ANGUILLA

# REVISED STATUTES OF ANGUILLA

## CHAPTER T6

# TELECOMMUNICATIONS ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 5/2003, in force 10 June 2003

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# TELECOMMUNICATIONS ACT

## PART 1

## PRELIMINARY PROVISIONS

**Definitions**

**1.** (1) In this Act—

"access" means, with respect to a telecommunications network or service, the ability of a service provider or user to use the telecommunications network or telecommunications service of an operator or other provider;

"affiliated" has the same meaning assigned to it under section 2 of the Companies Act[*];

"authorisation holder" means a person that is granted a frequency authorisation by the Commission pursuant to this Act;

"body corporate" has the same meaning assigned to it under section 1 of the Companies Act[†];

"broadcasting service" means the offering of the transmission of programmes whether or not encrypted, by any means of telecommunications, for reception by the public, including sound, radio, television and other types of transmissions, such as those on a point to multipoint basis;

"class licence" means a licence, other than an individual licence, granted on the same terms to each applicant in respect to a class of telecommunications networks, telecommunications services or radiocommunication services;

"closed user group" means a group of persons who have a common business, other economic or social interest other than the provision of a telecommunications service;

"closed user group service" means a telecommunications service, used by a closed user group, operated without interconnection to a public telecommunications network enabling telecommunications to persons other than the members of such group;

"Commission" means the Public Utilities Commission established under the Public Utilities Commission Act;

"Court" means the High Court;

"facility" means a physical component of a telecommunications network, other than terminal equipment, including wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or object connected therewith, used for the purpose of telecommunications and includes any post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used for carrying, suspending, supporting or protecting the structure;

[*] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.
[†] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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"*force majeure*" means any of the following circumstances—

(a) acts of God, riot or civil commotion;

(b) strikes, lock-outs 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; and

(g) embargoes or trade restrictions;

"frequency authorisation" means an authorisation granted by the Commission under section 9;

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

"harmful interference" means interference with the authorised use of spectrum that impedes, degrades, obstructs or interrupts a broadcasting service or a radiocommunication service;

"interconnection" means the linking of public telecommunications networks and services to allow the users of one public telecommunications service to communicate with users of another public telecommunications service, and to access the services of that provider;

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

"licence" means a licence granted by the Commission under section 4;

"licensee" means a person granted a licence;

"Minister" means the Minister to whom responsibility for telecommunications is assigned;

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

"operator" means a person licensed under this Act to operate a public telecommunications network;

"private telecommunications service" means a telecommunications service used within one enterprise or any body corporate with which it is affiliated, to satisfy its or their internal needs and operated without interconnection to a public telecommunications network enabling telecommunications to persons other than within such enterprise or such body corporate;

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

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"public telecommunications network" means a telecommunications network used to provide a public telecommunications service;

"public telecommunications service" means a telecommunications service, including a public telephone service, offered to members of the general public, whereby one user can communicate with any other user in real time, regardless of the technology used to provide such service, but does not include a service that modifies a communication, restructures, adds or supplies, or permits user interaction with, information unless such service is offering a public telephone service;

"public telephone service" means the commercial provision to the public of the direct transport and switching of voice telephony in real time from and to network termination points;

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

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

"regulations" means the regulations made in accordance with section 51;

"road" has the same meaning assigned to it under section 1 of the Roads Act;

"road works" means any activity that involves breaking open a road or public ground, or that removes, alters or affects any utility installation;

"service provider" means a person licensed under this Act to provide a public telecommunication service;

"significant interest", in respect of a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly—

(a) to control 10% or more of the voting rights of that company at a general meeting of the company;

(b) to a share of 10% or more in dividends declared and paid by the company; or

(c) to a share of 10% or more in any distribution of the surplus assets of the company;

"special licence" means a special licence granted by the Commission under section 16;

"special licensee" means a person granted a special licence;

"spectrum" means the continuous range of electromagnetic wave frequencies used for telecommunications;

"telecommunications" includes the transmission, emission or reception of signals, writing, pulses, images, sounds or other intelligence of any kind by wire, radio, terrestrial or submarine cables, optical or electromagnetic spectrum or by way of any other technology;

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"Telecommunications Code" means such guidelines, standards and other requirements as the Commission may issue or specify in accordance with section 51(2)(a);

"telecommunications network" means any wire, radio, optical or electromagnetic transmission, emission or receiving system, or any part thereof, used for the provision of a telecommunications service;

"telecommunications service" means a service providing telecommunications and includes a closed user group service, a private telecommunications service, a public telecommunications service, a radiocommunication service and a value added service;

"terminal equipment" means equipment on the user's side of the network termination point that is connected directly or indirectly to a telecommunications network by wire, radio, optical or electromagnetic means and with which a user can originate, process or terminate telecommunications;

"universal service" means any public telecommunications services as to which the Commission, in accordance with section 19, determines the requirements of universal service shall apply;

"user" means a customer or a subscriber of a telecommunications network or a telecommunications service and includes a customer that is an operator of a telecommunications network and a customer that is a provider of a telecommunications service;

"utility installation" means any physical component of a system owned or operated by a public utility to provide piped water or electricity, as each of those terms are defined in the Public Utilities Commission Act;

"utility installation owner" means the owner or operator of any utility installation; and

"value added service" means a service that combines applications provided to users with telecommunications, provided that a value added service does not include any public telecommunications service.

(2) Terms and words relating to telecommunications used in this Act but not defined in this section shall bear the meaning assigned to them in the ITU Treaties.

## PART 2

## FUNCTIONS OF THE MINISTER AND THE COMMISSION

**Functions of the Minister**

**2.** The Minister shall—

(a) develop and review telecommunications policies consistent with the purposes of this Act;

(b) be responsible for matters of international telecommunications affecting Anguilla, including international, regional and bilateral frequency coordination;

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(c) manage the spectrum;

(d) administer the numbering plan;

(e) administer domain names; and

(f) in the exercise of his powers, consult with the Commission.

**Functions of the Commission**

**3.** Subject to the provisions of this Act, the Commission shall—

(a) advise the Minister on positions and policies relating to telecommunications issues at international, regional and national levels;

(b) establish or monitor the implementation of national telecommunications standards and ensure compliance therewith;

(c) implement and enforce the provisions of this Act, the regulations and the Telecommunications Code;

(d) be responsible, where required, for the economic regulation of licensees and authorisation holders and for ensuring fair competition among licensees and all other operators of telecommunications networks or providers of telecommunications services;

(e) classify types of services as public telecommunications services, closed user group services, private telecommunications services, value added services, broadcasting services, or any other services;

(f) determine applications for licences, special licences and frequency authorisations for any of the purposes specified in this Act and shall monitor, enforce and ensure effective compliance therewith;

(g) determine which telecommunications services should be provided, pursuant to section 19, throughout Anguilla and establish and monitor the funding mechanisms therefor;

(h) collect all fees and any other charges payable to the Commission under this Act;

(i) investigate and resolve any dispute relating to interconnection or to the sharing of facilities or utility installations or any other matters arising under this Act, as provided in Part 5 of the Public Utilities Commission Act;

(j) investigate and resolve all complaints of harmful interference made to the Commission or of which it has knowledge;

(k) investigate complaints by users of their failure to obtain redress from providers of public telecommunications services and, where it deems appropriate, operators of telecommunications networks or other providers of telecommunications services, in respect of rates, billings and services provided generally and to facilitate relief where necessary;

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(l) carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of a person as will enable it to determine whether and to what extent any person is engaging in conduct in contravention of this Act;

(m) establish quality of service indicators, reporting requirements for operators and service providers and otherwise monitor and protect the interests of users of telecommunications services;

(n) certify and ensuring the testing of telecommunications equipment for compliance with—

(i) international standards, and

(ii) environmental health and safety standards, including electromagnetic radiation and emissions;

(o) ensure the systematic development of telecommunications throughout Anguilla;

(p) issue such guidelines and standards as it deems necessary, from time to time, in the form of and which shall constitute the Telecommunications Code;

(q) obtain such information from persons as is needed to carry out any of its functions; and

(r) prepare draft regulations, in accordance with section 51, and the Telecommunications Code to give effect to its functions specified in paragraphs (a) to (q).

