

THE TELECOMMUNICATIONS BILL, 2001

EXPLANATORY NOTE

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill establishes a legislative framework for telecommunications and broadcasting services in Trinidad and Tobago, for the purpose of encouraging new providers to enter the market, thereby facilitating competition in the sector. The current statutes, which are decades old, are ill-suited for an era of convergence among telecommunications and broadcasting services, as well as new, internet-based services.

The goal of liberalisation, generally, is greater customer satisfaction both in respect of the services being offered and the cost at which such services are offered. The Government proposes to and, in line with the policies reflected in the Bill, liberalise this sector in Trinidad and Tobago accordingly. By attracting providers of efficient and technologically advanced telecommunications services to Trinidad and Tobago, the Government hopes to promote broader business activity and to make the country a regional centre for the new information economy.

The trend towards liberalisation has been facilitated by the World Trade Organisation, of which Trinidad and Tobago is a member, committing countries to move on a path towards competition and permitting both local and foreign companies alike access to the domestic market. The commitments made by Trinidad and Tobago to the World Trade Organisation include adherence to the principles of openness and transparency in regulating the sector. To achieve this objective, the new Authority established in the Bill is vested with the authority to regulate and monitor the telecommunications sector.

Several interdependent policies, which have been proven around the world, to be essential for a successful transition to a liberalised and open telecommunications sector, have been a guiding factor in the preparation of this Bill.

In addition, the Bill provides for a mechanism by which existing providers of telecommunications services in Trinidad and Tobago, including Telecommunications Services of Trinidad and Tobago, hereinafter referred to as "TSTT", will be able to continue providing services during a transition period, after which time, they will be subject to the provisions of the Act. As the Government considers that the Trinidad and Tobago Telephone Act 1968 and the Wireless Telegraphy Ordinance 1936 are inconsistent with the modern approach reflected in the Bill, they are being repealed.

In the ensuing discussion on the Bill, only the major clauses of each Part of the Bill will be highlighted.

PART I - PRELIMINARY

Most notably, this Part contains definitions which are essential to an understanding of the Bill and the exercise of regulatory power. The principal definitions are those that define particular types of services because the Bill provides for regulatory treatment that differs among such groups.

PART II - THE TELECOMMUNICATIONS AUTHORITY

The Bill, in this Part, establishes the Trinidad and Tobago Telecommunications Authority (clause 4) as the governing body for telecommunications, with the power to oversee and regulate the telecommunications sector.

Pursuant to clause 6, it is proposed that the Authority shall be managed by a Board consisting of a Chairman, Deputy Chairman and not less than five or more than seven members appointed by the President, on such terms and conditions as the President determines. The members of the Board shall be drawn from various disciplines, as prescribed. Additionally, the method of appointment has been chosen as a means of ensuring that the life of the Board does not end because appointments terminate at the same time.

The Board shall be assisted, in its operations, by a Secretary and an Executive Director. The Secretary shall be responsible for such matters as the Board shall determine (clause 7) and the Executive Director shall be responsible for the operation of the Authority by carrying out the mandate of the Board (clause 8).

The Bill proposes to give the Authority numerous functions (clause 18), amongst which, the Authority may make recommendations to the Minister on the grant concessions and issue licences, classify telecommunications services, determine obligations relating to the provision and funding of universal service and implement and enforce any regulations that are made pursuant to the Act.

Consistent with the World Trade Organisation obligations of Trinidad and Tobago, the Authority is structured to be independent from the influences of providers of services. Its independence is not absolute, however, in that the Authority, pursuant to section 19 is required to implement Government policy.

PART III - CONCESSIONS

This Part proposes to deal with the manner in which potential operators of telecommunications networks and providers of telecommunications services or broadcasting services are authorised to enter the market. Basically, for certain classes of operators and service providers, entry into the market is subject to the grant of concessions by the Minister on the recommendation of the Authority. Clause 21(1) requires that a person who proposes to operate a public telecommunications network or provide a public telecommunications or broadcasting service shall require a concession granted by the Minister.

Where a concession is granted, the concession shall require the observance of certain conditions by the concessionaire, of both a general and specific nature. The general conditions applicable to all concessionaires are stipulated in clause 22. Those conditions include conditions as to fees, renewal applications, penalties, the provision of information, anti-competitive pricing and so on.

Clause 23 requires, as a condition peculiar to a concessionaire of a broadcasting service, that the concessionaire shall adhere to the Broadcasting Code promulgated pursuant to this Act.

Clause 24(1) stipulates specific conditions applicable to a concessionaire for a public telecommunications network, a public telecommunications service and a broadcasting service. Such networks and services are subject to particular conditions given their importance to users and the country. Some of these conditions are as follows:

- concessionaires to refrain from cross-subsidising without the prior written approval of the Authority;
- concessionaires to submit plans in respect of prescribed matters;
- concessionaires to meet prescribed standards of quality;
- concessionaires to provide users with access to and the opportunity to use the network or service;
- concessionaires to refrain from impairing or terminating the telecommunications service provided to any user or other provider of a telecommunications service during the pendency of a dispute;
- concessionaires to permit the resale of telecommunications services;
- concessionaires to provide and contribute to universal service.

Additionally, concessions for public telecommunications networks and services carry a condition governing interconnection obligations. Clause 25 requires that concessionaires of public telecommunications networks and public telecommunications services interconnect with other concessionaires of such networks and services. In order for such interconnection to be effected, the concessionaire is mandated to observe the requirements listed in clause 25(2). It may be noted that interconnection is defined, in clause 2, as “the linking of public telecommunications networks and public telecommunications services, to allow the users of one provider of a public telecommunications service to communicate with the users of another provider of a public telecommunications service and to access the services provided by such other provider.”.

In the interests of fair and open competition, Government has decided that all similarly situated operators of networks and providers of service are to be treated in like fashion under the Act. No provider shall be singled out for special treatment except, where necessary, for the introduction of competition. With respect to a dominant provider, therefore, which in the case of Trinidad and Tobago, is the incumbent, TSTT, additional conditions shall be imposed in its concession, in order to facilitate the development of competition in the market. Examples of the additional obligations imposed upon dominant providers can be found in clause 25(2)(j), (k), (l) and (m) of the Bill.

It should be noted that the special obligations in respect of a dominant provider shall not apply to TSTT alone, but shall apply to any network operator or service provider whose dominance in a particular market is established. The criteria for the determination of dominance are listed in clause 25(4).

With respect to a concession for a public telecommunications network and a concession for a broadcasting service, it shall be a further condition that a concessionaire provide other such concessionaires with access to any facilities owned or controlled by him. Furthermore, access to such facilities shall be granted to other concessionaires on a non-discriminatory and equitable basis and where agreed by both parties, the Authority may assist in negotiating a settlement between them. Charges may be levied for such access based upon criteria established by the Authority (clause 26).

By virtue of clause 28, the Authority is required to develop systems to fund and provide for universal service. The Act contemplates that in addition to the obligations of concessionaires, other providers of telecommunications services and users may be required to contribute as well. Under this clause, the Authority has the power, subject to the approval of the Minister, to determine the type of telecommunications services to be provided to persons throughout Trinidad and Tobago. Thus, by way of example, as teledensity is currently 20/100 in Trinidad and Tobago, it is anticipated that the Authority may seek to establish a system for the rapid and efficient provision of a public telephone service to be made available to all persons throughout Trinidad and Tobago.

The Bill adopts a modern approach to price regulation. New providers, without market power, shall be able to price their services based upon the market. In respect of the incumbent, TSTT, which is now subject to “rate of return” regulation, it is intended that, under the Bill, it will be subject to “price cap regulation” or such other method as the Authority deems appropriate in a competitive environment.

Under this type of pricing regime, which is now being used worldwide, TSTT will have the freedom to adjust prices below the cap with the expectation that prices will be reduced over time.

By virtue of clause 29, therefore, the Authority will not review and approve prices. Instead, it will determine the circumstances in which price regulation is appropriate and will establish regimes, such as price cap formulas, for regulating prices, where necessary.

Clauses 30 and 31 address the issues of termination, suspension or amendment of a concession and renewal respectively. With respect to renewal of a concession it should be noted that the Minister is bound to guarantee similar terms and conditions in respect of the first renewal of a concession and thereafter the terms of any subsequent renewal will be the subject of negotiation.

The remaining clauses of this Part are self-explanatory.

PART IV - LICENCES, SPECTRUM MANAGEMENT AND NUMBERING

This Part deals with a number of different issues, the first being the issue of licences for the purpose of establishing a radiocommunication service and operating radiotransmitting equipment (clause 36). As with concessions, licences shall be issued by the Minister on the recommendation of the Authority and shall be subject to certain conditions stipulated in the Bill (clause 37) and are also subject to stated principles governing termination, suspension, amendment and renewal (clause 39).

The Authority has power under clauses 41 and 42 to regulate and manage the use of the spectrum and, to this end, licences issued by the Minister shall be consistent with the spectrum plan made pursuant to section 41. The spectrum plan shall, *inter alia*, address the manner in which the spectrum shall be used and the procedures to be adopted for the licensing of frequency bands. In carrying out its functions with respect to the issue of licences and the spectrum, the Authority is required to take into account those matters as set out in clause 43, such as the impact of the spectrum plan on existing and future use, the most efficient use of the spectrum and the Government's obligations under the Convention. Clause 44 requires the Authority to develop a numbering plan in respect of telecommunications services. Such plan shall, to the extent that it is feasible, build upon the numbering plan currently in effect.

PARTS V AND VI - TECHNICAL STANDARDS AND TESTING AND INSPECTION

These Parts address Technical Standards and Testing and Inspection and are self-explanatory.

