

## **Telecommunications Act**

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of 25 July 1996 (Federal Law Gazette I p 1120) amended by Article 2 paragraph 34 of the Side Law to the Telecommunications Act (Begleitgesetz zum Telekommunikationsgesetz – BegleitG) of 17 December 1997 (Federal Law Gazette I p 3108) and amended by Article 2 paragraph 6 of the Sixth Law Amending the Law against Restraints of Competition of 26 August 1998 (Federal Law Gazette I p 2544)<sup>1</sup>

The German Bundestag has adopted the following Act with the consent of the German Bundesrat:

### **Part I. General Provisions ➡**

#### **§1 Legislative Purpose**

The purpose of this Act is, through regulation of the telecommunications sector, to promote competition, to guarantee appropriate and adequate services throughout the country and to provide for frequency regulation.

## §2 Regulation

1. Telecommunications and frequency regulation shall be a sovereign task of the Federal Republic of Germany.
2. The aims of regulation shall be:
  1. to safeguard the interests of users in the fields of telecommunications and radiocommunications as well as to maintain telecommunications secrecy;
  2. to ensure equal-opportunity and workable competition, in rural as well as urban areas, in telecommunications markets;
  3. to ensure provision throughout the Federal Republic of Germany of basic telecommunications services (universal services) at affordable prices;
  4. to promote telecommunications services in public institutions;
  5. to ensure effective, interference-free use of frequencies, due regard also being paid to broadcasting requirements;
  6. to protect public safety interests.
3. The provisions of the Law against Restraints of Competition shall remain unaffected.
4. The sovereign rights of the Federal Minister of Defence shall remain unaffected.

## §3 Definitions

For the purposes of this Act

1. "operation of transmission lines" shall mean exercise of de jure and de facto control (functions control) of all the functions that must necessarily be provided for the implementation of information transmission on transmission lines;
2. "operation of telecommunications networks" shall mean exercise of de jure and de facto control (functions control) of all the functions that must necessarily be made available for the provision of telecommunications services or for non-profit-oriented telecommunications purposes via telecommunications networks; this shall also apply where transmission lines owned by third parties are used within the telecommunications network;
3. "terminal equipment" shall mean equipment intended for direct connection to the network termination of a telecommunications network or intended to interwork with a telecommunications network and to be connected for such interworking directly or indirectly to the network termination of a telecommunications network;

4. "radio equipment" shall mean the electrical transmitting or receiving equipment between which information transmission can take place without any trunk line;
5. "commercial provision of telecommunications services" shall mean telecommunications offered on a sustained basis, including transmission line offers to third parties, with or without the intention to realise profits;
6. "property" shall mean a part of the earth's surface entered in the Land Register as a separate property or a part of the earth's surface which, due to the way it is economically used or to its outward appearance, forms a unit even where this unit consists of several properties under real property law. Road and rail networks shall not be deemed a unit;
7. "licence" shall mean the authorisation to offer specified telecommunications services for the public;
8. "mobile radio services " shall mean telecommunications services intended for mobile use;
9. "network access" shall mean the physical and logical connection of terminal equipment or other equipment to a telecommunications network or parts thereof as well as the physical and logical connection of a telecommunications network to another telecommunications network or parts thereof for the purpose of obtaining access to functions of such telecommunications network or to the telecommunications services provided via such network;
10. "numbers" shall mean character sequences serving addressing purposes in telecommunications networks;
11. "users" shall mean any parties having a demand for telecommunications services;
12. "public telecommunications network" shall mean the technical facilities in their entirety (transmission lines, switching equipment and any other equipment that is indispensable to ensure proper operation of the telecommunications network) to which, by means of network terminations, terminal equipment is connected and which serve to provide telecommunications services for the public;
13. "regulation" shall mean measures to achieve the aims referred to in §2(2) of this Act which regulate the conduct of telecommunications companies in the offer of telecommunications services, terminal equipment or radio equipment as well as measures to ensure effective, interference-free use of frequencies;
14. "satellite services" shall mean telecommunications services provided by means of satellite earth station equipment;
15. "voice telephony" shall mean the profit-oriented provision for the public of the direct transport and switching of voice in real-time to and from the network termination points of the public switched network such that any user can use the terminal equipment connected to such network termination point to communicate with another network termination point;
16. "telecommunications" shall mean the technical process of sending, transmitting and receiving any kind of message in the form of signs, voice, images or sounds by means

of telecommunications systems;

17. "telecommunications systems" shall mean any technical equipment or systems capable of sending, transmitting, switching, receiving, steering or controlling as messages identifiable electromagnetic or optical signals;
18. "telecommunications services" shall mean the profit-oriented offer of telecommunications, including transmission line offers to third parties;
19. "telecommunications services for the public" shall mean the profit-oriented offer of telecommunications, including transmission line offers to any natural or legal persons and not solely to members of closed user groups;
20. "telecommunications lines" shall mean underground or overhead telecommunications cable systems, including the associated switching and distribution equipment, poles and supports, cable chambers and cable duct conduits;
21. "telecommunications network" shall mean the technical facilities in their entirety (transmission lines, switching equipment and any other equipment that is indispensable to ensure proper operation of the telecommunications network) which serve the provision of telecommunications services or non-profit-oriented telecommunications purposes;
22. "transmission lines" shall mean telecommunications systems in the form of cable or radio links with the associated transmission equipment as point-to-point or point-to-multipoint links with a given information throughput (bandwidth or bit rate), including their network terminations;
23. "carrier network" shall mean a telecommunications network to which customers are not connected directly and which interconnects access networks;
24. "interconnection" shall mean the network access establishing the physical and logical connection of telecommunications networks to allow users connected to different telecommunications networks to communicate directly or indirectly.

#### **§4 Notification Requirement**

Whosoever provides telecommunications services shall notify the regulatory authority in writing within a period of one month of the startup, modification or termination of operations. The regulatory authority shall publish the essential details of such notifications at regular intervals.

#### **§5 Reporting Requirement**

Whosoever provides telecommunications services shall undertake to provide the regulatory authority upon demand with reports which it as the national regulatory authority requires to fulfill its reporting requirements in relation to the European Commission on the basis of Directives and Recommendations issued in accordance with Article 6 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No L 192 p 1) and Article 90(3) of the Treaty establishing the European Community.

## **Part II. Regulation of Telecommunications Services** ➔

### **Chapter One. Licences** ➔

#### **§6 Licensed Sector**

1. Whosoever:
  1. operates transmission lines going beyond the limits of a property and used to provide telecommunications services for the public
  2. offers voice telephony on the basis of self-operated telecommunications networks shall require a licence.

The licences required under (1) above shall be divided into the following Licence Classes:

1. Licences for the operation of transmission lines:
  - a. for mobile radio services for the public by the licensee or other parties (Licence Class 1: Mobile Radio Licence);
  - b. for satellite services for the public by the licensee or other parties (Licence Class 2: Satellite Licence);
  - c. for telecommunications services for the public whose offer is not covered by Licence Classes 1 or 2, by the licensee or other parties (Licence Class 3);

Licences for voice telephony on the basis of self-operated telecommunications networks (Licence Class 4). This Licence Class shall not include the right to operate transmission lines.

2. It shall be presumed that the operation of transmission lines used by third parties constitutes a telecommunications service for the public.
3. Upon request the regulatory authority may also award licences from Licence Classes 1 to 4 as a composite licence. In this regard, it shall be bound to the scope specified in (1) above.

#### **§7 International Status**

Licensees providing international telecommunications services or operating, within the framework of their offering, radio equipment which may cause harmful interference to radio services of other countries shall be deemed recognised operating agencies within the meaning of the Constitution and the Convention of the International Telecommunication Union.

## §8 Licensing

1. Upon written request licences shall be granted in writing by the regulatory authority. The licence application shall specify the area where the activity subject to licence will be performed. The regulatory authority will decide on licence applications within a period of six weeks.
2. The regulatory aims according to §2(2) of this Act shall be observed when licences are granted. To ensure the regulatory aims according to §2(2), collateral clauses may be attached to the licence even after it has been granted. If the prerequisites for a collateral clause cease to exist, the regulatory authority shall repeal such clause at the request of the licensee.
3. A licence applied for shall be denied when
  1. the regulatory authority does not possess any usable frequencies which could be assigned to the applicant seeking to operate radio links, or
  2. facts warrant the assumption that
    - a. the applicant does not possess the reliability, efficiency and specialised knowledge required to exercise the licence rights applied for and hence it must be expected that such licence rights will not be exercised on a lasting basis, or
    - b. public safety or order would be prejudiced as a result of a licence being granted.

Whosoever guarantees

1. compliance, as a licensee, with the legal provisions shall be deemed to possess the reliability
  2. availability of the means of production for setting-up and operation necessary to exercise licence rights shall be deemed to possess the efficiency
  3. the necessary knowledge, experience and skills of the persons engaged in the exercise of licence rights shall be deemed to possess the specialised knowledge required according to sentence 1 subparagraph 2(a) above.
4. Licences may be granted for a limited period, provided this is expedient in view of the scarcity of frequencies available.
  5. Frequencies required to operate transmission lines under licence shall be assigned in accordance with the provisions of §§44 to 48 of this Act.

## **§9 Change of Licensee**

1. Transfer of the licence shall be in written form and require prior written approval by the regulatory authority. In respect of the denial of approval §8(3) sentence 1 subparagraph 2 and §11(3) shall apply accordingly.
2. Any other licence transfer to a new holder or any change in ownership of the licensee or any permission to use the licence shall be notified to the regulatory authority without undue delay.

## **§10 Limitation of the Number of Licences**

The number of licences for telecommunications markets may be limited if frequencies as provided for by the frequency usage plan are not available for licensing in sufficient quantity. The parties concerned shall be heard prior to any such decision. The decision shall be published in the Official Gazette of the regulatory authority.

## **§11 Award Proceedings Following a Limitation of the Number of Licences**

1. If the number of licences is limited as provided for by §10 of this Act, the regulatory authority may, after hearing the parties concerned, hold an auction in accordance with (4) below or competitive bidding in accordance with (6) below. Decisions on the choice of proceedings and the determinations and rules for the conduct of the proceedings according to (4) or (6) below shall be published in the Official Gazette of the regulatory authority.
2. Licences shall be awarded in accordance with §8 of this Act following completion of the proceedings as laid down in (4) below, except where such proceedings are not suitable to ensure the regulatory aims specified in §2(2) of this Act. This may be the case particularly where a licence has already been granted on the relevant product and geographical market for the applicable telecommunications service for the public without an auction having been held or where an applicant as a licensee or a user of the applicable service can claim a legal right to preference for the frequencies to be assigned under licensing. Frequencies for the radio linkup of accesses shall be granted solely by way of competitive bidding.
3. Where it is to be expected that equal-opportunity competition on the relevant product and geographical market for the telecommunications service subject to licence will be prejudiced by a successful auction bid according to (4) below or a successful competitive bid according to (6) below, the companies concerned may be excluded from the award proceedings. Due regard shall be paid to the justified interests of the companies concerned in respect of the deployment of new technologies.
4. The aim of the auction is to determine which bidder/s is/are best placed to use the radio frequencies bought at auction efficiently for the offer of the applicable telecommunications service for the public. Prior to the auction, the regulatory authority shall identify, in observance of §47 of this Act and the ordinance having the force of law issued by virtue of this provision,
  1. the minimum requirements in terms of specialised skills and qualifications bidders shall evidence in order to be admitted to the auction,

2. the relevant product and geographical market for which the radio frequencies bought at auction may be used in observance of the frequency usage plan,
  3. the licence conditions, including the degree of coverage in respect of frequency usage and the time required to achieve such degree, as well as the frequency usage conditions of the future licence that must be observed,
  4. the basic number of radio frequencies which the bidder must buy at auction for the startup of the telecommunications service, provided such basic number is necessary. The regulatory authority shall also determine in detail the rules for holding an auction, such rules being objective, comprehensible and non-discriminatory and taking the interests of small and medium-sized enterprises into consideration. The regulatory authority may stipulate a minimum bid for participation in the auction.
5. Where the auction according to (4) above is not suitable for licensing, licences shall be granted in accordance with the competitive bidding proceedings according to (6) below.
6. The aim of competitive bidding is to determine which bidder(s), by way of proven skills and qualities, is/are best placed to satisfy users' demand for the applicable telecommunications service for the public. Prior to competitive bidding the regulatory authority shall identify, in observance of §47 of this Act and the ordinance having the force of law issued by virtue of this provision,
1. the minimum requirements in terms of specialised qualifications bidders shall evidence in order to be admitted to competitive bidding,
  2. the relevant product and geographical market for which the licences are to be granted,
  3. the licence conditions, including the degree of coverage in respect of frequency usage and the time required to achieve such degree, as well as the frequency usage conditions of the future licence that must be observed,
  4. the criteria according to which bidders' eligibility is assessed. Criteria shall be the specialised knowledge and efficiency of the bidders, the suitability of plans to be submitted for the provision of the telecommunications service subject to competitive bidding and the promotion of workable competition in the relevant market. Preferred in the selection procedure shall be those bidders ensuring a higher degree of coverage for the applicable telecommunications services subject to licence. The regulatory authority shall also determine in detail the rules for conducting competitive bidding, such rules being objective, comprehensible and non-discriminatory. In the event of various bidders being equally well placed as a result of competitive bidding, the decision shall be taken by drawing lots.
7. Where frequencies are granted according to (4) or (6) above for the radio link-up of accesses, the regulatory authority shall require the licensee as a condition of his licence to offer to a particular section of the residential population within a specified period of time universal service, ie voice telephony with ISDN supplementary services, as well as access to emergency call facilities in the licence area according to §8(1) sentence 2.



## **§12 Provision of Customer Data**

1. A licensee offering voice communication services for the public shall undertake to give other licensees offering voice communication services for the public, upon request and in an appropriate form for the customer's use, access to customer data, observing the applicable data protection regulations, for the purposes of starting up an inquiry service or publishing a directory of numbers. This may be subject to a fee based on the costs of efficient provision.
2. In addition, a licensee offering voice communication services for the public shall undertake to give any third party, upon request and in an appropriate form for the customer's use against payment of a reasonable fee, access to customer data, observing the applicable data protection regulations, for the purposes of starting up an inquiry service or publishing a directory of numbers.

