

THE TELECOMMUNICATIONS ACT

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SCHEDULE.

THE TELECOMMUNICATIONS ACT

Acts
1 of 2000,
17 of 2006
S. 6.,
4 of 2012.

[1st March, 2000.]

PART I. *Preliminary*

1. This Act may be cited as the Telecommunications Act. Short title.
- 2.—(1) In this Act, unless the context otherwise requires— Interpreta-
tion.
- “appointed day” means the 1st day of March, 2000;
- “assign” means transfer, sell or otherwise dispose of in any manner;
- “Authority” means the Spectrum Management Authority established under section 21; 4/2012
S. 2(a).
- “authorized officer” means— 4/2012
S. 2(a).
- (a) for the purposes of section 4(1), a member of the Jamaica Constabulary Force or the Island Special Constabulary Force and any member of the staff of the Office or any other person authorized by the Office to assist it in the performance of its functions under this Act;
- (b) for the purposes of section 23A(9), a member of the Jamaica Constabulary Force or the Island Special Constabulary Force and any member of staff of the Office or any other person authorized by the Authority to assist it in the performance of its functions under this Act;
- “Board” means the Board of Management of the Universal Service Fund established under section 38C; 4/2012
S. 2(a).
- “broadcasting” means either sound broadcasting or television broadcasting or both;
- “bypass operations” means operations that circumvent the international network of a licensed international voice

carrier in the provisions of international voice services;

“carrier” means a person who is granted a carrier licence pursuant to section 13;

“closed user group” means, in relation to a person, that person and the person’s employees and officers;

“connection” means wireline and wireless connection;

4/2012
S. 2(b).

“Court” means the Supreme Court of Judicature of Jamaica;

4/2012
S. 2(b).

“customer” means a person who is provided with a facility or specified service by a service provider or carrier and includes the end user of that service or facility;

“customer equipment” means all equipment, whether mobile or fixed, that is used on the customer side of the network termination point;

“data service” means a specified service other than a voice service;

“dealer” means a person who is granted a dealer licence under section 13;

“domestic service” means a specified service that is provided between one or more points in Jamaica but does not include a transit service;

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

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

(a) wires, lines, poles, ducts, sites, towers, satellite earth stations or any other apparatus using the radio spectrum;

(b) submarine cables and other tangible resources used in the provision of a specified service;

“fixed network” means a telecommunications network that is not a mobile network;

“functions” include duties and powers;

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

“interconnection” means the physical or logical connection of public networks of different carriers;

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

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

“licence” means a licence other than a spectrum licence, granted under this Act and “licensee” shall be construed accordingly; 4/2012
S. 2(d).

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

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

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

“network termination point” means the point designated by a carrier for connection by a customer of equipment to that carrier’s network;

“the Office” means the Office of Utilities Regulation established under the Office of Utilities Regulation Act;

“prescribed equipment” means such facility or customer equipment as may be prescribed;

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

(a) anywhere in Jamaica; or

(b) anywhere outside of Jamaica;

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

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

“service provider” means a person who is the holder of a service provider license issued under section 13;

4/2012
S. 2(e).

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

4/2012
S. 2(e).

“spectrum licence” means a license granted under Part IV and “spectrum licensee” shall be construed accordingly;

4/2012
S. 2(e).

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

“telecommunications” means the transmission of intelligence by means of guided or unguided electro-magnetic, electrochemical or other forms of energy, including but not limited to intelligence—

(a) in the form of—

(i) speech, music or other sounds;

(ii) visual images, whether still or animated;

(iii) data or text;

(iv) any type of signals;

- (b) in any form other than those specified in paragraph (a);
- (c) in any combination of forms; and
- (d) transmitted between persons and persons, things and things or persons and things;

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

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

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

“transmission” means the despatch, conveyance, switching, routing or reception of intelligence by any means including, but not limited to rendering into packets, digitization and compression;

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

- (a) acts of God, action by or against the Queen’s enemies, riot or civil commotion;
- (b) strikes, lockouts and other industrial disturbances;
- (c) wars, blockades or insurrection;

- (d) earthquake, hurricane, flood, fire or explosions;
- (e) outbreak of pestilence or epidemics;
- (f) government rationing of electricity or other wartime or emergency controls imposed by government;
- (g) embargos or trade restrictions;

4/2012
S. 2(f).

“Universal Service Fund” or “Fund” means the fund established under section 38A;

“voice service” means—

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

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

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

Objects of
Act.

3. The objects of this Act are—

- (a) to promote and protect the interest of the public by—
 - (i) promoting fair and open competition in the provision of specified services and telecommunications equipment;
 - (ii) promoting access to specified services;
 - (iii) ensuring that services are provided to persons able to meet the financial and technical obligations in relation to those services;

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

PART II. *Administration*

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

Functions
of Office.

- (a) regulate specified services and facilities;
- (b) receive and process applications for a licence under this Act and make such recommendations to the Minister in relation to the application as the Office considers necessary or desirable;
- (c) make such recommendations to the Minister as the Office considers necessary or desirable as to whether a licence should be suspended for such period as the Office considers appropriate or should be revoked;
- (d) promote the interests of customers, while having due regard to the interests of carriers and service providers;

4/2012
S. 3(a)(i).

4/2012
S. 3(a)(ii).

- (e) carry out, on its own initiative or at the request of any person, investigations in relation to a licensee's conduct as will enable it to determine whether, and to what extent, the licensee is acting in contravention of this Act and in exercise of this function the Office may—
- (i) summon and examine witnesses;
 - (ii) summon the production by a licensee of equipment, records, documents or other information so maintained or stored, in whatever manner, as it considers necessary;
 - (iii) require that any equipment, record, document or other information so produced, be verified by affidavit;
 - (iv) enter and search, in the company of an authorized officer, the premises or other property of a licensee, and inspect, or seal or remove, such equipment, records, documents or other information referred to in sub-paragraph (ii); and
 - (v) conduct or make any other necessary enquiries;
- (f) make available to the public, information concerning matters relating to the telecommunications industry;
- (g) promote competition among carriers and service providers;
- (h) advise the Minister on such matters relating to the provision of telecommunications services as it thinks fit or as may be requested by the Minister;
- (i) determine whether a specified service is a voice service for the purposes of this Act;
- (j) carry out such other functions as may be prescribed by or pursuant to this Act.
- (2) In making a decision in the exercise of its functions under this Act the Office shall observe reasonable standards of

procedural fairness, act in a timely fashion and observe the rules of natural justice, and, without prejudice to the generality of the foregoing, the Office shall—

- (a) consult in good faith with persons who are or are likely to be affected by the decision;
- (b) give to such persons an opportunity to make submissions to and to be heard by the Office;
- (c) have regard to the evidence adduced at any such hearing and to the matters contained in any such submissions;
- (d) give reasons in writing for each decision;
- (e) give notice of each decision in the prescribed manner.

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

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

(4) The Office may, in the exercise of its functions, in writing— 4/2012
S. 3(b).