PARTS VII AND VIII - FINANCIAL PROVISIONS AND STAFF RELATED MATTERS

These Parts address financial and staffing matters respectively and likewise are self-explanatory.

PART IX - OFFENCES

Offences and penalties in respect thereof are comprehensively dealt with in this Part. Clause 72 empowers the Minister by Order to amend the penalties.

PART X - GENERAL

This Part contains a number of miscellaneous provisions. Of note are the provisions empowering the Minister to make regulations in which similarly situated persons are to be treated in like fashion in accordance with the WTO commitments of Trinidad and Tobago (clause 78). Clause 79 requires the Authority to promulgate a broadcasting code, while clauses 80 and 81 address issues of confidentiality and forbearance respectively.

Clause 82 seeks to put in place systems for dispute resolution, while clause 83 gives an aggrieved person the right to request that the Minister reconsider decisions made, based upon new information put before it. Such right, however, does not abrogate a person's right to appear before the High Court, however, in respect of this provision, particularly, or the Act, generally.

Clause 84 would deal with the use of telecommunications installations and equipment during periods of emergency.

Finally, clause 85 is a repeal and transitional provision. This clause repeals the Wireless Telegraphy Ordinance, the Cable and Wireless (West Indies) Limited Ordinance, the Trinidad and Tobago Telephone Act and the Telecommunications Authority Act. Notwithstanding the repeal of the Wireless Telegraphy Ordinance, regulations made thereunder shall remain in force until replaced by corresponding regulations made under this Act. Likewise all rights and obligations under the Trinidad and Tobago Telephone Act shall remain in force for either one year or such longer period as the Minister may determine or until TSTT is granted a new concession, whichever is earlier. The remaining amendments are consequential in nature.

THE TELECOMMUNICATIONS BILL, 2001

ARRANGEMENT OF SECTIONS

Clause

PART 1

PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objects of the Act

PART II

THE TELECOMMUNICATIONS AUTHORITY

4. Establishment of the Authority
5. Management of Authority by Board
6. Constitution of Board
7. Corporate Secretary
8. Executive Director
9. Absence from office of Executive Director
10. Seal
11. Ordinary meetings
12. Special meetings
13. Quorum
14. Decisions of the Board
15. Disclosure of interest
16. Inducement, collusion, concealment or connivance
17. Personal liability of members
18. Functions of the Authority
19. Directions by the Minister
20. Assets transferred to the Authority

PART III
CONCESSIONS

21. Requirement for a concession
22. Conditions applicable to all concessions
23. Conditions applicable to a concession for a broadcasting service
24. Conditions applicable to a concession for a public telecommunications network or service
25. Interconnection
26. Access to facilities
27. Government essential services
28. Universal service
29. Prices
30. Termination, suspension or amendment of concession
31. Renewal of concession
32. Terminal equipment
33. Road works
34. Repair and restoration
35. Trees

PART IV
LICENCES, SPECTRUM MANAGEMENT AND NUMBERING

36. Requirement for a licence
37. Conditions of licence
38. Authorisation to operate in territorial waters or airspace
39. Termination, suspension, amendment or renewal of licence
40. Operation of equipment
41. Spectrum
42. Allocation of frequency bands
43. Exercise of functions
44. Numbering plan

PART V
TECHNICAL STANDARDS

45. Standards

PART VI

TESTING AND INSPECTION

- 46. Inspectors
- 47. Power to request information
- 48. Pre-installation testing
- 49. Standards for testing
- 50. Entry and search
- 51. Magistrate may issue warrant

PART VII

FINANCIAL PROVISIONS

- 52. Financial powers of the Authority
- 53. Funds of the Authority
- 54. Exemption from tax and provisions of Central Tenders Board Ordinance, 1961
- 55. Estimates of expenditure
- 56. Preparation of annual reports and accounts by Authority
- 57. Audit of accounts
- 58. Financial year
- 59. Authority may make rules

PART VIII

STAFF AND RELATED MATTERS

- 60. Employment of staff
- 61. Secondment
- 62. Transfer of officers to the Authority
- 63. Pension fund plan
- 64. Employment of persons for specific tasks

PART IX

OFFENCES

- 65. Offences
- 66. Obstructing an inspector
- 67. False signals
- 68. False communications
- 69. Damage to equipment
- 70. Recovery of civil debt

- 71. General penalty
- 72. Amendment of penalties

PART X

GENERAL

- 73. Directions for Minister
- 74. Minister's certification
- 75. Monitoring stations
- 76. Harmful interference
- 77. Obligations under international agreements
- 78. Regulations
- 79. Authority to promulgate Broadcasting Code
- 80. Confidentiality
- 81. Forbearance
- 82. Dispute settlement
- 83. Reconsideration and appeal
- 84. Telecommunications during an emergency
- 85. Repeal and transitional provisions

SCHEDULE

A BILL

AN ACT for the regulation of telecommunications in Trinidad and Tobago

Preamble WHEREAS, the Government believes that in order to promote the country as the regional centre for the new information economy, it is necessary to establish a comprehensive and modern legal framework for an open telecommunications sector by permitting new providers of telecommunications services to enter the market and compete fairly:

 And whereas it is appropriate that an Authority be established with transparent regulatory processes to guide the sector's transformation from virtual monopoly, in which Telecommunications Services of Trinidad and Tobago is the principal provider of telecommunications services, to a competitive environment, to monitor and regulate the sector so transformed and in particular, to prevent anti-competitive practices:

 And whereas, in order to achieve these stated goals, it is necessary to repeal the existing, outdated legislation and enact new legislation, as hereunder proposed:

Enactment **ENACTED** by the Parliament of Trinidad and Tobago as follows:

PART I

PRELIMINARY

Short title 1.(1) This Act may be cited as the Telecommunications Act, 2001.
and
commencement

(2) Parts I, II, VII, VIII and X with the exception of sections 77, 81, 82, 83, 84 and 85 shall take effect on the date of assent of this Act, and the remaining Parts shall take effect on dates to be fixed by the President, by Proclamation.

Interpretation 2.(1) In this Act –

Act No.35 of 1995 “affiliate” means an affiliated body corporate within the meaning of section 5 of the Companies Act;

 “Authority” means the Trinidad and Tobago
 Telecommunications Authority established under
 section 4;

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

“closed user group” means a group of persons, who have a common business or other economic 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;

“concession” means an authorization to operate a public telecommunications network or provide a public telecommunications service or broadcasting service, issued pursuant to section 21;

“Convention” means the International Telecommunication Union Convention adopted from time to time and in force, to the extent ratified by Trinidad and Tobago;

“Executive Director” means the Chief Executive Officer of the Authority appointed by the Board in accordance with section 8;

“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 thing 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;

“frequency band” means a continuous frequency range of spectrum;

“harmful interference” means interference which endangers the functioning of telecommunications so as to impede, degrade, obstruct or interrupt a telecommunications service;

“interconnection” means the linking of public telecommunications networks and public telecommunications services, to allow the users of one provider of a public telecommunications service to communicate with the users of another provider of a public telecommunications service, and to access the services provided by such other provider;

“licence” means an authorization issued pursuant to section 36;

Act No. 21 of 1990

“local authority” means the council of a municipal corporation within the meaning of the Municipal Corporations Act, 1990;

“Minister” means the member of Cabinet to whom responsibility for telecommunications is assigned;

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

Chap. 75:01

“pension fund plan” has the meaning assigned to it by section 28(1) of the Income Tax Act;

Act No. 20 of 1997
Chap.14:01

“pension law” has the meaning assigned to it by the Law Reform (Pensions) Act, 1997 except for the reference to the Defence Act;

“private telecommunications service” means a telecommunications service used within one enterprise or its affiliates, to satisfy its or their internal needs and operated without any interconnection to a public telecommunications network;

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

Chap. 1:01

“Public Service” has the meaning assigned to it under section 3 of the Constitution;

“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;

“public telephone service” means the commercial provision to the public of the direct transport and switching of voice in real time from and to points at which users are connected to a network such that a user can use terminal equipment to communicate with another user;

“radiocommunication service” means a service performed or intended to be performed or facilities provided or intended to be provided involving the transmission, emission or reception of electromagnetic waves for telecommunications purposes;

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

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

“station” means one or more transmitters or receivers or a combination of transmitters and receivers including accessory equipment at one location for carrying on a radiocommunication service;

“street” has the same meaning assigned to it in section 2 of the Highways Act;

“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;

“telecommunications network” means a system or any part thereof used for the provision of a telecommunications service;

“telecommunications service” includes a closed user group service, a private telecommunications service, a public telecommunications service, and a radio-communication service;

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

Act No. 40 of 1996

“Tobago House of Assembly” means the Assembly established under the Tobago House of Assembly Act;

"universal service" means the provision of telecommunications services throughout Trinidad and Tobago, in accordance with the criteria stipulated in section 28;

“user” means a customer or a subscriber;

“utility installation” means any facility in or over a street or public ground;

Act No. 26 of 1998

“utility installation owner” means the owner or operator of any utility installation, and includes any concessionaire or licensee, statutory authority and any other entity defined to be a public utility in the Regulated Industries Commission Act;

“value added service” means a service, other than a public telecommunications service, that, using a telecommunications service, modifies the form, content, code, protocol or other similar aspect of the communication, restructures, adds or supplies information or permits user interaction with information.

(2) Terms and words not defined in this section shall bear the meaning assigned to them in the Convention.

(3) The Minister may, by Order, amend this section, subject to negative resolution of Parliament.