## **§13 Provision of Emergency Call Facilities**

1. A licensee offering voice communication services for the public shall undertake to provide emergency call facilities to all end users free of charge.
2. A licensee offering voice communication services for the public shall, at the application of the competent federal state or an authority empowered to provide emergency services, install additional emergency call devices in public telephones allowing users to establish voice contact with an emergency call answering position by means of a simple procedure and, as far as possible, with automatic indication of the location of the telephone used. Public telephones with devices according to sentence 1 shall be marked as such. With regard to the provision and operation of emergency call facilities, the applicant shall pay a fee covering the full costs.

## **§14 Separation of Corporate Structures and Segregated Accounting**

1. Companies having a dominant position according to §19 of the Law against Restraints of Competition in markets other than telecommunications markets shall carry on telecommunications services through one or more legally independent companies.
2. Companies having a dominant position according to §19 of the Law against Restraints of Competition in a telecommunications market shall guarantee the transparency of financial relations between and among telecommunications services in the licensed sector and between and among such services and telecommunications services in the non-licensed sector by establishing a segregated accounting system. In this regard, the regulatory authority may prescribe the structure of internal accounting for particular telecommunications services subject to licence.

## **§15 Licence Revocation**

A licence may be wholly or partially revoked in the event of

1. the licensee not fulfilling the obligations arising from his licence or ensuing from this Act, violating in particular the secrecy of telecommunications, data protection regulations or penal provisions,

2. a reason for denial according to §8(3) sentence 1 subparagraph 2 arising in respect of the licensee or in respect of the party having permission to use the licence in the cases of §9(2) of this Act.

### **§16 Licence Fee**

1. Licences shall be granted for a fee. The Federal Ministry of Posts and Telecommunications shall be empowered to lay down, in agreement with the Federal Ministry of the Interior, the Federal Ministry of Finance, the Federal Ministry of Justice and the Federal Ministry of Economics, by ordinance having the force of law but not requiring the consent of the German Bundesrat and as provided for by the Administrative Expenses Act, chargeable acts, the level of the fee and the reimbursement of expenses.
2. In the event of an auction according to §11(4) of this Act there shall be charged a fee according to (1) above only insofar as it exceeds the proceeds from the auction.

## **Chapter Two Universal Service ➔**

### **§17 Universal Services**

1. Universal services are a minimum set of telecommunications services for the public in respect of which a particular quality has been defined and to which every user shall have access, irrespective of place of residence or place of work, at an affordable price. Designated as universal services shall be telecommunications services which can be assigned to the sectors of voice telephony and the operation of transmission lines according to §6(1) of this Act and whose provision for the public as basic services has become indispensable. Also designated as universal services may be those telecommunications services which are directly connected with telecommunications services according to sentence 2 above and whose provision for the public as basic services has become indispensable.
2. The Federal Government shall be empowered to designate as universal services, by ordinance having the force of law and requiring the consent of the German Bundestag and the German Bundesrat, telecommunications services according to (1) sentences 2 and 3 above. Such designation shall be adapted to technical and social developments in line with requirements. The ordinance shall also stipulate the minimum quality and the criteria governing universal service pricing. The regulatory authority shall have the power to decide on compliance with these criteria. The consent of the German Bundestag according to sentence 1 above shall be deemed given unless the German Bundestag refuses to give consent within three parliamentary weeks of receipt of the said ordinance from the Federal Government.

### **§18 Obligation to Provide Universal Services**

1. Where a universal service according to §17 of this Act is not being appropriately and adequately provided or where there is reason to believe that such provision will not be ensured, each licensee operating in the relevant product market for the applicable telecommunications service subject to licence and achieving a share of at least four percent of the total sales of this market within the purview of this Act or having a dominant position according to §19 of the Law against Restraints of Competition in the

relevant geographical market shall undertake to contribute to providing the universal service. The obligation according to sentence 1 above shall be fulfilled in accordance with the provisions of this Chapter.

2. Paragraph (1) above shall apply accordingly to any company constituting a single company with a licensee. A single company is created through any linkage of companies within the meaning of §36(2) and §37(1) and (2) of the Law against Restraints of Competition.

## **§19 Imposition of Universal Services**

1. The regulatory authority shall publish in its Official Gazette notice of the relevant product and geographical market in which a universal service according to §17 of this Act is not being appropriately or adequately provided or in which there is reason to believe that such provision will not be ensured. It shall give notice of its intention to proceed as provided for by §§19 to 22 of this Act unless a company declares itself willing, within one month of the notice being published, to provide such universal service without any compensation according to §20 of this Act.
2. Upon expiration of the period referred to in (1) above the regulatory authority may oblige any licensee having a dominant position according to §19 of the Law against Restraints of Competition in the relevant product and geographical market to provide such universal service in accordance with the conditions laid down in the ordinance and in the provisions of this Act.
3. Where in the relevant market for the applicable telecommunications service subject to licence several licensees jointly have a dominant position according to §19 of the Law against Restraints of Competition, the regulatory authority may decide, after hearing the licensees concerned, whether and to what extent it will oblige one or more of these licensees to provide the universal service. Such obligation may not unduly prejudice the licensees thus obliged in relation to other licensees.
4. The provisions of (2) and (3) above shall apply accordingly to any company operating in a market referred to in (2) above and constituting a single company with a licensee according to (2) or (3) above. A single company is created through any linkage of companies within the meaning of §36(2) and §37(1) and (2) of the Law against Restraints of Competition.
5. Where a provider who, according to (2) to (4) above, is to be obliged to provide universal service, furnishes prima facie evidence that, in the case of such obligation, he will be able to claim compensation according to §20(2) sentence 2 of this Act, the regulatory authority may, in place of the decision to oblige one or more companies under (2) to (4) above, solicit bids for the universal service, awarding it to the bidder proving himself sufficiently qualified to provide the universal service and requiring the least financial compensation therefor.
6. Where an obligation according to (2) to (4) above is not possible, bids shall be solicited for the universal service as provided for by (5) above.
7. Prior to soliciting bids for the universal service as provided for by (5) or (6) above, the regulatory authority shall determine in detail which universal service according to §17 of this Act must be provided in which geographical area or at which place and shall specify the criteria according to which the necessary specialised knowledge of the

universal service provider will be assessed. In addition, it shall stipulate in detail the rules for conducting the competitive bidding proceedings, such rules being objective, comprehensible and nondiscriminatory.

## **§20 Compensation for Universal Services**

1. Where a company is obliged under §19(2) to (4) of this Act to provide universal service and where it has furnished prima facie evidence of its claim for compensation according to §19(5) sentence 1 of this Act, the regulatory authority shall grant compensation for the provision of such universal service if the company evidences that the long-term additional costs of providing the universal service efficiently in the relevant geographical market, inclusive of adequate interest on the capital employed, exceed the income therefrom. The income shall be computed on the basis of the affordable prices laid down or to be laid down by ordinance having the force of law according to §17(2) of this Act.
2. Compensation shall be paid after expiration of the calendar year in which a deficit in providing the universal service occurs. The amount of compensation shall be computed in accordance with the actual long-term additional costs of providing the service efficiently, in compliance with the universal service obligation, inclusive of adequate interest on the capital employed, less the income earned from such universal service. In respect of income computation (1) sentence 2 above shall apply accordingly.
3. In the event of bids being solicited as provided for by §19(5) or (6) of this Act, the regulatory authority shall grant compensation in accordance with the result of the bids solicitation.

## **§21 Universal Service Levy**

1. Where the regulatory authority grants compensation according to §20 of this Act for the provision of universal service, each licensee operating in the relevant product market for the applicable telecommunications service subject to licence and achieving a share of at least four percent of the total sales of this market within the purview of this Act shall contribute to such compensation by means of a universal service levy. The share of the levy shall be computed according to the ratio of the licensee's revenues to the total revenues of those obliged according to sentence 1 above in the relevant product market within the purview of this Act. Where such share cannot be recovered from a licensee obliged according to sentence 1 above, the other parties obliged shall pay his amount. The additional share to be paid shall be computed on the basis of the ratio of such other parties' shares according to sentence 2 above.
2. After expiration of the calendar year for which compensation according to §20 of this Act will be granted, the regulatory authority shall determine the amount of compensation to be granted and the shares of the licensees contributing to such compensation, communicating this to the companies concerned. The amount of compensation shall be computed on the basis of the deficit according to §20(2) sentence 2 of this Act evidenced by the provider obliged to offer universal service according to §19 of this Act plus the usual market interest. Interest will be paid as from the day following the date of expiration of the calendar year referred to in sentence 1 above.
3. The companies contributing to compensation under §20 of this Act shall undertake to

pay to the regulatory authority within a period of four weeks the shares falling to them as determined by the regulatory authority. This period will begin on the day of receipt of the communication referred to in (2) sentence 1 above.

4. Where a licensee is more than three months in arrears with payment of the levy, the regulatory authority shall issue a notice of assessment of the overdue amounts and enforce collection.

## **§22 Disclosure of Revenue**

1. Where universal service is imposed under §19 of this Act, the licensees operating in the relevant market for the applicable telecommunications service subject to licence shall notify the regulatory authority annually upon demand of the revenues generated in the relevant market. Otherwise the regulatory authority may make an estimate.
2. Section §36(2) and §38 of the Law against Restraints of Competition shall apply accordingly with regard to computing revenues according to (1) above.

## ***Part III. Rates Regulation*** ➡

### **§23 Objections to and Objection Proceedings concerning General Terms and Conditions**

1. The regulatory authority shall object to general terms and conditions for telecommunications services subject to licence and to general terms and conditions for universal services where such terms and conditions do not meet the criteria for general terms and conditions, for information on such terms and conditions and the availability of such information in Directives and Recommendations issued by the European Parliament and the Council in accordance with Article 6 and Annex III of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No L 192 p 1).
2. General terms and conditions shall be submitted to the regulatory authority in written form prior to their entry into force. The regulatory authority shall be entitled to object to them within a period of four weeks. Where it exercises its right of objection, the general terms and conditions shall be invalid.

### **§24 Criteria Applicable to Rates Regulation**

1. Rates shall be based on the costs of efficient service provision and shall accommodate the requirements according to (2) below. The provisions of §17(1) and (2) of this Act and of the ordinance having the force of law issued by virtue of §17(2) of this Act shall remain unaffected.
2. Rates shall:
  1. contain no surcharges which prevail solely as a result of the provider's dominant position according to §19 of the Law against Restraints of Competition in the

relevant telecommunications market,

2. contain no discounts which prejudice the competitive opportunities of other companies in a telecommunications market, or
3. not create any advantages for individual users in relation to other users of identical or similar telecommunications services in the relevant telecommunications market, unless there is evidence of an objectively justifiable reason therefor.

### **§25 Rates Regulation**

1. As provided for by §§24 and 27 to 31 of this Act rates and rate-related components of general terms and conditions for the offer of transmission lines and voice telephony within the framework of Licence Classes 3 and 4 according to §6 of this Act shall be subject to approval by the regulatory authority, provided the licensee has a dominant position according to §19 of the Law against Restraints of Competition in the relevant market.
2. Rates and rate-related components of general terms and conditions for telecommunications services other than those referred to in (1) above provided by companies having a dominant position according to §19 of the Law against Restraints of Competition in the relevant market shall be subject to the procedure of §30 of this Act in accordance with §§24, 27(4) and §31 of this Act.
3. Paragraphs (1) and (2) above shall apply accordingly to rates and rate-related components of general terms and conditions of a company constituting a single company with a licensee according to (1) above or a company according to (2) above. A single company is created through any linkage of companies within the meaning of §36(2) and §37(1) and (2) of the Law against Restraints of Competition.

### **§26 Publication**

The regulatory authority shall publish once a year in its Official Gazette the relevant product and geographical markets in which dominant positions prevail and where providers are subject to objection proceedings for general terms and conditions under §23 of this Act and to rates regulation under §25(2) of this Act.

### **§27 Forms and Procedures for Rates Approval**

1. The regulatory authority shall approve rates according to §25(1) of this Act
  1. on the basis of the costs of efficient service provision falling to the individual service, or
  2. on the basis of the benchmarks it prescribes for the average rates of change in the rates for a basket of combined services.
2. In the case of (1) subparagraph 1 above the regulatory authority shall examine compliance with the requirement of §24(2) subparagraph 1 for each separate rate. In

the case of (1) subparagraph 2 the requirement of §24(2) subparagraph 1 shall be deemed complied with if the given benchmarks are observed.

3. Approval of the rates shall be denied where they do not satisfy the requirement of §24(2) subparagraph 1 as provided for by (2) above or where it is obvious that they do not meet the requirements of §24(2) subparagraphs 2 or 3 or where they are not in conformity with this Act or other legal provisions.
4. The Federal Government shall be empowered to lay down in detail, by ordinance having the force of law but not requiring the consent of the German Bundesrat, the forms of approval referred to in (1) above and to stipulate the prerequisites for the regulatory authority's decision as to which of the procedures specified in (1) above shall be applied. The ordinance shall lay down details of the procedure, in particular the documents to be submitted by the licensee, the structure of the cost statement he is obliged to effect as well as the obligation to publish rates. It shall also specify the components and content of the benchmarks and baskets referred to in (1) subparagraph 2 above. Sentences 1 and 2 shall also apply to the procedure of rates regulation according to §30 of this Act.

### **§28 Regulatory Procedure for Rates Subject to Approval**

1. Rates and rate-related components of general terms and conditions according to §25(1) of this Act which are subject to approval shall be submitted to the regulatory authority in writing. In the event of approvals being granted for a limited period of time submission shall be effected at least two months prior to the expiration of the period.
2. The regulatory authority shall decide on rate proposals according to (1) above within a period of six weeks of receipt of the submission. Within the period specified in sentence 1 above the regulatory authority may extend the procedure by a maximum of four weeks. It shall decide on the rate proposals within this four-week period.
3. With regard to approval, the regulatory authority will impose time-limits under §36(2) subparagraph 1 of the Administrative Procedures Act.
4. Approved rates shall be published in the Official Gazette of the regulatory authority.

