

ANTIGUA AND BARBUDA



TELECOMMUNICATIONS BILL, 2021

No. of 2021

ANTIGUA AND BARBUDA
TELECOMMUNICATIONS BILL, 2021
ARRANGEMENT OF CLAUSES

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SCHEDULE

ANTIGUA AND BARBUDA
TELECOMMUNICATIONS BILL, 2021
NO. OF 2021

AN ACT to provide a legislative framework for the regulation of the telecommunications sector in Antigua and Barbuda and for incidental and related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I
PRELIMINARY

1. Short title and Commencement

- (1) This Act may be cited as the Telecommunications Act 2021.
- (2) The provisions of this Act shall come into force on such dates as the Minister may appoint by order published in the Gazette and different dates may be appointed for different provisions and different purposes.

2. Interpretation

- (1) In this Act —

“access”, with respect to a telecommunications network or telecommunications service, includes —

- (a) making available network facilities and/or network services by an operator or service provider to another operator or provider, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing telecommunications services; and
- (b) the ability of an operator or a service provider to use the following facilities of an operator or other service provider —
 - (i) network elements and associated network facilities which may involve the connection of equipment by fixed or non-fixed means such as access to the local loop and to network facilities and services necessary to provide services over the local loop;

- (ii) infrastructure;
- (iii) relevant software systems including operational support systems;
- (iv) number translation or systems offering equivalent functionality;
- (v) fixed telephone networks and mobile telephone networks, in particular for roaming; and
- (vi) virtual network services;

“affiliate” means an affiliated body corporate within the meaning of the Companies Act;

“associated facility” means a facility which is available for —

- (a) use in association with the use of a telecommunications network or telecommunications service; and
- (b) the purpose of either making the provision of telecommunications network or telecommunications service possible, or making possible the provision of other services provided by means of that network or service, and or supporting the provision of such other services;

“bill” includes an invoice, account statement or other document of similar character and “billing” shall be construed accordingly;

“cable duct” means a protective structure used in constructing a public telecommunications network for the purpose of accommodating telecommunications cables;

“call” means a connection established by means of a fixed public telecommunications network available to the public allowing two-way communication in real time;

“class licence” means a licence granted under section 27;

“closed user group” means —

- (a) a group of persons who have a common business, or other common economic or social interest, other than the provision of a telecommunications service; and
- (b) in relation to a person, that person and the person’s employees, agents and officers;

“closed user group service” means a telecommunications service, used by a closed user group, operated without interconnection to a public telecommunications network thereby enabling telecommunications service only to a person who is member of the group;

“Commission” means the National Telecommunications Regulatory Commission established under section 4;

“consumer” means a natural person who —

- (a) uses a telecommunications service for non-commercial purposes; and
- (b) enters or intends to enter into an electronic transaction with a telecommunications provider as the end user of the telecommunications services offered by that telecommunications provider;

“content” means any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination thereof which is capable of being created, manipulated, stored, retrieved or communicated electronically;

“Convention” means the Constitution, the Convention and Regulations of the International Telecommunication Union adopted from time to time, to the extent ratified and in force in Antigua and Barbuda;

“Court” means the High Court;

“domain name” means an alphanumeric designation that is registered or assigned in respect of an electronic address or other resource on the Internet;

“domain name system” means a system to translate a domain name into an Internet Protocol (IP) number identifying the point of connection of a computer or other device to the IP address or other information;

“e-government services” means any public service provided by electronic means by a public body;

“electronic communication” means any type of transmission and receipt of symbols, signals, writing, images and sounds, or any sort of communication on lines, by radio, wire, or other electromagnetic systems, and includes telecommunications;

“electronic communications equipment” include equipment, other than consumer terminal equipment, used or capable of being used to provide telecommunications services, and any software integral to such equipment;

“electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical fiber or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, irrespective of the type of information conveyed;

“electronic communications service” include a public service which consists wholly or mainly in the conveyance of signals on electronic communications networks, and telecommunications services and transmission services in networks used, but does not include services providing, or exercising editorial control over content transmitted using electronic communications networks and services or broadcasting services;

“electronic mail” means any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient’s terminal equipment until it is collected by the recipient, and messages sent using a short message service;

“End-user” includes a person who owns a terminal equipment for the purpose of receiving services from a telecommunications network;

“Executive Director” means the Chief Executive Officer of the Commission appointed by the Board in accordance with section 9;