## PART 3

## LICENCES AND FREQUENCY AUTHORISATIONS

**Requirement for a licence**

**4.** (1) No person shall operate a public telecommunications network or provide a public telecommunications service without a licence granted by the Commission.

(2) A person who wishes to operate a network or provide a service described in subsection (1) shall apply to the Commission in the manner specified in the Telecommunications Code.

(3) The Commission may grant or refuse any application for a licence based on applicable policies and regulations.

(4) On the granting of a licence the Commission shall cause to be published in the *Gazette* a notice to that effect.

(5) Where an applicant for a licence is refused, the Commission shall notify the applicant in writing, giving the reasons for the refusal.

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(6) The terms of a licence shall be available for public scrutiny at the office of the Commission and may be reproduced by the Commission at the request of any member of the public on payment of the specified fee.

(7) The Commission shall determine applications for all licences on a non-discriminatory basis.

(8) A person who intends to land or operate submarine cables within Anguilla for the purpose of connecting to a telecommunications network shall first obtain a licence, in addition to any other licence, approvals, or permits required under the laws of Anguilla.

(9) The Commission may conduct public hearings in respect of applications for licences granted under this section, when such applications are made in the first instance or prior to any renewal of any licence.

(10) Where it deems appropriate, the Commission may adopt a class licence in lieu of individual licences granted in accordance with this section.

(11) Notwithstanding any other provision of this Act, the Commission may require that any person within a class of persons operating a type of telecommunications network or providing a type of telecommunications service that is not required to obtain a licence under this section must notify the Commission within 1 month of commencing operations.

(12) An operator of a telecommunications network used solely to provide private telecommunications services, closed user group services and value added services, or a provider of any such services—

(a) is not required to obtain a licence pursuant to this Act, except where the Commission and the Minister determine that the circumstances requires the licensing thereof;

(b) must obtain a frequency authorisation pursuant to section 9 if its network provides a radiocommunication service or uses the spectrum;

(c) shall not, unless licensed or authorized by the Commission, sell its network to other operators of networks for private telecommunications services, closed user group services and value added services, or to a provider of any such services;

(d) must obtain a licence pursuant to this section if it intends to operate a public telecommunications network or to provide a public telecommunications service; and

(e) is not restricted to carrying voice only or data only or to any other such use.

**Obligations with respect to licences**

**5**. (1) Every operator or service provider shall—

(a) pay the fees specified by the Commission;

(b) not assign the licence without the prior written approval of the Commission;

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(c) upon written request made by the Governor and subject to any enactment, collaborate with the Governor in matters of internal security; and

(d) observe the conditions of its licence, the regulations and the Telecommunications Code.

(2) A person owning or holding a significant interest in an operator or service provider shall not sell, transfer, charge or otherwise dispose of his interest in such operator or service provider, or any part of his interest, unless the prior written approval of the Commission has been obtained.

(3) An operator or service provider shall not, unless the prior written approval of the Commission has been obtained—

(a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2); or

(b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in—

(i) a person acquiring a significant interest in such operator or service provider, or

(ii) a person who already owns or holds a significant interest in the operator or service provider, increasing or decreasing the size of his interest.

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

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

(a) the prior written approval of the Commission shall not be required; and

(b) such operator or service provider shall, as soon as reasonably practicable, notify the Commission of the nature and extent of such sale, transfer, charge or other disposition.

(6) The Commission may, in respect of an operator or service provider whose shares are publicly traded on a stock exchange recognized by the Commission, waive the obligation to obtain approval under subsection (3) and any such waiver shall be subject to a condition that the operator or service provider shall, as soon as reasonably practicable, notify the Commission of any sale, transfer, charge or other disposition referred to in subsection (2).

**Conditions of licences**

**6**. Every licence shall contain conditions regarding—

(a) the term and expiration of the licence and the time required for an application for renewal;

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(b) the circumstances under which the licence may be amended for *force majeure*, national security, changes in national legislation and implementation of international obligations and where the Commission, taking into account the public interest, otherwise deems amendment necessary to achieve the objectives of this Act; and

(c) such other matters as the Commission may specify for such licence.

**Obligations of licensees**

**7**. (1) Every operator or service provider shall—

(a) in addition to compliance with any directions issued under sections 11 and 12 of the Public Utilities Commission Act submit to the Commission such information with respect to the development of its network or service;

(b) provide users, under conditions which are published or are otherwise filed with the Commission, with access to and the opportunity to use such network or service on a fair and reasonable basis;

(c) not discriminate unduly among similarly situated users and shall transmit all communications without discrimination, subject to section 53;

(d) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices and, in particular, shall refrain from using revenues or resources, from a telecommunications network or a telecommunications service in respect of which the operator or service provider is dominant, to cross-subsidise unfairly any other telecommunications network or telecommunications service, without the prior written approval of the Commission;

(e) meet standards of quality in accordance with its licence, the regulations or specified in the Telecommunications Code;

(f) file annually with the Commission a report on its quality of service as measured against the quality of service performance indicators set by the Commission and otherwise publish such reports as the Commission may authorise;

(g) develop, implement and publish procedures for responding to user complaints and disputes related to quality of service, statements of charges and prices and shall respond quickly and adequately to such complaints;

(h) submit to the jurisdiction of the Commission with regard to the resolution of complaints from and disputes with other licensees, operators of telecommunications networks, providers of telecommunications services and any other users, where such disputes arise out of the licensee's exercise of its rights and obligations under the licence;

(i) file with the Commission forms of user agreements with users for the provision of public telecommunications services;

(j) permit the resale of its telecommunications service by not imposing unreasonable or discriminatory conditions or limitations on such resale;

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(k) provide and contribute to universal service in accordance with policies established by the Minister, and determinations and requirements of the Commission, under section 19;

(l) account for costs in accordance with the regulations and the Telecommunications Code;

(m) refrain from impairing or terminating the telecommunications service provided to a user during a *bona fide* dispute, without the prior written approval of the Commission, except that the operator or service provider may—

(i) in respect of a billing dispute, collect from any such user amounts that are not in dispute;

(ii) in respect of terminal equipment attached to an operator's network in contravention of section 33, disconnect any equipment that is unsafe to the user, that is not in compliance with international standards or that poses a risk of physical harm to such network; and

(iii) enforce the terms of its user agreement, provided that such terms do not incorporate matters that are the subject of regulation or prevent persons from submitting disputes to the Commission pursuant to this Act and, if a user timely submits a dispute over such impairment or termination to the Commission, then such operator or service provider shall refrain from impairing or terminating the telecommunications service except as may be authorised by the Commission;

(n) provide number portability when required to do so and in accordance with the requirements specified by the Commission; and

(o) provide dialling parity to other operators and service providers in accordance with requirements specified by the Commission.