### **§29 Divergence from Approved Rates**

1. The licensee shall undertake to charge solely the rates approved by the regulatory authority.
2. Contracts for services containing rates other than those approved shall be effective subject to the proviso that the approved rate takes the place of the agreed rate. The regulatory authority may prohibit execution of a legal transaction using a rate other than the approved rate.

### **§30 Procedure for Subsequent Rates Regulation**

1. Where the approval procedure according to §27 of this Act is applied and the regulatory authority subsequently becomes aware of facts warranting the assumption

that rates and rate-related components of general terms and conditions subject to regulation under §25(1) are not in compliance with the requirements of §24(2) subparagraphs 2 and 3, the regulatory authority shall initiate an examination of the rates and rate-related components of general terms and conditions. It shall notify the company concerned in writing of such initiation.

2. Where the regulatory authority becomes aware of facts warranting the assumption that rates and rate-related components of general terms and conditions subject to regulation under §25(2) are not in compliance with the requirements of §24 of this Act, the regulatory authority shall initiate an examination of the rates and rate-related components of general terms and conditions. It shall notify the company concerned in writing of such initiation.
3. The regulatory authority shall take a decision within a period of two months following initiation of an examination.
4. Where the regulatory authority establishes that rates or rate-related components of general terms and conditions subject to regulation under (1) and (2) above are not in compliance with the requirements of §24(2) of this Act, the regulatory authority shall request the company concerned to adjust the rates or rate-related components of general terms and conditions to the requirements without undue delay.
5. Where such adjustment as prescribed by the regulatory authority according to (4) above is not effected, the regulatory authority shall prohibit the conduct objected to and declare the rates and rate-related components of general terms and conditions invalid. Section 29(1) and (2) of this Act shall apply accordingly.
6. Exercise of objection according to (4) above shall be published in the Official Gazette of the regulatory authority.

### **§31 Administrative Orders Relating to Rates Regulation**

1. In carrying out rates regulation, the regulatory authority may order that
  1. the licensee provide it with detailed information on his service offer, the current and anticipated revenues for services, the current and anticipated volumes of sales and costs, the foreseeable effects on users and competitors and any other documents required for the proper exercise of its approval or objection rights arising from this Act,
  2. a licensee structure a cost statement in such a way that the statement enables the regulatory authority to obtain the data on costs necessary for rates regulation as required by this Act.

In order to enforce these administrative orders, an administrative fine not exceeding one million Deutschmarks may be fixed in accordance with the Administration Enforcement Law.

2. The regulatory authority may prescribe the form in which rates or rate changes shall be published.



### **§32 Prohibition of Mergers**

Any licensee having a dominant position according to §19 of the Law against Restraints of Competition in the relevant market may be required by the regulatory authority as a condition of his licence to refrain from any linkage with another company within the meaning of §37(1) and (2) of the Law against Restraints of Competition in the case of a limitation of the number of licences according to §10 of this Act if such other company is or will be operating in telecommunications markets deemed to be the same product and geographical markets as the licensee's sphere of activity.

## **Part IV. Open Network Provision and Interconnection ➔**

### **§33 Special Control of Abusive Practices**

1. Any provider having a dominant position according to §19 of the Law against Restraints of Competition in a market for telecommunications services for the public shall enable competitors in such market to access, on a non-discriminatory basis, the services he uses internally and those he offers to the market, to the extent that they are essential, upon the same conditions he applies to himself for the use of such services to provide other telecommunications services, unless the establishment of less favourable conditions, particularly the imposition of restrictions, is objectively justified. Such provider may in particular only restrict access insofar as this is in line with the essential requirements within the meaning of Article 3(2) of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No L 192 p 1). In this regard, competitors shall be informed of which essential requirement underlies a restriction in the given instance.
2. The regulatory authority may impose or prohibit conduct in relation to a provider violating (1) above and declare agreements wholly or partially invalid insofar as such provider abuses his dominant position in the market. The regulatory authority shall first request the parties concerned to refrain from the abuse to which objection was made. Abuse shall be presumed where a provider having a dominant position according to §19 of the Law against Restraints of Competition in the relevant market grants himself access to the services he uses internally and to those he offers to the market on more favourable conditions than such provider establishes for competitors for use with regard to these services for their service offerings unless the provider furnishes evidence of facts which objectively justify the imposition of less favourable conditions, in particular the imposition of restrictions.
3. Insofar as a provider according to (1) sentence 1 above constitutes a single company with other companies, the regulatory authority shall have the powers according to (2) above in relation to each of these companies. A single company is created through any linkage of companies within the meaning of §36(2) and §37(1) and (2) of the Law against Restraints of Competition.

### **§34 Interfaces for Open Network Provision**

1. Where a provider having a dominant position according to §19 of the Law against Restraints of Competition in the relevant market fails in the offer of telecommunications services to observe the standards which the European Commission or the Council, in accordance with Article 10 of Council Directive

90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No L 192 p 1), has declared compulsory, the regulatory authority shall have the powers specified in §33(2) and (3) of this Act.

2. Where a provider or a user observes the applicable European standards relating to interfaces and service features for open network provision as published in the Official Journal of the European Communities, it shall be assumed that such provider or user meets the essential requirements for open network provision.
3. Provided no European standards relating to interfaces and service features for open network provision as published in the Official Journal of the European Communities must be observed for the offer of telecommunications services, the regulatory authority may require the provider under §33 of this Act to evidence observance of the conditions for open network provision.

### **§35 Granting of Network Access**

1. The telecommunications carrier offering telecommunications services for the public and having a dominant position according to §19 of the Law against Restraints of Competition in such market shall allow other users to access its telecommunications network or parts thereof. Such access may be granted via connections provided for all users (general network access) or via special connections (special network access). A carrier according to sentence 1 above shall enable in particular interconnection of its telecommunications network with public telecommunications networks of other carriers.
2. Network access agreements according to (1) above shall be based on objective criteria, shall be comprehensible and shall grant equal access to the telecommunications networks of a carrier according to (1) sentence 1 above. The carrier may only restrict network access for reasons based on the essential requirements within the meaning of Article 3(2) of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No L 192 p 1) and only insofar as such restriction is in conformity with other provisions of European Community law. Agreements according to sentence 1 above shall be submitted to the regulatory authority in writing; they shall be published.
3. Where a user requests the provision of special network access, the regulatory authority shall examine in accordance with §8(3) sentence 1 subparagraph 2(a) whether the user has the reliability, efficiency and specialised knowledge required for such network access requested. Such examination shall not be required where the user has been granted a licence under §8 of this Act.
4. Paragraph (1) above shall apply accordingly to a company constituting a single company with a carrier according to (1) sentence 1 above. A single company is created through any linkage of companies within the meaning of §36(2) and §37(1) and (2) of the Law against Restraints of Competition.
5. The Federal Government shall lay down, by ordinance having the force of law and requiring the consent of the German Bundesrat, details of how special network access, in particular for interconnection, must be enabled. The ordinance shall contain framework provisions for agreements according to (2) above and shall stipulate how agreements on special network access according to (2) sentence 3 above must be

submitted to the regulatory authority and published. The Directives of the European Community issued by the European Parliament and the Council in accordance with Article 6 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No L 192 p 1) shall be observed.

### **§36 Negotiation Requirement**

Each public telecommunications carrier shall undertake to make to other carriers of such networks an interconnection offer, at their request. In this regard, all parties concerned shall seek to enable and improve communication between and among users of different public telecommunications networks.

### **§37 Interconnection Requirement**

1. Where no interconnection agreement has been brought about between public telecommunications carriers, the regulatory authority shall, after hearing the parties concerned, order interconnection within a period of six weeks beginning on the day of appeal by one of the parties engaged in interconnection. Within this period the regulatory authority may extend the procedure by a maximum of four weeks. It shall decide on the order within this four-week period.
2. An order according to (1) above shall only be admissible insofar and for as long as the parties concerned fail to reach an interconnection agreement. Section 36 of this Act shall remain unaffected.
3. The Federal Government shall be empowered to determine the necessary details of the interconnection order according to (1) above in the ordinance according to §35(5) of this Act. In this regard, the procedure to be taken by the regulatory authority shall be laid down and the content of the interconnection order as well as the period within which carriers must implement such order determined. Orders shall satisfy the criteria of §35(2) of this Act.

### **§38 Competition-Restricting Agreements**

1. All agreements on the granting of network access under §35 of this Act shall be invalid insofar as they are likely to prejudice the competitive opportunities of other companies in a telecommunications market without objectively justifiable reason.
2. Section 33(2) and (3) of this Act shall apply accordingly.

### **§39 Charges for the Granting of Network Access**

The provisions of §§24, 25(1) and (3), §§27, 28, 29, 30(1) and (3) to (6) and §31 shall apply accordingly with regard to regulation of the charges for the granting of network access under §35 of this Act and for the implementation of an interconnection ordered under §37 of this Act.

## **Part V. Customer Protection ➔**

## **§40 Damage Claims and Actions to Cease and Desist**

Any provider of telecommunications services for the public who intentionally or negligently violates this Act, any ordinance having the force of law issued by virtue of this Act or any obligation laid down in a licence issued by virtue of this Act or any administrative order of the regulatory authority shall undertake, where such provision or obligation aims to protect users, to compensate the user for any damage arising from such violation. Users may also initiate actions to cease and desist against such providers.

## **§41 Customer Protection Ordinance**

1. For the special protection of users, consumers in particular, the Federal Government shall be empowered to issue, by ordinance having the force of law with the consent of the German Bundesrat, framework provisions for the use of telecommunications services for the public.
2. In particular, regulations on the conclusion, subject and termination of agreements and on the rights and obligations of the contractual parties and all other parties engaged in telecommunications traffic may be laid down in such ordinance. In this regard, those Directives issued by the European Parliament and the Council in accordance with Article 6 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No L 192 p 1) shall be observed insofar as they regulate the position of users.
3. Specifically, regulations shall be issued with regard to:
  1. the liability of providers, damage claims and claims to cease and desist initiated by users;
  2. the unbundling of telecommunications services for the public in the licensed and nonlicensed sector as well as the unbundling of these services in relation to each other;
  3. detailed conditions for the provision and use of general network access according to §35(1) of this Act; the conditions shall be based on objective criteria, shall be comprehensible and shall ensure equal access;
  4. how to refer to general terms and conditions and rates and the possibility of their incorporation;
  5. information requirements;
  6. procedures and time-limits to be observed with regard to changes in offers;
  7. special requirements for billing and for rate level verification; and
  8. extra-judicial dispute settlement procedures.

## **§42 Broadcasting Equipment**

When transmitting equipment is sold, the purchaser shall succeed to existing contractual relationships with broadcasting corporations.

## **Part VI. Numbering** ➔

### **§43 Numbering**

1. Numbering functions shall be discharged by the regulatory authority. It shall be responsible in particular for the structuring and configuration of the numbering space so that the requirements of users, telecommunications carriers and telecommunications service providers can be satisfied at any time. Essential elements of such structuring and configuration shall be published in the Official Gazette of the regulatory authority, provided there are no national security reasons to the contrary. In addition, the regulatory authority shall perform numbering space management, mainly by assigning numbers to telecommunications carriers, telecommunications service providers and users.
2. The regulatory authority shall impose conditions which must be fulfilled before rights to use numbers can be granted and which constitute a right to assignment. These conditions and the regulations on number assignment shall be published in the Official Gazette of the regulatory authority.
3. Numbers shall be assigned upon the application of a telecommunications carrier, telecommunications service provider or user. Assignment may be linked with conditions and other collateral clauses. The assignment decision shall be subject to a fee. The Federal Ministry of Posts and Telecommunications shall be empowered to lay down, in agreement with the Federal Ministry of the Interior, the Federal Ministry of Finance, the Federal Ministry of Justice and the Federal Ministry of Economics by ordinance having the force of law but not requiring the consent of the German Bundesrat and as provided for by the Administrative Expenses Act, chargeable acts, the level of the fee and the reimbursement of expenses.
4. In order to implement international obligations or recommendations and to ensure sufficient availability of numbers, the regulatory authority may modify the structure and configuration of the numbering space and the assignment of numbers. In this respect, due regard shall be paid to the interests of the parties concerned, most notably to conversion costs incurred by licensees, telecommunications service providers and users. Any proposed modifications shall be made known in good time prior to their becoming effective. Telecommunications carriers and telecommunications service providers affected by such modifications shall undertake to take all measures required for implementation.
5. In their networks telecommunications carriers shall ensure that users may keep the numbers assigned to them when they change carrier but not location (carrier portability); there shall be charged solely the costs incurred once for customer change. The regulatory authority may suspend this obligation insofar and for as long as the absence of carrier portability does not significantly impair competition in individual markets and does not significantly affect consumer interests. It may also suspend this obligation insofar and for as long as this is justified for technical reasons.
6. In their networks telecommunications carriers shall ensure that each user is free in his choice of long-distance carrier; such choice shall be enabled by means of permanent preselection which can be overridden by a carrier selection prefix each time a

particular call is made. The regulatory authority may suspend this obligation wholly or partially insofar and for as long as this is justified for technical reasons.

7. The regulatory authority may issue administrative orders to enforce the obligations according to (4) sentence 4, (5) sentence 1 and (6) sentence 1 above. In order to enforce these administrative orders, an administrative fine not exceeding one million Deutschmarks may be fixed in accordance with the Administration Enforcement Law.

## **Part VII. Frequency Regulation** ➔

### **§44 Functions**

1. In order to ensure effective, interference-free use of frequencies, a table of frequency allocations and a frequency usage plan shall be drawn up, frequencies assigned and frequency usages supervised.
2. The regulatory authority shall issue administrative orders regarding the operation of radio equipment in foreign vehicles on land, water and in aircraft operating within the purview of this Act.
3. With regard to frequency usages serving to defend federal territory, the Federal Ministry of Posts and Telecommunications shall reach agreement with the Federal Ministry of Defence.

### **§45 Frequency Band Allocation**

1. The Federal Government shall be empowered to stipulate, by ordinance having the force of law but not requiring the consent of the German Bundesrat, the frequency band allocation for the Federal Republic of Germany in a table of frequency allocations and to amend such table. Ordinances allocating frequencies to broadcasting shall require the consent of the German Bundesrat. The parties affected by allocation shall participate in their preparation.
2. In the table of frequency allocations the frequency bands shall be allocated to the individual radio services and other electromagnetic wave applications. Insofar as required to ensure effective, interference-free use of frequencies, the table of frequency allocations also contains provisions governing frequency usages and associated more detailed determinations. Sentence 2 above shall also apply to frequency usages in and along conductors; geographical, time and technical determinations shall be made in respect of the frequency bands concerned, compliance with which will allow free use.