“facility” includes —

- (a) a physical component of a telecommunications network, including wires, lines, terrestrial and domestic submarine cables, wave guides, optics or other equipment or an object connected therewith, used for the purpose of telecommunications, but does not include terminal equipment; and
- (b) any post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used for carrying, suspending, supporting or protecting the structure;

“fixed telephone network” means a telecommunications network in which the terminal equipment is connected to the telecommunications network from a fixed location;

“frequency licence” means a licence granted under section 55 to use radio frequencies in connection with the operation of an electronic communication network or other provision of an electronic communication series under licence or otherwise;

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

“General Code” refers to the directives and guidelines issued by the Commission for the proper regulation of the telecommunications network and telecommunications services of a telecommunication provider in the provision of telecommunications services to a consumer;

“harmful interference” means interference which endangers the functioning of telecommunications by impeding, degrading, obstructing or repeatedly interrupting a lawful telecommunications service or a radio communication service;

“ICT” or “Information Communication Technologies” means technologies that provide access to information through telecommunications, such as, the Internet, wireless networks, cellular phones and other electronic communications media;

“IEEE” means Institute of Electrical and Electronic Engineers;

“infrastructure” includes pipes, ducts, tunnels, aerials, masts and pylons as well as all other structures fixed to the ground or attached to buildings for the purpose of providing electronic communication network services;

“International Connectivity Agreement” means an agreement entered into between a public telecommunications service provider in Antigua & Barbuda and a telecommunications service provider in another country for the purpose of Interconnection and or the exchange of telecommunications traffic or services;

“interface” means a network termination point, which is a physical connection point at which a user is provided with access to a public telecommunications network;

“intercept” in relation to a communication includes —

- (a) aural or other acquisition of the contents of a communication through the use of any means, including an interception device, so as to make some or all of the contents of a communication available to a person other than the sender or recipient or intended recipient of that communication;
- (b) monitoring the communication by means of a monitoring device;
- (c) viewing, examining, storing, decrypting, reading, recording or inspecting the contents of the communication by any means, in its passage over a telecommunications network;
- (d) diverting the communication from its intended destination to any other destination; and
- (e) carrying out any other type of surveillance over voice and communications data,

with or without the knowledge of the user, sender, recipient or intended recipient of that communication, and “interception” shall be construed accordingly;

“interception device” includes any electronic, mechanical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself or in combination with any other instrument, device, equipment or apparatus to intercept any communication but does not include any instrument, device, equipment or apparatus, or any component thereof —

- (a) furnished to a user by a service provider in the ordinary course of business and being used by the user in the ordinary course of business;
- (b) furnished by a customer for connection to the facilities of a telecommunications service and being used by the user in the ordinary course of business; or
- (c) being used by an operator or a service provider in the ordinary course of business;

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

“Internet” means a computer network consisting of a worldwide network of computer networks that use Transmission Control Protocol or Internet Protocol TCP/IP to facilitate data transmission and exchange;

“interoperability” means the ability of an equipment to function with its telecommunications network, and with other terminal equipment that can be used to access the same telecommunications service;

“Internet Protocol address” or “IP address” is a numerical label assigned to each device participating in a computer network that uses the Internet Protocol for communication;

“ISO” means International Standards Organisation;

“ITU” means International Telecommunications Union;

“leased line” means a dedicated, fixed-bandwidth, symmetric data connection or telecommunications line that is made available by a service provider or licensee to a user for his exclusive use in exchange for rent on a periodic basis;

“licence” means any category of licence issued under section 25;

“location data” means any data processed in an electronic communications network indicating the geographical position of the terminal equipment of a user of a public electronic communications service, including data relating to the latitude, longitude or altitude of the terminal equipment, the direction of travel of the user, or the time that the location information was recorded;

“local loop” means the facility which connects the customer’s terminal equipment to the first switching or routing point in a telecommunications service provider’s network;

“Minister” means the Minister with responsibility for telecommunications;

“mobile telephone network” means a telecommunications network primarily used for telecommunications in which the terminal equipment is connected to the public telecommunications network by means of freely propagating radio waves;

“National Numbering and Electronic Address Plan” refers to rules and guidelines established by the Commission for the assignment and use of numbers and addresses for the delivery of telecommunications services over public telecommunications networks;

“net neutrality” means the principle that electronic communications network and electronic communications licensees treat all data on the internet the same, not intercepting, interrupting, blocking, degrading, or discriminating by user, content, site, platform, application, type of attached equipment, mode of electronic communication or source or destination of electronic communication

