
CHAPTER 304
TELECOMMUNICATIONS

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CHAPTER 304

TELECOMMUNICATIONS

An Act to create a new legal regulatory framework for telecommunications in The Bahamas to remove monopoly rights of The Bahamas Telecommunications Corporation and to establish a licensing regime for telecommunications.

3 of 2000
S.I. 128/2001
S.I. 36/2005

[Assent 28th January, 2000]

[Commencement 25th March, 2000]

PART I
PRELIMINARY

1. This Act may be cited as the Telecommunications Act. Short title.
2. In this Act — Interpretation.
- “affiliate” or “affiliated company” includes, in relation to another company, a company that directly or indirectly controls, is controlled by, or is under common control with, such other company; and hence is considered to be a member of the same group of companies;
- “broadcasting” means transmissions by radiocommunications of messages or information, or educational or entertainment material, for general reception by the public or any section of the public;
- “class licence” means —
- (a) a licence to establish, operate and maintain a telecommunications system or to provide a telecommunications service, or both; or
- (b) a radiocommunications licence, *S.I. 36/2005.*
- that is available to all persons who satisfy the criteria established by the Commission to be a licensee under such a licence;
- “Commission” means the Public Utilities Commission established under the Public Utilities Commission Act; Ch. 306.

Ch. 303.

“Company” means the company formed in accordance with section 22 to acquire and take over the principal assets and activities of the Corporation;

“Corporation” means The Bahamas Telecommunications Corporation established by The Bahamas Telecommunications Corporation Act;

“Court” means the Supreme Court;

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

“Dominance” means the ability of a licensee (either alone or together with third parties) materially to affect the terms of participation in a market (having regard to price and supply) as a result of —

- (a) control over essential facilities; or
- (b) use of its position in that market,

and a licensee is “Dominant” if it has Dominance;

“essential facilities” means parts of a telecommunications system that —

- (a) are exclusively or predominantly provided by a single or limited number of persons; and
- (b) cannot feasibly be economically or technically substituted in order to provide a telecommunications service;

“individual licence” means —

- (a) a licence to establish, operate and maintain a telecommunications system and/or to provide a telecommunications service individually granted to a person under section 9; or
- (b) a radiocommunications licence individually granted to a person under section 30;

S.I. 36/2005.

“interconnection” means physical or logical linking of telecommunications systems or telecommunications services to allow the users of one licensee to communicate with the users of another licensee or to access services provided by another licensee;

“licence” means an individual licence or a class licence;

“licensee” means a person who has been granted an individual licence or registered under a class licence, or who has satisfied the criteria for being a licensee under a class licence where registration is not required;

“message” means any speech, sound, data, signal, writing, visual image or video or any combination of them;

“Minister” means the Minister charged with the responsibility for telecommunications;

“network termination point” means any physical point of connection forming part of a telecommunications system at which other telecommunications systems or customer premises equipment may be connected;

“numbering plan” means the plan made by the Commission under section 14 which establishes a format of codes and subscriber numbers for routing telecommunications services to specific locations in The Bahamas;

“radiocommunications” means the emitting or receiving, over paths that are not provided by any material substance and that are constructed or arranged for that purpose, of the electromagnetic energy of a frequency not exceeding three million mega cycles a second being energy which either —

- (a) serves for the conveying of messages, sound or visual images (whether or not actually received), or for the actuation or control of machinery or apparatus; or
- (b) is used in connection with the determination of position, bearing, or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class;

“radiocommunications apparatus” means apparatus for emitting or receiving radiocommunications, including apparatus in a vehicle, vessel, aircraft, hovercraft, buoy, or beacon;

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“radiocommunications licence” means an individual licence or class licence available under section 30;

“radiocommunications station” means any premises including a vehicle, vessel, aircraft, hovercraft, buoy, or beacon, at which radiocommunications is intended to take place or in which radiocommunications apparatus is located;

“regulatory undertaking” means that part or those parts of the Corporation’s undertaking concerned with the granting of licences and with the making of regulations under this Act;

“sector policy” means the strategic aims of the Government for the telecommunications sector, as published by the Minister from time to time, which may include the scope of and requirements for universal service, the basis of licence fees, the efficient use and management of resources and wider economic or social objectives in The Bahamas;

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

“telecommunications equipment” means telecommunications apparatus and any other apparatus designed or adapted for use in connection with the provision of a telecommunications service, including switches, equipment, wires, cables, apparatus, poles, structures, ducts, man-holes and other tangible property;

“telecommunications service” means a service consisting of emitting, transmitting, switching, conveying or receiving messages within, into or from The Bahamas by means of any telecommunications system;

“telecommunications system” means a system for the emission, transmission, switching, conveyance or reception of messages through any electric, electro-magnetic, electro-optical or optic-electronic means;

“the Treasurer” means the Treasurer of the Commonwealth of The Bahamas;

“universal service” means making certain basic telecommunications services available at an affordable price to all people throughout The Bahamas;

“vesting date” means in relation to property, rights and liabilities specified in an order made by the Minister under section 24(1), the date specified in that order as the date on which those property, rights and liabilities shall be transferred to and vest in the vested entity;

“vested entity” in relation to any property, rights and liabilities of the Corporation means the entity specified in section 24 in which those property, rights and liabilities are vested.

3. (1) This Act binds the Crown.

Application of Act.

(2) Sections 4 to 6 and 9 to 24 and the Second Schedule of the Public Utilities Commission Act shall not apply to telecommunications services.

Ch. 306.

PART II REGULATORY AUTHORITIES

4. The objectives of Parts II, III, IV, V and VI of this Act are —

Objectives.

- (a) to secure, so far as practicable, the provision of telecommunications services that satisfy all reasonable demands within The Bahamas including, in particular, emergency services, public call services, directory information services, maritime services, aeronautical services and services providing access to information services, whether those services are supplied from, within or to The Bahamas;
- (b) to ensure that any person by whom telecommunications services are efficiently provided is able to finance the provision of such services;
- (c) to improve the quality and coverage of telecommunications services and to facilitate the availability of new telecommunications services within The Bahamas;

- (d) to protect the interests of consumers and other users in The Bahamas in respect of the prices charged for and the quality and variety of, telecommunications services;
- (e) to introduce, maintain and promote effective and sustainable competition in telecommunications services in The Bahamas, but subject to any special rights granted to the Company in accordance with the sector policy; and
- (f) to promote efficiency and economy on the part of licensees.

Functions and powers of the Minister.