### **§46 Frequency Usage Plan**

1. The regulatory authority shall draw up the frequency usage plan on the basis of the table of frequency allocations in consideration of the aims specified in §2(2) of this Act, European harmonisation, technical developments and the compatibility of frequency usages in the transmission media.
- 2.

The frequency usage plan shall contain further allocation of the frequency bands to the individual frequency usages as well as determinations on such usages. The frequency usage plan may consist of subplans.

3. The frequency usage plan shall be drawn up with the participation of the public. The Federal Government shall be empowered to lay down, by ordinance having the force of law and requiring the consent of the German Bundesrat, the procedure for drawing up the frequency usage plan.

#### **§47 Frequency Assignment**

1. Each frequency usage shall require prior assignment by the regulatory authority. Frequencies shall be assigned in accordance with the frequency usage plan in a nondiscriminatory manner on the basis of comprehensible and objective procedures.
2. Frequency usages of the Federal Ministry of Defence shall not require assignment in the frequency bands intended exclusively for military usages as indicated in the frequency usage plan.
3. The assignment of frequencies for the broadcasting of programmes within the jurisdiction of the federal states shall be subject to an authorisation, required by media law, of the competent federal state authority in respect of programmes to be broadcast.
4. The Federal Government shall be empowered to lay down, by ordinance having the force of law and requiring the consent of the German Bundesrat, the content, scope and procedures for frequency assignment and frequency assignment revocation in derogation of §49(2) of the Administrative Procedures Act.
5. Frequencies shall be assigned upon application or, ex officio, by administrative act. Where several applications have been filed for particular frequencies, it may be ordered, without prejudice to the provisions of (1) and (2) above, that frequency assignment be preceded by award proceedings based on conditions to be determined by the regulatory authority; §11 shall apply accordingly. Assignment of a frequency may also be revoked provided that use for the intended purpose of the assigned frequency is not commenced within one year of the assignment or that the assigned frequency has not been used for its intended purpose for more than a year.
6. With regard to a change in ownership of the party which has been assigned frequencies, §9 of this Act shall apply accordingly, the applicable assignment provisions being maintained. Sections 8(3) and 15 shall apply accordingly to the denial and revocation of frequencies.

#### **§48 Frequency Fee and Contributions**

1. Costs (charges and expenses) shall be payable for frequency assignment and for measures to counteract violations of §§44 to 47 of this Act or the ordinances issued by virtue of these sections. The Federal Ministry of Posts and Telecommunications shall be empowered to stipulate in greater detail, in agreement with the Federal Ministry of the Interior, the Federal Ministry of Finance, the Federal Ministry of Justice and the Federal Ministry of Economics by ordinance having the force of law but not requiring the consent of the German Bundesrat, chargeable acts and the level of the fee.

Section 16(2) shall apply accordingly.

2. The parties which have been assigned frequencies shall make an annual contribution for reimbursement of expenditure on the planning and updating of frequency usages including the necessary measurements, tests and compatibility studies to ensure effective, interference-free frequency usage. Costs to be reimbursed according to sentence 1 above shall not include costs for which a fee according to (1) above or charges and expenses or contributions according to §§9 or 10 of the Electromagnetic Compatibility Act as published on 30 August 1995 (Federal Law Gazette I p 1118) and the ordinances issued by virtue of these provisions have already been levied.
3. The Federal Ministry of Posts and Telecommunications shall be empowered to determine, in agreement with the Federal Ministry of the Interior, the Federal Ministry of Finance, the Federal Ministry of Justice and the Federal Ministry of Economics by ordinance having the force of law but not requiring the consent of the German Bundesrat, the group of those obliged to make contributions, the contribution rates and the procedure for the collection of contributions. Contribution rates shall be such that staff costs and other expenditure associated with the official acts are covered. The shares in the overall costs shall be allocated, as far as possible on a market-related basis, to the individual frequency allocation user groups that have been assigned frequencies. Within these groups the contribution shall be divided in consideration of the number and, if applicable, the bandwidth of the frequencies used as well as the number of pieces of transmitting equipment operated.

#### **§49 Supervision, Decommissioning Order**

The regulatory authority shall, with a view to ensuring frequency regulation, have the power to supervise frequency usage. In the event of violations of this Act or of provisions of the ordinance having the force of law issued by virtue of §47(4) of this Act, the regulatory authority may order restricted operation or that equipment be taken out of service.

### **Part VIII. Use of Trafficways ➔**

#### **§50 Principles for the Use of Public Ways**

1. The Federal Republic of Germany shall have the power to use trafficways free of charge for telecommunications lines serving public purposes provided that their dedication as trafficways is not thereby restricted on a lasting basis (right of use). Trafficways shall include public ways, squares, bridges and public waters.
2. The Federal Republic of Germany shall, within the scope of licensing according to §8 of this Act, transfer the right according to (1) above to licensees according to §6(1) subparagraph 1. Telecommunications lines shall be set up and maintained in such a way that they satisfy the requirements of safety and order and the recognised rules of engineering.
3. The laying of new and modification of existing telecommunications lines shall require the approval of the authorities responsible for the construction and maintenance of public ways. With regard to the laying of overhead lines, the interests of the above authorities and licensees shall be balanced and town planning requirements accommodated. Approval may be based on technical terms and conditions which must be determined in a non-discriminatory manner.



4. Where the authority responsible for the construction and maintenance of public ways is a licensee himself or constitutes a single company with a licensee within the meaning of §37(1) or (2) of the Law against Restraints of Competition, the regulatory authority shall be responsible for granting approval according to (3) above, provided another licensee wishes to use the trafficways of the above authority.

### **§51 Joint Use**

Insofar as the right according to §50 of this Act concerning the laying of further telecommunications lines cannot be exercised or the expenditure for exercising such right is disproportionately high, it shall be possible to demand acquiescence in the joint use of other installations intended for accommodation of telecommunications cables where such joint use is economically reasonable and no major additional construction work is required. In this case the user shall pay adequate pecuniary compensation to the party obliged to grant joint use.

### **§52 Allowance for Maintenance of Ways and Dedication Purpose**

1. With regard to the use of trafficways, any hindrance of the maintenance thereof and any temporary limitation on the dedication purpose thereof shall be avoided as far as possible.
2. Where maintenance is hindered, the party enjoying the right of use shall reimburse the party liable for maintenance with the costs arising from such hindrance.
3. After completion of work on telecommunications lines, the party enjoying the right of use shall restore the trafficway without undue delay, provided the party liable for maintenance has not declared its willingness to undertake restoration itself. The party enjoying the right of use shall reimburse the party liable for maintenance with the expenses incurred in the restoration thus undertaken and shall pay compensation for any damage incurred as a result of work on the telecommunications line.

### **§53 Changes Required**

1. Where, following the setting-up of a telecommunications line, it emerges that the telecommunications line hinders the dedication purpose of a trafficway not only temporarily or prevents performance of the work required for the maintenance thereof or stands in the way of execution of any change to the trafficway as intended by the party liable for maintenance, the telecommunications line shall be modified to the extent necessary, or removed.
2. Where a trafficway is withdrawn, the right of use thereof of the party enjoying such right shall cease.
3. In all such cases the party enjoying the right of use shall effect the required measures in respect of the telecommunications line at its own expense.

### **§54 Protection of Trees**

1. Trees planted on and around trafficways shall be protected, where possible, and

allowance made for their growth. Pruning may only be required to the extent necessary to set up the telecommunications line or to prevent interruption of service; pruning shall be limited to the degree absolutely necessary.

2. The party enjoying the right of use shall set the tree owner an appropriate period within which to prune trees himself. Where the trees are not pruned or are not pruned sufficiently within the specified period, the party enjoying the right of use shall effect pruning. It shall also be entitled to do so in order to urgently prevent or eliminate interruption.
3. The party enjoying the right of use shall pay compensation for all damage to trees and shall reimburse the costs of all pruning undertaken at its request.

### **§55 Special Installations**

1. Telecommunications lines shall be laid in such a way that they do not adversely affect existing special installations (installations serving to maintain public ways, canalisation, water and gas lines, tracks, electrical installations and the like). The party enjoying the right of use shall bear any costs incurred for the implementation of necessary protective measures.
2. The relocation or modification of existing special installations may only be requested, against compensation, provided that use of the trafficway for the telecommunications line would otherwise have to be discontinued and that the special installation can be accommodated elsewhere in a manner suited to its intended purpose.
3. Even when these prerequisites are fulfilled, use of the trafficway for the telecommunications lines shall be discontinued in the event of the damage arising from relocation or modification of the special installation being disproportionately high in relation to the costs incurred by the party enjoying the right of use for use of any other trafficway available to it.
4. Paragraphs (1) to (3) above shall apply accordingly to any special installations in a preparatory stage whose establishment lies in the public interest. Compensation according to (2) above shall only be granted up to the amount of the expenses incurred as a result of preparation. Installations shall be deemed in a preparatory stage as soon as they have been approved, on the basis of the detailed plan pertaining thereto, by the contract-awarding entity and, insofar as is necessary, by the competent authorities and the owner or any other party enjoying the right of use of the given way.

### **§56 Subsequent Special Installations**

1. Where possible, subsequent special installations shall be provided in such a way that they do not adversely affect existing telecommunications lines.
2. Any request to relocate or modify a telecommunications line shall be complied with at the expense of the party enjoying the right of use where the establishment of a subsequent special installation which, for reasons of public interest resulting particularly from economic or traffic-related concerns, is to be realised by the party liable for maintenance or with the majority participation of one or more similar parties, would otherwise have to be discontinued or would be significantly hindered. The

relocation of a cable-based telecommunications line not serving solely local, suburban or neighbouring area traffic may only be required when such cable-based telecommunications line can be accommodated elsewhere in a manner suited to its intended purpose without disproportionately high costs being incurred.

3. In the event of protective measures having to be taken with regard to an existing telecommunications line as a result of any such subsequent special installation, the resulting costs shall be borne by the party enjoying the right of use.
4. Where a party liable for maintenance transfers its share to a third party not liable for maintenance, the party enjoying the right of use shall be reimbursed, on a pro-rata basis, for costs incurred by the relocation or modification or by the implementation of protective measures.
5. Entrepreneurs of special installations other than those designated in (2) above shall bear the costs arising from the relocation or modification of existing telecommunications lines or from the implementation of any required protective measures.
6. With regard to any subsequent modifications of existing special installations, the provisions of (1) to (5) above shall apply accordingly.

### **§57 Detriment to Property**

1. The owner of a property which is not a trafficway within the meaning of §50(1) sentence 2 cannot prohibit the setting-up, operation and renewal of telecommunications lines on his property insofar as 1. a line or installation on the property which is secured by a right is also used for the setting-up, operation and renewal of a telecommunications line and the usability of the property is not thereby additionally restricted on a lasting basis, or 2. the property is not or is only insignificantly affected by such use.
2. Where the owner of the property must acquiesce in intervention according to (1) above, he may claim appropriate pecuniary compensation from the operator of the telecommunications line if use of his property or the income therefrom is affected to an extent more than can be reasonably expected by the setting-up or renewal or by maintenance or repair work or comparable measures directly associated with the operation of the telecommunications line. In addition, with regard to extended use for telecommunications purposes, non-recurrent pecuniary compensation may be claimed, provided that there were hitherto no lines that could be used for telecommunications purposes. In the event of damage to the property and its accessories caused by exercise of the rights ensuing from this provision, the operator shall remedy the damage at his expense.

### **§58 Damage Claims**

Damage claims arising from §§50 to 57 of this Act shall be subject to a limitation period of two years. The limitation period shall begin at the close of the year in which the claim arose.

## **Part IX. Approval, Transmitting Equipment ➔**

## **Chapter One. Approval ➔**

### **§59 Terminal Equipment**

1. Terminal equipment satisfying the essential requirements according to (2) below and approved and marked in accordance with an ordinance having the force of law according to (4) below may be placed on the market, connected to and operated in a public telecommunications network for its intended purpose.
2. The essential requirements for terminal equipment shall include:
  1. user safety, insofar as this is not covered by the Second Ordinance Implementing the Energy Industry Act as published on 14 January 1987 (Federal Law Gazette I p 146) or by the Safety of Equipment Act as published on 23 October 1992 (Federal Law Gazette I p 1794), both in the prevailing version;
  2. safety of employees of public telecommunications carriers, insofar as this is not covered by provisions referred to in subparagraph 1 above;
  3. electromagnetic compatibility requirements insofar as they are specific to terminal equipment;
  4. protection of a public telecommunications network from harm;
  5. effective use of the frequency spectrum and orbital resources as well as avoidance of radio interference between space-based and terrestrial communications systems and other technical systems in corresponding installations;
  6. interworking of terminal equipment with public telecommunications network equipment, and
  7. interworking of terminal equipment via a public telecommunications network in justified cases according to European Community law.
3. With regard to terminal equipment according to Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ No L 128 p 1) and satellite earth station equipment according to Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment (OJ No L 290 p 1) operated at a voltage of a maximum of 50 volts AC or a maximum of 75 volts DC, the user safety standards according to §2 of the First Ordinance of the Act on Technical Work Equipment of 11 June 1979 (Federal Law Gazette I p 629) shall also be included as essential requirements according to (2) subparagraphs 1 and 2 above.
4. The Federal Ministry of Posts and Telecommunications shall be empowered to stipulate, by ordinance having the force of law but not requiring the consent of the German Bundesrat, in observance of Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ No L 128 p 1), as amended by Council Directive 93/68/EEC of 22 July

1993 (OJ No L 220 p 1), and of Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment (OJ No L 290 p 1),

1. the details of the essential requirements according to (2) above, the conformity assessment and approval procedure for terminal equipment and the details thereof as well as the implementation procedure for measures according to (6) to (8) below;
2. the prerequisites for terminal equipment marking, and
3. the form and content of such marking.

