, of electromagnetic energy of a frequency which –
- (a) conveys messages whether or not received;
 - (b) actuates or controls machinery or apparatus; or
 - (c) is used in connection with the determination of position, bearing or distance or for the gaining of information as to the presence, absence, position or motion of an object or of a class of objects;
- “radiocommunications apparatus” means apparatus for emitting or receiving radiocommunications including apparatus in an aircraft, beacon, buoy, hovercraft, vehicle or vessel;
- “rate” means an amount of money or other consideration and includes a charge, fare, price, rental, toll or other compensation payable to a licensee for the use of his services;
- “regulated service” means a service designated by the Commission as a service of which the Commission approves the rates of the service;
- “service provider” means a person who has been granted a licence under this Ordinance to provide telecommunications services to the public;
- “spectrum” means the continuous range of electromagnetic wave frequencies from zero to infinity;
- “spectrum licence” means a licence granted under section 34;
- “subscriber” means a person who has entered into a contract with a telecommunications service provider for the use of a telecommunications service;

“telecommunications” means any form of transmission, emission, or reception of signs, text, images and sounds or other intelligence of any nature by wire, radio, optical or other electro magnetic means.

“telecommunications apparatus” means apparatus designed or adapted for use in conveying, emitting, receiving, switching or transmitting messages over a telecommunications network;

“telecommunications network” means any wire , radio, optical, or other electromagnetic system used to route, switch, or transmit telecommunications;

“telecommunications service” means a service consisting of -

- (a) conveying, emitting, receiving, switching or transmitting messages or having messages conveyed, emitted, received, switched or transmitted, by means of a telecommunications system; and
- (b) installing, maintaining, adjusting, repairing, altering, moving, removing or replacing telecommunications equipment which may be connected to a telecommunications system;

“Universal service” means the services set out in section 29.

PART II

TELECOMMUNICATIONS COMMISSION AND DIRECTOR GENERAL OF TELECOMMUNICATIONS

3. (1) There is hereby established a Commission to be known as the Telecommunications Commission of the Turks and Caicos Islands (hereinafter referred to as the Commission) which shall consist of not more than seven members all of whom shall be appointed by the Minister, acting with the approval of the Executive Council.

Telecommunications Commission

(2) The members of the Commission shall be -

- (a) the Permanent Secretary, Communications or representative ex officio;
- (b) an Attorney-at-law;
- (c) an Accountant or Economist;
- (d) a technical person who has experience of, and shown capacity in Telecommunications matters; and
- (e) four other persons.

(3) The Minister, acting with the approval of Executive Council shall appoint a chairman of the Commission from among the members of the Commission.

(4) A member shall be appointed to hold office for a period not exceeding five years; but may be removed by the Minister, acting with the approval of Executive Council, if, in the Minister opinion, based on evidence provided to the Minister the member is guilty of misconduct or malfeasance .

(5) A member of the Commission shall be eligible for reappointment.

(6) A member of the Commission who directly or indirectly has a pecuniary interest in any matter under consideration by the Commission shall be bound to declare such interest and shall not participate in any vote regarding such matter.

(7) The Commission shall be a body corporate having perpetual succession, a common seal and power to acquire, hold and dispose of land and other property.

(8) The Minister, acting with the approval of the Executive Council, shall set –

- (a) the payments for the members of the Commission; and
- (b) the travel expenses to be paid to members.

(9) Schedule 1 shall have effect with respect to the meetings and proceedings of the Commission.

(10) Schedule 2 shall have effect with respect to the operations, staff and finances of the Commission.

Functions of
Commission

4. (1) The functions of the Commission are -

- (a) to carry out the functions conferred on it by this Ordinance;
- (b) to advise the Minister on telecommunications;
- (c) to regulate telecommunications in the Islands in accordance with the policy guidelines published in the Gazette from time to time and in accordance with the principle of technological neutrality;
- (d) to facilitate, maintain and promote effective and sustainable competition in telecommunications;
- (e) to set standards for the quality of telecommunications services to be delivered to the public;
- (f) to promote the interests of consumers and to encourage licensees to operate efficiently;
- (g) to publish information, reports or other documents;
- (h) to carry out investigations and hold enquiries with respect to any matter in relation to its functions or duties under this Ordinance.
- (i) to give advice and directions to a licensee with respect to anti-competitive practice or behaviour;

- (j) to prescribe standards for the protection of consumers and the public;
- (k) to instruct the Director General to conduct research into the quality and standard of service of a licensee, and into tariffs or any anti competitive behaviour;
- (l) administer such of its own databases or other information or administrative or operational systems as it considers necessary in relation to the discharge of its functions; and
- (m) to carry out such other functions as may be necessary for the purpose of discharging its functions under this Ordinance

(2) The Commission for purposes of carrying out investigations or holding an enquiry under subsection (1) or for the purpose of conducting any hearing or making any decision or order under this Ordinance -

- (a) may receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible as evidence in a court of law in civil or criminal proceedings;
- (b) may determine the manner in which such material shall be received and what persons or class of persons shall be permitted or required to give evidence;
- (c) may require any person who wishes to give evidence before the Commission to submit a summary in writing of the evidence proposed to be given;
- (d) may summon any person, in the prescribed form and manner, to attend to give evidence or to produce any article or document;
- (e) may administer oaths and affirmations;
- (f) may examine on oath, affirmation or otherwise any person attending before the Commission and require such person to answer all questions put by or with the consent of the Commission, and produce any article or document in his possession or under his control;
- (g) may reimburse any private individual (which for the avoidance of doubt shall not include any commercial parties) attending before the Commission such compensation as in the opinion of the Commission represents the loss to that private individual occasioned by the time spent in such appearance before the Commission

- (h) may prescribe rules which prohibit the disclosure or publication by any person attending before the Commission, or by any member or staff of the commission, of all or part of any material received by the Commission;
- (i) shall determine the procedure to be followed at the inquiry and the form of any summons, warrant, or other document to be made or issued by the Commission;
- (j) shall observe the principles of procedural fairness and natural justice; and
- (k) shall publish in a local newspaper circulating in the Islands the procedure to be followed when making applications for licences under this Ordinance including any applicable licensing criteria.

(3) Any person whose conduct is the subject of an inquiry, or who is implicated or concerned in the subject matter of the inquiry, shall, subject to the provisions of section 5, be entitled to be represented by an Attorney at the inquiry.

(4) For the purpose of subsection (3), the Commission shall determine whether the conduct of any person is the subject of the inquiry or whether a person is in any way implicated or concerned in the subject matter of the inquiry.

(5) The Commission may delegate to any person including the Director General such of its investigating or reporting functions as the Commission may unanimously decide, except essential decision making functions including the making of orders

(6) The Commission shall in the performance of its functions act in fair and impartial manner.

Conduct of inquiry

5. Without derogating from the generality of the power conferred under section 4(1)(i), the Commission may—

- (a) order the manner in which any person shall give his oral evidence and may specify that this shall be by way of cross-examination without examination-in-chief; and
- (b) determine who may address the Commission, on what matters and in what order.

Director General

6. (1) The Minister, acting with the approval of Executive Council, shall appoint a Director General of Telecommunications.

(2) The functions of the Director General are –

- (a) to act as secretary to the Commission;
- (b) to report to the Commission the findings of any research conducted by him;
- (c) to take part in the deliberations of the Commission but without a right to vote;

- (d) to instruct a licensee to supply to him, not later than the end of the period of three months beginning with the day after the end of its financial year, a copy of its audited annual accounts and such return as he may instruct;
- (e) to carry out such duties as may be conferred on him by the Commission; and
- (f) to carry out such other duties as may be required by this Ordinance.

(3) The Director General may have such staff as the Commission may specify.

7. (1) This section shall apply to every person having any official duty or being employed in the administration of this Ordinance while holding that office or being so employed, whether or not the person has ceased to hold that office or be so employed.

Confidentiality

(2) For the purposes of this section, document includes a copy of or extract from a document or information in an electronic or magnetic form.

(3) A person to whom this section applies who, by reason of his capacity or office, has by any means access to the confidential information, shall not, while his employment in or, as the case may be, his professional relationship with the Commission continues or after the termination thereof, communicate any confidential information to any person.