(2) The Commission shall specify—

(a) quality of service indicators for classes of public telecommunications services; and

(b) means to enforce a licensee's compliance with its stated quality of service standards, including measures by which a licensee shall compensate users adversely affected by a failure to provide a telecommunications service in accordance with such standards.

(3) Where an operator is a dominant operator of a network, as determined in accordance with the criteria set out in section 17(6), such operator shall make available on a timely basis, as the Commission may specify in the Telecommunications Code, to other operators of telecommunications networks or providers of telecommunications services, such technical information as the Commission may determine regarding such network, including planned deployment of equipment, and other information relevant to such other operator's or service provider's network or services.

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**Obligations of all operators of telecommunications networks and providers of telecommunications services**

**8**. (1) Every operator of a telecommunications network and every provider of a telecommunications service shall maintain the confidentiality of, and refrain from using or disclosing, any confidential, personal and proprietary information of any user, other operator of a telecommunications network or other provider of a telecommunications service originating from—

(a) any such user, operator or service provider; or

(b) any information regarding usage of the service or information received or obtained in connection with the operation of the network or provision of the service,

for any purpose other than to—

(c) operate such network or service;

(d) bill and collect charges;

(e) protect the rights or property of the operator or provider; or

(f) protect users or other operators or providers from the fraudulent use of the network or service,

except as otherwise permitted by the user, other operator or other provider, as the case may be, or as required by warrant, court order or other Government agency with competent authority.

(2) Nothing in subsection (1) prohibits the Commission from authorising an operator or service provider to disclose lists of its subscribers, including directory access databases, for the publishing of directories or for such other purposes as the Commission may specify.

**Requirement for a frequency authorisation**

**9.** (1) No person shall use the spectrum without a frequency authorisation granted by the Commission.

(2) A person who wishes to use the spectrum shall apply to the Commission in the manner specified in the Telecommunications Code.

(3) The Commission may grant or refuse any application for frequency authorisations based on applicable policies and regulations.

(4) On the granting of a frequency authorisation the Commission shall cause to be published in the *Gazette* a notice to that effect.

(5) The terms of a frequency authorisation shall be made available for public scrutiny at the office of the Commission and may be reproduced by the Commission, at the request of any member of the public, on payment of the specified fee.

(6) Where an applicant for a frequency authorisation is refused, the Commission shall notify the applicant in writing, giving reasons for the refusal.

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(7) Where it appears to the Commission that the frequency authorisation contains information contrary to national security or other international obligations, the Commission shall withhold that information from public scrutiny.

(8) A frequency authorisation shall be consistent with the spectrum plan established pursuant to section 25 and regulations made pursuant to this Act and shall confer the right on the authorisation holder to use a certain frequency band or bands subject to such conditions as may be set out in the frequency authorisation.

(9) Subject to the other subsections of this section, the Commission shall determine all frequency authorisations on a non-discriminatory basis.

**Obligations with respect to frequency authorisations**

**10**. (1) Every holder of a frequency authorisation shall—

(a) pay the fees specified by the Commission;

(b) strictly adhere to the authorised frequency band;

(c) not assign the frequency authorisation without the prior written approval of the Commission;

(d) upon request made by the Governor and subject to any enactment, collaborate with the Government in matters of internal security; and

(e) observe the conditions of its authorisation, the regulations and the Telecommunications Code.

(2) A person owning or holding a significant interest in the holder of a frequency authorisation shall not sell, transfer, charge or otherwise dispose of his interest in such holder, or any part of his interest, unless the prior written approval of the Commission has been obtained.

(3) A holder of a frequency authorisation shall not, unless the prior written approval of the Commission has been obtained—

(a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2); or

(b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in—

(i) a person acquiring a significant interest in such holder, or

(ii) a person who already owns or holds a significant interest in the holder, increasing or decreasing the size of his interest.

(4) The approval of the Commission required under subsections (1)(c), (2) and (3) shall not be unreasonably withheld.

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

(a) the prior written approval of the Commission shall not be required; and

(b) such holder shall, as soon as reasonably practicable, notify the Commission of the nature and extent of such sale, transfer, charge or other disposition.

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

**Conditions of frequency authorisations**

**11**. Every frequency authorisation shall contain conditions regarding—

(a) the expiration of the frequency authorisation and the time required for an application for renewal;

(b) the circumstances under which the frequency authorisation may be amended for *force majeure*, national security, changes in national legislation and implementation of international obligations and where the Commission, taking into account the public interest, otherwise deems amendment necessary to achieve the objectives of this Act;

(c) the use of the frequency band so authorised;

(d) the type of emission, power and other technical requirements for the radiocommunication service; and

(e) such other matters as the Commission may specify for such frequency authorisation.

**Authorisation to operate in territorial waters or airspace**

**12.** Notwithstanding section 9(1), a ship or aircraft, being a ship or aircraft not registered in Anguilla while operating in the territorial waters or airspace of Anguilla, is not required to have authorisation from the Commission for any radiocommunication service as long as, and to the extent that, the service is operated under a valid authority or frequency authorisation issued elsewhere than in Anguilla in accordance with international agreements relating to radiocommunication in respect of ships or aircraft.

**Suspension and termination of licences and frequency authorisations**

**13.** (1) Subject to this section, the Commission may suspend or terminate a licence or any frequency authorisation where—

(a) the licensee or the authorisation holder has failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of its licence or frequency authorisation;

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(b) the licensee or the authorisation holder has failed to comply materially with any lawful direction of the Commission;

(c) the licensee or the authorisation holder is in default of payment of any fee or other monies that are charged or imposed by or pursuant to this Act, the Public Utilities Commission Act or the regulations, it owes to the Commission or the Government;

(d) the licensee or the authorisation holder is dissolved or goes into liquidation or ceases operating any public telecommunications network, providing any public telecommunications service or using any frequency band; or

(e) the suspension or termination is necessary for reasons of—

(i) national security, or

(ii) the public interest.

(2) The Commission shall, before exercising the power of suspension or termination conferred by this section, give the licensee or the authorisation holder adequate advance notice, which, absent exigent circumstances, shall not be less than 90 days, in writing of its intention to do so, specifying the grounds on which it proposes to suspend or terminate the licence or the frequency authorisation, and shall give the licensee or the authorisation holder the opportunity—

(a) to present its views;

(b) to remedy the breach of the provisions of this Act, the regulations or the term or condition of the licence or the frequency authorisation; and

(c) to submit to the Commission within such time as the Commission may specify a written statement of objections to the suspension or termination of the licence or the frequency authorisation,

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

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

(4) During the period that the Commission is considering exercising its power to suspend or terminate a licence or a frequency authorisation, the licensee or the authorisation holder shall continue to operate until such time as the Commission makes a determination and, in the event that the period of the licence or the frequency authorisation comes to an end before the determination by the Commission is made, an interim renewal of the licence or the frequency authorisation on the same terms shall be granted.

(5) A decision of the Commission pursuant to this section is subject to judicial review by the Court.

(6) Nothing in this section precludes the Commission from immediately suspending or terminating a licence or a frequency authorisation where there is, or is likely to be, a risk to national security, or where to do so is essential to the public interest.

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**Amendment of licences and frequency authorisations**

**14.** (1) A licence or a frequency authorisation may be amended by the written agreement of the licensee or the holder of the frequency authorisation or by the Commission, where—

(a) *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations require amendment; or

(b) the Commission, taking into account the public interest, otherwise deems amendment necessary to achieve the objectives of this Act.

