

THE TELECOMMUNICATIONS ACT

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THE TELECOMMUNICATIONS ACT

Act
1 of 2000.

[1st March, 2000.]

PART I. *Preliminary*

1. This Act may be cited as the Telecommunications Act. Short title.
- 2.—(1) In this Act, unless the context otherwise requires— Interpreta-
tion.
- "appointed day" means the 1st day of March, 2000;
- "assign" means transfer, sell or otherwise dispose of in any manner;
- "broadcasting" means either sound broadcasting or television broadcasting or both;
- "bypass operations" means operations that circumvent the international network of a licensed international voice carrier in the provision of international voice services;
- "carrier" means a person who is granted a carrier licence pursuant to section 13;
- "closed user group" means, in relation to a person, that person and the person's employees and officers;
- "connection" means wireline and wireless connection;
- "customer" means a person who is provided with a specified service by a service provider and includes the end user of that service;
- "customer equipment" means all equipment, whether mobile or fixed, that is used on the customer side of the network termination point;
- "data service" means a specified service other than a voice service;
- "dealer" means a person who is granted a dealer licence under section 13;
- "domestic service" means a specified service that is provided between one or more points in Jamaica but does not include a transit service;

TELECOMMUNICATIONS

"existing telecommunications carrier" means Cable & Wireless Jamaica Limited and includes any wholly owned subsidiary or any successor or assignee of that company;

"facility" means any physical component of a telecommunications network (other than customer equipment) including—

- (a) wires, lines, poles, ducts, sites, towers, satellite earth stations or any other apparatus using the radio spectrum;
- (b) submarine cables and other tangible resources used in the provision of a specified service;

"fixed network" means a telecommunications network that is not a mobile network;

"functions" includes duties and powers;

"intelligence" means signs, signals, writings, images, sounds or intelligence of any nature;

"interconnection" means the physical or logical connection of public voice networks of different carriers;

"international service" means a transit service or a specified service between points in Jamaica and points outside Jamaica, or with ships at sea and small vessels in coastal waters;

"internet access" means access to the Internet or any similar global system for linking networks together using, as the basis for communications, transmission protocols or internet protocols or any protocols amending or replacing them;

"mobile network" means a telecommunications network used to provide specified services that—

- (a) permits a user to move continuously between places (including places accessing that network through different mobile base facilities) during the provision of a single call; and

(b) does not require physical contact between the network and the customer equipment;

"network termination point" means the point designated by a carrier for connection by a customer of equipment to that carrier's network;

"licence" means a licence granted under this Act;

"licensee" means a person who is the holder of a licence granted under this Act;

"the Office" means the Office of Utilities Regulation established under the Office of Utilities Regulation Act;

"prescribed equipment" means such facility or customer equipment as may be prescribed;

"public network" means a telecommunications network used by any person to provide specified services to the public and includes a network whereby the public can send or receive telecommunications services to or from—

(a) anywhere in Jamaica; or

(b) anywhere outside of Jamaica;

and includes a network commonly known as a public switched telephone network;

"resale" means an activity whereby a person subscribes to or acquires the use of another person's specified services and then re-offers those services to any other person and "reseller" shall be construed accordingly;

"service provider" means a person who is the holder of a service provider licence issued under section 13;

"subscriber television service" has the same meaning as in the Broadcasting and Radio Re-Diffusion Act;

"specified service" means a telecommunications service or such other service as may be prescribed;

"telecommunications" means the transmission of intelligence by means of guided or unguided electromagnetic, electrochemical or other forms of energy, including but not limited to intelligence—

- (a) in the form of—
 - (i) speech, music or other sounds;
 - (ii) visual images, whether still or animated;
 - (iii) data or text;
 - (iv) any type of signals;
- (b) in any form other than those specified in paragraph (a);
- (c) in any combination of forms; and
- (d) transmitted between persons and persons, things and things or persons and things;

"telecommunications network" means a system or any part thereof, whereby a person or thing can send or receive intelligence to or from any point in Jamaica, in connection with the provision of a specified service to any person;

"telecommunications service" means a service provided by means of a telecommunications network to any person for the transmission of intelligence from, to or within Jamaica without change in the content or form and includes any two way or interactive service that is provided in connection with a broadcasting service or subscriber television service;

"transit service" means a service that is provided to any international carrier or service provider for use as a means of transit of international traffic through Jamaica;

"transmission" means the despatch, conveyance, switching, routing or reception of intelligence by any means

including, but not limited to rendering into packets, digitization and compression;

“uncontrollable forces” means such forces as are not within the control of the carrier or service provider or which the carrier or service provider is unable to avoid or prevent by the exercise of due diligence and includes—

- (a) acts of God, action by or against the Queen’s enemies, riot or civil commotion;
- (b) strikes, lockouts and other industrial disturbances;
- (c) wars, blockades or insurrection;
- (d) earthquake, hurricane, flood, fire or explosions;
- (e) outbreak of pestilence or epidemics;
- (f) government rationing of electricity or other wartime or emergency controls imposed by government;
- (g) embargos or trade restrictions;

“voice service” means—

- (a) the provision to or from any customer of a specified service comprising wholly or partly of real time or near real time audio communications, and for the purpose of this paragraph, the reference to real time communications is not limited to a circuit switched service;
- (b) a service determined by the Office to be a voice service within the provisions of section 52,

and includes services referred to as voice over the Internet and voice over IP.

(2) Any reference to a network or service in this Act, other than Part V, includes any part of that network or service.

Objects of
Act.

3. The objects of this Act are—

- (a) to promote and protect the interest of the public by—
 - (i) promoting fair and open competition in the provision of specified services and telecommunications equipment;
 - (ii) promoting access to specified services;
 - (iii) ensuring that services are provided to persons able to meet the financial and technical obligations in relation to those services;
 - (iv) providing for the protection of customers;
 - (v) promoting the interests of customers, purchasers and other users (including, in particular, persons who are disabled or the elderly) in respect of the quality and variety of telecommunications services and equipment supplied;
- (b) to promote universal access to telecommunications services for all persons in Jamaica, to the extent that it is reasonably practicable to provide such access;
- (c) to facilitate the achievement of the objects referred to in paragraphs (a) and (b) in a manner consistent with Jamaica's international commitments in relation to the liberalization of telecommunications; and
- (d) to promote the telecommunications industry in Jamaica by encouraging economically efficient investment in, and use of, infrastructure to provide specified services in Jamaica.

PART II. Administration

Functions
of Office.

4.—(1) The Office shall regulate telecommunications in accordance with this Act and for that purpose the Office shall—

- (a) regulate specified services and facilities;

- (b) receive and process applications for a licence under this Act and make such recommendations to the Minister in relation to the application as the Office considers necessary or desirable;
- (c) promote the interests of customers, while having due regard to the interests of carriers and service providers;
- (d) carry out, on its own initiative or at the request of any person, investigations in relation to a person's conduct as will enable it to determine whether and to what extent that person is acting in contravention of this Act;
- (e) make available to the public, information concerning matters relating to the telecommunications industry;
- (f) promote competition among carriers and service providers;
- (g) advise the Minister on such matters relating to the provision of telecommunications services as it thinks fit or as may be requested by the Minister;
- (h) determine whether a specified service is a voice service for the purposes of this Act;
- (i) carry out such other functions as may be prescribed by or pursuant to this Act.

(2) In making a decision in the exercise of its functions under this Act the Office shall observe reasonable standards of procedural fairness, act in a timely fashion and observe the rules of natural justice, and, without prejudice to the generality of the foregoing, the Office shall—

- (a) consult in good faith with persons who are or are likely to be affected by the decision;
- (b) give to such persons an opportunity to make submissions to and to be heard by the Office;

- (c) have regard to the evidence adduced at any such hearing and to the matters contained in any such submissions;
- (d) give reasons in writing for each decision;
- (e) give notice of each decision in the prescribed manner.

(3) In exercise of its functions under this Act, the Office may have regard to the following matters—

- (a) the needs of the customers of the specified services;
- (b) whether the specified services are provided efficiently and in a manner designed to—
 - (i) protect the health and well-being of users of the service and such members of the public as would normally be affected by its operation;
 - (ii) protect and preserve the environment;
 - (iii) afford economical and reliable service to its customers;
- (c) whether the specified services are likely to promote or inhibit competition.

