



GUYANA

TELECOMMUNICATIONS BILL 2011

Bill No. __ of 2011

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A BILL

Intituled

AN ACT to provide for the establishment of the Telecommunications Agency and for a regular, coordinated, open and competitive telecommunications sector and for matters incidental thereto or connected therewith.

A.D. 2011 Enacted by the Parliament of Guyana

PART I

PRELIMINARY PROVISIONS

Short title.

- 1.** (1) This Act may be cited as the Telecommunications Act 2011.
- (2) This Act shall come into force on such day as the Minister may by order appoint, and different days may be appointed for different provisions of this Act.

Definitions.

- 2.** (1) In this Act –

“access” means the availability of the facilities of one operator or service provider to other operators and service providers, and the availability of the facilities of an operator to public utilities and of the utility installations of a public utility to operators, under defined conditions, including the availability of telecommunications network elements and associated facilities such as the local loop and the facilities and services necessary to provide telecommunications services over the local loop; physical infrastructure; relevant software systems including operational support systems; number translation, signalling systems and systems offering equivalent functionality; fixed and mobile networks for roaming and other functions; and virtual network services;

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“affiliated” has the same meaning assigned to it in sections 527 and 528 of the Companies Act 1991;

“Agency” means the Telecommunications Agency established under this Act;

"allocate," "allocation" and "allocating" mean the entry in the spectrum plan of a given frequency band for the purpose of its use by one or more radiocommunication services, under specified conditions, and shall include any reallocation of any such frequency band;

“appointed day” means the date on which this Act, or any provision of it, comes into force pursuant to section 1(2);

"assign" and "assignment," in relation to frequency authorisations, mean the inclusion in a frequency authorisation of permission for the authorisation holder to use specified frequency bands under specified conditions, and shall include any reassignment;

“authorisation holder” means a person that is granted a frequency authorisation by the Minister pursuant to this Act;

“body corporate” means a company, corporation, partnership, joint venture, trust, unincorporated organisation, enterprise, government (or any agency, instrumentality or political subdivision thereof), or other body of persons corporate or incorporate;

"broadcasting" means the transmission of any programme, whether or not encrypted and whether or not actually received, by wired or wireless medium or technology for reception by all or part of the general public, but does not include telecommunications;

"broadcasting network" means a network used to provide a broadcasting service;

“broadcasting service” means a service providing broadcasting;

"bundled" means the offering of more than one telecommunications service, more than one broadcasting service, two or more of telecommunications services and broadcasting services, or two or more of telecommunications services, broadcasting services, and terminal equipment, to a user as a package, where the price covers all services and any terminal equipment within the package;

“class licence” means a licence granted by the Minister under section 24;

“Commission” means the Public Utilities Commission established under the Public Utilities Commission Act 1999;

“consumer,” in relation to an operator or a service provider, means a person making use of any telecommunications service provided by the operator or service provider;

“dealer's permit” means any permit issued by the Minister under this Act and the regulations for the sale or other supply or transfer, or programming or any other modification, of radiocommunication equipment;

“Deputy Director” means the Deputy Director of Telecommunications of the Agency appointed from time to time by the Minister under section 4;

“dialing parity” means the ability of a consumer to route his telecommunications to the operator or service provider of the consumer’s choice automatically, without having to dial any extra digits or enter any other type of access code;

“Director” means the Director of Telecommunications of the Agency appointed by the Minister from time to time under section 4;

"disaggregate" and "disaggregated" mean the offering by an operator or service provider of elements of its telecommunications network and broadcasting network and its facilities, as the case may be, to other operators, service providers and users in such a way that the charge therefor reflects only the cost of such elements and facilities and does not require the operator, service provider or user to pay for other elements or facilities.

“dominance” and “dominant” have the meanings provided in section 40;

"emergency telecommunications" means telephone access to police, fire and ambulance services and such other services as may be specified by the Minister by order;

“equal access” means the ability of a consumer to choose, in a transparent and non-discriminatory manner, between two or more competing service providers;

“exemption” means an exemption from the requirement to obtain a licence, granted by the Minister under section 23(10);

"exemption holder" means any person to whom an exemption is granted under this Act;

“facility” means (a) any physical component of a telecommunications network and any associated software, other than terminal equipment, used for the purpose of or in connection with telecommunications, including copper, coaxial, fibre optic and electrical wires and lines, fixed and wireless transmission (circuit and packet) switching and signaling equipment,

terrestrial and submarine cables, cable landing stations, satellites, satellite earth stations and other equipment or objects connected therewith; (b) any radiocommunication equipment; and (c) any post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used for carrying, suspending, supporting or protecting a structure or equipment provided for in (a) and (b);

“force majeure” means any of the following circumstances, to the extent that such circumstance is beyond the reasonable control of the person claiming to be affected by it:

- acts of God, riot or civil commotion;
- strikes, lock-outs and other industrial disturbances;
- wars, blockades, invasions, terrorist actions, civil unrest, or insurrection;
- earthquake, hurricane, flood, fire or explosions;
- outbreak of pestilence or epidemics;
- government rationing of electricity or other wartime or emergency controls imposed by a government, or other shortage of adequate power or transportation; and
- embargoes, trade restrictions or nationalisation or government sanctions;

“frequency authorisation” means an authorisation granted by the Minister under section 30;

“frequency band” means a continuous frequency range of spectrum;

“harmful interference” means an adverse effect of electromagnetic energy from any emission, radiation, induction or use of the spectrum that (a) endangers the use or functioning of a navigation- or safety-related radiocommunication service or (b) seriously degrades or obstructs, or repeatedly interrupts, a radiocommunication service operating in accordance with this Act;

“Head of Division” means any Head of any Division of the Agency as may be appointed by the Minister from time to time under section 4, or all of them;

“individual licence” means a licence granted to a person to operate a

telecommunications network or provide a telecommunications service under section 23;

“interconnection” means the linking of public telecommunications networks and public telecommunications services, to allow the users of one public telecommunications network or public telecommunications service to communicate with users of another public telecommunications network or public telecommunications service, and to use the facilities of such other public telecommunications network or the services provided by such other public telecommunications service;

“ITU Treaties” means and includes the Constitution, the Convention and the Regulations of the International Telecommunication Union, as in force from time to time;

"joint dominance" and "jointly dominant" have the meaning provided in section 40(5)(b);

“licence” means any licence granted by the Minister under this Act;

“licensee” means a person granted a licence;

"market" has the meaning assigned to it in any of the regulations;

“member” means the Director, Deputy Director and the Heads of Division, or any of them;

"National Frequency Management Unit" means the entity established in the Guyana National Frequency Management Unit Order 1990;

“network termination point” means the point designated for connection of terminal equipment by a user to a telecommunications network;

“number portability” means the ability of a consumer to retain the same telephone number upon changing from one service provider to another service provider;

“operator” means a person licensed, or granted an exemption from the licensing requirement, under this Act to operate a public telecommunications network;

“private telecommunications network” means a telecommunications network that --

(a) is used solely and exclusively by a body corporate or a

group of affiliated bodies corporate for satisfying its or their internal needs and not for the purpose of operating a telecommunications network;

- (b) is not interconnected with any public telecommunications network or otherwise configured or used in a manner that would enable telecommunications with any persons other than those within such body corporate or group of affiliated bodies corporate, except for the purpose of allowing those persons to communicate with persons outside the body corporate or group of affiliated bodies corporate to meet the needs of such body corporate or group of affiliated bodies corporate and not for the purpose of operating a telecommunications network; and
- (c) except with respect to use of the spectrum or, except as otherwise permitted by the Minister in writing, does not cross public rights of way;

provided that subparagraph (c) shall not apply to a telecommunications network that is in existence on the appointed day with regard to the bringing into force of this section 2, that does not use the spectrum, and that meets the requirements of subparagraphs (a) and (b);

“private telecommunications service” means a telecommunications service provided solely through a private telecommunications network and used solely and exclusive by a body corporate or a group of affiliated bodies corporate, for satisfying its or their internal needs and not for the purpose of operating a telecommunications network;

"programme", in relation to broadcasting, means any speech, music or other sound, any visual image, or any combination thereof, the primary purpose of which is to inform, educate, or entertain, or to offer any goods or other property or services, to all or part of the general public;

“public land” includes any open or enclosed space to which, for the time being, the public has or is permitted to have access;

“public telecommunications network” means a telecommunications network used to provide a public telecommunications service;

“public telecommunications service” means a telecommunications

service which is available to the public or to any part thereof, or to such classes of users as to be effectively available to the public, whereby one user can communicate with any other user, regardless of the technology used to provide such service, and shall include any public telephone service, any call termination service, and any telecommunication between a person and equipment or between equipment;

“public telephone service” means the commercial provision to the public of interactive voice communication in real time from and to network termination points, irrespective of the switching or transmission technology used;

Cap. 57:01

“public utility” has the same meaning assigned to it under section 4(1) of the Public Utilities Commission Act 1999;

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“Public Utilities Commission Act” means the Public Utilities Commission Act 1999;

“radiocommunication equipment” means any equipment that is capable of transmitting, emitting or receiving electromagnetic waves;

“radiocommunication network” means a telecommunications network or a broadcasting network used to provide a radiocommunication service;

“radiocommunication service” means a telecommunications service or a broadcasting service that is provided through the transmission, emission or reception of electromagnetic waves;

"reallocation," "reallocate," and "reallocating" mean any change in an allocation;

"reassignment" and "reassign" mean any change in an assignment;

“Reference Interconnection Offer” means a document containing the terms and conditions under which an operator or a service provider that is dominant proposes to provide interconnection and access to other operators and service providers;

“regulations” means the regulations made in accordance with section 85;

“service provider” means a person licensed, or exempted from the licensing requirement, under this Act to provide a public telecommunication service, and includes an operator who provides any telecommunications service;

“significant interest,” in respect of a body corporate, means any legal or equitable holding or interest in the body corporate or in any parent of the body corporate held or owned by a person, either alone or with any other person, that entitles or enables the person, directly or indirectly –

- (a) to control 10 per cent or more of the voting rights of that body corporate at a general meeting of the body corporate,
- (b) to a share of 10 per cent or more in dividends or other earnings declared and paid by the body corporate to such person, or
- (c) to a share of 10 per cent or more in any distribution of the surplus assets of the body corporate;

“space segment” means the system of satellites in orbit, or any part of it, and the equipment needed or used to monitor or control them;

“special frequency authorisation” means a frequency authorisation granted by the Minister under section 37;

“special licence” means a licence granted by the Minister under section 37;

“spectrum” means the continuous range of electromagnetic wave frequencies used for telecommunications or broadcasting;

"spectrum plan" means the table of frequency allocations and the other elements set forth in the regulations or as provided in section 44(2) for the use of the spectrum in Guyana, as adopted and published by the Agency from time to time under this Act and the regulations;

"table of frequency allocations" means a general plan which allocates frequency bands to various radiocommunication services within the scope of international and regional tables of frequency band allocations adopted at World Radiocommunication Conferences, which responds to domestic spectrum requirements and spectrum allocation and utilisation policies, and which, except as provided in section 44(2), contains the elements required in the regulations;

“telecommunications” means the transmission, emission or reception of signals, writing, signs, text, pulses, images, sounds, or other intelligence of any kind, or any combination thereof, by way

of any wired or wireless medium or technology, but does not include broadcasting;

“Telecommunications Code” means such standards, rules and other requirements with regard to telecommunications, including facilities, as the Agency may specify from time to time in accordance with section 85(3);

“telecommunications network” means a system or any part or combination thereof used for the provision of a telecommunications service;

“telecommunications service” means a service providing telecommunications and includes a public telecommunications service, a private telecommunications service, a radiocommunication service, and a value added service;

“telecommunications undertaking” means any operator, service provider or any other person whose activities are subject to this Act;

“terminal equipment” means equipment on the consumer’s side of the network termination point that is connected or capable of being connected, directly or indirectly in any manner, to a telecommunications network and with which a consumer can originate, process or terminate telecommunications;

"unbundle," "unbundling" and "unbundled" mean the offering by an operator or service provider of a telecommunications service or a broadcasting service, or the provision of terminal equipment, to other operators, service providers and users in such a way that the charge therefor reflects only the cost of such telecommunications service, broadcasting service, or terminal equipment and does not require the operator, service provider or user to pay for other telecommunications services, broadcasting services, or terminal equipment.

"Unit" means the National Frequency Management Unit;

“universal access” means the reasonable availability of telecommunications networks and telecommunications services on either a private or a shared, public basis to individuals, bodies corporate and other persons within a given community;

“universal service” means the ubiquitous delivery, accessibility and affordability of telecommunications services to persons throughout a geographical area, with no practical

impediments to subscription and usage;

“Universality Fund” means the financial mechanism established by the Agency in accordance with section 43(4) and used to supplement private investment in the expansion of telecommunications networks and the delivery of telecommunications services to achieve universal access and universal service objectives or for any other purpose provided for in the regulations;

“user” means a consumer or other subscriber of a telecommunications network, a facility, or a telecommunications service and includes a person that is an operator or a service provider or that is a public utility that seeks access to facilities;

“utility installation” means any physical component of a system owned or operated by a public utility to provide a service, as the term “service” is defined in section 3(1)(i) of the Public Utilities Commission Act 1999, and any works, as the term “works” is defined in section 2 of the Electricity Sector Reform Act 1999;

“value added service” means a service that, using a telecommunications service, (i) modifies the form, content, code, protocol or other similar aspect of any telecommunication, (ii) restructures, adds or supplies information, or (iii) permits user interaction with information, but does not include any public telecommunications service that does not perform the functions set forth in items (i) through (iii) of this definition; and

"World Radiocommunication Conference" means the successive conferences of that name organized by the International Telecommunication Union.

(2) Terms and words relating to telecommunications used, but not defined, in this Act shall have the meanings assigned to them in the regulations or, if not so defined, in the ITU Treaties.

PART II

TELECOMMUNICATIONS AGENCY

Establishment of the Telecommunications Agency.

- 3.** (1) There is hereby established a body corporate to be known as the Telecommunications Agency.
- (2) The Agency shall consist of the following members –

- (a) a Director of Telecommunications, who shall also be the Chief Executive Officer;
- (b) a Deputy Director of Telecommunications, who shall also be the Deputy Chief Executive Officer; and
- (c) such Heads of Divisions as may be designated by the Minister.

(3) The members shall be persons appearing to the Minister to be of high character and integrity and qualified as having had extensive and relevant training and experience in fields relating to telecommunications law, economics, finance, engineering, or other technical matters or business.

Term of appointment of members.

4. (1) The members shall be fulltime officers and employees of the Agency and shall be appointed by the Minister.

(2) The members shall hold office for such period, not exceeding three years, as may be specified by the Minister.

(3) A member shall be eligible for reappointment by the Minister at the expiry of the term of office of such member.

Emoluments.

5. (1) The members shall be paid such salary and allowances as may be provided for in the annual budget of the Agency approved by the National Assembly, and the other terms and conditions of appointment of the members shall be such as may be determined by the Minister.

(2) The members shall not, during any term of service on the Agency, hold any other position in the Government, and within the one year preceding his appointment to any term, the member shall not have been a licensee, or held any senior position in a person that is a telecommunications undertaking under this Act or is or was a licensee under the Telecommunications Act 1990 or the Post and Telegraph Act.

Cap. 47:02
Cap. 47:01

Conflicts of interest.

6. (1) A member who is interested in any telecommunications undertaking or any other person that is a party interested in any matters before the Agency, other than as a consumer, shall disclose to the Agency the fact and nature of his interest and shall not take part in any deliberation or decision of the Agency relating to such matter, and such a disclosure shall forthwith be recorded in the records of the Agency.

(2) A member shall, during his period of service with the Agency, refrain from engaging in discussions with any telecommunications undertaking or with any person engaged in broadcasting through utilisation of the spectrum regarding his employment thereby and shall be prohibited from accepting employment with any such

Termination of appointment and resignation of members.

7. (1) The Minister may terminate the appointment of a member where he –
- (a) becomes of unsound mind or incapable of carrying out his duties;
 - (b) becomes bankrupt or compounds with his creditors;
 - (c) is convicted of any felony or misdemeanor;
 - (d) is guilty of misconduct inconsistent with membership of the Agency; or
 - (e) materially or willfully fails to carry out any of his duties or functions conferred or imposed on him by this Act or by the Minister:
- Provided that the appointment of a member shall not be terminated under this subsection unless he has been given a reasonable opportunity of being heard.

(2) A member may resign from his office by letter addressed to the Minister.

Disqualification of a member.

8. (1) A member shall not directly or indirectly –
- (a) hold, acquire or become interested in any share, stock, debenture or other security of any telecommunications undertaking;
 - (b) have any interest in any contract or agreement for the construction of any facilities or the providing of goods or any services for or by any telecommunications undertaking;
 - (c) have any interest in any device, appliance, machine, article, patent or patented process, or any part thereof, which is required or used by any telecommunications undertaking;
 - (d) hire themselves as consultants or hire as consultants for the Agency any body corporate or other entity in which they have any interest, directly or indirectly; or
 - (e) receive any other benefit, directly or indirectly, from a

telecommunications undertaking or any group, association or other person appearing at or interested in any proceeding of the Agency:

Provided that a member shall not be deemed to have any interest in a telecommunications undertaking by reason of the fact that he uses a telecommunications service in the ordinary course.

(2) Any person disqualified under subsection (1) shall not be appointed as a member and in case he is so appointed, when the matter comes to the knowledge of the Minister, he shall terminate the appointment of such person as a member:

Provided that the appointment of any person as a member shall not be terminated under this subsection unless he has been given a reasonable opportunity of being heard.

(3) Where a member has, after he has been appointed, committed a breach of subsection (1), he shall be deemed guilty of misconduct.

Notification of appointment and removal.

9. The appointment, reappointment, termination of appointment and removal of the members shall be published in the *Official Gazette*.

Seal of authority.

10. The seal of the Agency shall be such device as the Agency shall determine and shall be kept in the custody of the Director.

Headquarters of the Agency.

11. The headquarters of the Agency shall be at Georgetown, but the Agency may, for convenience generally, carry out its functions at any other place in Guyana.

Immunity of members from suit.

12. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member, officer, or employee of the Agency in respect of any act done bona fide in pursuance or execution or intended execution of his duties or powers under this Act.

Procedure of the Agency.