(2) Where a licence or a frequency authorisation is amended pursuant to subsection (1) on grounds of national security, the rights of the licensee or the authorisation holder to compensation shall not be prejudiced.

(3) Before amending a licence or a frequency authorisation, the Commission shall give the licensee or authorisation holder adequate advance notice, which, absent exigent circumstances, shall not be less than 90 days, in writing of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect, and shall give the licensee or the authorisation holder the opportunity—

(a) to present its views; and

(b) to submit to the Commission within such time as the Commission may specify a written statement of objections to the amendment of the licence or the frequency authorisation, which may include proposed alternatives to the amendment,

which the Commission shall take into account before reaching a decision on amendment.

(4) Nothing in this section precludes the Commission causing the immediate amendment of a licence or a frequency authorisation where there is, or is likely to be, a risk to national security, or where immediate amendment is essential to the public interest.

(5) The licensee or the authorisation holder may request that the Commission consent to an amendment of its licence or its frequency authorisation.

(6) A decision of the Commission pursuant to this section is subject to judicial review by the Court.

**Renewal of licences and frequency authorisations**

**15.** (1) The Commission shall automatically renew licences or frequency authorisations granted under this Act for a period equivalent to the first licence or the first frequency authorisation granted unless—

(a) the licensee or the authorisation holder failed to operate within the terms of the first licence or the first frequency authorisation;

(b) the licensee or the authorisation holder failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of the licence or the frequency authorisation;

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(c) the licensee or the authorisation holder failed to comply materially with any lawful direction of the Commission; or

(d) in the case of an operator or service provider, the Commission has determined that it is not in the public interest to renew the licence and has given notice not less than 3 years before the expiration of the licence that the licence will not be renewed.

(2) Before determining not to renew a licence or a frequency authorisation pursuant to subsection (1), the Commission shall give the licensee or the authorisation holder adequate advance notice, which, absent exigent circumstances, shall, except as provided for in paragraph (1)(d), not be less than 180 days, in writing of its intention not to renew such licence or frequency authorisation, specifying the grounds on which it proposes to not renew, and shall give the licensee or the authorisation holder the opportunity—

(a) to present its views; and

(b) to submit to the Commission within such time as the Commission may specify a written statement of objections to the decision not to renew the licence or the frequency authorisation,

which the Commission shall take into account before reaching a decision on renewal.

**Special licences**

**16.** (1) The Commission may grant a special licence where it determines that an emergency or other exigent circumstance exists.

(2) A person who wishes to obtain a special licence shall apply to the Commission in the manner specified in the Telecommunications Code.

(3) Special licences are subject to section 4(3) to (6).

(4) A special licence shall be for a term not to exceed 10 calendar days and may be renewed for good cause shown.

## PART 4

## INTERCONNECTION AND ACCESS TO FACILITIES

**Interconnection**

**17.** (1) In addition to the obligations of section 7, every operator or service provider shall—

(a) not, with respect to its network or services, refuse, obstruct or in any way impede, other than for reasonable technical grounds stated in writing, another operator or service provider from making a direct interconnection, or an indirect interconnection through the public telecommunications network or public telecommunications services of other licensees; and

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(b) provide for the transmission and routing of the services of other operators or service providers, at any technically feasible point, as may be specified by the Commission.

(2) In respect of the obligations pursuant to subsection (1), every operator or service provider shall—

(a) comply with guidelines and standards established by the Commission in the Telecommunications Code to facilitate interconnection;

(b) provide, upon request, points of interconnection in addition to those offered generally to other operators or service providers, subject to rates that reflect the operator's or service provider's total economic cost of constructing additional facilities necessary to satisfy such request;

(c) provide the elements of interconnection, to other operators and service providers, in a manner that is at least equal in both quality and rates to that provided by the operator or service provider to its own business units or to any body corporate with which it is affiliated or to any other party to which the operator or service provider provides interconnection and without regard to the types of users to be served, or the types of services to be provided, by such other operator or service provider;

(d) promptly negotiate, upon the request of another operator or service provider, and endeavour to conclude, subject to paragraph (g), an agreement with regard to the prices and the technical and other terms and conditions for the elements of interconnection;

(e) submit to the Commission, for its approval, a copy of any agreement concluded pursuant to paragraph (d) within 28 days of its making;

(f) offer, on a non-discriminatory basis, the terms and conditions of an agreement concluded pursuant to paragraph (d) or required by a decision rendered pursuant to paragraph (g) to any other operators or service providers seeking interconnection;

(g) submit to the Commission for prompt resolution, in accordance with such procedures as the Commission may adopt, any disputes that may arise between itself and any other licensees relating to any aspect of interconnection, including its or any other operator's or service provider's denial of interconnection or the failure to conclude promptly an agreement pursuant to paragraph (d), or disputes as to price and any technical, commercial or other term and condition for any element of interconnection; and

(h) submit to any decision rendered by the Commission pursuant to paragraph (g).

(3) An interconnection agreement concluded pursuant to subsection (2), with the exception of those parts which the Commission determines, subject to section 41 of the Public Utilities Commission Act, dealing with the commercial strategy of the parties thereto—

(a) shall be made available for public scrutiny at the office of the Commission where at least one party to such agreement is dominant; and

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(b) may be reproduced by the Commission at the request of any member of the public on payment of the specified fee.

(4) Every dominant operator or service provider shall—

(a) disaggregate its network and/or its service and, on a cost-oriented basis such as the Commission may specify, establish prices for its individual elements and offer the elements at the established prices to other operators and service providers;

(b) publish, in such manner as the Commission may specify, the prices, technical, commercial and other terms and conditions pertaining to its reference offer for elements of interconnection; and

(c) permit other operators and service providers to have equal access to telephone numbers, operator services, directory assistance and directory listing without unreasonable delay, in accordance with requirements specified by the Commission.

(5) Where a dominant operator or service provider fails to comply with its obligations under subsection (4), the Commission may seek an order from the Court requiring compliance therewith.

(6) For the purposes of this Act, the Commission may determine that an operator or service provider is dominant with respect to a telecommunications network or a telecommunications service where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and users and, for such determination, the Commission shall take into account the following factors—

(a) the relevant market;

(b) technology and market trends;

(c) the market share of the operator or service provider;

(d) the power of the operator or service provider to introduce and sustain a material price increase independently of competitors;

(e) the degree of differentiation among networks and services in the market;

(f) any other matters that the Commission deems relevant.

(7) Where an operator or service provider deemed dominant by the Commission pursuant to subsection (6) considers that it has lost its dominance with respect to a telecommunications network or a telecommunications service, it may apply to the Commission to be classified as non-dominant in a particular market and, should the Commission so classify, the applicable licence shall be amended to reflect such classification.

(8) Before determining that an operator or service provider is dominant, or has lost its dominance, with respect to a telecommunications network or a telecommunications service, the Commission shall publish the matter for decision in the *Gazette*.

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**Access to facilities**

**18.** (1) Subject to the provisions of this section, an operator shall provide other operators with access to the facilities that it owns or controls on a timely basis, such access not to be unreasonably withheld.

(2) Where, in connection with its network, an operator requests the use of a utility installation belonging to a public supplier, in accordance with section 38 of the Electricity Act, the operator shall, notwithstanding such section, have a right of such use in accordance with this section.

(3) Where, in connection with its network, an operator requests the use of a utility installation of a public utility other than as set forth in subsection (2), it shall have the right to such use in accordance with this section and, where any public utility requests the use of facilities of an operator, it shall have the rights of an operator under this section.