5. (1) The functions of the Minister shall be —
- (a) to determine, after consultation with the Commission, the sector policy which shall be published in the *Gazette*;
 - (b) to determine after consultation with the Minister responsible for Lands and the Commission, the circumstances in which and the terms on which qualified licensees under Part III of the Act may purchase or obtain public land;
 - (c) to determine after consultation with the Minister responsible for Public Works the circumstances in which and the terms on which qualified licensees may enter along, under or over any public land;
 - (d) to ensure that The Bahamas is able to comply with its international obligations; and
 - (e) to ensure that public security and the investigation of criminal activities and enforcement of public policy are safe guarded.
- (2) The Minister shall have the power —
- (a) to make regulations after consultation with the Minister responsible for Lands and the Minister responsible for Public Works on which qualified licensees under the Act may purchase or obtain public land or easements over public land or enter upon and remain on public land;
 - (b) to make regulations in accordance with section 31 concerning fees payable for the use of the radio frequency spectrum and for the holding of auctions in respect of the radio spectrum;
 - (c) to issue directions or make regulations in relation to the international obligations of The Bahamas;

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- (d) to issue directions for national security purposes;
 - (e) to issue directions relating to public security and the investigation of criminal activities and enforcement of public policy;
 - (f) to make regulations in accordance with section 10 concerning fees payable for the grant or renewal of telecommunications licences; and
 - (g) to make regulations in accordance with section 14 concerning fees payable for the allocation of numbers and for the holding of auctions in respect of numbers.

(3) The Minister shall cause to be laid before each House of Parliament a copy of every direction given under section 5 (2) unless he is of the opinion that disclosure of the direction is against the interests of national security, public safety, public policy or the international obligations of The Bahamas.

(4) A licensee shall not disclose, or be required by virtue of any enactment or otherwise to disclose, any direction given under section 5 (2) or anything done by virtue of such direction if the Minister has notified him that the Minister is of the opinion that disclosure of the direction or that thing is against the interests of national security, public policy or the international obligations of The Bahamas.

- 6.** (1) The functions of the Commission shall be — Functions and powers of the Commission.
- (a) to advise the Minister generally in relation to the telecommunications sector;
 - (b) to implement the sector policy;
 - (c) to issue, modify, enforce and revoke licences in a manner consistent with sector policy;
 - (d) to regulate the inter-connection of telecommunications systems and the management of numbers for telecommunications services as set out in Part IV;
 - (e) to formulate and implement standards in relation to the technical regulation of telecommunications systems, telecommunications equipment and customer premises equipment as set out in Part V;
 - (f) to regulate, allocate and manage the use of the radio frequency spectrum as set out in Part X;

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- (g) to determine whether a licensee is Dominant;
 - (h) to regulate the prices that may be charged by a licensee who is Dominant in a relevant market in accordance with the provisions of subsections (6) and (7) of section 9;
 - (i) to facilitate, maintain and promote effective and sustainable competition in telecommunications services in The Bahamas in accordance with the objective set out in section 4(e); and
 - (j) to exercise such other functions and powers as are set out in this Act.
- (2) In carrying out its functions under any part of this Act, the Commission shall have the power —
- (a) to require any licensee to furnish such information and submit such returns in relation to its operation at such interval as the Commission may require;
 - (b) to conduct inquiries, investigations and regulatory hearings and to hear complaints by any person regarding the operations of any telecommunications or radiocommunications service;
 - (c) to publish information, reports and other documents;
 - (d) to impose the sanctions provided for under section 34; and
 - (e) to modify the conditions of a licence in accordance with the provisions of section 12.
- (3) The Commission may, from time to time, but subject to the provisions of subsection 4, issue instructions to licensees licensed under any part of this Act, in relation to any or all of the following matters —
- (a) the interconnection of telecommunications systems in accordance with section 13;
 - (b) the provision of information in relation to telecommunications activities;
 - (c) the numbering plan and allocation of numbers in compliance with the numbering plan, as required under section 14;
 - (d) the methods for measuring quality of service, in cases where quality of service obligations have been imposed on licensees under their respective licences;

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- (e) the universal service obligations in a manner consistent with the sector policy;
 - (f) the international obligations of The Bahamas;
 - (g) the licence fees payable by licensees;
 - (h) the use of any radiocommunications station or of radiocommunications apparatus in accordance with section 32 or any other matter referred to in that section; and
 - (i) in relation to any particular licence, or radio-communications licence, in other cases (if any) in which the Commission has reserved the right to specify a condition included in the licence or radiocommunications licence concerned.

(4) In exercising its functions and powers under this Act, the Commission shall at all times act in a manner that is timely, transparent, objective and non-discriminatory and consistent with the objectives of this Act as set out in section 4.

(5) The Commission shall publish its proposals on licensing procedures, types or classes of licence, licence conditions, modification to licences or making any general instruction intended to be issued by the Commission under any part of this Act. The Commission shall allow a reasonable period of consultation and take into account any objection or suggestion made by persons affected by the proposals before adopting the proposal. In particular, the Commission shall publish its proposals identifying the types of telecommunication systems, telecommunication services, radiocommunications stations and radiocommunications apparatus for which class licences are required and the criteria applying to the grant of such licences.

7. (1) All decisions of the Commission made in the exercise of its functions and powers under this Act, shall be final, other than a decision — Appeals.

- (a) on a point of law and questions of law;
- (b) to refuse to grant an individual licence;
- (c) that a licensee is Dominant;
- (d) to modify a licence in accordance with section 12(4)(d);
- (e) to revoke an individual licence; or
- (f) to impose a fine.

(2) Any person aggrieved by a decision referred to in subsection (1) may appeal to the Court on a point of law, on the ground that the decision was unreasonable in light of the information available to the Commission at the time it made its decision or on the ground that it was unreasonable for the Commission to make a decision without ascertaining further information.

(3) On an appeal the Court may —

(a) dismiss the appeal; or

(b) allow the appeal; and

(i) in relation to a point of law give such direction as the court thinks fit; and

(ii) in any other case remit the matter to the Commission for reconsideration generally or for such further consideration by the Commission as the court thinks fit,

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and may make such order as to costs including costs in the proceedings before the Commission and such other order as it thinks fit.

PART III LICENSING OF TELECOMMUNICATIONS SYSTEMS AND SERVICES

Licensed systems
and services.
S.I. 128/2001.

8. (1) Subject to the provisions of subsections (2) and (3) below, no person shall establish, operate or maintain a telecommunications system or provide a telecommunications service in The Bahamas unless he is authorised to do so by a licence granted under section 9.

(2) Subsection (1) is not contravened by —

(a) the operation of a telecommunications system in which messages are conveyed by light in a manner capable of being received or perceived by the eye alone;

(b) the operation by a person of a telecommunications system which is not connected to any other telecommunications system and where all apparatus comprised in the first system is situated either —

(i) on a single set of premises in single occupation; or

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- (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more of the same when mechanically coupled together;
 - (c) broadcasting in accordance with a licence issued under the Broadcasting Act; Ch. 305.
 - (d) operation of a cable television system in accordance with a licence issued under the Broadcasting Act; or Ch. 305.
 - (e) the operation by The Royal Bahamas Police Force, The Royal Bahamas Defence Force or The Prison Service of telecommunications systems used exclusively for their own purposes.