13. Subject to the provisions of this Act or any other law, the Agency may regulate its own procedure and may make rules for that purpose, which rules shall be effective upon publication and reasonable notice to interested parties.

Duties of members; employment and terms of employment of officers and employees.

14. (1) The Director shall be responsible for --
- (a) implementation of the directions of the Minister to the Agency and the decisions of the Agency;
 - (b) oversight and management of the Deputy Director, the Heads of Divisions and the officers and employees of the

Agency in the performance of their duties;

- (c) management and organisation of the Agency, including the discipline of the Deputy Director and Heads of Division (with the exception of termination), and the discipline of the officers and employees in accordance with the general terms and conditions of their service established by the Agency, with the approval of the Minister;
- (d) participation in the representation of the Government in international, regional and bilateral telecommunications- and spectrum-related organisations, conferences, meetings and other events; and
- (e) oversight of the Agency's performance of the functions provided for in section 20 and elsewhere in this Act and in any other applicable law.

(2) If the Director is absent or is unable to act or if the office is vacant, the Deputy Director shall have, and shall discharge, the functions of the Director.

(3) The Heads of Divisions shall be responsible for such duties as the Director, with the approval of the Minister, shall designate.

(4) The Agency shall employ a secretary and such other officers and employees as are required for the proper conduct of the business of the Agency.

(5) The remuneration and other terms and conditions of employment (including the payment of any pension, gratuity or other like benefits by reference to their service) of the secretary, and any other officers and employees of the Agency, shall be such as may be determined by the Agency, with the approval of the Minister.

Employment of experts.

15. (1) The Agency may at any time retain the services of experts and other professional persons (including consultants) having specialised knowledge relevant to the functions of the Agency and determine the remuneration payable to such persons and their other terms and conditions of retention.

(2) Section 8 shall *mutatis mutandis* apply to professional persons considered for retention, or retained, by the Agency pursuant to subsection (1).

(3) Recommendations of professional persons retained by the Agency pursuant to this section shall not be binding on the Agency.

Obtaining services of public officers.

16. (1) For the purposes of any enquiry or examination conducted by it or in the performance of any of the other functions conferred on it by this Act, the

Agency may, with the consent of the appropriate authority, utilise the services of any public officer or other employee of the Government.

(2) In this section, “appropriate authority,” in relation to any public officer or other employee of the Government, means the person or authority vested with power to appoint such public officer or employee of the Government to the position he holds in the Government.

Superannuation benefits.

Cap. 19:05

17. (1) Section 28 of the Public Corporations Act 1988 shall *mutatis mutandis* apply to public officers, persons (not being public officers) holding appointments in the public service and teachers, referred to therein, who are seconded, temporarily transferred or permanently transferred to the Agency as if the Agency were a public corporation.

(2) The Agency, with the approval of the Minister, may make such provisions as it deems appropriate for the payment of pension, gratuity, or other allowances in respect of the service of its officers and other employees on their retirement from their employment with the Agency.

Budget and resources.

18. (1) The Agency shall determine its own annual budget for submission to the Minister of Finance for inclusion in the annual budget presented to the National Assembly.

(2) The Agency shall have the discretion and authority to disburse funds obtained in accordance with this Act, subject to the provisions of any other written law.

(3) The funds and resources of the Agency shall consist of --

- (a) fees paid over to the Agency by licensees, authorisation holders and other persons in accordance with this Act, the regulations, and any other applicable law;
- (b) fines and penalties imposed by and paid over to the Agency under this Act or the regulations;
- (c) any property or investment acquired by, or vested in, the Agency;
- (d) moneys earned or arising from any property or investment acquired by, or vested in, the Agency;
- (e) sums provided to the Agency by or under any appropriation law;
- (f) sums allocated from time to time to the Agency from loan funds;

- (g) sums borrowed by the Agency for the purpose of meeting any of its obligations or the performance of any of its functions; and
- (h) all other sums or property which may in any manner become payable to or vested in the Agency in respect of any matter incidental to its functions.

(4) The charges on any amount which may be allocated to the Agency from any loan funds shall be met by the Agency except that all or any part of such charges may be met out of moneys provided by or under any appropriation law.

(5) For the purposes of this section, the expression “loan funds” means such sums as may be made available from time to time to the Government by way of loan.

PART III

FUNCTIONS OF THE MINISTER, THE AGENCY AND THE COMMISSION

**Functions of the
Minister.**

- 19.** (1) Subject to the provisions of this Act, the Minister shall –
- (a) oversee the Agency in the performance of its functions;
 - (b) develop and review telecommunications and other spectrum-related plans, positions and policies consistent with the purposes of this Act;
 - (c) grant or deny applications for, and amend, renew, suspend and terminate, licences, exemptions and frequency authorisations under this Act;
 - (d) determine which telecommunications networks shall be classified or reclassified as public telecommunications networks, private telecommunications networks, or any other type of telecommunications network, and which telecommunications services shall be classified or reclassified as public telecommunications services, private telecommunications services, value added services, or any other type of telecommunications service;
 - (e) determine which telecommunications networks may be operated, and which telecommunications services and value added service may be provided, under class licences,

and the terms and conditions of any such class licence;

- (f) determine which classes or descriptions, if any, of operators and service providers, and their related telecommunications networks and telecommunications services, may be exempted from the requirement to obtain a licence under this Act, and the terms and conditions of any such exemption;
- (g) determine the instances in which a competitive process will be utilised to select licensees and authorisation holders and the terms and conditions of any such competitive process;
- (h) determine which telecommunications networks and telecommunications services should be provided pursuant to section 43, and oversee the establishment and administration of the Universality Fund;
- (i) regulate the use of the spectrum by any person, including ships, aircraft and other vessels, whether registered in Guyana or another jurisdiction;
- (j) represent, along with any other relevant Minister, the Director and any other members of the Agency designated by the Minister for that purpose, the interests of the Government in international, regional and bilateral telecommunications- and spectrum-related organisations, conferences, meetings and other events;
- (k) give to any person such directions, or take such other action, with regard to telecommunications and the spectrum as may be deemed necessary in the interests of national security, public order, or relations with the government of a foreign country or territory;
- (l) publish the annual reports prepared by the Agency and the Commission under this Act, and lay copies of them before the National Assembly;
- (m) in the exercise of his powers, consult with the Agency and the Commission;
- (n) be responsible for preparing and promulgating regulations, after seeking the advice of the Agency or the Commission, as the case may be;
- (o) issue such orders as may be necessary and consistent with

the purposes and provisions of this Act; and

- (p) have the power to do anything which in his reasonable opinion is calculated to facilitate the proper discharge of his functions or is incidental thereto.

(2) In addition to the functions provided for in subsection (1), the Minister shall give the Agency such general policy and other directions as are consistent with the provisions of this Act, and the Agency shall give effect to any such directions.

(3) The Minister may delegate any function conferred upon him by this Act, other than the power to promulgate regulations and other subsidiary legislation and the powers with respect to licences, exemptions and frequency authorisation conferred in subsection (1)(c), to the members of the Agency or any other person employed by the Government.

(4) All directions and delegations referred to in subsections (2) and (3) shall be in writing and signed by the Minister.

Functions of the Agency.

20. Subject to the provisions of this Act, the Agency shall –

- (a) advise the Minister, and implement his directions, on plans, positions and policies relating to telecommunications and spectrum issues at national, bilateral, regional and international levels;
- (b) advise the Commission on any matters with regard to the functions of the Commission, as the Commission may request;
- (c) receive and review applications for licences, exemptions and frequency authorisations and provide its recommendations thereon to the Minister;
- (d) advise the Minister on the instances in which a competitive process should be utilised to select licensees and authorisation holders and the terms and conditions of any such competitive process;
- (e) monitor, enforce and ensure effective compliance with licences, exemptions and frequency authorisations, and advise the Minister on the amendment, renewal, suspension and termination thereof;
- (f) advise the Minister with respect to the telecommunications networks that should be classified or reclassified as public

telecommunications networks, private telecommunications networks, or any other type of telecommunications network; the types of telecommunications services that should be classified or reclassified as public telecommunications services, private telecommunications services, value added services, or any other type of telecommunications service; and any other matter on which the Minister requests its advice;

- (g) advise the Minister on which telecommunications networks may be operated, and which telecommunications services and value added services may be provided, under class licences; which classes of operators and service providers, and their related telecommunications networks and telecommunications services, may be exempted from the requirement to obtain a licence under this Act; and the terms and conditions of any such class licences and exemptions;
- (h) advise the Minister on which telecommunications networks and telecommunications services should be provided pursuant to section 43, and establish and administer the Universality Fund therefor;
- (i) plan, supervise and regulate the use of the spectrum, and the installation and use of radiocommunication equipment, by any person, including ships, aircraft and other vessels, and persons engaged in broadcasting, whether registered in Guyana or another jurisdiction;
- (j) investigate and resolve all complaints of harmful interference made to the Agency or of which it has knowledge;
- (k) establish and monitor the implementation of national telecommunications- and spectrum-related technical standards and ensure compliance therewith;
- (l) regulate the telecommunications numbering system and dialing parity;
- (m) certify and otherwise regulate terminal equipment, radiocommunication equipment, and equipment used in facilities for compliance with –
 - (i) national and international standards; and
 - (ii) environmental health and safety standards related to electromagnetic radiation and emissions;
- (n) collect all fees and any other charges payable to the Agency

under this Act;

- (o) be responsible for matters of international, regional and bilateral telecommunications and spectrum-related matters affecting Guyana, including standard-setting and enforcement and the allocation, use and regulation of the spectrum, numbers and domain names; and participate in international, regional and bilateral telecommunications- and spectrum-related organisations, conferences, meetings and other events;
- (p) with regard to its functions under this Act --
 - (i) prepare draft regulations for the Minister's consideration and promulgation, and implement such regulations once promulgated;
 - (ii) prepare an annual report, in such form and at such times as the Minister shall specify, on its activities during the year;
 - (iii) from time to time as it may deem necessary, prepare and, with the approval of the Minister, issue the Telecommunications Code;
 - (iv) publish such information and advice, as appropriate, for users of telecommunications networks and telecommunications services;
 - (v) monitor activities connected with telecommunications and the spectrum at the national, bilateral, regional and international levels and, for such purpose, collect such information as it deems necessary;
 - (vi) subject to section 56(2), obtain such other information from such persons as it deems necessary; and
 - (vii) have the power to do anything which in the reasonable opinion of the Agency is calculated to facilitate the proper discharge of its functions or is incidental thereto.

**Functions of the
Commission.**
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21. (1) In addition to the functions provided for in the Public Utilities Commission Act with regard to telecommunications undertakings and subject to the provisions of this Act, the Commission shall –

- (a) advise the Minister on plans, positions and policies relating to interconnection, access, the regulation of prices for telecommunications services, the principles regarding fair competition, consumer protection, and such other matters as specified in this Act or as the Minister may

deem appropriate;

- (b) advise the Agency on any matters with regard to the Agency's functions, as the Agency may request;
- (c) be responsible for the economic regulation of operators and service providers, including with respect to fair competition and to pricing for telecommunications services and for interconnection and access;
- (d) monitor, enforce and ensure effective compliance with licences, except for such matters that may be allocated to enforcement by the Minister or the Agency under this Act, the regulations or the relevant licence;
- (e) establish and monitor the implementation of quality of service performance indicators and reporting requirements by operators and service providers with respect thereto;
- (f) investigate and resolve any dispute relating to interconnection or access, and any other dispute between users arising under this Act, in the manner provided for in Part X of the Public Utilities Commission Act or otherwise in this Act or the regulations and in rules made by the Commission;
- (g) regulate relations between and among service providers, operators, consumers, and other users and otherwise monitor and protect the interests of users of telecommunications networks and telecommunications services;
- (h) in the performance of its functions under this Act, investigate and adjudicate complaints brought against operators and service providers with respect to their obligations under this Act and the regulations, including complaints by users regarding failures to obtain redress from operators and service providers in respect of prices, billings, telecommunications services and quality of services provided;
- (i) regulate number portability and equal access;
- (j) with regard to its functions under this Act --
 - (i) prepare draft regulations for the Minister's consideration and promulgation, and implement such regulations once promulgated;

- (ii) prepare an annual report, in such form and at such times as the Minister shall specify, on its activities during the year;
- (iii) carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of any person in order to enable it to determine whether and to what extent such person is engaging in conduct in contravention of this Act;
- (iv) resolve disputes between operators and service providers, and between operators and public utilities, including disputes concerning interconnection and access;
- (v) subject to section 56(2), obtain such information from such persons as it deems necessary;
- (vi) publish such information and advice, as appropriate, for users of telecommunications networks and telecommunications services; and
- (vii) do anything which in the reasonable opinion of the Commission is calculated to facilitate the proper discharge of its functions or is incidental thereto.

(2) The Commission may establish any internal organisation and acquire any expertise that it deems necessary or appropriate in carrying out its telecommunications-related functions under this Act and the Public Utilities Commission Act.

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Ministerial guidelines.

22. Notwithstanding anything in any other law, the Minister may issue such guidelines as he may deem necessary or appropriate to clarify the allocation of the functions of the Agency and the Commission provided for in this Act, and the Agency and the Commission shall observe such guidelines and shall otherwise cooperate with one another to ensure the coordinated regulation of the telecommunications sector as provided in this Act and other applicable law.

PART IV

LICENCES AND FREQUENCY AUTHORISATIONS

Requirement for an individual licence.

23. (1) Except as provided in subsection (10) and sections 24 and 37, no person shall operate a public telecommunications network or provide a public telecommunications service without an individual licence granted by the Minister.

(2) A person who wishes to operate a public telecommunications network or provide a public telecommunications service shall submit an application to the Agency in the manner specified in the regulations.

(3) The Agency shall supply its recommendations with respect to each application for an individual licence to the Minister.

(4) On the submission to the Agency of an application for an individual licence, the Minister shall cause a notice of such application to be published in the *Official Gazette*, and the applicant shall publish a notice of such application in a newspaper of general circulation in Guyana, for the purpose of providing interested persons the opportunity to comment for a period not being less than forty days from the date of the submission of the application to the Agency, and the Minister shall consider any representations or objections which are duly made and not withdrawn.

(5) The Minister shall grant or deny any application for an individual licence based on applicable policies and regulations on a non-discriminatory basis.

(6) Where an application for an individual licence is denied, the Minister shall notify the applicant in writing and shall, upon the applicant's request, give the reasons for the denial in writing.

(7) On the granting of an individual licence, the Minister shall cause to be published in the *Official Gazette* a notice to that effect.

(8) The terms of an individual licence shall be available for public scrutiny at the office of the Agency:

Provided, however, that notwithstanding any other provision of this section, where it appears to the Agency, after consultation with the Minister, that the individual licence contains information, the disclosure of which would be contrary to national security or any other matter provided for in the regulations, the Agency shall withhold that information from public scrutiny.

(9) (a) A person that intends to land, install or operate any submarine or terrestrial cable for the purpose of connecting to a cable, other facility, or telecommunications network outside Guyana shall first obtain an individual licence, or if such person has already been granted an individual licence, shall first obtain an amendment to such individual licence, expressly authorising the landing, installation or operation of any such cable.

(b) A person that holds any authorisation to engage in broadcasting and that intends to operate a public telecommunications network or provide a public telecommunications service, including the operation of a converged network or the provision of bundled services, must first obtain an individual licence for the operation of

such public telecommunications network or provision of such public telecommunications services, in addition to the authorisation to engage in broadcasting or any other licence, approval or permit required under this Act, the regulations or any other written law.

(10) (a) The Minister may by order designate any class or description of operators or service providers, and their related public telecommunications networks, public telecommunications services or value added services, as exempt from the requirement to obtain an individual licence or any other type of licence that would otherwise be required under this Act, and may establish the procedures and terms and conditions applicable to any such exemption, including --

- (i) whether an application for approval of the exemption is required or whether the exemption may be obtained by written registration with the Agency; and
- (ii) any obligation that the operator or service provider granted an exemption be subject to provisions of this Act, the regulations and the Telecommunications Code applicable to a licensee.

(b) In the instances in which an application for an exemption is required, the Minister shall grant or deny any such application based on applicable policies and regulations on a non-discriminatory basis.

(c) Subject *mutatis mutandis* to the proviso to subsection (8), the terms of an exemption shall be available for public scrutiny at the office of the Agency.

Class licences.

24. (1) Where appropriate, the Minister may determine that public telecommunications networks may be operated and public telecommunications services and value-added services may be provided on the basis of a class licence.

(2) Where the Minister determines that a public telecommunications network may be operated, or a public telecommunications service, or value-added service may be provided, on the basis of a class licence, he shall issue an order to that effect, setting forth the type of public telecommunications network that may be so operated and the type of public telecommunications service or value added service that may be so provided and the terms and conditions thereof.

(3) Where the Minister determines to grant a class licence, such licence shall be granted on the same terms and conditions to each applicant in respect to a class of public telecommunications networks, public telecommunications services, or value-added services.

(4) A person who wishes to operate a public telecommunications network or provide a public telecommunications service or a value-added service under a class licence shall submit an application to the Agency in the manner specified in the regulations.

(5) The Agency shall supply its recommendations with respect to each application for a class licence to the Minister.

(6) The Minister shall grant or deny any application for a class licence based on applicable policies and regulations on a non-discriminatory basis.

(7) Where an application for a class licence is denied, the Minister shall notify the applicant in writing and shall, upon the applicant's request, give the reasons for the denial in writing.

(8) The Minister shall cause a notice of each grant of a class licence to operate a public telecommunications network or to provide public telecommunications services or value-added services to be published in the *Official Gazette*.

(9) Subject *mutatis mutandis* to the proviso to section 23(8), each class licence shall be available for public scrutiny at the office of the Agency.

Operation of a private telecommunications network or provision of a private telecommunications service.

25. (1) Any body corporate or group of affiliated bodies corporate that operates a private telecommunications network or provides any private telecommunications service –

- (a) shall not be required to obtain a licence or exemption pursuant to this Act, except where the Minister determines that the circumstances require the licensing thereof;
- (b) shall obtain a frequency authorisation pursuant to section 30 if its telecommunications network includes a radiocommunication network or provides a radiocommunication service or otherwise uses the spectrum or radiocommunication equipment, except in the case of any use of radiocommunication equipment or the spectrum that the Minister determines to be exempt from the requirement of a frequency authorisation pursuant to section 30(11);
- (c) shall not, unless licensed or otherwise authorised by the Minister, sell or otherwise provide its telecommunications network or its telecommunications services to any person outside of such body corporate or group of such bodies corporate, including any person that operates a telecommunications network or that provides a telecommunications service;
- (d) shall obtain a licence pursuant to section 23 or 24, whichever is applicable, if it intends to operate a public

telecommunications network or to provide a public telecommunications service, or if the Minister classifies or reclassifies its telecommunications network or telecommunications services as a public telecommunications network or public telecommunications service in accordance with this Act; and

- (e) shall be subject to the provisions of this Act, except for those provisions that expressly apply only to operators, service providers or licensees.