“network facilities” means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer equipment;

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

“number” means a series of digits indicating an electronic communication network termination point, comprising the information necessary in order to route a call or message to that termination point and it includes short numbers, service numbers, identification codes and prefixes determined in the numbering plan;

“number portability” means the ability of a user of telecommunications services to retain their existing telecommunications numbers, without impairment of quality, reliability, or convenience when changing from one service provider to another service provider;

“operator” means a person licensed or authorised under this Act to operate a public telecommunications network or an associated facility;

“ONDCP” refers to the Office of National Drug and Money Laundering Control Policy established by the Office of National Drug and Money Laundering Control Policy 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;

“program” means a set of instructions, expressed in words, codes, schemes or any other form, which is capable, when incorporated in a machine readable medium, of causing a computer to perform or achieve a particular task or result;

“public body” includes —

- (a) the Barbuda Council;
- (b) a corporation established by an Act of Parliament for public purposes and any affiliate registered under the Companies Act; and
- (c) a commission, authority, committee or other body, whether paid or unpaid, and whether or not established by or under any law to perform a public function on behalf of the Government;

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

“public network” means a public fixed telephone network and a public mobile telephone network;

“public telecommunications service” means a telecommunications service, including a public telephone service, offered to members of the general public, but does not include a value-added service;

“public utilities” has the meaning assigned to it in the Public Utilities Act Cap. 359;

“radio-communication” means any emission, transmission or reception of radio waves specifically for telecommunications purposes;

“radio-communication 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;

“re-farming” is the process of making free certain radio frequency range for reallocation to other radio communication services for the purpose of the economic development of the State;

“Radio Spectrum and Frequency Plan” means a top-level plan based on the ITU Radio Regulations table of frequency allocations which indicates how the radio frequency spectrum is divided into bands that can be used by defined services;

“Standard Reference Interconnection Offer” means an offer document setting out matters relating to the price and terms and conditions under which a provider with significant market power will permit interconnection to its network;

“registrant” means an applicant for or holder of a domain name;

“Registrar” means an entity which is licensed by the Commission to update a repository;

“registry” means an entity licensed by the Commission to manage and administer a specific sub-domain;

“regulations” means regulations made under this Act.

“repository” means the primary register of the information maintained by a registry;

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

“roaming” means the ability of a mobile network subscriber to benefit from mobile network access rights and or extending of the wireless telecommunication connectivity service provided by one network operator to another network operator in a geographical area outside the coverage area of the home network by means of using a visited network;

“second level domain” means the sub-domain immediately following the top level domain or TLD;

“service provider” means a person who is a holder of a licence granted under this Act to provide a specified public telecommunications service;

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

- (a) to control 20 per cent or more of the voting rights of that company at a general meeting of the company;

(b) to a share of 20 per cent or more in dividends declared and paid by the company; or

(c) to a share of 20 per cent or more in any distribution of the surplus assets of the company;

“significant market power” in relation to a licensee, means that a licensee individually or jointly with others enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by affording the licensee the power to behave to an appreciable extent independently of its competitors and users;

“special licence” means a special licence granted by the Minister under section 41;

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

“sub-domain” means any subdivision of the .ag domain name space which begins at the second level domain;

“subscriber” means a person that is a party to a contract with the provider of a publicly available electronic communications service for the supply of such service.

“subscriber information” means any information held by a service provider relating to a subscriber, other than traffic data or other data, and contained in the form of computer data or any other form, that can establish —

(a) the type of the communication service used, the technical provisions taken to use the communication service and the period of the service;

(b) the subscriber’s identity, postal or geographical address, telephone and other access number, billing and payment information, available on the basis of a service agreement or arrangement; or

(c) any other information on the site of installation of a communication equipment available on the basis of a service agreement or arrangement;

“TCP/IP” or “Transmission Control Protocol/Internet Protocol” refers to the protocols for communication between computers, used as a standard for transmitting data over networks and as the basis for standard Internet Protocols;

“telecommunications” includes the transmission, emission or reception of signals, writing, pulses, images, sounds or other intelligence of any kind by wire, wireless, optical or electromagnetic spectrum or by way of any other technology;

“telecommunications network” means a wire, radio, optical or electromagnetic transmission, emission or receiving system, or a part of such system, used for the provision of a telecommunications service;

“telecommunications service” includes a service which provides telecommunications, a closed group service, a private telecommunications service, a public telecommunications service, a radio communications service and a value added service;