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

9. (1) Licences under this section shall be granted by the Commission having regard to any current sector policy promulgated by the Minister under section 5. Licensing of systems and services.

(2) The Commission shall publish the details of the procedures and criteria applying to the grant of a licence under this section.

(3) A licence granted under this section may be an individual licence or a class licence. Each licence shall be in writing and shall continue in force in the period specified in the licence, unless previously revoked in accordance with any condition contained in the relevant licence or any section of this Act.

(4) A licence granted under this section shall specify the type of telecommunications system and/or the type of telecommunications service that may be provided by the licensee and which (if any) other telecommunications systems or apparatus may be connected to the licensed system.

(5) A licence granted under this section may also include —

- (a) such conditions as appear to the Commission to be appropriate having regard to the objectives of this Act as specified in section 4;

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- (b) conditions requiring the payment to the Commission of fees specified in the licence or instructions issued by the Commission but subject to paragraph (g) of section 6(3) and section 10;
 - (c) conditions requiring the licensee to supply such documents, accounts or other information as the Commission may reasonably require for the purpose of exercising the functions and powers assigned to it under this Act;
 - (d) an obligation on the licensee to comply with any direction given by the Minister pursuant to section 5 or any instructions given by the Commission pursuant to section 6;
 - (e) conditions intended to prevent anti-competitive behaviour in telecommunications markets, including —
 - (i) engaging in anti-competitive cross-subsidiation;
 - (ii) using information obtained from competitors with anti-competitive results; and
 - (iii) not making available to other licensees, on a timely basis, technical information about essential facilities and commercially relevant information necessary for them to provide services;
 - (f) conditions relating to effective and efficient use of numbering;
 - (g) conditions relating to the provision of universal service or financial contributions to the cost of universal service;
 - (h) conditions relating to provision of emergency services;
 - (i) conditions relating to interconnection of networks and interoperability of services;
 - (j) conditions linked to the grant to qualified licensees of access to public land;
 - (k) conditions relating to the control of persons who are Dominant in a market;
 - (l) conditions relating to the quality, availability and permanence of a telecommunications service or telecommunications system;

- (m) conditions relating to national security, public security and the investigation of criminal activities and enforcement of public policy; and
- (n) conditions relating to the surrender and/or revocation of the licence.

(6) In a case where the Commission decides that a licensee is Dominant in relation to the provision of telecommunications service or access to any telecommunications system in a market, the Commission may include in the licence issued to the licensee concerned under this section of the Act or subject to section 12 modify such person's licence so as to include, a condition, regulating the prices (including any discounts) that may be charged by the licensee concerned for telecommunications services in the relevant market. In particular, such a condition may require —

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- (a) relevant prices not to exceed or be below levels specified from time to time by the Commission either for individual services or for a collection of services;
- (b) a Dominant licensee to offer its retail services, or any part thereof, to other licensees at wholesale prices;
- (c) publication of prices for telecommunications services in the relevant market.

(7) Any condition included in any licence granted under this section may be time-limited or may be expunged by the Commission, following a public consultation, if the Commission considers that a condition is no longer appropriate, bearing in mind the objectives of this Act specified in section 4.

10. (1) The Commission shall set fees only so as to recover from licensees on an equitable basis, the aggregate amounts required to defray costs incurred or anticipated by the Commission in connection with its functions and powers in relation to telecommunications.

Fees for telecommunications licences.

(2) The Minister may by regulations direct the Commission to recover an amount in excess of that specified under subsection (1) to reflect the market value of the licence granted and such amounts shall be paid by the Commission into the Consolidated Fund.

Licence registers
and directions.

11. (1) The Commission shall maintain up-to-date public registers of licences granted under this Part of the Act containing —

- (a) for all individual licences, the name and address of the licensee, the telecommunications system or telecommunications service licensed and the conditions applicable to the licence granted; and
- (b) for all class licences, the telecommunications system or telecommunications service licensed, the conditions of that licence and, where registration is required, the persons who have been registered under that class licence.

(2) A copy of each individual licence shall be made available for public inspection.

(3) The Commission may from time to time, and following public consultation, determine and issue instructions concerning —

- (a) the making of applications for individual licences and the matters to be taken into account when an application is reviewed; and
- (b) the form of any class licences, the process for registration of licences and eligibility criteria.

Modification of
licence
conditions.

12. (1) Subject to the provisions of this section, the Commission may modify the conditions of a licence granted under section 9.

(2) Before modifying a licence under this section, the Commission shall give notice —

- (a) stating that the Commission proposes to make the modifications and setting out their effect;
- (b) stating the reasons why the Commission proposes to make the modifications, including whether or not the modifications are required to protect the public interest; and
- (c) specifying the time (being not less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) Notice under this section shall be given to the holder of an individual licence who is affected and, if the Commission elects, by publication on the Commission's website or in a newspaper circulating in The Bahamas.

(4) Licences may only be modified under this section —

- (a) in the case of an individual licence held by only one person, with the prior written consent of that licensee;
- (b) in cases where substantially similar individual licences have been issued to more than one person, with the prior written consent of such licensees who, between them, account (according to good faith estimates of the Commission based on available market information) for at least seventy-five per centum of the aggregate telecommunications revenue of all licensees carrying on business under such individual licence; and
- (c) in the case of class licences, with the prior written consent of such persons actually carrying on telecommunications services licensed under that class licence who account (according to good faith estimates of the Commission based on available market information) for at least seventy-five per centum of the aggregate telecommunications revenue of all licensees carrying on business under that class licence; or
- (d) where the Commission has proposed a modification to an individual licence or to a class licence but consent has been withheld, or, in the case of a class licence, is impracticable to obtain, unless the licence expressly provides to the contrary, the Commission may amend that licence to include that modification if the Commission, after a public consultation and consideration of all information available to it concludes that a modification to the licence is in the public interest or is necessary in order to implement international obligations of The Bahamas.

PART IV INTERCONNECTION AND NUMBERING

13. (1) The Commission may issue instructions to any licensee in relation to interconnection. Interconnection.

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- (2) Instructions issued made under subsection (1) shall only include requirements necessary or desirable —
- (a) to protect the integrity of a telecommunications system, telecommunications equipment or customer premises equipment;
 - (b) to protect the health or safety of any person;
 - (c) to ensure the interoperability of telecommunications systems, telecommunications equipment and customer premises equipment; and
 - (d) to achieve, or assist in achieving, the sector policy.
- (3) The Commission may require that —
- (a) any licensee who is licensed to operate a telecommunications system provides interconnection to any other licensee who requests such interconnection; and
 - (b) such interconnection is provided in a timely fashion.
- (4) The Commission may require that any licensee which the Commission determines has Dominance in a relevant market —
- (a) makes its procedures for interconnection publicly available;
 - (b) makes either its standard interconnection agreement or a reference interconnection offer publicly available under non-discriminatory terms, conditions and charges at a quality that is no less favourable than that provided in relation to its own services, including the services of its affiliate, and for services of other third parties;
 - (c) provides interconnection on terms, conditions and charges that are transparent and cost-oriented (having regard to economic feasibility); and at any technically feasible point in its telecommunications system; and
 - (d) provides interconnection in a manner that is sufficiently unbundled, so that the licensee requesting interconnection does not pay for telecommunications systems components that it does not require.
- (5) The Commission may require that any licensee involved in an interconnection dispute with another licensee may refer the dispute to the Commission.