- (a) direct any licensee to maintain such records, documents or other information for such period as the Office may specify; and
- (b) require a licensee to furnish, to the Office, such

records, documents or other information in relation to that licensee's operations, within such reasonable time and for such reason, as the Office may specify.

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

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

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

(a) is of substantial competitive significance to the provision of specified services; and

(b) falls within the functions of the Fair Trading Commission under the Fair Competition Act,

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

Ministerial directions.

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

Obligation for secrecy.

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

4/2012
S. 4(a).

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

4/2012
S. 4(b).

- (3) Subsection (2) shall not apply where—
- (a) the confidential information is disclosed—
- (i) with the consent in writing of a licensee or an applicant for a licence;
 - (ii) on the written directions of the Minister to the police who require such disclosure for the purpose of the investigation of a criminal offence;
 - (iii) to the Minister, an agent of or consultant providing professional services to the Office or Authority, as the case may be, or the Fair Trading Commission; 4/2012
S. 4(c)(i).
 - (iv) subject to paragraph (b), to any person who is authorized by the Office or the Authority, as the case may be, to receive it; or 4/2012
S. 4(c)(i).
 - (v) to any person carrying out regulatory or other functions under this Act; 4/2012
S. 4(c)(i).
- (b) in the opinion of the Office or the Authority, as the case may be, or the Minister, disclosure is necessary in the public interest, so, however, that before such disclosure is made, the Office or the Authority, as the case may be, or the Minister shall give not less than fourteen days' notice of the proposed disclosure to the applicant or licensee or spectrum licensee, as the case may be, concerned who shall, upon receipt of that notice, be entitled to apply to a Judge in Chambers for an order prohibiting the disclosure on the ground that it would be harmful to the interest of applicant or licensee or spectrum licensee, as the case may be; 4/2012
S. 4(c)(ii).

4/2012
S. 4(c)(ii).

4/2012
S. 4(c)(ii).
- (c) subject to subsection (4), pursuant to a court order; or 4/2012
S. 4(c)(iii).
- (d) disclosure is required under any other enactment. 4/2012
S. 4(c)(iv).

(4) Where an application is made to a court for disclosure of confidential information, the party claiming confidentiality has a right to require that the information be first disclosed only to the Judge for the purpose of determining the extent of and necessity for the disclosure.

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

4/2012
S. 4(d).

(6) Subject to section 7A, in this section “confidential information” means any information classified by the Office or the Authority, as the case may be, as confidential, in accordance with the following procedure—

(a) any licensee or spectrum licensee or applicant for a license or spectrum license who submits information to the Office or the Authority, as the case may be (hereinafter called “the submitting party”) may, in so doing, claim that the information is confidential for any of the following reasons, namely that—

- (i) the information is a trade secret;
- (ii) the information is subject to a claim of legal professional privilege;
- (iii) the disclosure of the information would or could reasonably be expected to—

- (A) result in significant financial loss or gain to any person;
 - (B) prejudice significantly the competitive position of any person; or
 - (C) affect contractual or other liabilities of any person; or
- (iv) the information relates to the private affairs of an individual and publication of that information would or might seriously and prejudicially affect the interests of that individual;
- (b) where the submitting party makes a claim that any document or part thereof is confidential for the purposes of this section, and one of the reasons indicates that specific direct harm would be caused to the submitting party or will seriously and prejudicially affect the interests of an individual, details shall be provided as to the nature and extent of such harm or prejudice;
- (c) where the Office or the Authority is of the opinion that, based on all the material before it—
- (i) specific direct harm or prejudice would be likely to result and outweighs any public interest in disclosing the information, the Office or the Authority, as the case may be, shall classify the information as confidential;

TELECOMMUNICATIONS

- (ii) no specific direct harm or prejudice would be likely to result from disclosure, or where any such specific direct harm or prejudice is shown but is not sufficient to outweigh the public interest in disclosing the information, the Office or the Authority, as the case may be, shall not classify the information as confidential.

Information
not to be
regarded as
confidential.

7A. For the purposes of section 7, the following information is not required to be regarded and dealt with as secret and confidential namely—

- (a) information that will facilitate customers in their choice of facilities or specified services and the development of the telecommunications industry; and
- (b) information relating to—
 - (i) quality of service measurements;
 - (ii) prices charged to customers or to other licensees;
 - (iii) network coverage of licensees;
 - (iv) the market share of licensees;
 - (v) the volume of services of licensees however measured;
 - (vi) the subscriber base of licensees; and
 - (vii) the capacity and usage of international submarine cables.

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

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

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

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

PART III. *Licensing of Telecommunications Services*

9.—(1) A person shall not—

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

Licence
required for
provision of
specified
service.

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

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

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

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

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

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

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

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

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

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

Ministerial
directions
to Office *re*
licences, etc.

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

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

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

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

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

Application
for licence.

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

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

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

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

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

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

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

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

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

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

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

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

Application
fees.

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

Grant of
licence.

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

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

- (e) refuse to grant the licence and the Minister shall as soon as practicable give written reasons for such refusal.

(2) The Minister shall not grant a licence to an applicant unless—

- (a) the Minister has consulted the Office with regard to its recommendation in relation to the application and has obtained the support of the Office in relation thereto; and
- (b) the Minister is satisfied that the applicant satisfies the requirements specified in section 11 (1) (a) to (d).

(3) A licence granted under this section shall be in the prescribed form and, subject to subsection (5), shall be subject to the following conditions—

- (a) the licensee shall not operate a facility, provide specified services or use any frequencies designated in the licence beyond the period of the licence or in any manner other than that authorized by the licence;
- (b) the licence or any right granted thereby shall not be assigned or otherwise transferred except in accordance with this Part;
- (c) such other condition as may be considered necessary to ensure that the licensee complies with the requirements specified in section 11 (1) (a) to (d);
- (d) subject to subsection (4), such other condition as the Minister deems reasonably necessary to achieve the objects of this Act.

(4) Where a licence contains a condition such as is referred to in subsection (3) (d), the Minister shall inform the applicant in writing of the reasons for that condition.

(5) A licence granted under this Act may, on the expiry thereof, be renewed in accordance with section 15.

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

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

Suspension
or revoca-
tion of
licence.

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

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

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

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

(4) Where a licensee fails to comply with any requirement of a notice under subsection (1), the Office may recommend to the Minister that the licence—

- (a) be suspended for such period as the Office considers appropriate; or
- (b) be revoked.

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

4/2012
S. 6(a).

(6) Subject to subsection (7), the Office may recommend to the Minister that a licence be suspended or revoked, as the case may be, if, on its own initiative or on representations made by any other person, the Office is satisfied that the licensee has—

- (a) knowingly made any false statement in an application for a licence or in any statement made to the Office;
- (b) knowingly failed to provide information or evidence that may have resulted in a refusal to grant a licence; 4/2012
S. 6(b)(i).
- (c) failed to comply with the terms of its licence;
- (d) contravened any provision of this Act or any rules or regulations made hereunder;
- (e) contravened or failed to comply with a cease and desist order issued under section 63; 4/2012
S. 6(b)(iii).
- (f) provided services not authorized by its licence;
- (g) operated a facility without a carrier licence;
- (h) failed to make payments in a timely manner in connection with the universal service levy or in respect of the regulatory fee imposed pursuant to section 16.