(4) Access to facilities and utility installations shall be negotiated as between or among operators and public utilities on a non-discriminatory and equitable basis and, at the request of the parties, the Commission may assist in negotiating a settlement among them.

(5) An operator or public utility may deny access to a facility or utility installation only where it demonstrates that there is insufficient capacity in such facility or utility installation, taking into account its reasonably anticipated requirements, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(6) The Commission may regulate the rates, terms and conditions for access to any facility or utility installation, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to resolve disputes concerning such rates, terms and conditions.

(7) For the purposes of this section, access to facilities does not include interconnection.

## PART 5

## UNIVERSAL SERVICE AND PRICES

**Universal service**

**19.** (1) In accordance with the policy established by the Minister, the Commission shall determine the public telecommunications services in respect of which the requirement of universal service shall apply, taking into account the needs of the public, affordability of the service and advances in technologies.

(2) Such services as are referred to in subsection (1) shall include, at a minimum, a high quality public telephone service, including a free telephone directory for subscribers of such service, and operator assisted information services and free access to emergency telecommunications services.

(3) In accordance with the policy established by the Minister, the Commission shall periodically determine the manner in which a public telecommunications service shall be provided and funded in order to meet the requirements of universal service for that service, including the obligations, if any, of the providers and users of the service.

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(4) The Commission may, with the approval of the Minister, require that providers of private telecommunications services, closed user group services and value added services, as well as the users of such services and of any other telecommunications services, contribute to the funding of universal service.

(5) The obligation to provide and contribute to the funding of the services referred to in subsection (1) shall be applied on a transparent and non-discriminatory basis as between all similarly situated providers of telecommunications services and users.

(6) Prior to terminating the offering to the public of a public telecommunications service in respect to which the requirement of universal service applies, a licensee shall obtain written approval from the Commission.

**Prices**

**20**. (1) Prices for telecommunications services, except those regulated by the Commission in accordance with this section, shall be determined by providers in accordance with the principles of supply and demand in the market.

(2) The Commission may establish price regulation regimes, which may be specified in a Telecommunications Code and which may include setting, reviewing and approving prices, in any case where—

(a) there is only one licensee operating a public telecommunications network or providing a public telecommunications service, or where one licensee has a dominant position in the relevant market;

(b) a sole or dominant licensee operating a public telecommunications network or providing a public telecommunications service cross-subsidises another telecommunications service provided by such licensee; or

(c) the Commission detects anti-competitive pricing or acts of unfair competition.

(3) A service provider shall provide rates that are fair and reasonable and shall not discriminate unduly among similarly situated persons, including the service provider and any body corporate with which it is affiliated.

(4) For any public telecommunications service as to which a service provider is dominant, the Commission may specify in the Telecommunications Code a method for regulating the prices of such service by establishing caps on such prices, or by such other methods as it may deem appropriate.

(5) A service provider shall publish the prices, terms and conditions for its public telecommunications services at such times and in such manner as the Commission shall specify and such prices, terms and conditions shall thereafter, subject to this Act and the conditions of any licence, be the lawful prices, terms and conditions for such services.

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PART 6

ROAD WORKS AND ACCESS TO LAND

**Road works**

**21**. (1) In connection with its operation of a public telecommunications network, a licensee may install or maintain a facility in or over a road or public ground, or on the shore and bed of the sea, or remove the facility therefrom in accordance with the regulations of the Planning Department and, for that purpose, may, in accordance with the development plan for the area and the provisions of the Roads Act and any other written law, carry out road works.

(2) Before carrying out any road works for the purposes specified in subsection (1), a licensee shall—

(a) obtain from the Planning Department plans showing all utility installations that might be affected;

(b) submit detailed plans of the intended road works to each utility installation owner likely to be affected thereby;

(c) not commence any road works that might affect a utility installation without first having requested and obtained written permission from the affected utility installation owner; and

(d) notify the Commission of any intended road works and, in the event of the failure to obtain the permission of a utility installation owner under paragraph (c), the Commission shall resolve any dispute thereof.

(3) Pursuant to the notification received by the Commission under paragraph (2)(d), the Commission shall notify other operators or public utilities of the intended road works and inquire of them whether they have any intention of undertaking similar type road works.

(4) No road works shall commence until the expiration of 14 days from the date of the receipt of the permission.

(5) In the event of an emergency, the licensee may dispense with the requirement set out in subsection (4) above.

(6) A licensee may dispense with the requirement of paragraph (2)(c) where the Commission certifies in writing that the intended road works are necessitated by an emergency.

(7) The removal or alteration of any utility installation shall be undertaken by the affected utility installation owner, and the cost thereof shall be borne by the licensee.

(8) No licensee or public utility notified under subsection (3) shall carry out road works within 3 months of the receipt of such notification except where such licensee proves to the satisfaction of the Commission the necessity of carrying out emergency works.

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(9) Prior to carrying out road works, a licensee shall publish a description thereof in at least one newspaper in Anguilla and shall otherwise inform affected persons by such other means as the Commission may specify.

**Repair and restoration**

**22**. (1) Where a licensee damages any utility installation in carrying out road works, it shall immediately request the utility installation owner to repair the damage to the utility installation.

(2) The licensee shall compensate the utility installation owner for the full cost of repair.

(3) A licensee shall, as speedily as possible, complete all road works and restore the road and public grounds, including the removal of any debris, to the satisfaction of the Planning Department and the Minister with responsibility for Infrastructure, such satisfaction to be expressed in writing.

(4) Where a licensee fails to comply with subsection (2), it shall be held liable for any expenditure that the Planning Department incurs in such restoration and for any other loss by any other person.

(5) The liability of the licensee under subsection (4) shall continue for a period of 2 years or until the Planning Department expresses its satisfaction in writing pursuant to subsection (3).

**Access to lands for inspection and maintenance**

**23.** (1) An operator duly authorised in writing by the Planning Department may, at any reasonable time, enter upon and survey any land, other than land covered by buildings or used as a garden or pleasure ground, for the purpose of ascertaining whether the land would be suitable for use by the operator for, or in connection with, the establishment or operation of the operator's telecommunications network.

(2) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the operator shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the operator shall pay to that person compensation in respect of the disturbance.

(3) In engaging in the inspection of land, installation of facilities, or maintenance of facilities, an operator must take all reasonable steps to act in accordance with good engineering practice, to protect the environment, to protect the safety of persons and property, and to ensure that the activity interferes as little as practicable with the operations of a public utility, roads and paths, the movement of traffic, and the use of public grounds and other land.

**Installation of facilities on private land or buildings**

**24.** (1) Subject to this section, an operator may install and maintain facilities along, on or over any land or building and may enter upon any land and place and maintain facilities thereon and repair or renew any facilities placed thereon.

(2) Where an operator wishes to install facilities on private land or buildings it must first obtain the permission of the landowner and the landowner is entitled to compensation therefor, except where such facilities are used to provide a telecommunications service to the landowner or his tenant.