Objects of the Act

3. The objects of the Act are to establish conditions for –
- (a) an open market for telecommunications services, including conditions for fair competition, at the national and international levels; and
 - (b) the facilitation of the orderly development of a telecommunications system that serves to safeguard, enrich and strengthen the national, social, cultural and economic well-being of the society;
 - (c) promoting and protecting the interests of the public by -
 - (i) promoting access to telecommunications services;
 - (ii) ensuring that services are provided to persons able to meet the financial and technical obligations in relation to those services;
 - (iii) providing for the protection of customers;
 - (iv) promoting the interests of customers, purchasers and other users in respect of the quality and variety of telecommunications services and equipment supplied;
 - (d) promoting universal access to telecommunications services for all persons in Trinidad and Tobago, to the extent that is reasonably practicable to provide such access;
 - (e) facilitating the achievement of the objects referred to in paragraphs (a) and (b) in a manner consistent with Trinidad and Tobago's international commitments in relation to the liberalization of telecommunications; and
 - (f) promoting the telecommunications industry in Trinidad and Tobago by encouraging investment in, and the use of, infrastructure to provide telecommunications services.

PART II

THE TELECOMMUNICATIONS AUTHORITY

Establishment of
the Authority

4. There is hereby established a body corporate to be known as the Trinidad and Tobago Telecommunications Authority (hereinafter referred to as "the Authority").

Management of
Authority by
Board

5. The Authority shall be managed by a Board (hereinafter referred to as "the Board") for the purpose of exercising and performing such duties as are conferred upon it by this Act and by any other written law.

Constitution
of Board

6.(1) The Board shall consist of -

- (a) a Chairman, a Deputy Chairman and not less than five or more than seven members appointed by the President on such terms and conditions as the President may determine; and
- (b) an Executive Director.

Act No. 12 of 1985

(2) Of the members appointed under subsection (1)(a), at least three members shall be qualified, by reason of training and experience, in fields relating to telecommunications, one member shall be an attorney-at-law within the meaning of the Legal Profession Act and the remainder shall be qualified, by reason of training and experience, in the fields of economics, finance or business and human resource management.

(3) Subject to subsection (4) an appointment under subsection (1)(a) shall be for such period, being not more than three years at any one time, as the President shall specify in the instrument of appointment, and the appointments of members shall not all expire at the same time.

(4) The first Board shall consist of a Chairman, Deputy Chairman and two members appointed for a term of three years, three members appointed for a term of two years and any other members that may be appointed for a term of one year each.

(5) The Chairman or Deputy Chairman may at any time resign his office as Chairman or Deputy Chairman or as a member of the Board or both by letter addressed to the President and forwarded through the Minister.

(6) A member of the Board may at any time resign by letter addressed to the Chairman who shall forthwith cause it to be forwarded to the Minister to be submitted to the President.

(7) The appointment of any person to an office or membership of the Board and the termination thereof whether by death, resignation, revocation, effluxion of time or otherwise, shall be notified in the *Gazette*.

(8) The President may terminate the appointment of a member of the Board where he-

- (a) becomes of unsound mind or is incapable of carrying out his duties;
- (b) has been declared bankrupt;
- (c) is convicted of any offence which brings the Authority into disrepute;
- (d) is guilty of misconduct in relation to his duties;
- (e) is absent, except on leave granted by the Board, from three consecutive meetings of the Board; or
- (f) fails materially and willfully to carry out any of the duties or functions conferred or imposed on him under this Act.

(9) Where a member, appointed under subsection (1)(a) is unable to act by reason of illness or other cause, the President may appoint a person to act as a Board member in his stead for that occasion or until termination of the disability.

(10) The President may fix the remuneration of a person appointed pursuant to subsection (9), and any person so appointed may complete any unfinished business of the Authority in which he has taken part, notwithstanding the resumption of duty of the Board member in whose place he was appointed under this section.

(11) Section 15 applies *mutatis mutandis* to a person appointed under subsection (9).

Corporate
Secretary

7.(1) The Board shall appoint a Corporate Secretary (hereinafter referred to as “the Secretary”) for a period of not less than three years on such terms and conditions as it shall determine.

(2) The Secretary shall be responsible for such matters as the Board may determine.

(3) Service upon the Authority of any document shall be effected by delivering or sending the same by registered post or by facsimile, addressed to the Secretary, at the office of the Authority.

(4) Service upon the Authority of any document, by facsimile, shall be confirmed in writing as soon as possible thereafter.

Executive Director

8.(1) The Board shall appoint an Executive Director, who shall be the Chief Executive Officer of the Authority, for a term not exceeding five years on such terms and conditions as are agreed upon between the Board and the Executive Director.

(2) The Executive Director shall -

- (a) manage the affairs of the Authority subject to the directions of the Board;
- (b) attend all meetings of the Board and take part in its deliberations but he shall have no right to vote.

(3) The appointment of the Executive Director and the termination of his appointment, whether by death, resignation or otherwise, shall be published in the *Gazette*.

Absence from
office of
Executive Director

9.(1) Where a vacancy arises in the office of the Executive Director either -

- (a) by a resignation or termination of appointment;
- (b) by absence approved by the Board,

the Board shall appoint, from amongst the staff of the Authority, a person to act as Executive Director.

(2) Where a person acts in accordance with this section he -

- (a) shall have and may exercise all the powers and perform all of the functions of the Executive Director;
- (b) shall receive the same remuneration as the Executive Director; and
- (c) shall, where the vacancy arose as a result of a resignation or termination, continue to act until such time as an Executive Director is appointed, such appointment to be no later than six months from the date of the acting appointment.

(3) At no time shall an appointment to act as Executive Director exceed a period of six months.

Seal

10.(1) The Authority shall have an official seal that is to be kept in the custody of the Secretary.

(2) The seal shall be used with the permission of the Board and every instrument to which it is affixed shall be signed by the Secretary and Chairman or the Secretary and Deputy Chairman.

(3) All documents other than those required by law to be under seal shall be signed by the Chairman or the Deputy Chairman or a member authorised by resolution of the Board to do so.

Ordinary meetings

11.(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business and in any case at least once every two months at such place and time and on such days as the Board may determine.

(2) The Chairman or, in his absence, the Deputy Chairman shall preside at all meetings of the Board.

(3) Where, for any reason, the Chairman or the Deputy Chairman is absent the members present may choose one of their number to preside at that meeting.

(4) Notwithstanding subsections (2) and (3), no person shall preside at any meeting when the provisions of section 15(2) apply to him.

(5) The Board may, by way of rules or resolutions, regulate its own procedure for the conduct of its business.

(6) Minutes of each meeting shall be kept in the proper form by the Secretary and confirmed at a subsequent meeting of the Board.

(7) Certified copies of the Minutes referred to in subsection (6), when confirmed pursuant to that subsection, shall be forwarded to the Minister.

Special meetings

12.(1) The Chairman may at any time call a special meeting of the Board.

(2) The Chairman shall call a special meeting within seven days of receiving a request, in writing, so to do, signed by any four members of the Board and shall cause notices to be issued to all members in respect of every special meeting.

(3) Every request for a special meeting shall include sufficient indication of the purpose of the meeting.

Quorum

13. At any meeting of the Board, four members of the Board, including the presiding Chairman, shall constitute a quorum.

Decisions of the Board

14. A decision of the Board, by a majority of members present and voting, shall be final and conclusive.

Disclosure of interest

15.(1) Every member of the Board shall, on appointment and annually thereafter, submit to the President a declaration stating whether or not he has a pecuniary interest -

- (a) in any network or service regulated by the Authority; and
- (b) in any business or any body corporate carrying on any business with the Authority in the exercise of its functions.

(2) A member of the Board whose interest is likely to be affected in any way by a decision of the Board on any matter specified in subsection (1) shall, as soon as possible after the relevant facts come to his knowledge, disclose the nature of his interest.

(3) A disclosure under subsection (2) shall be recorded in the minutes of a meeting of the Board and the member shall -

- (a) not take part after disclosure in any deliberation or decision of the Board with respect to that matter; and
- (b) be disregarded for the purpose of constituting a quorum of the Board.

(4) For the purposes of this section, a person who, or a nominee or relative of whom, is a shareholder who owns shares in excess of five per cent, or is a partner in a company or other body of persons other than a statutory authority or who is an employee thereof, shall be treated as having an interest.

Act No. 30 of 1998

(5) In this section, “relative” means spouse, cohabitant within the meaning of the Cohabital Relationships Act, father, mother, brother, sister, son or daughter of a person.

(6) A member who fails to comply with the provisions of this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars unless he proves, to the satisfaction of the Court, that he did not know that -

- (a) the matter in which he had an interest was the subject of consideration at the meeting; or

- (b) he had an interest in the matter under consideration at the meeting.

Inducement,
collusion,
concealment or
connivance
Act No.11
of 1987

16. The provisions of the Prevention of Corruptions Act apply where a member of the Board or an employee of the Authority demands or accepts any fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, from any person, on account of anything done or to be done, omitted or to be omitted by such person, in any way relating to his office or employment, or if such a person attempts to make any collusive agreement to neglect his duty or to conceal or connive at any act whereby any provision of this Act or any other law may be evaded or violated, such person commits an offence and is liable, on summary conviction, to a fine of not less than two hundred and fifty thousand dollars and imprisonment for two years.

Personal liability
of members

17.(1) No personal liability shall attach to any member for –

- (a) any act or omission of the Board; or
(b) anything done or permitted in good faith in the course of the operations of the Authority under this Act.

(2) Any sums of money, damages or costs recovered against the Authority or any member of the Board for anything done, omitted or permitted in good faith in the course of the operations of the Authority shall be paid out of such amounts as may be appropriated by Parliament.

