

CHAPTER 282B

TELECOMMUNICATIONS

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SCHEDULE

CHAPTER 282B

TELECOMMUNICATIONS

An Act to make provision for the management and regulation of telecommunications in Barbados, to ensure inter alia 2001-36.

- (a) *the establishment of a framework for authorising the ownership and operation of telecommunications networks;*
- (b) *the provision of telecommunications services on a competitive basis allowing the widest possible access to those services at an affordable rate;*
- (c) *the prevention of unfair competitive practices by carriers and service providers in the management of telecommunications under this Act, the Fair Trading Commission Act and the Utilities Regulation Act; and* Cap. 326B.
Cap. 282.
- (d) *the overall development of telecommunications in the interest of the sustainable development of Barbados, taking into account the introduction of advanced telecommunications technologies and an increased range of services and the preservation of public interest and national security.*

[30th September, 2002] Commence-
ment.
2002/110.

PART I

Preliminary

- Short title. **1.** This Act may be cited as the *Telecommunications Act*.
- Interpretation.
Cap. 308. **2.** In this Act,
"affiliate", in relation to a company, means an affiliated body corporate within the meaning of section 440 of the *Companies Act*;
"broadcasting" means the one-way transmission of sound images or other programming to the general public on any basis, and whether delivered by radio waves, cable, terrestrial or satellite means, or by other electronic delivery;
"bypass" means
 (a) the passing of international voice service, including the carriage of reconstructable voice channel within a data or mixed voice or data service, without passing through the international gateway switch of a licensed voice network operator; or
 (b) the termination of international voice services over the domestic switched telecommunications network by a person who does not originate the call or possess a valid interconnection agreement with that domestic network operator with respect to international voice services;
"Cable & Wireless BARTEL Limited" means a company incorporated as such under the *Companies Act*;
Cap. 308. "Cable & Wireless BET Limited" means a company incorporated as such under the *Companies Act*;
"Cable & Wireless Caribbean Cellular (Barbados) Limited" means a company incorporated as such under the *Companies Act*;

"carrier" means a person who has been granted a licence by the Minister pursuant to this Act to own and operate a public telecommunications network;

"Chief Telecommunications Officer" means a public officer appointed as such under the *Civil Establishment Act*;

Cap. 21.

"Commission" means the Fair Trading Commission established under the *Fair Trading Commission Act*;

Cap. 326B.

"Convention" means the International Telecommunication Convention adopted in Nairobi in November 1982 to which Barbados is a party;

"Court" means the High Court;

"customer equipment" means

- (a) telecommunications equipment whether fixed or mobile; and
- (b) inside wiring located at the premises of a customer and connected to a public telecommunications network at the network termination point;

"document" has the meaning assigned to it by section 2 of the *Evidence Act*;

Cap. 121.

"domestic telecommunications service" means a telecommunications service that is provided between one or more points in Barbados but excludes a transit service or a mobile telecommunications service;

"emergency numbers" means numbers assigned to the police, fire, ambulance or other like services for use by the public in reaching those services in an emergency;

"existing carrier" means in respect of domestic telecommunications, Cable & Wireless BARTEL Limited, in respect of international telecommunications, Cable & Wireless BET Limited, and in respect of mobile telecommunications, Cable & Wireless Caribbean Cellular (Barbados) Limited;

"existing service provider" means

- (a) Cable & Wireless BARTEL Limited;
- (b) Cable & Wireless BET Limited;
- (c) Cable & Wireless Caribbean Cellular (Barbados) Limited; and
- (d) any other existing service provider that has registered with the Ministry prior to 30th September, 2002;

"facility" means any physical component of a telecommunications network including wires, lines, poles, ducts, towers, satellite earth stations or any other apparatus using the radio spectrum, submarine cables, and other tangible resources used for the provision of a telecommunications service, but does not include customer equipment;

Cap. 282A. "former Act" means the *Telecommunications Act, 1991*;

"frequency band" means a continuous frequency range of electromagnetic spectrum;

"harmful interference" means any form of emission, radiation induction or other electromagnetic effect that endangers the functioning of a radio navigation service or other safety service, or seriously degrades, obstructs or repeatedly interrupts any telecommunication or radio communication service operated in accordance with the provisions of this Act;

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

"interconnection provider" means a carrier that provides an interconnection service;

"interconnection service" means a service provided as part of the obligation to provide interconnection under Part VI;

"international telecommunications service" means a telecommunications service that is provided from points in Barbados to points outside of Barbados and from points outside of Barbados to points in Barbados, or is passing in transit through Barbados and from or to ships at sea and small vessels in coastal waters but excludes a mobile telecommunications service;

"licence" means a licence referred to in this Act;

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

"mobile telecommunications network" means a telecommunications network used for the provision of mobile telecommunications services that

- (a) permits a user to have access to the services irrespective of the location of the user via different mobile base facilities during the provision of a single call known as an "inter-cell hand-over"; and
- (b) does not require physical contact between the network and the customer equipment;

"mobile telecommunications service" means a telecommunications service consisting of the emitting, transmitting, switching, conveying or receiving of messages within, into or from Barbados by means of a mobile telecommunications network;

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

"person" includes an individual, a partnership, an unincorporated organisation, a Government or Government agency;

"prescribed fee" means such fee as the Minister responsible for Finance prescribes by order;

"private telecommunications network" means a telecommunications network that is

- (a) used solely by a person or group of affiliated persons for purposes other than the provision of telecommunications services;
- (b) is not interconnected with a public telecommunications network; and
- (c) except with respect to use of the electromagnetic spectrum, does not cross public rights of way;

"private telecommunications service" means a telecommunications service used solely by a person or group of affiliated persons, using a private telecommunications network;

"public telecommunications network" means a public switched telecommunications network owned and operated by a carrier for the provision of telecommunications services to the public;

"radiocommunications" means telecommunication by radio waves;

"radiocommunications apparatus" or "radio apparatus" means any apparatus designed or adapted for use in transmitting or receiving radiocommunications including apparatus in a vehicle, vessel, aircraft or on board a satellite, buoy or beacon;

"radiocommunications service" means a service performed and the facilities provided in connection with the transmission and reception of radiocommunications;

"radiocommunications station" or "radio station" means one or more radio transmitters or receivers or a combination of such transmitters and receivers including the accessory equipment necessary at one location for carrying on a radiocommunications service;

"radio navigation service" means a service for determining the position, velocity or other characteristics of a vessel or the obtaining of information relating to the position, velocity or other characteristics of the vessel by means of the propagation properties of radio waves;

"Reference Interconnection Offer" or "RIO" has the meaning set out in section 26;

"resale" means an activity whereby a person subscribes to, or contracts with, a licensed carrier or service provider for the use of specified services of that licensed carrier or service provider and then re-offers those services to any person;

"satellite receiver" means an apparatus adapted for the reception only of sound and images from a radiocommunications service and transmitted by means of a satellite;

"service provider" means a person granted a licence by the Minister pursuant to this Act to provide telecommunications services to the public;

"spectrum" means electromagnetic spectrum;

"Spectrum Plan" means the National Spectrum Management Plan referred to in Part IX;

"technician" means a person who is certified in accordance with this Act to connect customer equipment to the public telecommunications network or to install, maintain and repair wiring on the customer's side of the network termination point;

"telecommunications" means any form of transmission, emission or reception of signs, text, images, sounds or other intelligence of any nature by guided or unguided electromagnetic, electrochemical or other forms of energy including by wire, radio, optical, electromagnetic spectrum or by way of any other technology, whether as between persons and persons, things and things, or persons and things;

"telecommunications apparatus" means any apparatus used for the transmission or reception of telecommunications;

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

"telecommunications service" means a service that comprises the emitting, transmitting, switching, conveying or receiving of messages within, into or from Barbados by means of a telecommunications network;

"transit service" means a service provided to or by any international carrier which facilitates the passing of traffic through telecommunications facilities of licensed carriers where that traffic does not terminate in Barbados;

"universal service carrier" means a carrier in relation to which a declaration is in force with respect to the universal service obligation pursuant to Part VII;

"universal service obligation" means the obligation set out in section 33;

"VSAT" means very small aperture terminal satellite facility.

PART II

Exclusive Right of the Crown

3. Subject to this Act, the Crown reserves the exclusive right to provide telecommunications services in Barbados.

Exclusive right with respect to telecommunications services.

PART III

Regulators of the Telecommunications Sector

4. (1) The Minister shall have responsibility for the management and regulation of telecommunications in Barbados. Powers and duties of Minister.

(2) In furtherance of his powers and duties under subsection (1), the Minister shall

- (a) develop and review telecommunications policies for the promotion of the objects of this Act;
- (b) publish the policies referred to in paragraph (a) as determined in accordance with this Act;
- (c) ensure compliance with the Crown's international obligations with respect to telecommunications;
- (d) issue licences in respect of the provision of telecommunications services;
- (e) determine the category of telecommunications services that are to be subject to regulation;
- (f) specify the policy to be applied to each category of telecommunications services;
- (g) maintain a register of each category of licences issued under this Act;
- (h) monitor and ensure compliance with the terms and conditions that are applicable to each licensee;
- (i) specify the interconnection policy;
- (j) plan, manage and regulate the use of spectrum in Barbados or between Barbados and elsewhere;

ss.5-7.

- (k) plan, manage and regulate numbering in Barbados in accordance with the National Numbering Plan specified in section 50; and
- (l) inform the public about matters related to telecommunications.

Delegation. **5.** The Minister may by instrument in writing delegate to any public officer such of the Minister's powers and duties as the Minister considers necessary; but such delegation shall not prevent the Minister from exercising any of his powers or duties.

Functions of
Commis-
sion.

6. (1) The Commission shall

- (a) enforce the policies established by the Minister pursuant to this Act;
- (b) exercise its regulatory functions in respect of telecommunications in accordance with this Act, the *Fair Trading Commission Act* and the *Utilities Regulation Act*;
- (c) be responsible for the regulation of competition between all carriers and service providers in accordance with this Act to ensure that the interests of consumers are protected; and
- (d) establish and administer mechanisms for the regulation of prices in accordance with this Act, the *Fair Trading Commission Act* and the *Utilities Regulation Act*.

Cap. 326B
Cap. 282.

Cap. 326B.
Cap. 282.

Protection of
confidential
information.

7. (1) The Minister shall take all reasonable steps to ensure that the information submitted to him, and to every person concerned with the administration of this Act, in respect of licensees and applicants for licences granted under this Act is treated confidentially except insofar as disclosure is necessary for the administration of this Act.

(2) The requirement to keep confidential information secret pursuant to subsection (1) shall not apply where

(a) disclosure of that information is necessary for the proper administration of this Act; and

(b) the Minister authorises the release of that information.

(3) Where

(a) a person claims that confidential information

(i) made available or to be made available by or on behalf of that person, whether in oral evidence or in a written statement, submission or other document, at a hearing pursuant to this Act; or

(ii) furnished, or contained in a document produced by the person,

is information the disclosure of which would be injurious to the interest of the person; and

(b) the Minister is satisfied that the claim is justified and is not of the opinion that disclosure of the confidential information is necessary in all the circumstances,

the Minister shall take all reasonable steps to ensure that the confidential information is not, without the consent of that person, disclosed in the proceedings or by the person who receives the relevant information in the course of his duties.

(4) Any person who

(a) discloses information contrary to this section; or

(b) without the consent of the person referred to in subsection (3), contravenes this section is,

guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 2 years or to both.