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

(a) may lop or trim any tree that, in its opinion, is likely to damage or obstruct its facilities;

(b) shall cause as little damage as possible and shall pay full compensation to all persons for any damage sustained by them by reason of or in consequence of the exercise by such operator of such powers; and

(c) shall be subject to the following restrictions—

(i) it shall not place any facilities on any private land or building in such manner so as to cause interference with or obstruction of the occupier of any lands in any business or cultivation carried on upon such land or building,

(ii) it shall not place any facilities on any private land or building, or lop or trim any trees thereon, until it has given at least 14 days notice in writing to the owner or occupier of the land or building of its intention to do so, specifying the work to be done and notifying such person of his rights to give notice of an objection thereto to the Commission pursuant to subparagraph (iii),

(iii) on receipt of any notice of the intention of an operator to place any facilities on any private land or building, or to lop or trim any trees thereon, the owner or occupier, or his agent may, within 14 days thereafter, give notice in writing of his objection to the Commission, whereupon the operator shall not proceed with the work or such part thereof as is objected to until authorised by the Commission to do so.

(4) In the event of disagreement over the quantum of any compensation to which a landowner is entitled pursuant to subsection (2) or of any other dispute relating to the installation or maintenance of facilities on or over private land or buildings, the matter shall be referred to the Commission, whose decision shall be final.

(5) To minimize disruption to landowners, an operator shall, to the extent feasible, provide other operators with access to its facilities in accordance with section 18 and shall coordinate its installation or maintenance of facilities on or over private land or buildings.

## PART 7

## SPECTRUM MANAGEMENT, NUMBERING AND DOMAIN NAME MANAGEMENT

### Spectrum

**25**. (1) The Minister shall allocate the uses of the spectrum in order to promote the economic and orderly utilisation of frequencies for the operation of all telecommunications networks and provision of all telecommunications services, and to recover the cost thereof.

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(2) The Minister may adopt an interim spectrum plan and shall, in co-operation and consultation with all users of the spectrum in Anguilla, develop and adopt a spectrum plan, which may be amended from time to time, in order to allocate the uses of the spectrum.

(3) In developing the spectrum plan and in frequency coordination, the Minister shall consult bilaterally, regionally and internationally.

(4) The Minister shall make the spectrum plan available, for which he may charge a specified fee to members of the public.

(5) The spectrum plan shall state how the spectrum shall be used and the procedures that the Commission is to use to determine applications for frequency authorisations for frequency bands used to provide radiocommunication services.

(6) The procedures referred to in subsection (5) may include, but are not limited to authorising use of frequency bands —

(a) by auction;

(b) by tender;

(c) at a fixed price; or

(d) based on stated criteria.

(7) The procedures referred to in subsections (5) and (6) may include charges for authorisations for use of frequency bands in addition to the fees specified by the Commission pursuant to section 48.

**Allocation of frequency bands**

**26**. (1) Subject to subsection (2) and notwithstanding any other provision of this Act or any frequency authorisation granted by the Commission, the Minister may, in accordance with the spectrum plan, allocate and reallocate any frequency bands.

(2) In the allocation and re-allocation of any frequency bands by the Minister, priority shall be given to the needs of the Government in respect of matters of national security.

(3) In connection with any allocation or re-allocation of a frequency band, the Commission, upon the recommendation of the Minister, may terminate a frequency authorisation.

**Exercise of functions**

**27.** The Minister, in exercising the functions under sections 25 and 26, shall take into account—

(a) the objects of this Act;

(b) the impact of the spectrum plan on existing and future use;

(c) the efficient use of the spectrum;

(d) any applicable regional agreements, standards and arrangements;

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(e) any applicable international standards, ITU Treaties and other agreements; and

(f) any other relevant matters having regard to the circumstances of the case.

**Monitoring**

**28.** (1) The Commission may operate frequency monitoring stations for—

(a) ascertaining whether frequency bands are being used in accordance with this Act;

(b) monitoring the use of the frequency spectrum; and

(c) carrying out any technical function necessary for fulfilling the requirements of the Radio Regulations of the International Telecommunication Union for the time being in force.

(2) A frequency monitoring station operated by the Commission is exempt from any of the provisions of this Act.

**Harmful interference**

**29.** (1) No person shall operate any facility, terminal equipment or other equipment in a manner likely to cause harmful interference.

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

(a) serve notice on the person in possession of the facility, terminal equipment or other equipment requiring such person to cease such use within 7 days from the date of service of the notice; or

(b) impose limits as to when the facility, terminal equipment or other equipment may be used.

**Space segment**

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

**Numbering plan**

**31.** (1) The Minister shall develop a plan for the numbering of telecommunication services and shall administer and manage such numbers.

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

(3) The numbering plan may establish procedures by which providers of telecommunications services may assign or re-assign numbers to users.

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(4) The Commission shall make the numbering plan available to the public on payment of the specified fee.

(5) In developing the numbering plan referred to in subsection (1), the Minister shall preserve, to the extent feasible, the assignment of numbers made before the commencement of this Act.

(6) The Minister shall notify all service providers of any new numbering assignments made.

(7) The Minister may delegate his responsibilities, as set forth in this section, to a neutral, non-Governmental organization.

**Domain name management**

**32.** (1) The Minister is responsible for the registration and management of Anguilla's top level domain names, in accordance with the manner that he shall determine.

(2) The Minister may delegate his responsibilities, as are set forth in subsection (1), to a neutral, non-Governmental organization.

## PART 8

## TERMINAL EQUIPMENT AND TECHNICAL STANDARDS

**Terminal equipment**

**33**. (1) Any terminal equipment sold or otherwise provided in Anguilla may be connected to a public telecommunications network where the Commission has certified such terminal equipment as—

(a) being safe for the user;

(b) being in compliance with international standards, and environmental, health and safety standards, including standards for electromagnetic radiation and emissions;

(c) meeting requirements of electromagnetic compatibility, if specified;

(d) not posing a risk of physical harm to such network;

(e) effectively utilising the electromagnetic spectrum and preventing interference between satellite and terrestrial-based systems and between terrestrial systems; and

(f) being compatible with such network.

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

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

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(4) The Commission may regulate or prohibit the sale or other provision, or the connection, of any terminal equipment or other device that is provided in Anguilla primarily for the purposes of circumventing, or facilitating the circumvention of, any requirements of this Act.

(5) After 10th June 2003, the Commission shall, as soon as reasonably practicable, specify the means—

(a) by which terminal equipment shall be provided and charged to users separately from the provision of public telecommunications services; and

(b) to facilitate or require users as opposed to a licensee's, ownership of inside wiring and such other facilities as the Commission may determine.

**Standards**

**34.** (1) Subject to the other provisions of this Act, licensees and authorisation holders may implement such technical standards as they deem appropriate and which are in conformity with accepted international standards.

(2) Notwithstanding subsection (1), the Commission may identify, adopt or establish preferred technical standards in the Telecommunications Code or, where necessary, require conformance to a single standard.

## PART 9

## TESTING AND INSPECTION

**Power to request information**

**35.** In addition to any obligations under sections 11 and 12 of the Public Utilities Commission Act, to ensure compliance with the conditions of a licence, special licence or frequency authorisation, or for any other purpose authorised under this Act, the Commission may require a licensee, special licensee, authorisation holder or any other person, to supply information, including specific answers to questions submitted to such licensee, special licensee, authorisation holder or such other person, concerning any telecommunications network or use of spectrum for which the licence, special licence or the frequency authorisation was granted, the operation of any equipment or any works carried out in relation to such network or use or usage of the licensee's or special licensee's telecommunications network or telecommunications service.

**Pre-installation testing**

**36.** (1) The Commission shall, for the purpose of certifying or approving terminal equipment and other equipment to be installed or used for a public telecommunications network, a public telecommunications service or a broadcasting service, determine whether such equipment fulfills the criteria stipulated in section 33 and such other requirements as the Commission may specify in the Telecommunications Code.