Functions of the
Authority

18.(1) Subject to the provisions of this Act, the functions of the Authority are to -

- (a) make recommendations to the Minister on the granting of concessions and licences and monitor and ensure compliance with the conditions set out therein;
(b) classify telecommunications networks and services as public telecommunications networks, public telecommunications services, closed user group services, private telecommunications services, value added services, broadcasting services or any other type of telecommunication service;
(c) determine universal service obligations throughout Trinidad and Tobago, pursuant to section 28, and ensure that such obligations are realised;
(d) establish national telecommunications industry standards and technical standards;

- (e) advise the Minister on policies governing the telecommunications industry and issues arising at international, regional and national levels;
- (f) advise the Minister on technical standards;
- (g) ensure compliance with the Convention;
- (h) implement and enforce the provisions of this Act and the policies and regulations made hereunder;
- (i) plan, supervise, regulate and manage the use of the radio frequency spectrum, including –
 - (i) the licensing and registration of radio frequencies and call signs to be used by all stations operating in Trinidad and Tobago or on any ship, aircraft, or other vessel or satellite registered in Trinidad and Tobago;
 - (ii) the allocation, assignment and reallocation or reassignment of frequency bands where necessary;
- (j) plan, administer, manage and assign telecommunications numbering for telecommunications services;
- (k) collect all fees, including concession and licence fees, and any other charges levied under this Act;
- (l) investigate and resolve all allegations of harmful interference;
- (m) investigate complaints by users, operators of telecommunications networks, providers of telecommunications and broadcasting services or other persons arising out of the operation of a public telecommunications network, or the provision of a telecommunications service or broadcasting service, in respect of rates, billings and services provided generally and to facilitate relief where necessary;
- (n) train and certify its personnel in accordance with the Convention;
- (o) test and certify telecommunications equipment, subject to section 48(3), to ensure compliance with -

- (i) international standards; and
 - (ii) environmental health and safety standards, including electromagnetic radiation and emissions;
- (p) ensure the orderly and systematic development of telecommunications throughout Trinidad and Tobago; and
- (q) carry out such other functions imposed by or under this Act and do anything incidental or conducive to the performance of any of its functions.

(2) In the performance of its functions under subsection (1)(b), the Authority shall require that all persons operating or intending to operate any of the services listed in subsection (1)(b) notify the Authority accordingly.

(3) In the performance of its functions, the Authority shall have regard to the interests of consumers and in particular -

- (a) that services are reliable and provided at the lowest possible cost;
- (b) to fair treatment of consumers and service providers similarly situated;
- (c) in respect of consumers similarly placed, to non-discrimination in relation to access, pricing and quality of service; and
- (d) current national environmental policy.

Directions by
the Minister

19. In the exercise and performance of its function, powers and duties under this Act or any other written law, the Authority shall act in accordance with any special or general directions of the Government given to the Authority by the Minister.

Assets transferred
to the Authority
Schedule

20.(1) All rights, claims or interests of the Government in the assets set out in the Schedule are hereby vested in the Authority.

(2) The Auditor General shall within thirty days of the commencement of this Act, cause an audit of the assets vested in the Authority.

(3) The Auditor General shall within thirty days of completion of the audit cause a copy of the audited statement together with an inventory to be laid in Parliament or if Parliament is not then in session, within thirty days after commencement of its next session.

(4) The audited statement shall indicate among other things, the value of the inventory, as of the date of the audit.

PART III

CONCESSIONS

Requirement
for a
concession

21.(1) No person shall operate a public telecommunications network, provide a public telecommunications service or broadcasting service, without a concession granted by the Minister.

(2) A person who wishes to operate a network or provide a service described in subsection (1), shall apply to the Authority in the manner prescribed.

(3) The Minister shall not be bound to accept the advice or any part thereof rendered by the Authority in accordance with this section.

(4) Where the Minister grants a concession, the Authority shall cause to be published in the *Gazette* and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect.

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

Conditions
applicable
to all
concessions

22.(1) Every concession for a public telecommunications network, a public telecommunications service or a broadcasting service shall -

- (a) require the concessionaire to pay fees annually to the Authority;
- (b) prohibit anti-competitive pricing and other related practices;
- (c) prohibit the transfer of control of the concessionaire without the prior written approval of the Authority;
- (d) prohibit the assignment of the concession without the prior written approval of the Authority;

- (e) require the concessionaire, upon request made by the Minister of National Security and subject to any written law, to collaborate with the Ministry in matters of national security; and
- (f) require the observance of regulations made pursuant to this Act.

(2) The approval of the Authority as required under subsection (1)(c) and (d), shall not be unreasonably withheld.

(3) Every concession for a public telecommunications network, a public telecommunications service or a broadcasting service shall contain conditions regarding -

- (a) the expiration of the concession and the time required for an application for renewal;
- (b) the circumstances under which the concession may be amended, e.g. *force majeure*, national security, changes in national legislation, implementation of international obligations;
- (c) the provision of information and reports to the Authority;
- (d) the overall performance of the concessionaire;
- (e) the provision of information to users and procedures for handling and responding to user complaints and disputes;
- (f) the submission to the Authority of disputes with other concessionaires, users and any person, where such disputes arise out of the concessionaire's exercise of his rights and obligations under the concession, subject to section 82; and
- (g) any other matter as may be agreed between the Authority and the concessionaire.

Conditions applicable to a concession for a broadcasting service

23. In addition to the conditions stipulated in section 22 a concession for a broadcasting service shall require the concessionaire to adhere to the Broadcasting Code promulgated pursuant to this Act.

Conditions applicable to a concession for a public telecommunications network or service

24.(1) In addition to the conditions stipulated in section 22 a concession for a public telecommunications network or a public telecommunications service shall require the concessionaire to adhere, where applicable, to conditions requiring the concessionaire to -

- (a) submit to the Authority plans for its approval respecting -
 - (i) the development of its network or service;
 - (ii) quality of service; and
 - (iii) any other related matter as the Authority may require,

and in the event that the concessionaire and Authority fail to agree with respect to the plans required under this paragraph, the Minister may prescribe such plans by Order, subject to negative resolution of Parliament;
- (b) provide users, under conditions which are published or are otherwise filed with the Authority, with access to and the opportunity to use such network or service on a fair and reasonable basis, and without discrimination among similarly situated users;
- (c) refrain from using revenues or resources, from a telecommunications network or service in respect of which the concessionaire is dominant, to cross-subsidise any other telecommunications network or service, without the prior written approval of the Authority;
- (d) meet prescribed standards of quality;
- (e) file annually with the Authority forms of user agreements with users for the provision of public telecommunications services for approval by the Authority;
- (f) permit the resale of its telecommunications service by not imposing unreasonable or discriminatory conditions or limitations on such resale;
- (g) provide and contribute to universal service in accordance with section 28;

- (h) account for costs and keep such books of accounts and where the Authority prescribes by regulation the manner in which such books are to be kept, to keep such books of accounts in accordance with such regulations;
- (i) refrain from impairing or terminating the telecommunications service provided to a user or other provider of a telecommunications service during a dispute, without the prior written approval of the Authority, except that, the concessionaire may, in respect of a billing dispute collect, from any such user or other provider, amounts that are not in dispute; and
- (j) refrain from using, and maintain the confidentiality of any confidential, personal and proprietary information of any user, other operator of a public telecommunications network or other provider of a telecommunications service originating from -
 - (i) any such user, operator or provider; or
 - (ii) any information regarding usage of the service or information received or obtained in connection with the operation of the concessionaire's network or service,

for any purpose other than to -

 - (iii) operate such network or service;
 - (iv) bill and collect charges;
 - (v) protect the rights or property of the concessionaire;
 - (vi) protect users or other providers from the fraudulent use of the concessionaire's network or service,

or as otherwise permitted by the concessionaire, user or other provider, as the case may be; and
- (k) make available on a timely basis, to other providers of telecommunications services, such technical information as the Authority may prescribe regarding the concessionaire's network, including planned

deployment of equipment, and other relevant information necessary for the provision of such services.

(2) The requirement of subsection (1) (k) shall, in respect of a concessionaire of a public telecommunications network or a public telecommunications service, apply in respect of a dominant operator of such network or provider of such service only, such dominance to be determined in accordance with the criteria set out in section 25(4).

Interconnection

25. (1) In addition to the requirements of sections 22 and 24 a concession for a public telecommunications network or a public telecommunications service shall include conditions obliging the concessionaire to provide for -

- (a) direct interconnection with the public telecommunications network or public telecommunications service of another concessionaire;
- (b) indirect interconnection with such network or service referred to in paragraph (a), through the public telecommunications networks or public telecommunications services of other concessionaires; and
- (c) the transmission and routing of the services of other concessionaires, at any technically feasible point in the concessionaire's network.

(2) In respect of a concessionaire's obligations pursuant to subsection (1), the Authority shall require a concessionaire to -

- (a) comply with guidelines and standards established by the Authority to facilitate interconnection;
- (b) provide, upon request, points of interconnection in addition to those offered generally to other concessionaires, subject to rates that reflect the concessionaire's cost of constructing additional facilities necessary to satisfy such request;
- (c) publish, in such manner as the Authority may prescribe, the prices and the technical and other terms and conditions pertaining to its offer for the elements of interconnection;

- (d) provide the elements of interconnection, to other concessionaires of public telecommunications networks and public telecommunications services, in a manner that is at least equal in both quality and rates to that provided by the concessionaire to a subsidiary, affiliate or any other party to which the concessionaire provides interconnection;
- (e) promptly negotiate, upon the request of another concessionaire of a public telecommunications network or a public telecommunications service, and endeavour to conclude, subject to paragraph (h), an agreement with regard to the prices and the technical and other terms and conditions for the elements of interconnection;
- (f) deposit with the Authority a copy of any agreement concluded pursuant to paragraph (e) within twenty-eight days of its making ;
- (g) offer the terms and conditions of an agreement concluded pursuant to paragraph (e) to any other concessionaire of a public telecommunications network or public telecommunications service on a non-discriminatory basis;
- (h) submit to the Authority for prompt resolution, in accordance with such procedures as the Authority may adopt, any disputes that may arise between concessionaires relating to any aspect of interconnection, including the failure to conclude an agreement made pursuant to paragraph (e) , or disputes as to price and any technical or other term and condition for any element of interconnection; and
- (i) submit to any decision rendered by the Authority made pursuant to paragraph (h).
- (j) provide, to the extent technically feasible, number portability when, and in accordance with the requirements, prescribed by the Authority;
- (k) provide dialing parity to other concessionaires of public telecommunications networks and public telecommunications services in accordance with requirements prescribed by the Authority;

- (l) permit other concessionaires of public telecommunications networks and public telecommunications services to have equal access to telephone numbers, operator services, directory assistance and directory listing without unreasonable delay, in accordance with requirements prescribed by the Authority; and
- (m) disaggregate the network and, on a cost-oriented basis such as the Authority may prescribe, establish prices for its individual elements and offer the elements at the established prices to other concessionaires of public telecommunications networks and public telecommunications services.