(4) Where the Office has reasonable grounds for so doing, it may for the purpose of its functions under this Act, require a licensee to furnish, at such intervals as it may determine, such information or documents as it may specify in relation to that licensee's operations and the licensee shall be given a reasonable time within which to furnish the information.

(5) The office may make rules, subject to affirmative resolution, prescribing the system of regulatory accounts to be kept by a dominant carrier or service provider in relation to specified services.

5. Where after consultation with the Fair Trading Commission the Office determines that a matter or any aspect thereof relating to the provision of specified services—

Duty of Office to refer matters to the Fair Trading Commission.

- (a) is of substantial competitive significance to the provision of specified services; and
- (b) falls within the functions of the Fair Trading Commission under the Fair Competition Act,

the Office shall refer the matter to the Fair Trading Commission.

6. The Minister may give to the Office such directions of a general nature as to the policy to be followed by the Office in the performance of its functions under this Act as the Minister considers necessary in the public interest and the Office shall give effect to those directions.

Ministerial directions.

7.—(1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential all confidential information relating to applicants and applications for licences, and the management and operation of licensees and shall, upon assuming such duty or employment, make and subscribe a declaration to that effect before a Justice of the Peace.

Obligation for secrecy.

(2) Subject to subsection (3), a person who, by reason of his capacity or office has by any means access to the confidential information referred to in subsection (1) shall not, while his employment in or, as the case may be, his professional relationship with the Office continues or after the termination thereof, communicate any confidential information to any person.

(3) Subsection (2) 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 Minister to the police who require such disclosure for the purpose of the investigation of a criminal offence;
 - (iii) to the Minister, an agent of the Office or the Fair Trading Commission; or
 - (iv) subject to paragraph (b), to any person who is authorized by the Office to receive it;
- (b) in the opinion of the Office or the Minister, disclosure is necessary in the public interest, so, however, that before such disclosure is made, the Office or the Minister 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;
- (c) subject to subsection (4), pursuant to a court order.

(4) 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 necessity for the disclosure.

(5) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(6) In this section "confidential information" means any information classified as such and includes information that a reasonable person would regard as confidential having regard to the nature of the information.

8.—(1) The Office shall assign numbers for telecommunications services to carriers and service providers on a non-discriminatory basis. Numbering.

(2) In carrying out its functions under this section the Office shall develop a plan for the numbering of telecommunications services and may make rules pursuant to that plan regarding the assignment and use of numbers by carriers and service providers.

(3) For the purposes of subsection (2) the Office shall—

- (a) take account of relevant international regulations;
- (b) ensure that sufficient numbers are available for the current and reasonably anticipated future needs of carriers and service providers;
- (c) have regard to the role that numbers can play in conveying useful information to customers, including information about the type of service being used;
- (d) promote efficient use of numbers;
- (e) promote fair and open competition;
- (f) as far as possible and subject to paragraphs (a) to (e), avoid the imposition of costs on customers as a result of changes in the numbering system; and
- (g) to such extent as may be reasonable and subject to paragraphs (a) to (f), preserve the numbering system maintained by the existing telecommunications carrier and the numbering allocations existing immediately before the appointed day.

PART III. *Licensing of Telecommunications Services*

9.—(1) A person shall not—

- (a) own or operate a facility in Jamaica unless that person is the holder of a carrier licence granted under section 13;

Licence
required for
provision of
specified
service.

- (b) provide specified services to the public by means of that facility unless the person is also the holder of a service provider licence granted under section 13;
- (c) sell, trade in or import any prescribed equipment unless that person is the holder of a dealer licence granted under section 13;
- (d) engage in bypass operations.

(2) A person shall not provide a specified service to the public in Jamaica unless that person is the holder of a service provider licence granted under section 13.

(3) Subsections (1) and (2) shall not apply to the following facilities to the extent that they are not used to provide specified services, being facilities that are—

- (a) used solely on a single premises;
- (b) not connected to any other system and are run solely by a person for domestic purposes;
- (c) used solely as part of an electricity transmission or distribution system or of the generation or distribution of an electricity network;
- (d) used solely for broadcasting or to provide subscriber television service;
- (e) used solely to provide emergency telecommunications services;
- (f) used solely by an aeronautical, maritime or other industry or organization to provide services to its members that share a common business purpose other than the supply of telecommunications services.

(4) This section shall not apply to any facility owned or operated by the Jamaica Constabulary Force or the Jamaica Defence Force.

(5) For the purposes of this Act, a specified service is provided to the public if it—

- (a) is supplied, directly or indirectly, for a fee to a person other than—
 - (i) a connected person or any of its employees or officers; or
 - (ii) a closed user group;
- (b) is connected to a public network; or
- (c) provides customers with the capability to use the service for originating specified services to or terminating such services from the public switched telephone network.

(6) For the purposes of this Act, the marketing and sale of international services to the public within Jamaica constitute the provision of a specified service to the public.

(7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding four years or to both such fine and imprisonment.

10.—(1) The Minister shall by a direction in writing to the Office, require the Office to invite applications for the grant of carrier or service provider licences or both and such direction shall specify—

Ministerial
directions
to Office *re*
licences, etc.

- (a) the number of licences to be issued;
- (b) the facilities or specified services, as the case may be, in relation to which the licences will be granted.

(2) Upon receipt of a direction under subsection (1), the Office shall—

- (a) publish a notice in a daily newspaper circulating in the Island, containing information as to—
 - (i) the service area to be covered by the licence;

- (ii) the technical limits of the licence;
 - (iii) the technical, legal and financial requirements to be met by applicants;
 - (iv) the number of licences to be issued;
 - (v) the type of conditions to be included in a licence; and
 - (vi) such other information as the Office considers relevant;
- (b) determine the period within which applications shall be submitted, not being less than sixty days in cases where a limited number of licences are to be issued;
- (c) publish at the end of that period and in the manner specified in paragraph (a), a notice of each application submitted;
- (d) afford members of the public a reasonable opportunity to comment on any matter regarding such applications within such period as the Office may determine, being not less than thirty days after the publication of the notice pursuant to paragraph (c).

(3) Where any comments made pursuant to subsection (2) (d) include a proposal for refusal of an application, such comments shall contain a statement of the reasons for that proposal.

Application
for licence.

11.—(1) An application for a licence under this Act shall be made to the Office in the prescribed form and shall be accompanied by the prescribed application fee and contain a statement that—

- (a) the applicant undertakes to comply with the provisions of this Act relating to the type of facility or specified service to which the application relates, including—
 - (i) interconnection obligations;
 - (ii) universal service obligations;

- (iii) licence limitations; and
 - (iv) network expansion requirements;
- (b) the applicant is not disqualified from being granted a licence by reason of any legal impediment;
- (c) the applicant possesses the technical qualifications to fully perform the obligations imposed by the licence; and
- (d) the applicant satisfies the financial requirements for the construction and operation of the facility or the provision of the services to which the application relates.

(2) In deciding whether to recommend to the Minister that an applicant be granted a licence, the Office shall—

- (a) determine whether the applicant is a fit and proper person to be granted a licence, is an undischarged bankrupt or has previously been granted a licence which was revoked;
- (b) determine whether any connected person has previously been granted a licence which was revoked;
- (c) have regard to such other matters as the Office considers relevant.

(3) The Office may, where it considers necessary or desirable for the purposes of subsection (2), by notice in writing, require an applicant to furnish such information as is specified in that notice.

(4) After taking action in accordance with subsection (2) in respect of an application, the Office shall make recommendations thereon to the Minister.

(5) The Office shall recommend the refusal of a licence to an applicant if the Office is satisfied that—

- (a) the applicant has failed to comply with the requirements of section 11 (1); or

- (b) the application is otherwise contrary to this Act or any directions issued to the Office by the Minister pursuant to section 10.

(6) For the purposes of this Act, the following persons shall be treated as being connected with a given person ("L") and the person with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist—

- (a) a holding company or subsidiary of L;
- (b) any company of which L has control;
- (c) any company of which L and persons connected with L together have control;
- (d) any company which together with L constitute a group.

Application
fees.

12. The Minister shall determine the amount of the application fee which shall be such as is necessary to recover the costs of processing the application.

Grant of
licence.