(2) Notwithstanding any other provision of this Act, the Agency may require that any person operating a type of telecommunications network or providing a type of telecommunications service that is not required to obtain a licence or exemption under section 23 or 24, whichever is applicable, must --

- (a) notify the Agency at least one month before commencing operations; and
- (b) provide the Agency with any information that it requires in order to carry out its functions under this Act.

Obligations with respect to licences.

26. (1) Every licensee shall –

- (a) pay the fees to the Agency and the Commission specified by this Act, the Public Utilities Commission Act, its licence and the regulations;
- (b) not assign the licence, or otherwise transfer it in any manner whatsoever, without the prior written consent of the Minister;
- (c) if required by the Minister, be a company incorporated under the Companies Act 1991 or other body corporate of Guyanese nationality and maintain its books and records in Guyana, or register as an external company under the Companies Act;
- (d) upon written request made by the Minister and subject to any written law, cooperate with the Minister in matters of national security and public order; and
- (e) observe the terms and conditions of its licence, this Act, the regulations, the Telecommunications Code, and any other applicable written law.

(2) A person owning or holding a significant interest in a licensee shall not sell, transfer, charge or otherwise dispose of such interest, or any part thereof, without the prior written consent of the Minister.

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- Minister, –
- (3) A licensee shall not, without the prior written consent of the
- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2);
 - (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in –
 - (i) a person acquiring a significant interest in such licensee, or
 - (ii) a person who already owns or holds a significant interest in the licensee increasing or decreasing the size of his interest.

(4) The consent of the Minister required under subsections (1)(b), (2) and (3) shall not be unreasonably withheld.

(5) Notwithstanding anything in this section, where a sale, transfer, charge or other disposition referred to in subsection (2) is a result of an internal reorganisation of a body corporate that does not constitute ultimate transfer of control of a licensee –

- (a) the prior written consent of the Minister shall not be required; and
- (b) such licensee shall, as soon as reasonably practicable, notify the Minister in writing of the nature and extent of such sale, transfer, charge or other disposition.

(6) The Minister may, in respect of a licensee whose shares are publicly-traded on a *bona fide* stock exchange, waive the obligation to obtain his consent under subsections (2) or (3), and any such waiver shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Minister of any sale, transfer, charge or other disposition referred to in subsections (2) and (3).

Conditions of licences.

27. Every licence shall contain conditions regarding –

- (a) the term and expiration of the licence and the time required for an application for renewal; and
- (b) such other matters as the Minister may, by regulation or on the advice of the Agency, specify for such licence.

Obligations of operators and

28. (1) Every operator and service provider shall –

service providers.

- (a) comply with the requirements of this Act, the regulations, the Telecommunications Code, its licence and all other applicable law;
- (b) submit to the Agency and the Commission information with respect to the development of its telecommunications network and telecommunications services, as may be reasonably required by the Agency and the Commission in the performance of their functions;
- (c) meet technical standards and quality of service performance indicators in accordance with its licence, this Act, the Public Utilities Commission Act, the regulations, and the Telecommunications Code;
- (d) provide and contribute to universal access and universal service in accordance with policies established by the Minister, and determinations and requirements of the Agency, under section 43 and the regulations, including obligations to provide such access and services to low income or other designated areas;
- (e) provide users with interconnection and access to and the opportunity to use its telecommunications network, telecommunications services and facilities on a fair and reasonable basis and otherwise in accordance with this Act and the regulations;
- (f) file with the Commission in accordance with the regulations or, where not provided for in the regulations, as may be required by the Commission, proposed agreements with users for the provision of public telecommunications services and the use of public telecommunications networks and facilities, including interconnection and access;
- (g) file, at such times as the regulations or, if not provided for in the regulations, the Agency may require, a report on its adherence to the required technical standards as measured against the technical standards set by the Agency and otherwise publish such reports as the Agency may require;
- (h) file, at such times as the regulations or, if not provided for in the regulations, the Commission may require, a report on its adherence to the required quality of service as measured against the quality of service performance indicators set by the regulations or the Commission, and otherwise publish such

reports as the regulations or the Commission may require;

- (i) develop, implement and publish procedures, consistent with the regulations, for responding to user complaints and disputes related to quality of service, billings, services and prices, and respond promptly and adequately to such complaints;
- (j) be subject to the jurisdiction of the Commission with regard to the resolution of complaints from and disputes with other operators and service providers and any other users;
- (k) as applicable to the telecommunications network operated or telecommunications services provided, be subject to any applicable written law and any commitments or agreements on telecommunications made by Guyana from time to time at the World Trade Organisation and the International Telecommunication Union and in any other international, regional or bilateral agreement or organisation;
- (l) comply with all applicable written law, including orders and other decisions of the Commission, regarding consumer protection, except that the operator or service provider may –
 - (i) in respect of a billing dispute, collect from any consumer amounts that are not in dispute;
 - (ii) in respect of terminal equipment attached to the public telecommunications network of an operator, disconnect telecommunications services only with respect to terminal equipment that is unsafe to the consumer or that poses a material risk of physical harm to such public telecommunications network; and
 - (iii) enforce the terms of its consumer agreements, provided that such terms do not contravene the regulations or prevent a consumer from submitting disputes to the Commission pursuant to this Act, the Public Utilities Commission Act, or the regulations;
- (m) refrain from impairing or terminating the interconnection, access or telecommunications services provided to another operator or service provider, or the access to facilities granted to another operator or service provider or a public utility, during a dispute, without the prior written approval of the Commission, except that the operator or service provider may, in respect of a billing dispute, collect from such other operator or service provider, or from such public utility, amounts that are not in dispute;

- (n) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing or other practices that impede competition or that are unfair and, in particular, shall refrain from using revenues or resources to cross-subsidise any other telecommunications network or telecommunications service in a manner that is anti-competitive;
- (o) not discriminate unduly among similarly-situated users, and transmit all telecommunications without discrimination, subject to section 88 and other applicable written law;
- (p) not impose unreasonable, discriminatory or anti-competitive conditions or limitations on the resale of its telecommunications services;
- (q) account for costs in accordance with this Act, the regulations, its licence, and the requirements of the Commission;
- (r) develop and maintain current maps, diagrams, drawings and schematics of its telecommunications networks and facilities, and every significant component thereof, and --
 - (i) at its own cost, furnish the Agency with a full set of such maps, diagrams, drawings and schematics and any updates thereto, upon the written request of the Agency; and
 - (ii) make maps of its telecommunications networks available to any person with a bona fide interest, including other operators or service providers and public utilities, upon written request and at a charge that reflects the actual cost of reproducing such maps; and
- (s) in the case of a dominant or jointly dominant operator or service provider, not cease operating any public telecommunications network or providing any public telecommunications service authorised in its licence, or deprogramme or dispose of any facility or other asset where such deprogramming or disposal would affect access or operation of such public telecommunications network or provision of such public telecommunications service, without the prior written consent of the Minister:

Provided that this subsection (s) shall not apply to the disposal of assets in the ordinary course of the operator's or service provider's maintenance,

replacement or upgrading of its public telecommunications network or public telecommunications services.

(2) The Commission shall be empowered to enforce the compliance of operators and service providers with the quality of service standards applicable to the telecommunications networks of such operators and the telecommunications services of such service providers, including measures by which an operator or a service provider shall compensate users adversely affected by a failure to operate a telecommunications network or provide a telecommunications service in accordance with such standards.

(3) An operator shall make available on a timely basis, to other operators and service providers, subject to conclusion of an appropriate confidentiality agreement between the operator and the other operator or service provider, such technical information as the Commission may determine regarding the telecommunications network of such operator, including planned deployment of facilities and such other information relevant to the telecommunications network or telecommunications services of such other operator or service provider.

Obligations of all persons that operate a telecommunications network or provide a telecommunications service.

29. (1) Every person that operates a telecommunications network or provides a telecommunications service shall maintain the confidentiality of, and refrain from using or disclosing, any confidential, personal or proprietary information of any user, originating from –

- (a) any such user;
- (b) any usage of the telecommunications network or telecommunications service by such user or any other information received or obtained regarding such user in connection with the operation of the telecommunications network or provision of the telecommunications service,

for any purpose other than to –

- (i) operate such telecommunications network or provide such telecommunications service;
- (ii) bill and collect charges, and seek legal redress against the relevant user subject to an appropriate protective order;
- (iii) protect the rights or property of such person operating the telecommunications network or providing the telecommunications service;
- (iv) protect users from the fraudulent use of the telecommunications network or telecommunications service;

(v) respond to a subpoena or other lawful process, subject to an appropriate protective order; or

(vi) conduct such other activities as may be authorised by the Minister in the regulations, by order, or in the terms of a licence, or by the Commission by order,

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except as required or permitted under the Interception of Communications Act 2008.

(2) Nothing in subsection (1) shall prohibit the Minister or the Commission from authorising a person that operates a telecommunications network or provides a telecommunications service to disclose lists of its users, including directory access databases, for the publishing of directories or for such other purposes as the Minister or the Commission may specify.

Requirement for a frequency authorisation.

30. (1) Except in accordance with an order issued under subsection (11), no person shall use the spectrum, or install or operate radiocommunication equipment, without a frequency authorisation granted by the Minister.

(2) A person who wishes to use the spectrum, and install and operate radiocommunication equipment for such purposes, shall submit an application for a frequency authorisation to the Agency in the manner specified in the regulations.

(3) The Agency shall supply its recommendations with respect to each application for a frequency authorisation to the Minister.

(4) On the submission to the Agency of an application for a frequency authorisation, the Minister shall cause such application to be published in the *Official Gazette*, and the applicant shall publish a notice of such application in a newspaper of general circulation in Guyana, for the purpose of providing interested persons the opportunity to comment for a period not being less than forty days from the date of the submission of the application to the Agency, and the Minister shall consider any representations or objections which are duly made and not withdrawn.

(5) Subject to the other subsections of this section, the Minister shall grant or deny any application for a frequency authorisation based on applicable policies and regulations on a non-discriminatory basis.

(6) Where an application for a frequency authorisation is denied, the Minister shall notify the applicant in writing and shall, upon the applicant's request, give the reasons for the denial in writing.

(7) On the granting of a frequency authorisation, the Minister shall cause to be published in the *Official Gazette* a notice to that effect.

(8) The terms of a frequency authorisation shall be available for public scrutiny at the office of the Agency:

Provided, however, that notwithstanding any other provision of this section, where it appears to the Agency, after consultation with the Minister, that the frequency authorisation contains information, the disclosure of which would be contrary to national security or any other matter provided for in the regulations, the Agency shall withhold that information from public scrutiny.

(9) A frequency authorisation shall be consistent with the spectrum plan established by the Agency pursuant to section 44 and the regulations and shall confer on the authorisation holder the right to use a specific frequency band or bands and install and operate specific types of radiocommunication equipment for the use of such frequency band or bands, subject to such conditions as may be set out therein and in the regulations.

(10) (a) A person that intends to install or operate any radiocommunication equipment within Guyana for the purpose of transmitting any telecommunication to any point outside Guyana shall first obtain a frequency authorisation, or if such person has already been granted a frequency authorisation, shall first obtain an amendment to such frequency authorisation, expressly authorising the installation and operation of any such radiocommunication equipment and the use of the spectrum in connection therewith.

(b) A person that intends to reconfigure or otherwise alter the technical parameters of any radiocommunication equipment authorised for installation and operation under a frequency authorisation, or add any type of radiocommunication equipment that is not already authorised in its frequency authorisation, shall notify the Agency of its intention in writing, and shall be required to be granted an amendment of its frequency authorisation by, or other written approval of, the Minister, prior to effecting any such reconfiguration or other alteration or addition, as the case may be.

(11) Notwithstanding any other provision of this Act, the Minister may, by order, designate certain radiocommunication equipment, and the portions of the spectrum used when such equipment is installed or operated, as available for use by the general public or any other person without the need for obtaining a frequency authorisation, subject to any terms and conditions set forth in the order, the regulations, or the Telecommunications Code, including any obligation that any such person be subject to provisions of this Act, the regulations or the Telecommunications Code.

(12) The Minister may make such provisions in regulations as he may deem appropriate requiring any person –

(a) who intends to sell, or otherwise supply or transfer to any other person, or to programme or otherwise modify, any radiocommunication equipment, to obtain a dealer's permit prior to carrying out any such sale, other supply or transfer, or programming or other modification; and

- (b) who is involved in the use of, or any other activity regarding, the spectrum or radiocommunication equipment, in a manner other than that covered by a frequency authorisation or, if required, a dealer's permit, to obtain a specified certification or permit prior to engaging in such use or other activity.

Obligations with respect to frequency authorisations.

31. (1) Every authorisation holder shall –

- (a) pay the fees to the Agency and the Commission specified by this Act, the Public Utilities Commission Act, its frequency authorisation, and the regulations;
- (b) strictly adhere to the frequency band and radiocommunication equipment authorised in its frequency authorisation;
- (c) if required by the Minister, be a company incorporated under the Companies Act 1991 or other body corporate of Guyanese nationality and maintain its books and records in Guyana, or register as an external company under the Companies Act;
- (d) not assign its frequency authorisation, or otherwise transfer it in any manner whatsoever, without the prior written consent of the Minister;
- (e) upon request made by the Minister and subject to any written law, cooperate with the Minister in matters of national security and public order;
- (f) observe the conditions of its frequency authorisation, this Act, the regulations, the Telecommunications Code and any other applicable written law; and
- (g) as applicable to the use of the spectrum or radiocommunication equipment, be subject to any commitments on telecommunications and spectrum-related matter made by Guyana at the World Trade Organisation and the International Telecommunication Union and in any other international, regional or bilateral agreement or organisation.

(2) A person owning or holding a significant interest in an authorisation holder shall not sell, transfer, charge or otherwise dispose of such interest, or any part thereof, without the prior written consent of the Minister.

(3) An authorisation holder shall not, without the prior written consent of the Minister, –

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- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2);
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in –
 - (i) a person acquiring a significant interest in such holder, or
 - (ii) a person who already owns or holds a significant interest in such holder, increasing or decreasing the size of his interest.

(4) The consent of the Minister required under subsections (1)(d), (2) and (3) shall not be unreasonably withheld.

(5) Notwithstanding anything in this section, where a sale, transfer, charge or other disposition referred to in subsection (2) is a result of an internal reorganisation of a body corporate that does not constitute ultimate transfer of control of an authorisation holder –

- (a) the prior written consent of the Minister shall not be required; and
- (b) such holder shall, as soon as reasonably practicable, notify the Minister of the nature and extent of such sale, transfer, charge or other disposition.

(6) The Minister may, in respect of an authorisation holder whose shares are publicly traded on a *bona fide* stock exchange, waive the obligation to obtain his consent under subsection (2) or (3), and any such waiver shall be subject to a condition that the authorisation holder shall, as soon as reasonably practicable, notify the Minister of any sale, transfer, charge or other disposition referred to in subsection (2) and (3).

**Conditions of
frequency
authorisations.**

32. Every frequency authorisation shall contain conditions regarding –

- (a) the term and expiration of the frequency authorisation and the time required for an application for renewal;
- (b) the use of the frequency band and radiocommunication equipment so authorised;
- (c) the designation of emissions, power and other technical requirements for the authorised radiocommunication equipment, radiocommunications network and radiocommunication services; and
- (d) such other matters as the Minister may, by regulation or on the

advice of the Agency, specify for such frequency authorisation.

Authorisation to operate in territorial waters or airspace.

33. (1) The provisions of this Act, the regulations and the Telecommunications Code with respect to frequency authorisations, the spectrum and radiocommunication equipment shall apply to the owners, operators, masters, captains and pilots of every ship, aircraft and other vessel that is registered in Guyana and uses the spectrum or radiocommunication equipment for telecommunications in any manner.

(2) Notwithstanding section 30(1), a ship, aircraft or other vessel not registered in Guyana shall not be required to have a frequency authorisation issued under this Act, and a person operating radiocommunication equipment onboard any such vessel shall not be required to have any authorisation provided for under section 30(12)(b), for any use of the spectrum or operation of radiocommunication equipment made while in the territorial waters or airspace of Guyana, provided and to the extent that the spectrum and radiocommunication equipment are used under a valid frequency authorisation or other relevant authorisation issued by a foreign governmental authority in accordance with international agreements relating to radiocommunications in respect of ships, aircraft and other vessels:

Provided, however, that while in the territory of Guyana, every ship, aircraft and other vessel not registered in Guyana, and every person operating radiocommunication equipment onboard any such vessel, shall be subject to the jurisdiction of the Agency for purposes of the Minister's and the Agency's monitoring and enforcement powers under this Act other than those set forth in sections 30(1) and (12), including matters regarding harmful interference and applicable provisions of the ITU Treaties.

Suspension and termination of licences and frequency authorisations.

34. (1) Subject to this section, the Minister may, after consultation with the Agency, suspend or terminate a licence or a frequency authorisation, in whole or in part, where –

- (a) the licensee or the authorisation holder has failed to comply materially with any of the provisions of this Act, the regulations, the terms and conditions of its licence or frequency authorisation, the Telecommunications Code, or any other applicable written law;
- (b) the licensee or the authorisation holder has failed to comply materially with any lawful direction of the Minister, the Agency or the Commission;
- (c) the licensee or the authorisation holder is in default of

payment of any fee or other monies that are charged or imposed by the Agency, the Commission, or any other Government agency pursuant to this Act, the Public Utilities Commission Act, the regulations, its licence or frequency authorisation, the Telecommunications Code or any other applicable written law;

- (d) the licensee or the authorisation holder is dissolved; goes into liquidation, receivership, or trusteeship, or enters or is ordered into any scheme or arrangement for winding up or dissolution; declares or is declared bankrupt; convenes any meeting with its creditors generally with a view to the general re-adjustment or rescheduling of its indebtedness; or makes a general assignment for the benefit of its creditors;
- (e) the licensee or authorisation holder ceases operating any public telecommunications network, providing any public telecommunications service, or using any frequency band authorised by its licence or frequency authorisation, or otherwise ceases to carry on its business in whole or significant part;
- (f) the Minister determines, in connection with any allocation, reallocation, assignment or reassignment of frequency bands, that a frequency authorisation should be terminated under section 45(3);
- (g) the suspension or termination is necessary for reasons of national security or public order;
- (h) the licensee or authorisation holder no longer meets any criteria for the original grant of a licence or frequency authorisation set forth in the regulations;
- (i) any material declaration or representation made by the licensee or authorisation holder on the original application form or in a renewal request for such licence or frequency authorisation or during the original or renewal application process was false or misleading; or
- (j) the licensee or authorisation holder agrees in writing with the Minister that the licence or frequency authorisation shall be terminated or suspended.