“telecommunications provider” means an operator or a service provider;

“terminal equipment” means equipment, product or relevant component of a product on the user’s side of the network termination point that is connected or intended to be connected by any means whatsoever directly or indirectly to the interfaces of public networks either by wire, radio, optical or electromagnetic means and with which a user can originate, process or terminate telecommunications;

“third party”, in relation to a service provider, means a subscriber to the service provider’s services or any other user of the service provider’s services or a user of information systems;

“TLD” or “Top-Level Domain” refers to the last part of the domain name;

“traffic data” means any data processed for the purpose of the conveyance of a communication on an electronic communications network relating to the routing, duration or time of a communication;

“universal service” means the provision of telecommunications services throughout Antigua and Barbuda, taking into account the needs of the public, affordability of the service and advances in technologies;

“user” includes a customer or a subscriber and a customer who is an operator and/or a service provider using or requesting a public telecommunications service for private or business purposes;

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

“utility suppliers” means electronic communications services suppliers within Antigua and Barbuda; and

“value added service” means a service that combines applications provided to users with telecommunications and which does not effectively compete with a public telecommunication service.

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

3. Objects of the Act

(1) The objects of this Act are to develop and advance the telecommunications sector of Antigua and Barbuda, by establishing conditions for —

(a) an effective and efficient regulatory framework for telecommunications networks and telecommunications services;

- (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 universal access to telecommunications services for all persons in Antigua and Barbuda, to the extent that is reasonably practicable to provide such access;
 - (d) 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, purchasers and other users of telecommunications services;
 - (iv) promoting the long term interests of a purchaser and other users including, in particular, a person who is differently-abled or the elderly, in respect of the quality and variety of telecommunications services and equipment provided;
 - (e) promoting the telecommunications sector by encouraging economically efficient investment in, and the use of infrastructure to provide telecommunications services;
 - (f) the provision and expansion of a variety of modern and innovative telecommunications networks and telecommunications services;
 - (g) ensuring information security and network reliability and integrity through competition and technological advancement;
 - (h) promoting and advancing the participation of the private sector in the development of the telecommunications sector;
 - (i) promoting a high level of public confidence in the delivery of telecommunications services and ensuring the equitable provision of affordable services through the telecommunications network and infrastructure in Antigua and Barbuda; and
 - (j) an open market for telecommunications services, including conditions for encouraging and enabling fair competition in the telecommunications sector, through effective regulation.
- (2) The objects referred to in subsection (1) shall be facilitated in a manner consistent with the preservation of the public interest.

PART II

NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION

4. Establishment of the National Telecommunications Regulatory Commission

- (1) There is hereby established a body corporate to be known as the National Telecommunications Regulatory Commission, with perpetual succession and a common seal and with power to acquire, hold and dispose of land and other property, to enter into contracts, to sue and be sued in its corporate name and do all things necessary for the purpose of its functions.
- (2) The Commission shall be governed by a Board which is responsible for the policy and general administration of the affairs and business of the Commission.
- (3) The Board may by resolution appoint one of its officers or another agent either generally or in a particular case to execute or sign on behalf of the Commission any agreement or other instrument not under the seal of the Commission in relation to matters coming within the powers of the Commission.

5. Appointment of members of the Commission

- (1) The Board shall consist of seven (7) members, including a Chairperson, to be appointed by the Minister with the approval of the Cabinet on such terms and conditions as the Cabinet may determine, from amongst persons who possess –
 - (a) qualifications relating to, and knowledge and experience in telecommunications, information technology, finance and accounting, law, economics or administration; or
 - (b) knowledge and experience of, and demonstrated expertise in matters relevant to the functioning of the Commission.
- (2) A person shall be disqualified from being a member of the Board, or is not eligible to be appointed as a member, or having been appointed, is not eligible to continue as a member if the person –
 - (a) holds or is beneficially interested in more than 5% of any stock, share, bond, debenture or other security of, or other interest in, a licensee;
 - (b) has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a licensee;
 - (c) is a director, officer, employee, agent or a person providing a service or supplying goods to a licensee under a contract;
 - (d) has filed for bankruptcy in a court or is declared by a court to be a bankrupt;