13.—(1) Upon receipt of a recommendation from the Office pursuant to section 11 (4), the Minister may, subject to subsections (2) and (3)—

- (a) in the case of an application for a carrier licence, grant that licence authorizing the licensee to own and operate the facilities specified in the application;
- (b) in the case of an application for a service provider licence, grant that licence authorizing the licensee to provide the services specified in the application;
- (c) in the case of a dealer licence, grant the licence authorizing the licensee to sell, trade in or import any prescribed equipment;
- (d) refer the recommendation back to the Office for further consideration; or

- (e) refuse to grant the licence and the Minister shall as soon as practicable give written reasons for such refusal.
- (2) The Minister shall not grant a licence to an applicant unless—
- (a) the Minister has consulted the Office with regard to its recommendation in relation to the application and has obtained the support of the Office in relation thereto; and
 - (b) the Minister is satisfied that the applicant satisfies the requirements specified in section 11 (1) (a) to (d).
- (3) A licence granted under this section shall be in the prescribed form and, subject to subsection (5), shall be subject to the following conditions—
- (a) the licensee shall not operate a facility, provide specified services or use any frequencies designated in the licence beyond the period of the licence or in any manner other than that authorized by the licence;
 - (b) the licence or any right granted thereby shall not be assigned or otherwise transferred except in accordance with this Part;
 - (c) such other condition as may be considered necessary to ensure that the licensee complies with the requirements specified in section 11 (1) (a) to (d);
 - (d) subject to subsection (4), such other condition as the Minister deems reasonably necessary to achieve the objects of this Act.
- (4) Where a licence contains a condition such as is referred to in subsection (3) (d), the Minister shall inform the applicant in writing of the reasons for that condition.
- (5) A licence granted under this Act may, on the expiry thereof, be renewed in accordance with section 15.

(6) A licence granted under this Act shall, unless sooner revoked, be valid—

- (a) in the case of a carrier licence, for such period as is specified therein;
- (b) in any other case, for such period, not exceeding fifteen years, as may be so specified.

Suspension
or revoca-
tion of
licence.

14.—(1) Where the Office has reason to believe that a licensee has contravened the conditions of the licence or, as the case may be, has failed to pay any amount required under section 16, the Office shall give to that licensee notice in writing—

- (a) specifying particulars of such contravention; and
- (b) requiring the licensee to justify its actions to the Office or otherwise to take such remedial action as may be specified in the notice.

(2) Where the Office gives any notice under subsection (1), the Office shall send a copy thereof to the Minister for his information.

(3) Where a licensee fails to justify its actions to the satisfaction of the Office or fails or refuses to take any remedial action specified in the notice issued under subsection (1), the Office shall notify the Minister in writing of the fact of such failure or refusal.

(4) Where a licensee fails to comply with any requirements of a notice under subsection (1), the Office may—

- (a) on the first occasion of such failure, recommend to the Minister that the licence be suspended for a period not exceeding three months; or
- (b) if the failure occurs on any second or subsequent occasion, recommend to the Minister that the licence be suspended for such period as the Office considers appropriate or be revoked.

(5) Before suspending or revoking a licence, the Minister shall direct the Office to notify the licensee accordingly and shall afford the licensee an opportunity to show cause why the licence should not be suspended or revoked.

(6) Subject to subsection (7), the Office may recommend to the Minister that a licence be suspended or revoked, as the case may be, if, on its own initiative or on representations made by any other person, the Office 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 Office;
- (b) knowingly failed to provide information or evidence that would have resulted in a refusal to grant a licence;
- (c) wilfully failed to comply with the terms of its licence;
- (d) wilfully contravened any provision of this Act or any rules or regulations made hereunder;
- (e) violated or failed to comply with a cease and desist order issued under section 63;
- (f) provided services not authorized by its licence;
- (g) operated a facility without a carrier licence;
- (h) failed to make payments in a timely manner in connection with the universal service obligation levy or in respect of the regulatory fee imposed pursuant to section 16.

(7) Before taking action under subsection (1), the Office shall carry out such investigations as may be necessary and afford the licensee concerned an opportunity to be heard.

(8) For the purpose of this section, the Office 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.

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

Renewal of
licence.

15. The Minister shall, upon application by a licensee, renew a licence (hereinafter in this section referred to as the "original licence") for a period equivalent to the period for which the original licence was granted, if the Minister is satisfied that—

- (a) the applicant has operated within the terms of the original licence; and
- (b) during the continuance in force of the original licence, the applicant has not engaged in any conduct amounting to a material contravention of this Act or any regulations made hereunder.

Regulatory
fees.

16.—(1) The Office may impose an annual regulatory fee in accordance with this section in relation to all carrier licences and service provider licences issued under this Act.

(2) The amount of the regulatory fees shall be such sum as, in the opinion of the Office, is a reasonable estimate of the costs which will be incurred by the Office in relation to the regulation of the specified services to which the licences relate (hereinafter in this section referred to as "regulation costs").

(3) In determining the amount of the regulatory fee payable by a licensee, the Office shall apportion regulation costs reasonably and equitably among licensees.

(4) Where a licensee fails to pay the amount of the regulatory fee within the time required by the Office for such payment, the licensee shall be liable to such amount by way of a surcharge as

the Office may determine, not exceeding twenty-five per cent of the amount unpaid.

17.—(1) In this Act—

"control" in relation to a licensee, means the power of a person to determine and implement the licensee's policies and the day to day operations of the policies and the day to day operations of the licensed facilities or services;

Assignment
of licences
and transfer
of control of
licensees.

"pro forma transaction" means—

- (a) an assignment from one or more individuals to a body corporate owned or controlled by the same individual or individuals without any change in their relative interests;
- (b) an assignment from a body corporate to shareholders without effecting any change in the disposition of their interests;
- (c) a reorganization of a body corporate that involves no change in the beneficial ownership thereof;
- (d) an assignment or transfer—
 - (i) from a body corporate to its wholly owned subsidiary or *vice versa*;
 - (ii) between wholly owned subsidiaries of the same holding company;
- (e) an assignment from a body corporate to another body corporate owned or controlled by the assignor's shareholders without a substantial change in their relative interests.

(2) A licensee may, with the prior approval of the Minister, assign its licence or any rights thereunder or transfer control of its operations.

(3) An application for approval of an assignment or transfer under this section shall be made in writing to the Minister who shall grant such approval if he is satisfied that the assignee satisfies the requirements of section 11 (1) (a) to (b) as regards the obligations imposed on a licensee by this Act or the licence.

(4) Subsection (3) shall not apply to a pro forma transaction and the following provisions of this subsection shall apply in relation thereto—

(a) within forty-five days after the completion of the transaction the licensee shall—

(i) submit to the Office, proof of the completion of the transaction either in the form of an application that is appropriate for the class of licence to which it relates or such other written correspondence as the Office may authorize, containing all of the information included in the application;

(ii) certify that the transaction is a pro forma transaction;

(b) the Office shall publish notice of the assignment or transfer in the *Gazette*.

Customer
equipment.

18.—(1) Any person may provide customer equipment other than prescribed equipment to the public.

(2) Customer equipment referred to in subsection (1) includes any equipment used—

(a) by the customer to receive mobile services; and

(b) to connect more than one telephone station to the public network.

(3) Where a person provides customer equipment referred to in subsection (2)—

- (a) that person shall include a provision in the appropriate tariff or contract that reserves a right of the underlying international carrier on application to the Office and on such terms and conditions as the Office may specify to have access to and inspect that equipment; and
- (b) that carrier shall take action under paragraph (a) in the prescribed manner.

(4) Where a customer denies access to the carrier that is required for the purposes of subsection (3) (a), the carrier may, with the prior approval of the Office, disconnect the service provided to that customer or discontinue the provision of that service.

19.—(1) The Office shall cause to be kept a register of all applications for carrier, dealer and service provider licences received by it and all such licences granted pursuant to this Act and such register may be kept in electronic form.

Register and
inspection
of licences.

- (2) Subject to section 7 (Obligation for secrecy) the Office—
 - (a) shall make available for public inspection during its business hours, all applications for licences and supporting documents and all licences granted pursuant to this Act;
 - (b) may permit any person to make copies of any entry in the register and may charge such fees as it considers reasonable for such copies.

PART IV. *Spectrum Management*

20.—(1) The Minister shall take such steps as he considers necessary or desirable to regulate the use, for any purpose, of the spectrum within Jamaica or between Jamaica and elsewhere.

Regulation
of use of
spectrum.