(3) The requirements of subsection (2) (j), (k), (l) and (m) shall apply to a dominant operator of public telecommunications network or provider of a public telecommunications service only.

(4) For purposes of this Act, the Authority may determine that an operator or provider is dominant 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, customers and ultimately consumers and, for such determination, the Authority may take into account the following factors:

- (a) the relevant market;
- (b) technology and market trends;
- (c) the market share of the provider;
- (d) the power of the provider to set prices;
- (e) the degree of differentiation among services in the market; and
- (f) any other matters that the Authority deems relevant.

(5) Where a concessionaire, deemed dominant by the Authority pursuant to subsection (4), considers that it has lost its dominance, it may apply to the Authority to be classified as non-dominant and should the Authority so classify, the applicable concession shall be amended to reflect such classification.

Access to facilities

26.(1) Subject to the provisions of this section, it shall be a further condition of a concession for a public telecommunications network and broadcasting service that the concessionaire be required to provide other concessionaires with access to the facilities that it owns or controls, such access not to be unreasonably withheld.

(2) Access to facilities shall be negotiated as between concessionaires on a nondiscriminatory and equitable basis and, at the request of both parties, the Authority may assist in negotiating a settlement between such parties.

(3) A concessionaire may deny access only where it demonstrates that there is insufficient capacity in the facility, taking into account its reasonably anticipated requirements and its obligations pursuant to section 27, or, for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(4) The Authority may regulate the rates, terms and conditions for access to any facility, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to facilitate, by such means as the Authority deems appropriate, the determination of complaints concerning such rates, terms and conditions.

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

Government
essential services

27. A concessionaire of a public telecommunications network shall permit the Minister to place, at his request, one cross-arm on any or all of its poles in Trinidad and Tobago free of all rental charges for the purpose of providing essential fire-alarm, police signaling or other services of the Government, but any cross-arm so placed shall be provided, placed and maintained at the expense of the Government, and any damage caused to the property of such concessionaire or any expense, cost, damage or claim incurred by such concessionaire by the exercise by the Minister of the powers conferred by this subsection shall be made good and paid to such concessionaire by the Government.

Universal service

28.(1) Subject to the approval of the Minister, the Authority 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 quality public telephone service.

(3) Subject to the approval of the Minister, the Authority 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.

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

(5) The obligations to provide and contribute to the funding of the services referred to in subsection (1) shall be applied on a nondiscriminatory basis as between all similarly situated telecommunications service providers and users.

Prices

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

(2) The Minister may, and subject to negative resolution of Parliament, establish price regulation regimes, which may include setting, reviewing and approving prices, in any case where -

- (a) there is only one concessionaire operating a public telecommunications network or providing a public telecommunications service, or where one concessionaire has a dominant position in the relevant market;
- (b) a sole or dominant concessionaire operating a public telecommunications network or providing a public telecommunications service cross-subsidises another telecommunications service provided by such concessionaire; or
- (c) the Authority detects anti-competitive pricing or acts of unfair competition.

(3) The Authority shall regulate prices for public telecommunications services and international incoming and outgoing settlement tariffs by publishing pricing rules and principles.

(4) Such rules and principles, made pursuant to subsection (3), shall require rates to be fair and reasonable and shall prohibit unreasonable discrimination among similarly situated persons, including the concessionaire.

(5) In respect of any telecommunications services provided on an exclusive basis by a concessionaire, the Authority shall establish the maximum rate-of-return that the concessionaire may receive on its investment.

(6) For any public telecommunications service in which there is competition, the Authority may introduce a method for regulating the prices of a dominant provider of such telecommunications service by establishing caps on such prices, or by such other methods as it may deem appropriate.

(7) Prices, terms and conditions for public telecommunications services shall be published by the concessionaire at such times and in such manner as the Authority shall prescribe and shall thereafter, subject to this Act and the conditions of any concession, be the lawful prices, terms and conditions for such services.

Termination,
suspension or
amendment of
concession

30.(1) Subject to this section, the Minister, after consultation with the Authority, may suspend or terminate a concession where -

- (a) the concessionaire has failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of the concession; or
- (b) the concessionaire has failed to comply materially with any lawful direction of the Minister or the Authority.

(2) A concession may be amended by the Minister, after consultation with the Authority, where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to a concession.

(3) Where a concession is amended pursuant to subsection (2), on grounds of national security, the rights of the concessionaire to compensation shall not be prejudiced.

(4) The Minister shall, before exercising the power of termination or suspension conferred on him by this section -

- (a) cause the Authority to serve on the concessionaire, a written notice to the effect that -

- (i) he is considering exercising the power and setting out the ground on which it may be exercised; and
 - (ii) the concessionaire may within thirty days of the notice being served, make written representation to the Authority;
- (b) take into consideration any representation made to the Authority under paragraph (a) (ii).

(5) During the period that the Minister is considering exercising his power to suspend or terminate the concession, the concessionaire shall continue to operate in accordance with the terms of the concession.

(6) Before amending a concession, the Minister shall cause the Authority to serve on the concessionaire written notice of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect.

(7) A decision of the Minister pursuant to this section may be reviewed by the High Court.

Renewal of concession

31.(1) Upon application by a concessionaire for the renewal of the first concession issued to him under this Act, the Minister shall, in consultation with the Authority, renew that concession for a period equivalent to the period for which the first concession was granted, where the Authority is satisfied that -

- (a) the concessionaire has operated within the terms of the first concession; and
- (b) during the period for which the first concession was granted the concessionaire did not engage in any conduct amounting to a material contravention of this Act, or regulations made pursuant to this Act.

(2) For any renewal after the renewal of the first concession, the period of renewal shall be as agreed between the concessionaire and the Minister.

(3) Where the Minister is not satisfied that the concessionaire operated within the terms of the first concession or has engaged in conduct amounting to a material contravention of this Act or regulations made hereunder, the concession shall not be renewed, but the concessionaire shall be permitted to apply for a new concession.

Terminal
equipment

32. Any terminal equipment may be connected to a public telecommunications network where the Authority, after consultation with the concessionaire, 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 harm to the 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 the network.

Road works

33.(1) In connection with the operation of a telecommunications network or the provision of a telecommunications service, a concessionaire may install or maintain a facility in or over a street or public ground or remove the facility therefrom and, for that purpose, may, in accordance with the development plan for the area and the provisions of the Highways Act and any other written law, carry out road works.

Chap. 48:01

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

- (a) obtain from the Ministry with responsibility for highways, the local authority or the Tobago House of Assembly, as the case may be (hereinafter referred to as “the relevant authority”), 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 said utility installation owner; and

- (d) notify the Authority 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 Authority shall facilitate relief thereof.

(3) Pursuant to the notification received by the Authority under subsection (2)(d), the Authority shall notify other concessionaires 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 fourteen days from the date of the receipt of the permission.

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

(6) A concessionaire may dispense with the requirement of subsection (2)(c) where the Authority 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 concessionaire.

(8) No concessionaire notified under subsection (3) shall carry out road works within six months of the receipt of such notification except where such concessionaire proves to the satisfaction of the Authority the necessity of carrying out emergency works.

(9) The Authority shall require that, prior to carrying out road works, a concessionaire publish a description thereof in at least one daily newspaper.

Repair and restoration

34.(1) Where a concessionaire damages any utility installation in carrying out road works, he shall immediately request the utility installation owner to repair the damage to the utility installation.

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

(3) A concessionaire shall, as speedily as possible, complete all road works and restore the street and public grounds, including the removal of any debris, to the satisfaction of the relevant authority, such satisfaction to be expressed in writing.

(4) Where a concessionaire fails to comply with subsection (2), he shall be held liable for any expenditure that the relevant authority incurs in such restoration and for any other loss by any other person.

(5) The liability of the concessionaire under subsection (4) shall continue for a period of four years or until the relevant authority expresses its satisfaction in writing pursuant to subsection (3).

Trees

35. Where trees on private lands overhang or interfere with any facility or road works, a concessionaire shall, before cutting down, pruning or trimming the trees, obtain the consent of the owner or person in possession of the land.

PART IV

LICENCES, SPECTRUM MANAGEMENT AND NUMBERING

Requirement for
a licence

36.(1) No person shall -

- (a) establish, operate or use a radiocommunication service;
- (b) install, operate or use any radiotransmitting equipment;
or
- (c) establish, operate or use any radiocommunication service on board any ship, aircraft, or other vessel in the territorial waters or territorial airspace of Trinidad and Tobago, other than a ship of war or a military aircraft or satellite registered in Trinidad and Tobago,

without a licence granted by the Minister.