Powers of
Commis-
sion.

8. (1) The Commission shall exercise its powers and perform its functions consistently with the purposes and objects of this Act and any law implementing the telecommunications policy objectives of Barbados.

Cap. 282.
Cap. 326B

(2) The Commission shall ensure that service providers provide telecommunications services and charge rates in accordance with this Act, the *Utilities Regulation Act* and the *Fair Trading Commission Act*.

Minister,
Commission
to refrain
from acting.

9. Where the Minister or the Commission is satisfied on the basis of evidence presented to the Minister or the Commission, as the case may be, that the market is sufficiently competitive to ensure that the interests of consumers are protected, the Minister or the Commission shall refrain from exercising their respective functions in respect of the rate-setting mechanism referred to under Part VIII by giving notice to that effect.

PART IV

Licensing requirements in respect of public telecommunications

General
licensing
require-
ments in
respect of
public
telecommu-
nications.

- 10.** (1) No person shall
- (a) own or operate a telecommunications network without a carrier licence issued in accordance with this Part;
 - (b) provide telecommunications services to the public without a service provider licence issued in accordance with this Part;
 - (c) use spectrum for the purpose of
 - (i) operating any telecommunications network; or
 - (ii) providing a telecommunications servicewithout a spectrum licence issued in accordance with Part IX;

-
- (d) distribute, lease, trade, offer for sale, sell or import for sale any prescribed telecommunications apparatus or radiocommunications apparatus without a dealer's licence issued in accordance with Part XI; or
 - (e) own or operate a VSAT without a VSAT licence issued in accordance with the provisions of this Act.
- (2) Subsection (1) shall not apply to facilities used solely
- (a) for non-commercial purposes by the Barbados Defence Force or the Royal Barbados Police Force; or
 - (b) as part of an electricity distribution network that does not provide telecommunications services.

11. (1) An application for the grant, renewal or modification of a licence under this Part must Application for licence.

- (a) be made in the form prescribed;
- (b) contain such information as the regulations prescribe; and
- (c) be accompanied by the prescribed fee.

(2) An applicant for a licence under this Part shall be required to satisfy the Minister that

- (a) the applicant will comply with all interconnection obligations, universal service obligations, licence limitations, network build-out requirements and any other such obligations imposed by this Act for the type of telecommunications network or telecommunications service in respect of which the applicant seeks a licence;
- (b) all legal requirements for the holding of the licence have been complied with;
- (c) the applicant possesses the technical qualifications necessary to fully perform the obligations attached to the licence for which the applicant is applying; and

(d) the applicant satisfies the financial requirements, as imposed by the Minister, to construct and operate the telecommunications network or to provide the telecommunications services associated with the licence for which the applicant is applying.

(3) The Minister shall refuse an application for a licence under this Part where

(a) that application does not meet the requirements specified in subsections (1) and (2); or

(b) the application is otherwise contrary to the Act or any law.

Grant of
licence.

12. (1) In determining whether to grant a licence under this Part, the Minister shall consider

(a) whether an applicant

(i) is a person of fit and proper character;

(ii) is, or is affiliated with, an undischarged bankrupt; and

(iii) has had a licence revoked or is affiliated with a person who has had a licence revoked; and

(b) any other matter that he considers relevant.

(2) The Minister may grant to an applicant under this Part

(a) a carrier licence for the ownership and operation of a telecommunications network; or

(b) a service provider licence for the provision of telecommunications services,

where the Minister is satisfied that the applicant has complied with the provisions of section 11 and that the applicant satisfies the required criteria referred to in subsection (1).

(3) The Minister is not mandated to grant a licence to any applicant.

13. (1) A licensee shall pay annually to the Accountant General the prescribed fee; and shall produce to the Chief Telecommunications Officer the receipt as evidence of the payment of that fee. Annual licence fee.

(2) The fee referred to under subsection (1) shall be paid within the time prescribed.

(3) Where a licensee has failed to pay an annual licence fee within the time specified in subsection (2), the licensee shall be required to pay a penalty for the late payment thereof calculated at 25 per cent of the licence fee.

(4) The Minister may suspend or revoke a licence where the licensee fails to pay

- (a) the annual licence fee within the time specified in subsection (2); or
- (b) a penalty for the late payment of that fee within the time specified in subsection (3).

14. (1) Any licence granted under this Part is subject to the following conditions: Conditions for the granting of a licence.

- (a) the licensee shall operate a telecommunications network or provide the telecommunications services specified in the licence only for the period specified in the licence and only in the manner explicitly authorised by the licence;
- (b) the licensee shall not assign or otherwise transfer the licence nor the right granted by the licence except in accordance with this Part;
- (c) the licensee shall comply with the requirements specified under section 11; and

(d) the licensee shall adhere to any other conditions deemed reasonably necessary to achieve the objects of this Act.

(2) The conditions of a licence referred to in subsection (1) shall not be varied otherwise than in accordance with this Act.

Existing
licences.

15. All licences that were granted under the former Act and were valid immediately before the commencement of this Act shall continue in force and effect and shall be deemed for the purposes of this Act to have been granted under this Act without payment of any further fee until new licences are issued under this Act.

Duration of
licences.

16. A licence granted under this Part

(a) shall be for the period specified in the licence and except for a carrier licence, shall not be granted for a period longer than 25 years; and

(b) may be revoked or suspended in accordance with this Act.

Renewal of
licences.

17. (1) Where an application for renewal of a licence under section 11 is made, the Minister may refuse to renew that licence if the licensee is or has engaged in conduct that materially contravenes this Act or any regulations made under this Act.

(2) Where the Minister has reasonable grounds for not renewing a licence under subsection (1), he shall inform the licensee by written notice as soon as practicable of his intention not to renew the licence.

(3) A licensee referred to under subsection (2) shall be given 30 days to make written submissions to the Minister in respect of the refusal.

(4) The Minister shall consider any written submissions made under subsection (3) and shall inform the licensee within 7 days of the receipt of the submissions of his decision on the matter.

18. (1) The Minister may, either on his own motion or on the application of a licensee, modify a licence by agreement with the licensee in accordance with this section. Modifica-
tion of
licences.

(2) The Minister may modify a licence without the consent of the licensee where the Minister is of the view that the modification is necessary for reasons of public interest; but where he does so, the Minister shall advise the affected parties by written notice at least 2 days prior to the modification.

(3) The Minister shall publish the fact of the modification referred to in this section and the general effect of that modification in the *Official Gazette* and in at least one daily newspaper.

(4) Section 22 of the *Utilities Regulation Act* shall not apply in respect of carriers and service providers licensed under this Act. Cap. 282.

19. (1) The Minister may suspend or revoke a licence granted under this Part where Suspension
or revoca-
tion.

- (a) the licensee contravenes this Act;
- (b) the licensee fails to observe a term or condition specified in the licence;
- (c) the licensee is in default of payment of any licence fee prescribed; or
- (d) the suspension or revocation is necessary in the interest of national security or in the public interest.

(2) Where the Minister has reasonable grounds for believing that a licence granted under this Act ought to be suspended or revoked, the Minister shall, before suspending or revoking the licence, give the licensee 60 days notice in writing of his intention to do so, specifying the date and the grounds on which he proposes to suspend or revoke the licence; and shall give the licensee an opportunity

- (a) to make written submissions in respect of those grounds;
- (b) to remedy the breach of the licence or a term or condition of the licence; or
- (c) to submit to the Minister, within 30 days of the receipt of the notice, or such longer time as the Minister may specify, a written statement of objections to the suspension or revocation of the licence which the Minister shall take into account before reaching a decision.

(3) The suspension or revocation of a licence referred to in subsection (2) shall take effect on the date specified by the Minister in the notice referred to in that subsection or such other date as the Minister specifies.

Assignment
or transfer.

20. (1) A person shall be permitted to assign a licence granted under this Part, or any rights thereunder where prior written approval of the Minister is first obtained; and the assignment shall be deemed to be a licence issued by the Minister under this Act.

(2) The Minister may approve an application for the assignment of a licence under subsection (1), where the Minister is satisfied that the proposed assignee is legally, technically or financially qualified to undertake the obligations imposed by this Act or by the licence.

Register.

21. (1) The Minister shall maintain a Register of licences granted under this Part, and the Register shall be made available to the public for inspection on payment of the prescribed fee.

- (2) The Minister responsible for Finance may prescribe fees for
 - (a) inspection of; or
 - (b) obtaining copies from,

the Register of licences granted under this Part.

PART V

Licensing requirements in respect of private telecommunications

22. (1) Any person who

(a) owns or operates a private telecommunications network; or

(b) provides a private telecommunications service,

shall be required to obtain a private network licence or a private telecommunications service licence, as the case may be, from the Minister.

(2) An application for a private network licence or a private telecommunications licence referred to under subsection (1)

(a) must be in the form prescribed; and

(b) must be accompanied by the prescribed fee.

(3) Sections 11(2), 11(3), 12(1), 12(3), 13, 14, 15, 16, 17, 18 and 19 shall apply to licences issued under this Part.

23. Where the licensee of

(a) a private telecommunications network; or

(b) a private telecommunications service,

uses spectrum, the licensee must also obtain a spectrum licence in accordance with section 44.

24. A licensee of a private telecommunications network or a private telecommunications service shall not offer the network for resale to any person or offer the service for sale or shall not otherwise dispose of the network or the service to the public without first obtaining the relevant licence to do so.

Private
telecommu-
nications.

Spectrum
licence.

No sale.

PART VI

Network Interconnections and Reference Interconnection Offers

Interconnec-
tion by
carriers.

25. (1) A carrier shall provide, on request from any other carrier, interconnection services to its public telecommunications network for the purpose of supplying telecommunications services in accordance with the provisions of subsection (2).

- (2) Interconnection services referred to in subsection (1) shall
- (a) be offered at points, in addition to network termination points offered to the end-users, subject to the payment of charges that reflect the cost of construction of any additional facilities necessary for interconnection;
 - (b) be on terms that are transparent and non-discriminatory;
 - (c) in respect of the interconnection charges and service quality of the interconnection services, be no less favourable than similar services provided by the interconnection provider for
 - (i) its own purposes;
 - (ii) any non-affiliate service supplier of the carrier;
 - (iii) a subsidiary of the carrier; or
 - (iv) for similar facilities so provided;
 - (d) be made available in a timely fashion;
 - (e) be offered at charges that are cost-oriented;
 - (f) be offered in such a way as to allow the requesting carrier to select the services required and not require the carrier to stand the cost of network components, facilities or services that are not required or have not been requested by that carrier; or

-
- (g) allow for end-users of public telecommunications services to exchange telecommunications with other users of similar services regardless of the carrier to which the end-user is connected.
 - (3) A carrier shall provide interconnection to its network
 - (a) on such reasonable terms and conditions as the interconnecting parties agree through commercial negotiations;
 - (b) consistent with an approved Reference Interconnection Offer; or
 - (c) where there is no agreement between the parties, on such terms and conditions as the Commission determines in accordance with section 29 applying the principles established under this Act, and under any approved Reference Interconnection Offer.

26. (1) A dominant carrier shall file with the Commission a Reference Interconnection Offer, also referred to in this Act as an "RIO", that sets out the terms and conditions upon which other licensed carriers will be permitted to interconnect with the interconnection provider's public telecommunications network.

Reference
Interconnec-
tion Offer.