- (2) For the purposes of this section, the Minister shall—
- (a) allocate the spectrum for facilities and specified services within Jamaica;
 - (b) determine methods for assignment of the spectrum;
 - (c) issue licences authorizing the use of specified portions of the spectrum;
 - (d) institute procedures for ensuring the compliance by licensees with any obligations regarding the use and operation of the spectrum, imposed by or under the licence, any provisions of this Act or any regulations made hereunder.

(3) The Minister may make regulations with respect to the implementation of the policy with regard to management of the spectrum.

(4) The Minister may, subject to subsection (5), delegate any of his functions under this Part (other than the powers of delegation) to the Spectrum Management Authority established under section 21.

(5) In the absence of a delegation under subsection (4), the Minister shall, in carrying out his functions under this Part, seek the recommendations of the Spectrum Management Authority.

(6) In this Act "spectrum" means the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz.

Spectrum
Management
Authority.

21.—(1) For the purposes of this Part, the Minister shall establish a Spectrum Management Authority (hereinafter referred to as "the Authority").

(2) Subject to subsection (3), the functions of the Authority shall be to advise the Minister on any matter referred to it by the Minister and to perform any function delegated to it pursuant to section 20 (4).

(3) In performing its functions under this Act, the Authority shall—

- (a) have regard to the objects, provisions and purposes of this Act and the provisions of the Radio and Telegraph Control Act; and
- (b) consult with and co-operate with the Office in relation to any matter which falls within the functions of the Office pursuant to this Act.

22.—(1) The Minister may, on the recommendation of the Authority, cause to be prepared a national plan for the allocation of the spectrum and that plan shall—

Allocation
of spectrum.

- (a) contain particulars of the allocation of frequency bands; and
- (b) conform to the International Telecommunication Union table of Frequency Allocations, including such allocation for facilities and specified services.

(2) In subsection (1) (a) "frequency" means a continuous frequency range of spectrum.

23.—(1) The Minister may, on the recommendation of the Authority and subject to subsection (4), grant a licence (hereinafter referred to as a "spectrum licence") authorizing the use of such portion of the spectrum as may be specified therein.

Licence for
use of
spectrum.

(2) For the purposes of this section, the Minister may, in writing, direct the Authority to—

- (a) invite applications for spectrum licences;
- (b) review such applications and make recommendations to the Minister concerning assignment of the spectrum in accordance with the provisions of the national plan referred to in section 22 (1).

(3) A person may, in the same application, apply for a carrier licence, a service provider licence and a spectrum licence and in

such a case, a copy of the application shall be sent to the Minister and the Office.

(4) The Minister may grant a spectrum licence in connection with the provision of a facility or specified service only to an applicant who is the holder of a carrier licence or service provider licence or, as the case may be, is eligible for the grant of a carrier licence or service provider licence.

(5) In making recommendations to the Minister under subsection (2) (b), the Authority shall have regard to the prescribed standards.

(6) The Minister may make regulations prescribing methods for assignment of the spectrum and the standards required as to the technical, financial and legal requirements of applicants.

(7) A person to whom a spectrum licence is granted under this section shall pay such fees as the Minister may determine by notice in writing to that person.

Saving *re*
existing
users.

24. Section 23 (1) to (6) shall not apply to any person (hereinafter in this Part referred to as an "existing user") to whom any rights relating to the use of the spectrum were granted before the appointed day in connection with a licence granted under the Radio and Telegraph Control Act or any other enactment.

Use of
spectrum.

25. Every person who is the holder of a spectrum licence shall comply with the terms and conditions of that licence and the directions of the Authority in relation to the use of the spectrum.

Spectrum
regulatory
fee.

26.—(1) The Minister may impose an annual spectrum regulatory fee in accordance with this section in relation to each spectrum licence issued under this Part.

(2) The spectrum regulatory fee shall be such amount as the Minister considers necessary in order to cover the reasonable operating costs incurred by the Authority in relation to spectrum licences.

(3) The amount of the spectrum regulatory fee shall be calculated on the same basis in relation to each holder of a carrier licence and a service provider licence.

PART V. *Interconnection*

27. In this Part—

Interpreta-
tion.

“dominant public voice carrier” means a public voice carrier that holds a dominant position in the telecommunications market in Jamaica within the meaning of section 19 of the Fair Competition Act;

“interconnection provider” means a public voice carrier who has received a request from another public voice carrier for interconnection;

“interconnection seeker” means a public voice carrier who makes a request to another public voice carrier for interconnection;

“point of interconnection” means the physical location for hand-over of voice telecommunications services between the interconnection provider and the interconnection seeker;

“public voice carrier” means a carrier who owns and operates a public voice network used to provide a voice service to the public;

“reference interconnection offer” means an offer document setting out matters relating to the price and terms and conditions under which a public voice carrier will permit interconnection to its public voice network.

28.—(1) Subject to subsection (2), the Office shall determine which public voice carriers are to be classified as dominant public voice carriers for the purposes of this Act.

Determina-
tion of
dominance.

(2) Before making a determination under subsection (1), the Office shall—

- (a) invite submissions from members of the public on the matter; and
- (b) consult with the Fair Trading Commission and take account of any recommendations made by that Commission.

(3) A dominant public voice carrier may at any time apply to the Office to be classified as non-dominant and the Office shall not make a determination in respect of that application unless it has invited submissions from members of the public on the matter and has taken account of any such submissions.

Obligation to
grant inter-
connection.

29.—(1) Each carrier shall, upon request in accordance with this Part, permit interconnection of its public voice network with the public voice network of any other carrier for the provisions of voice services.

(2) A public voice carrier shall provide interconnection in accordance with the following principles—

- (a) any-to-any connectivity shall be granted in such manner as to enable customers of each public voice network to complete calls to customers of another public voice network or to obtain services from such other network;
- (b) end-to-end operability shall be maintained in order to facilitate the provision of services by an interconnecting carrier to the customer notwithstanding that the customer is directly connected to a different network;
- (c) interconnecting carriers shall be equally responsible for establishing interconnection and doing so as quickly as is reasonably practicable.

(3) Copies of all interconnection agreements shall be lodged with the Office which may object to any such agreement in the prescribed manner.

(4) The Office may, either on its own initiative in assessing an interconnection agreement, or in resolving a dispute between operators, make a determination of the terms and conditions of call termination, including charges.

(5) When making a determination of an operator's call termination charges, the office shall have regard to the principle of cost orientation, so, however, that if the operator is non-dominant then the Office may also consider reciprocity and other approaches.

(6) For the purposes of subsection (5), "reciprocity" means basing the non-dominant carrier's call termination charges on the call termination charges of another carrier.

30.—(1) Without prejudice to section 29, dominant public voice carrier shall provide interconnection in relation to a public voice network in accordance with the following principles—

Interconnec-
tion by
dominant
carrier.

- (a) the terms and conditions under which it is provided shall be—
- (i) on a non-discriminatory basis;
 - (ii) reasonable and transparent, including such terms and conditions as relate to technical specifications and the number and location of points of interconnection; and
 - (iii) charges shall be cost oriented and guided by the principles specified in section 33;
- (b) no unfair arrangements for cross subsidies shall be made;
- (c) where technically and economically reasonable, interconnection services shall be so diversified as to render it unnecessary for an interconnection seeker to pay unreasonably for network components or facilities that it does not require.

(2) Each dominant public voice carrier shall keep separate accounts in such form and containing such particulars as will enable the Office to assess whether that carrier provides interconnection services in accordance with the principles specified in subsection (1).

Determina-
tion of
term or
condition.

31. Each term and condition in relation to the provision of interconnection services provided to each carrier shall be determined—

- (a) in accordance with the relevant references interconnection offer or any part thereof which is in effect in relation to the provision of those services;
- (b) where paragraph (a) does not apply, by agreement between the interconnection seeker and the interconnection provider; and
- (c) where neither paragraph (a) nor (b) applies, by the Office acting as arbitrator pursuant to the arbitration rules referred to in section 34 (2).

Filing of
offer by
dominant
and other
carriers.

32.—(1) Every dominant carrier shall, and any other carrier may, lodge with the Office a proposed reference interconnection offer setting out the terms and conditions upon which other carriers may interconnect with the public voice network of that dominant or other carrier for the provision of voice services.

(2) Each dominant public voice carrier who is required under this Part to provide interconnection in relation to voice services shall submit a reference interconnection offer to the Office—

- (a) within ninety days after the date of determination of dominance pursuant to section 28; or
- (b) at least ninety days before the date of expiry of an existing reference interconnection offer,

and the existing telecommunications carrier shall submit its initial reference interconnection offer within thirty days after the appointed day.