(6) The Commission shall resolve disputes referred to it under subsection (5) within a reasonable period of time, and in any event within six months and may issue an instruction as to the interconnection terms that shall apply.

14. (1) The Commission shall make and issue by Numbering. instructions a plan for —

- (a) the numbering of telecommunications services in The Bahamas; and
- (b) the allocation and use of numbers in connection with the supply of such services.

(2) Any numbering plan shall, so far as possible —

- (a) address market expectations and licensee needs for allocation of numbers; and
- (b) promote efficient use of numbers.

(3) The Commission may administer the numbering plan and/or issue any instruction with respect to the national numbering plan.

(4) The Commission may, in writing, delegate any of its functions under this section to any person.

(5) The Minister, after consultation with the Commission may, by regulations, direct the Commission to require that applications for the allocation of numbers be made in accordance with an auction procedure or other pricing procedure to be determined by him and the details of which shall be set out in the regulations and the regulations may also prescribe how and when fees shall be paid.

(6) In making regulations under subsection (1) above, the Minister shall have regard to —

- (a) numbers available for use, the demand and future demand;
- (b) the need to promote efficient use of the numbers and competition in the provision of telecommunications services; and
- (c) the likely economic benefits available to users of the numbers concerned. S.I. 36/2005.

(7) Any fees received by the Commission under this section shall be paid by the Commission into the Consolidated Fund.

PART V
TECHNICAL REGULATION

Technical standards for telecommunications systems.

15. (1) The Commission shall establish and issue instructions for technical standards relating to specified telecommunications systems, telecommunications equipment, customer premises equipment or radiocommunications apparatus.

(2) Technical standards made under this section may include only requirements necessary or desirable —

- (a) to protect the integrity of telecommunications systems;
- (b) to protect the health or safety of any person;
- (c) to ensure the interoperability of telecommunications systems, telecommunications equipment and customer premises equipment;
- (d) to promote the effective use of the radio frequency spectrum, where appropriate; or
- (e) to achieve, or assist in achieving, the sector policy or the spectrum management plan approved under section 33.

S.I. 36/2005.

(3) When making technical standards, the Commission shall have due regard to any international standards relating to the applicable telecommunications systems, telecommunications equipment or customer premises equipment.

Testing and approval of telecommunications systems, etc.

16. The Commission may issue instructions specifying the procedures for testing telecommunications systems, telecommunications equipment, customer premises equipment or radiocommunications apparatus to verify that it complies with relevant technical standards.

Approved installers.

17. The Commission may, by instructions specify procedures for approving persons to install customer premises equipment or radiocommunications apparatus.

Marking requirements.

18. The Commission may, by instructions, specify marking requirements to be affixed to customer equipment approved under section 16.

S.I. 36/2005.

Register of technical standards, approved apparatus and installers.

19. (1) The Commission shall maintain a public register of all technical standards, telecommunications equipment, radiocommunications apparatus and installers approved in accordance with sections 15, 16, and 17.

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- (2) The register shall contain —
- (a) for all technical standards, a copy of the technical standard, including any amendments thereto; and the date the technical standard came into force;
 - (b) for all telecommunications equipment and radio-communications apparatus, the name and address of the manufacturer, the date the equipment or apparatus was approved, details of the approved equipment or apparatus and a copy of the Commission's approval documentation; and
 - (c) for all installers, the name and address of the installer, the date the application of the installer was approved, details of the types of telecommunications equipment or radiocommunication apparatus he may install and the Commission's approval documentation.

PART VI
PROVISION OF TELECOMMUNICATIONS
SERVICES

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

Terms of supply.

(2) A licensee may enforce the terms and conditions published in accordance with subsection (1) as if they were an agreement between it and the person to whom telecommunications services are provided.

21. (1) Licensees shall not control the content or influence the meaning or purpose of any message carried by it for a member of the public.

Contents of messages.

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

(3) Subsection (2) does not restrict disclosure or use of information or documents —

- (a) for the purpose of providing telecommunications services to that person;
- (b) where the sender of the message or the subject of the personal particulars consents;
- (c) for the purpose of facilitating the performance of any functions of the Minister or the Commission under this Act;
- (d) in accordance with an authorisation given under section 5 of the Listening Devices Act; or
- (e) to the Court in connection with a court order made in civil proceedings.

Ch. 90.

PART VII

BAHAMAS TELECOMMUNICATIONS COMPANY

Establishment of the company.
Ch. 308.

22. (1) The Minister shall cause to be incorporated under the Companies Act a company limited by shares to be known as “The Bahamas Telecommunications Company”.

(2) Upon the date of incorporation of The Bahamas Telecommunications Company all shares of that Company shall be issued to or become vested in the Treasurer in trust for Her Majesty in right of Her Government of The Bahamas.

(3) The Treasurer may, on the advice of the Minister of Finance, transfer any or all of its shares of The Bahamas Telecommunications Company to any person at any time and in any manner as he determines.

(4) Notwithstanding subsection (3) neither the Treasurer nor any Minister shall transfer any shares vested in the Treasurer without the prior approval of the House of Assembly signified by resolution thereof.

PART VIII

VESTING

Separation of functions.

23. Before the vesting date the Corporation shall take steps to identify, define and separate from the remainder of its undertaking —

- (a) the regulatory undertaking;

- (b) the part or parts of its undertaking concerned with the Corporation's shareholding in Cable Bahamas; and
- (c) any assets not used in relation to the provision of telecommunications services.

24. (1) Subject to the following provisions of this section, the Minister may, by one or more written vesting orders, vest any or all of the property, rights and liabilities to which the Corporation was entitled or subject immediately before the date of the vesting order concerned in any one of the persons named below, whereupon such property, rights and liabilities shall become the property, rights and liabilities of, the vested entity concerned, subject to any terms and conditions determined by the Minister and specified in the vesting order concerned —

Vesting of property, rights and liabilities of the Corporation.

- (a) in the case of property, rights and liabilities relating to the regulatory undertaking of the Corporation, the Commission;
- (b) in case of the Corporation's shareholding in Cable Bahamas, the Treasurer;
- (c) in case of all or any assets not used in relation to the provision of telecommunication services, the Treasurer; and
- (d) in case of all or any other property, rights and liabilities of the Corporation, the Company.