(2) The Minister shall, before exercising the power of suspension or termination conferred by this section, give the licensee or the authorisation holder adequate advance notice in writing, which, absent exigent circumstances, shall not be less than ninety days, of his intention to suspend or terminate the licence or frequency

authorisation, specifying the grounds on which suspension or termination is proposed, and shall give the licensee or the authorisation holder the opportunity –

- (a) to present its views, including submitting to the Agency within such time as the notice shall specify a written statement of objections to the suspension or termination; and
- (b) to remedy the breach or other grounds for suspension or termination set forth in the notice,

which the Minister shall take into account before reaching a decision on suspension or termination.

(3) The suspension or termination of a licence or a frequency authorisation shall take effect on the date specified by the Minister in the notice required under subsection (2).

(4) During the period in which the Minister is considering the exercise of his power to suspend or terminate a licence or a frequency authorisation, the licensee or the authorisation holder shall continue to operate its telecommunications network and provide telecommunications services until such time as the Minister makes a determination and, in the event that the term of the licence or the frequency authorisation comes to an end before such determination is made, an interim renewal of the licence or the frequency authorisation on the same terms shall be granted, without prejudice to any subsequent decision by the Minister to suspend or terminate the licence or frequency authorisation.

(5) Nothing in this section shall preclude the Minister from immediately suspending or terminating a licence or a frequency authorisation where there is, or is likely to be, a risk to national security or public order, and where the Minister suspends or terminates a licence or frequency authorisation pursuant to this subsection, he shall promptly provide written notice thereof to the licensee or authorisation holder whose licence or frequency authorisation has been so suspended or terminated and publish notice thereof in the *Official Gazette*.

**Amendment of
licences and
frequency
authorisations.**

35. (1) A licence or a frequency authorisation may be amended --

- (a) by the written agreement of the licensee or the authorisation holder; or
- (b) by the Minister in his discretion and upon the advice of the Agency where –
 - (i) force majeure, national security or public order considerations require amendment;

- (ii) in connection with the allocation, reallocation, assignment or reassignment of a frequency band, the Minister determines that the frequency authorisation should be amended;
- (iii) this Act or the regulations require; or
- (iv) the Minister otherwise deems amendment necessary to achieve the objectives of this Act.

(2) Before amending a licence or a frequency authorisation, the Minister shall publish the proposed amendment in the *Official Gazette* for representations or objections by interested persons, and where the Minister determines in the exercise of his discretion that a licence or a frequency authorisation should be amended, he shall –

- (a) give the licensee or authorisation holder adequate advance notice in writing, which, absent exigent circumstances, shall not be less than ninety days, of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect;
- (b) give the licensee or the authorisation holder the opportunity to present its views and to submit to the Agency, within such time as the notice may specify, a written statement of objections to the amendment of the licence or the frequency authorisation, which may include proposed alternatives to the amendment; and
- (c) take any representations, objections, views, statements and alternatives presented by the licensee or authorisation holder and by interested persons into account before reaching a decision on the amendment.

(3) Nothing in this section shall preclude the Minister from causing the immediate amendment of a licence or a frequency authorisation where there is, or is likely to be, a risk to national security or public order, and where the Minister amends a licence or frequency authorisation pursuant to this subsection, he shall promptly provide written notice thereof to the licensee or authorisation holder whose licence or frequency authorisation has been so amended and publish notice thereof in the *Official Gazette*.

(4) A licensee or authorisation holder may request in writing that the Minister consent to an amendment of its licence or its frequency authorisation.

Renewal of licences and frequency authorisations.

36. (1) Upon the application of any licensee or authorisation holder submitted to the Agency within the time prior to expiration set forth in its licence or frequency authorisation, the Minister shall renew a licence or frequency authorisation, unless he determines that –

- (a) the licensee or the authorisation holder has failed to comply materially with any of the provisions of this Act, the regulations, the terms and conditions of its licence or frequency authorisation, the Telecommunications Code, or any other applicable written law;
- (b) the licensee or the authorisation holder has failed to comply materially with any lawful direction of the Minister, the Agency or the Commission;
- (c) the licensee or the authorisation holder is in default of payment of any fee or other monies that are charged or imposed by the Agency, the Commission, or any other Government agency pursuant to this Act, the Public Utilities Commission Act, the regulations, its licence or frequency authorisation, the Telecommunications Code or any other applicable written law;
- (d) the licensee or the authorisation holder has been, or is likely to be, dissolved; has gone, or is likely to go, into liquidation, receivership, or trusteeship, or has entered or has been ordered into, or is likely to enter or to be ordered into, any scheme or arrangement for winding up or dissolution; has declared or has been declared, or is likely to declare or be declared, bankrupt; has convened, or is likely to convene, any meeting with its creditors generally with a view to the general re-adjustment or rescheduling of its indebtedness; or has made, or is likely to make, a general assignment for the benefit of its creditors;
- (e) the licensee or authorisation holder has ceased operating any public telecommunications network, providing any public telecommunications service, or using any frequency band authorised by its licence or frequency authorisation, or otherwise has ceased to carry on its business in whole or significant part;
- (f) non-renewal is necessary for reasons of national security or public order;
- (g) the licensee or frequency authorisation holder no longer meets any criteria for the original grant of a licence or a frequency authorisation set forth in the regulations; or
- (h) any material declaration or representation made by the licensee or authorisation holder on the original application form or in the renewal request for such licence or frequency authorisation or during the original or renewal application

process was false or misleading.

(2) The Minister may, on his own motion, determine not to renew a licence or a frequency authorisation on any of the grounds set forth in subsection (1), and in such instances, he shall give the licensee or the authorisation holder written notice thereof within a reasonable time before the expiration of such licence or frequency authorisation, specifying the grounds on which he proposes not to renew such licence or frequency authorisation, and shall publish a notice of the action taken on such determination in the *Official Gazette*.

(3) Subject to a licensee's or authorisation holder's submission of a timely application under subsection (1) in the case of a renewal request initiated by such licensee or authorisation holder, sections 34(2) through (5), governing the procedure for the suspension or termination of a licence or frequency authorisation, shall apply *mutatis mutandis* to proceedings for the non-renewal of a licence or frequency authorisation under subsection (1) or (2).

Special licences and related special frequency authorisations.

37. (1) The Minister may grant a special licence, and a related special frequency authorisation, where he determines that --

- (a) an emergency or other exigent circumstances exist requiring the provision of the telecommunications services or operation of the telecommunications networks to be authorised in such special licence and related frequency authorisation; or
- (b) it is warranted for demonstration, testing or other short-term purposes.

(2) A person who wishes to obtain a special licence, and if applicable a related special frequency authorisation, shall submit an application to the Minister in the manner specified in the regulations:

Provided that the Minister may grant a special licence and a related special frequency authorisation without the requirement of an application therefor where necessary to provide telecommunications services or to operate telecommunications networks in an emergency or other exigent circumstances.

(3) Special licences shall be subject to subsections (6) through (8) of section 23, and a related special frequency authorisations shall be subject to subsections (6) through (8) of section 30, and such other provisions of this Act, the regulations, the Telecommunications Code, other applicable law and terms and conditions as the Minister shall specify therein.

(4) A special licence, and if applicable a related special frequency authorisation, shall be valid for a term not to exceed ten days and may be renewed by the

Minister for good cause.

(5) The Minister may, by regulation or order, provide for additional procedures, terms and conditions with respect to special licences and related special frequency authorisations.

PART V

PRICES AND DOMINANCE

Prices.

38. (1) Prices for telecommunications services on a wholesale and retail basis, except those regulated by the Commission in accordance with this section, Part VI and the regulations, shall be determined by operators and service providers in accordance with the principles of supply and demand in the market.

(2) Operators and service providers shall provide prices that are fair and reasonable and shall not discriminate unduly among similarly-situated persons, including the operator or service provider itself and any body corporate with which it is affiliated.

(3) The Commission may establish price regulation regimes, in the manner set forth in the regulations, in any case where –

- (a) there is only one operator operating a public telecommunications network or service provider providing a public telecommunications service;
- (b) an operator or a service provider is dominant as to a relevant public telecommunications network or public telecommunications service; or
- (c) the Commission detects anti-competitive cross-subsidisation or any other anti-competitive pricing or unfair competition,

for such periods as required by the regulations or, where not provided for in the regulations, by the Commission.

- (4) (a) In addition to regulating prices as provided in subsection (3), the Commission may establish price regulation regimes in any other circumstances provided for in the regulations.
 - (b) An operator or service provider subject to a price regulation regime may apply to the Commission for the review of such regime in the manner prescribed in the regulations.
- (5) Prior to establishing prices from time to time pursuant to subsection

(3) or (4)(a), the Commission shall --

- (a) give the operator or service provider written notice of its intention to establish a price regulation regime and the grounds and proposed terms thereof;
- (b) afford the operator or service provider an opportunity to present its views in writing to the Commission with regard to the proposed price regulation regime, within a period not less than twenty-eight days from the date of such notice;
- (c) publish a notice of the proposed price regulations regimes in a newspaper of general circulation in Guyana, for the purpose of providing interested persons the opportunity to comment for a period not less than twenty-eight days from the date of such publication, and shall consider any representations or objections which are duly made and not withdrawn;
- (d) hold a public hearing, at which the operator or service provider and any interest person may present their views on the proposed price regulation regime;
- (e) take any views submitted in writing or at the public hearing into account in determining the price regulation regime imposed; and
- (f) implement such other procedures as may be set forth in the regulations.

(6) Operators and service providers shall publish the prices, terms and conditions for their public telecommunications networks, public telecommunications services, and facilities, as the case may be, at such times and in such manner as the regulations, or where not provided for in the regulations the Commission, shall specify, and subject to this Act, the regulations and the conditions of any licence, such prices, terms and conditions shall thereafter be the lawful prices, terms and conditions for the use of such networks and facilities and the provision of such services.

(7) The Commission may, where it deems appropriate, require that an operator or a service provider effect accounting separation between different portions of its telecommunications networks, facilities and telecommunications services.

(8) The pricing provisions of this Part and Part VI shall apply to wholesale prices and to retail prices for telecommunications networks, telecommunications services, facilities, interconnection and access.

Costs.

39. Subject to the regulations, the Commission may develop, prescribe and apply methodologies, which may include benchmarking and network modeling --

- (a) that operators and service providers required to provide specified facilities, telecommunications networks and telecommunications services on a cost-oriented basis shall apply to determine and demonstrate that they are complying with such requirements;
- (b) to determine whether there is a difference between an operator's or service provider's total cost of providing facilities, telecommunications networks or telecommunications services and the revenues derived by such operator or service provider from providing such facilities, telecommunications networks or telecommunications services for such others' use; and
- (c) if so, to determine whether and to what extent to levy a charge on other operators or service providers to compensate such operator or service provider for such deficit.

Dominance.

40. (1) For purposes of this Act, the Commission may determine that an operator, service provider or any other telecommunications undertaking is dominant with respect to a telecommunications network, a telecommunications service or a type of facility, or any market for them, where, individually or jointly with others, it occupies such a position of economic strength as will enable it to operate with regard to such network, service, facility or market without effective constraints from its competitors, potential competitors, consumers or other users, and for any such determination, the Commission shall take into account the following factors:

- (a) the relevant market;
- (b) technology and market trends;
- (c) the market share of the telecommunications undertaking;
- (d) the power of the telecommunications undertaking to introduce and sustain a material price increase independently of competitors, potential competitors, consumers or other users;
- (e) the degree of differentiation among telecommunications networks, telecommunications services or facilities in the market;
- (f) the extent to which the position of the telecommunications undertaking in markets inside or outside of Guyana affords it the economic strength to operate in the market without effective constraints from competitors, potential competitors, consumers or other users; and

(g) any other factors provided for in the regulations or deemed relevant by the Commission.

(2) Where the Minister deems it appropriate on the basis of the factors provided in subsection (1), he may, in the terms of a licence granted to an operator or service provider, designate such operator or service provider as dominant as to specific telecommunications networks, telecommunications services, types of facilities, or markets, and any designation so made shall subject such operator or service provider to the provisions of this Act and the regulations governing dominance, subject to subsection (3):

Provided that no omission of a designation of dominance in the terms of a licence shall be interpreted as a determination that the relevant operator or service provider is not dominant as to any telecommunications network, telecommunications service, type of facility, or market, nor shall it prejudice the authority of the Commission to designate such operator or service provider as dominant as to any such network, service, type of facility, or market.

(3) Where a telecommunications undertaking deemed to be dominant by the Commission pursuant to subsection (1) or by the Minister pursuant to subsection (2) considers that it has lost its dominance with respect to a telecommunications network, a telecommunications service, a type of facility, or a market, it may apply to the Commission in writing to be classified as non-dominant as to such network, service, facility or market, and should the Commission so re-classify it, the Minister shall amend any applicable terms in the licence of a relevant operator or service provider to reflect such re-classification without the need for the procedures set forth in section 35(2).

(4) The provisions of section 38(5) shall *mutatis mutandis* apply to the procedure that shall be followed by the Commission in determining that a telecommunications undertaking is dominant, or has lost its dominance, with respect to a telecommunications network, a telecommunications service, a type of facility, or a market.

(5) (a) The Minister may provide in the regulations for the determination by the Commission of instances in which an operator, service provider or other telecommunications undertaking is jointly dominant with another operator, service provider or telecommunications undertaking with respect to a telecommunications network, a telecommunications service or a type of facility, or any market for them, and in such instances the provisions of this section shall apply *mutatis mutandis* to any such jointly dominant operator, service provider or telecommunications undertaking.

- (b) Two or more operators, service providers or other telecommunications undertakings shall be considered jointly dominant with respect to a telecommunications network, a telecommunications service or a type of facility, or any market for them, where such operators, service providers or other telecommunications undertakings jointly occupy such a position of economic strength as will enable each of them to operate in such market without effective constraints from their competitors, potential competitors, consumer or other users.

PART VI

INTERCONNECTION AND ACCESS

General principles relevant to interconnection and access.

41. (1) In addition to the obligations of section 28 and any other obligation of an operator or service provider provided for in this Act, every operator and service provider shall –

- (a) not, with respect to its telecommunications networks or telecommunications services, refuse, obstruct or in any way impede, other than for justified technical grounds stated in writing and approved by the Commission, another operator or service provider from making a direct interconnection, or an indirect interconnection through the public telecommunications network or public telecommunications services of other operators and service providers, and accessing its telecommunications networks and facilities;
- (b) comply with the regulations and the standards established by the Commission with regard to interconnection, access, and the pricing therefor, including for international telecommunications;
- (c) provide the elements of interconnection and access to other operators and service providers, in a manner that is at least equal in both quality and prices to that provided by the operator or service provider to its own business units or to any body corporate with which it is affiliated or to any other party to which the operator or service provider provides interconnection or access and without regard to the types of users to be served, or the types of telecommunications services to be provided, by such other operator or service provider;
- (d) promptly negotiate, upon the request of another operator or service provider, and subject to subsections (1)(g) and (h),

endeavour to conclude an agreement with regard to the prices and the technical and other terms and conditions for the elements of interconnection and access;

- (e) submit to the Commission, for its approval, a copy of any agreement concluded pursuant to subsection (1)(d) within the time provided for in the regulations;
- (f) offer, on a non-discriminatory basis, the terms and conditions of an agreement concluded pursuant to subsection (1)(d) or required by a decision rendered pursuant to subsection (1)(g) to any other operator or service provider seeking interconnection or access;
- (g) submit to the Commission for prompt resolution, in accordance with such procedures as may be provided for in the regulations and, to the extent not provided for in the regulations, that the Commission may otherwise adopt, any disputes that may arise between itself and any other operator or service provider relating to any aspect of interconnection or access, including its or any other operator's or service provider's denial of interconnection or access or the failure to conclude promptly an agreement pursuant to subsection (1)(d), or disputes as to price or any technical, commercial or other term and condition for any element of interconnection or access;
- (h) comply with any decision rendered by the Commission pursuant to subsection (1)(g) and the regulations; and
- (i) as may be required by the regulations or, to the extent not provided for in the regulations, by the Commission, provide equal access to consumers using the public telecommunications services of other service providers.

(2) In addition to the obligations of section 28, this section and any other obligation of operators and service providers provided for in this Act, every operator and service provider shall, as may be specified by the Commission --

- (a) establish standard points of interconnection and access at any technically feasible point and provide for the transmission and routing of the telecommunications services of other service providers at any such point; and
- (b) provide, upon request, points of interconnection and access in addition to those standard points offered generally to other operators or service providers, subject to prices that reflect the operator's or service provider's total economic cost of

constructing additional facilities necessary to satisfy such requests.

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(3) Reference Interconnection Offers concluded pursuant to subsections (1) and (4)(b) and agreements for interconnection and access concluded pursuant to subsection (1), with the exception of those parts of any agreement that the Commission determines, pursuant to the proviso to section 83(5) of the Public Utilities Commission Act, should not be published or otherwise be made publicly available, –

- (a) shall be made available for public scrutiny at the offices, and on the website, of the Commission; and
- (b) may be reproduced by the Commission at the request of any member of the public on payment of the specified fee.