(3) A reference interconnection offer shall contain such particulars as may be prescribed.

(4) A reference interconnection offer or any part thereof shall take effect upon approval by the Office in the prescribed manner.

33.—(1) Where the Office is required to determine the prices at which interconnection is to be provided by a dominant carrier, it shall, in making that determination, be guided by the following principles—

Principles to guide determination of prices.

- (a) costs shall be borne by the carrier whose activities cause those costs to be incurred;
- (b) non-recurring costs shall be recovered through non-recurring charges and recurring costs shall be recovered through recurring charges;
- (c) costs that do not vary with usage shall be recovered through flat charges and costs that vary with usage shall be recovered through charges that are based on usage;
- (d) costs shall include attributable operating expenditure and depreciation and an amount estimated to achieve a reasonable rate of return;
- (e) prices for interconnection shall be established between the total long run incremental cost of providing the service and the stand alone cost of providing the service, so, however, that the prices shall be so calculated as to avoid placing a disproportionate burden of recovery of common costs on interconnection services;
- (f) where appropriate, interconnection costs shall include provision for a supplementary charge, being a contribution towards the access deficit of the interconnection provider.

(2) Where the Office has been unable to obtain cost information that it is reasonably satisfied is relevant and reliable, it may take into account comparable international benchmarks.

(3) In subsection (1) (f) "access deficit" means the amount by which a carrier's revenue from connection and line rental charges falls short of the cost of providing access lines due to regulatory constraints on those charges.

Pre-contract
disputes.

34.—(1) Where, during negotiations for the provision of interconnection there is any dispute between the interconnection provider and the interconnection seeker (hereinafter in this section referred to as pre-contract dispute) as to the terms and conditions of such provision, either of them may refer the dispute to the Office for resolution.

(2) The Office shall make rules applicable to the arbitration of pre-contract disputes.

(3) A decision of the Office in relation to any pre-contract dispute shall be consistent with—

- (a) any agreement reached between the parties as to matters that are not in dispute;
- (b) the terms and conditions set out in a reference interconnection offer or any part thereof that is in effect with respect to the interconnection provider;
- (c) the principles specified in sections 29 (2) and 30 (1).

(4) Where neither party to the dispute is a dominant public voice carrier, the Office may decline to act as an arbitrator in relation to the dispute.

Competitive
safeguards.

35.—(1) The Office may, after consultation with the Fair Trading Commission and such participants in the telecommunications industry as it thinks fit and subject to subsection (3), make rules subject to affirmative resolution

(hereinafter referred to as "competitive safeguard rules") prescribing the following matters in relation to dominant public voice carriers—

- (a) separation of accounts;
- (b) keeping of records;
- (c) provisions to ensure that information supplied by other carriers for the purpose of facilitating interconnection is not used for any uncompetitive purpose;
- (d) such other provisions as the Office considers reasonable and necessary for the purposes of the competitive safeguard rules.

(2) The Office may in consultation with the Fair Trading Commission, develop guidelines as to—

- (a) the types of uncompetitive practices to which the competitive safeguard rules apply; and
- (b) the procedure for determining whether to impose a competitive safeguard in relation to that practice.

(3) The Office shall make competitive safeguard rules only if it is satisfied that—

- (a) such rules are necessary for the identification or prevention of abuse of a dominant practice by a dominant public voice carrier or any other uncompetitive practice by that carrier; and
- (b) no other means are available to the Office for the provision of an adequate remedy in relation to such abuse or practice;

36.—(1) The Office may make rules subject to affirmative resolution imposing on a dominant public voice carrier, the responsibility to offer a particular form of indirect access to its network to other interconnection providers, if the Office is satisfied on reasonable grounds that such rules are necessary in the interest of customers and that—

- (a) the benefits likely to arise from the requirement to provide a particular form of indirect access outweigh the likely cost of implementing it; and

- (b) the requirement to provide the particular form of indirect access will not impose an unfair burden on any carrier or service provider.

(2) In subsection (1) "indirect access" means the method whereby customers are able to select the services of any service provider who uses a public voice carrier's network to provide specified services.

Number
portability.

37.—(1) Subject to this Act, the Office may make rules subject to affirmative resolution imposing on any public voice carrier, the responsibility to offer number portability if the Office is satisfied on reasonable grounds that—

- (a) the benefits likely to arise from the requirement to provide a particular form of number portability outweigh the likely cost of implementing it; and
- (b) the requirement will not impose an unfair burden on any carrier or service provider.

(2) In this section "number portability" means the ability of customers to change service providers without having to change their telephone numbers.

PART VI. *Universal Service*

Principles
governing
provision of
universal
service.

38. Universal service shall be provided to customers in accordance with the following principles—

- (a) connection to the public voice network shall be reasonably provided to all customers upon request, to the extent that such connection is technically feasible and economically reasonable;
- (b) any obligation imposed by this act with regard to the provision of universal service shall be fulfilled as efficiently, economically and practically as possible;
- (c) a licensee who is required by this Act to provide universal service shall be entitled to compensation in relation

to the net costs incurred in meeting that requirement;

- (d) licensees shall pay the universal service levy in the prescribed manner.

39.—(1) Subject to this section the obligation to provide universal service shall be determined—

Obligation to provide universal service.

- (a) by an agreement between the Minister and a licensee; and
- (b) on the recommendation of the Office, in accordance with section 42.

(2) The obligation to provide universal service shall be based on the following principles, that is to say the need—

- (a) to the extent technically feasible and economically reasonable, to promote access to single line voice telephone services throughout the Island to persons regardless of place of residence or work;
- (b) to ensure that payphone services are reasonably accessible to customers on an equitable basis;
- (c) to permit access to free calls to emergency services; and
- (d) to the extent technically feasible and in so far as the necessary resources are available, to promote internet access throughout the Island in schools, public libraries and post offices.

(3) Where the universal service obligation is determined in accordance with subsection (1) (a), the provisions of this Part other than section 41, shall not apply to the provision of such service.

(4) Where the universal service obligation is determined otherwise than pursuant to subsection (1) (a), the Office shall, on the request of the Minister and subject to subsection (5), make

recommendations as to the nature of the obligation to be imposed on the provider of such service.

(5) The Office shall, before making any such recommendations, consult with members of the public on the matter in order to ensure that any such recommendations are based on the most complete and reliable information available and, in making such recommendations, the Office shall have regard to—

- (a) the estimated net cost of fulfilling the universal service obligation in each year, not exceeding five per cent of the projected eligible revenue for each year in a period of three years;
- (b) the need to avoid imposing an unfair or unreasonable burden on the universal service provider, persons who are required to contribute to the universal service levy or customers of specified services.

(6) In determining the obligations of a universal service provider under this section, the Minister shall have regard to any recommendations made by the Office, so, however, that the Minister shall not be bound by any such recommendations.

Designation
of universal
service
provider.

40.—(1) Subject to subsection (2), the Minister may—

- (a) designate the existing telecommunications carrier as a universal service provider; and
- (b) on the recommendation of the Office, deem any other licensee to be a universal service provider or to be so eligible,

for a specified area or in relation to a specific service.

(2) Before taking action under subsection (1), the Minister shall—

- (a) consult with members of the public; and

- (b) issue a written determination that the public interest requires the taking of such action.

41.—(1) Subject to subsection (2), a universal service provider shall—

Obligation
of universal
service
provider.

- (a) fulfill its universal service obligation in relation to the relevant area or specified service, to the extent that it is technically feasible and economically reasonable; and
- (b) follow any guidelines issued by the Office in relation to universal service.

(2) A universal service provider shall not be in breach of its universal service obligation if and to the extent that it is prevented from fulfilling it by uncontrollable forces.

42.—(1) The Minister may, on the recommendation of the Office, direct in writing that a universal service obligation may be modified in accordance with this section if sufficient funds are available and it is necessary to fully compensate the universal service provider concerned for providing additional services.

Modification
of universal
service
obligation.

(2) Before making any recommendations under subsection (1), the Office shall consult with members of the public on the matter and such recommendations shall be based on the most complete and reliable information reasonably available in relation to—

- (a) the estimated net cost of fulfilling the universal service obligation in each subsequent year, not exceeding five per cent of the projected eligible revenues derived by licensees from provision of the relevant services for each year over a period of three years; and
- (b) the need to ensure that the universal service obligation does not impose an unfair or unreasonable burden on the universal service provider, persons who are required

to contribute to the universal service obligation levy or customers of specified services.