(4) Subsection (3) shall not apply where -

- (a) the confidential information is disclosed –
 - (i) with the consent in writing of a licensee or an applicant for a licence;
 - (ii) on the written directions of the Commission to the police who require such disclosure for purposes of the investigation of a criminal offence;
 - (iii) to the Minister or the Commission; or
- (b) subject to paragraph (ii) to any person who is authorised by the police to receive it;
- (c) in the opinion of the Commission, disclosure is necessary in the public interest, in which case, before such disclosure is made, the Commission shall give not less than fourteen days notice of the proposed disclosure to the applicant or licensee concerned who shall, upon receipt of that notice, be entitled to apply to a Judge in Chambers for an order prohibiting the disclosure on the ground that it would be harmful to the interest of the applicant or licensee;

- (d) where the disclosure proposed pursuant to paragraph a (ii) is of information that is confidential information of a third party, before such disclosure is made, the Commission shall give notice to the third party and shall provide an opportunity for representations by such third party;
- (e) subject to subsection (5), in pursuance of a court order.

(5) Where an application is made to a court for disclosure of confidential information, the party claiming confidentiality has a right to require that the information be first disclosed only to the Judge for the purpose of determining the extent of and the necessity for the disclosure.

(6) A person who contravenes subsection (3) shall be guilty of an offence and liable –

- (a) on summary conviction to a fine of \$10,000 or in the case of an individual to 6 months imprisonment or to both such fine and imprisonment; or
- (c) on conviction on indictment to a fine of \$50,000 or in the case of an individual to three years imprisonment or to both such fine and imprisonment.

PART III

TELECOMMUNICATIONS NETWORK AND SERVICES

Licensing of
telecommunications
providers

- 8.** (1) No person shall-
- (a) establish, own or operate a telecommunications network without a carrier licence issued in accordance with this Part;
 - (b) provide public telecommunications services, whether or not for compensation, to the public without a service provider licence issued in accordance with this Part.
- (2) Subsection (1) shall not be contravened by -
- (a) the operation of a telecommunications network or service in which messages are conveyed by light in a manner capable of being received or perceived by the eye alone;
 - (b) the non-commercial operation of telecommunications network or service by the Royal Turks and Caicos Islands Police Force or the Civil Aviation Department or any department of Government, provided that such telecommunications network or service is used exclusively for the purposes of the Force or the

department and not used as a public telecommunications; or

(c) the operation of a telecommunication network or service used in a single household for its own purposes.

(3) Nothing in this section shall discharge a person from having to obtain a licence or additional licence under Part IV where the person establishes, operates or uses a radiocommunications station or installs, operates or uses radiocommunications apparatus.

(4) This section shall not apply to a person who was legally authorised to provide a public telecommunications service, on or before the coming into force of this Ordinance unless and until that person has been granted a licence under section 13.

(5) For the avoidance of doubt, no person shall engage in bypass operations.

9. (1) A person shall not obtain a licence under this Part unless it satisfies the Commission that it is owned or controlled by Belongers.

Belonger control

(2) For the purposes of subsection (1), a person is owned or controlled by Belongers if in the case of a company -

(a) not less than fifty-one per cent of the members of its board of directors are individual Belongers;

(b) otherwise than by way of security only, not less than fifty-one per cent of the company's voting shares issued and outstanding are owned by Belongers; and

(c) the company is not otherwise controlled by persons that are not Belongers.

(3) The Minister may exempt any person from the provisions of subsection (1).

(4) Subsection (1) shall not apply to a person listed in Schedule 4 who was legally authorised to provide a public telecommunications service or operate a public telecommunications network, on or before the coming into force of this Ordinance.

(5) After the expiration of a licence granted under this Ordinance to a person listed in Schedule 4, the provisions of subsection (1) shall apply.

10. A licence granted under section 13 shall specify the type of telecommunications network which may be established, operated or maintained or the type of telecommunications service which may be provided by the licensee.

Licences

11. (1) An application for a licence under this Part shall be made to the Commission in the prescribed form and be accompanied by the prescribed information and application fee.

Application for licences

(2) An applicant for a licence shall satisfy the Commission

- (a) that it has the technical capacity to establish, operate and maintain the telecommunications network or service in respect of which application for the licence is being made; and
- (b) with evidence including evidence as to its financial resources, that it can establish, operate and maintain that system or provide that service for the duration of the licence.

(3) The Governor may, with the approval of the Executive Council, prescribe the procedure to be followed for the purpose of making an application for a licence under this Part.

(4) The Governor may, with the approval of the Executive Council, prescribe the procedure to be followed and the fees to be paid for the grant of a licence under this Part

Fees

12. (1) The prescribed fees payable under section 11(4) shall be in respect of the year commencing on the date on which the licence comes into force.

(2) The prescribed fees under section 11(4) shall be payable for each year for which the licence is in force and such fee shall be due on each anniversary of the date on which the licence was issued.

Grant of licence

13. (1) An application for a licence under this part shall be made to the Commission which shall forward the application along with its recommendations to the Minister.

(2) Where the Minister is satisfied that an application for a licence complies with the provisions of this Ordinance in relation to the licence for which application is being made, the Minister, on terms and conditions as recommended by the Commission, may grant the licence to the applicant

(3) A licence granted under this Part shall continue in force for a period of fifteen years unless previously revoked in accordance with a condition contained in the licence or under this Ordinance.

(4) A licensee shall commence business not later than the end of the period specified for commencement by the Minister in the licence.

(5) A licensee shall comply with the terms and conditions of the licence and all applicable rules, orders, regulations or decisions of the Commission.

(6) Where the Minister refuses to grant a licence under this Ordinance, the reasons for the refusal shall be made known to the applicant on request.

Conditions in a licence

14. A licence granted under section 13 shall include conditions-

- (a) which appear to the Commission to be appropriate;
- (b) to prevent anti-competitive behaviour in telecommunications markets including -
 - (i) engaging in anti-competitive cross-subsidisation; and
 - (ii) not making available timeously to other licensees technical information about essential facilities and commercially relevant information which are necessary for them to provide telecommunication services;
- (c) that, not later than the end of the period of three months beginning with the day after the end of its financial year, the licensee shall send each year to the Commission a report in such form and containing such matters as the Commission may prescribe during that financial year;
- (d) regarding the provision of a universal service or making a prescribed financial contribution to the cost of a universal service;
- (e) relating to the quality and availability of a telecommunications service or telecommunications network;
- (f) relating to the surrender, suspension or revocation of the licence;
- (g) relating to providing the Commission with copies of the licensees audited accounts; and.
- (h) relating to the annual date of payment of licence fees and the date licence fees become due.

(2) Where a licence is granted after the date set for payment of the licence fee, the fee payable thereon shall be in the proportion to the period of the year remaining in which the licence will be in force.

15. (1) A licensee shall treat as confidential, the contents and circumstances of messages sent by telecommunications network and unsuccessful attempts to send messages.

Messages

(2) A licensee shall not, except where necessary to provide telecommunications service to a customer –

- (a) disclose to any other person, information relating to messages sent by telecommunications network or give any other person an opportunity to do so; and
- (b) without the expressed or implied permission of the users involved in the sending and receipt of messages –
 - (i) monitor, intercept or record or permit the monitoring, interception or recording of

messages sent by telecommunications network;
or

(ii) send or permit the sending of information relating to these messages by persons other than the users.

(3) Subsection (2)(b)(i) shall not apply to –

(a) the recording and tracing of calls by organisations providing emergency services in the course of accepting emergency calls or identifying malicious or obscene calls;

(b) the monitoring, interception, or interruption of messages being transmitted over a licensee's telecommunications network for the purposes of –

(i) preventing the illegal or fraudulent use of the telecommunications network or telecommunications services of the licensee; or

(ii) preserving the technical integrity of the telecommunications services of the licensee.

(4) Where the Royal Turks and Caicos Islands Police Force wish to have subsection (2) disappplied in relation to a user who is suspected of a criminal offence or charged with a criminal offence they shall apply to the court for a disapplication and the court may order that subsection (2) shall not apply subject to such conditions as the court may specify.