The provisions of the Agreement of 2 May 1992 on the European Economic Area (Federal Law Gazette 1993 II pp 266, 1294) shall also be observed in this regard. Approval shall be granted if the prerequisites provided for by this Act or by an ordinance having the force of law issued by virtue of this Act are satisfied.

5. Compliance with the essential requirements set out in (2) subparagraphs 1 and 2 above shall be presumed for terminal equipment which is in conformity with the relevant harmonised European standards, the references of which have been published in the Official Journal of the European Communities. These standards shall be converted into DIN/VDE standards and their references published in the Official Gazette of the regulatory authority.
6. A public telecommunications carrier shall disconnect any terminal equipment connected to its network which does not satisfy the essential requirements according to (2) above. Where the customer concerned objects to such disconnection, the public telecommunications carrier may only disconnect the terminal equipment with the consent of the regulatory authority.
7. Where terminal equipment bears the CE marking or the national approval mark without the prerequisites according to (4) sentence 1 subparagraph 2 above being met, the regulatory authority shall prohibit the equipment from being placed on the market and moved freely in accordance with the ordinance issued under (4) sentence 1 above, and shall have the marking invalidated or removed at the expense of the manufacturer or supplier. This shall apply accordingly where terminal equipment bears marks which may be confused with the CE marking or the national approval mark.
8. In accordance with the ordinance issued under (4) sentence 1 above, the officials of the regulatory authority shall have the power, in performing their duties under (7) above, to have access, during business and working hours, to property, production sites and business premises on and in which terminal equipment or equipment capable of but not intended for connection to a public telecommunications network is manufactured, stored for the purpose of being placed on the market or moved freely, displayed or operated for such purpose in order to inspect and test the terminal equipment and the other equipment specified.

#### **§60 Equipment and Satellite Earth Station Equipment not Intended for Connection to a Public Network**

1. Equipment and satellite earth station equipment capable of but not intended for

connection to a public telecommunications network may not be connected to a public telecommunications network.

2. Equipment and satellite earth station equipment according to (1) above may only be placed on the market if accompanied by a specific declaration from the manufacturer or supplier on the intended purpose in accordance with Annex VIII to Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ No L 128 p 1), as amended by Council Directive 93/68/EEC of 22 July 1993 (OJ No L 220 p 1), and by the instructions for use and if the equipment has been marked in conformity with Annex VII to the Directive.
3. Receive-only satellite earth station equipment according to Article 10 of Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment (OJ No L 290 p 1) may only be placed on the market if it
  1. has undergone the conformity assessment and approval procedure according to §59(4) sentence 1 subparagraph 1 and has been marked in accordance with §59(4) sentence 1 subparagraph 3, or
  2. has undergone the internal production control procedure as set out in the Annex to Directive 93/97/EEC and has been marked in accordance with Article 13(4) of Directive 93/97/EEC.
4. Section 59(6) to (8) of this Act shall apply accordingly to equipment and satellite earth station equipment according to (1) above and to receive-only satellite earth station equipment according to (3) above not meeting the applicable provisions of (1) to (3) above or operated in contravention thereof.
5. The Federal Ministry of Posts and Telecommunications shall be empowered to stipulate, by ordinance having the force of law but not requiring the consent of the German Bundesrat, the details and procedure in relation to (2) to (4) above. In this regard, the provisions of the Agreement of 2 May 1992 on the European Economic Area (Federal Law Gazette 1993 II pp 266, 1294) shall also be observed.
6. Prior to placing, within the purview of this Act, equipment and satellite earth station equipment according to (1) above on the market for the first time, the manufacturer or supplier shall send a copy of the declaration on the intended purpose to the approval authority. At the request of the approval authority, the manufacturer or supplier shall be obliged to give reasons in support of the intended purpose of the equipment and satellite earth station equipment with reference to its technical characteristics and functionality and to the market segment envisaged.
7. Equipment and satellite earth station equipment capable of but not intended for connection to a public telecommunications network which was placed on the market prior to 1 January 1995 may, even if it fails to meet the essential requirements according to §59(2) and (3) of this Act, remain on the market without being marked in accordance with (2) above. Paragraph (1) shall remain unaffected.

## **§61 Interference-Free Frequency Usage**

In order to ensure compliance with the essential requirements according to §59(2) subparagraphs 1 and 2 as well as to ensure interference-free, effective use of the frequency spectrum in compliance with the essential requirements of §59(2) subparagraph 5, the Federal Ministry of Posts and Telecommunications shall be empowered to lay down in the ordinance having the force of law issued under §59(4) of this Act the prerequisites and the procedure for placing on the market and operating radio equipment not intended for connection to a public telecommunications network and equipment for wanted emissions of electromagnetic waves. Section 59(7) and (8) shall apply to surveillance accordingly.

## **§62 Functions Assignment and Accreditation**

1. The Federal Ministry of Posts and Telecommunications shall be empowered to stipulate, by ordinance having the force of law but not requiring the consent of the German Bundesrat, in compliance with Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ No L 128 p 1), as amended by Council Directive 93/68/EEC of 22 July 1993 (OJ No L 220 p 1), and with Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment (OJ No L 290 p 1), the requirements and procedure for functions assignment to notified bodies as specified in Article 10(1) of Directive 91/263/EEC, the requirements and procedure for the accreditation of test laboratories for terminal equipment and for the accreditation of control bodies for quality systems in the field of telecommunications. In this regard, the provisions of the Agreement of 2 May 1992 on the European Economic Area (Federal Law Gazette 1993 II pp 266, 1294) shall also be observed. The procedures shall also determine the conditions governing revocation and expiration of functions assignment and accreditations.
2. The regulatory authority shall be the competent authority for functions assignment to notified bodies and for the accreditation of control bodies for quality systems and test laboratories within the purview of this Act.

## **§63 Qualifications**

1. Insofar as is necessary to satisfy the essential requirements according to §59(2) and (3) of this Act, terminal equipment may only be set up, connected, modified and maintained by companies or natural persons licensed to render such services on account of their technical and specialised knowledge and the equipment at their disposal. The licence granted to a company shall authorise the natural persons employed at such company to set up, connect, modify and maintain terminal equipment. The Federal Ministry of Posts and Telecommunications shall be empowered to determine, by ordinance having the force of law but not requiring the consent of the German Bundesrat, which types of terminal equipment may only be set up, connected, modified and maintained by licensed companies or licensed persons, and to lay down in detail the prerequisites and procedure for the licensing of persons. Required as prerequisites for licensing may be the appropriate professional qualifications, a related occupation, the required knowledge of the technology and of the functions of public telecommunications networks as well as of telecommunications law, and the equipment and spare parts required to perform the above functions properly being available. Companies shall verify compliance with the prerequisites of sentence 4 above by nominating as competent specialists natural persons satisfying such prerequisites.
2. Licensing shall be effected if the prerequisites according to (1) above are met. The

licence may be revoked particularly in those cases where execution of the work shows the licensed company or licensed person to be unreliable.

## **§64 Approval and Licensing Authority**

1. The competent body for the approval and licensing specified in §§59, 60, 61 and 63 of this Act and for other associated functions shall be the regulatory authority or a body which has been assigned the relevant functions according to (2) below. The regulatory authority may cease to discharge approval and licensing functions according to §§59 and 63 of this Act if other bodies have been assigned these functions according to (2) below.
2. Where a notified body meets the conditions laid down in an ordinance having the force of law issued under §62(1) of this Act, it shall be assigned approval and licensing functions according to §§59 and 63 of this Act and approval authority functions according to §§60 and 61 of this Act.
3. The Federal Ministry of Posts and Telecommunications shall be empowered to determine, in agreement with the Federal Ministry of the Interior, the Federal Ministry of Finance, the Federal Ministry of Justice and the Federal Ministry of Economics in the ordinances issued under §59(4), §60(5), §61, §62(1) and §63(1) and as provided for by the Administrative Expenses Act, the chargeability of the acts as laid down in detail, the level of the fee and the reimbursement of expenses.

## **Chapter Two. Transmitting Equipment ➔**

### **§65 Abuse of Transmitting Equipment**

1. It shall be prohibited to own, manufacture, market, import or otherwise introduce transmitting equipment into the purview of this Act which, by its form, simulates another object or is disguised by an object of daily use and, due to such circumstances, is particularly suitable to intercept the non-publicly spoken words of another person without such person detecting this. The prohibition on owning such transmitting equipment shall not apply to anyone obtaining actual control of such transmitting equipment
  1. as a body, a member of a body, a legal representative or a partner entitled to represent an authorised user according to (2) below,
  2. from another or for another authorised user according to (2) below if and for as long as he must comply with the directives given by the other party concerning exercise of the actual control of the transmitting equipment on the basis of service or employment relations, or exercises actual control on the basis of court or authority orders,
  3. as a bailiff or enforcement officer in enforcement proceedings,
  4. temporarily from an authorised user according to (2) below for the purpose of safe custody or non-commercial conveyance to an authorised user,
  5. for conveyance or storage for business purposes only,



6. by finding, provided that such person hands over the equipment without undue delay to the loser, owner, any other party entitled to acquire the equipment or the office responsible for taking delivery of the lost property report,
  7. by acquiring it causa mortis, provided that such person gives the transmitting equipment to an authorised user without undue delay or renders it permanently unusable,
  8. which has been rendered permanently unusable by the removal of a major component, provided that such person gives notice in writing to the regulatory authority of the acquisition without undue delay, thereby stating his particulars, type of equipment, producer's brand or trade mark and, if given on the equipment, the manufacturing number, and presents prima facie evidence that the equipment has been acquired for collection purposes only.
2. The competent supreme federal or state authorities shall allow exceptions if these are required in the public interest, in particular for public safety reasons. Paragraph (1) sentence 1 shall not apply insofar as the Federal Export Office has given permission to export the transmitting equipment.
  3. It shall be prohibited to advertise in public or in communications intended for a larger group of persons transmitting equipment, indicating that the equipment is suitable to intercept the non-publicly spoken words of another person without such person detecting this.

## **Part X. Regulatory Authority** ➔

### **Chapter One. Establishment, Headquarters and Organisation** ➔

#### **§66 Establishment, Headquarters and Legal Status**

1. There shall be established as a higher federal authority within the scope of business of the Federal Ministry of Economics a regulatory authority for telecommunications and posts in order to discharge the functions arising from this Act and from other laws. Its headquarters shall be in Bonn.
2. The regulatory authority shall be run by a President. The President shall represent the regulatory authority in and out of court and shall lay down the distribution and course of business by rules of procedure; these shall require confirmation by the Federal Ministry of Economics. Section 73(1) shall remain unaffected.
3. The President and the two Vice-Presidents shall be nominated by the Federal Government upon the proposal of the Advisory Council. Where, in spite of a request from the Federal Government, the Advisory Council fails to make a proposal within a period of four weeks, the right of nomination shall end. In the event of a proposal from the Advisory Council failing to meet with the approval of the Federal Government, the Advisory Council may submit another proposal within a period of four weeks. The Federal Government's right to take the final decision shall remain unaffected by this procedure.
4. The President and the Vice-Presidents shall be appointed by the President of the

Federal Republic of Germany.

5. Insofar as the Federal Ministry of Economics gives general directives governing the issue or non-issue of decisions under this Act, such directives shall be published in the Federal Gazette.

### **§67 Advisory Council**

1. There shall be constituted at the regulatory authority an Advisory Council. It shall consist of nine members of the German Bundestag and nine members of the German Bundesrat. All members of the Advisory Council and their deputies shall be appointed by the Federal Government upon the proposal of the German Bundestag or the German Bundesrat, as the case may be.
2. Members proposed by the German Bundestag shall be appointed to the Advisory Council for the duration of the German Bundestag legislative period. They shall remain in office at the end of this legislative period until such time as new members have been appointed. Reappointment is permitted. Members proposed by the German Bundesrat shall be appointed to the Advisory Council for a period of four years; reappointment is permitted. They shall be removed if the German Bundesrat proposes another person in their place.
3. Members may renounce their membership by means of written notice to the Federal Government and resign from office. Members proposed by the German Bundestag shall lose their membership when the requirements for their appointment are no longer given.
4. Should a member resign from office, a new member shall be appointed in his place without undue delay. Until such time as a new member is appointed and in the event of a member being temporarily prevented from performing his duties, the appointed deputy shall discharge the functions. Paragraphs (1) to (4) shall apply accordingly to deputy members.

### **§68 Rules of Procedure, Chairmanship, Meetings of the Advisory Council**

1. The Advisory Council shall adopt its Rules of Procedure which shall require the consent of the Federal Ministry of Economics.
2. The Advisory Council shall elect a Chairman and Deputy Chairman from its members in accordance with the Rules of Procedure. The candidate obtaining the majority of votes from the members shall be elected. If none of the candidates achieves the required majority in the first ballot, the majority of votes cast shall decide in the second. In the event of a tie in the second ballot, the matter shall be resolved by drawing lots.
3. The Advisory Council shall constitute a quorum whenever more than half of the representatives of the German Bundesrat and the German Bundestag are present. Resolutions shall be adopted by simple majority. In the event of a tied vote, a motion shall be dismissed.
4. If the Chairman considers debate of a resolution in draft unnecessary, members' approval or comments can be obtained by means of an inquiry in writing. Paragraph

(3) above shall apply accordingly with regard to resolutions being effected. The inquiry will be made sufficiently early in order to allow time for the matter still to be debated at a meeting at the request of a member or of the regulatory authority.

5. The Advisory Council will meet at least once a quarter. Meetings shall be convened when the regulatory authority or at least three members make written request for such convocation. The Chairman of the Advisory Council may convene a meeting at any time.
6. Ordinary meetings shall not be open to the public.
7. The President of the regulatory authority and the persons authorised by him may attend the meetings. They shall be heard at all times. The Advisory Council may require the presence of the President of the regulatory authority or, should the President be prevented from attending, that of one of his deputies.
8. Members or their deputies shall receive a refund of their travelling expenses and a commensurate attendance fee as determined by the Federal Minister of Economics.