(2) For the purpose of a determination made pursuant to subsection (1), the Commission may require that such equipment be tested in such manner as it may specify.

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(3) The requirement for testing may be waived by the Commission, after consultation with the licensee or authorisation holder, if the Commission is satisfied that the equipment has been certified in accordance with international standards.

**Standards for testing**

**37**. The tests stipulated under section 36 shall be carried out in compliance with international standards and other standards specified by the Commission in the Telecommunications Code.

**Entry, search and inspection**

**38**. (1) Personnel of the Commission may, at all reasonable times, enter any place, vehicle, ship, aircraft, vessel or other contrivance from which any telecommunications network is operated or telecommunications service is provided, or from which any person is using spectrum for telecommunications, and—

(a) test any equipment or article found therein which is used or intended to be used for the purpose of operating a telecommunications network, providing a telecommunications service or using spectrum;

(b) examine records or other documents relating to the operation of the telecommunications network, or the provision of the telecommunications service or the use of spectrum;

(c) search, where necessary with the assistance of any other person authorised for the purpose by the Commission, for any equipment, articles, books, records or documents that may afford evidence of contravention of this Act or of any regulation made hereunder, or of any breach of any condition of any licence or frequency authorisation;

(d) require the owner or person in charge of the place, vehicle, ship, aircraft, vessel or other contrivance to give him all reasonable assistance in the examination or search; and

(e) seize and take away any equipment, articles, books, records or documents if it appears that there has been a contravention of this Act or of any regulation made hereunder, or of any breach of any condition of any licence or frequency authorisation, and such items so seized shall be lodged with the Commission.

(2) For the purposes of subsection (1), the personnel of the Commission may be accompanied by any police officer with such further assistance as may be necessary.

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

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

**Magistrate may issue warrant**

**39.** (1) Notwithstanding section 38, the Commission shall not exercise the powers vested in it under that section except upon warrant of the Magistrate issued to it for such purpose.

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(2) A warrant issued under this section remains in force until the purpose for which the warrant is required has been satisfied or for 1 month, whichever is sooner.

## PART 10

## OFFENCES

**Offences**

**40.** (1) A person who knowingly—

(a) fails to comply with or acts in contravention of section 4(1), including by providing a telecommunications service for which a licence or special licence is required pursuant to this Act without having obtained such licence or special licence;

(b) fails to comply with or acts in contravention of sections 9(1), 21 or 35;

(c) uses any equipment in such a manner as to cause harmful interference;

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

(e) intercepts, attempts to intercept or procures another person to intercept, without the authorisation of the provider or user, or a court order, or otherwise obtains, attempts to obtain, or procures another to obtain, unlawful access to, any communication transmitted over a telecommunications network;

(f) uses, or attempts to use, the content of any communication, knowing or having reason to believe that such content was obtained through interception or access in contravention of paragraph (e);

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

(h) aids or abets any person operating a telecommunications network or providing a telecommunications service or a broadcasting service contrary to its licence, special licence or frequency authorisation, as the case may be;

(i) willfully obstructs, hinders, molests or assaults any personnel of the Commission duly engaged in the exercise of any power conferred on him under this Act; or

(j) fails to contribute to the funding of the services referred to in section 19 in accordance with the directions of the Commission,

is guilty of an offence and liable to a fine of $50,000 or to imprisonment for a term of 2 years or to both and, in the case of a continuing offence, to a further fine of $5,000 dollars for each day that the offence continues after conviction.

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(2) Notwithstanding subsection (1), the Commission may, where a person has violated any provision of this Act, the regulations or the Telecommunications Code or a licensee, a special licensee or an authorisation holder has breached any condition contained in its licence, special licence or frequency authorisation, warn such person, licensee, special licensee or authorisation holder, issue a cease and desist order or other mandatory order, seek enforcement of the condition or of any such order in the Court, seek to obtain an order to show cause or a mandatory injunction from the Court; propose amendments to such licence or frequency authorisation in accordance with section 14, suspend or terminate such licence or frequency authorisation in accordance with section 13 or take such other action consistent with this Act, the regulations, the Telecommunications Code or other written law, as it deems appropriate.

(3) Notwithstanding paragraph (1)(e), any person operating a telecommunications network or providing a telecommunications service may intercept any communication that is transmitted over its network or service—

(a) solely and as is strictly necessary to—

(i) install, maintain or test equipment used or intended for use in the operation of such network or the provision of such service,

(ii) monitor the network or service quality,

(iii) bill and collect charges from the sender or recipient of such communication,

(iv) protect such person's network or services from harm,

(v) protect users, or

(vi) protect other operators of telecommunications networks or providers of telecommunications services from the fraudulent use of such networks or services;

(b) after having been authorised to intercept such communication by the Court; or

(c) in obedience to an Order issued by the Governor.

**Giving false information**

**41.** A person who knowingly gives false or misleading information to the Commission is guilty of an offence and liable to a fine of $10,000 or to imprisonment for a term of 6 months or to both.

**False signals**

**42.** A person who knowingly transmits or circulates false or deceptive distress, safety or identification signals is guilty of an offence and liable to a fine of $50,000 or to imprisonment for 2 years or to both.

**False communications**

**43**. (1) A person who, by means of any telecommunications service, sends any communication that to his knowledge is false or misleading and likely to prejudice the efficiency of any life safety

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service or to endanger the safety of any person, ship, aircraft, vessel or vehicle is guilty of an offence and liable on summary conviction to a fine of $50,000 or to imprisonment for 2 years or to both.

(2) For the purposes of subsection (1), a person is taken to know that a communication is false or misleading if he did not take reasonable steps to ensure that it was not false or misleading.

(3) Subsection (2) does not apply to the operators of telecommunications networks or providers of telecommunications service over which a communication is sent.

**Damage to equipment**

**44.** (1) A person who, by any means—

(a) recklessly or maliciously damages, removes or destroys any facility; or

(b) recklessly or intentionally interferes with, or causes damage to, or who intentionally accesses without authorisation, any computer, switch or other facility used in connection with the operation or provision,

of any telecommunications network or telecommunications service, or any telecommunications service operated by the Royal Anguilla Police Force, the Prison Service or the Government, is guilty of an offence and liable to a fine of $50,000 or to imprisonment for 2 years or to both.

(2) A person who negligently commits any of the acts described in subsection (1) commits an offence and is liable on summary conviction to a fine of $5,000.

**Recovery of civil debt**

**45.** A person convicted under section 44 is liable for all expenses reasonably incurred in the repairing, restoration or replacement of any computer, switch or other facility damaged, removed or destroyed by him and the expenses are recoverable summarily as a civil debt.

**Confidentiality and disclosure of personal information**

**46.** A person who intentionally discloses any communication that he knows was obtained in violation of section 40(1)(e) or who intentionally uses or discloses any personal information in violation of section 8 commits an offence and is liable on summary conviction to a fine of $5,000.

**General penalty**

**47.** A person who contravenes or fails to comply with any of the provisions of this Act or any regulations made hereunder commits an offence and except where the provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine of $25,000, and in the case of a continuing offence to a further fine of $1,000 for each day that the offence continues after conviction.

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## PART 11

## FEES

**Fees**

**48.** (1) The Commission shall—

(a) charge fees for any licence, special licence or frequency authorisation; and

(b) charge fees for any document that it makes available or any service that it provides.