Dominant Licence

Dominant
licensee

16. (1) The Commission may make a determination that a licensee is dominant in relation to the establishment, operation or maintenance of a telecommunications network or service.

(2) Before making a determination under subsection (1), the Commission shall –

(a) hold a meeting to consider the status of the licensee under this section;

(b) provide reasonable notice of the meeting to the licensee;

(c) provide the licensee with the opportunity to make submissions to the Commission regarding its status under this section; and

(c) provide the licensee with the reasons for any determination made with respect to that licensee under subsection (1).

(3) Where a licensee has been declared dominant by the Commission under subsection (1), the licensee may subsequently apply to the Commission to be classified as not dominant.

17. Where the Commission decides in accordance with section 16 that a licensee is dominant in relation to the provision of telecommunications service or the establishment, operation or maintenance of a telecommunications network, the Commission may include in the licence conditions –

Conditions in dominant licensee's licence

- (a) regulating the operations of the licensee;
- (b) regulating the rates which may be charged by that licensee for telecommunications services or a telecommunications network in accordance with section 27;
- (c) requiring the licensee to publish its rates for telecommunications services or in relation to a telecommunications network, in the market in which the licensee is dominant;
- (d) that rates for services, or in relation to a telecommunications network provided, to all users shall not be discriminatory; and
- (e) with respect to the provision of international services and the settling of accounts with respect to those services.

Modifications, transfer and renewal of licences

Modification of conditions of licence

18. (1) The Commission may modify the conditions of any licence granted under this Ordinance.

(2) Before modifying the conditions of any licence, the Commission shall give notice to the licensee who is affected and where substantially similar licences have been issued to more than one person to all licensees who are affected; and may publish the notice in a newspaper circulating in the Islands or on the Commission's website -

- (a) stating that the Commission proposes to make the modifications and setting out their effect;
- (b) stating the date of publication to the licensees, if the notice is being published;
- (c) giving the reasons why the Commission proposes to make the modifications, including whether the modifications are required in the public interest; and
- (d) specifying a period not less than the end of the period of twenty-eight days beginning with the day after the date on which notice is given to the licensee or of publication, whichever is later, within which representations on the proposed modifications may be made by the licensee.

(3) The Commission shall consider representations which are made by the licensee and not withdrawn.

- (4) Licences may only be modified -
- (a) with the written consent of the licensee; and
 - (b) where substantially similar licences have been issued to more than one person, with the written consent of the licensees who between them account, according to estimates by the Commission based on available market information, for at least seventy-five per cent of the total telecommunications revenue of all licensees carrying on business under the licences.

(5) Where consent under subsection (4) is not forthcoming or is impracticable to obtain, the Commission may, after considering representations of the licensee under subsection (3) modify the conditions of licence to include the modifications, if the Commission considers that the modifications are in the interest of national security or the public interest.

Registers of
licences

19. The Commission shall maintain public registers of licences granted under this Ordinance, and the register shall include information relating to the name and address of the licensee, the telecommunications network or telecommunications service in respect of which the licensee was licensed and the conditions applicable to the licence.

Transfer of
licence

20. (1) Where a licensee wishes to assign its licence or any rights thereunder or transfer control of operations, the licensee shall apply in writing to the Commission for prior approval.

(2) The Commission shall have regard to the following matters when deciding on a request for approval of assignment or transfer -

- (a) the circumstances of each transfer or assignment so as to ensure that licensees are not unduly restricted in the management of their commercial affairs;
- (b) whether or not the assignee or transferee satisfies the criteria for the grant of a licence;
- (c) where the assignment is from one or more individuals to a body corporate owned or controlled by the same individual or individuals; the extent to which the assignment achieves a change in their relative interest;
- (d) where the assignment is from a body corporate to its shareholders; the extent to which there is a change in the assignor's interest;
- (e) where the assignment or transfer is the result of a corporate reorganisation; the extent to which there is a change in beneficial ownership.

(3) Notwithstanding subsection (2), the Commission shall not withhold approval where the assignment or transfer achieves no material change in the relative interests of the assignee and

assignor, or where the assignment or transfer is to a wholly owned subsidiary of the assignor, or from a body corporate to its parent company, or between wholly owned subsidiaries, or results from a corporate reorganisation that involves no change in the beneficial ownership or management of the assignor

21. (1) The Commission shall automatically renew licences granted under this Ordinance for a period equivalent to the first licence granted unless –

Renewal of licence

- (a) the licensee failed to operate within the terms of the first licence;
- (b) the licensee failed to comply materially with any of the provisions of this Ordinance made hereunder or the terms and conditions of the licence;
- (c) the licensee failed to comply materially with any lawful direction of the Commission; or
- (d) in the case of a licence or service provider, the Commission has determined that it is not in the public interest to renew the licence and has given notice not less than three years before the expiration of the licence that the licence will not be renewed.

(2) Before determining not to renew a licence pursuant to subsection (1), the Commission shall give the licensee adequate advance notice, which, shall, except as provided for in subsection (1)(d), not be less than 180 days, in writing of its intention not to renew such licence, specifying the grounds on which it proposed to not renew, and shall give the licensee the opportunity to present its views; and to submit to the Commission within such time as the Commission may specify a written statement of objections to the decision not to renew the licence which the Commission shall take into account before reaching a decision on renewal.

Interconnection

22. (1) Where the Commission under section 16 decides that a licence is dominant, the licensee shall provide an interconnection timeously to another licensee who requests the interconnection.

Interconnection

(2) A dominant licensee to whom a request for interconnection is made may refuse to provide such interconnection on grounds to be determined by the Commission for the protection of –

- (a) the safety of a person;
- (b) the security of a network; or
- (c) the integrity of the network.

23. (1) In the implementation of section 22, the Commission may issue instructions to the dominant licensee, and without prejudice to that generality may issue instructions to the licensee –

Instructions on interconnection

- (a) to make its procedures for interconnection publicly available;
 - (b) to make the terms, conditions and rates of either its standard interconnection agreement or its interconnection offer, publicly available; and
 - (c) to provide interconnection -
 - (i) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided by the licensee for its own like services or for like services of non affiliated service suppliers or for the licensees subsidiaries or other affiliates;
 - (ii) in a timely fashion on terms and conditions (including technical standards and specifications cost-oriented rates) that are transparent, reasonable, having regard to economic feasibility;
 - (iii) sufficiently unbundled so that the licensee requesting interconnection does not pay for telecommunications systems components that it does not require for the service be provided; and
 - (iv) at all technically feasible points.
 - (d) to impose time limits for completion of the interconnection;
 - (e) on an optimal point for interconnection and on the technical characteristics of the point of interconnection;
 - (f) in respect of collocation as may be prescribed by regulations;
 - (g) in respect of rates for interconnection;
 - (h) in respect of the accounting standards to be used;
 - (i) to ensure that high standards of service are maintained; and
 - (j) in respect of services to be provided in connection with or ancillary to the interconnection;.
- (1) –
- (2) The terms, conditions and rates referred to in subsection
 - (a) in the case of a licensee’s standard interconnection agreement or interconnection offer, shall not be discriminatory and shall be at a quality which is no less favourable than those provided in relation to the dominant licensee’s own and an affiliate’s services;
 - (b) shall be transparent and cost-oriented having regard to economic feasibility; and

(c) shall provide interconnection in such a manner that the licensee requesting interconnection does not pay for telecommunications network components which it does not require.

(3) This section shall not apply to an interconnection agreement or arrangement that contains rates, terms or conditions which are different from those established by the Commission pursuant to this section:

Provided that all parties to such agreement or arrangement have agreed to be bound by the terms of such agreement or arrangement.

Disputes

24. (1) The Commission may on its own motion or at the request of an interested party instruct licensees involved in an interconnection dispute to refer the dispute to it.

(2) The Commission shall take such measures as it deems fit to resolve disputes referred to it under subsection (1) and may issue instructions about the interconnection terms which shall apply.

(3) In carrying out its duties under this section the Commission may consider the difficult or costly technical and engineering nature of the interconnection.