### **§69 Functions of the Advisory Council**

The Advisory Council shall have the following responsibilities:

1. The Advisory Council shall make proposals to the Federal Government concerning the appointment of the President and Vice-Presidents of the regulatory authority.
2. The Advisory Council shall participate in taking decisions according to §73(3) of this Act.
3. The Advisory Council shall be entitled to request measures to implement the regulatory aims and to ensure universal service. The regulatory authority shall undertake to decide on the request within a period of six weeks.
4. The Advisory Council shall be entitled to obtain information and comments from the regulatory authority. The regulatory authority shall undertake to provide information to the Advisory Council.
5. The Advisory Council shall advise the regulatory authority on the drawing-up of an activity report according to §81(1) of this Act.
6. The Advisory Council shall be heard when the frequency usage plan is drawn up according to §46 of this Act.

### **§70 Specialist Consulting**

1. The regulatory authority may set up commissions of experts in order to prepare its decisions or to deliver opinions on regulatory issues. The members of such commissions shall have special experience of economic, business management, social policy, technological or legal matters in the fields of telecommunications or posts and shall possess proven scientific knowledge.

2. In performing its functions the regulatory authority shall be given ongoing scientific support. This shall concern in particular
  1. the regular assessment of economic, business management, legal and social developments in telecommunications and posts at home and abroad,
  2. the preparation and further development of the scientific basis for licensing, the structure of universal service, the regulation of dominant providers, the rules governing open network provision and interconnection as well as numbering and customer protection.

## **Chapter Two Functions and Powers ➔**

### **§71 Supervision**

The regulatory authority shall oversee compliance with the provisions of this Act and with conditions, administrative orders and orders imposed in accordance with this Act or with an ordinance having the force of law issued by virtue of this Act, and in particular compliance with the conditions imposed on a licensee. The regulatory authority may prohibit providers of telecommunications services subject to licence who have no valid licence from performing such activities when lawful conditions cannot otherwise be established.

### **§72 Powers**

1. Insofar as is necessary to discharge the functions assigned to the regulatory authority under this Act, the regulatory authority may
  1. request information on the economic circumstances of companies and associations of companies engaged in telecommunications, in particular on their revenues;
  2. inspect and audit within normal business hours the business records of companies and associations of companies engaged in telecommunications.
2. The regulatory authority shall request such information and arrange an audit by written order. The legal basis, the subject and purpose of the information request shall be stated in such order. With regard to information requests, a reasonable period shall be determined for provision of the information.
3. Owners of companies or their representatives or, in the case of legal persons, corporations or associations without legal capacity, those persons appointed representatives by law or statutes shall undertake to provide the requested information, submit the business records and acquiesce in their auditing and to allow access to business premises and property during normal business or working hours.
4. Persons commissioned by the regulatory authority to conduct audits may have access to the premises of companies and associations of companies during normal business or working hours. The basic right of Article 13 of the Basic Law shall be restricted to this extent.
- 5.

Searches may only be made by virtue of an order from a local court of the district in which the search is to take place. With regard to an appeal against such order, §§306 to 310 and 311a of the Code of Criminal Procedure shall apply accordingly. In cases of imminent danger, the persons designated in (4) above may conduct during business hours the necessary searches without judicial order. A record shall be drawn up on site of the search and its fundamental outcome also showing, where no judicial order was obtained, the facts leading to the assumption of imminent danger.

6. Objects or business records may be taken into custody as required or, provided they are not delivered voluntarily, seized. With regard to seizure, paragraph (5) above shall apply accordingly.
7. Whosoever is obliged to provide information according to (3) above may refuse to answer questions which would render himself or a person related by blood affinity as specified in §383(1) subparagraphs 1 to 3 of the Code of Civil Procedure liable to prosecution or to proceedings under the Administrative Offences Act.
8. The findings and records obtained through information requests or measures according to (1) above may not be used for taxation assessment proceedings or administrative fines proceedings involving an offence against tax laws or currency violations or for proceedings involving a fiscal or currency offence; the provisions of §§93, 97, 105(1), §111(5) in conjunction with §105(1) as well as §116(1) of the Fiscal Code shall not apply in this regard. Sentence 1 above shall not apply to proceedings involving a fiscal offence or to any taxation assessment proceedings related thereto where the institution of such proceedings concerns an imperative public interest or in the event of the intentional provision of false information by the party obliged to provide information or by persons working on its behalf.
9. Insofar as audits reveal violations of licence conditions, administrative orders or orders of the regulatory authority, the company shall reimburse the regulatory authority with the expenses, including any fees for experts, incurred by such audits.
10. In order to enforce these administrative orders, an administrative fine not exceeding one million Deutschmarks may be fixed in accordance with the Administration Enforcement Law.

## **Chapter Three Proceedings ➡**

### **§73 Ruling Chambers**

1. The regulatory authority shall take decisions through Ruling Chambers in the cases of §§11 and 19, Parts III and IV, including the relevant ordinances, as well as §47(5) sentence 2 of this Act. Decisions shall be taken by means of administrative act. With the exception of the Ruling Chamber according to (3) below, Ruling Chambers shall be constituted as provided for by the Federal Ministry of Economics.
2. Chamber decisions shall be taken in the composition of Chairman and two assessors.
3. In the cases of §§11 and 19 of this Act the Ruling Chamber shall take decisions in the composition of President as Chairman and the two Vice-Presidents as assessors; paragraph (4) shall not apply. The matter of the representation of the President as Chairman and of the Vice- Presidents as assessors of the Ruling Chamber in the event of their being prevented from performing their duties shall be settled in the rules

of procedure according to §66(2). Ruling Chamber decisions in the cases of §11(4) subparagraphs 2 and 3, (6) subparagraphs 2 and 3 and (7) and §19 of this Act shall be taken in consultation with the Advisory Council.

4. The Chairman and assessors shall be qualified to hold office in the senior administrative grade of the civil service.

#### **§74 Institution of Proceedings, Parties Concerned**

1. Ruling Chambers shall institute proceedings ex officio or upon a motion.
2. There shall take part in proceedings before the Chamber:
  1. the person presenting the motion;
  2. public telecommunications carriers and providers of telecommunications services for the public against whom or which the proceedings are directed;
  3. the persons and associations of persons whose interests will be affected by the decision reached and whom the regulatory authority has summoned to the proceedings in response to their motion.

#### **§75 Hearing, Oral Proceedings**

1. The Chamber shall give the parties concerned the opportunity to state their case.
2. Where appropriate, the Chamber may give representatives of business circles affected by the proceedings the opportunity to state their case.
3. The Chamber shall decide on the matter in question based on public oral proceedings; subject to the agreement of the parties concerned, a decision can be reached without oral proceedings. The public shall, at the request of one of the parties concerned or ex officio, be excluded from the proceedings or from a part thereof if it poses a threat to public order, specifically to national security or to an important business or operating secret.

#### **§76 Investigations**

1. The Chamber may conduct all investigations and take all evidence necessary.
2. With regard to real evidence, testimonies and expert opinions, §372(1), §§376, 377, 380 to 387, 390, 395 to 397, 398(1) and §§401, 402, 404, 406 to 409, 411 to 414 of the Code of Civil Procedure shall apply accordingly; detention may not be imposed. The higher regional court shall have jurisdiction to decide upon appeals.
3. A record of the statements of witnesses will be drawn up; such record shall be signed by the investigating member of the regulatory authority and by a registrar, if present. The place and date of the proceedings as well as the names of those assisting and of the parties concerned will be stated in the record.

4. The record shall be read to witnesses for their approval or presented for their own inspection. Approval given shall be noted and signed by the witnesses. In the event of the record not being signed, the reason shall be stated.
5. With regard to the questioning of experts, the provisions of (3) and (4) above shall apply accordingly.
6. The Chamber may request the local court to administer an oath to witnesses if the Chamber deems it necessary to bring about true statements. The court shall decide upon such confirmation by oath.

### **§77 Seizure**

1. The Ruling Chamber may seize objects which may be important as evidence in investigations. Seizure shall be notified without undue delay to the party concerned.
2. The Chamber shall seek the judicial confirmation of the local court of the district in which seizure took place within three days where neither the party concerned nor an adult relative was present upon seizure or where the party concerned or, in his absence, an adult relative expressly objected to such seizure.
3. The party concerned may seek at any time a judicial decision against the seizure. He shall be instructed of this right. The court having jurisdiction according to (2) above shall decide on the motion.
4. Appeals against judicial decisions shall be admissible. Sections 306 to 310 and 311a of the Code of Criminal Procedure shall apply accordingly.

### **§78 Temporary Orders**

Pending a final decision the Ruling Chamber may issue temporary orders.

### **§79 Conclusion of Proceedings**

1. Ruling Chamber decisions shall be substantiated. They shall be served along with such substantiation and information concerning the admissible remedy upon the parties concerned in accordance with the provisions of the Law on Service in Administrative Procedure. Decisions affecting a company having its headquarters outside the purview of this Act shall be served upon the party designated by the company to the Chamber as the party authorised to accept service. Where the company has not designated such party, the Chamber shall serve the decision by means of notice in the Federal Gazette.
2. Insofar as proceedings are not concluded by means of a decision served upon the parties concerned according to (1) sentences 2 to 4 above, the parties concerned shall be notified of the conclusion in writing.
3. The Ruling Chamber may charge the parties concerned with the costs of taking evidence as appears fair.

## **Chapter Four. Remedies and Civil Proceedings ➡**

### **§80 Effect of Legal Action**

1. There shall be no preliminary proceedings.
2. Legal action against regulatory authority decisions shall not have suspensory effect.
3. With regard to civil proceedings ensuing from this Act, §90(1) and (2) of the Law against Restraints of Competition shall apply accordingly. In such cases the regulatory authority and its President shall take the place of the Federal Cartel Office and its President.

## **Chapter Five. Activity Report, Cooperation ➡**

### **§81 Activity Report**

1. The regulatory authority shall submit to the legislative bodies of the Federal Republic of Germany every two years a report on its activity and on the situation in and development of the telecommunications sector. This report shall also comment on the question as to whether modification of the determination which telecommunications services are deemed universal services within the meaning of §17 of this Act is recommended.
2. The regulatory authority shall publish at regular intervals in its Official Gazette the principles of its administration, in particular those related to licensing and the determination of licence conditions.
3. The regulatory authority shall submit every two years, along with the report according to (1) above, the report of the Monopolies Commission on the question as to whether there is workable competition in the telecommunications markets. In this regard, the Monopolies Commission may point out the consequences necessarily arising from its point of view from individual provisions of this Act. The Monopolies Commission is asked to state in particular whether the provisions on rates regulation in Part III of this Act continue to be necessary. The Federal Government shall submit its comments on this report to the legislative bodies of the Federal Republic of Germany within a reasonable period of time.

### **§82 Cooperation with the Federal Cartel Office**

In the cases specified in §11(3) of this Act the regulatory authority shall take decisions in agreement with the Federal Cartel Office. This shall also apply to definition of the relevant product and geographical markets and the determination by the regulatory authority of a dominant position within the scope of this Act. Where the regulatory authority takes decisions in accordance with Parts III and IV of this Act or where collateral clauses concerning Parts III and IV of this Act are attached to the licence under §8(2) sentence 1, it shall give the Federal Cartel Office the opportunity to make comments prior to completion of the procedure. Where the Federal Cartel Office implements procedures according to §§ 19 and 20(1) and (2) of the Law against Restraints of Competition in the telecommunications sector, it shall give the regulatory authority the opportunity to make comments prior to completion of the procedure. Both authorities shall seek to find a consistent interpretation of



this Act which ensures coherence with the Law against Restraints of Competition. They shall inform each other of all observations and determinations which may be of significance to the discharge of their mutual functions.

### **§83 Cooperation with Other Authorities**

Insofar as is necessary to discharge its functions, the regulatory authority shall cooperate with the competent authorities of other countries in cases of cross-border information or investigations.

### **§84 Statistical Support**

1. In order to deliver opinions on the development of the market and of competition in the telecommunications sector, the regulatory authority may have transmitted to it by the Federal Statistical Office and the state statistical offices summarised detailed information from the data collected by these offices for official statistics about the percentage shares of the three, six and ten largest companies operating in the relevant market in:
  1. the value of the telecommunications services intended for sales;
  2. revenues;
  3. the number of persons employed;
  4. salaries and wages;
  5. investments;
  6. added value; and
  7. the number of businesses.
2. The summarised detailed information may be used solely for the purposes for which it was transmitted. It shall be erased as soon as the purpose specified in (1) above is fulfilled.

## **Part XI. Telecommunications Secrecy, Data Protection, Safeguards ➔**

### **§85 Telecommunications Secrecy**

1. The content of telecommunications and the detailed circumstances thereof, in particular the fact of whether a person is or has been involved in telecommunications traffic, shall be subject to telecommunications secrecy. Telecommunications secrecy shall also cover the detailed circumstances surrounding unsuccessful call attempts.
2. Whosoever commercially provides or assists in the provision of telecommunications services shall be obliged to maintain telecommunications secrecy. The obligation to maintain secrecy shall also apply after the end of the activity through which such

commitment arose.

3. Any person subject to the obligation according to (2) above shall be prohibited from procuring for himself or other parties any information regarding the content or detailed circumstances of telecommunications beyond that necessary for the commercial provision of telecommunications services. Knowledge of facts which are subject to telecommunications secrecy may only be used for the purpose referred to in sentence 1 above. Use of such knowledge for other purposes, in particular its retransmission to other parties, shall only be admissible insofar as provided for by this Act or any other legal provision and reference is made expressly to telecommunications traffic. The reporting requirement according to §138 of the Code of Criminal Procedure shall have priority.
4. Where the telecommunications system is located on board a ship or aircraft, the obligation to maintain secrecy shall not apply in relation to the master or his representative.

### **§86 Prohibition to Intercept, Obligation of Operators of Receiving Equipment to Maintain Secrecy**

Interception by means of radio equipment of messages not intended for the radio equipment shall not be permitted. The content of such messages and the fact of their reception may not, even where reception has been unintentional, be communicated to other parties, not even by persons who are not already committed to secrecy under §85 of this Act. Section 85(4) of this Act shall apply accordingly. The right to receive radio emissions intended for the general public or an unspecified group of persons as well as the interception and retransmission of messages by virtue of special legal authorisation shall remain unaffected.