(2) The terms and conditions referred to under subsection (1) may include the following:

- (a) a description of interconnection services to be provided;
- (b) terms of payment, including billing procedures;
- (c) location of points of interconnection;
- (d) technical standards for interconnection;
- (e) processes for the testing and establishment of interconnection;
- (f) interconnection charges;
- (g) the procedure in event of alterations being proposed to the network or services, of services to be offered by one of the parties;

- (h) access to ancillary services;
- (i) traffic forecasting and network management;
- (j) maintenance and quality of interconnection services;
- (k) the duration of the RIO;
- (l) limitation of liability;
- (m) indemnity;
- (n) dispute resolution procedures; and
- (o) confidentiality in relation to certain aspects of the agreement.

(3) In this Part "dominant carrier" means a carrier that the Minister determines to be dominant based on that carrier not being effectively constrained by competitive forces in a particular telecommunications market and such other criteria as the Minister prescribes.

Approval of
Reference
Interconnec-
tion Offer.

27. (1) The RIO shall not take effect unless approved in writing by the Commission.

(2) Where the Commission considers that the RIO or any part of the RIO is inconsistent with the principles of interconnection as set out in section 25(2), the Commission may refuse to approve the RIO or a part of the RIO outlining the inconsistency and giving reasons for its decisions.

(3) In deciding whether to approve or refuse an RIO the Commission shall

- (a) consult with the carrier providing the RIO and any other carriers likely to seek interconnection to that carrier's network; and
- (b) have regard to
 - (i) the interconnection principles set out in section 25;

- (ii) the interconnection policy specified by the Minister under paragraph (i) of subsection (2) of section 4;
- (iii) the need to promote competition;
- (iv) the long-term interests of end-users; and
- (v) the submissions, whether oral or written, of the carriers providing and seeking interconnection.

(4) Where the Commission approves an RIO of a carrier or part of that RIO then it shall make a declaration as to the approval specifying the date on which the approval takes effect.

(5) Where the Commission refuses the RIO of a carrier or part of that RIO, the Commission shall consult with the carrier in order to resolve the inconsistency with the interconnection principles referred to in section 25; and the carrier may amend the RIO to remedy the inconsistency.

(6) Where the Commission is satisfied that an amendment of an RIO by a carrier pursuant to subsection (5) satisfies the interconnection principles referred to in section 25, it shall approve the amended RIO and the carrier shall file the amended RIO with the Commission.

28. (1) A person who wishes to interconnect with the telecommunications network of a telecommunications provider shall so request that provider in writing giving sufficient information as is reasonably required by a provider to allow for a response to the requests.

Requests for interconnection.

(2) Where an RIO is in effect with respect to an interconnection provider, and the person seeking interconnection accepts the terms and conditions set out in the RIO, the parties shall sign an agreement in accordance with those terms and conditions of the RIO within 90 days of the receipt of the request.

(3) Where a person requests an interconnection pursuant to subsection (1) on terms other than those of the RIO that is in effect in relation to the interconnection provider, the parties shall negotiate in good faith to reach an agreement on the terms and conditions of the interconnection; and the negotiations shall commence within 30 days of the receipt of the written request.

(4) A request for interconnection to a public telecommunications network may be refused by an interconnection provider for the following reasons:

- (a) for the protection of the
 - (i) safety of a person;
 - (ii) security of the network;
 - (iii) integrity of the network; or
- (b) the difficult technical and engineering nature of the interconnection.

(5) Where there is a refusal by the provider under subsection (4), the person seeking interconnection may refer that refusal to the Commission for review.

Interconnec-
tion
agreements.

29. (1) Where pursuant to subsection (3) of section 28 a person who requests interconnection and an interconnection provider agree on the terms and conditions of interconnection, that agreement shall be filed with the Commission within 30 days of the date of the agreement for the Commission's approval.

(2) The Commission may in respect of any agreement filed with it under subsection (1)

- (a) approve the agreement in writing; or
- (b) require parties to the agreement to vary the filed agreement

-
- (i) to comply with interconnection principles set out in section 25; or
 - (ii) if it considers that the interconnection agreement unfairly discriminates against other carriers or is otherwise unlawful.

(3) Any direction for variation under subsection (2) shall be issued within 30 days of an interconnection agreement having been filed with the Commission.

(4) Where parties to an interconnection agreement have failed to vary the agreement at the request of the Commission pursuant to subsection (2), the Commission may, having regard to the matters specified in subsections (1) and (2) of section 31, make an order stating the amendment that is to be made to the interconnection agreement to ensure that the agreement is consistent with this Part.

(5) An interconnection provider may limit or terminate its agreement to offer interconnection services or may cease to offer those services

- (a) in the interest of protecting the integrity of its telecommunications network;
- (b) in the interest of protecting the safety of any person; or
- (c) where the other party to the agreement fails to comply with the terms of the agreement.

(6) Where the interconnection provider takes any action pursuant to subsection (5), in respect of the agreement, the other party to the agreement may refer the matter to the Commission for review.

(7) Where the other party to the agreement refers the matter to the Commission for review under subsection (6), and the Commission determines that matter in favour of the other party, the other party may seek compensation for any financial loss incurred that resulted from the decision by the interconnection provider.

Register of interconnection agreements.

30. (1) The Commission shall keep a Register of interconnection agreements and Reference Interconnection Offers for public inspection.

(2) The principles of confidentiality set out in section 7 shall apply in respect of the keeping of the Register of interconnection agreements and in respect of the penalties to be applied for any contravention of those principles.

Interconnection disputes.

31. (1) Any dispute that arises between parties in respect of the negotiating of an interconnection agreement may be referred to the Commission in writing for resolution by either party to the negotiations where

- (a) all reasonable efforts have been made by the parties to resolve the dispute; and
- (b) the parties have negotiated in good faith.

(2) In determining a dispute pursuant to subsection (1), the Commission shall have regard to

- (a) what is a fair balance between the legitimate interests of the parties;
- (b) the interconnection principles established under section 25;
- (c) any regulatory obligations or constraints imposed under this Act, the *Fair Trading Commission Act* and the *Utilities Regulation Act* on any of the parties pursuant to this Act;
- (d) the desirability of stimulating innovative offers in the market;
- (e) the desirability of providing consumers with a wide range of telecommunications services;
- (f) the availability of technically and commercially available alternatives to the interconnection requested;
- (g) the need to maintain the integrity of the public telecommunications network and the interoperability of telecommunications services;

Cap. 326B.
Cap. 282.

- (h) the nature of the request in relation to the resources available to meet the request;
- (i) the relative market positions of the parties;
- (j) the promotion of competition in Barbados;
- (k) the Reference Interconnection Offer of the interconnection provider; and
- (l) the interconnection policy specified by the Minister in accordance with paragraph (i) of section 4(2).

(3) The Commission shall conduct any proceedings in respect of dispute resolution referred to it under subsection (1) *in camera* unless the parties otherwise agree; but the decision taken by the Commission shall be published subject to any requirement for confidentiality under this Act or any other enactment.

(4) The decision of the Commission under subsection (3) in respect of the terms and conditions of an interconnection agreement that are the subject of the dispute shall be consistent with

- (a) those terms and conditions which have been agreed on by the parties and are not in dispute; and
- (b) the terms of any RIO that is in effect with respect to that interconnection provider.

(5) The provisions of this section in respect of dispute resolution apply in respect of

- (a) pre-contract interconnection disputes; and
- (b) disputes referred to the Commission under the terms of an interconnection agreement.

PART VII

Universal Service Obligation

Universal
service
policy.

32. The universal service policy of the Government of Barbados is aimed at ensuring that every resident and every business enterprise of Barbados has access to reliable, affordable telecommunications services throughout Barbados on an equitable basis.

Universal
service
obligation.

33. (1) There shall be a universal service obligation which is an obligation imposed on the Universal Service Carrier designated by the Minister under section 34(1), to

- (a) ensure that basic telecommunications service, which is the ability to access dial tone in order to make telephone calls to other end-users, is reasonably accessible to all people in Barbados on an equitable basis wherever they reside or carry on business;
- (b) ensure that payphones are reasonably accessible to all people in Barbados;
- (c) permit access to directory inquiries;
- (d) permit access to emergency numbers free of charge;
- (e) provide appropriate telecommunications equipment to disabled persons to ensure access by those persons to the basic telecommunications service.

(2) In giving effect to the provisions of subsection (1), the Minister shall ensure, in furtherance of the policy referred to in that subsection, that

- (a) the universal service obligation described in this Part is fulfilled as efficiently and economically as practicable;
- (b) the net avoidable costs that result from providing services in the course of fulfilling the universal service obligation are recovered from all carriers and service providers in accordance with sections 35 and 36 on an equitable basis;

-
- (c) the universal service obligation does not impose an unfair or unreasonable burden on the universal service provider or persons required to contribute to the provision of universal service;
 - (d) the provision of the universal service obligation is co-ordinated with cost-oriented pricing efforts so that rate structures and levels for telecommunications services appropriately reflect underlying cost structures and levels; and
 - (e) the universal service obligation is transparent, non-discriminatory, non-preferential, and competitively neutral.

(3) The Minister may, after consultation with the Commission and the universal service carrier, modify in writing the universal service obligation referred to in section 33(1).

(4) In modifying a universal service obligation pursuant to subsection (3), the Minister, in consultation with the Commission,

- (a) shall permit the universal service carrier concerned in the modification to recover the cost of providing the modified universal service obligation; and
- (b) ensure that no unfair or unreasonable burden is placed on the universal service carrier or any person required to contribute to the provision of the service.

(5) In this section "net avoidable costs" means all costs incurred by the universal service provider in connection with the fulfillment of the service obligation less any revenues derived from the provision of universal service.

34. (1) The Minister shall designate in writing a carrier to be the universal service carrier for Barbados.

Designation of carrier as a universal service carrier.

(2) A designation under this section takes effect on the date specified by the Minister and shall have effect for the duration of the licence of the universal service carrier unless otherwise specified by the Minister, or unless the Minister designates another carrier to be the universal service carrier.

(3) Where the Minister designates another carrier as a universal service carrier under subsection (2), the Minister shall give 12 months notice in writing of the new designation.

(4) The carrier licence or the service provider licence of a designated universal service carrier is subject to the condition that the carrier must fulfil the universal service obligation.

Access
deficit
charge.

35. (1) The Commission shall prescribe a charge to be known as "an access deficit charge" to be paid by all carriers and service providers interconnecting to the service.

(2) The Commission shall establish guidelines in writing for determining the amount of the access deficit charge.

Universal
Service
Fund.

36. (1) There is hereby established a fund to be known as a Universal Service Fund, the resources of which comprise such amounts as may be collected under the authority of this Act from all carriers and service providers for the purpose of funding the universal service.

(2) The Universal Service Fund shall be administered by a person designated by the Minister in accordance with regulations made for the purpose by the Minister.

PART VIII

Rates

Definitions.

37. (1) For the purposes of this Part, "provider" means a service provider that provides a regulated service under this Act.

(2) "A regulated service" means a service designated by the Minister as a service in respect of which the Commission or the Minister approves the rates of the service in the manner referred to in section 38.

38. The rates to be charged by a provider are those set in accordance with the provisions of this Part, the *Utilities Regulation Act* and the *Fair Trading Commission Act*.

Rate-setting.
Cap. 282.
Cap. 326B.

39. (1) The Commission shall establish a mechanism for the setting of rates to be charged by a provider in accordance with the provisions of this Act, the *Fair Trading Commission Act* and the *Utilities Regulation Act*.