25. (1) The costs of interconnection shall be borne equally by the licensee who is requesting interconnection and the provider. For the avoidance of doubt equal bearing of costs shall relate only to ongoing costs of inter-operability

Interconnection costs

(2) Non-recurring costs shall be recovered through non-recurring charges and recurring costs shall be recovered through recurring charges;

(3) Costs that do not vary with usage should be recovered through non-usage sensitive charges and costs that vary with usage shall be recovered through usage-sensitive charges;

(4) For calling party pays calls between networks, the terminating network shall receive a cost-oriented usage based rate based upon costs of the Licensee providing interconnection services.

25A. (1) The Commission may prescribe a charge to be known as the “access deficit charge” to be paid by carriers and service providers as the Commission sees fit .

Access deficit charge

(2) The Commission shall publish guidelines, following consultation for determining the amount of the access deficit.

Numbering

26. (1) The Commission shall have a scheme for –

Numbering

(a) the numbering of telecommunications services; and

- (b) the allocation and use of numbers in connection with these services.
- (2) A numbering scheme shall, so far as possible –
 - (a) address market expectations and licensee needs for allocation of numbers;
 - (b) promote efficient use of numbers;
 - (d) preserve the numbering allocations that are in existence immediately before the commencement of this Ordinance.
- (3) The Commission may administer the scheme and issue instructions to licensees in respect of the scheme in accordance with the North American Numbering Plan.
- (4) The Governor may make regulations with respect to –
 - (a) numbers available for use;
 - (b) the demand and likely future demand for numbers;.
 - (c) the need to promote efficient use of the numbers and competition in the provision of telecommunications services; and
 - (d) the likely economic benefits available for users of the numbers concerned.

Rates

Rates

- 27.** (1) Rates for telecommunications services, except those regulated by the Commission in accordance with this section, shall be determined by providers in accordance with the principles of supply and demand in the market.
- (2) The Commission may establish rates regulation regimes, which may be prescribed and which may include setting, reviewing and approving rates in any case where -
- (a) there is only one licensee operating a telecommunications network or providing telecommunication service, or where one or more licensees have been determined to have a dominant position in the relevant market in accordance with section 16;
 - (b) a sole or dominant licensee operating a telecommunications system, network or providing a telecommunications service cross-subsidises another telecommunications service provided by such licensee; or
 - (c) the commission is satisfied that there is evidence of anti-competitive pricing or acts of unfair competition.

(3) Where the Commission finds that a provider of a regulated service is dominant in a relevant market in accordance with the procedure prescribed in this Ordinance, the Commission shall establish a mechanism for the setting of rates to be charged by the provider of a regulated service. The Commission shall use an incentive-based rate setting mechanism to establish the rates to be charged by such a provider of a regulated service.

(4) The incentive-based rate setting mechanism referred to under subsection (3) shall be established by the Commission in the manner prescribed and the Commission shall monitor and ensure compliance with the mechanism.

(5) In approving, disallowing or amending any regulated rate or tariff filed by the licensee, the aim of the Commission shall be to facilitate the policy of market liberalisation and competitive pricing.

(6) Subject to the provisions of subsection (5) which shall govern rate of tariff increase, in approving, disallowing or amending any regulated rate or tariff filed by the licensee, the Commission shall reply in writing to a request by the licensee within 28 days of receipt of the tariff filing, failing which, such filing shall be deemed approved by the Commission.

(7) In considering a rate or tariff decrease filed by the licensee, the Commission shall reply in writing to a request within 7 working days of receipt of the filing stating whether the filing is approved by the Commission as filed or whether it is conditionally approved.

(8) Conditional approval under subsection (7) means that the rate or tariff decrease is approved so that the licensee may immediately implement the decrease and the Commission may then take up to 180 days after the introduction of the rate or tariff decrease to assess whether the rates or tariff are anti-competitive through a determination of whether they are above an incremental cost price floor.

(9) If the Commission fails to reply to the request within 7 working days, the filing shall be deemed approved by the Commission as filed.

(10) The Commission shall keep confidential the fact that a filing has been made under this section and the contents of the rate or tariff decrease filing shall be confidential.

(11) Where the Commission determines that a service is regulated service under this section, the rates for that service shall then only be subject to the rate regulation determined under this section.

(12) A service provider shall publish the rates, terms and conditions for its telecommunications services at such times and in such manner as the Commission shall specify and such rates, terms and conditions shall thereafter, subject to this Ordinance and the conditions of any licence, be the lawful rates, terms and conditions for such services.

Forbearance by
Commission

28. (1) The Commission may make a determination to refrain in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Part to a telecommunications service provided by a licensee, where the Commission finds as a question of fact that to refrain would be consistent with the telecommunications policy objectives of the Island.

(2) Where the Commission finds as a question of fact that a telecommunications service provided by a licensee is or will be subject to competition sufficient to protect the interest of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Part in relation to the service .

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service.

(4) The Commission shall declare that any provision of this Part does not apply to a licensee to the extent that the provision is inconsistent with a determination of the Commission under this section.

Universal service

Universal
service

29. (1) In accordance with the telecommunication policy established by the Government, the Commission shall determine the telecommunications services in respect of which the requirement of universal service shall apply, taking into account the needs of the public, affordability of the service and advances in technologies.

(2) The telecommunications services referred to in subsection (1) shall comprise –

- (a) affordable access to basic telecommunications services for all people in the Islands, which is the ability to access a dial tone in order to make telephone calls to other end-users;
- (b) the maintenance of public payphones;
- (c) free internet access for public libraries and public schools; and
- (d) access to emergency numbers free of charge.

(3) The Governor, acting with the approval of the Executive Council, may make regulations to amend the provisions of subsection (2) on the recommendation of the Commission and in accordance with the telecommunications policy, after consultation with the universal service provider.

(4) In accordance with the telecommunications policy the Commission shall periodically determine the manner in which telecommunications service shall be provided.

(5) Subject to the universal service provider establishing that there is a net avoidable cost pursuant to subsection (9), there may be established a fund to be known as the Universal Service Fund contributed to by carriers and service providers for the purpose of funding the universal service.

(6) The Universal Service Fund shall be administered by a person designated by the Commission in accordance with regulations made for the purpose by the Governor acting on the advice of Executive Council.

(7) The obligation to provide and contribute to the funding of the service referred to in subsections (1) and (2) and shall be applied on a transparent and non-discriminatory basis as between all similarly situated providers of telecommunications services and users and shall not place unreasonable burden on the universal service provider or any person required to contribute to the provision of the service.

(8) The net avoidable cost of the universal providers shall be recovered by means of payments by licensees to the universal service provider under the supervision of the person designated as Fund Administrator designated under subsection (6)

(9) The universal service provider shall be permitted to recover the net avoidable costs that result from fulfilling the universal service obligation where net avoidable cost mean all costs incurred by the universal service provider in connection with the fulfilment of the universal service obligation less any revenues derived from the provision of universal service.

(10) For the purpose of subsection (9) the words the words “all costs incurred by the universal service provider in connection with the fulfilment of the universal service obligation” shall include, but not be limited to –

- (a) all costs incurred by a universal service provider in meeting the universal service obligation;
- (b) all costs incurred by a universal service provider in administering and collecting levies associated with fulfilling the universal service obligation and obtaining reimbursement;
- (c) the universal service provider’s cost of capital on the relevant assets; and
- (d) an interest component calculated from the date each cost is incurred from the date when payment is due and at a rate in accordance with principles applied to commercial transactions.

(11) For the purpose of subsection (9) “less any revenues derived from the provision of universal service” means any

revenue derived from the provision of such telecommunications service as may be determined by the Commission.

(12) Prior to terminating the general offering to the public of telecommunications service in respect to which the requirement of universal service applies, a licensee shall obtain written approval from the Commission.

PART IV

SPECTRUM MANAGEMENT

Regulation and
monitoring of
spectrum

30. (1) The Commission shall, so far as it considers it necessary or desirable, regulate the use for any purpose, of the spectrum within the Islands or between the Islands and elsewhere.

(2) For the purposes of subsection (1), the Commission shall –

- (a) allocate the spectrum for specified services within the Islands;
- (b) subdivide the allocation into allotments; and
- (c) determine methods for assignment of the spectrum.

(3) The Commission may monitor the use of the spectrum including the inspection and evaluation of the efficiency of that use.