(2) Where a licence is required pursuant to subsection (1), the applicant shall apply to the Authority in the manner prescribed.

(3) The Minister shall not be bound to accept the advice or any part thereof rendered by the Authority in accordance with this section.

(4) Where the Minister grants a licence, the Authority shall cause to be published in the Gazette and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect.

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

(6) A licence issued by the Minister shall be consistent with the spectrum plan established pursuant to section 41 and regulations made pursuant to this Act and shall confer the right on the licensee to use a certain frequency band or bands subject to such conditions as may be set out in the licence.

Conditions of
licence

37.(1) Every licence shall -

- (a) require the licensee to pay fees annually to the Authority;
- (b) require strict adherence to the allotted frequency band;
- (c) prohibit the transfer of control of the licensee without the prior written approval of the Authority;
- (d) prohibit the assignment of the licence, without the prior written approval of the Authority;
- (e) require the licensee, upon request made by the Minister of National Security and subject to any written law, to collaborate with the Ministry in matters of national security; and
- (f) require the observance of regulations made pursuant to this Act.

(2) The approval of the Authority required under subsection (1)(c) and (d) shall not be unreasonably withheld.

(3) Every licence shall contain conditions regarding –

- (a) the use of the frequency or frequencies so licensed;
- (b) the expiration and renewal of a licence;
- (c) the circumstances under which the licence may be amended, e.g. *force majeure*, national security, changes in national legislation, implementation of international obligations;
- (d) type of emission, power and other technical requirements for the radiocommunication service; and
- (e) any other matter as may be agreed between the Authority and the licensee.

Authorisation
to operate in
territorial
waters or
airspace

38. Notwithstanding section 36(1), a ship or aircraft being a ship or aircraft not registered in Trinidad and Tobago while operating in the territorial waters or airspace of Trinidad and Tobago, is not required to have authorisation from the Authority for the establishment, operation or use of any telecommunications network or service or radiocommunication equipment as long as the service or equipment is operated or used under a valid authority or licence issued elsewhere than in Trinidad and Tobago in accordance with international agreements relating to telecommunications or radiocommunication in respect of ships or aircraft.

Termination,
suspension
amendment or
renewal
of licence

39.(1) Subject to this section, the Minister, after consultation with the Authority, may suspend or terminate a licence where -

- (a) the licensee has failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of the licence; or
- (b) the licensee has failed to comply materially with any lawful direction of the Minister or the Authority.

(2) A licence may be amended by the Minister, after consultation with the Authority, where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to the licence.

(3) Where a licence is amended pursuant to subsection (2), on grounds of national security, the rights of the concessionaire to compensation shall not be prejudiced.

(4) The Minister shall, before exercising the power of suspension or termination conferred on him by this section –

- (a) cause the Authority to serve on the licensee, a written notice to the effect that –
 - (i) he is considering exercising the power and setting out the ground on which it may be exercised; and
 - (ii) the licensee may within thirty days of the date on which the notice was served, make written representation to the Authority;
- (b) take into consideration any representation made to the Authority under paragraph (a) (ii).

(5) During the period that the Minister is considering exercising his power to suspend or terminate the licence, the licensee shall continue to operate in accordance with the terms of the licence.

(6) Before amending a licence, the Minister shall cause the Authority to serve on the licensee written notice of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect.

(7) A decision of the Minister pursuant to this section may be reviewed by the High Court.

(8) Upon application by a licensee for the renewal of the first licence issued to him under this Act, the Minister shall, in consultation with the Authority, renew that licence for a period equivalent to the period for which the first licence was granted, where the Authority is satisfied that –

- (a) the licensee has operated within the terms of the licence; and
- (b) during the period for which the first licence was granted the licensee did not engage in any conduct amounting to a material contravention of this Act, or regulations made hereunder.

(9) For any renewal after the renewal of the first licence, the period of renewal shall be as agreed between the licensee and the Minister.

(10) Where the Minister is not satisfied that the licensee operated within the terms of the first licence or has engaged in conduct amounting to a material contravention of this Act or regulations made hereunder, the licence shall not be renewed but the licensee shall be permitted to apply for a new licence.

Operation of
equipment

40. Radiocommunication equipment shall not be operated in a manner likely to cause harmful interference to any other means of telecommunication.

Spectrum

41.(1) The Authority shall regulate the use of the spectrum in order to promote the economic and orderly utilisation of frequencies for the operation of all means of telecommunications and to recover the cost incurred in the management of the spectrum.

(2) The Authority shall develop a spectrum plan in order to regulate the use of the spectrum.

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

(4) The spectrum plan shall state how the spectrum shall be used and the procedures for licensing frequency bands.

(5) The procedures referred to in subsection (4) may include, but are not limited to –

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

Allocation of
frequency
bands

42.(1) Subject to subsection (2), the Authority may, in accordance with the spectrum plan allocate and re-allocate frequency bands.

(1) In the allocation or assignment and re-allocation or re-assignment of frequency bands by the Authority priority shall be given to the needs of the State in respect of matters of national security.

Exercise of
functions

43. The Authority, in exercising the functions under sections 36 to 42, shall take into account -

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

Numbering plan

44.(1) The Authority shall develop a plan for the numbering of telecommunications 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 telephone numbers to users.

(4) The numbering plan shall be made available to the public on payment of the prescribed fee.

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

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

PART V

TECHNICAL STANDARDS

Standards

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

(2) Notwithstanding subsection (1), the Authority may establish technical standards.

PART VI

TESTING AND INSPECTION

Inspectors

46. The Authority may, for the purpose of this Act, appoint suitably qualified and experienced officers to be telecommunications inspectors, (hereinafter referred to as "inspectors".)

Power to request information

47.(1) To ensure compliance with the conditions of a concession or licence, or for any other purpose authorised pursuant to this Act, an inspector may require a concessionaire or licensee to supply information, including specific answers to questions submitted to such concessionaire or licensee, concerning any telecommunications network or telecommunications or radiocommunication service for which the concession was granted or the licence issued, the operation of any equipment or any works carried out in relation to such network or service.

(2) In the exercise of his powers under this Part, an inspector shall at all times act reasonably.

Pre-installation
testing

48.(1) The Authority shall, for the purpose of certifying or approving terminal equipment and other equipment to be installed or used for a public telecommunications network or telecommunications service or broadcasting service determine whether such equipment fulfills the criteria stipulated in section 32 and such other requirements as the Authority may prescribe.

(2) For the purpose of a determination made pursuant to subsection (1), the Authority may require that such equipment be submitted for testing by an inspector.

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

Standards for testing

49. The tests stipulated under sections 48 and 50 shall be carried out in compliance with international standards and other standards prescribed by the Authority.

Entry and search

50.(1) An inspector 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 in which any telecommunications equipment, excluding broadcast receivers, is located, 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 or of providing a telecommunications service;
- (b) examine records or other documents relating to the operation of the telecommunications network or the provision of the telecommunications service;
- (c) search, where necessary with the assistance of any other person authorised for the purpose by the Authority, 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 concession or licence;
- (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 including the answering of questions; and

- (e) subject to having obtained a warrant pursuant to section 51, 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 concession or licence, and such items so seized shall be lodged with the Authority.

(2) Notwithstanding the provisions of subsection (1), an inspector shall not exercise his powers under subsection (1)(c),(d) or (e) or enter a dwelling-house except upon the warrant of a magistrate issued to him pursuant to section 51 for the purpose and unless he is accompanied by a police officer.

Magistrate may issue warrant

51.(1) Where it is shown to the satisfaction of a magistrate on sworn information in writing -

- (a) that for the purpose of performing any function under section 50, an inspector has been denied entry; or
- (b) that a request for entry would defeat the purpose of an entry by an inspector for the purpose of performing any function under section 50,

and there is reasonable ground for entry for any purpose mentioned in section 50, the magistrate may by warrant authorise entry.

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

PART VII

FINANCIAL PROVISIONS

Financial powers of the Authority

52.(1) The Authority shall, with the prior written approval of the Minister -

- (a) charge fees for any concession or licence; and
- (b) charge fees for any service that it provides.

(2) Except as provided under section 41, fees charged by the Authority under subsection (1) shall be commensurate with the cost of -

- (a) providing a service under subsection (1)(a);

- (b) operating the Authority; and
- (c) administering concessions or licences,

and shall be charged to concessionaires, licensees or other persons where applicable, on a just and reasonable basis.

Funds of the
Authority

53.(1) The funds of the Authority shall consist of -

- (a) such amounts as may be appropriated by Parliament for the purposes specified in subsection (2);
- (b) special grants of funds as may from time to time be provided for the financing of any special project;
- (c) fees collected in respect of concessions granted or licences issued under this Act;
- (d) sums collected in respect of universal service obligations;
- (e) all sums from time to time received by or falling due to the Authority as fees or payments for services rendered;
- (f) all other sums that may in any manner become lawfully payable to the Authority in respect of any matters incidental to its functions.

(2) The funds of the Authority, in any financial year shall, with the exception of those sums referred to in subsection (1)(d), be applied in defraying the following expenditure:

- (a) the remuneration, fees and allowances of the Chairman and other members of the Board;
- (b) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the Executive Director, Secretary and other members of staff of the Authority;
- (c) research and development projects, training and certification and other related matters; and
- (d) any other expenditure authorised by the Authority in the discharge of its duties, functions and contractual obligations.

(3) Funds arising in respect of paragraph (1)(d) shall only be applied to facilitate the provision of universal service in accordance with the provisions of section 28.

(4) Subject to subsection (5), such amounts appropriated by Parliament and the other sums referred to in subsection (1) shall be paid into a bank account opened with the approval of the Minister of Finance.