(4) In addition to the other obligations provided for in this section, every operator and every service provider that is dominant shall –

- (a) disaggregate its telecommunications networks and facilities, and unbundle its telecommunications services, and on a cost-oriented basis such as the regulations or the Commission may specify, establish prices for its individual elements and offer the elements at the established prices to other operators and service providers;
- (b) prepare, and obtain the Commission’s approval of, Reference Interconnection Offers and publish, in such manner as the regulations or the Commission may specify, the prices, technical, commercial and other terms and conditions thereof;
- (c) permit other operators and service providers to have equal access to telephone numbers, operator services, directory assistance and directory listings in a seamless manner and without unreasonable delay, in accordance with requirements specified in the regulations or, to the extent not provided for in the regulations, by the Commission;
- (d) provide number portability in accordance with any requirements specified in the regulations or, to the extent not provided for in the regulations, by the Commission; and
- (e) provide dialing parity to other operators and service providers in accordance with any requirements specified in the regulations or, to the extent not provided for in the regulations, by the Agency.

(5) The Commission shall approve and otherwise regulate wholesale and retail prices for interconnection and access set forth in Reference Interconnection

Offers in the manner provided for in section 39.

(6) Where an operator or service provider fails to comply with its obligations under this section 41 or an operator or a public utility fails to comply with its obligations under section 42, the Commission may order compliance therewith.

Joint use of facilities and utility installations.

42. (1) Where, in connection with the installation, operation or maintenance of its telecommunications networks, an operator requests access to any tracks, conduits, poles, wires, works or other utility installation of a public utility, or a public utility requests the access to any facility of an operator, such request shall be governed by this section and the regulations.

(2) An operator may deny a public utility access to a facility, and a public utility may deny an operator access to a utility installation, only where it demonstrates to the satisfaction of the Commission that there is insufficient capacity in such facility or utility installation, taking into account the reasonably anticipated requirements of such operator or public utility itself, as the case may be, or for reasons of safety, security, reliability of service or difficulty of a technical or engineering nature that it would be unreasonable to require the operator or public utility to overcome.

(3) The provisions of section 41(1) shall *mutatis mutandis* apply to an operator with regard to requests of a public utility to access the facilities of such operator, and to a public utility with regard to requests of an operator to access the utility installations of such public utility.

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(4) Notwithstanding anything in the Public Utilities (Exemption of the Linden Electricity Services Inc. from the Public Utilities Commission Act 1999) Order 2006, this section and any related regulations shall apply to Linden Electricity Services Inc. and any other public supplier of electricity in Region 10.

PART VII

UNIVERSAL ACCESS AND UNIVERSAL SERVICES

Principles governing universal access and universal services.

43. (1) The Minister, in consultation with the Agency, shall determine the public telecommunications networks and public telecommunications services in respect of which the requirements of universal access and universal services shall apply, taking into account --

- (a) the needs of the public;
- (b) the affordability of such public telecommunications networks and public telecommunications services;
- (c) advances in technologies;

- (d) the instances in which public telecommunications networks and public telecommunications services should be provided on the basis of shared access facilities;
- (e) where appropriate or necessary, the provision of universal access to, and universal services of, such public telecommunications networks and public telecommunications services on a staged basis; and
- (f) such other factors as the Minister may prescribe in the regulations.

(2) The public telecommunications networks and public telecommunications services referred to in subsection (1) shall include, at a minimum --

- (a) universal access to a high quality public telephone service, including a free telephone directory for consumers of such service, a free telephone directory at each pay telephone or other public access point, and operator directory assistance;
- (b) twenty-four hour free access to emergency telecommunications; and
- (c) as the Minister may specify, special arrangements for persons who are blind or otherwise differently-abled.

(3) The Minister, in consultation with the Agency, shall determine the manner in which a public telecommunications network or a public telecommunications service shall be provided and funded in order to meet the requirements of universal access and universal service, including any obligations of operators, service providers and other telecommunications undertakings.

- (4) (a) The Agency shall establish a Universality Fund, as one means by which universal access and universal services may be funded in accordance with subsection (3), to which operators, service providers, and specified other telecommunications undertakings shall be required to contribute as specified in subsection (4)(b) and (c) and the regulations.
- (b) The Agency may, with the approval of the Minister, require that persons operating private telecommunications networks and providing private telecommunications services and value added services, as well as telecommunications undertakings that use such networks and services and provide any other telecommunications services, contribute to the funding of universal access and universal service.

- (c) The obligation to provide, and contribute to the funding of, the networks and services referred to in subsection (1) shall be applied on a transparent and non-discriminatory basis as between all similarly-situated operators of telecommunications networks, providers of telecommunications services, and other telecommunications undertakings in accordance with such methodology as specified in the regulations and the Telecommunications Code.
- (d) The Minister may, in the regulations, provide for such other temporary uses of the Universality Fund as may be necessary or appropriate to provide public telecommunications services in the general interests of the Guyanese public.

(5) Prior to terminating the offering to the public of a public telecommunications network or a public telecommunications service in respect to which the requirement of universal access or universal services applies, an operator or service provider shall obtain the written consent of the Minister.

PART VIII

SPECTRUM MANAGEMENT, NUMBERING AND DOMAIN NAME MANAGEMENT

Spectrum Plan.

44. (1) The Agency shall manage and allocate the spectrum in order to promote the economic and orderly utilisation of frequencies for the operation of telecommunications networks and the provision of telecommunications services and for the operation of broadcasting networks and the provision of broadcasting services, to recover the cost incurred in the management thereof.

(2) Pending the adoption and publication of a spectrum plan pursuant to this section and the regulations, section 93(5)(b) shall apply to allocation and reallocation of frequency bands and the uses of the spectrum.

(3) (a) The Agency shall, in accordance with the regulations, develop and adopt a spectrum plan, which may be amended from time to time, in order to allocate the uses of the spectrum.

(b) Any spectrum plan shall be subject to the approval of the Minister.

(4) In developing the spectrum plan and in coordinating the allocation of frequency bands, the Agency shall consult bilaterally, regionally and internationally as it deems necessary and appropriate and as may be otherwise required by the regulations.

(5) The Agency shall make the spectrum plan available for public scrutiny at its offices and in any other manner required by the regulations.

(6) The spectrum plan shall state how the spectrum shall be used and, except as otherwise provided for in the regulations, the procedures that the Agency shall follow in making recommendations to the Minister on applications for, and that the Minister shall follow in deciding whether to grant or deny, frequency authorisations.

(7) The procedures referred to in subsection (6), and any fees charged by the Agency for the use of the spectrum upon the issuance of a frequency authorisation and on a periodic basis pursuant to the regulations or the spectrum plan, may recognise that the spectrum is a valuable public resource and may include authorising the use of frequency bands by auction, tender, at a fixed price or on the basis of stated criteria, and such fees may be in addition to those specified by the Agency pursuant to section 82.

Allocation and assignment of frequency bands.

45. (1) Subject to subsection (2) and notwithstanding any other provision of this Act or any frequency authorisation granted by the Minister under this Act or any other authorisation to use the spectrum granted by any other governmental authority (including the National Frequency Management Unit) under any other act, the Agency may, in consultation with the Minister and in accordance with the spectrum plan, allocate, reallocate, assign and reassign any frequency bands.

(2) In the allocation, reallocation, assignment or reassignment of frequency bands, the Agency shall give priority to the needs of the Government in respect of matters of national security and public order.

(3) In connection with any allocation, reallocation, assignment or reassignment of a frequency band, the Minister, upon the recommendation of the Agency, may amend a frequency authorisation in accordance with section 35 or terminate a frequency authorisation in accordance with section 34.

Exercise of functions.

46. The Agency, in the exercise of its functions under sections 44 and 45, shall take into account –

- (a) the objectives of this Act;
- (b) the impact of the spectrum plan on existing and future use;
- (c) the efficient use of the spectrum;
- (d) any applicable regional and bilateral agreements, standards and arrangements;
- (e) any applicable international standards, ITU Treaties and other agreements or commitments to which Guyana is a party or has otherwise adopted as legally binding upon it; and

- (f) any other relevant matters, having regard to the circumstances of the case, as may be set forth in the regulations or determined by the Minister or the Agency.

Frequency monitoring.

47. (1) The Agency may operate frequency monitoring stations for –

- (a) monitoring the use of the spectrum and radiocommunication equipment;
- (b) ascertaining whether frequency bands are being used in accordance with this Act; and
- (c) carrying out any technical function necessary for fulfilling its functions and the requirements of this Act, the regulations, any other applicable law, the Radio Regulations of the International Telecommunication Union for the time being in force, and any applicable international, regional and bilateral agreements to which Guyana is a party.

(2) A frequency monitoring station operated by the Agency shall be exempt from any of the provisions of this Act.

Harmful interference.

48. (1) No person shall operate any facility, radiocommunication equipment, terminal equipment or any other equipment or apparatus in a manner likely to cause, or that causes, harmful interference.

(2) Where the Agency is of the opinion that the use of any facility, radiocommunication equipment, terminal equipment or other equipment or apparatus is likely to cause, has caused or is causing harmful interference, whether or not all reasonable steps to minimise harmful interference have been taken, the Agency may –

- (a) serve notice on the person in possession of or with control over the facility, radiocommunication equipment, terminal equipment or other equipment or apparatus, requiring such person to cease such use within seven days from the date of service of the notice or such earlier time as may be required to avoid harm or other damage to the facilities, radiocommunication equipment, terminal equipment, other equipment or apparatus, or business, of any other person;
- (b) impose limits as to when and how the facility, radiocommunication equipment, terminal equipment or other equipment or apparatus may be used; or
- (c) exercise any of its other powers under Part X.

Space segment.

49. The Agency, in allocating frequency bands for radiocommunication services that use satellite systems, shall ensure that access to space segment is made available on a non-discriminatory and equitable basis.

Numbering plan.

50. (1) The Agency shall develop a numbering plan which will govern the administration of the national numbering resources of Guyana and, after public consultations on, and subject to the approval of, such plan by the Minister, shall administer and manage such number resources:

Provided that, notwithstanding anything in this section 50, the Commission shall regulate number portability, and in so doing, shall consult and liaise with the Agency to achieve a coordinated approach between the Agency's development, administration and management of the numbering plan and the Commission's regulation of number portability.

(2) Subject to subsection (5), numbers shall be made available to service providers on an equitable basis.

(3) The numbering plan may establish procedures by which service providers may issue or re-issue numbers to users.

(4) The Agency shall make the numbering plan available for public scrutiny.

(5) In developing the numbering plan referred to in subsection (1), the Agency shall preserve, to the extent feasible, the assignment of numbers made before the coming into force of this section.

(6) The Agency shall notify all service providers whose telecommunications services involve numbers of any new numbering assignments made.

(7) The Agency, with the approval of the Minister, may delegate its responsibilities under this section to a neutral, non-governmental organisation.

Domain name management.

51. (1) The Agency shall be responsible for the registration and management of the top level domain names of Guyana, in accordance with the manner that it shall determine with the approval of the Minister.

(2) The Agency, with the approval of the Minister, may delegate its responsibilities, under this section to a neutral, non-governmental organisation.

PART IX

TERMINAL EQUIPMENT, OTHER EQUIPMENT, TESTING AND TECHNICAL STANDARDS

**Terminal
equipment.**

52. (1) Subject to subsection (7), terminal equipment may be connected to a public telecommunications network only where the Agency has certified such terminal equipment as –

- (a) being safe for the user;
- (b) being in compliance with national or international standards, and environmental, health and safety standards, including standards for electromagnetic radiation and emissions;
- (c) meeting requirements of electromagnetic compatibility, if specified;
- (d) not posing a risk of physical harm to such telecommunications network;
- (e) effectively utilising the spectrum and preventing interference between satellite and terrestrial-based radiocommunication equipment and between terrestrial radiocommunication equipment; and
- (f) being compatible with such telecommunications network.

(2) The Agency, in certifying terminal equipment pursuant to subsection (1), may recognise the type approvals from such jurisdictions as it may specify.

(3) Terminal equipment certified pursuant to this section shall bear such labels or other markings as the Agency may determine.

(4) The Agency shall maintain a register of terminal equipment certified in accordance with this section, which shall be made publicly-available.

(5) In addition to the provisions of section 77, the Minister may, in the regulations or by order, regulate or prohibit the sale or other transfer, or the installation, connection, operation or other use, by any person of any terminal equipment or other device that --

- (a) is not certified as required by this Act;
- (b) is unsafe for the user or any other person, or poses a risk of harm to any telecommunications network; or

- (c) is utilised, or capable of being utilised, by any person for the purposes of circumventing, or facilitating the circumvention of, this Act, including terminal equipment utilised to by-pass the telecommunications services of a service provider and provide telecommunications services to any person, including a person in possession of such terminal equipment, without a licence therefor.

(6) Without limiting the application or generality of any other provision of this section or any other provision of this Act or the regulations, --

- (a) every person who installs or uses terminal equipment shall be responsible for ensuring that all such terminal equipment is sufficient and suitable for the purposes for, and the circumstances in, which it is used, and that it is so constructed, designed, installed, protected (both electrically and mechanically), used and maintained to be capable of being operated and connected to any telecommunication network in a manner that will not cause physical harm to any such network to which it is connected or physical injury to any person; and
- (b) the certification of any terminal equipment or any other equipment or other apparatus by the Agency for sale, purchase, use, provision, connection or any other purpose shall not imply any warranty that such equipment or other apparatus, or any part thereof, is safe or suitable for any purpose, and neither the Agency, the Government, nor any subpart of the Government, nor an Government or Agency official or employee, shall be obligated to inspect, test, approve or certify any such equipment or apparatus, nor shall any of them be liable for any injury or death to persons or loss or damage to the property of any person resulting directly or indirectly from any use, defect or inadequacy of any such equipment or other apparatus, regardless of whether it is or is not certified.

(7) Without prejudice to any of the other provisions of this section or this Act, terminal equipment sold or otherwise provided or installed after the appointed day shall not be subject to the certification requirements of subsection (1) until such time as the Agency shall have provided notice of the initiation of its terminal equipment certification programme by publication in the *Official Gazette* and in at least two editions of a newspaper in general circulation in Guyana, stating the date on which such certification programme shall become effective and any other details as the Agency shall determine:

Provided, however, that nothing in this subsection (7) shall be construed as authorising the operation of any public telecommunications network or the provision of any public telecommunications service by any person who has not been issued a licence or, where relevant, a frequency authorisation under this Act.

- shall—
- (8) Within one year following the appointed day, the Commission
- (a) examine whether and to what extent terminal equipment must be provided and charged to users separately from the provision of public telecommunications services; and
 - (b) with the goal of having users, rather than licensees, own inside wiring and similar facilities and other items on the user's side of the network termination point, examine whether and to what extent such an objective can be achieved.

(9) The Commission, having undertaken the examinations required under subsection (8)(a) and (b), may, after consultation with the Agency, operators and service providers likely to be affected, and the public, order –

- (a) the unbundling of the provision of terminal equipment from the provision of public telecommunications services; and
- (b) the transfer of ownership of and responsibility for inside wiring and similar facilities and other items on the user's side of the network termination point from licensees to users.

(10) Notwithstanding anything in subsections (8) and (9), operators and service providers shall provide terminal equipment, inside wiring and similar items on the consumers' side of the network termination point, as may be necessary for such consumers to connect to the relevant operator's public telecommunications network and utilise the relevant service provider's public telecommunications services, until such time as such necessary terminal equipment, inside wiring and similar items are available in the relevant consumers' geographical area.

Certification of other equipment and testing of equipment.

- 53.** (1) The Agency may --
- (a) institute certification procedures for equipment used for telecommunications in addition to terminal equipment, including any equipment to be installed or utilised in a public telecommunications network or a facility; and

(b) for the purpose of certifying or otherwise ascertaining that terminal equipment, radiocommunication equipment, and any equipment to be installed or utilised in a telecommunications network or a facility complies with section 52(1) or 55, any certification requirement established by the Agency under subsection (1)(a), any applicable regulations or the Telecommunications Code, carry out such pre- or post-installation testing as it deems necessary or appropriate, upon reasonable written notice to the relevant operator, service provider, authorisation holder or other person.

(2) For the purpose of any determination made pursuant to subsection (1), the Agency may recognise the type approvals from such jurisdictions, or require that such equipment be tested in such manner, as it may specify.

(3) An operator, in connection with its operation of a public telecommunications network, and any other person operating radiocommunication equipment shall take proper and adequate measures for the safeguarding of life, property and the environment, including safeguarding against exposure to electrical and radiation hazards emanating from any equipment used by the operator or such other person.

Standards for testing.

54. Any tests required by the Agency under section 53 shall be carried out in compliance with such standards as may be specified by the Minister in the regulations or by the Agency in the Telecommunications Code.

Technical standards.

55. (1) The Agency may identify, adopt or establish technical standards in the Telecommunications Code for terminal equipment, radiocommunication equipment and any equipment to be installed or utilised in any telecommunications network or facility, and every person who sells or otherwise transfers, purchases or otherwise acquires, installs or operates any equipment for which the Agency has so identified, adopted or established technical standards shall be responsible for ensuring that such equipment complies with such standards.

(2) Pending the identification, adoption or establishment of technical standards by the Agency pursuant to subsection (1), operators, service providers, authorisation holders and any other person who sells or otherwise transfers, purchases or otherwise acquires, installs or operates terminal equipment, radiocommunication equipment and any equipment to be installed or utilised in any telecommunications network or facility shall implement such technical standards as are in conformity with accepted international standards for such equipment.

PART X

INFORMATION, REPORTING AND INSPECTION

Power to request information and

56. (1) In addition to any requirement of the Public Utilities Commission

Act and to ensure compliance with this Act, the Public Utilities Commission Act, or the terms or conditions of a licence, exemption or frequency authorisation, the Minister, the Agency and the Commission may require an operator or service provider, and the Minister and the Agency may require an authorisation holder, or any other person to supply documents or information, including --

- (a) specific answers to questions submitted to such operator, service provider, authorisation holder or other person, concerning any telecommunications network, telecommunications service, facility or use of spectrum, radiocommunication equipment or terminal equipment;
- (b) the operation of any facility in relation to any telecommunications network, telecommunications service or use of the spectrum or radiocommunication equipment;
- (c) any usage of the telecommunications network or telecommunications service of the operator, service provider, authorisation holder, or other person; and
- (d) any other matter concerning compliance with this Act, the Public Utilities Commission Act, or the terms and conditions of a licence, exemption or frequency authorisation.