(7) Before taking action under subsection (6), the Office shall carry out such investigations as may be necessary and afford the licensee concerned an opportunity to be heard. 4/2012
S. 6(c).

(8) For the purposes of this section, the Office may—

- (a) summon and examine witnesses;
- (b) call for and examine documents;
- (c) require that any document submitted be verified by affidavit;
- (d) adjourn any investigation from time to time.

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

Renewal of
licence.

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

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

Regulatory
fees.

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

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

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

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

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

17.—(1) In this Act—

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

Assignment
of licences
and transfer
of control of
licensees.

"pro forma transaction" means—

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

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

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

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

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

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

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

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

Customer
equipment.

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

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

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

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

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

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

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

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

(2) Subject to section 7 (Obligation for secrecy) the Office—

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

PART IV. *Spectrum Management*

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

(2) For the purposes of this section, the Minister shall—

- (a) allocate the spectrum for facilities and specified services within Jamaica;
- (b) determine methods for assignment of the spectrum;

4/2012
S. 7.

- (c) issue spectrum licences, authorizing the use of specified portions of the spectrum, on condition that the spectrum is to be used and operated;
- (i) in an efficient manner; and
 - (ii) in accordance with international best practices;

4/2012
S. 7.

- (d) institute procedures for ensuring the compliance by spectrum licensees with any obligation regarding the use and operation of the spectrum, imposed by or under the spectrum licence, any provisions of this Act or any regulations made hereunder.

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

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

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

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

Spectrum
Management
Authority.
4/2012
S. 8(a).

21.—(1) For the purposes of this Part, the Minister shall establish a body to be known as the Spectrum Management Authority.

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

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

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

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

Allocation of spectrum.

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

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

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

Licence for use of spectrum.
4/2012
S. 9.

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

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

(3) A person may, in the same application, apply for a carrier licence, a service provider licence and a spectrum licence and in such a case, a copy of the application shall be sent to the Minister and the Office.

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

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

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

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

Suspension
or revocation
of spectrum
licence.
4/2012
S. 10.

23A.—(1) Where the Authority has reason to believe that a spectrum licensee has contravened any term or condition of the spectrum licence or has failed to pay any amount required under section 23(7) or 26, the Authority shall give to that spectrum licensee notice in writing—

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

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

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

(4) Where a spectrum licensee fails to comply with any requirements of a notice under subsection (1), the Authority may recommend to the Minister that the spectrum licence—

- (a) be suspended for such period as the Authority considers appropriate; or
- (b) be revoked.

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

(6) Subject to subsection (8), the Authority may recommend to the Minister that a spectrum licence be suspended or revoked, as the case may be, if, on its own initiative or on representations made by any other person, the Authority is satisfied that the spectrum licensee has—

- (a) knowingly made any false statement in an application for a spectrum licence or in any statement made to the Authority;
- (b) knowingly failed to provide information or evidence that may have resulted in a refusal to grant a spectrum licence;
- (c) failed to comply with the terms and conditions of the spectrum licence;
- (d) contravened any provision of this Act or any rules or regulations made under this Act;
- (e) contravened or failed to comply with a cease and desist order under this Act;
- (f) provided services not authorized by its spectrum licence;
- (g) failed to pay in a timely manner any fee determined or imposed pursuant to section 23(7) or 26;
- (h) failed to utilize the spectrum efficiently or at all.

(7) Where a licensee holds both a licence (in this section called a “telecommunications licence”) and a spectrum licence, the Minister may, upon the recommendation of the Authority, revoke the spectrum licence in any case where it has been proposed that the telecommunications licence be assigned or where the control of the licensee’s operations are being transferred (whether directly or indirectly).

(8) Before taking action under subsection (6), the Authority shall carry out such investigations as may be necessary and afford the spectrum licensee concerned an opportunity to be heard.

(9) For the purposes of this section, the Authority may—

- (a) summon and examine witnesses;
- (b) summon the production by the spectrum licensee concerned of equipment, records, documents or other information maintained or stored by the spectrum licensee in whatever manner;
- (c) require that any equipment, record, document or information submitted be verified by affidavit;
- (d) enter and search, in the company of an authorized officer, the premises or other property of a spectrum licensee and inspect, or seal or remove such equipment, records, documents or other information for the purpose of carrying out its investigations.

(10) If a person fails or refuses without reasonable cause, to furnish any equipment, record, document or other information to the Authority when required to do so or obstructs the Authority in the exercise of its functions under this section, the Authority may apply to the Court for an order to compel the person to comply with the requirements of the Authority.

Saving *re*
existing
users.

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

Use of
spectrum.

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

Spectrum
regulatory
fee.

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

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

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

PART V. *Interconnection*

27. In this Part—

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

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

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

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

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

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

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

Interpreta-
tion.

4/2012
S. 11(a).

4/2012
S. 11(b).

4/2012
S. 11(c).

4/2012
S. 11(d).

4/2012
S. 11(e).

4/2012
S. 11(f).

Determina-
tion of
dominance.
4/2012
S. 12(a).

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

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

4/2012
S. 12(b).

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

Obligation to
grant inter-
connection.
4/2012
S. 13(a)(i)(ii).

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

4/2012
S. 13(b)(i).

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

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

4/2012
S. 13(b)(ii).

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

4/2012
S. 13(c).

(4) The Office may—

- (a) on its own initiative, in assessing an interconnection agreement, make a determination of the terms and conditions, including charges; or
- (b) resolve post-contract disputes; and in resolving such disputes brought by a licensee before the Office for resolution—
 - (i) make such determination as it thinks fit; and
 - (ii) the provisions of subsections (2) and (3) of section 34 apply, with such modifications as are appropriate, as they apply to pre-contract disputes.

(5) When making a determination of an operator's interconnection charges, the Office shall have regard to— 4/2012
S. 13(c).

- (a) the principles of cost orientation or reciprocity;
- (b) local or international benchmarks; or
- (c) any other approach that is relevant to the determination of interconnection charges.

(6) Any determination of the Office made pursuant to subsection (4) shall be binding on the operator. 4/2012
S. 13(c).

(7) For the purposes of subsections (4) and (5)— 4/2012
S. 13(c).

“post-contract dispute” means a dispute between the parties to an interconnection agreement arising out of that agreement; and

“reciprocity” means basing a carrier's interconnection charges on the interconnection charges of another carrier;

29A.—(1) Subject to subsection (3) the Office may—

- (a) impose an infrastructure sharing obligation on a licensee, where the Office considers it to be justified having regard to any of the following considerations—

Infrastructure
sharing.
4/2012
S. 14.