(2) Notwithstanding subsection (1) the Minister shall not dispose of any property to which the Corporation was entitled without the prior approval of the House of Assembly signified by resolution thereof.

(3) Subject to subsection (2), the vesting of property, rights and liabilities under this section shall be binding on all other persons notwithstanding that it would, apart from this section, have required the consent or concurrence of any other person.

(4) The First Schedule shall apply to any transfer and vesting effected under this section.

First Schedule.

(5) References in this Act to property, rights and liabilities of the Corporation are references to all such property, rights and liabilities —

- (a) whether or not capable of being transferred or assigned by the Corporation;

- (b) whether located in The Bahamas or elsewhere;
- (c) whether under the laws of The Bahamas or the laws of any other country or territory; and
- (d) in the case of liabilities whether they are actual or contingent.

Exceptions from stamp duty.
Ch. 370.

25. Notwithstanding any other law to the contrary no stamp duty shall be payable under the Stamp Act on or in relation to the transfer or vesting of property, rights and liabilities of the Corporation under section 24.

Dissolution of the Corporation.

26. The Minister may by order after consultation with the Commission and the Corporation dissolve the Corporation on a date to be specified in the order.

PART IX NATIONAL INTEREST MATTERS

Interception.

27. (1) Each licensee shall ensure that each telecommunications system operated by it has the capability to enable a private conversation to be heard, listened to or recorded using a listening device in accordance with an authorisation given under section 5 of the Listening Devices Act.

Ch. 90.

(2) The Minister may, after consultation with the Commissioner of Police and the Attorney-General, exempt a licensee from the obligation imposed under subsection (1) in so far as that obligation relates to a specified telecommunications system or telecommunications service.

(3) Any exemption under subsection (2) shall be in writing and may be unconditional or subject to conditions specified in the exemption.

(4) In this section “private conversation” and “listening device” have the meanings given to them in the Listening Devices Act.

Ch. 90.

War and emergencies.

28. (1) During any period in which Article 29 of the Constitution applies, and the Governor-General considers that it is necessary in the interests of defence, public safety, public order, the Government shall have control over any telecommunications station, cable television system or radiocommunications apparatus and the Governor-General may take possession of and assume control over, or direct such other persons as he thinks fit to assume control

over, part of all of the telecommunications system of any licensee or of any radiocommunications station, cable television system or radiocommunications apparatus for use by the Government. *S.I. 36/2005.*

(2) Notwithstanding anything in any Act to the contrary, the Governor-General may, for the purpose of exercising the powers conferred on him by subsection (1), appoint temporary operative or engineering staff, for no longer than six months in the first instance, under such terms and conditions and at such salaries as the Governor-General may prescribe and determine and the salaries of all such staff shall be paid out of the Consolidated Fund.

PART X REGULATION OF RADIOCOMMUNICATIONS

29. (1) No person shall establish, operate or use any radiocommunications station or install, operate or use any radiocommunication apparatus unless he is authorised to do so by a licence granted under section 30. Licensed radio communications.

(2) Subsection (1) is not contravened by the installation or use of apparatus for reception only of television and radio broadcasting.

30. (1) Radiocommunications licences under this part shall be granted or made available by the Commission having regard to any current spectrum allocation policy determined by the Commission under section 33. Radio communications licences.

(2) A radiocommunications licence may be an individual licence or a class licence. Each radiocommunications licence shall be in writing and shall continue in force for the period specified in the licence, unless previously revoked in accordance with any condition contained in the relevant radiocommunications licence or any section of this Act.

(3) The Commission shall publish details of the procedures and criteria applying to the grant of an individual radiocommunications licence under this Part of the Act.

(4) A radiocommunications licence may be issued subject to such conditions as appear to the Commission to be appropriate, including —

-
- (a) in the case of a licence to establish, operate or use any radiocommunications station, the purposes for which, the circumstances in which, and the persons by whom the radiocommunications station may be operated or used and the apparatus that may be installed or operated or used therein;
 - (b) in the case of any other licence, limitations as to the apparatus which may be installed, operated or used, and the places where, the purposes for which the circumstances in which and the persons by whom the apparatus may be operated or used;
 - (c) in any case, conditions requiring the payment to the Commission of fees specified in the licence or in instructions issued by the Commission;
 - (d) conditions requiring the licensee to supply such documents, accounts or other information as the Commission may reasonably require for the purpose of exercising the functions assigned to it under this Act;
 - (e) an obligation on the licensee to comply with any direction given by the Minister pursuant to section 5 or any instructions given by the Commission pursuant to section 6;
 - (f) conditions relating to national security, public security and the investigation of criminal activities; and
 - (g) conditions relating to the surrender and/or revocation of the licence.
- (5) Any condition included in any licence granted under this section may be time limited or may be expunged by the Commission, following a public consultation, if the Commission considers that a condition is no longer appropriate, having regard to the objectives for radio frequency spectrum as set out in the plan provided for under section 33.
- (6) A radiocommunications licence shall, unless previously revoked by the Commission, continue in force for such period as may be specified in the licence.
- (7) Subject to any conditions included in the licence concerned, a radiocommunications licence may be revoked, or the terms, provisions or limitations thereof

varied, by a notice in writing of the Commission served on the holder of the licence or by a general notice applicable to licences of the class to which the licence in question belongs published in the manner specified in the licence.

31. (1) The Minister may, after consultation with the Commission by regulations, direct the Commission to exercise its power under section 30 to require the payment of fees for the grant or renewal of radiocommunications licences in such a way as to recover amounts in excess of those necessary in order to recover the costs incurred by it in connection with the performance of its functions in relation to radiocommunications. All excess amounts received shall be paid by the Commission into the Consolidated Fund.

Fees for radio communications licences and auctions.

S.I. 36/2005.

(2) In the absence of any regulations, the Commission shall set fees only so as to recover from licensees, on an equitable basis, the aggregated amounts required to defray costs incurred or anticipated by the Commission in connection with its functions and power in relation to radiocommunications.

(3) In making regulations under subsection (1) above, the Minister shall regard to —

- (a) the extent of the part of the spectrum available for use under licences of the relevant description, the demand and likely future demand;
- (b) the need to promote efficient use of the spectrum and competition in the provision of radiocommunications based services; and
- (c) the likely economic benefits available to users of the spectrum concerned.

S.I. 36/2005.

(4) The Minister may, after consultation with the Commission by regulations, direct the Commission to require that applications for the grant or renewal of radiocommunications licences be made in accordance with an auction procedure to be determined by him and the details of which shall be set out in the regulations. The regulations may also prescribe how and when fee bids shall be paid and any minimum requirements regarding fitness to hold the licence and the maintenance of competition.

32. (1) The Commission shall maintain a public register of radiocommunications licences granted under this Part of the Act containing —

Radio communications licence registers.