(2) With respect to any information or reporting requirements, or the submission of any data, documents, materials or other written information by an operator or service provider, the submitting operator or service provider may request confidential treatment of such information in writing to the Minister, the Commission or the Agency, which written request shall contain a showing of good cause, and the Minister, the Commission or the Agency shall not disclose in any manner the written information that is the subject of the confidentiality request without first providing the submitting operator or service provider with advance written notice and an opportunity to be heard:

Provided, however, that nothing in this subsection (2) shall be interpreted to exempt any operator, service provider or other person from submitting or producing any data, documents, materials or other information, whether written or oral, required by the Minister, the Agency, or the Commission;

Provided further that this subsection (2) shall be in addition to, and not in derogation of, any other provision of any written law with regard to the confidential treatment of any data, documents, materials or other information, whether written or oral, of an operator or service provider.

(3) Every person who imports terminal equipment, radiocommunication equipment or any equipment to be installed or utilised in any facility shall report all such imports in writing to the Agency at least fourteen days prior to the landing of any such

equipment in Guyana, identifying in detail the nature, technical parameters and intended use or disposition of such equipment.

Entry, search and inspection.

57. (1) Personnel authorised by the Minister, the Agency or the Commission with regard to an operator, service provider, or other telecommunications undertaking, and by the Minister or the Agency with regard to an authorisation holder or any other person, may, at all reasonable times, enter any land, place, premises, facility, vehicle, ship, aircraft, vessel or other contrivance from which any telecommunications network is operated or any telecommunications service is provided, or from which any person is using spectrum, or in which any radiocommunication equipment or related equipment is, or is suspected to be, located, and –

- (a) test any equipment or other thing found therein which is, or could be, used for telecommunications or which does, or could, use the spectrum;
- (b) examine records or other documents relating to the operation of the telecommunications network, the provision of the telecommunications service, the use of spectrum or the installation or operation of radiocommunication equipment;
- (c) search, where necessary with the assistance of any other person authorised for the purpose by the Minister, the Agency, the Commission or applicable law, as the case may be, for any equipment, articles, books, records, documents or other thing that may afford evidence of contravention of this Act, the regulations, or the Telecommunications Code, or of any breach of any term or condition of any licence, exemption, frequency authorisation or other permit, authorisation or certification required under this Act or the regulations;
- (d) require the owner, occupier or any other person in charge of the land, place, premises, facility, vehicle, ship, aircraft, vessel or other contrivance to give him all reasonable assistance in the testing, examination or search;
- (e) seize and take away any equipment, articles, books, records, documents and any other thing if it appears that there has been a contravention of this Act, the regulations, or the Telecommunications Code, or any breach of any term or condition of any licence, exemption, frequency authorisation, or other permit, authorisation or certification required under this Act or the regulations, and such items so seized shall be lodged with the Minister, the Agency, or the Commission, as the case may be, and be subject to forfeiture in the circumstances provided for in section 78(2); and

- (f) take such other steps as may be necessary to cease the operations of any person who is contravening this Act, the regulations or the Telecommunications Code, or the terms or conditions of any licence, exemption, frequency authorisation or other permit, authorisation or certification required under this Act or the regulations.

(2) For the purposes of subsection (1), the personnel of the Minister, the Agency or the Commission, as the case may be, may be accompanied by any police officer as may be necessary.

(3) Upon request of the Agency, any licensee or authorisation holder shall exhibit its licence or frequency authorisation.

(4) In carrying out the functions under this section, personnel of the Minister, the Agency and the Commission shall at all times act in a reasonable manner.

**Warrant of
magistrate or justice
of the peace.**

58. (1) Subject to subsection (3), the Minister, the Agency or the Commission shall not exercise the powers vested in it under section 57(1) except where a magistrate or a justice of the peace, satisfied by information given on oath by the Minister or personnel of the Agency or Commission that there is a reasonable ground for supposing that there has been or may be a violation of this Act, the regulations, or the Telecommunications Code, or any term or condition of any licence, exemption, frequency authorisation, or other permit, authorisation or certification required under this Act or the regulations, has granted a search warrant to it for such purpose.

(2) A warrant issued under this section shall remain in force and effect until the purpose for which the warrant is required has been satisfied or for one month, whichever is earlier.

(3) Notwithstanding anything in subsection (1) or any other written law, the Minister, the Agency or the Commission may exercise the powers vested in it under section 57(1) without first obtaining a search warrant where such powers are exercised --

- (a) as provided in this Act and the regulations with regard to monitoring of the use of the spectrum and harmful interference; or
- (b) as a result of a person's violation of an order issued in respect of such person by the Minister or the Commission under this Act or the regulations.

PART XI

BREAKING UP STREETS, REMOVAL OF OBSTRUCTIONS, AND ACCESS TO LAND

Breaking up streets.

- 59.** (1) An operator, from time to time and for the purpose of constructing, maintaining and renewing any facilities duly authorised, or any part or parts thereof, may open and break up the soil and pavement of any road, street or bridge along the routes of its facilities, and may erect facilities subject to the following conditions –
- (a) the operator shall give to the road authority notice of its intention, specifying the time at which it will begin to do so and the portion of the road, street, or bridge proposed to be opened or broken up, such notice to be given at least seven days before the commencement of the work unless the work is to remedy a dangerous situation or a situation that imminently threatens to interrupt the operation of such operator's telecommunications network or facilities, in which case notice may be dispensed with;
 - (b) the operator shall submit detailed plans of the intended road works to each operator whose facilities, and each public utility whose utility installations, are likely to be affected thereby;
 - (c) the operator shall not open or break up a road, street or bridge that might affect another operator or a public utility without first having the potentially-affected operator or public utility in writing;
 - (d) the operator shall not open or break up the soil or pavement of any road, street or bridge, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give superintendence at the time specified in the notice, or discontinues it during the work;
 - (e) the operator shall not erect any facility in a position to which the road authority reasonably objects;
 - (f) the operator shall pay all reasonable expenses to which the road authority is put on account of the superintendence;
 - (g) the operator shall not, without the consent of the road authority, open or break up any road, street or bridge without providing reasonable facilities for the passage of ordinary traffic on that road, street or bridge to the satisfaction of the road authority.

(2) When an operator has opened or broken up any portion of the road, street or bridge, it shall be under the following further obligations –

- (a) it shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing), complete the work on account of which it opened or broken up the road, street or bridge (subject to the construction, maintenance or removal of facilities), and fill in the ground and make good the surface and, to the reasonable satisfaction of the road authority, restore the portion of the road, street or bridge to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving, and other material and rubbish, occasioned thereby;
- (b) it shall in the meantime cause the place where the road, street or bridge is opened or broken up to be protected at all times; and
- (c) if the operator fails to comply in any respect with this section, it shall for each offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against it) be liable to the road authority for a fine of five hundred thousand dollars, and to a further fine of five hundred thousand dollars for each day during which the failure to comply continues after the first day on which notice to comply therewith has been served on the operator.

(3) No operator or public utility notified under subsection (1)(b) shall open or break up a road, street or bridge that is the subject of such notice within three months of the receipt of such notification except where such operator or public utility, as the case may be, proves to the satisfaction of the Commission, the necessity of carrying out emergency works.

- (4) (a) Prior to opening or breaking up a road, street or bridge, an operator shall publish a description thereof in at least one newspaper of general circulation in Guyana, or in an emergency situation as may be otherwise specified by the Commission, and shall otherwise inform affected persons by such other means as the Commission may specify.
- (b) Without prejudice to subsection (4)(a), in an emergency situation requiring the opening or breaking up of a road, street or bridge, an operator shall inform affected persons by such means as the Commission shall specify.

Compensation for

60.

Where an operator damages the facilities of another operator or the utility

repair and restoration.

installation of a public utility in opening or breaking up any road, street or bridge, or carrying out any other work with respect to such facilities or utility installation, the operator shall immediately notify such other operator or public utility of such damage, and shall compensate such operator or public utility for the full cost of repair and restoration thereof.

Installation of facilities on public land or buildings.

61. (1) An operator may construct, operate and maintain facilities along, on or over any public rights of way, such as road allowances, sidewalks and public land reserves, or any other land or buildings owned by any national, regional or local authority.

(2) Before undertaking such activities as are permitted under subsection (1), the operator shall submit its plans in writing to the affected national, regional or local authority for review, and obtain approval therefor.

(3) A national, regional or local authority may charge fees to the operator for such uses permitted under subsection (1), provided that such fees shall be limited solely to those necessary to compensate such authorities for the administrative costs actually incurred in reviewing and supervising such uses.

Installation of facilities on private land or buildings.

62. (1) Subject to this section and the regulations, an operator may install and maintain facilities above, along, across or on any private land and buildings thereon and, for such purposes, may enter upon any such land and place and maintain facilities thereon and install, maintain, inspect, repair or renew any such facilities.

(2) Subject to section 63, where an operator wishes to install facilities on private land or any buildings thereon, it must first obtain the permission of the landowner, and the landowner shall be entitled to compensation therefor, except where such facilities are to be used to provide a telecommunications service to the landowner or his authorised tenant.

(3) To minimise disruption to landowners, an operator shall, except to the extent permitted under section 42, provide other operators and public utilities with access to its facilities in accordance with section 42 and the regulations and shall coordinate its installation or maintenance of facilities above, along, across or on private land or buildings with the relevant landowner, other operators, and public utilities.

Acquisition of lands.
Cap. 62:05

63. (1) The Minister may, in accordance with the Acquisition of Lands for Public Purposes Act and at his sole discretion, compulsorily acquire land for and on behalf of an operator for the purpose of the proper and effectual exercise of a licence or an exemption granted under this Act.

(2) In order for the Minister to proceed under subsection (1), the operator shall expressly request the Minister to acquire the land, satisfying the Minister from documentary evidence, including plans and studies, that the land is required so that the operator may adequately fulfill the conditions of its licence or exemption.

(3) The Minister shall not proceed to acquire land under this section unless he, in his sole discretion, is satisfied that the operator is able to make prompt

payment to any person entitled to compensation for the land in consequence of such compulsory acquisition, of a sum which represents the fair market value of the land, and upon such payment the land, being vested in the State, is transferred by deed to the operator by the Minister.

(4) The Minister shall not acquire land under this section if the land belongs to another operator and is being used for the purpose of a facility necessary to carry on activities authorised by such other operator's licence or exemption, or it appears to the Minister that the land will be so used by such other operator commencing with the period of five years beginning with the proposed date of the commencement of the acquisition, or the acquisition of the land is not necessary for the proper and effectual exercise of the relevant operator's licence or exemption.

(5) Where land is acquired under this section and the land is no longer required for the purpose for which it is acquired, the Minister shall have the authority to re-vest, by deed of transfer, the land in the proprietor from whom it was compulsorily acquired subject to the refund of the compensation, and subsection (6) shall *mutatis mutandis* apply in relation to the re-vesting of such land.

(6) Where land is transferred to an operator under subsection (3), the land shall vest in the operator from the date of such transfer and --

- (a) a notice to that effect shall be published in the *Official Gazette*;
- (b) the deed of transfer shall be treated for all purposes as if it were a transport or other document effecting the conveyance of immovable property, and the Registrar of Deeds shall take due notice thereof and shall make such annotations on the records as may be necessary, including an annotation that the operator shall not dispose of such land or any interest or right in or over it, except with the written consent of the Minister.

(7) An operator who has acquired any land by virtue of this section shall not dispose of that land or of any interest in or right over it except with the written consent of the Minister.

(8) Subject to the preceding subsections, the Acquisition of Lands for Public Purposes Act shall apply *mutatis mutandis* in relation to the acquisition of lands under this section as they apply in relation to an acquisition wholly under the Acquisition of Lands for Public Purposes Act, and for that purpose shall be construed with any necessary modifications, adaptations, qualifications and exceptions, and, without prejudice to the generality of the foregoing, subject, in particular, for the purpose of such application, to the following modifications --

- (a) the proper and effectual exercise of its licence or exemption by an operator shall be deemed to be a public work, that is to say, whatever is to be done or constructed on the land shall be

deemed to be a public work;

- (b) sections 7(2), 10, 24, 26 and 27 shall not apply to an acquisition under this section;
- (c) in section 9(1) there shall be substituted for the words “and may at the same time or any subsequent time deposit a certificate under his hand to the effect that the National Assembly has voted the sum necessary for compensation” the words “and shall at the same time, where the proprietor has received compensation, deposit a certified copy of the receipt therefor; or where compensation is to be determined, deposit a statement showing how and in what manner this is to be effected”.

(9) In this section, “Minister” means the minister assigned responsibility for public works.

Alteration of obstructions.

64. (1) If an operator considers that the position of any facility or utility installation, or other matter or thing, is likely to cause material interruption of such operator’s business in terms of repairs or renewals and ought to be altered, the operator shall not alter the position of any such obstruction but shall give notice to the operator, public utility, local authority or other person to whom such obstruction belongs, or under whose control any such obstruction lies, that the operator is of the opinion that the position of the obstruction should be altered and, if there is a disagreement with respect thereto as between the parties, the matter shall be determined by the Commission.

(2) If an operator, public utility, person or local authority agrees upon, or a decision of the Commission directs, the alteration of the position of any obstruction, the work of the alteration shall immediately be carried out by the concerned party and in accordance with any plan agreed upon or directed by such decision.

Cutting trees and boughs.

65. (1) In the course of installing and maintaining its facilities, an operator shall have power, by officers and servants duly authorised for that purpose in writing, to cut and remove from any street and to enter upon and to cut and remove from any private land any tree, or any branch, bough or other part thereof, growing on such land within one hundred feet of any facility of such operator and which may tend to interfere with, endanger or otherwise prejudicially affect such facilities.

(2) In connection with the exercise of its powers under subsection (1), an operator –

- (a) shall cause as little damage as possible; and
- (b) shall make compensation to the owner of any tree so cut for any damage suffered by the owner or occupier in respect thereof, and the amount of such compensation shall, in the event of disagreement, be determined by the Commission.

**Dispute resolution
by the Commission.**

66. Disputes between and among operators, public utilities, local authorities and other persons under this Part shall be determined by the Commission, upon the filing of a written request by any party to the dispute, and the matter shall be expeditiously determined by the Commission in accordance with the regulations or, if not provided for in the regulations, in such manner as the Commission shall direct.

PART XII

OFFENCES

**Penalty for
unauthorised
telecommunications
network,
telecommunications
service, use of the
spectrum or
installation or
operation of
radiocommunication
equipment.**

67. A person who --

- (a) provides a telecommunications service or operates a telecommunication network for which a licence or exemption is required, without having first obtained the required licence or exemption;
- (b) uses spectrum or installs or operates radiocommunication equipment for which a frequency authorisation is required, without having first obtained the required frequency authorisation;
- (c) provides a telecommunications service, operates a telecommunications network, uses spectrum or installs or operates radiocommunication equipment other than as permitted by this Act, the regulations, the Telecommunications Code, or such person's licence, exemption or frequency authorisation, as the case may be;
- (d) fails to cooperate with, or follow any direction of, the President or the Minister on matters of national security, public order, or a state of public emergency in accordance with sections 26(1)(d), 31(1)(e) and 88;
- (e) fails to cease and desist the operation of any telecommunications network, the provision of any telecommunications service, or the use of any portion of the spectrum, as required by section 93(6)(f);

(f) facilitates any person who is not duly authorised under any applicable law to use the spectrum or install or operate radiocommunication equipment for any purpose; or

(g) aids and abets any person in any of the foregoing acts,

shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than one million dollars and not more than five million dollars and to imprisonment for two years and, in the case of a continuing offence, to a further fine of two hundred thousand dollars for each day that the offence continues after conviction.

Penalties for harmful interference, obstruction of telecommunications, and other illegal conduct.

68. A person who –

(a) uses any facility, terminal equipment, radiocommunication equipment or other thing in such a manner as to cause harmful interference;

(b) obstructs, or interferes with, the sending, transmission, delivery or reception of any telecommunication;

(c) obstructs, interferes with, fails to provide reasonable assistance to, or molests, assaults or otherwise harms, any personnel of the Minister, the Agency or the Commission duly engaged in the exercise of any power conferred under this Act; or

(d) without due cause obstructs, interferes with, molests, assaults or otherwise harms a telecommunications undertaking or its personnel in the performance of any of the powers or obligations conferred or imposed upon such telecommunications undertaking by or under this Act,

shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than five hundred thousand dollars and not more than two million dollars and to imprisonment for a term of one year and, in the case of a continuing offence, to a further fine of one hundred thousand dollars for each day that the offence continues after conviction.

Penalties for failure to obey order or furnish information and notices and furnishing false

69. A person who --

information.

- (a) in any material particular and without lawful excuse --
 - (i) fails or refuses to obey an order of the Minister or the Commission;
 - (ii) fails or refuses to furnish to the Minister, the Agency or the Commission, within the time and in the manner and form required, any information required to be furnished by or under this Act or directed to be furnished by the Minister, the Agency or the Commission, or to answer any reasonable question relevant to any matter under the authority of the Minister, the Agency or the Commission;
- (b) willfully furnishes any information to the Minister, the Agency or the Commission which is false in any material particular;
- (c) fails to notify the Minister in writing of the nature and extent of the sale, transfer, charge or other disposition provided for in sections 26(5)(b) and 31(5)(b); or
- (d) fails to notify the Agency in writing of the import of any terminal equipment, radiocommunication equipment or any equipment to be installed or utilised in any facility in the manner required in section 56(2),

shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than two million dollars and not more than five million dollars, or any greater amounts that may be provided for in the regulations, and imprisonment of two years.

Penalty for fraudulent use.

70. A person who manufactures, sells, offers for sale, or otherwise transfers or provides, or obtains or uses in any manner whatsoever, any facility, terminal equipment or other system, equipment, or any card, plate, account number, mobile identification number, personal identification number, or any other device or thing whatsoever, for the purpose of fraudulent use of or fraudulent access to any telecommunications service, telecommunication network or facility, or to circumvent or otherwise avoid payment of any charge applicable to any telecommunications service, telecommunications network or facility, shall be liable upon summary conviction to a fine of not less than five hundred thousand dollars and not more than two million dollars and imprisonment for a term of one year.

Penalty for false or dangerous telecommunications.

71. (1) A person who, by means of a telecommunications network or a telecommunications service, willfully circulates or otherwise transmits any telecommunication that is a false, deceptive or misleading, or that materially endangers the physical safety of any other person, shall be guilty of an offence and shall be liable on

summary conviction to a fine of not less than two hundred fifty thousand dollars and not more than two million dollars and to imprisonment for a term of six months.