- (i) matters relating to public health or to the environment or town planning or other development considerations;
 - (ii) economic inefficiencies; or,
 - (iii) physical or technical impracticability;
- (b) determine the terms and conditions of any infrastructure sharing obligation imposed pursuant to paragraph (a); and
 - (c) hear and determine complaints made by licensees and disputes in respect of charges and other terms and conditions of the infrastructure sharing arrangement.

(2) All infrastructure sharing arrangements made by the Office shall include the making of rules, after consultation with the Minister, for the apportionment of the costs of sharing infrastructure; and the rules shall be made in accordance with the principles set out in section 33.

(3) In determining whether to impose an infrastructure sharing obligation on a licensee, or in determining the terms and conditions of an infrastructure sharing obligation imposed under subsection (1), the Office shall consult with licensees, the relevant environmental and planning authorities and the Authority.

(4) In this section—

“infrastructure sharing” means the provision to licensees of access to tangibles used in connection with a public network or intangibles facilitating the utilization of a public network;

“intangibles” includes agreements, arrangements, leases, licenses, franchises, rights-of-way, easements and other similar interests;

“tangibles” includes—

- (a) lines, cables and wires;
- (b) equipment and apparatus;
- (c) towers, risers and masts;

- (d) conduits, tunnels and ducts;
- (e) manholes and other holes and pits;
- (f) poles and antennae;
- (g) huts and landing stations; and
- (h) land, building and other real property.

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

Inter-connection
by dominant
carrier.
4/2012
S. 15(a)(i).

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

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

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

Determin-
ation of
term or
condition.

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

Filing of
offer by
dominant
and other
carriers.

4/2012

S. 16(a)(i)(ii).

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

4/2012

S. 16(b)(i)(ii).

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

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

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

4/2012

S. 16(c).

(3) A reference interconnection offer shall contain such particulars as may be specified by the Office and shall remain in force for a period not exceeding five years or such shorter period as the Office considers necessary having regard to technological and market developments.

4/2012

S. 16(d).

(4) A reference interconnection offer or any part thereof shall take effect upon approval by the Office and all existing interconnection agreements executed by the filing carrier shall

be amended in accordance with the approved reference interconnection offer and until actually amended are deemed to be so amended.

33.—(1) Where the Office is required to determine the charges for the provision of interconnection by a dominant carrier, it shall, in making that determination, be guided by the following principles—

Principles to
guide deter-
mination of
prices.
4/2012
S. 17(a)(i).

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

4/2012
S. 17(a)(ii).

4/2012
S. 17(a)(iv).

4/2012
S. 17(b).

(2) Where the Office has been unable to obtain cost information that it is reasonably satisfied is relevant and reliable it may take into account local and international benchmarks, reciprocity and any other approach that in the opinion of the Office is relevant.

4/2012
S. 17(c).

(3) In this section—

- (a) “access deficit” means the amount by which a carrier’s revenue from connection and line rental charges falls short of the cost of providing access lines due to regulatory constraints on those charges;
- (b) “avoidable costs” means the difference between—
 - (i) the identified total long run costs of a carrier providing its full range of telecommunications services; and
 - (ii) the identified total long run costs of the carrier providing its full range of telecommunications services, except for the wholesale termination service supplied to any third party (which costs exclude non-traffic-related costs).

Pre-contract
disputes.

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

4/2012
S. 18(a).

(2) The Office may, after consultation with the Minister, make rules applicable to the arbitration of pre-contract disputes.

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

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

(c) the principles specified in sections 29 (2) and 30 (1).

(4) Where neither party to the dispute is a dominant public telecommunications carrier, the Office may decline to act as an arbitrator in relation to the dispute. 4/2012
S. 18(b).

35.—(1) The Office may, after consultation with Fair Trading Commission and such participants in the telecommunications industry as it thinks fit and after consultation with the Minister, make rules (hereinafter referred to as “competitive safeguard rules”) prescribing the following matters in relation to dominant public telecommunications carrier— Competitive
safeguards.
4/2012
S. 19(a)(i).
4/2012
S. 19(a)(ii).

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

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

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

(3) [*Deleted by Act 4/2012 S. 19(b).*]

36.—(1) The Office may make rules imposing on a dominant public telecommunications carrier, the responsibility to offer a particular form of indirect access to its network to other interconnection providers, if the Office is satisfied on reasonable grounds that such rules are necessary in the interest of customers and that— Indirect
access.
4/2012
S. 20(a)(ii).

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

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

4/2012
S. 20(b).

(2) In this section—

“calling platform” means an automated gateway which authenticates the caller for access, such as by way of an access code, credit card number, prearranged billing based on the calling number;

“indirect access”—

(a) means the method whereby customers of a particular carrier are able to access specified services provided by another carrier through the telecommunications network and the telecommunications services of the first mentioned carrier with whom the customer is directly connected; but

(b) does not include two stage dialing, this being the method by which the customer of one licensee is able to dial a ITU-TE164 number to reach a calling platform which facilitates the customer’s access to the specified services of other licensees.

Number
portability.
4/2012
S. 21.

37.—(1) The Minister may after consultation with the Office make rules imposing on any public telecommunications carrier the responsibility to offer number portability.

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

Office may
set interim
rates and
charges for
wholesale
and retail
services.
4/2012
S. 22.

37A.—(1) Subject to subsection (2), the Office may set interim interconnection charges and an interim price cap for retail rates for telecommunication services.

(2) Interim interconnection charges and interim price caps for retail rates set pursuant to subsection (1) shall—

- (a) be applicable for a defined period, being a period not exceeding twelve months;
- (b) be established, pending the completion of the process to determine interconnection charges or to make price cap rules, as the case may be, in accordance with sections 4(2), 33 and 46.

(3) When setting an interim interconnection charge or an interim price cap for retail rates, the Office shall have regard to reciprocity, local or international benchmarks or such other relevant data or information as may be available to the Office, from time to time.

(4) In the event that the Office is unable to determine interconnection charges or make price cap rules for retail rates before the expiration of the defined period, the Minister may extend the application of the interim interconnection charges or interim price caps for retail rates for a further period, being a period not exceeding six months.

(5) If after the further period, the interconnection charges or price cap rules for retail rates are still not determined by the Office, the mid-point between the interconnection charges or retail rates that were applicable before and after the setting of the interim interconnection charges or interim price cap rules for retail rates shall apply until such determination is made by the Office, but shall not have retroactive effect.

(6) The power of the Office to set interim interconnection charges or interim price cap for retail rates under this section shall not be subject to the provisions of section 4(2), 33, 46, 60 or 62.

PART VI. *Universal Service*

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

- (a) connection to the public network shall be reasonably provided to all customers upon request, to the extent

Principles governing provision of universal service.
4/2012
S. 23(a)(b)(i).

that such connection is technically feasible and economically reasonable;

- (b) any obligation imposed by this Act with regard to the provision of universal service shall be fulfilled as efficiently, economically and practically as possible;
- (c) a licensee who is required by this Act to provide universal service shall be entitled to compensation in relation to the net costs incurred in meeting that requirement;
- (d) there shall be a universal service levy that shall be imposed, by the Minister, on licensees, in support of universal service; and
- (e) licensees shall pay the universal service levy in the prescribed manner.