(3) In this Part "eligible revenues" means revenues which form the basis of calculation of contributions by licensees, determined in the prescribed manner.

PART VII. *Consumer Protection*

Interpreta-
tion.

43. In this part—

"consumer" means a person—

- (a) to whom specified services are provided or are intended to be provided in the course of a business carried on by a service provider;
- (b) who is not a carrier;

"retail service" means a specified service provided by a service provider to a consumer who is an end user of that service.

Quality of
service.

44.—(1) Providers of retail services to consumers shall use reasonable endeavours to ensure that those services are—

- (a) reliable;
- (b) provided with due care and skill; and
- (c) rendered in accordance with the standards reasonably expected of a competent provider of those services.

(2) A complaint may be made to the Office by any customer who is dissatisfied with the services provided to him by a carrier or service provider or who claims to be adversely affected by the actions of a carrier or service provider.

(3) The Office may make rules subject to affirmative resolution prescribing quality standards for the provision of specified services in relation to all service providers or dominant service providers, as the case may be.

(4) The Office may make rules relating to the administration and resolution of customer complaints.

45. Service providers may—

- (a) refuse to provide retail services to consumers; or
- (b) discontinue or interrupt the provision of such services to a customer whether or not that customer is a consumer, pursuant to an agreement with that customer,

Non-discrimination and continuity of supply.

only on the grounds which are reasonable and non-discriminatory and where any such action is taken, the service provider shall state the reasons therefor.

46.—(1) In this Part—

"prescribed price caps" means such restrictions on the price of prescribed services as are prescribed in rules made under this section;

Price cap restrictions.

"prescribed services" means services to which prescribed price caps apply;

"price cap" means a restriction whereby the weighted aggregate price, calculated in the prescribed manner, for prescribed services shall not be greater than a specified price.

(2) The Office shall make rules providing for the imposition, monitoring and enforcement of price caps.

47.—(1) Every carrier and service provider shall, subject to subsection (2), regard and deal with as secret and confidential, all information regarding the type, location, use, destination, quantity and technical configuration of services used by their customers.

Privacy of customer information.

(2) A carrier or service provider may—

- (a) disclose such information to the Office or pursuant to the provisions of any law for the time being in force

which requires such disclosure for the purpose of the investigation or prosecution of a criminal offence;

- (b) disclose such information with the written consent of the customer;
- (c) disclose such information where the disclosure is necessary in defence of the carrier or service provider in any proceedings brought against that carrier or service provider.

(3) A service provider or carrier shall not be liable to any action or suit for any injury, loss or damage resulting from a disclosure of information made pursuant to subsection (2).

Obligations
re public
voice
services.

48.—(1) Every service provider shall take such steps as are necessary to ensure that, in relation to its retail public voice services—

- (a) each customer of that service can reasonably and reliably reach—
 - (i) emergency services by dialing the numbers specified for use in connection with such services; and
 - (ii) subject to subsection (2), a directory assistance service;

(b) no charge is imposed for calls to emergency services.

(2) A service provider may charge a fee for the provision of directory assistance.

Improper
use of
service or
facility.

49. A service provider who knowingly permits its services or facilities to be used by any person to defraud, abuse, annoy, threaten or harass any other person shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars.

PART VIII. *International Services*

50. The Office may make rules subject to affirmative resolution— International service rules.

- (a) prohibiting or regulating conduct that is likely to result or results in the avoidance or distortion of the process for international settlements, thereby—
 - (i) reducing the funds that would otherwise be available for contributions towards the universal service obligation; or
 - (ii) adversely affecting competition in Jamaica resulting in harm to consumers;
- (b) governing international settlements.

51. A carrier or service provider may on application to the Office and on such terms and conditions as the Office may specify— Rights of carriers and service providers.

- (a) discontinue the provision of specified services to any person; or
- (b) disconnect any facility from that carrier's facility or another facility used to provide that service provider's specified services,

if that carrier or service provider believes on reasonable grounds, that the person who owns or operates that facility or the person to whom those specified services are provided, is engaging in bypass operations or in conduct in respect of international services that is prohibited or regulated by the international service rules.

52.—(1) The Office may, where it considers necessary, decide that a particular service should be treated as a voice service and notice of that decision shall be published in such manner as the Office considers appropriate. Services to be treated as voice service.

(2) In making a decision under this section, the Office shall have regard to such factors as may be prescribed.

PART IX. *Powers and Immunities of Carriers and Service Providers*

Access to
crown lands.

53.—(1) Subject to subsection (2), a carrier may, with the written permission of the Minister responsible for crown lands enter any crown lands for the purpose of—

- (a) inspecting the land to determine whether the land is suitable for the purposes of that carrier;
- (b) installing a facility on the land; and
- (c) maintaining any facility situated on the land.

(2) Before entering any crown lands for the purposes specified in subsection (1) (a) and (b) the carrier shall, not later than seven days before the date of the proposed entry, in writing notify the Minister referred to in subsection (1) of its intention to do so and such notice shall—

- (a) identify the land;
- (b) state the purpose, approximate dates and period for which the entry is required.

Access to
land or
facilities of
other carrier.

54.—(1) Subject to subsection (3), if the requirements of subsection (2) are satisfied, a carrier (hereinafter in this section referred to as the "provider carrier") may permit another carrier (hereinafter in this section referred to as the "requesting carrier") to enter, on a non-discriminatory basis, any land or facility owned or controlled by the providing carrier.

(2) The requirements referred to in subsection (1) are as follows—

- (a) the requesting carrier shall, before the proposed date of entry on the land, give reasonable notice of the purposes for which such entry is required and the approximate dates and duration of such entry;
- (b) the providing carrier shall be entitled to reasonable compensation in relation to that entry, to be determined

in accordance with the relevant provisions of the Land Acquisition Act;

- (c) entry on the land shall be carried out or supervised by the providing carrier and any action taken thereon shall be carried out by a certified technician.

(3) The requesting carrier shall not be permitted to enter on any land or facility owned or controlled by the providing carrier if such entry—

- (a) would threaten the integrity of the providing carrier's network;
- (b) is not technically feasible for the providing carrier; or
- (c) would prevent the providing carrier from fulfilling its reasonably anticipated requirements for use of the land or facility, including, but not limited to, requirements for permitting entry to other persons with whom the providing carrier has contracted to provide such entry.

55.—(1) Where a carrier is denied permission to enter on any land or the permission for such entry is unreasonably delayed, the carrier may make an application to the court for an order permitting such entry. Enforcement
of access.

(2) An application under subsection (1) shall—

- (a) identify the land to which the application relates;
- (b) identify the owner or occupier of such land;
- (c) state the means by which entry is to be effected, the purposes and the approximate dates and the period for which such entry is required;
- (d) specify—
 - (i) the date of any prior notice given to the owner or occupier of the land; and
 - (ii) the amount of compensation offered to such owner or occupier;

- (e) state that all reasonable attempts to seek permission for entry have failed; and
- (f) in the case of land owned or controlled by another carrier, state that all reasonable alternatives for entry on land have been exhausted.

(3) The court may grant an order under this section if it is satisfied that the applicant has complied with the requirements of sections 53 and 54.

Powers of
Minister.

56. The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action.

PART X. *Certification Standards*

Certification
standards.

57. The Office may make rules subject to affirmative resolution prescribing certification standards in relation to—

- (a) customer equipment;
- (b) plugs and jacks;
- (c) wiring connected to the public network; and
- (d) technicians.

PART XI. *Telecommunications Advisory Council*

Establish-
ment of
Council.

58.—(1) There shall be established for the purposes of this Act a body to be called the Jamaica Telecommunications Advisory Council (hereinafter referred to as the Council).

First
Schedule.

(2) The provisions of the First Schedule shall have effect as to the constitution of the Council and otherwise in relation thereto.

59. It shall be the duty of the Council to advise the Minister on all matters relating to telecommunications services, including—

Functions of Council.

- (a) certification standards;
- (b) codes of conduct in relation to the telecommunications activities of licensees and their agents and inter-licensee relationships.

PART XII. *Review of Administrative Decisions*

60.—(1) A person who is aggrieved by a decision of the Minister may, within fourteen days after receipt of that decision, apply to the Minister in the prescribed manner for a reconsideration of the matter.

Reconsideration by Minister or Office.