(2) For purposes of subsection (1) only, the word "person" shall not include the owner or personnel of the telecommunications network or the telecommunications service that is used to circulate or otherwise transmit a false, deceptive or misleading telecommunication or to materially endanger the physical safety of another person, unless such owner or personnel is himself or themselves the originator of such telecommunication.

Penalty for unauthorised transfer of a licence, frequency authorisation or significant interest.

72. A person who sells, transfers, charges, assigns or otherwise disposes of a licence, frequency authorisation, or a significant interest in contravention of section 26 or 31 shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than one million dollars and not more than five million dollars and to imprisonment for a term of two years.

Penalty for modification of telecommunications.

73. An operator or service provider, or any personnel thereof, who, otherwise than in the authorised course of the performance of the operator's or service provider's obligations under this Act, willfully modifies or interferes with the content of a message sent by any user of such operator's telecommunications network or such service providers' telecommunications service shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than five hundred thousand dollars and not more than two million dollars and to imprisonment for a term of six months.

Penalty for unauthorised disclosure of information.

74. Any person who willfully discloses or uses information in contravention of section 29 or 86 shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than five hundred thousand dollars and not more than two million dollars and to imprisonment for a term of six months.

Penalty for damage to a facility or unauthorised removal or access; recovery of civil debt.

75. (1) A person who, in any manner whatsoever, recklessly or maliciously destroys or otherwise damages, or without authorisation removes or accesses, any facility, or any part thereof, shall be guilty of an offence and shall be liable to a fine of not less than five hundred thousand dollars and not more than two million dollars and to imprisonment for a term of six months.

(2) A person who negligently commits any of the acts described in subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than one hundred thousand dollars and not more than one million dollars.

(3) A person convicted under this section shall be liable for all expenses reasonably incurred in the repair, restoration or replacement of the facility, or any part thereof, destroyed or otherwise damaged, or removed or accessed without authorisation, by him, and such expenses shall be recoverable by the person that owns such facility, or part thereof, summarily as a civil debt.

Penalty for failure to contribute to Universality Fund or unauthorised

76. (1) A person who fails to contribute to the Universality Fund in accordance with the terms of its licence or frequency authorisation, the regulations, or the directions of the Minister or the Agency shall be guilty of an offence and shall be liable on

cessation of networks or services to which universal access or universal service applies.

summary conviction to a fine of not less than two million dollars and not more than five million dollars and to imprisonment for two years and, in the case of a continuing offence, to a further fine of five hundred thousand dollars for each day that the offence continues after conviction.

(2) An operator or service provider who, without the prior written consent of the Minister, ceases to offer to the public a public telecommunications network or public telecommunications service to which the requirement of universal access or universal service applies shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than one million dollars and not more than three million dollars and to imprisonment for two years and, in the case of a continuing offence, to a further fine of five hundred thousand dollars for each day that the offence continues after conviction.

Penalties with regard to unsafe, unsuitable or unauthorised equipment and testing of equipment.

77. Any person who --

- (a) connects terminal equipment to a public telecommunications network knowing that it is not sufficient or suitable for its intended purpose or that it presents a risk of physical harm to such network or physical injury to any person;
- (b) connects terminal equipment to a public telecommunications network that causes physical harm to such network or physical injury to any person;
- (c) at such time as the Agency has initiated its terminal equipment certification programme in the manner provided for in section 52(7), sells, installs or connects to a public telecommunications network any terminal equipment that is not certified by the Agency under section 52(1);
- (d) sells or otherwise transfers, installs or operates any equipment as part of a telecommunications network or a facility that does not conform with accepted international standards or, at such time as the Agency may have established a certification programme for such equipment under section 53(1)(a), that is not certified by the Agency; or
- (e) fails to cooperate with the Agency in the testing of terminal equipment, radiocommunication equipment, or equipment to be installed or utilised in a facility or a telecommunications network,

shall be guilty of an offence and liable upon summary conviction to a fine of not less than five hundred thousand dollars and not more than five million dollars and imprisonment of six months, and in the case of a continuing offence, to a further fine of five hundred thousand dollars for each day that the offence continues after conviction.

No derogation of powers; forfeiture of equipment and other things involved in the commission of an offence.

Cap. 57:01

78. (1) The penalties provided for in this Part and the regulations shall be in addition to, and not in derogation of, the powers of the Minister, the Agency and the Commission under sections 57 and 58 or any other provision of this Act, the regulations, the Telecommunications Code, or the Public Utilities Commission Act.

(2) Upon summary conviction of any person of an offence provided for in this Part or the regulations, any equipment or other thing used by such person in, or otherwise related to, the commission of such offence shall be forfeited to the State, without compensation to such person.

General penalty; penalty for continuing offences; liability of directors, officers and other natural persons.

79. (1) Except as otherwise provided in this Act or the regulations --

(a) a person who contravenes or fails to comply with any of the provisions of this Act or the regulations, but for which a penalty is not specified herein or therein, commits an offence and shall be liable on summary conviction to a fine of five hundred thousand dollars; and

(b) if any offence of which a person is convicted is continued by such person after conviction, he shall be guilty of a further offence and liable to a fine of two hundred thousand dollars for every day on which the offence is continued.

(2) All penalties imposed by or under this Act or the regulations, the recover of which is not otherwise specially provided for, may be recovered under the Summary Jurisdiction Acts.

(3) Where an offence under this Act or the regulations has been committed by, or in the name of, a body corporate, every person who, at the time the offence was committed, was a director, officer, corporate secretary, manager, partner, person acting under a power of attorney, or other person with responsibility for the affairs of the body corporate, as well as the body corporate itself, shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this subsection (3) shall render any such person liable to punishment if he proves that the offence was

committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Institution of proceedings.

80. (1) The Minister and any person designated by him in the regulations may institute proceedings in respect of any offence provided for in this Act or the regulations.

(2) The Minister may provide in the regulations for additional offences, penalties and fines with regard to matters set forth in this Act or in the relevant regulations.

Payment of penalties.

81. Except to the extent that the regulations may designate the payment of fines to the Agency or the Commission, or the Telecommunications Code designates the payment of fines to the Agency, for violations of this Act, the regulations, the Telecommunications Code or a licence, exemption or frequency authorisation, any fine imposed under this Part shall be paid to the Accountant General.

PART XIII

FEEES

Fees.

82. (1) The Agency may charge fees –

- (a) with regard to any licence, exemption, frequency authorisation, or with regard to any other permit or certification provided for under section 30; and
- (b) for any document that it makes available or any testing, certification, and service that it provides or any other function that it performs under this Act or other applicable written law.

(2) The Agency may determine to charge fees, pursuant to subsection (1)(a), for any initial or renewal application for a licence, exemption, frequency authorisation, or other permit or certificate; upon the initial grant of a licence, exemption, frequency authorisation, or other permit or certificate and any renewal thereof; on an annual or other periodic basis; and for the use of the spectrum in accordance with section 44(7), and any such fees may be based upon a percentage of the gross annual revenues of the applicant, licensee, exemption holder, authorisation holder, or of any other person to whom any permit or certificate is issued or such other basis provided for in the regulations or the Telecommunication Code.

(3) Except as provided in sections 44(7), fees charged by the Agency pursuant to subsections (1) and (2) shall be commensurate with the cost of –

- (a) carrying out the functions of the Agency under this Act, the regulations and the Telecommunications Code;
- (b) administering licences, exemptions, frequency authorisations

and other permits and certifications; and

- (c) providing documents, carrying out testing, issuing certifications, providing services and performing any other functions, with respect to the fees described in subsection (1)(b),

and shall be charged to licensees, exemption holders, authorisation holders or other persons, where applicable, on a just and reasonable basis as the Agency may determine.

(4) Except as provided in section 93(5), all fees charged by the Agency under this Act and the regulations shall be subject to the approval of the Minister and, once approved by him, shall be set forth in the regulations or the Telecommunications Code.

PART XIV

GENERAL AND TRANSITIONAL PROVISIONS

Obligations under international agreements.

83. The obligations of a licensee or an authorisation holder shall not be abrogated by reason of any international agreement to which Guyana is a party.

Services provided from outside Guyana.

84. Notwithstanding any other provision of this Act, the Minister may take any action he deems appropriate with regard to telecommunications networks, telecommunications services, or use of the spectrum or radiocommunication equipment operated or provided by persons not located in Guyana, to the extent that such networks, services or use of the spectrum or radiocommunication equipment --

- (a) compete unfairly or otherwise jeopardise the operation of telecommunications networks, the provision of telecommunications services or the use of the spectrum or radiocommunication equipment in Guyana or between Guyana and any other location; or
- (b) are being operated or provided in a manner that is contrary to the public interest, national security or public order.

Regulations and the Telecommunications Code.

85. (1) The Minister may make regulations for giving effect to this Act with regard to –

- (a) any matters necessary to implement the plans and policies for the telecommunications sector;
- (b) the application for and the granting of licences, exemptions and frequency authorisations, including their terms and

conditions, and provisions for the utilisation of competitive processes for the selection of licensees and authorisation holders;

- (c) the monitoring, compliance with and enforcement, and the amendment, renewal, suspension, and termination, of licences, exemptions and frequency authorisations;
- (d) the classification or reclassification of telecommunications networks and telecommunications services;
- (e) the designation of which telecommunications networks, telecommunications services and value added services may be provided under class licences;
- (f) the designations of which classes or descriptions, if any, of operators and service providers may be exempted from the requirement to obtain a licence under this Act, and the terms and conditions of any such exemption;
- (g) fees payable to the Agency and the Commission;
- (h) universal service and universal access and the establishment and administration of the Universality Fund;
- (i) any matter with regard to the use and regulation of the spectrum and radiocommunication equipment;
- (j) the setting of technical standards;
- (k) the telecommunications numbering system, dialing parity, number portability, equal access and domain names;
- (l) the certification and other regulation of terminal equipment, equipment used in facilities, radiocommunication equipment, and any other equipment used in telecommunications;
- (m) any matter regarding international, regional and bilateral telecommunications affecting Guyana;
- (n) interconnection and access;
- (o) the pricing of telecommunications services and other matters regarding the economic regulation of operators and service providers;
- (p) competition in the telecommunications sector;

- (q) quality of telecommunications services;
- (r) relationships and disputes between and among operators, service providers, users, public utilities, and local authorities;
- (s) the investigation of complaints against operators, service providers and authorisation holders, and of alleged violations of any provision of this Act, the regulations, the Telecommunications Code, or the terms and conditions or a licence, exemption or frequency authorisation;
- (t) information that must be provided by persons subject to this Act;
- (u) consumer safeguards;
- (v) the maintenance, by licensees, authorisation holders and persons operating private telecommunications networks, of maps, plans and other drawings, diagrams and schematics and their submission to the Agency or the Commission;
- (w) the treatment of confidential information;
- (x) the stoppage of telecommunications;
- (y) any matter regarding national security and public order, and the mitigation of any event of force majeure;
- (z) fines and penalties payable to the Agency and the Commission;
- (aa) the penalties for contravention of any regulation or the Telecommunications Code made under this section;
- (bb) any other matter necessary to establish and carry out national policy on matters involving telecommunications or the administration of this Act.

(2) Prior to making, amending or revoking regulations under subsection (1), the Minister shall send a draft of the proposed regulation or amendment, or notice of the proposed revocation, to every operator, service provider, authorisation holder and public utility affected thereby and specifying the period within which written representations may be provided to the Minister, and he shall consider such written representations as may be received.

- (3) (a) The Agency, as may be directed by the Minister or on its own initiative with the approval of the Minister, may issue a

Telecommunications Code, which shall be subject to the approval of the Minister.

- (b) The Agency shall publish the Telecommunications Code, if issued, and any amendments thereto, in the *Official Gazette*.

Restrictions on disclosure of information.
Cap. 57:01

86. (1) Subject to subsection (2) and without limitation of the proviso to section 83(5) of the Public Utilities Commission Act, any person who is or has been a member, employee, advisor, outside consultant, secondee, agent or other staff member or representative of the Agency or the Commission shall not knowingly disclose to any person –

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- (a) information obtained under or by virtue of the provisions of this Act or the Public Utilities Commission Act that concerns the private affairs of an individual or the business of any person, which information he has acquired in the course of his duties or in the exercise of his functions under this Act, the Public Utilities Commission Act, or any other written law; and
- (b) without limitation of section (1)(a), any information that is in the nature of a trade secret or other confidential financial, scientific or technical information, the disclosure of which could reasonably be expected to result in material financial loss or gain to any person.

(2) Subsection (1) shall not apply to a disclosure of information –

- (a) made with the written consent of the person to whom the information relates;
- (b) that is otherwise in the public domain;
- (c) where the information disclosed is in a summary or statistical form and is expressed in a manner that does not enable the identity of the person to whom the information relates to be determined;
- (d) in connection with the investigation of any civil or criminal offence or for the purposes of any civil or criminal proceedings;
- (e) for the purposes of any civil proceedings brought under or by virtue of this Act or the Public Utilities Commission Act;
- (f) made by one person to whom this section applies to another person to whom this section applies; or

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- (g) required or permitted by any court or administrative body of competent jurisdiction in Guyana.

Forbearance.

87. (1) The Minister, the Agency and the Commission may refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Act in relation to any telecommunications network, telecommunications service or uses of spectrum by any person, or in relation to any other matter under their authority pursuant to this Act, where the Minister, the Agency or the Commission, as the case may be, finds that to refrain would further the interests of the public.

(2) A decision of the Minister, the Agency or the Commission under subsection (1) to exercise forbearance shall not operate as a waiver of any prior or subsequent exercise of power or the prior or subsequent performance of any duty of the Minister, the Agency or the Commission under this Act, and shall not give rise to any cause of action, for any person, that the Minister, the Agency or the Commission is estopped or otherwise prohibited from exercising any power or performing any duty under this Act.

National security, public order and states of public emergency.

88. (1) Where the Minister deems it necessary due to national security or the maintenance of public order, or a state of public emergency has been proclaimed by the President, the Minister or President, as the case may be, may –

- (a) authorise the taking of possession and control by the Government of any facility, telecommunications network, telecommunications service or portion of the spectrum and to use it –

- (i) for Government service or purposes;

- (ii) for such other use as he may determine as in the national interest,

and during any such possession and control, shall ensure the payment of the operating expenses and the debt financing (but not the equity obligations) associated with such facility, telecommunications network, telecommunications service or portion of the spectrum;

- (b) direct or authorise the control, or block the reception, of telecommunications and other use of the spectrum in any manner that he may direct; and

- (c) impose penalties and forfeitures in respect of the failure by any person to fail to comply with any direction or authorisation given by him under this section.

(2) Each operator, service provider, authorisation holder and other person shall comply with the directions or authorisations of the Minister or the President in the circumstances provided for in subsection (1), and no such compliance shall operate as a violation of its licence, exemption or frequency authorisation or this Act, the regulations, the Telecommunications Code, or any other written law.

(3) The Government shall discontinue its possession, control, use or direction of a facility, a telecommunications network, a telecommunications service and any use of the spectrum under this section at such time as the Minister shall have determined that national security or public order no longer require such possession, control, use or direction, or the President shall have terminated the state of public emergency, or any applicable facet of it, that resulted in the possession, control, use or direction of such facility, telecommunications network, telecommunications service, or use of the spectrum.

(4) At any time that the Minister or the President should require any person to give priority to telecommunications to or by the Government, such telecommunications shall have priority over all other telecommunications.

(5) Operators, service providers and authorisation holders shall develop plans for operating their facilities and telecommunications networks and providing telecommunications services, and using the spectrum, during threats to national security or public order, a state of emergency, and other circumstances in which there is a material interruption in the operations of facilities and telecommunications networks, the provision of telecommunications services, or the use of the spectrum, and shall cooperate with the Government in the implementation of such plans or any other procedure developed or required by the Government during a threat to national security or public order, a state of public emergency or other material interruption of telecommunications or other use of the spectrum.

Interception of Communications Act 2008.

Cap. 47:03

89. (1) Nothing in this Act shall be construed as an amendment or any other alteration of the Interception of Communications Act 2008.

Cap. 47:03

(2) For purposes of the Interception of Communications Act 2008, a licence, an exemption and a frequency authorisation under this Act shall be deemed to be a "licence" as that term is used in the Interception of Communications Act.

Non-application of the Act.

90. This Act shall not apply to –

- (a) the content of any broadcasting service, or except as provided for in this Act or the regulations, any other matter involving broadcasting;
- (b) facilities, telecommunications networks, or telecommunications services operated or provided exclusively

by or for the Guyana Defense Force, the Guyana Police Force and civil aviation authorities, except as otherwise expressly provided in this Act;

- (c) any facilities, telecommunications networks or telecommunications services owned, controlled, operated or provided by the Government, or any part of it, to communicate solely with, among or between Government officials, employees or offices;
- (d) any ship, aircraft or other conveyance belonging to or exclusively used in the service of the Government, the Guyana Defense Force, the Guyana Police Force or civil aviation, harbour or maritime authorities; and
- (e) any terminal equipment (except radiocommunication equipment) used exclusively by the persons and in the ships, aircraft, other conveyances, facilities, and telecommunications networks provided for in subsections (b) through (d):

Provided that the persons exempted from the application of this Act pursuant to subsections (b) through (d) must apply for and be granted a frequency authorisation in order to use spectrum, operate radiocommunication equipment or a radiocommunication network, or provide radiocommunication services, and shall be subject to the provisions of this Act governing any such frequency authorisation, including the provisions of section 48;

Provided further that subsections (c) through (e) shall not apply to facilities, telecommunications networks or telecommunications services owned, controlled, operated or provided by a company incorporated under the Companies Act 1991 that is majority-owned, and is controlled, by the Government and is a commercial enterprise.

Cap. 89:01

No infringement of copyright.

91. The granting of a licence, exemption, frequency authorisation or any other permit, certification or authorisation under this Act does not authorise the licensee, exemption holder, authorisation holder or other person granted any such permit, certification or authorisation to do any act which is an infringement of any copyright which may exist in any telecommunication transmitted or received.

Repeal of Guyana Frequency Management Unit Order 1990 and consequential provisions.

92. (1) With effect from the appointed day –

No. 79 of 1990

- (a) the Guyana Frequency Management Unit Order 1990 shall

stand revoked; and

(b) the National Frequency Management Unit (hereinafter referred to as the “Unit”) established by that Order shall stand dissolved.