4/2012
S. 23(b)(iii).

4/2012
S. 23(c).

(2) The Minister may, after consultation with the Office, make regulations, subject to affirmative resolution, in relation to the computation of the universal service levy.

Universal
Service
Fund.
4/2012
S. 24(2).

38A.—(1) There is hereby established for the purposes of this Act, a body to be known as the Universal Service Fund which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

Third
Schedule.

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

Objectives of
Fund.
4/2012
S. 24(2).

38B. The objectives of the Fund shall be to support the implementation of the obligation to provide universal service, as approved by the Minister, in accordance with the principles set out in section 39(2) and the use specified in section 42A.

Establish-
ment of
Board of
Management
of Fund.
4/2012
S. 24(2).

38C.—(1) There shall be established for the purposes of this Act, a Board of Management of the Fund which shall, subject to the provisions of this Act, be responsible for—

- (a) the general management of the resources of the Fund within the guidelines established by the Minister;
- (b) the policy and general administration of the affairs of the Fund;

- (c) recommending to the Minister such projects and programmes to be financed from the Fund, the purposes of which fall within sections 39(2) and 42A;
- (d) investing the moneys of the Fund;
- (e) monitoring the implementation of projects financed by the Fund;
- (f) doing or causing to be done such other things as are necessary or expedient for or in connection with the proper performance of the functions of the Fund.

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

Third
Schedule.

38D.—(1) The funds and resources of the Fund shall consist of—

Funds,
resources and
expenses of
Fund.
4/2012
S. 24(2).

- (a) the universal service levy imposed on licensees pursuant to this Act;
- (b) all amounts which accrue from interest, realized gains on investments, loan repayments and other accretions to the Fund; and
- (c) any other sum lawfully paid into, or credited to, the Fund.

(2) All moneys of the Fund not immediately required to be expended in meeting any of its obligations or discharging any of its functions may with due regard to the level of inflows, be invested in such interest bearing securities in Jamaican currency and foreign currency as may be approved either generally or specifically by the Minister responsible for finance, who shall (as regards any proposed investment in foreign securities or foreign currency instruments) act after consultation with the Bank of Jamaica.

(3) The expenses of the Fund shall be managed so as to maximize operational efficiency, and shall be paid out of the Fund.

Accounts.
4/2012
S. 24(2).

38E.—(1) The Fund shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister and conforming to established accounting principles.

(2) The accounts of the Fund shall be audited annually by an auditor appointed by the Board of Management of the Fund.

(3) The Auditor-General shall be entitled at all times to examine the accounts of the Fund.

Reports on
Fund.
4/2012
S. 24(2).

38F.—(1) The Fund shall, within four months after the end of each financial year, cause to be made and shall transmit to the Minister a report dealing generally with the activities of the Fund during the preceding financial year.

(2) The Minister shall cause a copy of the report, together with the annual statement of accounts and the auditor's report, together with the annual statement of accounts and the auditor's report thereon to be laid in the House of Representatives and the Senate.

Returns, etc.
4/2012
S. 24(2).

38G. The Fund shall furnish the Minister with such returns, accounts and other information as he may require with respect to the Fund, and shall afford to the Minister the facilities for verifying such information in such manner and at such times as he may reasonably require.

Obligation
to provide
universal
service.

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

(a) by an agreement between the Minister and a licensee; or

(b) on the recommendation of the Office, in accordance with section 42.

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

(a) to the extent technically feasible and economically reasonable, to promote access to single line voice telephone services throughout the Island to persons regardless of place of residence or work;

4/2012
S. 25(a).

- (b) to ensure that payphone services are reasonably accessible to customers on an equitable basis;
- (c) to permit access to free calls to emergency services; and
- (d) to the extent technically feasible, and insofar as the necessary resources are available, to—
- 4/2012
S. 25(b).
- (i) promote Internet access in educational institutions, public libraries and post offices throughout Jamaica;
 - (ii) pursue strategies to increase access to high capacity networks and the dissemination of information and communications technology services in un-served and under-served areas of Jamaica;
 - (iii) support information and communications technology programmes that specifically target vulnerable groups, including low-income households, the elderly, the youth and disabled persons;
 - (iv) provide access points and multi-function telecentres;
 - (v) fund connectivity services and support the provision of infrastructure to educational institutions, public libraries and post offices throughout Jamaica to facilitate the use of information and communications technology;
 - (vi) provide Internet access devices and applications for the training of students in the use of the Internet and other information and communications technology services to support Government's plan of creating an information and knowledge-based society; and

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

(4) Where the universal service obligation is determined otherwise than pursuant to subsection (1)(a), the Office shall, on the request of the Minister and subject to subsection (5), make recommendations as to the nature of the obligation to be imposed on the provider of such service.

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

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

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

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

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

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

4/2012
S. 25(c).

Designation
of universal
service
provider.

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

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

- (a) consult with members of the public; and
- (b) issue a written determination that the public interest requires the taking of such action.

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

Obligation of universal service provider.

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

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

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

Modification of universal service obligation.

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

- (a) the estimated net cost of fulfilling the universal service obligation in each subsequent year, not exceeding five per cent of the projected eligible revenues derived by licensees from provision of the relevant services for each year over a period of three years; and

4/2012
S. 26(a).

- (b) the need to ensure that the universal service levy does not impose an unfair or unreasonable burden on the universal service provider, persons who are required to contribute to the universal service levy or customers of specified services.

(3) [*Deleted by Act 4/2012 S. 26(b).*]

Use of
universal
service levy.
4/2012
S. 27.

42A.—(1) The universal service levy shall be utilized to fund the obligation to provide universal service as determined pursuant to section 39(2) and the following, namely—

- (a) the provision of loans or grants for information and communications technology projects operated by local non-profit organizations and loans, grants or equity investment for information and communications technology projects operated by local micro, small and medium-sized businesses (excluding domestic network operators) for the purpose of stimulating the expansion of information and communications technology access;
- (b) the facilitation of lifelong learning and a knowledge-based society, by providing universal access to information;
- (c) the development of local content;
- (d) the promotion of information, and the enhanced development of local content; and
- (e) the promotion of information and communications technology literacy through literacy programmes and the Government's delivery of e-services.

(2) In this Part “domestic network operator” means a domestic carrier that owns or operates a public network.

PART VII. *Consumer Protection*

Interpreta-
tion.

43. In this part—

“consumer” means a person to whom facilities or specified services are provided or are intended to be provided in the course of a business carried on by a carrier or service provider;

4/2012
S. 28.

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

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

Quality of service.
4/2012
S. 29(a)(i)(ii).

(a) reliable;

(b) provided with due care and skill; and

(c) rendered in accordance with the standards reasonably expected of a competent provider of facilities or specified services.

4/2012
S. 29(a)(ii).

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

4/2012
S. 29(b).

(3) The Office may—

4/2012
S. 29(c).