(5) The Authority shall keep and maintain a separate account opened with the approval of the Minister of Finance for the purpose of depositing funds collected in respect of the funding of the services referred to in section 28 and such funds shall not be used for any other purpose.

(6) At the end of each financial year, any surplus of funds remaining in the account opened in accordance with subsection (4), after defraying the expenditure referred to in subsection (2), shall be paid into the Consolidated Fund.

Exemption
from tax and
provisions of
Central Tenders
Board Ordinance,
1961

54.(1) The Authority is exempt from stamp duty, corporation tax, customs duty, motor vehicle tax and all other taxes, fees, charges, provisions of assessments, levies and imposts on its income or on assets which it acquires for its own use.

(2) Where –

- (a) goods are imported by the Authority for and on behalf of the Authority;
- (b) the commercial sale of goods or services is in the opinion of the Board of Inland Revenue required for the purposes of the Authority,

the goods and services shall be exempt from Value Added Tax.

(3) The Authority, in the performance of its functions, shall not be subject to the provisions of the Central Tenders Board Ordinance, but until such time as the Authority makes its own tendering rules, approved by the Minister and subject to negative resolution of Parliament, the Authority shall observe the provisions of the Central Tenders Board Ordinance.

(4) The Authority shall open every tender in public and indicate the parties to and the content of each tender received.

(5) Tendering rules made pursuant to subsection (2) shall govern the conduct of the award of tenders and related matters and shall be published in the *Gazette*.

Estimates of
expenditure

55.(1) The Authority shall prepare a budget in accordance with GAAP or such other form as the Minister, with responsibility for Finance, may direct for each financial year and the Authority shall submit estimates so prepared to the Treasury not later than the deadline date stipulated by the Minister of Finance, having first obtained approval of the estimates of expenditure from the Minister.

(2) The Authority shall, at such time as the Minister directs, furnish him with any further information in relation to the estimates as he may require.

(3) The estimates of expenditure as approved by the Minister shall be the expenditure budget of the Authority for the financial year to which it relates.

Preparation of
annual reports
and accounts
by Authority

56.(1) The Authority shall keep proper books of accounts and records of all sums received and expended by the Authority and shall record the matters in respect of which such sums were received and expended.

(2) Within three months after the end of each financial year the Authority shall cause to be prepared, in respect of that year -

- (a) a report setting out the activities of the Authority; and
- (b) financial statements prepared in accordance with GAAP,

and a copy of such report and financial statements shall be forwarded to the Minister.

(3) Where the standards included in GAAP are inappropriate or inadequate for any type of accounting method the Treasury may provide such instructions as may be necessary.

Audit of accounts
Chap. 1:01

57.(1) The accounts of the Authority are public accounts of Trinidad and Tobago for the purpose of section 116 of the Constitution.

(2) On completion of an audit of the Authority, the Auditor General or an auditor authorised by him to undertake the audit, as the case may be, shall immediately draw to the attention of the Minister and the Board any irregularity disclosed by the audit which in the opinion of the Auditor General or the auditor is of sufficient importance to justify so doing.

Chap.69:01

(3) For the purpose of an audit conducted pursuant to this Act the Exchequer and Audit Act shall apply as if an audit referred to in this Part is one to which that Act applies.

(4) As soon as the accounts of the Authority have been audited, the Auditor General shall submit his report in accordance with section 116 of the Constitution and shall simultaneously forward a copy of the said report to the Minister.

(5) Nothing in this section precludes the Auditor General or an auditor engaged by the Board from performing a management or comprehensive audit of the activities of the Authority.

(6) For the purposes of this section, “GAAP” means Generally Accepted Accounting Practice which includes the International Accounting Standards adopted by the Institute of Chartered Accountants of Trinidad and Tobago.

Financial year

58. The financial year of the Authority shall be 1st October to 30th September in every year or such other period as the Authority may prescribe, but the period from the date of commencement of this Act to the end of September next following shall be deemed to be the first financial year.

Authority may make rules

59. The Authority may, by resolution subject to the prior approval, in writing, of the Minister with responsibility for finance, make rules for the proper control of the system of accounting and the finances of the Authority.

PART VIII

STAFF AND RELATED MATTERS

Employment of staff

60.(1) The Authority may employ on such terms and conditions as it thinks fit such persons as it considers necessary for the due and efficient performance of its functions and exercise of its powers under this Act on such terms and conditions as are agreed between the Authority and the person and subject to such maximum limit of remuneration as the Board, in consultation with the Minister, determines.

(2) Section 15 applies *mutatis mutandis* to persons employed under this Part.

Secondment

61.(1) Subject to subsection (2) and to the approval of the Authority, the appropriate Service Commission and with the consent of the officer, any officer in the Public Service or a statutory authority may be seconded to the service of the Authority.

(2) Where a secondment referred to in subsection (1) is effected, arrangements shall be made to preserve the rights of the officer so transferred to any pension, gratuity or other allowance for which he would have been eligible had he not been seconded to or from the service of the Authority.

(3) A period of secondment shall not, in any case, exceed three years.

Transfer of
officers
to the Authority

62. Subject to the approval of the Authority, the appropriate Service Commission and with the consent of the officer, an officer in the Public Service or a statutory authority may be transferred to the service of the Authority on terms and conditions no less favourable than those enjoyed by the officer in the Public Service or statutory authority, as the case may be.

Pension fund
plan

63.(1) The Authority shall establish a pension fund plan, or where the establishment of a plan is not feasible, join an existing plan.

(2) All employees of the Authority shall be eligible to become members of the pension fund plan.

(3) Superannuation benefits which had accrued to a person who transferred in accordance with section 62 shall be preserved as at the date of his employment by the Authority and such benefits shall continue to accrue under the relevant pension law up to the date of establishing or joining a pension fund plan on the basis of pay, pensionable emoluments or salary, as the case may be, applicable, at the time of his transfer, to the office held by him immediately prior to his employment by the Authority.

(4) Where a person, who is transferred in accordance with section 62, dies, retires or his post in the Authority is abolished or he is retrenched by the Authority prior to establishing or joining the pension fund plan and, if at the date that his service is terminated by any of the above-mentioned methods he was in receipt of a salary higher than the pay, pensionable emoluments or salary referred to in subsection (3), the superannuation benefits payable to his estate or to him, as the case may be, shall be based on the higher salary.

(5) The difference between the superannuation benefits payable on the basis of the higher salary referred to in subsection (4) and the superannuation benefits payable under the relevant pension law, on the basis of the pay, pensionable emoluments or salary, referred to in subsection (3), shall be paid by the Authority.

(6) Where a person, who is transferred in accordance with section 62, dies, retires or his post in the Authority is abolished or he is retrenched from the Authority while being a member of the pension fund plan established by the Authority, he shall be paid superannuation benefits by the pension fund plan at the amount which, when combined with superannuation benefits payable under the relevant pension law, is equivalent to the benefits based on his pensionable service in the Public Service or a statutory authority combined with his service in the Authority and calculated at the final salary applicable to him on the date that his service was terminated by any of the above-mentioned methods.

(7) For the purposes of subsection (6), “final salary” shall have the meaning assigned to it by the pension fund plan.

(8) Where a person who is transferred in accordance with section 62, dies, retires or his post in the Authority is abolished or he is retrenched from the Authority while being a member of a pension fund plan that the Authority joined, superannuation benefits payable under that plan shall be no less favourable than those payable in accordance with subsection (6).

Employment of
persons for
specific tasks

64. The Authority may employ persons to perform specific tasks that the Authority considers necessary for the due performance of its functions and exercise of its powers under this Act, on such terms and conditions as are agreed between the Authority and the person and subject to such maximum limit of remuneration as the Board, in consultation with the Minister, determines.

PART IX

OFFENCES

Offences

- 65.** A person who knowingly—
- (a) fails to comply with or acts in contravention of section 21(1), 33, 36(1) or 73;
 - (b) commits a material breach of any condition contained in a concession or licence issued under this Act;
 - (c) operates a station or uses any equipment in such a manner as to cause harmful interference to any telecommunications network or telecommunications or radiocommunication service;
 - (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 otherwise obtains, attempts to obtain, or procures another to obtain, unlawful access to any communication unless such action is taken in the interests of national security and at the request of the Minister with responsibility for national security;

- (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 telecommunications network or telecommunications, broadcasting or radio-communication service to operate contrary to its concession or licence, as the case may be;
- (i) fails to contribute to the funding of the services referred to in section 28 in accordance with the directions of the Authority,

commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years, and, in the case of a continuing offence, to a further fine of ten thousand dollars for each day that the offence continues after conviction.

Obstructing
an inspector

66. A person who willfully obstructs, hinders, molests or assaults an inspector duly engaged in the performance of any duty or the exercise of any power conferred on him under this Act commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.

False signals

67. A person who knowingly transmits or circulates false or deceptive distress, safety or identification signals commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for two years.

False
communications

68.(1) A person who by means of any telecommunications or radiocommunication service sends any communication that to his knowledge is false or misleading and likely to prejudice the efficiency of any life-safety service or endanger the safety of any person, ship, aircraft, vessel or vehicle commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for three years.

(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.

Damage to
equipment

69.(1) A person who maliciously damages, removes or destroys any facility, works or other installation of a public telecommunications network or a public telecommunications service or of any telecommunications service operated by the Police Service, the Fire Service, the Prison Service or the Trinidad and Tobago Defence Force commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

(2) A person who negligently damages, removes or destroys any facility, works or other installation described in subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Recovery of
civil debt

70. A person convicted under section 69 is liable for all expenses reasonably incurred in the repairing, restoration or replacement of any facility, works or other installation damaged, removed or destroyed by him and the expenses are recoverable summarily as a civil debt.