(2) (a) All the assets (including rights and interests) which, on the day immediately before the appointed day, were vested in or belonged to the Unit shall, with effect from the appointed day, by virtue of this section and without further assurance, shall stand transferred to and vested in the Agency.

(b) The assets of the Unit transferred to and vested in the Agency under this subsection shall include –

(i) all the furniture and other furnishings, voice and communications equipment, motor vehicles and other means of transportation owned by the Unit;

(ii) all books, documents and other records, including electronically stored data and other material, owned by or in the possession of the Unit;

(iii) all material prepared by the Unit or any employee of the Unit on its behalf or in connection with its functions;

(iv) copyright and rights to other intellectual property vested in the Unit;

(v) cash in hand and amounts held in bank accounts in the name of the Unit; and

(vi) all sums or property which in any manner were received by, or became payable to or vested in the Unit in the performance of its functions or in respect of any matter incidental thereto.

(3) The liabilities of the Unit as on the day immediately before the appointed day shall, with effect from the appointed day, stand transferred to the Agency and shall be discharged by, and enforceable against, the Agency as if the said liabilities had been incurred by the Agency.

(4) Nothing in subsections (2) and (3) shall apply to rights and liabilities under any contract of service.

(5) Without prejudice to the provisions of subsection (4), all contracts, deeds, bonds, overdrafts, guarantee agreement or other instruments or other documents which were subsisting immediately before the appointed day and affected by the Unit

shall, as from the appointed day, insofar as they relate to the undertakings of the property of the Unit, be of full force and effect against or in favor of the Agency and be enforceable as fully and effectively as if, instead of the Unit, the Agency had been named therein and had been a party thereto.

(6) Where immovable property has, by virtue of this section, vested in the Agency, the Registrar of Deeds shall take due notice thereof and shall make such annotations on the records of the Deeds Registry as may be necessary.

(7) Any proceedings commenced by or against the Unit prior to the appointed day for the enforcement of any right or liability and pending immediately before the appointed day in any court or before any authority, including the Unit, shall be transferred or attached to the Agency by virtue of this section, and may be continued by or against the Agency.

(8) Notwithstanding anything contained in this Act or any other written law or contract to the contrary, the appointment of all the officers and employees employed by the Unit immediately before the appointed day shall stand terminated with effect from the appointed day:

Provided that any person whose appointment stands terminated under this subsection may apply for employment by the Agency in any position on or after the appointed day, and the Agency, after consultation with the Minister, shall determine in its discretion which, if any, of such persons shall be employed by the Agency, on such terms and conditions as may be agreed upon between any such persons and the Agency.

**Repeal of the
Telecommunications
Act 1990, amendment
and repeal of certain
provisions of the Post
and Telegraph Act,
and consequential
provisions.**
Cap. 47:02

93. (1) Without prejudice to subsections (2) and (5), the Telecommunications Act 1990 shall stand repealed.

No. 20 of 2008

(2) Notwithstanding subsection (1), the Telecommunications (Amendment) Act 2008 shall remain in full force and effect as though it were a part of this Act, and the following terms in the Telecommunications (Amendment) Act shall have the following meanings –

- (a) “licensee of a telecommunication system” and “licensee” have the same meaning as the term “licensee of a radiocommunication network” under this Act;
- (b) “telecommunications system” has the same meaning as the term “telecommunications network” under this Act; and

(c) “telecommunications service provider” has the same meaning as the term “service provider” under this Act.

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(3) (a) Section 2 of the Post and Telegraph Act shall be amended by adding, after the paragraph defining the term “body,” the following paragraphs –

““broadcasting” means the transmission of any programme, whether or not encrypted and whether or not actually received, by wired or wireless medium or technology for reception by all or part of the general public, but does not include telecommunications;

“broadcasting network” means a network used to provide a broadcasting service;

“broadcasting service” means a service providing broadcasting.”

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(b) Without prejudice to subsections (4) and (5)(a), section 63 of the Post and Telegraph Act is repealed and the following section re-enacted as section 63 --

“Broadcasting licences and regulation

63. (1) No person shall operate any broadcasting network, provide any broadcasting service, or otherwise engage in broadcasting, except under and in accordance with a licence granted in that regard by the Minister.

(2) The submission and processing, and the grant, of the licences provided for in subsection (1) shall be governed by the provisions of the Wireless Telegraphy Regulations, as amended, that apply to broadcasting.

(3) Any person who operates any broadcasting network, provides any broadcasting service, or otherwise engages in broadcasting without a licence authorising such activity shall be guilty of an offense and liable on summary conviction to a fine of

not less than twenty million dollars and not more than one hundred million dollars and to imprisonment for two years, and upon conviction, shall be liable to forfeit any apparatus used to operate such broadcasting network, provide such broadcasting service or otherwise engage in broadcasting.

(4) A magistrate or a justice of the peace, satisfied by information on oath that there is reasonable ground for supposing that a wireless telegraphy station or any other apparatus for wireless telegraphy has been established or installed, or is being operated or otherwise utilised, to operate any broadcasting network, provide any broadcasting service, or otherwise engage in broadcasting without a licence duly granted under subsection (1), may grant a search warrant to any police officer or any officer appointed for that purpose by the Minister and named in the warrant, and a warrant so granted shall authorise the officer named therein, and any persons duly appointed to assist him, to enter and inspect the station or any other place where any such apparatus is supposed to be located and to seize any apparatus appearing to him to be used or intended for use in operating any broadcasting network, providing any broadcasting service, or otherwise engaging in broadcasting without a licence.

(5) The Minister may make such regulations as he deems necessary or appropriate with regard to --

(i) broadcasting, broadcasting services and broadcasting networks; and

(ii) the content of any broadcasting service.”

- Cap. 47:01 (c) The amendments to sections 2 and 63 of the Post and Telegraph Act set forth in subsection (3)(b) shall be deemed repealed as of the date that the Broadcasting Act 2011 comes into operation in accordance with section 1 of that Act.
- Cap. 47:01 (d) Sections 64 and 65 of the Post and Telegraph Act shall stand repealed.
- No. 3 of 2001
No. 10 of 2001
Cap. 47:01 (4) Paragraph 3 of the Wireless Telegraphy (Amendment) Regulations 2001, as amended by paragraphs 3 and 4 of the Wireless Telegraphy (Amendment) (No. 2) Regulations 2001, shall continue in force as regulations made under section 63(5) of the Post and Telegraph Act, as set forth in subsection (3)(b) of this section 93, until such time as the Broadcasting Act 2011 shall have come into operation, on which date paragraph 3 of the Wireless Telegraphy (Amendment) Regulations 2001 and paragraphs 3 and 4 of the Wireless Telegraphy (Amendment) (No. 2) Regulations 2001 shall be of no further force or effect.
- No. 6 of 2003 (5) (a) Notwithstanding subsections (1) and 3(b), the fees specified in the Telecommunications Regulations 2003 and the Wireless Telegraphy Regulations, as amended and in force on the appointed day, shall continue in force and shall be deemed to be fees established for the Agency under section 82 of this Act until such time as the Agency may modify such fees in accordance with that section.
- (b) Pending the adoption and publication of a spectrum plan pursuant to section 44 and the regulations, the frequency allocation tables and frequency band plans established by the National Frequency Management Unit prior to the appointed day, and any changes to such tables and plans made by the Agency, with the approval of the Minister, after the appointed day, shall operate as the spectrum plan, with the same force and effect as if they had been adopted and published under this Act and the regulations.
- Cap. 47:02 (6) (a) With effect from the appointed day, the licences issued under the Telecommunications Act 1990 to Guyana Telephone & Telegraph Company Limited and to Cel*Star Guyana, Inc. and transferred to U-Mobile (Cellular) Inc., and all authorisations for use of the spectrum or the installation or operation of radiocommunication equipment issued by the Unit to any of them, shall stand terminated, and the Minister shall issue individual licences and frequency authorisations under this Act to Guyana Telephone & Telegraph Company Limited and U-Mobile (Cellular) Inc., and individual licences and frequency

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authorisations to the Guyana companies Nexlink Communications Inc., E-Networks Inc., Quark Communications Inc., and i-Net Communications Inc., or the successor in interest of any of them, without the need for any application therefor from any of those entities.

- (b) Notwithstanding subsections (1) and (3) and without prejudice to subsection (6)(a), any other licence, authorisation or other form of permit that was, prior to the appointed day, granted under the Telecommunications Act 1990, or under section 63 of the Post and Telegraph Act or the Wireless Telegraphy Regulations, as amended, with regard to telecommunications, and is subsisting on the appointed day shall, on and after that day, be deemed to have been granted under and shall be subject to this Act, and shall continue in force as provided in subsections (6)(c), (d) and (e).
- (c) No later than the ninetieth day after the appointed day, every holder of a licence, authorisation or other permit continued in force in accordance with subsection (6)(b) shall submit an application to the Agency for reissuance of a licence or frequency authorisation, or both as the case may be, under this Act, in the manner provided for in this Act and, if promulgated during such ninety-day period, the regulations.
- (d) Any licence, authorisation or other permit provided for in subsection (6)(b), in relation to which the holder thereof has timely submitted an application for reissuance of a licence or frequency authorisation, or both as the case may be, in accordance with subsection (6)(c), shall remain in force until such time as the Minister shall have determined whether to grant or deny the application, and such licence, authorisation or other permit shall terminate on the date on which the Minister sends written notification to the applicant of the denial of the application or the date on which he publishes notice of the granting of the application in the *Official Gazette*.
- (e) Every licence, authorisation and other permit continued in force in accordance with subsection (6)(b) but for which the holder thereof has not submitted an application to the Agency in accordance with subsection (6)(c) by the ninetieth day after the appointed day, shall be deemed automatically terminated and of no further force or effect.
- (f) The holder of any licence, authorisation or other permit continued in force under subsection (6)(b), but which has not

submitted an application for the issuance of a licence or frequency authorisation, or both as the case may be, under subsection (6)(c), shall be in violation of this Act and shall cease and desist, as of the ninetieth day after the appointed day, from operating any telecommunications network or providing any telecommunications service authorised by such licence, authorisation or other permit.

- (g) Any holder to which subsection (6)(f) applies that does not cease and desist as required by subsection (6)(f) shall be subject to the penalties provided for in section 67.
- (h) The Minister may, by order, extend the ninety-day period provided for in subsections (6)(b) through (g).
- (i) Nothing in this subsection (6) shall be construed as affecting any licence, authorisation or permit issued under the Post and Telegraph Act or the Wireless Telegraphy Regulations permitting any person to engage in broadcasting, to provide broadcasting services, or to operate a broadcasting network, and all such licences, authorisations and permits shall continue in full force and effect from the appointed day in accordance with their terms and shall be subject to the Post and Telegraph Act, the Wireless Telegraphy Regulations and any other applicable law in accordance with the provisions of section 93(3) through (5).

Cap. 47:01

Cap. 47:01

Amendments to the Competition and Fair Trading Act 2006.

Cap. 90:07

94. Section 3(2) of the Competition and Fair Trading Act 2006 shall stand repealed and the following section re-enacted as section 3(2) of such Act –

- “(2) (a) Notwithstanding anything in this Act and without limitation of any other functions assigned in any other written law to the Public Utilities Commission established under the Public Utilities Commission Act, the functions assigned to the Commission in this Act shall be performed by the Public Utilities Commission with regard to --
- (i) competition matters provided for in the Telecommunications Act 2011 and the regulations issued thereunder; and
 - (ii) such public utilities and other sectors under the jurisdiction of the Public Utilities Commission as the Minister

under the Public Utilities Commission Act 1999 may designate by order:

Provided that, with regard to telecommunications and telecommunications undertakings, as those terms are defined in section 2 of the Telecommunications Act 2011, the Commission shall promptly provide the Public Utilities Commission with any information that comes into its possession regarding the market, competition, anti-competitive conduct, abuse of a dominant position, and the welfare and interests of consumers.

- (b) For the purposes established in subsection (2)(a), the Public Utilities Commission shall be, and shall perform the responsibilities, functions and powers of, the national competition authority of Guyana with regard to Chapter Eight, Part One of the Revised Treaty of Chaguaramas.
- (c) Except to the extent provided for in subsections (2)(a) and (b), the Commission shall perform the functions assigned to it in this Act."

Continuing effectiveness of easements and other rights of way.

95. Nothing effected or authorised by this Act shall be regarded as –

- (a) abrogating or otherwise affecting any easement, way-leave, or right of way across lands owned by the Government, any local governmental authority or any other person previously granted to or otherwise obtained by an operator or a service provider as of the appointed day in accordance with any written law or by agreement between the operator or service provider and the Government, local authority or other person; or
- (b) placing any operator, service provider or other person in breach of contract, or as giving rise to a right for any person to terminate any contract or arrangement or to accelerate the performance of any obligation, or as invalidating or discharging any contract, security or surety, except as expressly provided for in this Act:

Provided that, notwithstanding anything in any written law or agreement, nothing in subsection (a) shall prevent the Government, any local governmental authority or any other person from imposing, after the appointed day, a reasonable charge for the use, by an operator or service provider, of any easement, way-leave or right of way across lands owned by any of them, and no imposition of such reasonable charge shall be construed as a violation of law or breach of contract.

EXPLANATORY MEMORANDUM

The Telecommunications Bill 2011 provides for an open, liberalised and competitive telecommunications sector that will be attractive to new market entrants and investors, while preserving the activities of the current sector participants. By creating a competitive environment for telecommunications, the Bill is expected to result in greater choice, better quality of service and lower prices for consumers. To further national and regional social and economic development, the Bill also specifically addresses the expansion of telecommunications networks and services into unserved and underserved areas through the institution of a new universal access/universal services programme.

The Bill, along with consequential amendments to the Public Utilities Commission Act 1999 also introduced today and regulations expected to be promulgated upon commencement of the new legislation, creates a clear, harmonized framework and a level playing field for the sector that is lacking in the current laws and is similar to that found in other countries in the world, including most Caribbean countries. The new legal framework is characterized by transparency and non-discrimination in the issuance and monitoring of licences and authorisations to use the spectrum, seamless interconnection and access between and among telecommunications networks and services, and price regulation where required to ensure competition and protect consumers.

Part I sets out the short title and defines terms used in the Bill.

Part II establishes a new Telecommunications Agency ("Agency"), into which the National Frequency Management Unit will be incorporated and which will function under the Minister's supervision as the technical regulator of the sector, responsible for regulating licensing, the spectrum, and other technical matters and for administering the new universal access/universal services programme. Under the Bill and the consequential amendments to the Public Utilities Commission Act, the Public Utilities Commission ("Commission") will continue to function as the economic regulator of the sector, with responsibility for ensuring a competitive environment, integrated networks and services, consumer rights, and fair, reasonable and non-discriminatory prices.

Part III sets out the respective functions of the Minister, the Agency and the Commission, in a manner designed to coordinate regulation of the sector.

Part IV provides a non-discriminatory licensing regime for the operation of public telecommunications networks and provision of public telecommunications services, through the issuance of individual licences, class licences, special licences (in emergency and short-term situations), and exemptions from the licensing requirement. The Part also provides for the issuance of frequency authorisations for use of the spectrum and the installation and operation of radiocommunication equipment by any person. Other provisions set forth conditions for the suspension, termination, amendment and renewal of licences, frequency authorisations and exemptions.

Part V adopts the internationally-recognised principle that prices will be set by the marketplace and must be fair, reasonable and non-discriminatory. The Commission will,

however, continue to regulate prices charged by telecommunications service providers that are capable of controlling the market (either alone or jointly with another provider) or that engage in anti-competitive conduct.

Part VI provides comprehensive, detailed and enforceable provisions for interconnection and access between and among telecommunications network operators and telecommunications service providers. Operators and service providers are obliged to provide interconnection and access, and the Commission is required to mandate the terms of interconnection and access if they do not themselves reach agreement on terms within specified time limits.

Part VII establishes a new universal access/universal services programme for the extension of telecommunications networks and services into unserved and underserved areas and regions. All operators and service providers will be required to contribute annually to a Universality Fund, which will be used to subsidise projects in those areas and regions. The Minister may also impose universal access/universal services obligations upon licensees, either in their licences or by order.

Part VIII sets out clear, unambiguous powers for the Agency's regulation of the use of the spectrum and the installation and operation of radiocommunication equipment.

Part IX requires Agency certification of equipment that a user of telecommunications services can connect to a telecommunications network, and obliges user's to install equipment that is safe and compatible with the network. The Agency may also institute a certification programme for equipment used in telecommunications facilities. In all cases, the Agency may recognise type approvals from other jurisdictions as the basis for certification.

Part X empowers the Minister, the Agency and the Commission to obtain information from telecommunications network operators and service providers necessary for effective sector regulation and planning. It also empowers the regulators, after the issuance of a warrant, to enter and search premises and seize equipment and other items that are being used illegally.

Part XI contains provisions governing a telecommunications operator's breaking up of streets, roads and bridges, installation of telecommunications facilities on public and private lands, and cutting of trees and boughs.

Part XII sets out the penalties that a court may order for violations of the Act. Penalties range from G\$ 250,000 to G\$ 5,000,000.

Part XIII establishes the Agency's authority to charge fees for the issuance, maintenance and renewal of licences and frequency authorisations and for performance of its other functions.

Part XIV deals with --

- (a) the Minister's powers to make regulations and to take action against telecommunications and uses of the spectrum from outside Guyana that

compete unfairly or otherwise jeopardise telecommunications, spectrum use and national security inside Guyana;

- (b) restrictions on the Agency's and Commission's disclosure of information concerning the business or private affairs of any person;
- (c) the Minister's and President's powers to control telecommunications to address a public emergency or ensure national security;
- (d) preservation of the Interception of Communications Act 2008;
- (e) non-applicability of the Act to broadcasting content and purely governmental telecommunications activities;
- (f) transfer of the functions, assets and liabilities of the National Frequency Management Unit to the Agency; and
- (g) repeal of the Telecommunications Act 1990 and amendment and repeal of provisions of the Post and Telegraph Act governing wireless telegraphy.

The Part also provides a transitional regime, under which new licences and frequency authorisations will be issued under the Act to GT&T, Digicel and other existing sector participants on the date the Act comes into operation. Any other persons holding licences or spectrum permits under the repealed regime are required to apply for new licences and frequency authorisation within ninety days of the Act's commencement. Part XIV also amends section 3(2) of the Competition and Fair Trading Act 2006, to clarify the Public Utilities Commission's role in regulating competition in telecommunications.

Prime Minister