(a) after consultation with the Minister, make rules prescribing quality standards for the provision of facilities or specified services in relation to all licensees, and relating to the administration and resolution of customer complaints; and

(b) direct the licensees to conduct all required associated measurements and to report to the Office thereon in such manner and at such intervals as the Office may determine.

(4) Rules made under subsection (3) regarding customer complaints shall be applicable to, and shall be observed by, all licensees.

4/2012
S. 29(c).

4/2012
S. 29(c).

(5) The Office may—

- (a) examine customer contracts in respect of facilities or specified services; and
- (b) direct the modification of any term of such a contract which appears to the Office to be unreasonable or unfair.

Restriction
on power of
licensee to
refuse to
provide
facilities and
services.
4/2012
S. 30.

45. A licensee may—

- (a) refuse to provide facilities or specified services to consumers; or
- (b) discontinue or interrupt the provision of such facilities or specified services to a customer pursuant to an agreement with that customer,

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

Price cap
restrictions.

46.—(1) In this Part—

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

“prescribed services” means services to which prescribed price caps apply;

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

4/2012
S. 31.

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

Privacy of
customer
information

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

(2) A carrier or service provider—

17/2006
S. 6.

(a) shall disclose the information referred to in subsection (1) to—

- (i) the Commissioner of Police;
- (ii) the officer of the Jamaica Constabulary Force in charge of—

(A) internal security; or

(B) the National Firearm and Drug Intelligence Centre or any organization replacing the same; or

- (iii) the Chief of Staff, or head of the Military Intelligence Unit of the Jamaica Defence Force, upon being requested to do so by the person referred to in sub-paragraph (i), (ii) or (iii), as the case may require, for the purposes of investigating or prosecuting a criminal offence;

(b) may disclose such information—

- (i) to the Office or pursuant to the provisions of any law for the time being in force which requires such disclosure for the purpose of the investigation or prosecution of a criminal offence;
- (ii) with the written consent of the customer; or
- (iii) where the disclosure is necessary in defence of the carrier or service provider in any proceedings brought against the carrier or service provider.

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

Obligations
re public
telecom-
munication
services.
4/2012
S. 32.

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

(a) each customer of that service can reasonably and reliably reach—

(i) emergency services by dialing the numbers specified for use in connection with such service; and

(ii) subject to subsection (2), a directory assistance service;

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

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

Improper use
of service or
facility.

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

PART VIII. *International Services*

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

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

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

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

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

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

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

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

Access to
crown lands.

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

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

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

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

Access to
land or
facilities of
other carrier.

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

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

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

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

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

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

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

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

Enforcement
of access.

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

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

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

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

Powers of
Minister.

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

PART X. *Certification Standards*

Certification
standards.

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

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

PART XI. *Telecommunications Advisory Council*

Establishment
of Council.

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

First Schedule.

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

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

Functions of Council.

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

PART XII. Review of Administrative Decisions

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

Reconsideration by Minister, Office or Authority.
4/2012
S. 34(a).

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

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

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

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

4/2012
S. 34(b).
4/2012
S. 34(b).

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

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

4/2012
S. 34(b).

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

4/2012
S. 34(b).

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

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

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

4/2012
S. 34(b).

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

4/2012
S. 34(b).

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

Establish-
ment of
Tribunal.
Second
Schedule.

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

Appeal to
Tribunal.
4/2012
S. 35(a).

62.—(1) A person who is aggrieved by a decision of the Office or Authority, as the case may be, may appeal against the decision to the Appeal Tribunal—

- (a) if the person is a party, within twenty-one days after receipt of the decision; or
- (b) in any other case, within thirty days from the date of notification of that decision.

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

- (a) confirm, modify or reverse the decision of the Office or Authority, as the case may be, or any part thereof; or

4/2012
S. 35(a).

- (b) by a direction in writing, refer the decision back to the Office or Authority, as the case may be, for reconsideration by it, either generally or in relation to any matter specified in the direction, 4/2012
S. 35(a).

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

(3) Except where the Office or the Authority, as the case may be, considers the circumstances of any appeal to be exceptional so as to justify its staying the decision to which the appeal relates, it is hereby declared that, until the determination of the appeal, the decision of the Office or the Authority, as the case may be, to which an appeal relates shall not be affected by the appeal proceedings. 4/2012
S. 35(b).

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

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

(5) Where the Appeal Tribunal dismisses an appeal, it shall in writing inform the appellant and the Office or Authority, as the case may be, stating the reasons therefor. 4/2012
S. 35(c).

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

PART XIII. *Enforcement*

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

- (a) provides false or misleading information to the Office;
- (b) fails to furnish any equipment, record, document or other information requested by the Office; or

Power of
the Office to
issue cease
and desist
order.
4/2012
S. 36(a)(c).

- (c) destroys or alters or causes to be destroyed or altered, any equipment, record, document or other information required to be so furnished.

4/2012
S. 36(c).

(2) A person commits an offence if he engages in any of the following conduct—

- (a) operates or knowingly facilitates any bypass operation in contravention of this Act or regulations made under this Act;
- (b) owns or operates an unlicensed facility;
- (c) provides any specified services to the public without a licence issued under this Act;
- (d) undertakes or embarks upon any course of action which could reasonably be expected to result in the disruption or interruption of the telecommunications industry; or
- (e) breaches any order of the Office issued pursuant to subsection (3).

4/2012
S. 35(c).

(3) The Office may, on its own initiative or on the application of any person, where it is satisfied that there are reasonable grounds for believing that any conduct specified in paragraphs (a) to (d) of subsection (2) or paragraph (a) of section 65 is being carried out by any person—

- (a) issue to the person concerned—
 - (i) a cease and desist order in accordance with section 64;
 - (ii) an order requiring a licensee to pay compensation to any person affected by any action of the licensee in contravention of this Act or any regulations made under this Act or any licence, determination, memorandum, order or directive of the Office;
 - (iii) an order requiring the licensee to take such steps as are necessary to remedy the effects of any harm caused by the conduct of the

licensee in contravention of this Act, any regulations made under this Act or any licence, determination, memorandum, order or directive of the Office;

(iv) an order to terminate, modify or nullify agreements, activities or decisions of the licensee which are found to be in contravention of this Act or, any regulation made under this Act or any licence, determination, memorandum, order or directive of the Office;

(b) apply to the court for an injunction against a licensee, whose actions, in the opinion of the Office, could cause severe disruption to the operations of another licensee or could cause irreparable damage.

(4) In a case where the Court issues an interim injunction in response to an application under subsection (3)(b), the Court shall not require a financial undertaking by the Office. 4/2012
S. 36(c).

(5) A person who commits an offence under subsection (1) or (2) shall be liable— 4/2012
S. 36(c).

(a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; or

(b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

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

4/2012
S. 36(d).

(a) state the facts constituting the alleged conduct and where appropriate, the name of the person against whom the allegation is made; and

(b) be accompanied by documents, if any, in support of the allegation.

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

- (a) containing a statement of the facts referred to in subsection (6)(a); and
- (b) specifying the period within which and a place at which a hearing will be held to afford to the person concerned an opportunity to show cause why the order should not be made.