Mechanism
for rate-
setting.
Cap. 326B.
Cap. 282.

(2) Subject to this Act, the rates referred to under subsection (1) shall be such as to facilitate the policy of market liberalisation and competitive pricing.

(3) Subject to this Act, the Minister shall at such time as is specified under this Act and after consultation with the Commission require that the Commission use an incentive-based rate-setting mechanism to establish the rates to be charged by a provider.

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

(5) The Commission shall regulate the rates to be charged by a provider in respect of regulated services only where

- (a) there is one provider providing that service; and
- (b) the Minister finds as a question of fact under subsection (6)
 - (i) there is a dominant provider; or
 - (ii) the market is not sufficiently competitive.

(6) The Minister shall, after consulting with the Commission, determine by way of policies or rules established by him for the purpose, as a question of fact whether

- (a) a provider is a dominant provider; or
- (b) the market is or is not sufficiently competitive.

(7) Section

Cap. 282.

- (a) 36 of the *Utilities Regulation Act* shall not apply in respect of telecommunications; and
- (b) 37 of the *Utilities Regulation Act* shall not apply in respect of utility services provided by service providers or carriers that are licensed under this Act.

PART IX

Spectrum Management

Duties and powers of Minister in relation to spectrum.

40. The Minister shall be responsible for

- (a) the development of a National Spectrum Management Policy;
- (b) the regulation of the use of spectrum within Barbados or between Barbados and any other country to
 - (i) promote the economic and orderly use of spectrum for the operation of telecommunications; and
 - (ii) recover the cost incurred in the management of spectrum.

Spectrum Management Plan.

41. (1) To regulate the use of spectrum, the Minister shall develop a National Spectrum Management Plan, in this Part referred to as a "Spectrum Plan", which shall state

- (a) how the spectrum is to be used; and
- (b) the procedures for authorising persons to use frequency bands.

(2) The procedures referred to in paragraph (b) of subsection (1) may include procedures for authorising frequency bands

- (a) by auction;
- (b) by tender;
- (c) at a fixed price; or
- (d) based on stated criteria.

(3) The Spectrum Plan shall be made available to the public on payment of the prescribed fee.

42. The Minister may, in accordance with the Spectrum Plan, allocate frequency bands for particular types of telecommunications networks, telecommunications services and radiocommunications.

Allocation of frequency bands.

43. The Minister, in exercising his functions under this Part, shall take into account

- (a) the objects of the Act;
- (b) the impact of the spectrum plan on existing and future use;
- (c) the efficient use of the spectrum;
- (d) the Convention;
- (e) any applicable international standards, conventions and other agreements; and
- (f) any other relevant matters having regard to the circumstances of the case.

Considerations to be taken into account by the Minister.

44. (1) An applicant for a spectrum licence shall submit his application to the Minister in the prescribed form together with the prescribed application fee.

Spectrum licence.

(2) The provisions of Part IV apply to the application for and the granting and assignment of a spectrum licence and the conditions in respect thereof.

(3) The Minister may, in accordance with the Spectrum Plan, modify a spectrum licence after consultation with the licensee where he is of the view that it is necessary for the better use of spectrum.

(4) Where the Minister proposes to modify a spectrum licence under subsection (3), he shall give the licensee one year's prior written notice of the intended modification.

(5) Where a spectrum licence is modified under subsection (4), the licensee shall be given by the Minister fair and reasonable compensation for the modification.

(6) The Minister may, in accordance with the spectrum plan, temporarily modify a spectrum licence after consultation with the affected spectrum licensee if the Minister is of the view that the modification is necessary for reasons of national security, but where he does so, he shall advise the affected licensee by giving to that licensee 2 days prior written notice.

(7) The spectrum licensee may apply to the Minister for a modification of a spectrum licence in accordance with this Act, and the Minister may modify that licence.

(8) The Minister shall publish the fact of the modification and its general effect in the *Official Gazette*.

Suspension,
revocation,
refusal to
renew.

45. (1) The Minister may suspend, revoke or refuse to renew a spectrum licence

(a) for any of the reasons specified in section 19; or

(b) where the radio equipment in respect of which the licence was granted interferes with the radio equipment of a person to whom a spectrum licence has been granted.

(2) The provisions of section 19(2) shall apply to the suspension, revocation or refusal to renew a spectrum licence except that the licensee shall be given 60 days notice of the Minister's intention to so suspend, revoke or refuse to renew a spectrum licence.

46. (1) The Minister may grant a special spectrum licence in the case of an emergency under the circumstances specified in the Spectrum Plan. Special spectrum licence.

(2) An applicant for a special spectrum licence shall submit his application in the prescribed form to the Minister together with the prescribed fee.

(3) A special spectrum licence shall be granted for a term not exceeding 10 calendar days and shall not be renewable.

47. (1) Subject to this section, section 15 shall apply to all spectrum licences that were valid immediately before 30th September, 2002. Existing spectrum licences.

(2) The spectrum rights of telecommunications carriers that were valid immediately before 30th September, 2002 and all other persons who are allocated rights to spectrum in connection with licences granted under the former Act and under any other validly granted licence or authority under the laws of Barbados are hereby preserved.

48. Section 13 shall apply in respect of spectrum licence fees. Spectrum licence fees.

49. The Minister shall maintain a Register of licences granted under this Part, which shall be made available to the public for inspection on payment of the prescribed fee. Public Register for spectrum licences.

PART X

Numbering for Telecommunications Carriers

50. (1) The Minister shall develop a Specific guidelines.

(a) National Numbering Policy; and

- (b) National Numbering Plan based on that policy to assign telephone numbers to telecommunications carriers on a non-discriminatory basis and in accordance with the Plan.
- (2) The Plan referred to in subsection (1) shall include provisions for ensuring
 - (a) that sufficient numbering resources are available for carriers in accordance with the Plan;
 - (b) to the extent reasonably possible, that the numbering network maintained by existing carriers immediately before 30th September, 2002 is preserved; and
 - (c) to the extent reasonably possible, that the numbering allocations that were in existence immediately before 30th September, 2002 are not reversed.

PART XI

Technical Standards for Telecommunications Equipment and Technicians

Certification
standards.

- 51.** (1) The Minister shall prescribe certification standards for
- (a) technicians;
 - (b) customer equipment including plugs and jacks; and
 - (c) wiring connected to the public telecommunications network.
- (2) The certification standards referred to in subsection (1) are aimed at ensuring
- (a) the protection of the integrity of the public telecommunications network;

-
- (b) the protection of the health or safety of persons who operate, use, install and maintain or are otherwise reasonably likely to be affected by the operation of the public telecommunications network;
 - (c) interoperability of the customer equipment and wiring with the public telecommunications network; and
 - (d) the adherence to relevant international industry standards.
- (3) The Minister may modify certification standards for
- (a) technicians; and
 - (b) customer equipment and wiring,

but in so doing, the Minister shall have due regard to any relevant international standards.

(4) Subject to the coming into effect of the certification standards prescribed under subsection (1)

- (a) all technicians employed by the existing telecommunications carrier; and
- (b) all customer equipment and wiring owned, operated or maintained by the existing telecommunications carrier

are deemed to meet the certification standards required at 30th September, 2002.

(5) The Minister may establish an equipment certification programme for the purposes of developing the required standards.

52. (1) No person shall

- (a) connect to the public telecommunications network customer equipment and wiring that do not comply with the prescribed certification standards; or

Compliance
with
standards.

(b) install, maintain or repair wiring, unless the person is a certified technician, unless the connection is to the public telecommunications network of approved plugs and jacks.

(2) Any person who manufactures customer equipment or wiring for connection to the public telecommunications network shall comply with the applicable certification standards.

Non-compliance with standards.

53. A carrier may, disconnect from its public telecommunications network any wiring, customer equipment, plugs or jacks that do not comply with the certification standards pursuant to this Part.

Access to premises.

54. (1) A carrier may, with the consent of the owner or occupier, enter premises where customer equipment or wiring is connected to the public telecommunications network of that carrier at such times as are reasonable to conduct inspections of connections, customer equipment and wiring in relation to that network.

(2) Where an owner or occupier referred to under subsection (1) denies reasonable access to the carrier that is required in accordance with that subsection the licensee may disconnect the service provided to that person.

Labelling of equipment or wiring connected to telecommunications network.

55. Where a certified technician is required to connect customer equipment or wiring to the public telecommunications network, the technician shall attach a permanent label to that equipment, or make a posting for wiring that clearly indicates

(a) the relevant certification standard; and

(b) a statement that the equipment or wiring complies with the relevant certification standard.

Dealers in apparatus to be licensed.

56. (1) The Minister shall prescribe such telecommunications and radiocommunications apparatus as is required to meet the certification standards referred to in this Part.

(2) No person shall sell, trade, lease, offer for sale, or import for sale any telecommunications or radiocommunications apparatus that has been prescribed without first obtaining a dealer's licence under paragraph (d) of section 10.

(3) A dealer's licence referred to under subsection (2)

(a) must be in such form as the Minister prescribes;

(b) must contain

(i) the name and a description of the licensee;

(ii) the location and description of the premises in respect of which the licence is granted; and

(iii) the date on which it was granted;

(c) is subject to the payment in respect of the grant thereof of such fee as the Minister responsible for Finance prescribes;

(d) is not transferable;

(e) expires on the 31st day of December following the date on which it was granted and is renewable during the month of January in every year, on payment of the prescribed fee; and

(f) must contain such other conditions as the Minister prescribes including conditions requiring compliance with the certification standards in respect of telecommunications apparatus established pursuant to this Part.

(4) A person licensed as a dealer under subsection (2) to sell radiocommunications apparatus, in this Part referred to as a "licensed dealer" shall, in respect of that apparatus keep on his premises a record book to be called a "Radiocommunications Record Book".

(5) A licensed dealer shall make as soon as possible after the receipt by him of any radiocommunications apparatus an entry in the Radiocommunications Record Book of the following:

- (a) the date of the receipt of the apparatus;
- (b) the number and a full description of each type of apparatus; and
- (c) the name and address of the person from whom the apparatus was received.

(6) A licensed dealer shall, immediately after delivery of any apparatus from his licensed premises, make or cause to be made in the Radiocommunications Record Book an entry of

- (a) the date of the delivery;
- (b) the name and address of the person to whom it is delivered;
- (c) the nature, number and date of the licence produced by that person with the name of the office from which it was issued, or the circumstances exempting that person from producing the licence;
- (d) the description of all apparatus; and
- (e) the purpose of the delivery, whether on sale, hire, loan or otherwise.

(7) A licensed dealer shall, in addition to the matters mentioned in subsection (6), enter in the Radiocommunications Record Book any radiocommunications apparatus that he has constructed or assembled for the purpose of use, sale or hire.

(8) The Radiocommunications Record Book referred to in subsection (4)

- (a) must be in such form as the Minister prescribes; and
- (b) must be produced for inspection at the request of any person authorised by the Minister.

(9) Any person who

- (a) contravenes this section; or

- (b) in the purchase, sale, hire or delivery of any radiocommunications or apparatus, knowingly makes or causes to be made any false entry or statement as to any matter which he is by this section required to make,

is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 12 months or to both.

57. (1) A person who holds radiocommunications apparatus for his own private use and in respect of which he holds the appropriate licence, may sell or otherwise dispose of that apparatus to any other person in Barbados without being a licensed dealer.

Disposal of privately-owned apparatus.