Licensing of
persons

31. (1) A person shall not establish, operate or use a radiocommunications apparatus or install, operate or use radiocommunications apparatus unless it is authorised to do so by a spectrum licence.

(2) Subsection (1) shall not be contravened by -

- (a) the installation or use of radiocommunications apparatus for receiving and not for emitting publicly available television and radio broadcasting; and
- (b) the operation by the Royal Turks and Caicos Islands Police Force, the Civil Aviation Department or any department of Government, of radiocommunications used exclusively for their purposes.

(3) Nothing in this section shall discharge a person from having to obtain a licence or additional licence under Part III where the person in addition to establishing, operating or using a radiocommunications apparatus or installing, operating or using radiocommunications apparatus, establishes, operates or maintains a telecommunications network or provides a telecommunication service.

Application for
spectrum licence

32. (1) An application for a spectrum licence shall be made to the Commission in the prescribed form and be accompanied by the prescribed information and application fee.

(2) The Governor, acting in accordance with the advice of the Executive Council, may prescribe -

- (a) the procedure for an application for the grant or renewal of spectrum licences;
- (b) the fees and the manner of payment of the fees for the grant or renewal of a spectrum licence;
- (c) requirements regarding the maintenance of competition which are consistent with this Ordinance.

(3) Subsection (2) shall not apply to any person that was lawfully authorized to establish, operate or use a radiocommunications apparatus on or before the coming into force of this Ordinance, unless and until that person has been granted a licence under section 13.

(4) The Commission shall make publicly available the procedures to be followed for the grant of a licence for the establishment, operation or use of the spectrum.

33. (1) The prescribed fees payable under section 32(2) shall be in respect of the year commencing on the date on which the licence comes into force.

Recover cost

(2) The prescribed fees under section 32 may enable the Commission to recover an amount in excess of the amounts under subsection (1) to reflect the market value of the licence granted.

(3) In making regulations under section 32 the Governor may have regard to -

- (a) the extent of the part of the spectrum available for use under the licences granted;
- (b) the demand and likely future demand for use of that part of the spectrum;
- (c) the need to promote efficient use of the spectrum and competition in the provision of spectrum based services; and
- (d) the likely economic benefits available to licensees.

34. (1) In considering whether to grant a spectrum licence the Commission shall have regard to the spectrum plan under section 39.

Grant of spectrum licence

(2) Where the Commission is satisfied that the applicant complies with the provision of this Ordinance in relation to a spectrum licence, the Commission may, on such terms and conditions as it thinks fit, grant the licence to the applicant.

(3) A spectrum licence shall continue in force for the period specified in the licence, unless previously revoked under this Ordinance or under a condition contained in the licence.

(4) A licensee shall comply with the conditions of the licence and with all applicable rules, orders, decisions of the Commission and regulations made pursuant to this Ordinance.

Conditions in
spectrum licence

35. A spectrum licence shall include conditions -

- (a) which are consistent with the Government's policy on telecommunications;
- (b) setting out the purposes for which, the circumstances in which and the persons by whom the radiocommunications station may be operated or used and the apparatus which may be installed, operated or used in the station;
- (c) containing limitations on the apparatus which may be installed, operated or used, and the places where, the purposes for which, the circumstances in which and the persons by whom, the apparatus may be operated or used;
- (d) that not later than the end of the period of three months beginning with the day after the end of its financial year, the licensee shall send each year to the Commission a report on its activities during that financial year;
- (e) relating to the surrender, suspension or revocation of the licence;
- (f) requiring the licensee or the person who is in possession or control of a radiocommunications apparatus to give access to facilitate the protection of the radiocommunications station or apparatus;
- (g) requiring the licensee or the person who is in possession or control of a radiocommunications station or radiocommunications apparatus to give access to and facilitate the inspection of, such person as may be authorised by the Commission the radiocommunications station or apparatus;
- (h) about the condition in which the radiocommunications station or apparatus is to be kept; and
- (i) requiring the licensee to exhibit at the radiocommunications station notices specified in instructions given under section 36(e).

Instructions by
Commission

36. The Commission may issue instructions to holders of spectrum licences –

- (a) about what is to be done or not to be done in relation to the use of a radiocommunications station or radiocommunications apparatus;
- (b) requiring the use of a radiocommunications station or radiocommunications apparatus to cease;

- (c) requiring the licensee or the person who is in possession or control of a radiocommunications station or radiocommunications apparatus to give access to and facilitate the inspection of, such person as may be authorised by the Commission the radiocommunications station or apparatus;
- (d) about the condition in which the radiocommunications station or apparatus is to be kept; and
- (e) requiring the licensee to exhibit at the station notices specified in the instructions.

37. (1) A person shall not use a portion of the spectrum unless the person is authorised to do so by a spectrum licence or special licence granted by the Commission under this Part.

Licensing of persons as spectrum licensees

(2) Subsection (1) shall not apply to a person who was legally authorised to use spectrum on or before the coming into force of this Ordinance.

Special licence

38. (1) A person who is not the holder of a spectrum licence under this Part who wishes to carry out any experiment in relation to radiocommunications or who wishes to cover any emergency or special event approved by the Commission shall not carry out such experiment or cover such emergency or event unless it has been authorised to do so by a special licence granted under this Part.

Special licence

(2) An application for the grant of a special licence under this Part shall be made to the Commission in the prescribed form and be accompanied by the prescribed information and application fee.

(3) The prescribed fee payable under subsection (2) shall be in respect of the year commencing on the date on which the licence comes into force.

(4) Where the Commission is satisfied that the applicant for a special licence complies with the provisions of this Part in relation to the licence, the Commission may grant the licence to the applicant on such terms and conditions it thinks fit and on the payment of such fee as may be prescribed.

(5) The Governor acting with the approval of Executive Council, may make regulations for the purpose of giving effect to this section and without prejudice to the generality of the forgoing, such regulations may -

- (a) provide for the duration of the licence;
- (b) provide for terms and conditions of the licence;
- (c) make provision with respect to the capacity or technical requirements of an applicant for a special licence;

- (d) fees with respect to special licences; and
- (e) provide for such other matters as may be necessary or required for purposes of a special licence.

Spectrum
planning

39. (1) The Commission shall make, amend or revoke a plan to achieve a balanced, efficient and effective management and use of the spectrum.

(2) A plan shall -

- (a) address market expectations and user requirements for allocation, allotment and assignments of the spectrum;
- (b) promote efficient spectrum use;
- (c) minimise risks of interference;
- (d) maximise economic benefit and sustainable competition; and
- (e) conform, as necessary, to relevant spectrum plans in the region.

(3) The Commission may delegate any of its functions under this section to another person.

Register of
licences under
this Part

40. The Commission shall maintain a public register of spectrum licences granted under this Part which shall include the name and address of the licensee, the radiocommunications station or radiocommunications apparatus or portion of the spectrum in respect of which the licensee was licensed and the conditions applicable to the licence granted.

PART V

TECHNICAL REGULATION

Technical
standards

41. The Commission may prescribe standards for customer premises equipment, radiocommunications apparatus, submarine cables, and telecommunications network and services—

- (a) to protect the integrity of radiocommunications, apparatus, submarine cables and telecommunications network and equipment;
- (b) to protect the health and safety of persons;
- (c) to ensure the interoperability of a combination of customer premises equipment, radiocommunications apparatus, submarine cable, telecommunications equipment and telecommunications network including the interoperability of one kind of equipment, apparatus or network with the same kind of equipment, apparatus or network;

- (d) to achieve or assist in achieving, the plan made under section 43; and
- (e) to prevent interference so far as practicable.

42. The Commission may by instructions specify the procedures for testing customer premises equipment, radiocommunications apparatus, submarine cables, telecommunications equipment and telecommunications network to verify that they comply with the prescribed standards.

Testing and verification

43. The Commission may by instructions specify procedures for approving persons to install customers premises equipment, radiocommunications apparatus, submarine cables or telecommunications equipment.

Approval of installers

44. The Commission may by instructions specify the markings to be affixed to customer premises equipment, radiocommunications apparatus or telecommunications equipment indicating -

Marking requirements

- (a) the date on which they were tested;
- (b) the person by whom they were installed; and
- (c) the date of installation.