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- (a) for all individual licences, the name and address of the licensee, the radiocommunications station or radiocommunications apparatus licensed and the conditions applicable to the licence granted; and
 - (b) for all class licences, the radiocommunications station or radiocommunications apparatus licensed, the conditions of that licence and, where registration is required, the persons who have been registered under that class licence.
- (2) A copy of each individual licence shall be made available for public inspection.
- (3) The Commission may from time to time, and following public consultation, determine and issue instructions concerning the —
- (a) making of applications for individual radiocommunications licences and the matters to be taken into account when an application is reviewed; and
 - (b) form of any class radiocommunications licences, the process for registration of licences and eligibility criteria.
- (4) The Commission may issue instructions —
- (a) to prescribe the things which are to be done or are not to be done in connection with the use of any radiocommunications station, or of radiocommunications apparatus and, in particular, requiring the use of any radiocommunications station or any such apparatus to cease on a demand to that effect made by the Commission or any other persons specified in the instructions;
 - (b) to impose on the person to whom a radiocommunications licence is issued, or who is in possession or control of any radiocommunications station or radiocommunications apparatus obligations permitting and facilitating the inspection of such radiocommunication stations or apparatus, as to the condition in which such station or apparatus are to be kept and as to the production of the radiocommunications licence or of such other evidence of the licensing of the radiocommunications station or apparatus as may be specified in the instructions; and

- (c) to require the person to whom a radiocommunications licence authorising the establishment, operation or use of a radiocommunications station or radio-communications apparatus has been issued to exhibit at the station such notices as may be specified in those instructions,

and different provisions may be made for instructions for different classes of cases. *S.I. 36/2005.*

33. (1) The Commission may issue instructions after consultation with the Minister, to make, amend or revoke a strategic plan for the balanced, efficient and effective allocation, use and management of the radio frequency spectrum in The Bahamas and satellite orbital slot allocated to The Bahamas. Any plan shall, so far as possible and subject to subsection (2) — *Spectrum planning.*

- (a) address market expectations and customer needs for assignments of radio frequency spectrum;
- (b) promote efficient spectrum use;
- (c) minimize risks of interference;
- (d) maximize economic benefit and sustainable competition;
- (e) maintain diversity of use; and
- (f) conform, as necessary, to relevant spectrum plans in the region.

(2) The Minister may, after consultation with the Commission by direction allocate or re-allocate any part of the radio frequency spectrum to —

- (a) defence, police or emergency purposes;
- (b) broadcasting; and
- (c) other uses in the interest of national security and public policy.

PART XI INVESTIGATION AND ENFORCEMENT

34. (1) Where the Commission is satisfied that a licensee is contravening or has contravened any of the conditions of a licence, any instructions issued by the Commission, or any provision of this Act, the Commission may issue further instructions to that effect and make arrangements for the publication of such instructions in any manner the Commission considers to be appropriate. *Securing compliance.*

(2) Any instructions issued by the Commission shall require the licensee concerned to do, or not to do, such things as are specified in the instructions and shall take effect at the earliest practicable time as determined under the instructions.

(3) Before acting under this section, the Commission shall —

- (a) give notice to the licensee concerned —
 - (i) stating that it proposes to issue instructions setting out its effects;
 - (ii) stating the relevant condition of the licence, instruction, section or regulation and the acts or omissions which, in the opinion of the Commission, constitute a contravention; and
 - (iii) specifying the time (in a case of an emergency the Commission may request the licensee to make representations or objections immediately and in any other case the licensee shall make representations not less than twenty-eight days from the date of publication of the notice) within which representations or objections may be made; and
- (b) have regard to any representations and objections made by the licensee or any other person.

S.I. 128/2001.

S.I. 36/2005.

(4) If after issue of a notice, any licensee fails to comply with the requirements of that instruction, the Commission may exercise any one or more of the following sanctions —

- (a) public censure;
- (b) impose a fine not exceeding three hundred thousand dollars and a further fine not exceeding ten thousand dollars for each day on which the failure continues; or
- (c) enforce any remedy available to it under the licence of the licensee concerned, including any remedy or revocation.

(5) Where the Commission imposes a fine under subsection (4) such fine shall be recoverable in the same manner as a fine imposed by the court.

35. (1) A person who establishes, maintains or operates a telecommunications system or provides a telecommunications service without a licence or in contravention of the conditions of a relevant licence or a direction shall be guilty of an offence and liable on summary conviction to a fine of three hundred thousand dollars.

Offences.
S.I. 36/2005.

(2) A person who knowingly, or having reason to believe that any telecommunications system or telecommunications service has been established or is maintained or is operated in contravention of this Act, transmits or receives a message by using that telecommunications system or telecommunications service, or performs any service incidental to the establishment, maintenance or operation of that telecommunications system or telecommunications service shall be guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.

(3) A person who does any of the acts mentioned below in relation to a telecommunications system —

- (a) participating in the management, financing, operation or day-to-day running of the telecommunications system knowing, or having reasonable cause to believe, that the telecommunications system, or telecommunication services supplied using the telecommunications system, is not licensed;
- (b) supplying, installing, repairing or maintaining any telecommunications system, telecommunications equipment or any other item knowing, or having reasonable cause to believe, that the telecommunications system, telecommunications equipment or other item is to be, or is, used for the purpose of facilitating the operation or day-to-day running of an unlicensed telecommunications system or unlicensed telecommunications services; or
- (c) rendering any other service to any person knowing, or having reasonable cause to believe, that the rendering of that service to that person will facilitate the operation or day-to-day running of an unlicensed telecommunications system or unlicensed telecommunications services,

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

(4) A person who installs a telecommunications system or telecommunications equipment and/or customer premises equipment that is directly or indirectly connected to a telecommunications system, which has not been approved by the Commission shall be guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.

(5) A person who installs customer premises equipment (other than by a single line plug-into socket connection) to any telecommunications system and who has not been approved by the Commission or an organisation appointed by it for approving installers under section 16 shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

(6) A person who sends, by means of a telecommunications system, a message for the purpose of causing annoyance or inconvenience to another person shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

(7) A person who is a licensee or employed by or engaged in any capacity for any licensee and contrary to his duty —

- (a) prevents or obstructs the sending, conveying or delivery of any message; or
- (b) discloses or uses the content of any message, any information or document that relates to the content of any message or the private affairs or personal particulars of any person contrary to section 21(2),

S.I. 36/2005.

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

S.I. 36/2005.

(8) A licensee who fails to comply with any requirement made pursuant to section 6(3)(b) shall be guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars and for each subsequent offence, is liable on summary conviction to a fine of one hundred thousand dollars.

Further offences
in relation to Part
X of this Act.