(2) A person who sells or otherwise disposes of radiocommunications apparatus pursuant to subsection (1), must, unless the apparatus is a sound broadcast receiver, within 14 days of the disposition, notify the Minister of that sale or disposition in writing, stating

- (a) the name and address of the person to whom the radiocommunications apparatus has been sold or otherwise disposed of; and
- (b) the description of the apparatus.

58. (1) The Minister may, subject to such terms and conditions as he may prescribe, restrict or prohibit the importation into, or use in, Barbados of a specified type of telecommunications or radiocommunications apparatus or class of telecommunications or radiocommunications apparatus.

Restriction on importation of certain apparatus.

(2) No person shall import into, or use in, Barbados any telecommunications apparatus or radiocommunications apparatus the importation or use of which is restricted or prohibited under this Act.

- (3) The Comptroller of Customs shall not deliver to any person
- (a) any telecommunications apparatus imported into Barbados for sale, trade or lease; or
 - (b) any radiocommunications apparatus imported into Barbados

unless such person furnishes the Comptroller with a dealer's licence issued pursuant to this Act, or such other licence or authority as may be required in respect of the importation, possession, use or establishment of that apparatus.

(4) Notice of any restriction or prohibition referred to under subsection (1) shall be published in the *Official Gazette*.

Restriction
on satellite
television
receiver
antenna.

59. (1) No person shall install, keep or use a satellite television receiver antenna except in accordance with the terms and conditions of a licence issued in accordance with the regulations.

(2) A person who installs, keeps or uses a satellite television receiver antenna shall not

- (a) use or cause to be used that antenna for any commercial purpose;
- (b) use the antenna on his premises for the reception or transmission of images and sound by cable or other means to any premises other than those specified in the application for the licence; and
- (c) make any modifications to the antenna for the purpose of using any device on his antenna for the transmission of images or sound or for any purpose other than the reception of images and sound.

PART XII

Radiocommunications

- 60.** (1) No person shall
- (a) establish, maintain, or operate a radio station for the purpose of providing a broadcasting service for commercial purposes;
 - (b) establish, maintain or operate a station for wireless communications on board any ship, aircraft or any other vessel registered in Barbados;
 - (c) for commercial purposes, establish, maintain or operate a radio station, not being a station referred to in paragraph (b), or provide a radiocommunications service, not being
 - (i) an amateur or experimental broadcasting service,
 - (ii) a meteorological or radio navigation service, or
 - (iii) an amateur or experimental radiocommunication service;
 - (d) establish, maintain, keep or use apparatus of any kind that generates and emits radio waves whether or not the apparatus is for radiocommunications; or
 - (e) keep or use any radio receiving apparatus other than a sound broadcast receiver,

Radiocommu-
nications.

without obtaining a licence for the purpose.

(2) An application for the grant or renewal of a radiocommunications licence must

- (a) be made in the form prescribed;
- (b) contain such information as is prescribed; and
- (c) be accompanied by the prescribed fee.

Grant of
radio
communica-
tions
licence.

61. (1) The Minister may, upon receipt of an application made pursuant to this Part, grant a licence to the applicant on payment of the prescribed licence fee or refuse the application.

(2) A licence granted under this section may be in such form and shall contain such details and be subject to such conditions as are prescribed.

(3) A licence granted under this section is not transferrable and shall expire after 12 months next following the date on which it was granted or such other date as the Minister determines.

(4) The Minister may grant licences in respect of radiocommunications for use on board ships or aircraft registered in Barbados in accordance with the provisions of the Convention and the Radio Regulations annexed to the Convention for the time being in force.

Suspension
and
revocation
of
radiocommu-
nications
licence.

62. (1) The Minister may suspend, revoke, modify or refuse to renew a licence granted under this Part on any of the following grounds:

(a) that the radio station or apparatus in respect of which the licence was granted interferes with the supply of a telecommunications service of a person to whom the Minister has granted a licence for that purpose;

(b) that telecommunications established after the date of the grant of the licence are available to the licensee or the public and provide, in the opinion of the Minister, adequate service for the purpose of the licensee or for the purpose of the public;

(c) that the licensee has contravened any of the provisions of this Act, the regulations or the conditions of his licence; or

(d) that a specified licence or class of licences is to be reviewed.

(2) Before suspending, revoking or modifying a radiocommunications licence under subsection (1), the Minister shall give the licensee such notice in writing as is prescribed.

63. The conditions of a radiocommunications licence referred to under section 61 shall include a condition that the licensee of the licence shall comply with the Convention and the Regulations annexed to that Convention. Compliance with Convention.

64. (1) Except as provided in this Act, no person shall operate a radio station or apparatus aboard Radiocommunications on ships and aircraft.

(a) any ship or vessel whilst that ship or vessel is in the territorial waters of Barbados; or

(b) any aircraft whilst that aircraft is in or over Barbados or in the territorial airspace of Barbados.

(2) Subsection (1) does not apply to a radio station or apparatus aboard any ship or aircraft in the services of the armed forces of any state or the Royal Barbados Police Force.

65. The Minister may grant a radiocommunications licence under this Part to a person who Reciprocity.

(a) is not a citizen or a resident of Barbados and who possesses a similar licence granted by the Government of the country of which he is a citizen or resident; and

(b) where there is in effect an agreement between the Government of Barbados and the Government of the country referred to in paragraph (a).

66. The Minister shall maintain a Register of licences granted under this Part which shall be made available for public inspection. Register of licences.

PART XIII

Compliance

67. (1) Where the Minister is satisfied that there are reasonable grounds to believe that a person has contravened the provisions of this Act by Prohibited conduct.

- (a) the bypassing by that person of an international telecommunications network;
- (b) being the owner or operator of an unlicensed telecommunications facility; or
- (c) the provision by that person of an unlicensed international, mobile or domestic telecommunications service,

the Minister shall issue a prohibition order referred to in section 68 requiring that person to cease the conduct referred to in subsection (1) and to refrain from continuing the conduct, together with a notice requiring that person to show cause why such an order should not become effective.

(2) The Minister may act under subsection (1) on his own motion or on the application of any person.

Prohibition
order.

68. (1) A prohibition order referred to in section 67 shall

- (a) contain
 - (i) a description of the prohibited conduct;
 - (ii) an order to stop the prohibited conduct; and
- (b) become effective when and if the person to whom the order is issued fails to show cause why the order should not become effective.

Notice to
show cause.

69. (1) The notice referred to in subsection (1) of section 67 shall be served on the person to whom it is issued and shall

- (a) specify the prohibited conduct;
- (b) require the person to show cause as to why the prohibition order should not become effective; and
- (c) specify a number of hours or days within which time the person to whom the order is issued may show cause and may make written submissions if requested by the Minister to do so.

(2) The Minister shall at the expiration of the time given in paragraph (c) of subsection (1)

- (a) determine whether the prohibited conduct has occurred, or is occurring, and if so, that the prohibition order becomes effective; or
- (b) determine that the prohibited conduct has not occurred and is not occurring, and withdraw the prohibition order.

70. The Minister may suspend or revoke a licence and in addition, may apply to the Court under section 72 if the Minister first determines that a person has Wilful or repeated acts.

- (a) knowingly made false statements in an application for a licence or in any statement of fact made to the Minister;
- (b) knowingly failed to provide information or evidence that would have warranted the denial of an original application for a licence;
- (c) wilfully or repeatedly failed to comply with the terms of a licence including the taking of such action as to have the effect of impacting negatively on the universal service obligation;
- (d) wilfully or repeatedly violated, or wilfully or repeatedly failed to observe,
 - (i) any provision of this Act; or
 - (ii) any rule, regulation, or order made under this Act;
- (e) violated or failed to observe any prohibition order;
- (f) provided a telecommunications service beyond the scope of a service provider licence or without such a licence;
- (g) engaged in bypass;

- (h) operated a telecommunications network without a carrier licence; or
- (i) failed to submit payments in a timely manner in connection with the Universal Service Fund.

Other considerations.

71. (1) The Minister, in exercising his powers under this Part, shall have regard to

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

(2) Prior to the taking of any action under this Part, the Minister must consider any relevant circumstances, including the

- (a) resources available to the licensee or affected persons or entities;
- (b) continued economic viability of the licensee or affected persons or entities; and
- (c) behaviour of the competitors of the licensee or affected persons or entities.

Application to Court.

72. (1) Where the Court is satisfied upon an application by the Minister that any person

- (a) has contravened the obligations under or any prohibitions in this Act; or
- (b) has failed to comply with any Rules made by the Minister under this Act or any order issued by the Minister requiring a person to comply with that order,

the Court may

- (A) grant an injunction restraining the alleged offending person from engaging in prohibited conduct notwithstanding that the Minister is conducting an investigation under this Part; and
- (B) order the offending person to pay to the Crown such pecuniary penalty as it thinks fit.

(2) The Court, in exercising its powers under subsection (1), shall have regard to

- (a) the nature and extent of the default;
- (b) the nature and extent of any loss suffered by any person as a result of the default;
- (c) the circumstances of the default; and
- (d) any previous determination against the offending person.

73. Where a person suffers financial loss or damage to property as a result of another person's

Civil
proceedings.

- (a) contravention of any of the obligations or prohibitions imposed by this Act;
- (b) aiding, abetting, counselling or procuring the contravention of any provision under this Act;
- (c) inducing by threats, promises, or otherwise the contravention of any provision under this Act;
- (d) being party to any contravention of any provision under this Act; or
- (e) conspiring with any other person to contravene any provision under this Act,

there is payable to that other person by the person in default such reasonable amount as is agreed between the parties or, failing agreement, as is determined by a court of competent jurisdiction.

Unlawful or
prohibited
conduct.

74. (1) A carrier or service provider may

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

where that carrier or service provider believes on reasonable grounds that the person who owns or operates that facility or the person to whom those specified services are provided is engaging in bypass operations or in conduct in respect of telecommunications services that are unlawful or prohibited or restricted under this Act.

(2) Where any person causes interference with telecommunications, the Minister may require that person to pay the cost incurred in connection with establishing and rectifying the cause of such interference.

(3) Any sum payable under this section is a debt due to the Crown and is recoverable in civil proceedings before a magistrate.

(4) A carrier or service provider whose service or facility has been discontinued or disconnected, as the case may be, under subsection (1), may appeal to the Minister within 14 days of the discontinuance or disconnection for a review thereof and the grounds on which that action was taken; and the Minister shall review that action within 14 days.

(5) Where the Minister finds that the action taken was not justified on reasonable grounds, he may order the restoration of the service or facility and investigate the discontinuance or disconnection under section 75.

(6) Nothing contained in this section shall restrict the right of any party to seek a review by the Court of the action taken in respect of the discontinuance or disconnection, as the case may be.

75. (1) The Minister may by instrument in writing appoint Inspectors. inspectors to

- (a) investigate any complaint or conduct concerning an allegation of a contravention of this Act or a licence issued under this Act; and
- (b) monitor the telecommunications and radiocommunications services.

(2) The Minister shall furnish each inspector with a certificate of authority containing a photograph of the inspector, which the inspector shall produce on request in the performance of his functions.

(3) A complaint referred to in subsection (1) shall be made in writing in such form as the Minister prescribes.

(4) Within 14 days of the receipt of a complaint made under subsection (1), an inspector shall investigate the complaint unless satisfied that

- (a) the complaint is
 - (i) trivial, frivolous or vexatious; or
 - (ii) not made in good faith; or
- (b) the complainant does not have *locus standi* in the matter.