4/2012
S. 36(e).

(8) Where at a hearing referred to in subsection

(7)(b)—

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

4/2012
S. 36(f).

63A.—(1) A person commits an offence if he engages in any of the following conduct—

- (a) provides false or misleading information to the Authority or to the Minister whether in support of an application under or any other matter in relation to this Act;
- (b) engages in the use of the spectrum without first obtaining a spectrum licence;
- (c) fails to furnish any equipment, record, document or other information requested by the Authority pursuant to this Act;
- (d) destroys or alters or causes to be destroyed or altered, any equipment, record, document or other information required to be so furnished;
- (e) being a spectrum licensee, utilizes frequencies other than those for which authorization was granted by the Authority or the Minister;

Power of
Authority to
issue cease
and desist
order.
4/2012
S. 37.

- (f) fails to comply with a request or directive issued by the Authority or Minister in the manner and within the time frame stipulated;
- (g) being a spectrum licensee, fails to pay spectrum licence fees and regulatory fees prior to the commencement of the relevant licensing period and in accordance with the terms and conditions of the spectrum licence;
- (h) breaches orders, directives, determinations or memoranda issued by the Authority;
- (i) behaves in a manner which contravenes the provisions of—
 - (i) this Act or any regulations made under the Act;
 - (ii) any spectrum licence; or
 - (iii) orders, directives, determinations or memoranda of the Authority;
- (j) breaches any order of the Authority issued pursuant to subsection (2);
- (k) obstructs, hinders or prevents any authorized officer from entering premises for the purposes of carrying out an investigation under this Act;
- (l) wilfully uses any apparatus for the purpose of causing harmful interference.

(2) The Authority may, on its own initiative or on the application of any person, where it is satisfied that there are reasonable grounds for believing that any conduct specified in paragraphs (a) to (l) of subsection (1) is being carried out by any person—

- (a) issue to the person concerned—
 - (i) a cease and desist order in accordance with section 64;
 - (ii) an order requiring the spectrum licensee to

take such steps as are necessary to remedy the effects of any harm caused by the conduct of the spectrum licensee in contravention of this Act, or regulations made under this Act, or any licence, determination, memorandum, order or directive of the Authority;

(iii) an order to terminate, modify or nullify agreements, activities or decisions of the spectrum licensee which are found to be in contravention of this Act or regulations made under this Act or any spectrum licence, determination, memorandum, order or directive of the Authority;

(b) apply to the court for an interim injunction against a spectrum licensee, whose actions, in the opinion of the Authority, could cause severe disruption to the operations of another spectrum licensee or could cause irreparable damage.

(3) In a case where a court issues an interim injunction in response to an application under subsection (2)(b), the court shall not require a financial undertaking by the Authority.

(4) An order under subsection (2) shall—

(a) state the facts constituting the alleged conduct and where appropriate, the name of the person against whom the allegation is made; and

(b) be accompanied by documents, if any, in support of the allegation.

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

(a) containing a statement of the facts referred to in subsection (4)(a); and

(b) specifying the period within which and a place at which a hearing will be held to afford to the person concerned an opportunity to show cause why the order should not be made.

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

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

(7) A person who commits an offence under subsection (1) shall be liable on summary conviction in a Resident Magistrate's Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

63B.—(1) This section applies to an offence against this Act and regulations made under this Act being a prescribed offence.

Fixed
penalty
offences.
4/2012
S. 37.

(2) Where the Office or Authority, as the case may be, believes that a person has committed an offence in relation to its area of regulation and to which this section applies, the Office or Authority may give that person the prescribed notice in writing offering the opportunity of the discharge of liability to conviction for that offence by payment to the Office or Authority, as the case may be, in the manner specified in the notice, of the prescribed pecuniary penalty applicable.

(3) A person shall not be liable to be convicted of any offence referred to in subsection (2) if the pecuniary penalty is paid in accordance with this section and any requirement in respect of which the offence was committed is complied with before the expiration of the period specified in the notice referred to in subsection (2) and shall be a date not less than twenty-one days following the issue of the notice.

(4) Where any person pays the pecuniary penalty in accordance with subsection (3) and complies with any other requirement specified in the notice, the Office or Authority, as

the case may be, shall accept that amount as complete satisfaction of any liability to conviction.

(5) Payment of a pecuniary penalty under this section shall be made to the Office or Authority, as the case may be, which shall cause it to be paid into the Consolidated Fund.

(6) In any proceedings for an offence to which this section applies, a certificate that payment of the pecuniary penalty was or was not made to the Office or Authority, as the case may be, by the date specified in the certificate shall, if the certificate purports to be signed by the Office or, as the case may be, the Authority, be sufficient evidence of the facts stated, unless the contrary is proved.

(7) A notice under subsection (2) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (c) state the period during which, by virtue of subsection(3), proceedings will not be taken for the offence, the amount of the pecuniary penalty, and the address at which the pecuniary penalty may be paid.

(8) In any proceedings for an offence to which subsection (2) applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a penalty thereunder unless, in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice or, as the case may be, to such a payment or non-payment.

(9) The Minister may make regulations providing for any matter incidental to the operation of this section, and in particular—

- (a) prescribing the offences to which this section applies;
- (b) prescribing the form of notice under subsection (2), and the place at which a pecuniary penalty is payable; and

- (c) prescribing the duties of the Office and Authority and the information, with regard to any payment made pursuant to a notice under this section, to be supplied to the Office or Authority, as the case may require.

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

Contents of
cease and
desist order.

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

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

65. The Court may exercise any of the powers specified in section 66, if the Court is satisfied—

Application
for enforce-
ment.
4/2012
S. 38.

- (a) on an application by the Office, that a licensee has engaged in any of the following conduct—
- (i) breaches any order, directive, determination or memorandum of the Office;
- (ii) behaves in a manner which is inconsistent with or contravenes provisions of—
- (A) this Act or any regulations made under this Act or the Office of Utilities Regulations Act or any regulations made thereunder;
- (B) any licence; or
- (C) any order, directive, determination or memorandum of the Office;
- (iii) breaches any quality of service standards established or approved by the Office; or
- (iv) undertakes or embarks upon any course of action which could reasonably be expected to result in the disruption or interruption of the telecommunications industry.

(b) on an application by the Authority that a spectrum licensee—

(i) has engaged in any of the conduct specified in section 63A(1); and

(ii) has contravened any provision of this Act or any regulations made under this Act.

Powers of Court.

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

4/2012
S. 39(a).

(a) order the offending licensee to pay to the Crown a pecuniary penalty not exceeding two hundred million dollars or the offending spectrum licensee to pay to the Crown a pecuniary penalty not exceeding three million dollars; and

(b) grant an injunction restraining the offending licensee or spectrum licensee from engaging in conduct described in of section 65; or

(c) make such other order as the Court thinks fit,

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

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

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

Civil liability.