45. (1) The Commission shall maintain a public register of the prescribed standards, the apparatus, cables, equipment and networks tested, the installers approved and the markings affixed under sections 41 to 44 respectively.

Register of apparatus, equipment, and systems

- (2) The register shall contain -
 - (a) a copy of the prescribed standards and the date on which they came into force;
 - (b) the name and address of the manufacturer of radiocommunications apparatus, submarine cables and telecommunications equipment, the date on which the apparatus, cables, equipment and network were tested and verified and a copy of the Commission's testing and verification documentation;
 - (c) the name and address of the approved installer, the date of approval and the types of customer premises equipment, radiocommunications apparatus, submarine cables or telecommunications equipment which he may install; and
 - (d) a description of the markings to be affixed.

PART VI

REGULATORY FEES, EXAMINATION AND AUDIT

Regulatory fee

46. (1) Every licensee holding a licence granted under this Ordinance, shall pay to the Commission for every year during the subsistence of the licence such annual regulatory fee as may be prescribed by Regulations.

(2) The regulatory fee under subsection (1) shall be such amounts as shall recover from licensees on an equitable basis the amounts required to defray cost incurred or anticipated by the Commission in the exercise of its functions in respect of telecommunications.

(3) The Commission shall specify on the licence the date of payment each year of the regulatory fee.

(4) The Commission may revoke any licence granted under this Ordinance where the licensee fails to pay the regulatory fee under subsection (1) on the date specified in the licence.

(5) The Governor, acting on the advice of Executive Council, shall make regulations specifying conditions under which a licensee may be exempted by the Commission from the provisions of this section.

Examination

47. The Commission may from time to time appoint one or more qualified persons to make examination, under conditions of secrecy, of the books and affairs of any licensee under this Ordinance.

Production of books, etc

48. (1) Every licensee of which an examination has been ordered under section 47, on service of an examination notice (the "Examination Notice") from the Commission specifying –

- (i) the relevant books, accounts and documents required by the Commission for examination; and
- (ii) the date on which such books, accounts and documents are required, such date to provide the licensee with a reasonable period in which to gather the required information.

shall produce to the person or persons under the provisions of that section, at such times and in such places on the date specified in the Examination Notice as such persons or persons may specify (being times and places which, in the opinion of such person or persons, would not be detrimental to the conduct of the normal daily business of the licensee) all books, accounts and documents in the possession or custody relating to its business as may be specified in the Examination Notice.

(2) If any book, account, document or information is not produced in accordance with subsection (1), the licensee shall be guilty of an offence and liable on summary conviction to a fine of \$50,000 in respect of every day during which the offence continues; and if any book, account, document or information specified in subsection (1) is false in any material particular, the licensee concerned shall be guilty of an offence and liable on summary conviction to a fine of \$500,000.

(3) As soon as may be after the conclusion of an examination under section 47, the person or persons appointed under the said section 47 shall submit a full report on such examination to the Commission

49. If in the opinion of the Commission an examination under this Part shows that the licensee concerned is carrying on its business in a manner contravening any of the provisions of this Ordinance, or any condition of the licence, the Commission may require by notice the licensee within such time as stated in the notice, not less than 14 days, to implement such measures as the Commission may consider necessary in relation to its business, and if the licensee fails to implement the said measures, the licensee shall be guilty of an offence and liable on summary conviction to a fine of \$500,000.

Power after examination

PART VII

INVESTIGATION, APPEALS AND ENFORCEMENT

50. For the purposes of this Part –

Definition

- (a) a person is in charge of premises if he is the owner or occupier of the premises or has or assists in, the management or control of the premises; and
- (b) “premises” includes a place, aircraft, vehicle, vessel, structure or other object whether movable or otherwise and whether on land or otherwise.

51. (1) Where the Commission is satisfied that a licensee is not complying or has not complied, with a condition or term of a licence, an instruction issued by the Commission or a provision of this Ordinance or its subordinate legislation, the Commission may issue to the licensee such directions as it considers necessary to bring the contravention to an end or ensure that the contravention is not repeated and make arrangements for the publication of the directions.

Securing compliance

(2) A licensee to whom directions are issued by the Commission shall comply with the directions.

(3) Before issuing directions under this section, the Commission shall give notice to the licensee to whom the directions will be issued -

- (a) stating that it proposes to issue directions and setting out their effect;
- (b) stating the condition or term of the licence, instruction, requirement, specification, or provision of the Ordinance or subordinate legislation with which, in the opinion of the Commission the licensee is not complying or has not complied; and

(c) stating that the licensee or any other person may make representations not later than the end of the period of seven days beginning with the day after the date of issuing the notice.

(4) At the end of that period of seven days the Commission having had regard to representations made and not withdrawn may issue the directions.

(5) If after issuing directions a licensee fails to comply with a requirement of the directions, the Commission, after hearing the licensee, may -

(a) censure the licensee publicly;

(b) impose a penalty not exceeding three hundred thousand dollars and a further penalty not exceeding ten thousand dollars for each day on which the contravention continues; and

(c) enforce a remedy available to the Commission under the licence of the licensee including any remedy of suspension or revocation.

(6) Where the Commission imposes a penalty under subsection (5) the penalty shall be recoverable in the same manner as a fine imposed by the Magistrate's Court.

Revocation and Suspension

Suspension and
revocation of
licence

52. (1) Where the Commission has reason to believe that a licensee has contravened any provision of this Ordinance or the conditions of the licence, the Commission shall give to the licensee notice in writing -

(a) specifying particulars of such contravention;

(b) requiring the licensee to justify its actions to the Commission or otherwise take such remedial action as may be specified in the notice.

(2) Before the Commission issues any notice under subsection (1) the Commission shall first send a copy of the notice to the Minister for his decision.

(3) Where a licensee fails to comply with any requirements of a notice under subsection (1), the Commission may -

(a) on the first occasion of such failure suspend the licence for a period not exceeding three months; or

(b) if the failure occurs on any second or subsequent occasion, suspend the licence for such period as the Commission considers appropriate, or revoke the licence.

(4) Before suspending or revoking a licence under subsection (3), the commission shall notify the licensee

accordingly and shall afford the licensee an opportunity to show cause why the licence should not be suspended or revoked.

(5) Subject to subsection (4), the Commission may suspend or revoke, a licence, as the case may be, if, on its own initiative or on representations made by any other person, the Commission is satisfied that the licensee has –

- (a) knowingly made any false statement in an application for a licence or in any statement made to the Commission;
- (b) knowingly failed to provide information or evidence that would have resulted in refusal to grant a licence;
- (c) wilfully failed to comply with the terms and conditions of its licence;
- (d) wilfully contravened any provision of this Ordinance or any rules or regulations made hereunder;
- (e) provided services not authorized by its licence;
- (f) operated a telecommunications network without a carrier licence;
- (g) failed to make payments in a timely manner in connection with the provision of universal service obligation or in respect of the regulatory fees imposed pursuant to section 46.

(6) Before taking action under subsection (5) the Commission shall carry out such investigations as may be necessary and afford the licensee concerned an opportunity to be heard .

(7) For the purpose of this section, the Commission may –

- (a) summon and examine witnesses;
- (b) call for and examine documents;
- (c) require that any document submitted be verified by affidavit;
- (d) adjourn any investigation from time to time.

(8) If a person fails or refuses without reasonable cause, to furnish information to the Commission when required to do so, the Commission may apply to the Court for an order to compel the person to furnish the information to the Commission.

Review

53. (1) The Commission may on application or on its own motion, review, revoke, cancel or vary, in whole or in part, any decision made by it, or may rehear any matter before the Commission.

Review of
decisions

(2) The Commission may make Rules for the purposes of subsection (1) and such Rules shall be published in the Gazette.

Appeals

Appeals

54. (1) The Minister, acting with the approval of the Executive Council, shall appoint a Telecommunication Tribunal to hear appeals under this Ordinance.

(2) The Telecommunications Tribunal shall consist of a President who shall be a Judge of any Commonwealth country or a person qualified for appointment as a judge, and two other members, one of whom must have experience in telecommunications.

(3) A member of the Tribunal may be appointed for a period of not less than five years; but may be removed by the Minister acting with the approval of Executive Council, if there is reasonable evidence that the member is guilty of misconduct or incompetence.