(2) Where an application is made under subsection (1), the Minister may—

- (a) order that the decision to which it relates shall not have effect until the matter has been reconsidered and further determined by him; and
- (b) confirm, modify or reverse that decision or any part thereof.

(3) Where no order is made under subsection (2) (a), the decision shall remain in effect.

(4) A person who is aggrieved by a decision of the Office may, within fourteen days of receipt of that decision, apply to the Office in the prescribed manner for a reconsideration of the matter.

(5) An application under subsection (4) shall be heard only if the applicant—

- (a) relies upon new facts or changed circumstances that could not, with ordinary diligence have become known to the applicant while the matter was being considered by the Office; or

(b) alleges that the decision was based upon material errors of fact or law.

(6) The Office may, in relation to an application under subsection (4), confirm, modify or reverse the decision or any part thereof.

(7) Where a decision is confirmed, the confirmation shall be deemed to take effect from the date on which the decision was made.

(8) Where an application is made under subsection (4)—

(a) the Office may, on an application by the applicant, order that the decision shall not take effect until a determination is made under subsection (6); and

(b) the Appeal Tribunal shall not hear an appeal under section 62 in relation to that decision until such a determination is made by the Office.

Establish-
ment of
Tribunal.
Second
Schedule.

61. There is hereby established for the purposes of this Act, an Appeal Tribunal and the provisions of the Second Schedules shall have effect as to the constitution of the Appeal Tribunal and otherwise in relation thereto.

Appeal to
Tribunal.

62.—(1) A person who is aggrieved by a decision of the Office may appeal against the decision to the Appeal Tribunal—

(a) if the person is a party, within twenty-one days after receipt of the decision; or

(b) in any other case, within thirty days from the date of notification of that decision.

(2) On hearing an appeal under this section the Appeal Tribunal may, subject to subsection (3)—

(a) confirm, modify or reverse the decision of the Office or any part thereof; or

- (b) by a direction in writing, refer the decision back to the Office for reconsideration by it, either generally or in relation to any matter specified in the direction,

and the Tribunal shall state the reasons for so doing within thirty days.

(3) The Tribunal may, on application by an appellant, order that the decision of the Office to which an appeal relates shall not have effect until the appeal is determined.

(4) The Appeal Tribunal may dismiss an appeal if it is of the opinion that—

- (a) the appeal is frivolous or vexatious or not made in good faith; or
- (b) the appellant does not have a sufficient interest in the subject matter of the appeal.

(5) Where the Appeal Tribunal dismisses an appeal, it shall in writing inform the appellant and the Office, stating the reasons therefor.

(6) In making a decision the Appeal Tribunal shall observe reasonable standards of procedural fairness and the rules of natural justice and act in a timely fashion.

PART XIII. *Enforcement*

63.—(1) The Office may, where it is satisfied that there are reasonable grounds for believing that any conduct specified in subsection (2) is being carried out by any person, on its own initiative or on the application of any person, issue to the person concerned, a cease and desist order in accordance with section 64.

Power to
issue cease
and desist
order.

(2) The conduct referred to in subsection (1) is as follows—

- (a) any bypass operations in contravention of this Act or regulations made under this Act;

- (b) ownership or operation of an unlicensed facility;
- (c) providing any specified services to the public without a licence issued under this Act.

(3) An order under subsection (1) shall—

- (a) state the facts constituting the alleged conduct and where appropriate, the name of the person against whom the allegation is made; and
- (b) be accompanied by documents, if any, in support of the allegation.

(4) Before issuing a cease and desist order, the Office shall cause to be served on the person concerned, a notice—

- (a) containing a statement of the facts referred to in subsection (3) (a); and
- (b) specifying the period within which and a place at which a hearing will be held to afford to the person concerned an opportunity to show cause why the order should not be made.

(5) Where at a hearing referred to in subsection (4) (b)—

- (a) the person concerned fails to show cause why the cease and desist order should not be made, the order shall be issued; or
- (b) the Office determines that the alleged conduct has not occurred, a cease and desist order shall not be issued.

Contents of
cease and
desist order.

64. A cease and desist order shall be served on the person to whom it is addressed and shall—

- (a) contain a description of the alleged conduct;
- (b) require the person concerned to cease and desist from the conduct giving rise to the order,

and the order shall take effect from the date specified therein.

65.—(1) If the Court is satisfied on an application by the Office that a licensee—

Application
for enforce-
ment.

- (a) has failed to comply with any term or conditions of the licence; or
- (b) has contravened any provision of this Act or any regulations made hereunder,

the Court may exercise any of the powers specified in section 66.

(2) Before making an application to the Court under subsection (1), the Office shall—

- (a) notify the licensee concerned in writing regarding the nature of the alleged contravention; and
- (b) afford to the licensee an opportunity to—
 - (i) remedy the alleged contravention to the satisfaction of the Office, within such period as the Office shall specify in the notice or on the application of the licensee;
 - (ii) make submissions to and to be heard by, the Office concerning the matter, and where any such hearing is held, the Office shall notify the licensee of its determination in the matter;
- (c) take into consideration any relevant circumstances, including—
 - (i) the resources available to the licensee or to any person or entity affected by the licensee's actions;
 - (ii) the continued economic viability of the licensee or any other person or entity affected as aforesaid; and
 - (iii) the conduct of any such other person or entity or the licensee's competitors.

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(3) In exercising its powers under this section, the Office shall have regard to—

- (a) the nature and extent of the conduct giving rise to the application;
- (b) the nature and extent of any loss suffered by a person as a result of the alleged contravention;
- (c) the circumstances of the alleged contravention; and
- (d) any previous determination against the licensee concerned.

Powers of
Court.

66.—(1) The Court may, pursuant to an application under section 65 (1)—

- (a) order the offending licensee to pay to the Crown such pecuniary penalty not exceeding five hundred thousand dollars in the case of an individual and not exceeding three million dollars in the case of any other person;
- (b) grant an injunction restraining the offending licensee from engaging in conduct described in subsection (1) (a) or (b) of section 65; or
- (c) make such other order as the Court thinks fit,

in respect of each contravention or failure specified in that subsection.

(2) In exercising its powers under this section the Court shall have regard to the matters specified in section 65 (3).

(3) Proceedings under this section and section 65 shall be civil proceedings.

Civil
liability.

67. Every person who engages in conduct which constitutes—

- (a) a contravention of any obligations or prohibitions specified in the relevant provisions of this Act;

- (b) aiding, abetting, counselling or procuring the contravention of any such provision;
- (c) inducing by threats, promises or otherwise the contravention of any such provision;
- (d) being knowingly concerned in or a party to such contravention;
- (e) conspiring with any other person to contravene any such provision,

is liable in damages for any loss caused to any other person by such conduct.

PART XIV. *Offences*

68. In this Part—

Interpreta-
tion.

"produce" includes design, alter, authenticate, duplicate or assemble;

"scanning receiver" means any equipment, device or apparatus that can be used to intercept a wire or electronic communication in violation of this Act or any other enactment;

"traffic" means to transfer or otherwise dispose of or to obtain control for the purpose of transfer or other disposal;

"telecommunications instrument" means any equipment, device or apparatus that is capable of being used to originate, terminate or intercept any specified service.

69.—(1) A person commits an offence if he—

Offence *re*
trespass,
interference,
etc.

- (a) trespasses upon any facility by any means;
- (b) meddles or interferes or tampers with any facility or otherwise causes harm to that facility;
- (c) knowingly and with intent to defraud, uses, produces, trafficks in, has custody or control of or possesses—

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- (i) telecommunications equipment that has been modified or altered;
- (ii) a scanning receiver; or
- (iii) any hardware or software use for altering or modifying instruments,

in order to obtain unauthorized use of specified services.

(2) Subsection (1) shall not apply to a customer in relation to any facility that—

- (a) is located on his premises; and
- (b) having regard to a contract in relation to such premises between the customer and the carrier or service provider, is intended to be used or dealt with by the customer in the ordinary course of his enjoyment of the service provided under that contract,

unless any act is done in relation to such facility that is expressly forbidden by that contract or is inconsistent with the terms of that contract or is detrimental to the safety or efficient operation of such facility.

(3) A person who is guilty of an offence under this section shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Seizure and
forfeiture
of equip-
ment.