36. (1) A person who has in his possession or under his control radiocommunications apparatus that he —

- (a) intends to use in contravention of section 29; or
- (b) knows, or has reasonable cause to believe, that another person intends to use in contravention of that section,

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

(2) A person who is in charge of any premises which are used for unlawful radiocommunications, or sending signals for the operation or control of any apparatus used for the purpose of unlawful radiocommunications from any other place if —

- (a) he knowingly causes or permits the premises to be so used; or
- (b) having reasonable cause to believe that the premises are being so used, he fails to take such steps as are reasonable in the circumstances of the case to prevent the premises from being so used,

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

(3) For the purposes of this section —

- (a) a person is in charge of any premises if he or the owner or occupier of the premises has, or acts or assists in, the management or control of the premises; *S.I. 36/2005.*
- (b) radiocommunications are unlawful if they are made in contravention of section 29; and
- (c) “premises” includes any place and, in particular includes any vehicle, vessel or aircraft, hovercraft, buoy or beacon and any structure or other object (whether movable or otherwise and whether on land or otherwise). *S.I. 36/2005.*

(4) A person who does any of the acts mentioned in this subsection in relation to a radiocommunications station —

- (a) participating in the management, financing, operation or day-to-day running of the radiocommunications station knowing, or having reasonable cause to believe, that unlawful radiocommunications are made by the station;
- (b) supplying, installing, repairing or maintaining any radiocommunications apparatus or any other item knowing, or having reasonable cause to believe, that apparatus or other item is to be, or is, used for the purpose of facilitating the operation of day-to-day running of the radiocommunications station and that unlawful *S.I. 36/2005.*

radiocommunications (as defined in section 36(2)) are made by the station; or

- (c) rendering any other service to any person knowing, or having reasonable cause to believe, that the rendering of that service to that person will facilitate the operation or day-to-day running of the radiocommunications station and that unlawful radiocommunications are so made,

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

(5) A person who contravenes any instructions made under section 32, or causes or permits any radiocommunications station or radiocommunication apparatus to be used in contravention of instructions issued under section 32 shall be guilty of an offence and liable on summary conviction to a fine of three hundred thousand dollars.

(6) A person who, by means of radiocommunications apparatus, sends or attempts to send, any message which, to his knowledge, is false or misleading and is, to his knowledge, likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or of any vessel, aircraft or vehicle, and, in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance shall be guilty of an offence and liable —

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

(7) A person who is using any apparatus for the purpose of interfering with any apparatus whether or not the apparatus in question is radiocommunication apparatus shall be guilty of an offence and liable on summary conviction of a fine of ten thousand dollars.

Forfeiture.

37. (1) The Court may (whether or not any person has been convicted of such offence) order to be forfeited to the Crown —

- (a) any money, telecommunications systems, telecommunications equipment, radiocommunications apparatus, customer premises equipment or other thing (other than premises) which has been used in the commission of or in connection with an offence under any section in this Part of the Act; and
- (b) any money or other property received or possessed by any person as a result or product of an offence under any section in this Act.

(2) An order under subsection (1) of this section for the forfeiture of a telecommunications system, telecommunications equipment, radiocommunications station, radiocommunications apparatus, customer premises equipment or other thing may include a term permitting a specified person or persons to redeem such item on such conditions, including conditions as to the payment of the value or a proportion of the value thereof to the Crown, as the Court may think fit.

(3) The Court may require that notice of an application for forfeiture under subsection (1) of this section shall be given in such manner as it thinks fit.

S.I. 36/2005.

38. (1) Where on information provided by the Commission (or other person), a magistrate has reason to believe that —

Search warrants.

- (a) any person is contravening any Part of this Act; and
- (b) entry to the specified premises, vehicle, vessel, aircraft, hovercraft, buoy or beacon is necessary for the enforcement of the Act,

the magistrate may issue a search warrant to a peace officer.

(2) The peace officer to whom a warrant is issued may be accompanied by an authorised representative of the Commission and may enter the specified premises, carry out search and inspection of those premises and test and seize any relevant apparatus, equipment or documents in accordance with the terms of the warrant.

(3) Where under this section a person has a right to examine and test any equipment or apparatus on any premises or in any vehicle, vessel, aircraft, hovercraft, buoy or beacon, it shall be the duty of any person who is on the

premises, or is in charge of, or in attendance on, the vehicle, vessel, aircraft, buoy or beacon, to give him any such assistance as he may reasonably require in the examination or testing of the equipment or apparatus.

Offences by body corporate.

39. Where an offence under sections 35 and 36 is committed by a body corporate and it is proved that such an offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, or any person purporting to act in such capacity, that officer, as well as the body corporate shall be liable to be proceeded against and punished accordingly.

PART XII MISCELLANEOUS

Repeals and savings.
Ch. 303.
Second Schedule.

40. (1) The sections and Parts of The Bahamas Telecommunications Act are repealed as set out in the Second Schedule.

(2) Nothing in this section shall affect —

Ch. 303.

(a) the continuation of any civil or criminal proceedings commenced under The Bahamas Telecommunications Corporation Act;

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(b) any liability to pay fees or penalties under The Bahamas Telecommunications Corporation Act or any subordinate legislation made under that Act that accrues before the date on which this section comes into operation; or

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(c) the limitation of the Corporation's liability pursuant to section 22 or 30 of The Bahamas Telecommunications Corporation Act.

S.I. 128/2001.

S.I. 36/2005.

(3) Any subordinate legislation that relates to subject matter within the functions or powers of the Minister or the Commission shall continue in force, *mutatis mutandis*, until such time as the Minister or the Commission issues directions or instructions or makes regulations for similar purposes under this Act that are inconsistent with that subordinate legislation. Once the Minister or the Commission issues directions or instructions or makes regulations that are inconsistent with that subordinate legislation, then, to the extent of the inconsistency, the subordinate legislation will cease to apply.

(4) Except in circumstances where the Corporation or the Company agrees with a user terms and conditions for the provision of telecommunications services, until the Corporation or the Company publishes new terms and conditions for the provision of telecommunications services in accordance with section 20(1), the terms and conditions for the provision of telecommunications services by the Corporation or the Company shall consist of the following which shall be deemed to have been published in accordance with section 20(1) —

- (a) the rates and rules applicable under the subordinate legislation; and
- (b) sections 21, 22, 23, 28 and 30 of The Bahamas Telecommunications Corporation Act.

Ch. 303.

(5) Subject to the following subsections of this section, any person (other than the Corporation) who, on the date this Act comes into operation holds a licence or authorisation validly issued under the laws, rules or regulations in force on that date for the establishment, operation or maintenance of a telecommunications system or the provision of telecommunications services or for the establishment or use of any radiocommunications station or the installation or use of any radiocommunications apparatus shall be deemed to hold a licence in accordance with this Act for twelve months from the date this Act comes into operation, unless its original licence or authorisation expires prior to the end of that twelve month period in which case its deemed licence under this Act shall expire on the same date.

S.I. 36/2005.