(5) Before commencing an investigation under subsection (1), an inspector shall inform the alleged offender of the matter to be investigated and shall not make a finding adverse to the alleged offender or the complainant unless the inspector has given that person the opportunity to make oral or written submissions about the matter to which the investigation relates.

(6) The inspector shall submit a report on the results of every investigation to the Minister; and shall make a copy of that report available to the complainant or the alleged offender as the case may be, where that person is adversely affected by the results of the investigation.

(7) An inspector may on his own motion or upon complaint, investigate harmful interference with telecommunications.

Entry, search
and seizure.

76. (1) Subject to subsection (2) and subsections (2), (3) and (4) of section 77, an inspector may, on a reasonable suspicion that a person is engaged in conduct that is contrary to this Act, or contrary to any licence granted, registration or authorisation done under this Act, enter any vehicle, ship, vessel, aircraft or premises and search the vehicle, ship, vessel, aircraft or premises as the case may be, and he may, in that process

- (a) seize any document or extracts of any document; or
- (b) seize any telecommunications or radiocommunications apparatus,

from the person with the custody or in possession of the document or apparatus.

(2) An inspector shall not

- (a) enter any vehicle, ship, vessel, aircraft, or premises in exercise of the powers conferred on him by section 77 unless
 - (i) the occupier or the person in charge of the vehicle, ship, vessel, aircraft or premises, or the employee or agent of the occupier or that person consents to the entry;
 - (ii) where the occupier or the person in charge or the employee or agent does not consent to the entry, the inspector first obtains a search warrant under section 77;or

(b) seize any telecommunications or radiocommunications apparatus or any document or extract of any document in exercise of the powers conferred on him by section 76 without a search warrant as provided in this Act.

(3) An inspector shall, on entering the vehicle, ship, vessel, aircraft or premises, identify himself to the occupier or the person in charge of the vehicle, ship, vessel, aircraft or premises, as the case may be, or the employee or agent of the occupier or of that person, by showing the person the search warrant together with his certificate of authority.

(4) An inspector shall, on completing the search referred to in subsection (1), leave the occupier or the person in charge of the vehicle, ship, vessel, aircraft, or premises, as the case may be, or his employee or agent, a receipt in which is indicated a list of documents, extracts of any documents or any telecommunications or radiocommunications apparatus seized by the inspector.

(5) An inspector shall copy any document seized by him in accordance with the provisions of subsection (1) of section 77, and return the document or the extract of the document to the owner or person in charge of the document or the extract.

77. (1) Where a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been committed or is about to be committed, the magistrate may issue a search warrant authorising the inspector named in the warrant, with or without a member of the Police Force to

Search
warrant.

- (a) enter and search the vehicle, ship, vessel, aircraft or premises specified in the information; and
- (b) examine, test or seize any document, extract of a document, telecommunications or radiocommunications apparatus or other item.

(2) Any document, extract of a document, telecommunications or radiocommunications apparatus or other item seized pursuant to a search warrant issued under subsection (1) shall

- (a) where proceedings are not commenced within a period of 30 days from the date of seizure, be returned to the owner; or
- (b) where legal proceedings are commenced before the expiry of the 30 days, be kept until the conclusion of those proceedings.

(3) A person who

- (a) wilfully obstructs, hinders, molests or assaults or otherwise interferes with an inspector engaged in the performance of any duty or the exercise of any power conferred on him under this Act; or

(b) knowingly gives false information to an inspector,

commits an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 6 months.

(4) An inspector shall not be personally liable for any loss or damage arising from the execution of a search warrant under this Part.

(5) A person who holds a licence under this Act shall produce his licence for inspection when asked to do so by an inspector.

PART XIV

Offences and Penalties

Unlicensed telecommunications network and service.

78. (1) A person who

- (a) establishes, maintains or operates a telecommunications network without a licence;
- (b) provides or offers a telecommunications service without a licence; or
- (c) contravenes the conditions of a relevant licence or the provisions of this Act,

commits an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years and in the case of a continuing offence to a fine of \$10 000 for each day or part thereof that the offence continues.

- (2) A person who knowing, or having reason to believe, that
- (a) any telecommunications network has been established, maintained or operated; or
 - (b) any telecommunications service has been provided or offered

in contravention of this Act, transmits or receives a message by using that telecommunications network or telecommunications service, or performs any service incidental to the establishment, maintenance or operation of that telecommunications network or telecommunications service, commits an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years and in the case of a continuing offence to a fine of \$10 000 for each day or part thereof that the offence continues.

(3) A person who, in relation to a telecommunications network or a telecommunications service,

- (a) participates in the management, financing, operation or day-to-day running of the telecommunications network knowing, or having reasonable cause to believe, that the telecommunications network is, or telecommunications services supplied using the telecommunications network are, unlicensed;
- (b) supplies, installs, repairs or maintains any telecommunications network, telecommunications apparatus or any other item knowing, or having reasonable cause to believe, that the telecommunications network, telecommunications apparatus or other item is to be, or is, used for the purpose of facilitating the operation or day-to-day running of an unlicensed telecommunications network or unlicensed telecommunications services; or

- (c) renders any other service to any person knowing, or having reasonable cause to believe, that the rendering of that service to that person will facilitate the operation or day-to-day running of an unlicensed telecommunications network or unlicensed telecommunications services,

commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 5 years.

- (4) A person who, not being a carrier or service provider, provides or offers any unlicensed international telecommunications service commits an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years.

Unlawful
advertising.

79. A person who, not being a carrier or service provider, who advertises telecommunications services commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years.

Unlicensed
equipment,
unlicensed
technician.

80. A person who installs

- (a) a telecommunications network, or telecommunications apparatus or customer equipment that is directly or indirectly connected to a telecommunications network, that has not been certified by the Minister under Part XI commits an offence and is liable on conviction on indictment to a fine of \$100 000 or to imprisonment for a term of 3 years; or
- (b) customer equipment to any telecommunications network and who has not been certified by the Minister under Part XI commits an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 12 months.

Annoying,
threatening,
offensive,
messages.

81. (1) A person who sends or publishes by means of a telecommunications network an annoying, offensive, threatening, obscene or abusive message to another person commits an offence and is liable on summary conviction to a fine of \$10 000, or to imprisonment for a term of 12 months.

(2) A person who subscribes to a telecommunications service who uses, causes or permits any person to use a telecommunications service or a telecommunications network for the purpose of sending an annoying, offensive, threatening, obscene or abusive message to another person commits an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 12 months.

82. (1) A person who knowingly

(a) obstructs or interferes with the sending, transmission, delivery or reception of any communication;

(b) intercepts or procures another person to intercept, without the authorisation of the provider or user, or otherwise obtains, or procures another person to obtain, unlawful access to any telecommunication or copies or causes to be copied any telecommunication;

(c) uses the content of any communication, or having reason to believe that such content was obtained through interception or access in contravention of paragraph (b); or

(d) manufactures or sells any network, equipment, card, plate or other device, or produces, sells, offers for sale or otherwise provides any account number, mobile identification number or personal identification number, for the purpose of fraudulent use of or access to any telecommunications service,

commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 3 years or to both and, in the case of a continuing offence, to a further fine of \$10 000 for each day that the offence continues after conviction.

(2) Paragraphs (b) and (c) of subsection (1) do not apply in relation to the Royal Barbados Police Force acting in the lawful execution of its duties in accordance with any law or enactment.

Unlawful
interceptor
access.

Unlawful
interference.

83. (1) No person shall use or permit to be used any vehicle, apparatus, motor, machinery, installation or appliance capable of causing harmful interference with the lawful and normal operation or use of a telecommunications network or telecommunications apparatus or a licensed radio station or radiocommunications apparatus unless that vehicle, apparatus, motor, machinery, installation or appliance is equipped with filters, suppressors or other devices or otherwise so modified as to reduce such electrical interference to a negligible and an acceptable amount to the satisfaction of an inspector.

(2) A person who

(a) uses any apparatus for the purpose of interfering with any telecommunication; or

(b) neglects to take appropriate measures to reduce interference to the satisfaction of an inspector pursuant to subsection (1),

commits an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for one year or to both.

(3) A person who uses a carrier's public telecommunications network without lawful authority commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 3 years or both, and in the case of a continuing offence, to a further fine of \$10 000 for each day that the offence continues after conviction.

Unlawful
use of
apparatus.

84. (1) A person who

(a) owns or operates radiocommunications apparatus without a licence commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years;

(b) sells, trades, leases, deals in or imports for sale any telecommunications apparatus or radiocommunications apparatus without a dealer's licence commits an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 2 years; or

(c) who imports into, or uses in Barbados any telecommunications apparatus or radiocommunications apparatus the importation or use of which is restricted or prohibited under this Act commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years.

(2) A person who has in his possession or under his control radiocommunications apparatus that he

(a) intends to use in contravention of this Act; or

(b) knows, or has reasonable cause to believe, that another person intends to use in contravention of this Act,

commits an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 6 months.

(3) A person who is in charge of any premises that are used for telecommunications or radiocommunications that contravene the provisions of this Act, or for sending signals for the operation or control of any apparatus used for the purpose of those telecommunications or radiocommunications from any other place and who

(a) knowingly causes or permits the premises to be so used; or

(b) having reasonable cause to believe that the premises are being so used, fails to take such steps as are reasonable in the circumstances of the case to prevent the premises from being so used,

commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years.

- (4) For the purposes of subsection (3)
 - (a) a person is in charge of any premises if he is the owner or occupier of the premises or is the employee or agent of the owner or occupier or has, or acts or assists in the management or control of the premises;
 - (b) radiocommunications are unlawful if they are made in contravention of Part XII; and
 - (c) "premises" includes any place and in particular, includes any vehicle, vessel or aircraft and any structure or other object.

Unlawful
use of radio-
communica-
tions.

85. (1) A person who, in relation to a radiocommunications station,

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

commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years.

(2) A person who contravenes any regulations made in respect of Part XII or causes or permits any radiocommunications station or radiocommunications apparatus to be used in contravention of regulations made in respect of Part XI commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years.

86. A person who, by means of

- (a) any telecommunications service or telecommunications apparatus; or
- (b) any radiocommunications service or radiocommunications apparatus,

Sending false messages *via* telecommunications service or apparatus.

sends any message which, to his knowledge, is false or misleading and is to his knowledge likely to prejudice the efficiency of any safety of life, service or endanger the safety of any person or of any vessel, aircraft or vehicle, and, in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or is in need of assistance or is not in distress or is not in need of assistance commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years.

87. A person who, with intent to defraud, transmits any telecommunication in respect of which the charge fixed by the carrier and approved in accordance with this Act or any other enactment has not been paid, commits an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 2 years or to both.

Transmission with intent to defraud.

88. (1) A person who provides a telecommunications service for public use at his premises shall display in a prominent place at those premises the rates charged by the service provider for that service.

Failure to display rates charged by service provider.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 12 months.

Damage to
equipment.

89. (1) A person who wilfully damages, removes or destroys any telecommunications apparatus, facility, works or other installation of

- (a) a public telecommunications network or a public telecommunications service;
- (b) any telecommunications service operated by the Royal Barbados Police Force, the Barbados Defence Force, the Fire Service or the Ambulance Service; or
- (c) any radio station or radiocommunications apparatus,

used for the purpose of providing a broadcast service commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 3 years.

(2) A person who negligently damages, removes or destroys any apparatus, facility, works or other installation of a public telecommunications network or a public telecommunications service or of any telecommunications service described in subsection (1) commits an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 12 months.