(4) A member of the Tribunal shall be eligible for re appointment.

(5) The Governor acting with the approval of Executive Council shall set the payments and allowances for members of the Tribunal.

(6) An appeal lies to the Telecommunication Tribunal from any decision made by the Minister or the Commission, including any decision made with respect to the revocation, suspension, or modification of a licence or any term or condition of a licence granted under this Ordinance.

(7) Notice of appeal shall be given to the Commission or the Minister as the case may be and the Telecommunications Tribunal within 14 days of the making of the decision complained of and the Tribunal shall set down the appeal for hearing within 21 days after receiving the notice of appeal.

(8) On the hearing of an appeal, the appellant and his representative and a representative of the Commission or the Minister as the case may be are entitled to appear and be heard and to make written submissions and also to be represented by an attorney.

(9) Subject to this section, the Telecommunications Tribunal may regulate the procedure at the hearing of an appeal and shall make its decision in writing.

(10) Any person who is dissatisfied with any decision of the Telecommunications Tribunal under this section may apply to the Supreme Court for leave to review the decision of the Tribunal.

Offences

55. (1) A person who establishes, operates or maintains a telecommunications network or provides a telecommunications service without a licence granted under this Ordinance shall be guilty of an offence and liable on summary conviction to a fine of one million dollars.

(2) A person who knows or having reason to believe that a telecommunications network is established or maintained or in operation, or a telecommunications service is being provided without a licence granted under this Ordinance –

- (a) wilfully and with intention of assisting the person referred to in subsection (1) sends or receives a message by using the telecommunications network or telecommunications service; or
- (b) performs a service incidental to the establishment, operation or maintenance of the telecommunications network or provision of the telecommunications service,

shall be guilty of an offence and liable on summary conviction to a fine of one million dollars.

(3) A person who -

- (a) participates in the management, financing or operation of a telecommunications network or telecommunications service knowing or having reasonable cause to believe, that the person who established or is operating or maintaining the network or providing the service, is not licensed;
- (b) supplies or installs a telecommunications network or part of a network or repairs or maintains a telecommunications network, telecommunications equipment or other item knowing or having reasonable cause to believe, that –
 - (i) the network will be or is, operated by a person who is not licensed;
 - (ii) the equipment or other item will be or is, used for the purpose of facilitating the operation of a telecommunications network by a person who is, not licensed; or
 - (iii) in either case the telecommunications network will be or is used for the provision of a telecommunications service by a person who will be or is, not licensed; or
- (c) wilfully and with intent to defraud renders any other service to a person knowing, or having reasonable cause to believe, that the rendering of that service to the person will facilitate the operation of a telecommunications network or the provision of a telecommunications service, by a person who will be or is, not licensed,

shall be guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars.

(4) A person who installs customer premises equipment, radiocommunications apparatus, submarine cables, telecommunications equipment or a telecommunications network –

- (a) which has not been tested and verified under section 42; or
- (b) which is directly or indirectly connected to a telecommunications network not tested and verified under section 42,

shall be guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars.

(5) A person who wilfully sends, by means of a telecommunications network, an offensive, obscene, threatening or abusive message to another person shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

(6) A person who is a licensee under this Ordinance or is employed by or engaged in any capacity by a licensee and -

- (a) prevents or obstructs the sending, conveying or delivery of a message; or
- (b) contravenes or causes a licensee to contravene section 31,

shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

Offences in respect of spectrum

56. (1) For the purposes of this section “unlawful use of the spectrum” is use of the spectrum in contravention of section 31.

(2) A person who –

- (a) establishes, operates or uses a radiocommunications station or installs, operates or uses radiocommunications apparatus or uses a portion of the spectrum; or
- (b) knows, or has reasonable cause to believe, that another person intends to do so,

without a licence granted under section 34 shall be guilty of an offence and liable on summary conviction to a fine of two hundred and fifty thousand dollars.

(3) A person in charge of premises who -

- (a) knowingly causes or permits the premises to be used for unlawful use of the spectrum or to operate or control apparatus used for unlawful use of the spectrum from another place; or
- (b) having reasonable cause to believe that the premises are being so used, fails to take reasonable steps to prevent the premises from being so used,

shall be guilty of an offence and liable on summary conviction to a fine of two hundred and fifty thousand dollars.

(4) A person who –

- (a) participates in the management, financing or operation of a radiocommunications station or use of the spectrum knowing or having reasonable cause to believe, that unlawful use of the spectrum is being made;
- (b) supplies, installs, repairs or maintains radiocommunications apparatus or spectrum apparatus or another item knowing or having reasonable cause to believe, that the apparatus or other item is to be or is, used for the purpose of facilitating the operation of unlawful use of the spectrum; or
- (c) renders another service to a person knowing or having reasonable cause to believe, that the rendering of the service will facilitate the operation of unlawful use of the spectrum,

shall be guilty of an offence and liable on summary conviction to a fine of two hundred and fifty thousand dollars.

(5) A person who, by means of radiocommunications or spectrum apparatus sends or attempts to send, a message which he knows is false or misleading and likely to prejudice the efficiency of a safety of life service or endanger the safety of a person, aircraft, vessel or vehicle shall be guilty of an offence and liable -

- (a) on summary conviction to a fine of five hundred thousand dollars or a term of imprisonment of five years; or
- (b) on conviction on indictment to a fine of one million dollars or to imprisonment for a term of ten years or to both such fine and imprisonment.

(6) A person who is knowingly using apparatus for the purpose of interfering with other apparatus whether or not the apparatus being used is radiocommunications or spectrum apparatus shall be guilty of an offence and liable on summary conviction to a fine of two hundred and fifty thousand dollars.

57. A person who carries out any experiment with respect to spectrum in contravention of section 38(1) shall be guilty of an offence and liable on summary conviction to a fine of two hundred and fifty thousand dollars.

Offence in respect of special licence

58. (1) Where on information provided by the Commission, the Director General or other person, the court has reason to believe that a person is not complying with a condition of a licence, or instructions issued by the Commission or a provision of this Ordinance, the Court may issue a search warrant to a police officer to search the premises of that person.

Powers of entry and search

(2) A warrant issued under this section shall authorise a police officer accompanied by a representative of the Commission

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any apparatus, documents or equipment in accordance with the terms of the warrant or take in relation to such apparatus, documents or equipment, any other steps which appear necessary for their preservation or preventing interference with them;
- (c) to take copies of or extracts from the documents or test the apparatus or equipment in accordance with the terms of the warrant; and
- (d) to use reasonable force.

(3) Where under this section a police officer and representative of the Commission may take possession of apparatus, documents or equipment or take copies of or extracts from documents or test apparatus or equipment on premises, a person who is on or in charge of the premises shall give them such assistance as they may require in taking possession or extracts or copies or and the testing.

(4) In this section “court” means Magistrate’s Court established under section 3 of the Magistrate’s Court Ordinance.

Offence by body
corporate

59. Where an offence under this Ordinance is committed by a body corporate and it is proved that the offence has been committed with the consent or connivance of or is attributable to neglect by, a director, manager, secretary or other officer of the body corporate or a person purporting to act in such capacity, the officer or person as well as the body corporate shall be liable to be proceeded against and punished accordingly.

PART IX

SUPPLEMENTARY

Minister

60. (1) The Minister in carrying out his functions under this Ordinance may conduct inquiries.

(2) All licences granted by the Commission under this Ordinance shall contain the signature of the Minister and the date of issuance.

61. The Commission in the discharge of its functions under this Ordinance shall in relation to Cable and Wireless West Indies Limited act in accordance with the Agreement made between the Government and Cable and Wireless, West Indies Limited the date of which shall be published in the Gazette and Cable and Wireless West Indies Limited shall carry out its obligations, and duties under the said agreement.

Agreement

62. (1) Any licence or other enabling instrument issued to any person to provide any aspect of Telecommunication services or networks in the Islands and which is valid immediately before the commencement of this Ordinance shall continue to remain in full force and effect and shall authorise the continued ownership and operation of the telecommunication service and network provided under such licence or enabling instrument until 31st December 2004 or such later date as the Governor acting on the advice of Executive Council may specify by notice published in the Gazette.