70.—(1) If a constable has reasonable cause to suspect that any equipment is being used or has been used for the commission of any offence against this Act, he may apply to a Resident Magistrate for a warrant authorizing him to search the specified apparatus named in the warrant authorizing him to search the specified

apparatus named in the warrant and to seize and detain that equipment if the search reveals evidence that it is being used or has been used for the commission of an offence as aforesaid.

(2) Where a person is convicted of an offence against this Act and the Court is satisfied that any equipment seized under subsection (1) was used in committing the offence, the Court may, on the application of the prosecution, order that the equipment be forfeited to the Crown.

(3) Where the Director of Public Prosecutions proposes to apply for forfeiture of any equipment under subsection (1), the Director of Public Prosecutions shall, subject to subsection (4), notify in writing the owner thereof or any other person having an interest therein of his intention to apply for the order.

(4) Notice shall not be required under subsection (3) if the seizure or detention of the equipment was made in the presence of the owner or other person having an interest therein.

(5) Where the Director of Public Prosecutions is unable to ascertain the owner of or any person having an interest in any equipment to which this section applies, he shall publish a notice in a daily newspaper circulating in the Island regarding the intention to apply to the Court for an order for forfeiture, not less than thirty days prior to the application.

(6) The owner or other person notified under subsection (3) may appear before the Court at the hearing of the application and show cause why the equipment should not be forfeited.

(7) If, on the application of a person prejudiced by an order made under subsection (2), the Court is satisfied that it is just in the circumstances of the case to revoke the order, the Court may revoke it upon such terms and conditions, if any, as it deems appropriate, and without prejudice to the generality of the foregoing,

may require that person, to pay in respect of the maintenance, administrative expenses and security of the equipment, such amount as may be charged by the person in whose custody the equipment was kept.

(8) An application to the Court under subsection (7) for the revocation of a forfeiture order shall be made within three months of the date of the order or such longer period as the Court may allow.

PART XV. *General*

Office may
make rules.

71.—(1) The Office may make rules subject to affirmative resolution prescribing any matter required by this Act to be prescribed by such rules or any matter that it considers necessary or desirable for the effective performance of its functions under this Act.

(2) Notwithstanding the provisions of section 29 of the Interpretation Act, rules made pursuant to this Act may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of fines not exceeding five hundred thousand dollars or imprisonment for a term not exceeding twelve months or both such fine and imprisonment.

Regulations.

72.—(1) The Minister may make regulations generally for giving effect to the provisions and purposes of this Act.

(2) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under subsection (1) may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of fines not exceeding five hundred thousand dollars or imprisonment for a term not exceeding twelve months or both such fine and imprisonment.

73.—(1) The provisions of the Fair Competition Act shall not affect an agreement between the Minister and a universal service provider in relation to the universal service obligation or any agreement approved by the Office after consultation with the Fair Trading Commission.

Agreements
not affected
by Fair
Competition
Act.

(2) Except as provided in subsection (1) nothing in this Act shall be construed as affecting the right of any person to refer a matter to the Fair Trading Commission in accordance with the Fair Competition Act.

FIRST SCHEDULE

(Section 58)

The Jamaica Telecommunications Advisory Council

1. The Advisory Council shall consist of such number of persons, not being less than five nor more than nine as the Minister may from time to time appoint, of whom—

Constitution
of Council.

- (a) one member shall be a representative of the existing telecommunications carrier;
- (b) the other members shall be appointed on the recommendation of other carriers, service providers, corporate business entities and consumers.

2.—(1) The appointment of a member of the Advisory Council shall, subject to the provisions of this Schedule, be for a period not exceeding three years and such member shall be eligible for reappointment.

Tenure of
office.

- (2) The Minister may revoke the appointment of any member who—
 - (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
 - (b) is convicted and sentenced to a term of imprisonment or to death;
 - (c) in the case of a licensee, is in breach of the provisions of a licence granted under this Act or, as the case may be, is a person whose licence has been revoked;
 - (d) has engaged in such other conduct as, in the opinion of the Minister, justifies such revocation.

- Temporary appointments. 3. The Minister may appoint any person qualified in accordance with paragraph 1, to act temporarily in the place of any member of the Advisory Council in the case of the absence or inability to act of such member.
- Chairman. 4. The Minister shall appoint one of the members of the Advisory Council to be chairman thereof.
- Resignation. 5.—(1) Any member of the Advisory Council other than the chairman may at any time resign his office by instrument in writing, addressed to the Minister and transmitted through the chairman and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Advisory Council.
- (2) The chairman may at any time resign his office by instrument in writing, addressed to the Minister and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.
- Filling of vacancies. 6. If any vacancy occurs in the membership of the Advisory Council, such vacancy shall be filled by the appointment of another member and in making such appointment, the Minister shall have regard to the provisions of paragraph 1.
- Publication of membership. 7. The names of all members of the Advisory Council as first constituted and every change in the membership thereof shall be published in the *Gazette*.
- Procedure and meetings. 8.—(1) The Advisory Council shall meet at such times as may be necessary or expedient for the transaction of their business and such meetings shall be held at such places and times as the Advisory Council may determine.
- (2) The chairman may at any time call a special meeting of the Advisory Council and shall call a special meeting within fourteen days of the receipt of a written requisition for that purpose, addressed to him by any two members of the Advisory Council.
- (3) The chairman shall preside at meetings of the Advisory Council and in the case of the absence of the chairman from a meeting, the members present and constituting a quorum shall elect one member to preside at that meeting.
- (4) The quorum of the Advisory Council shall be three.
- (5) The decisions of the Advisory Council shall be by a majority of votes, and in addition to an original vote, the chairman or member presiding at a meeting shall have a casting vote in any case in which the voting is equal.
- (6) Minutes in proper form of each meeting of the Advisory Council shall be kept.
- (7) The validity of the proceedings of the Advisory Council shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of any member thereof.

9.—(1) The Council shall from time to time carry out a survey of all telecommunications services which should be provided to yield optimum benefits.

Conduct of
survey by
Council.

(2) In carrying out a survey under this paragraph the Council shall consult with members of the public and take into account any recommendations made by such members.

(3) The Council shall make recommendations to the Office in relation to a survey carried out under this paragraph including recommendations as to contributions by service providers to the provision of services to which the recommendations relate.

(4) The Office shall determine the level of contributions to be made by service providers on a non-discriminatory basis.

(5) The first survey under this paragraph shall be carried out within ninety days after the appointed day.

10. There shall be paid to the chairman and other members of the Advisory Council such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

Remunera-
tion of
members.

11. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Council in respect of any act done *bona fide* in pursuance of execution or intended execution of this Act.

Protection
from
suit, etc.

12. The office of chairman or member of the Advisory Council shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

Office of
member not
public office.

SECOND SCHEDULE

(Section 61)

Constitution and Procedure of Appeal Tribunal

1. The Appeal Tribunal shall consist of three members appointed by the Minister as follows—

Constitution
of Tribunal.

- (a) one member shall be a former Judge of the Supreme Court or the Court of Appeal and shall be chairman of the Tribunal;
- (b) one member shall be appointed on the recommendation of the Advisory Council; and
- (c) one member shall be appointed on the recommendation of the Consumer Affairs Commission.

- Tenure of office. 2. The members of the Tribunal shall, subject to the provisions of this Schedule, hold office for such period not exceeding two years as the Minister may determine and shall be eligible for reappointment.
- Acting appointments. 3. The Minister may appoint any person to act in the place of the chairman or any other member of the Tribunal in the case of the absence or inability to act of the chairman or other member.
- Resignations. 4.—(1) Any member of the Tribunal other than the chairman may at any time resign his office by instrument in writing, addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument that member shall cease to be a member of the Tribunal.
- (2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of that instrument.
- Revocation of appointment. 5. The Minister may at any time revoke the appointment of any member of the Tribunal if such member—
- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
 - (b) is convicted and sentenced to a term of imprisonment;
 - (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him under this Act; or
 - (d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal.
- Filling of vacancy. 6. If any vacancy occurs in the membership of the Tribunal, such vacancy shall be filled by the appointment of another member thereof.
- Publication of membership. 7. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.
- Remuneration of members. 8. There shall be paid to the chairman and other members of the Tribunal in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.
- Voting. 9. The decisions of the Tribunal shall be by a majority of votes of the members.
- Power to regulate proceedings. 10. Subject to the provisions of this Schedule, the Tribunal shall regulate its own proceedings.
- Office not public office. 11. The office of chairman or member of the Tribunal shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.