- (3) A person who wilfully damages
 - (a) any private telecommunications apparatus or radiocommunications apparatus;
 - (b) any private telecommunications network or any component of that network; or
 - (c) any satellite television receiver antenna,

commits an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 12 months.

(4) A person convicted under this section is liable for all expenses reasonably incurred in the repairing, restoration or replacement of any facility, works or other installation damaged, removed or destroyed by him; and the expenses are recoverable summarily as a civil debt.

90. (1) The Court may order to be forfeited to the Crown Forfeiture.

(a) any money, telecommunications network, telecommunications apparatus, radiocommunications apparatus, customer equipment or other item which has been used in the commission of or in connection with an offence under this Part; and

(b) any money or other property received or possessed by any person as a result of or that is the product of an offence under any section of this Act.

(2) An order for forfeiture under subsection (1) may include a term permitting a specified person to redeem such item on such conditions, including conditions as to the payment of the value or a proportion of the value thereof to the Crown, as the Court may think fit.

(3) No order shall be made under this section unless the Court has given notice to any person appearing to the Court to have an interest in or right over the item in question that an order may be made and that person is given an opportunity to show cause why the order should not be made.

91. A person who

(a) refuses to produce any document, record, apparatus, or any information required by the Minister under this Act; or

(b) destroys or alters, or causes to be destroyed or altered, any document, record or thing required to be produced under this Act,

Refusal to produce documents etc.

commits an offence and is liable on summary conviction, to a fine of \$50 000 or to imprisonment for a term of 6 months.

92. A person who knowingly gives false or misleading information to the Minister commits an offence and is liable on conviction on indictment to a fine of \$100 000 or to imprisonment for a term of 2 years.

Giving false information.

Disclosing
confidential
information.

93. A person who contravenes section 7 other than the contravention stipulated in subsection (2) of that section commits an offence and is liable on conviction on indictment to a fine of \$100 000 or to imprisonment for a term of 2 years.

General
penalty.

94. A person who contravenes this Act commits an offence and, where no specific penalty is provided for the offence, is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 12 months and, in the case of a continuing offence, to a further fine of \$5 000 for each day that the offence continues after conviction.

PART XV

Construction Works By Carriers

Interpreta-
tion in
respect of
this Part.

95. In this Part,

"emergency works", in relation to a carrier, means works the execution of which, at the time it is proposed to execute them, are necessary in order to end or prevent circumstances that are likely to cause

- (a) danger to persons or property;
- (b) the interruption of any service provided by the carrier;
- (c) the interference with the exercise of any functions conferred or imposed on the carrier by or under any enactment; or
- (d) significant loss to the carrier;

and such other works as in all the circumstances it is reasonable to execute;

"Officer" means the Chief Technical Officer in the Ministry responsible for Works;

"road" includes any public or private road, any street, lane, alley, bridge, watercourse, sewer, embankment, tunnel, drain, gutter or wharf.

96. (1) Notwithstanding the provisions of any other Act and subject to this Part, a carrier or a person authorised by a carrier may, for the purpose of providing telecommunications services, construct, erect, place, maintain, alter or remove telecommunications lines or cables in, on, over, under, along or across any land, building, road, watercourse, harbour, seabed and foreshore and continue its lines to and from the necessary facilities.

Erection of lines, construction of works etc.

(2) For the purposes of providing telecommunications services under subsection (1), and subject to this Part, a carrier may

- (a) open and break up any road or pavement;
- (b) open and break up any bridge, tunnel or drain within or under any road;
- (c) block or close any road; and
- (d) do such other things as are necessary or expedient in connection with paragraphs (a) to (c).

(3) Before a carrier undertakes any activity pursuant to subsection (2), the carrier shall

- (a) give 14 days notice in writing to
 - (i) the owners or occupiers of premises that are likely to be affected by the activity, and
 - (ii) the Officer; and
- (b) deposit with the Accountant General a sum estimated by the Officer after consultation with the carrier as the cost of repairing, renewing or restoring the road; and where the sum deposited pursuant to this subsection is less than the expenses actually incurred by the Officer in repairing, renewing or restoring a road, then the Officer may recover from the carrier the difference between the amount deposited and the expenses incurred.

(4) Where it is necessary to do emergency works, the notice referred to in subsection (3), shall be given as soon as possible after the necessity for the action has arisen or after the works have begun.

(5) The carrier shall

(a) fence the portion of any road or pavement that is broken up; and

(b) provide adequate warning devices to indicate the fact of disrepair.

(6) Any works executed pursuant to this section do not confer on a carrier any right, other than the right of use only, in the property in, on, over, under, along or across which telecommunications lines are constructed, erected or placed.

Restoration
of struc-
tures.

97. (1) Any road, service or structure that is disturbed by a carrier or a person authorised by the carrier in the execution of works under subsection (2) shall be restored by the carrier to its original condition without undue delay.

(2) Where a carrier delays in making restoration or fails to fence or provide adequate warning devices required by section 96(5), the Officer may carry out the necessary work and recover from the carrier all reasonable expenses incurred.

Entry by
agents of
carrier.

98. (1) Any person authorised by a carrier may, at reasonable times with the owner's consent and on production of his authority, enter any premises to which a telecommunication facility has been installed or is to be installed and inspect, test, remove, alter, replace or install the line.

(2) Any damage caused by entry, inspection, removal, installation, alteration or replacement made or carried out, as the case may be, pursuant to subsection (1) or subsection (2) of section 99 shall be repaired by the carrier on whose behalf the entry, inspection, removal, installation, alteration or replacement was carried out.

99. (1) Where a carrier requires entry to any Crown lands pursuant to this Act, then, no later than 7 days before entry, the carrier shall give the Minister responsible for Lands written notice Entry onto Crown lands.

- (a) identifying the land;
- (b) describing the means and purposes of entry; and
- (c) providing the approximate dates and duration of access.

(2) The Ministry responsible for Lands, after consultation with the carrier and the Minister, may give the right to a proposed alternative reasonable access to Crown lands within 5 days of the written notice of access; but the alternative access must reasonably satisfy the carrier's stated purpose of access.

100. Subject to section 98, a carrier may enter any private land for the execution of works required by that carrier, except land that is owned or controlled by another carrier for activities relating to its provision of facilities, where Entry onto private lands.

- (a) reasonable prior notice describing the means and purposes of access and providing the approximate dates and duration of access is given to the owner or other affected party;
- (b) the owner of that land shall receive fair, just and reasonable compensation for the right of entry; and
- (c) the carrier has exhausted all reasonable alternative access.

101. A person who owns or controls the land to which a carrier seeks entry may, in the absence of agreement between the parties, apply to the Court for a determination as to what is fair, just and reasonable compensation in respect of any damage caused on entry. Compensation.

102. (1) Where a carrier has been denied entry to any land unreasonably or where the entry has been delayed unreasonably, the carrier may apply to the Court requesting enforcement of its right to entry. Enforcement of access.

- (2) An application under subsection (1) must
 - (a) identify the land to which entry is requested;
 - (b) identify the owner of the land to which entry is requested;
 - (c) describe the means and purposes of entry and provide the approximate dates and duration of the entry sought;
 - (d) specify the extent of prior notice that was given to the owner;
 - (e) specify the amount of compensation offered to the owner;
 - (f) explain that all reasonable attempts to negotiate entry have failed; and
 - (g) where the land is private land, explain that all alternatives of entry have been exhausted.
- (3) The Court, on application by the carrier under subsection (1), may
 - (a) issue an order enforcing a carrier's right to entry under this Act if it finds the carrier's request satisfies the provisions of this Part; and
 - (b) make such order as to compensation as is reasonable in respect of the owner or authorised occupier.

Procedure
for gaining
entry.
Cap. 240.

103. (1) No person may execute any works under this Part without first obtaining the relevant permit or approval required under the *Town and Country Planning Act*.

(2) An application for a permit or approval under subsection (1) shall be made in the prescribed form; and, if not refused, shall be granted within such time after the receipt of the application, as is prescribed.

(3) Where, pursuant to this Part, in the carrying out of works approved under this section, any damage is caused to land or to chattels, the licensed carrier shall effect the repairs necessary or otherwise make good the damage or, if the damage is not made good, pay to the owner of the land or chattels reasonable compensation in respect of the damage.

(4) Where a carrier engages in the inspection of land, installation of facilities, or maintenance of facilities, then the carrier shall take all reasonable steps to

- (a) act in accordance with good engineering practice;
- (b) protect the environment;
- (c) protect the safety of persons and property; and
- (d) ensure that the activity interferes as little as is reasonably practicable with the operations of a public utility, public roads and paths, the movement of traffic, and the use of the land by owners or authorised occupiers of that land.

(5) Section 24 of the *Utilities Regulation Act* shall not apply in respect of carriers and service providers licensed by the Minister under this Act. Cap. 282.

PART XVI

Review of Decisions

104. (1) Any person who is aggrieved by a decision of the Minister under this Act may file within 14 days of being notified of that decision, an application for a review of the decision. Review by
Minister.

(2) An application for a review of a decision under subsection (1) shall be in the form and manner prescribed.

(3) The filing of an application for a review under subsection (1) does not operate as a stay of the decision unless the Minister so provides.

(4) The Minister may on a review of his decision confirm, modify or reverse the findings of his prior decision or any part of that decision; and, where a hearing is required before that decision is reviewed, the decision shall not be reviewed without a further hearing.

(5) The Minister shall on an application made to him pursuant to subsection (1) have regard to relevant considerations.

Review by
Commis-
sion.

105. (1) A person aggrieved by a decision of the Commission under this Act may file an application for a review within 14 days following the notification of the Commission's decision.

(2) An application for a review of a decision under subsection (1) shall be in the form and manner prescribed.

(3) The filing of an application for review does not

(a) operate as a stay of the decision, unless the Commission so provides; or

(b) preclude an appeal from the Commission's decision to the High Court.

(4) The Commission, on review, may confirm, modify or reverse the findings of its prior decision or any part of that decision.

(5) The Commission shall on an application made to it pursuant to subsection (1) have regard to relevant considerations.

Appeal.
Cap. 326B.

106. Part V of the *Fair Trading Commission Act* shall apply in respect of decisions of the Commission under this Act.

PART XVII

Miscellaneous

107. (1) Subject to the provisions of this Act, a carrier or service provider may enter into contract with any person to provide telecommunications services to that person including the terms and conditions under which such services may be provided, maintained or discontinued.

Contract for telecommunications services.

(2) The offer and provision of telecommunications services by a licensee is subject to the terms and conditions agreed on between the licensee and the user or, where no terms and conditions have been agreed, terms and conditions published or otherwise made available for public inspection in the form and manner specified.

(3) A licensee may enforce the terms and conditions published in accordance with subsection (2) as if they were an agreement between it and the person to whom telecommunications services are provided.

(4) Subject to this section, a licensee shall not disclose or use any information or document that relates to the content of any message or the private affairs or personal particulars of any person that comes into the licensee's knowledge or possession in connection with its business of providing telecommunications services.

(5) Subsection (4) does not restrict disclosure or use of information or documents

- (a) for the purpose of providing telecommunications services and doing all things necessary for the provision of telecommunications services to that person;
- (b) where the sender of the message or the person who is the subject of the personal particulars consents;

Cap. 326B.
Cap. 282.