### **§87 Protective Technical Precautions**

1. Whosoever operates telecommunications systems serving the commercial provision of telecommunications services shall take appropriate technical precautions or other measures with regard to telecommunications and data processing systems operated for such purpose in order to protect:
  1. telecommunications secrecy and personal data;
  2. programme-controlled telecommunications and data processing systems against unauthorised access;
  3. systems against functional disruption resulting in considerable harm to telecommunications networks; and
  4. telecommunications and data processing systems against external attack and the effects of  
  
natural disasters.

Due regard shall be paid to state of the art technology. The regulatory authority shall draw up, in consultation with the German Information Security Agency and after

hearing consumer and trade associations of manufacturers and operators of telecommunications systems, a catalogue of security requirements for the operation of telecommunications and data processing systems in order to achieve adequate standard security in line with the state of the art and international criteria. The Federal Data Protection Commissioner shall be given the opportunity to make comments. The catalogue of security requirements shall be published by the regulatory authority in the Federal Gazette. The technical and economic expenditure required for the protection measures shall depend on the importance of the rights to be protected and the significance of the systems to be secured for the general public.

2. Operators of telecommunications systems subject to licence shall nominate a security commissioner and draw up a security concept setting out
  1. which telecommunications systems will be used and which telecommunications services will be commercially provided,
  2. what hazards must be expected, and
  3. which technical precautions or other protection measures have been taken or are planned so as to meet the obligations according to (1) above.

The security concept shall be submitted to the regulatory authority along with a declaration that the technical precautions and other protection measures specified therein have been implemented or will be implemented by a specific point in time. Where the regulatory authority establishes insufficient security in the security concept or during its implementation, it may require the operator to eliminate such shortcomings.

3. The Federal Ministry of Posts and Telecommunications shall be empowered to lay down, by ordinance having the force of law but not requiring the consent of the German Bundesrat, details of how the obligations according to (1) and (2) above will be met. In this regard, the group of those subject to the obligation according to (1) above and the extent of the protection measures to be required under (1) and (2) above can be determined in accordance with the economic significance of the telecommunications system concerned.

### **§88 Technical Implementation of Intercepts**

1. The technical facilities for implementing legally prescribed measures for the interception of telecommunications shall be configured and kept available by the operator of the telecommunications system at his own expense.
2. With regard to operators of telecommunications systems who are legally obliged to enable the interception and recording of telecommunications, the technical configuration of such facilities shall require the approval of the regulatory authority. The Federal Government shall be empowered to lay down, by ordinance having the force of law but not requiring the consent of the German Bundesrat,
  1. the requirements relating to the configuration of the technical facilities and the organisational implementation of intercepts by means of these facilities, and
  - 2.

the approval and acceptance procedures, and

3. the telecommunications systems for which, in derogation of (1), technical facilities shall not be configured or kept available for fundamental technical reasons or for reasons of proportionality.

The ordinance having the force of law may stipulate that compliance with individual technical requirements relating to the configuration of the facilities may be dispensed with upon request in technically justified exceptional cases, and lay down in such cases any collateral clauses for inclusion in the approval. A telecommunications system shall not be taken into service until its operator

1. has set up the technical facilities according to (1) above as provided for by the ordinance according to sentence 2, and
2. has informed the regulatory authority in writing of the above, and.
3. has furnished the regulatory authority, free of charge, with proof of compliance with the approval requirements during the acceptance procedure.

The regulatory authority will decide on approval within six weeks of receipt of the application and on acceptance within six weeks of receipt of written notification thereof according to sentence 4 subparagraph 2 above. Any functional defects subsequently ascertained shall be corrected by the operator of the telecommunications system forthwith.

3. Telecommunications systems by means of which intervention in telecommunications secrecy will be brought about and which are operated by the legally authorised bodies shall be technically configured in agreement with the regulatory authority.
4. Each operator of a telecommunications system commercially providing third parties with network access to his telecommunications system shall undertake to provide, without undue delay and as a matter of priority, the bodies legally authorised to intercept telecommunications, at their request, with network access for transmission of the information obtained under the given intercept. The technical configuration of such network access may be laid down in the ordinance according to (2) above. With the exception of special tariffs or surcharges for priority or early provision, the tariffs applicable to the general public shall apply in respect of such provision and use. Any specially agreed contractual provisions regarding discounts shall remain unaffected by sentence 3 above.
5. Operators of telecommunications systems obliged under §§100a and 100b of the Code of Criminal Procedure shall draw up and make available to the regulatory authority free of charge annual statistics on intercepts implemented under these provisions. Detailed presentation of the statistics may be laid down in the ordinance according to (2) above. Operators may not inform third parties of such statistics. The regulatory authority shall make the statistics available to the federal states free of charge. It shall summarise the individual statistics and include the result in its report according to §81(1) of this Act.

## **§89 Data Protection**

1. The Federal Government shall issue, by ordinance having the force of law with the consent of the German Bundesrat, provisions on the protection of the personal data of those engaging in telecommunications which govern the collection, processing and use of such data for companies commercially providing telecommunications services or contributing to the provision of such services. These provisions shall take account of the principle of reasonableness, specifically of restricting collection, processing and use to that which is necessary, and the principle of purpose-tying. Maximum storage periods shall be laid down and overall the justified interests of the company and parties concerned taken into account. Particulars of legal persons who are subject to telecommunications secrecy shall be treated as equivalent to personal data.
2. Companies and persons commercially providing telecommunications services or contributing to the provision of such services may, in accordance with the applicable ordinance, collect, process and use the data of natural and legal persons insofar as this is necessary:
  1. to operate their respective commercial telecommunications services, that is to say:
    - a. to establish, frame the contents of and modify a contractual relationship,
    - b. to set up and maintain a telecommunications connection,
    - c. to properly establish and verify the rates due for commercial telecommunications services including the service shares falling to other carriers and providers of commercial telecommunications services; concerning verification, the user shall be given a choice with regard to the duration and extent of storage,
    - d. to identify and remove faults in telecommunications systems,
    - e. to clarify and prevent the surreptitious use of services and other unlawful use of the telecommunications network and its facilities as well as of commercial telecommunications services, provided there are genuine indications of such; any data giving concrete indication of the misuse of commercial telecommunications services may, in accordance with the details of the applicable ordinance, be ascertained from the total database,
  2. to structure commercial telecommunications services in conformity with requirements; in this regard, calling access data may only be used with the access holder's consent and called access data shall be depersonalised without undue delay,
  3. at the written request of a user for the purpose of:
    - a. giving an account of user facilities; in this regard, the user may be specifically advised of the date, time of day, duration and numbers of the calls made from his access, with due observance of the protection laid down in the ordinance of consumers and the privacy of calls to persons, authorities and organisations working in social or church domains who or which, under a remit recognised by an authority or corporation, an

institution or foundation under public law, offer callers in emotional or social distress who remain anonymous as a general rule, advice wholly or predominantly by telephone, and whose staff or who or which themselves are thus bound by special obligations with regard to secrecy,

- b. identifying accesses, if the user has argued conclusively in a procedure for documentation that he is the object of threatening or nuisance calls; the user shall only be given the numbers of the accesses along with the outgoing calls and call attempts made on these accesses, including the name and address of the access holder, if he has narrowed down the calls beforehand in respect of date and time of day, provided misuse of the interception facility cannot be ruled out in any other way; as a general rule, the access holder shall be advised subsequently that such information has been supplied.
3. Only data relating to the detailed circumstances of telecommunications may be collected, processed and used. Insofar as is indispensable for measures according to (2) subparagraph 1(e) above control signals may, in a given instance, be collected, processed and used by automated means; the regulatory authority shall be notified accordingly. The party concerned shall be advised as soon as it is possible to do so without the purpose of the measure being compromised. Collection, processing and use of other message content shall not be admissible, except where necessary according to (4) below or indispensable in a given instance for measures according to (5) below.
4. In the commercial provision of telecommunications services message content may only be recorded, made available to third parties or otherwise processed insofar as this is the subject, or constituent part for processing reasons, of the service. Section 85(3) sentence 3 shall remain unaffected.
5. For purposes of changeover in the network as well as identifying and locating faults in the network, the operator of the telecommunications system or his authorised representative shall be allowed to override existing calls insofar as this is operationally required. Override shall be indicated to the parties concerned by an acoustic signal and they shall be specifically advised thereof.
6. Furthermore, the companies and persons specified in (2) above shall, in a given instance, transmit to the competent bodies, at their request, personal data which they have collected for the establishment, framing of the content or modification of a contractual relationship insofar as this is required for the prosecution of criminal and administrative offences, for averting danger to public safety or order or for the discharge of legal functions by the federal and state authorities for the protection of the Constitution, the Federal Intelligence Service, the Federal Armed Forces Counter-Intelligence Office as well as the Customs Criminological Office. The information supplied to the bodies referred to above may not be notified to customers or third parties.
7. The companies and persons specified in (2) above may process and use personal data which they have collected for the establishment, framing of the content or modification of a contractual relationship insofar as this is required for purposes of advertising, customer consulting or market research for the companies and persons specified in (2) above and the customer has given his consent. Personal customer data already collected by the companies and persons specified in (2) above at the date of entry into force of this Act may be processed and used for the purposes referred to in sentence 1 above if the customer does not raise any objections. His

consent shall be deemed given if he has been adequately informed but has not made use of his right of objection.

8. Service providers may enter customers' names, addresses and additional data such as profession, business sector, type of access and co-users in public printed or electronic directories insofar as the customer has requested such. In this regard, the customer may decide which data is to be published in the customer directories, that data is entered in printed or electronic directories only or that there will not be any entry. Co-users may be entered, provided they agree. Where customers have already been entered in a customer directory upon entry into force of this Act, there shall not be any entry in future if the customer raises objections. Paragraph (7) sentence 3 shall apply accordingly.
9. As provided for by the applicable ordinance having the force of law, companies and persons within the meaning of (2) above may in a given instance provide information or have information provided by third parties about data in public directories of users of commercial telecommunications services. Information may only be provided about the data of customers who have been properly advised that they may object to their data being retransmitted, but have not made use of their right of objection. Any objection shall appear in the service provider's directories without undue delay. Other service providers shall also pay due regard to such objection as soon as it appears in the service provider's public directory.
10. The commercial provision of telecommunications services and their pricing shall not be made conditional upon the indication of personal data not required for the provision or pricing of such services. Insofar as the companies specified in (2) above make processing or use of a customer's personal data dependent upon his consent, they shall inform him appropriately of the content and scope of such consent. In this regard, the intended purposes and periods of use shall be stated. Consent shall be given expressly and as a rule in writing. Where consent is given by electronic means, an appropriate revocation period shall be provided for.

### **§90 Information Requests from Security Authorities**

1. Whosoever commercially provides telecommunications services shall undertake to keep customer data files in which there must be entered without undue delay the numbers and quotas of numbers allocated to other parties for further marketing or other use as well as the names and addresses of holders of numbers and quotas of numbers even where they have not been entered in public directories.
2. The current customer data files shall be kept available by the party subject to the obligation according to (1) above so as to enable the regulatory authority to retrieve individual data or data sets by means of an automated procedure as prescribed by the regulatory authority. The party subject to the obligation shall ensure by technical and organisational measures that it cannot obtain any knowledge of retrievals.
3. The following authorities shall at all times be provided free of charge with information from the customer data files according to (1) above insofar as they require such information to discharge their legal functions:
  1. courts, public prosecutors' offices and other judicial authorities as well as other criminal prosecution authorities;

2. federal and state police forces for purposes of averting danger;
  3. customs investigation offices for criminal proceedings and the Customs Criminological Office for the preparation and implementation of measures according to §39 of the Foreign Trade and Payments Act; and
  4. the federal and state authorities for the protection of the Constitution, the Federal Armed Forces Counter-Intelligence Office and the Federal Intelligence Service.
4. The regulatory authority shall, at the request of the authorities referred to in (3) above, retrieve by means of an automated procedure and retransmit to the requesting authority data stored in the customer data files of the parties subject to the obligation according to (1) above. It shall only examine the admissibility of the transmission insofar as there is special reason to do so. Responsibility for such admissibility shall lie with the authorities referred to in (3) above. For purposes of data protection control by the competent body concerned the regulatory authority shall record, for each call, the point in time, the data used during retrieval, the data retrieved, the person retrieving the data and the requesting authority and its reference number. Use of the recorded data for other purposes shall not be permitted. Data recorded shall be deleted after twelve months.
5. Paragraph (1) shall apply accordingly to third parties allocating numbers from a given quota without being subject to the obligation within the meaning of (1) above, provided it is left to the third party to decide on how to keep available the data specified in (1) above for information purposes. Such third party shall provide the authorities referred to in (3) above at their request with the information from the customer data files. The party subject to the obligation to provide information shall be bound to secrecy, notably vis-à-vis the persons concerned, with regard to the fact of such retrieval and the information provided as well as the detailed circumstances thereof.
6. The party subject to the obligation according to (1) above shall, within its sphere of responsibility and at its expense, take every precaution required for automated retrieval according to (2) above. Depending on the specifications of the regulatory authority, this may include procurement of equipment required for ensuring confidentiality and protection against unauthorised access, provision of a suitable telecommunications access, participation in the closed user group and the continued provision of the above.
7. In information provision cases according to (5) above where the Act on Reimbursement of Witnesses and Experts does not apply, the provisions of the said Act governing the level of reimbursement shall apply accordingly.
8. In the event of repeated violations of the provisions of (1) and (2) above, the commercial activity of the party subject to the obligation may, on the regulatory authority's order, be restricted in such a way that the number of customers may not be changed except upon expiration of the contract or notice of termination, until the obligations ensuing from these provisions have been fulfilled.

## **§91 Control and Enforcement of Obligations**

1. The regulatory authority may give administrative orders and take other appropriate measures in order to ensure compliance with the provisions of Part XI of this Act and the ordinances having the force of law issued by virtue of this Part. To this end, the



parties obliged may be required to provide the necessary information. In order to examine fulfillment of the obligations, the regulatory authority shall have the power to have access to and inspect, during normal business and working hours, production sites and business premises.