(2) The Commission may determine to charge fees, pursuant to paragraph (1)(a), for any initial or renewal applications for licences, special licences or frequency authorisations, upon the initial grant of licences, special licences or frequency authorisations, and on an annual or other periodic basis.

(3) Except as provided under section 25(7), fees charged by the Commission pursuant to subsection (1) shall be commensurate with the cost of—

(a) carrying out the functions of the Commission under this Act;

(b) administering licences, special licences or frequency authorisations; and

(c) providing the services, with respect to the fees described in paragraph (1)(b),

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

## PART 12

## GENERAL

**Obligations under international agreements**

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

**Services provided from outside Anguilla**

**50.** Notwithstanding any other provision of this Act, when telecommunications services are being provided in Anguilla by persons not located in Anguilla, to the extent that such services jeopardize the provision of, or otherwise compete unfairly with, services licensed under this Act, the Governor may take such action as he deems appropriate.

**Regulations, the Telecommunications Code and disputes**

**51.** (1) Such regulations as the Commission and the Minister may deem necessary to give purpose and effect to this Act shall be made in accordance with section 50 of the Public Utilities Commission Act.

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(2) The Commission—

(a) may issue a Telecommunications Code setting out such guidelines, standards and other requirements as the Commission may issue or specify;

(b) shall publish the Code, or parts thereof, in the *Gazette*;

(c) may amend, add to or replace the Code pursuant to section 51 of the Public Utilities Commission Act.

(3) Part 5 of the Public Utilities Commission Act shall govern all complaints or disputes submitted to the Commission under this Act.

**Forbearance**

**52.** (1) The Commission may refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Act in relation to a telecommunications network, telecommunications service, radiocommunication service, class of telecommunications services or uses of spectrum by any persons where the Commission finds that to refrain would further the interests of the people of Anguilla.

(2) Before determining to refrain from the exercise of any power or the performance of any duty pursuant to subsection (1), the Commission shall publish the matter for decision in the *Gazette*.

**Telecommunications during a public emergency**

**53.** (1) Where a state of public emergency has been declared by Proclamation, as such terms are defined in, and in accordance with, the Emergency Powers Act, the Governor may, in accordance with that Act—

(a) authorise the taking of possession and control by the Government of any facilities, telecommunications equipment or service to be used—

(i) for Government Service; or

(ii) for such ordinary service as the Governor may determine; or

(b) direct or authorise the control of telecommunications in any manner as he may direct.

(2) Each service provider may, during a period of emergency, in which facilities are disrupted as a result of *force majeure*, use its service for emergency communications and in a manner other than that specified in its licence or in the applicable regulations.

(3) Emergency use permitted under this section shall be discontinued when normal telecommunication services are again available or when such special use of the facilities, equipment or service is terminated by the Governor.

(4) If and when the Governor shall require a licensee or special licensee to give priority to communications of the Government of Anguilla, such communications shall have priority over all other communications, consistent with the ITU Treaties.

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(5) Operators and service providers shall develop plans for operating networks and providing services during *force majeure* and where there is serious and substantial interruption in the provision of telecommunications services, and shall cooperate in the development and implementation of any such plans.

**Powers of the Governor**

**54.** The Governor may make written requests and issue Orders to operators of telecommunications networks and providers of telecommunications services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security.

**Non-application of Act**

**55.** This Act shall not apply to—

(a) persons providing broadcasting services, except insofar as they operate telecommunications networks, provide telecommunications services or use spectrum subject to this Act, but this Act shall, in no event, apply to the content or scheduling of, or to any fees charged for, programming provided by broadcasting services;

(b) telecommunications networks and services operated or provided exclusively by Her Majesty's armed forces, Royal Anguilla Police Force, public security, and civil aviation authorities, except as expressly provided in this Act and in relation to the requirement to be granted a frequency authorisation;

(c) any ship or aircraft belonging to or exclusively employed in the service of Her Majesty or to any telecommunications equipment thereon; and

(d) any terminal equipment used exclusively for the purposes of paragraphs (b) and (c).

**Repeal and transitional provisions**

**56.** (1) Subject to this section, the Telecommunications Act, R.S.A. c. T5 and the Telecommunications Agreement Act, R.S.A. c. T10 are repealed.

(2) Regulations made under the Telecommunications Act, R.S.A. c. T5 shall remain in force until replaced by corresponding regulations made pursuant to this Act and the Public Utilities Commission Act.

(3) Licences issued under the Telecommunications Act, R.S.A. c. T5 or pursuant to the Telecommunications Agreement Act, R.S.A. c. T10 and in force at 10th June 2003 for at least 1 year but no later than such date or dates as the Commission may determine, provided that any provision of any licence that expressly or indirectly grants or purports to grant any exclusive right to operate or provide any telecommunications network or telecommunications service is null and void as of the day 10th June 2003.

(4) Notwithstanding any other provision of this section, the Company, as defined in the Telecommunications Agreement Act, R.S.A. c. T10—

(a) may continue to operate any telecommunications network or provide any telecommunications service pursuant to any licence or other authorisation issued to it under the Telecommunications Act, R.S.A. c. T5 or the Telecommunications

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Agreement Act, R.S.A. c. T10 that is in force on the day 10th June 2003 until 45 days after the Commission has announced that a licence to the Company, to operate certain telecommunications networks and provide certain telecommunications services, is available for issuance under this Act, or such later date as the Commission may determine; and

(b) shall have the exclusive right—

(i) to operate a domestic public telecommunications network and provide domestic public telecommunications services during the period beginning with the day 10th June 2003 and ending on the earlier of—

(A) the 45th day after which the Commission makes the announcement to which paragraph (a) refers, or

(B) the day on which the Commission issues the licence to which paragraph (a) refers; and

(ii) to operate an international public telecommunications network until the later of 1 year from 10th June 2003 or 225 days from the date of the announcement to which paragraph (a) refers, or such later date or dates as the Commission may determine.

(5) Where any person who is licensed under the Telecommunications Act, R.S.A. c. T5 operates a telecommunications network or provides a telecommunications service, radio communication service or broadcasting service and is required to obtain a licence or frequency authorisation granted under this Act to continue such operation or provision of service, he shall, during the period referred to in subsection (3), apply to the Commission for such a licence or frequency authorisation, as the case may be, to continue operating such network or providing such service as he operated or provided on 10th June 2003.

(6) All public telecommunications networks or services provided by any person at the date of enactment of this Act and all licenses granted or agreed to be granted for such networks or services by the Government at such date except for licenses covered under subsection (5) shall continue to operate as agreed in contract, allowed by order of the Court, or as stipulated in the licence, during the period beginning with the day 10th June 2003 and ending the 45th day after which the Commission makes the announcement that a licence is available for issuance under this Act, or such later date as the Commission may determine.

(7) Apart from fees for initial applications established by the Commission pursuant to section 48, any person applying for a licence or frequency authorisation pursuant to subsection (5) shall not be charged additional fees for use of spectrum for which he had been licensed under the Telecommunications Act, R.S.A. c. T5.

(8) Any person who, prior to 10th June 2003, had rights of way to roads or other public grounds to operate a telecommunications network shall have such rights under this Act.

(9) The Commission shall approve any application submitted pursuant to subsection (5) in accordance with this Act and any licence or frequency authorisation granted shall be subject to the provisions of this Act.

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(10) The Minister shall be responsible for the regulation and administration of the telecommunication sector until the coming into force of the Public Utilities Commission Act.

**Citation**

**57.** This Act may be cited as the Telecommunications Act, Revised Statutes of Anguilla, Chapter T6.

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