(6) Within three months from the date this Act comes into operation, every person claiming to be the holder of a licence or authorisation under subsection (5) shall supply to the Commission full details of his licence or authorisation and may notify its request for a new licence under this Act, failing which his deemed licence shall expire forthwith.

(7) Where the Commission, having reviewed any licence or authorisation notified to it under subsection (6), is satisfied that such authorisation or licence had been validly issued under the laws, rules or regulations in force at the commencement of this Act, the Commission shall, within six months of the date of such notification —

S.I. 128/2001.

- (a) issue an individual licence to that person to establish, operate and maintain the telecommunications system, provide telecommunications services, establish, operate or use any radio-communications station or install, operate or use any radiocommunications apparatus; or
- (b) ensure that the activities concerned are included in a class licence,

for at least the unexpired term of the original authorisation or licence but otherwise subject to conditions duly determined by the Commission in accordance with this Act.

(8) If the Commission is not satisfied, for any reason, that a licence or authorisation notified to it under subsection (6) was validly issued, it shall so notify the person concerned and his deemed licence shall expire on the date of notification.

PART XIII RELATED AMENDMENTS

Amendments of various Acts. Third Schedule.

41. The Acts specified in the First Column of the Third Schedule are amended in the manner and to the extent as set out in the Second Column of that Schedule.

FIRST SCHEDULE (Section 24)

Statutory accounts of vesting entities.

1. (1) For the purposes of any statutory accounts of the Company —

- (a) the transfer and vesting effected under section 24 shall be treated as having been effected immediately after the end of the last audited accounting period of the Corporation ending before the vesting date;
- (b) the value of any asset and the amount of any liability of the Corporation taken to have been transferred to and vested in the Company shall be taken to be the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by the Corporation in respect of that period;
- (c) the amount to be included in respect of any relevant item shall be determined as if anything done by the Corporation (whether by way of acquiring, revaluing or carrying any amount to any provision or reserve or otherwise) had been done by the Company; and

(d) without prejudice to the generality of paragraph (c), the amount to be included from time to time in any reserves of the Company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Corporation had been realised and retained by the Company.

(2) References in this section to —

- (a) “statutory accounts” of the Company are references to any accounts prepared by that vesting entity for the purposes of any provision of the Companies Act, 1992; and
- (b) “audited accounting period” means an accounting period for which the Corporation’s statement of accounts have been audited by the Corporation’s auditor.

2. (1) Any agreement made, transaction effected or other thing done by, to or in relation to the Corporation or its property, rights and liabilities which is in force or effective immediately before the vesting date shall have effect on and from the vesting date as if made, effected or done by, to or in relation to the vested entity to whom the relevant property, rights or liabilities have been transferred and in whom they have been vested as if the Corporation and the vested entity were the same person.

Relationships
with third
parties.

S.I. 36/2005.

(2) Without limiting subsection (1), from the vesting date, references to the Corporation in any of the instruments listed below that relate as to property, rights or any liabilities vested under section 24 in a vested entity shall be taken as references to that vested entity. The instruments are —

- (a) any agreement or instrument;
- (b) any process or other document prepared or issued for the purpose of any proceeding before any court or other tribunal or authority; and
- (c) any other document whatsoever (other than an enactment) relating to or affecting that property, right or liability.

(3) Without limiting subsection (1), with effect from any vesting date the following paragraphs apply to each agreement that vests in a vested entity under section 24 —

- (a) all rights conferred and obligations imposed on the Corporation shall be conferred or imposed on that vested entity;
- (b) all references to a member or officer of the Corporation as respects anything to be done on or after the vesting date concerned shall be taken to be references to such person as that vested entity may appoint for that purpose, or if no person is appointed, to the officer in that vested entity whose functions correspond most closely to those to the member or officer of the Corporation; and

(c) any reference to persons employed by, persons engaged in the business of, or agents of, the Corporation, as respects anything to be done on or after the vesting date concerned shall be taken to be references to persons employed by, persons engaged in the business of, or agents of, that vested entity.

Employees.

3. (1) It is hereby declared for the avoidance of doubt that —

(a) the effect of section 24 of this Act in relation to any contract of employment with the Corporation in force immediately before any relevant vesting date is merely to modify the contract (as from that date) by substituting the vested entity as the employer (and not to terminate the contract or vary it in any other way); and

(b) that section is effective to vest the rights and liabilities of the Corporation under any agreement or arrangement for the payment of pensions, allowance or gratuities in the vested entity,

and accordingly, for the purposes of any such agreement or arrangement (as it has effect by virtue of paragraph 2 above in relation to employment with the vesting entity), and period of employment with the Corporation, and where an employee has transferred to the Corporation pursuant to The Bahamas Telecommunications Corporation Act, any period of employment, shall count as employment with the vested entity.

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(2) Any amounts that would have been payable in respect of an employee to the Corporation by the Treasurer pursuant to section 28(2) or 29 of The Bahamas Telecommunications Corporation Act shall be payable to the vested entity.

S.I. 36/2005.

Foreign property
and laws.

4. (1) The Corporation and each vested entity shall take all such steps as that vested entity considers appropriate to secure that the vesting in that entity under section 24 of any foreign property, right or liability is effective under the relevant foreign law.

(2) Where any property, right or liability referred to in section 24 cannot properly be vested in a vested entity by virtue of this Act because of the laws of another country, the Corporation shall —

(a) take all practicable steps for the purpose of securing that the property, right or liability is effectively transferred; and

(b) until the property, right or liability is transferred, the Corporation shall hold that property or right for the benefit of, and discharge that liability on behalf of, that vested entity.

(3) References in this section to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the laws of a country or territory other than The Bahamas.

(4) Each vested entity shall meet any expenses incurred by the Corporation in discharging its obligations under this section in respect of that vested entity —

SECOND SCHEDULE (Section 40)

REPEAL OF THE BAHAMAS TELECOMMUNICATIONS CORPORATION ACT

Section or Part	Date of Repeal
Part I	The date on which the Minister dissolves the Corporation as specified in an order made pursuant to section 26.
Part II <i>(except section 11)</i>	The date on which the Minister dissolves the Corporation as specified in an order made pursuant to section 26.
Section 11	The vesting date in relation to property, rights and liabilities vested in the Company.
Part III	The vesting date in relation to property, rights and liabilities vested in the Company.
Part IV	The vesting date in relation to property, rights and liabilities vested in the Company.
Section 29	The date on which the Minister dissolves the Corporation as specified in an order made pursuant to section 26.
Section 30	The vesting date in relation to property, rights and liabilities vested in the Company.
Section 31	The date on which the Minister dissolves the Corporation as specified in an order made pursuant to section 26.

THIRD SCHEDULE (Section 41)

First Column	Second Column
The Broadcasting Act Ch. 305	Section 11 is repealed. (The amendment to section 11 shall take effect from the date specified by the Minister as the date on which property rights and liabilities of the Corporation shall be transferred to and vest in the Company.)