2. In order to enforce obligations imposed upon operators of telecommunications systems by ordinance having the force of law according to §88(2) of this Act, the regulatory authority may fix, as provided for by the Administration Enforcement Law, administrative fines not exceeding three million Deutschmarks and administrative fines not exceeding two hundred thousand Deutschmarks to enforce obligations according to §90(1) and (2) of this Act.
3. In the event of non-fulfillment of obligations of Part XI of this Act, the regulatory authority may wholly or partially prohibit operation of the applicable telecommunications system or the commercial provision of the applicable telecommunications service if less rigorous intervention to enforce proper conduct is insufficient.
4. Insofar as the data of natural or legal persons is collected, processed or used for the commercial provision of telecommunications services, control by the Federal Data Protection Commissioner in accordance with §§21 and 24 to 26(1) to (4) of the Federal Data Protection Act shall take the place of control in accordance with §38 of the Federal Data Protection Act for companies. The Federal Data Protection Commissioner shall make his objections to the Federal Ministry of Posts and Telecommunications and shall inform the Ministry of further results of his control after due assessment of the circumstances.
5. The privacy of telecommunications as laid down in Article 10 of the Basic Law shall be restricted.

### **§92 Disclosure Requirement**

1. Whosoever commercially provides telecommunications services shall undertake to provide the Federal Ministry of Posts and Telecommunications upon request and free of charge with information about the structures of the telecommunications services and networks and any forthcoming changes. Isolated telecommunications processes and customer data shall not be the subject of information requests according to this provision.
2. Requests for information sought according to (1) above shall only be admissible where a request to this effect has been made by the Federal Intelligence Service and insofar as the information is required in order to discharge the functions according to Article 1 Section 3 of the Law concerning Article 10 of the Basic Law. Use of information sought in accordance with this provision for other purposes shall be ruled out. The Federal Ministry of Posts and Telecommunications may transfer to the regulatory authority the power to seek information according to (1) above.

### **§93 Government Telecommunications**

Telecommunications companies offering manual telecommunications service shall undertake to accord priority, in accordance with the provisions of the Constitution of the International Telecommunication Union, to government telecommunications before other telecommunications traffic, as far as they are able, when this is specifically requested by

the person booking the call.

## ***Part XII. Penal and Administrative Fines Provisions ➡***

### ***Chapter One. Penal Provisions ➡***

#### **§94.**

1. Whosoever, in contravention of §65(1),
  1. owns, or
  2. manufactures, markets, imports or otherwise introduces into the purview of this Act transmitting equipment as referred to in §65(1) shall be liable to a term of imprisonment not exceeding two years or to a fine.
2. Where such action arises through negligence in the cases of (1) subparagraph 2 above, the party concerned shall be liable to a term of imprisonment not exceeding one year or to a fine.

#### **§95**

Whosoever, in contravention of §86 sentences 1 or 2 of this Act intercepts a message or communicates to a third party any message content or the fact of reception thereof shall be liable to a term of imprisonment not exceeding two years or to a fine.

### ***Chapter Two. Administrative Fines Provisions ➡***

#### **§96 Administrative Fines Provisions**

1. An administrative offence shall be deemed to have been committed by anyone who, intentionally or negligently,
  1. in contravention of §4 sentence 1 of this Act fails to notify the regulatory authority or fails to notify it correctly, as prescribed or in time,
  2. in contravention of §5 of this Act fails to provide a report or fails to provide it correctly, completely or in time,
  3. operates transmission lines or offers voice telephony according to §6(1) without a licence,
  4. in contravention of §14(1) or (2) sentence 1 fails to carry on telecommunications services for the public through legally independent companies or fails to guarantee the transparency of the financial relations or fails to guarantee it as prescribed,
  - 5.

- in contravention of §22(1) sentence 1 fails to make notification or fails to make it correctly, completely or in time,
6. charges rates according to §25(1) without approval,
  7. contravenes an enforceable order according to §29(2) sentence 2, also in conjunction with §30(5) sentence 2, according to §31(1) subparagraph 1, §33(2) sentence 1, also in conjunction with §38(2), according to §34(1), §43(4) sentence 4 and (5) sentence 1 or (6) sentence 1, §44(2) or §49 sentence 2,
  8. contravenes an enforceable condition according to §32 of this Act,
  9. contravenes an ordinance having the force of law according to §35(5) sentence 1, §47(4), §59(4) sentence 1, §62(1) sentence 1, §63(1) sentence 3, §87(3) sentence 1 or §89(1) sentence 1 or an enforceable order by virtue of such ordinance insofar as the ordinance refers to this administrative fines provision for a particular act,
  10. uses frequencies according to §47(1) sentence 1 without frequency assignment,
  11. in contravention of §60(6) sentence 1 fails to send a copy of the declaration on the intended purpose to the approval authority or fails to send it in time,
  12. in contravention of §65(3) advertises transmitting equipment,
  13. in contravention of §88(2) sentence 4 subparagraph 1 in conjunction with the ordinance according to §88(2) sentence 2 subparagraph 1 takes a telecommunications system into service,
  14. in contravention of §88(2) sentence 4 subparagraph 2 or 3 takes a telecommunications system into service,
    - 14a. in contravention of §88(2) sentence 6 fails to correct a defect or fails to do so in time,
  15. in contravention of §88(4) sentence 1 fails to provide network access or fails to provide it as prescribed or in time, or
  16. in contravention of §90(2) sentence 1 fails to keep available a customer data file or fails to keep it available as prescribed or, in contravention of §90(5) sentence 2, fails to provide information or fails to provide it correctly, completely or in time, in contravention of §90(2) sentence 2 obtains knowledge of retrievals or in contravention of §90(5) sentence 3 fails to maintain secrecy.
2. Such offences may be punishable by a fine not exceeding one million Deutschmarks in the cases of an offence according to (1) subparagraphs 3, 4, 6, 7, 8, 9, 10, 13 and 14a above, or by a fine not exceeding twenty thousand Deutschmarks in the cases of an offence according to (1) subparagraphs 1, 2, 5, 11, 12, 14, 15 and 16 above. Administrative authority within the meaning of §36(1) subparagraph 1 of the Administrative Offences Act shall be the regulatory authority.

## **Part XIII. Transitional and Final Provisions** ➔

### **§97 Transitional Provisions**

1. Where Deutsche Telekom AG does not intend to provide the services specified in the Universal Service Ordinance, to be issued under §17(2) of this Act, to the full extent or intends to provide them under less favourable conditions than those specified in such ordinance, it shall notify the regulatory authority accordingly one year before this comes into effect.
2. In respect of the offer of voice telephony the Telecommunication Installations Act as published on 3 July 1989 (Federal Law Gazette I p 1455), last amended by §99(1) of the Law of 25 July 1996 (Federal Law Gazette I p 1120), and the Law concerning the Regulation of Telecommunications and Posts of 14 September 1994 (Federal Law Gazette I pp 2325, 2371; 1996 I p 103), as amended by §99(2) of the Law of 25 July 1996 (Federal Law Gazette I p 1120), shall continue to apply until 31 December 1997.
3. Approval by the competent authority of the rates of Deutsche Telekom AG for the offer of voice telephony shall be based until 31 December 1997 solely on the Law concerning the Regulation of Telecommunications and Posts. Targets set and approvals issued to Deutsche Telekom AG in relation to the offer of voice telephony prior to 1 January 1998 in accordance with the Law concerning the Regulation of Telecommunications and Posts shall remain effective until 31 December 2002 at the latest.
4. Insofar as it does not conflict with provisions of this Act, the Telecommunications Customer Protection Ordinance of 19 December 1995 (Federal Law Gazette I p 2020) shall continue to apply until entry into force of the ordinance to be issued by virtue of §41 of this Act, subject to the proviso that the provisions governing the network monopoly transferred to Deutsche Telekom AG by virtue of §1(2) sentence 2 of the Telecommunication Installations Act in the version of Article 5 subparagraph 1(b) of the Law of 14 September 1994 (Federal Law Gazette I pp 2325, 2363) shall, to the same extent as the previous rights and obligations of such monopoly, also apply analogously to Deutsche Telekom AG's rights and obligations ensuing from licences according to §6(2) subparagraph 1 of this Act.
5. Rights granted under §2(1) of the Telecommunication Installations Act as published on 3 July 1989 (Federal Law Gazette I p 1455) shall remain in effect. The protection of these rights shall also apply to frequencies which the state broadcasting corporations forming the ARD (Association of German Public Service Broadcasting Corporations) and Deutschlandradio use themselves in their own networks until entry into force of this Act. With the exception of §§6 to 11, this Act shall also apply to the rights specified in sentences 1 and 2 above.

### **§98 Transfer Provisions**

Functions assigned to the regulatory authority under this Act shall be discharged by the Federal Ministry of Posts and Telecommunications until 31 December 1997. The functions assigned to the Advisory Council under §69 of this Act shall be discharged until 30 September 1997 by the Regulatory Council constituted according to §11 of the Law concerning the Regulation of Telecommunications and Posts of 14 September 1994 (Federal Law Gazette I pp 2325, 2371; 1996 I p 103).

## §99 Amendments to Legal Provisions

1. The Telecommunication Installations Act as published on 3 July 1989 (Federal Law Gazette I p 1455), last amended by Article 47 of the Law of 25 October 1994 (Federal Law Gazette I p 3082), shall be amended as follows:

1. Section 1 shall be amended as follows:

- a. Paragraphs (1) to (3) shall be repealed.

- b. Paragraph (4) shall read as follows:

"(4) The Federal Ministry of Posts and Telecommunications hereby grants Deutsche Telekom AG until 31 December 1997 the exclusive right to offer voice telephony as provided for by §6(1) subparagraph 2 of the Telecommunications Act of 25 July 1996 (Federal Law Gazette I p 1120)."

- c. Paragraph (5) shall read as follows:

"(5) The Federal Ministry of Posts and Telecommunications may determine modifications of the content and scope of the exclusive right according to (4) above with the participation of the Regulatory Council as provided for by §13(3) subparagraph 3 of the Law concerning the Regulation of Telecommunications and Posts."

2. Section 12 shall read as follows:

"§12

"In criminal inquiries the judge and, if there is any impending danger, also the public prosecutor, may insist on being informed about telecommunications, if the communications were addressed to the accused or if there is reason to believe that the communications originated from the accused or were destined for him and that the information is of importance for the inquiry. The basic right of Article 10 of the Basic Law shall be restricted to this extent."

3. There shall be repealed:

Sections 1(a), §§2(a) to 5(e), §7(2), §§9 to 11, §§13 to 15, §18, §§20 to 24 and §27.

2. The Law concerning the Regulation of Telecommunications and Posts of 14 September 1994 (Federal Law Gazette I pp 2325, 2371; 1996 I p 103) shall be amended as follows:

1. Section 2(2) subparagraph 4 shall be repealed.

2. Section 3 shall be amended as follows:

- a.

Paragraph (1) sentence 1 shall be amended as follows:

- a.
    - a) The words "(2) and" shall be deleted.
    - b) The words "under §2(1) or §3 of the Telecommunication Installations Act or" shall be deleted.
  - b. Paragraph (2) shall be repealed.
3. Section 13 shall be amended as follows:

- a. Paragraph (2) shall be amended as follows:
  - a. In subparagraph 3 the comma after the words "Postal Law" shall be replaced by a full stop.
  - b. Subparagraph 4 shall be deleted.
- b. Paragraph (3) shall be amended as follows:
  - a. In subparagraph 5 the comma after "7" shall be replaced by a full stop.
  - b. Subparagraph 6 shall be deleted.

4. Section 15(2) shall be amended as follows:

In subparagraph 1 there shall be deleted "(1)".

3. Section 9(11) of the Act to Rectify the Land Register of 20 December 1993 (Federal Law Gazette I pp 2182, 2192), as amended by Article 2 Section 6 of the Law of 21 September 1994 (Federal Law Gazette I p 2457), shall read as follows:

"(11) Paragraphs (1) to (10) and the ordinances issued by virtue of these paragraphs shall apply accordingly to

1. telecommunications systems of the former Deutsche Post,  
  
systems to supply the rail network of the former Reichsbahn and of public transport companies with energy and water as well as to dispose of the waste waters of such systems,
2. systems to discharge oil or other raw materials, including all associated systems directly serving such purpose, and
3. systems to transport products between the production sites of one or more

private or public companies, located in the area specified in Article 3 of the Unification Treaty and established prior to 3 October 1990. Paragraph (1) shall not apply insofar as property owners are obliged to acquiesce in telecommunications systems on account of a declaration from the property owner made under §7 of the Telecommunications Ordinance of 24 June 1991 (Federal Law Gazette I p 1376) or under §8 of the Telecommunications Customer Protection Ordinance of 19 December 1995 (Federal Law Gazette I p 2020). For the supervisory authority within the meaning of (4) above there shall be substituted the Federal Ministry of Posts and Telecommunications with regard to systems according to sentence 1 subparagraph 1 and the Residual Special Asset of the Federal Railways with regard to systems of the former Reichsbahn according to sentence 1 subparagraph 2. These may also entrust another public body or a natural person who or which is not a member of the Federal Ministry or the Residual Special Asset of the Federal Railways with the issue of the certificate. With regard to servitudes according to sentence 1 subparagraphs 3 and 4, §1023(1) second half of sentence 1 of the Civil Code shall only apply to the provision of new public trafficways where the servitude has been entered in the Land Register. Prior to that date the holder of the servitude shall bear the costs of any necessary relocation."

#### **§100 Entry into Force, Expiration**

1. The provisions of §§66 and 73 to 79 shall enter into force on 1 January 1998. The provisions of §§67 and 68 shall enter into force on 1 October 1997. The remaining provisions of the Act shall enter into force on the day following promulgation. The rights ensuing from §6 of this Act may only be exercised as from 1 January 1998 insofar as they refer to the offer of voice telephony.
2. The obligations ensuing from §43(5) sentence 1 and (6) sentence 1 shall become effective on 1 January 1998 subject to the proviso that the necessary technical equipment is kept available and ready for operation on that date.
3. The Telegraph Lines Act as published on 24 April 1991 (Federal Law Gazette I p 1053), amended by Article 8 of the Law of 14 September 1994 (Federal Law Gazette I p 2325; 1996 I p 103), and the Law concerning the Simplification of the Plan Approval Procedure for Telecommunication Lines in the revised version published in the Federal Law Gazette Part III, classification number 9021-2, last amended by Article 9 of the Law of 14 September 1994 (Federal Law Gazette I p 2325), shall cease to have effect on the day following promulgation of this Act.