General penalty

71. 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 twenty-five thousand dollars, and in the case of a continuing offence to a further fine of one thousand dollars for each day that the offence continues after conviction.

Amendment of
penalties

72. The Minister may, by Order, subject to negative resolution of Parliament amend the penalties set out in this Act and regulations made pursuant thereto.

PART X

GENERAL

Directions
for Minister

73.(1) Where the Executive Director has reasonable grounds for believing that any person is operating a telecommunications network or providing a telecommunications or radiocommunication service -

- (a) that is dangerous to the security of the State;
- (b) that disrupts a telecommunications network or a telecommunications or radiocommunication service on land or on board any ship, aircraft, vessel or other floating or airborne contrivance;

- (c) that causes harmful interference to any telecommunications network or telecommunications or radiocommunication service established in respect of natural disasters and emergencies; or
- (d) without first having obtained a concession or licence pursuant to the requirements of this Act,

the Executive Director shall immediately notify the Minister of National Security and the Minister, in writing.

(2) Upon such notification by the Executive Director, in accordance with subsection (1), the Minister may direct that person, in writing, to cease operating such telecommunications network or providing such telecommunications or radiocommunication service.

(3) Where a person fails to comply immediately with a direction given by the Minister under subsection (2), the Minister may direct the Authority to suspend the concession or licence, if any, granted to that person.

(4) A person aggrieved by a direction of the Minister given under subsection (2) may apply to the High Court for judicial review.

Minister's
certification

74. Where, on an appeal against a direction made by the Minister under section 73(1)(a), (b) or (c), the Minister certifies that in his opinion it is contrary to public order, public safety or national security to disclose the grounds for believing that the appellant is operating a telecommunications network or providing a telecommunications or radiocommunication service in the manner described in section 73(1)(a), (b) or (c), then, unless the High Court thinks fit to order otherwise, the Minister is presumed to have had reasonable grounds for so believing.

Monitoring
stations

75.(1) The Authority may operate frequency monitoring stations for –

- (a) ascertaining whether radiocommunication services and broadcasting services are operated in accordance with this Act;
- (b) planning, supervising and regulating 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) The Minister may, by Order, exempt a frequency monitoring station operated by the Authority from any of the provisions of this Act.

Harmful interference

76.(1) Where the Executive Director is of the opinion that the use of any facility or terminal 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, he may -

- (a) serve notice on the person, in possession of the facility or terminal equipment, requiring the person to cease such use within seven days from the date of service of the notice; or
- (b) impose limits as to when the facility or terminal equipment may be used.

(2) A person aggrieved by a notice of the Executive Director under subsection (1) may make representation to the Board who, having regard to the representation made, may vary the decision made under subsection (1).

(3) A person aggrieved by the decision of the Board made pursuant to subsection (2) may apply to the High Court for judicial review.

Obligations under international agreements

77. The obligations of a concessionaire operating a telecommunications network or providing a telecommunication service, or a licensee providing a radiocommunication service, shall not be abrogated by reason of any international agreement to which Trinidad and Tobago is a party.

Regulations

78.(1) The Minister may make such regulations, subject to negative resolution of Parliament, as may be required for the purposes of this Act, including regulations prescribing—

- (a) application procedures in relation to concessions and licences;
- (b) fees payable to the Authority for or in relation to applications, concessions, licences or the provision of services provided by the Authority to any person;
- (c) procedures for the management of the spectrum;
- (d) approvals and certification of terminal equipment;
- (e) price regulation;
- (f) interconnection;

- (g) universal service;
- (h) numbering;
- (i) procedures for investigating and resolving complaints by users with regard to public telecommunications services; and
- (j) procedures for investigating alleged breaches of any term or condition of a concession or licence or alleged violations of any provision of this Act or regulations made pursuant thereto.

(2) Regulations made pursuant to this Act may prescribe penalties, not exceeding fifty thousand dollars for offences committed thereunder.

(3) Regulations made pursuant to this Act shall apply equally to all similarly situated persons.

Authority to
promulgate
Broadcasting
Code

79.(1) The Authority shall, within a year of its establishment, by Order, subject to affirmative resolution of Parliament, promulgate a Broadcasting Code to regulate the practices of concessionaires of broadcasting services.

(2) In the course of developing a Broadcasting Code, the provisions of section 78(3) shall apply *mutatis mutandis*.

(3) The Authority may, by Order, amend the Broadcasting Code, subject to affirmative resolution of Parliament.

(4) To the extent that a Broadcasting Code made under this section is inconsistent with sections 4 or 5 of the Constitution, it shall not take effect unless approved by resolution of Parliament passed with the special majority required by section 13(2) of the Constitution.

Confidentiality

80.(1) The Board, employees of the Authority and every person concerned with the administration of this Act shall treat documents, information or other matters related to the administration of this Act as secret and confidential except that disclosures -

- (a) made by the Authority, or any other person, pursuant to the provisions of this Act or any regulations made hereunder; or
- (b) which the Authority considers necessary in the discharge of its functions,

shall not be deemed inconsistent with any duty imposed under this section.

(2) Subject to subsection (1), any person has the right to request that any proprietary or confidential documents, information or matters provided or submitted to the Authority be maintained secret and confidential.

Forbearance

81. The Authority shall refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty in relation to a telecommunications network, telecommunications service, broadcasting service, radiocommunication service or a class of service provided by a concessionaire or licensee, where the Authority finds that to refrain would be consistent with the agreed telecommunications policy objectives.

Dispute
settlement

82. Where a dispute of the kind referred to in section 25(2)(h) arises, the Authority shall seek a resolution through consultation and negotiation and, where the dispute cannot be settled within three months from the date of written notification of the dispute, either party to the dispute may submit the dispute for resolution, using the dispute-settlement procedures adopted by the Authority.

Reconsideration
and appeal

83.(1) A person aggrieved by a decision of the Minister or Authority may request that the Minister reconsider any decision based upon information not previously considered, and the Minister shall consider the new information submitted and decide accordingly.

(2) Applications to the High Court for judicial review pursuant to any provision of this Act shall be subject to the Rules of Court.

Telecommunica-
tions during
an emergency

84.(1) Where a state of emergency has been declared, the President may, on the advice of the Minister of National Security -

- (a) authorize the taking of possession and control by the Government of any telecommunications equipment, installation, service, apparatus or station to be used-
 - (i) for Government Service;
 - (ii) for such ordinary service as the Minister of National Security may determine; or
- (b) direct or authorize the control of the transmission and reception of messages in any manner as he may direct.

(2) The Government shall compensate reasonably, the owning or controlling any installation, service, apparatus or station which possession or control was assumed under subsection (1).

(3) Where an agreement cannot be reached between the parties concerned with respect to the amount of the compensation paid, the matter shall be referred to an arbitrator agreed to by both parties whose decision shall be binding on all the parties.

(4) Each service provider may, during a period of emergency in which normal telecommunication installations are disrupted as a result of a hurricane, flood, earthquake or any other disaster, use his service, apparatus or station for emergency communications and in a manner other than that specified in the concession or in the regulations governing the relevant service, apparatus or station.

(5) Emergency use permitted under this section shall be discontinued when normal telecommunication facilities are again available or when such special use of the installation, service, apparatus or station is terminated by the President.

Repeal
and transitional
provisions
Ch. 36 No.2

85.(1) Subject to this section, the Wireless Telegraphy Ordinance is repealed.

(2) Regulations made under the Wireless Telegraphy Ordinance shall remain in force until replaced by corresponding regulations made pursuant to this Act.

(3) Licences issued under the Wireless Telegraphy Ordinance and in force at the commencement of this Act remain in force for one year but no more than two years thereafter as the Minister may determine, upon the advice and recommendation of the Authority.

(4) During the period referred to in subsection (3), any person licensed under the Wireless Telegraphy Ordinance to provide a telecommunications service or radiocommunication service shall apply to the Authority for a concession or a licence to provide such service under this Act, as the case may be.

(5) The Authority shall approve any application submitted pursuant to subsection (4) in accordance with this Act and any concession granted or licence issued shall be subject to the provisions of this Act.

(6) Any concession granted or licence issued in accordance with subsection (5) shall expire on the date that the licence issued under the Wireless Telegraphy Ordinance would have expired.

(7) The holder of a license issued under the Wireless Telegraphy Ordinance shall enjoy no new benefit or right conferred by this Act unless such benefit or right was conferred under the Wireless Telegraphy Ordinance.

- Ch. 36 No.3 (8) The Cable and Wireless (West Indies) Limited Ordinance is repealed.
- Chap. 47:30 (9) The Trinidad and Tobago Telephone Act is repealed, with all rights and obligations thereunder remaining in force for one year or such longer period as the Minister may determine upon the advice and recommendation of the Authority, or until the Company (as defined in such Act), having applied for a concession pursuant to Part III of this Act, is granted a concession hereunder, whichever is earlier.
- Act No.40 of 1991 (10) The Telecommunications Authority Act is repealed.
- Act No.40 of 1996 (11) The Tobago House of Assembly Act is amended by deleting Items 17 and 10 of the Fifth and Seventh Schedules, respectively.
- Act No.26 of 1998 (12) The Regulated Industries Commission Act is amended by deleting items 3 and 6 of the First and Second Schedules, respectively.

SCHEDULE

(Section 20)

ASSETS VESTED IN THE AUTHORITY

All the -

- (a) Vehicles;
- (b) Furniture;
- (c) Equipment, including office equipment, testing equipment and computers and their peripheral equipment and manuals;
- (d) Mobile monitoring and direction-finding facilities including maintenance equipment and spare parts; and
- (e) Miscellaneous items operated or used by the Telecommunications Division of the Office of the Prime Minister.