- (c) for the purpose of facilitating the performance of any functions of the Minister or the Commission under this Act, the *Fair Trading Commission Act* or the *Utilities Regulation Act*;
- (d) pursuant to the provisions of any law for the time being in force which requires such disclosure for the purpose of the investigation or prosecution of a criminal offence;
- (e) where the disclosure is necessary in defence of the licensee in any proceedings brought against that carrier or service provider; or
- (f) to the Court in connection with a Court order made in civil proceedings.

Refusal to
transmit a
private
telecommuni-
cations
message.

108. (1) A carrier may refuse to transmit, or may stop the transmission of, any private telecommunications message that

- (a) is, in the opinion of the carrier, dangerous to the security of the State;
- (b) is in contravention of any law; or
- (c) offends against public decency or public morals.

(2) A carrier is not liable for any loss arising from refusal to transmit, or from stopping the transmission of, a message under subsection (1).

(3) No carrier or any employee of a carrier is liable in any legal proceedings, whether civil or criminal, by reason of the transmission, in the normal course of a telecommunications service, of any defamatory message or of any other message the transmission of which is unlawful.

109. (1) The Crown shall take over or close down any part or whole of a licensee's operations for reasons of national interest or security; and any licensee affected by the action of the Crown shall be paid fair and reasonable compensation for any loss occasioned to the licensee.

Rights of the Crown.

(2) Where at any time during a period of public emergency it is expedient in the public interest that the Crown should have control over the transmission of messages by telecommunication, the Governor-General may

- (a) authorise by warrant under his hand any person to take temporary possession of any telecommunication lines and radio apparatus and installations whether used for public correspondence or not; and
- (b) make such orders as may appear to him to be desirable with respect to the possession, sale, purchase, construction and use of radiocommunications apparatus
 - (i) in any place in Barbados;
 - (ii) on board any ship or vessel whilst that ship or vessel is in the territorial waters of Barbados; or
 - (iii) on board any aircraft whilst that aircraft is in or over Barbados or the territorial airspace thereof.

(3) Any licensee affected by the action of the Governor-General under subsection (2) shall be paid fair and reasonable compensation for any loss occasioned to it.

110. (1) The Minister may make such rules, regulations and orders as may be required under this Act, including regulations prescribing

Power to make regulations, rules and orders.

- (a) forms and procedures in respect of the grant of licences under the Act;

- (b) terms and conditions to be contained in licences;
 - (c) licence fees;
 - (d) licence application fees;
 - (e) matters relating to interconnection policy;
 - (f) matters related to universal service and the funding of universal service;
 - (g) management of spectrum;
 - (h) the determination of dominance in relation to regulation of rates charged for telecommunications services;
 - (i) approvals and certification of customer equipment and wiring;
 - (j) the certification of technicians;
 - (k) technical standards for customer equipment;
 - (l) numbering;
 - (m) matters relating to radiocommunications;
 - (n) the treatment of confidential information; and
 - (o) anything that is by this Act authorised or required to be prescribed.
- (2) Regulations made pursuant to the Act
- (a) may prescribe penalties for offences committed under those regulations; and
 - (b) are subject to negative resolution.

(3) The Minister, in making regulations under paragraph (e) of subsection (1), may consult with the Commission, the carriers and such other persons as he deems necessary before doing so.

(4) The Commission may, in accordance with this Act make regulations governing the exercise of its powers with respect to interconnection and shall consult with the Minister and carriers before issuing the regulations.

111. The grant of a licence under this Act does not authorise the licensee to perform an act that may infringe any copyright or patent that may exist in any matter transmitted by the licensee under the licence. Infringement of copyright etc.

112. In performing telecommunications functions and exercising powers under this Act the Minister and the Commission must have regard to Barbados' obligations under any Convention in respect of telecommunications to which Barbados is a party. Conventions.

PART XVIII

Transitional Arrangements

113. There shall be such transitional arrangements for the operation of existing licences until new licences are issued as are set out in the *Schedule*. Transitional arrangements. Schedule.

114. (1) The *Telecommunications Act, 1991* is repealed. Repeal of enactments. Cap. 282A.

(2) Notwithstanding subsection (2), section 11 of the *Telecommunications Act*, shall remain in force until repealed.

(3) The following instruments shall remain in force and shall apply in so far as they are not inconsistent with this Act, until repealed:

(a) *The Barbados Telephone (Revenue Apportionment) Order, 1989*; 1989/54.

(b) *The Wireless Telegraphy (Video Tape Rental Service) Regulations, 1983*; 1983/126.

s.115

- 1983/127. (c) *The Wireless Telegraphy (Satellite Television Receiver Antenna) Regulations, 1983;*
- 1941/16. (d) *The Wireless Telegraphy Regulations, 1940;*
- 1974/120. (e) *The Wireless Telegraphy (Land Mobile and Fixed Radio Telephone Service) Regulations, 1974;*
- 1974/116. (f) *The Wireless Telegraphy (Model Aeroplanes, Model Racing Cars and Model Trains) Regulations, 1974;*
- 1954 p. 167. (g) *The Wireless Telegraphy (Ship Station) Regulations, 1954;* and
- 1953 p. 218. (h) *The Wireless Telegraphy (Amateur Transmitter) Regulations, 1953.*

Schedule.
Cap. 285.
Cap. 275.
Cap. 274.

(4) Subject to subsection (3), and the *Schedule*, all statutory instruments made under the *Wireless Telegraphy Act*, the *Cable and Wireless (West Indies) Limited Act* and the *Barbados Telephone Company Act* that are in force at 30th September, 2002 are revoked; and any facilities established, maintained or operated thereunder at 30th September, 2002, shall be deemed to have been established, maintained and operated under and in accordance with this Act.

Crown. **115.** This Act binds the Crown.

SCHEDULE

*Transitional Arrangements**(Section 113)*

1. Subject to this Act

Existing
licence.

- (a) any licences or other enabling instruments issued to the existing telecommunications carriers and the existing service providers prior to 30th September, 2002 that are valid immediately before 30th September, 2002 shall continue to remain in full force and effect and shall authorise the continued ownership and operation of telecommunications networks and provision of telecommunications services provided thereunder until such time as new licences are granted pursuant to this Act;
- (b) the spectrum rights of the existing telecommunications carriers and all other persons who are allocated rights to spectrum in connection with licences granted under the former Act and valid immediately before 30th September, 2002, and under any other validly granted licence or authority under the laws of Barbados, are hereby preserved;
- (c) all customer equipment and wiring owned, operated or maintained by the existing carrier and all technicians employed by the existing telecommunications carrier at 30th September, 2002 shall be deemed to have certification upon that date.

2. Subject to this Act, all certification standards for

Existing
certification
standards.

- (a) customer equipment;
- (b) wiring; and
- (c) technicians,

that conform to the standards employed by the carrier apply until modified by the Minister in accordance with this Act.

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- Existing numbering. 3. Subject to this Act, the Minister shall
- (a) preserve the numbering network maintained by the existing carrier; and
 - (b) shall not reverse existing numbering allocations.
- Rate-setting mechanism of the Commission. 4. (1) Subject to section 113, the Commission shall ensure that a rate-setting mechanism to be used by the Commission is established for rates to be charged by licensees and shall facilitate the policy of market liberalisation and competitive pricing in accordance with Schedule 6 of the Memorandum of Understanding between the Government of Barbados and Cable and Wireless BARTEL Limited and Cable and Wireless BET Limited signed on the 16th day of October, 2001.
- (2) The Minister shall at the commencement of Phase III of the Transition Timetable referred to in paragraph 5 require that the Commission commence use of an incentive-based rate-setting mechanism to establish rates to be charged by licensees.
- (3) The revenue-sharing arrangement of the former Act will be systematically altered to manage the reduction of the subsidy during the transition to achieve the objective of gradually removing or eliminating the revenue-sharing arrangement between the international rates and the domestic rates.
- Transition Timetable. 5. (1) There shall be a set Transition Timetable prescribed by the Minister in accordance with this Act for the transition required for the granting of new licences under this Act.
- (2) The Timetable referred to in sub-paragraph (1) shall comprise Phases I to III.
- Phase I. 6. (1) During Phase I of the Transition Timetable, the Minister may grant only:
- (a) domestic mobile carrier licences permitting the licensees to own and operate a domestic mobile telecommunications network, solely for the purpose of providing domestic mobile telecommunications services but prohibiting the licensee from operating an international facility and requiring handover of international traffic at a point of interconnection with the international network of the existing carrier;
 - (b) service provider licences of the following types:
 - (i) domestic mobile service provider licences permitting the licensed mobile carriers to provide domestic mobile telecommunications services to the public;

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- (ii) service provider licences authorising the licensee to provide a service to the public comprising internet access using facilities owned and operated by the existing telecommunications carrier but prohibiting the licensee from providing any voice service;
 - (iii) service provider licences for the switchless resale of international minutes procured from the existing telecommunications carrier;
 - (iv) service provider licences permitting the licensed domestic mobile carriers to resell Global Mobile Personal Communication by Satellite services under commercial arrangements with the existing international telecommunications carrier;
 - (v) service provider licences permitting licensees to provide prescribed value added domestic voice services;
 - (vi) service provider licences permitting licensees to resell international leased circuit capacity on a switchless basis obtained from the existing international telecommunications carrier;
 - (vii) licences to Caribbean Media Corporation and Caribbean Broadcasting Corporation to own and operate uplink and downlink satellite facilities for their own use and broadcasting purposes only prohibiting bypass and with prohibitions on carriage of switched telecommunications services for sale, lease or resale, on interconnection to the telecommunications networks of licensed carriers, on assignment of the licence or benefits arising thereunder; and
 - (viii) licences to permit call centre operators to use a bi-directional VSAT subject to the following conditions, namely, that:
 - (aa) there is certification of the call centre by the Barbados Investment Development Corporation;
 - (bb) VSAT is to be used solely for the call centre business;
 - (cc) there is no interconnection of the VSAT to the PSTN;
 - (dd) there is no interconnection of the VSAT to the network of domestic mobile carriers; and
 - (ee) there is no resale of any telecommunications services, lease or provision of any telecommunications services *via* the VSAT.

(2) For the purposes of this provision

"call centre" refers to a business registered in Barbados which employs a minimum of 50 Barbadians, generates and maintains a prescribed number of minutes per month and is engaged in a call centre activity;

"call centre activity" refers to the business undertaken by a call centre operator exclusively in the business of making or receiving telephone calls to and from call centre premises located in Barbados for telemarketing purposes;

Cap. 276. "Caribbean Broadcasting Corporation" means the Corporation established as such under section 3 of the *Caribbean Broadcasting Corporation Act*;

Cap. 308. "Caribbean Media Corporation" is a non-profit company registered as such under the *Companies Act*;

"PSTN" means the public switched telephone network.

Phase II. 7. During Phase II of the Transition Timetable, the Minister may grant, in addition to those granted in Phase I

(a) domestic carrier licences other than licences permitting the licensee to own and operate a mobile network; and

(b) domestic voice service provider licences.

Phase III. 8. During Phase III of the Transition Timetable, the Minister may grant any licence as he sees fit and in accordance with this Act.

Application for renewal of conditions. 9. After the commencement of any Phase, a licensee may file an application with the Minister for removal of those licence conditions that would not be required to be imposed by the Minister if the Minister had issued that licence in the newly commenced Phase provided that such modification shall be made in accordance with this Schedule.

Commencement of each Phase. 10. The Minister shall by order published in the *Official Gazette* declare the commencement of each Transition Phase.