Transitional provisions

(2) The Minister may, where the Commission has not been established at the date of commencement of this Ordinance issue any licence which the Commission is empowered by this Ordinance to issue and the Governor acting on the advice of Executive Council shall, for such period of time as shall determine, appoint such persons as he considers necessary to assist the Minister in carrying out such functions.

(3) Any fees or charges relating to any licence, granted pursuant to a law repealed by this Ordinance and owed to the Government in accordance with any such repealed law shall be deemed a debt owed to the Government and shall remain recoverable after the coming into force of this law.

(4) Notwithstanding the provisions of subsection (1), the Governor acting in accordance with the advice of Executive Council shall specify by notice published in the Gazette, the termination date of the agreement between the Government and Cable and Wireless West Indies Ltd for the exclusive provision of national and international telecommunications systems and services to the Islands, effected on the 12 June 1990 under the provision of the Public Telecommunications Ordinance.

63. The Governor acting with the approval of the Executive Council may by regulations make such provision including amending any legislation, as he considers necessary, convenient or expedient for savings, transitory or transitional purposes in connection with the coming into operation of any provision of this Ordinance.

Further transitional provisions

64. (1) The Governor, acting with the approval of Executive Council, may make regulations for giving effect to the provisions of this Ordinance.

(2) Without derogating from the generality of the power conferred by subsection (1), such regulations may provide for -

- (a) the matters which are required or permitted by this Ordinance to be prescribed or which appear to him to be necessary or desirable to be prescribed for the purpose of giving effect to this Ordinance;
- (b) forms to be used for any purpose of this Ordinance;
- (c) fees payable under this Ordinance;
- (d) the application of any rule of the International Telecommunications Convention to any provision of this Ordinance;
- (e) procedures to be followed under the Ordinance;
- (f) interconnection agreements and dispute resolution process in relation to interconnection;
- (g) specifying rights of subscribers including access by subscribers to information or data in relation to subscribers telephone bills;
- (h) amending any Schedule of this Ordinance;
- (i) the licensing of persons to distribute, lease, offer for sale, sell or import for sale any telecommunications apparatus or radiocommunications apparatus;
- (j) the alteration and regulation of lines or works of a licensee where this is necessary for the building or widening of any street, road or highway;
- (k) fees payable with respect to numbers;
- (l) terms, conditions and all matters in relation to interconnection costs and access deficit charge; and
- (m) any purpose which may be necessary or expedient for giving full effect to the provision of this Ordinance.

65. (1) The Public Telecommunications Ordinance and the Wireless Telegraphy Ordinance are repealed.

(2) The Telecommunications Taxation Ordinance and the Electricity Ordinance are amended to the extent set out in Schedule 3.

(3) Notwithstanding the repeals of the Wireless Telegraphy Ordinance all subsidiary legislation made under the said Ordinance and in force immediately prior to the commencement of this Ordinance shall, so far as they are not inconsistent with this Ordinance, continue to be in force as if made under this Ordinance.

(4) Notwithstanding the repeal of the Wireless Telegraphy Ordinance, in so far as anything done under the said Ordinance

could have been done under a corresponding provision of this Ordinance, it shall not be invalidated by the repeal but shall have effect as if done under the corresponding provision.

SCHEDULE 1

(Section 3(8))

MEETINGS AND PROCEEDINGS OF COMMISSION

- Quorum **1.** A majority of the members shall constitute a quorum of the Commission.
- Chairman **2.** The chairman of the Commission shall have supervision over and direction of, the work of the Commission and shall preside at meetings of the Commission and when so presiding shall have an original and casting vote.
- 3.** The Commission shall meet at least twelve times in every calendar year.
- Special meeting **4.** The chairman may at any time call a special meeting of the Commission and shall call a special meeting to be held not later than the end of the period of seven days beginning with the day after the date of receipt of a written request for that purpose addressed to him by a member of the Commission.
- Procedure **5.** The Commission may make rules regulating its procedure at meetings.
- Conflicts of interest **6. (1)** An assessor attached to the Commission who has an interest in a company or undertaking which is an interested party in a matter under consideration by the Commission shall declare to the Commission the fact and nature of his interest and shall not take part in the deliberations or decisions of the Commission relating to the matter.
- (2)** A declaration under subparagraph (1) and a declaration to the same effect by a member shall be recorded in the records of the Commission.



SCHEDULE 2

(Section 4(9))

STAFF AND FINANCES OF COMMISSION

- Salaries and assessors of Commission **1.** The Commission may engage experts, persons having technical or special knowledge or assessors necessary for the purpose of assisting the Commission to carry out its functions under this Ordinance on such terms and conditions as it thinks fit.
- Budget **2. (1)** Each year the Commission shall prepare a budget.

(2) The budget shall be subject to the approval of the Minister and the Minister may take into account the overall level of the budget and the apportionment among the functions of the Commission under this Ordinance.

(3) Any money standing to the credit of the Commission and not required for current purposes (“surplus funds”) may, with the consent of the Minister, be carried to a reserve fund. The Commission shall pay 80% of the surplus funds into the consolidated fund and to the licensees in the appropriate manner.

(4) The Commission may manage any reserve fund.

3. The funds of the Commission shall consist of such moneys as may from time to time be placed at its disposal for the purposes of this Ordinance by the Legislative Council and such other moneys as may be paid to the Commission under this Ordinance.

Commission funds

4. (1) The Commission shall keep proper accounts and other records of its business and shall prepare annually a statement of accounts in accordance with international accounting standards.

Accounts

(2) The accounts of the Commission shall be audited by an auditor appointed annually by the Commission and approved by the Minister

(3) Not later than the end of the period of three months beginning with the day after the end of each financial year, the Commission shall send the statement of its accounts to the Minister, together with a copy of any report made by the auditor on the statement or accounts.

(4) The chief auditor shall on the direction of the Minister examine the accounts and other records in relation to the business of the Commission.

(5) The Minister shall cause a copy of every account or report submitted to him pursuant to this Schedule to be laid before the Legislative Council.

5. The Commission shall, not later than the end of the period of three months beginning with the day after the end of each financial year, send to the Governor and the Minister a report dealing with the activities of the Commission during that financial year.

Annual report

6. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against a member of the Commission in respect of any act done *bona fide* in execution or intended execution of this Ordinance

Immunity from liability

(2) Where a member of the Commission is exempt from liability by reason only of the provisions of this paragraph, the Commission shall be liable to the extent that it would be if the member was an employee or agent of the Commission.

SCHEDULE 3

(Section 75)

AMENDMENTS

Cap 113

The Telecommunications Taxation Ordinance is amended as follows –

1. For section 2 substitute the following -

2. In this Ordinance “licensee”, “telecommunication services” and “telecommunication Network” have the meanings respectively assigned to them in the Telecommunications Ordinance 2004.

Interpretation

2. In section 3 -

(a) for subsections (1), (2) and (3) substitute the following -

“(1) A tax, to be known as telecommunication tax, shall be charged in accordance with the provisions of this section on all telecommunication services and network provided by a licensee to any person in the exercise of its rights to operate a telecommunications service or network under the Telecommunications Ordinance 2004.

(2) Telecommunication tax charged on any telecommunication service or network shall be payable by the person to whom the service is provided by the licensee.

(3) Telecommunication tax shall be charged at the rate of ten *per centum* and shall be charged on a telecommunication service and network by reference to the amount of the charge by the licensee in respect of that service.”.

3. In section 4 -

(a) in subsection (1) insert immediately after the words “telecommunications service” the words “or network”;

(b) substitute for the word “Company” wherever it appears, the word “licensee”.

The Electricity Ordinance is amended as follows –

Cap. 114

4. In section 63(1) -

(a) by the substitution for the word “Company” the word “licensee”;

(b) by the substitution for the words “national or international telecommunications service under the Public Telecommunications Ordinance” the words

“telecommunications system or telecommunications network under the Telecommunications Ordinance 2004”;

(c) by the substitution for the words “free of charge”, the words “on the payment of the prescribed fee”.

5. In section 63(2) by the substitution for the word “company” wherever it appears, the word “licensee”.

SCHEDULE 4

(Section 9(5))

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