67. Every person who engages in conduct which constitutes—

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

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

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

PART XIV. *Offences*

68. In this Part—

Interpreta-
tion.

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

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

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

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

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

Offence *re*
trespass,
interference,
etc.

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

TELECOMMUNICATIONS

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

in order to obtain unauthorized use of specified services.

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

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

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

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

Seizure and
forfeiture
of equip-
ment.

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

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

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

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

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

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

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

(7) If, on the application of a person prejudiced by an order made under subsection (2), the Court is satisfied that it is just in the circumstances of the case to revoke the order, the Court may revoke it upon such terms and conditions, if any, as it deems appropriate, and without prejudice to the generality of the foregoing, may require that person, to pay in respect of the maintenance, administrative expenses and security of the equipment, such amount as may be charged by the person in whose custody the equipment was kept.

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

PART XV. *General*

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

Office may
make rules.
4/2012
S. 40(a).

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

4/2012
S. 40(b).

71A.—(1) Notwithstanding the powers of the Office under this Act, the Office may forbear from enforcing any provision of this Act or of any regulations made under this Act if the Office determines that—

Office may
forbear
enforce-
ment.
4/2012
S. 41.

(a) enforcement of the provision or regulations is not necessary to ensure the achievement of the objects of this Act;

(b) enforcement of the provision or regulations is not necessary for the protection of consumers;

PART XV. *General*

(c) forbearance from applying the provision or regulations will not impede the administration of this Act; or

(d) forbearance from enforcing the provision or regulations is consistent with the public interest.

Regulations.

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

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

4/2012
S. 42.

Power of
minister to
amend
monetary
penalties.
4/2012
S. 43.

72A. The Minister may, by order subject to affirmative resolution, amend the monetary penalties imposed by this Act.

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

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

PART XV. *General*

Office may
make rules.

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

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

Regulations.

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

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

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

Agreements
not affected
by Fair
Competition
Act.

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

FIRST SCHEDULE

(Section 58)

The Jamaica Telecommunications Advisory Council

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

Constitution
of Council.

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

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

Tenure of
office.

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

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

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

Conduct of
survey by
Council.

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

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

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

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

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

Remunera-
tion of
members.

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

Protection
from
suit, etc.

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

Office of
member not
public office.

SECOND SCHEDULE

(Section 61)

Constitution and Procedure of Appeal Tribunal

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

Constitution
of Tribunal.

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

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

THIRD SCHEDULE (Sections 38A and 38C) 4/2012
S. 44.

The Universal Service Fund

1.—(1) The seal of the Fund shall be kept in the custody of the chairman or of any officer of the Fund authorized by the Board in that behalf, and shall be affixed to instruments pursuant to a motion of the Board in the presence of the chairman or any other member duly authorized to act in that behalf, and the secretary. Seal and execution of documents.

(2) The seal of the Fund shall be authenticated by the signature of the secretary or any other member of the Board duly authorized to act in that behalf.

2.—(1) Subject to sub-paragraph (2), the Fund shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit a chief executive officer and such other officers and employees as it thinks necessary for the proper carrying out of the provisions of this Act. Appointment and employment of officers.

(2) The Fund shall act in accordance with such guidelines in relation to emoluments payable to the staff of public bodies, as are issued from time to time by the Minister responsible for the public service.

3. All documents, other than those required by law to be under seal, documents made by, and all decisions of, the Fund may be signified under the hand of the chairman or any member of the Board authorized to act in that behalf or an officer of the Fund so authorized. Documents to be signified.

The Board of Management of the Fund

4. The Board shall consist of such number of members being not less than nine nor more than thirteen as the Minister may, from time to time, appoint including— Constitution of the Board.

(a) the following persons who shall be *ex-officio* members:

(i) the Financial Secretary or his nominee;

(ii) the Director General of the Planning Institute of Jamaica or his nominee;

(iii) the Chief Executive Officer of the Fund;

(b) such other persons who appear to the Minister to have ability and experience in matters relating to the activities of the Fund (hereinafter referred to as “selected members”).

5.—(1) The Minister shall appoint—

Chairman and deputy chairman.

(a) one of the members to be chairman of the Board; and

THIRD SCHEDULE, *cont'd.*

(b) a deputy chairman from among the other members.

(2) In the case of the absence or inability to act of the chairman, the deputy chairman shall exercise the functions of the chairman.

(3) In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman, the remaining members shall elect one of their number to act as chairman of that meeting.

Term of office.

6. Subject to the provisions of this Schedule, a selected member of the Board shall hold office for a period not exceeding three years and each such member shall be eligible for reappointment.

Acting appointments.

7. The Minister may appoint any person to act in the place of any member of the Board in the case of the absence or inability to act of such member.

Resignation.

8. A selected member of the Board may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

Revocation of appointments.

9. The Minister may at any time revoke the appointment of a selected member if he considers it expedient so to do.

Gazetting of appointments.

10. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*.

Leave of absence.

11.—(1) The Minister may, on the application of any selected member of the Board, grant leave of absence to such member.

(2) The appointment of a selected member shall be regarded as terminated if, without the grant of leave of absence, that member is absent from three consecutive meetings of the Board.

Procedure and meeting.

12.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business (but at least six meetings shall be held within each financial year) and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The chairman may at any time call a special meeting of the Board to be held within seven days of a written request for the purpose addressed to him by any two members of the Board.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the deputy chairman or the person elected to act as chairman in accordance with paragraph 5(3) shall preside at the meetings of the Board, and when so presiding the chairman, deputy chairman or the person elected to act as chairman, as the case may be, shall have an original and a casting vote.

THIRD SCHEDULE, *contd.*

(4) The quorum of the Board shall be the number rounded up that approximates to one-half the number of the membership.

(5) The decisions of the Board shall be by a majority of votes and, in addition to an original vote, the chairman or other member presiding at the meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes in proper form of each meeting of the Board shall be kept.

(7) Subject to the provisions of this Schedule the Board may regulate its own proceedings.

13. A member of the Board who is directly or indirectly interested in any matter which is being dealt with by the Board shall—

Disclosure of interest.

(a) disclose the nature of his interest at a meeting of the Board; and

(b) not take part in any deliberation or decision of the Board with respect to that matter.

14.—(1) The Board may appoint such committees as it thinks fit, consisting wholly or partly of members of the Board and may delegate to such committees such of the Board's functions as it thinks fit.

Appointment of committees.

(2) A delegation under sub-paragraph (1) shall not prevent the exercise by the Board of any function so delegated.

15. There shall be paid to the chairman and each member of the Board such remuneration, if any (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

Remuneration of members of Board.

16. No act done or proceedings taken under this Act by the Board shall be questioned on the ground of—

Protection of office.

(a) the existence of any vacancy in the chairmanship of, or any defect in the constitution of, the Board; or

(b) any omission, defect or irregularity not affecting the merits of the case.

17.—(1) No member of the board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operation of the Board.

Protection of members of Board.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Fund shall be liable to the extent that it would be if that member were an employee or agent of the Fund.

18. The office of a selected member of the Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

Office of member not public office.