- (e) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
 - (f) has been convicted of a criminal offence except where the offence –
 - (i) is a minor traffic offence;
 - (ii) is a spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act.
 - (g) is a member of Parliament.
- (3) Notwithstanding subsection (2)(b), a person shall not be held to have a pecuniary or other material interest in a licensee in respect of which the Commission performs regulatory functions by reason only of the fact that he or she is a customer of a licensee in respect of which the Commission performs regulatory functions.
- (4) In determining whether a person is eligible for appointment as a member of the Board, the Minister shall have regard to all matters that the Minister considers relevant to the appointment including—
- (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of a member; and
 - (b) the diligence with which that person is likely to fulfil the responsibilities of a member.
- (5) A decision of the Board taken at a meeting is not invalidated merely because a disqualified person votes at the meeting as long the number of members present exceeds the quorum.
- (6) If the Chairperson is absent or unable to perform his functions, the Board may appoint one of the remaining members to act as the Chairperson.

6. Tenure of office and revocation of appointment

- (1) A member of the Board shall hold office for a period of not more than 3 years and upon the expiration of such period, is eligible for re-appointment.
- (2) The Minister may, with the approval of Cabinet revoke the appointment of a member before the expiration of his tenure for justifiable cause including an undeclared conflict of interest, bankruptcy, criminal conviction and mental or physical illness which renders such a member unable to perform his functions, or loss of confidence as an advisor to the Minister.
- (3) The Minister shall publish in the Gazette a notice of any change in the membership of the Board.
- (4) The Cabinet shall determine the remuneration of the members of the Board.

7. Resignation of member

- (1) A member other than the Chairperson may resign from office by notice in writing addressed to the Minister and transmitted through the Chairperson and the date of receipt by the Minister of the notice is the date on which the member ceases to be a member of the Board.
- (2) The Chairperson may resign his office by notice in writing addressed to the Minister and the resignation takes effect on the date of receipt of the notice by the Minister.

8. Employment restriction

A member of the Board shall not, while a member of the Board or for 12 months after ceasing to be a member, work for an entity associated with telecommunications in Antigua and Barbuda.

9. Executive Director and Staff of the Commission

- (1) The daily affairs of the Commission shall be managed by an Executive Director, who shall be appointed by the Minister on the recommendation of the Board on terms and conditions to be determined by the Board and approved by the Cabinet.
- (2) The Executive Director shall be a person with considerable knowledge and experience in telecommunications, commerce, finance, law or administration.
- (3) The Executive Director shall hold office for a period of 3 years and shall be eligible for re-appointment for a second term.
- (4) The Minister may, on the recommendation of the Board, and with the approval of Cabinet terminate the services of the Executive Director before the expiration of the period of 3 years for justifiable cause.
- (5) The Executive Director shall not, while holding the Office of Executive Director or for 12 months after ceasing to hold office of Executive Director, work for an entity associated with telecommunications in Antigua and Barbuda.
- (6) The Commission may employ staff, on the terms and conditions approved by the Board, to assist in the performance of the functions of the Commission, including technical staff knowledgeable in telecommunications, administrative staff and technical consultants as required.
- (7) If the Executive Director or any other person employed by the Commission, was in the service of the Government immediately before the commencement of this Act that person shall –
 - (a) subject to paragraph (b), be considered as continuing in the service of the government, but seconded to the Commission on such terms and conditions as may be approved by the Minister and the Chairperson of the Board after consultation with that employee;

- (b) if his or her employment was under a contract for services, he or she may be employed by the Commission on such terms and conditions as may be approved by the Minister and the Chairperson of the Board after consultation with that person.

10. Authentication of seal and documents

- (1) The seal of the Commission shall be authenticated by the signature of the Chairperson, the Executive Director, or any member of the Board authorised by the Board to act.
- (2) Any document, other than those required by law to be under seal, or decision of the Board may be signified under the hand of the Chairperson or a member authorised by the Board.

11. Procedures and meetings

- (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, but shall meet at least once every month and the meetings shall be held at a place and time as the Board may determine.
- (2) The Chairperson may at any time call a special meeting by written request of the Board and such meeting shall be held within 7 days of the written request.
- (3) The Chairperson shall preside at all meetings of the Board and in the absence of the Chairperson, the Board shall appoint one of its members to preside.
- (4) The quorum of the Board shall be four (4) members and decisions of the Board shall be taken by a simple majority of votes of the members present and voting at the meeting.
- (5) Decisions of the Board shall be kept in minutes in proper form for each meeting and shall be confirmed by the Board as soon as practicable at a subsequent meeting, and any decision which affects the public shall be published by the Commission on its website and in the official Gazette.
- (6) The Board may co-opt any person to attend particular meetings of the Board for the purpose of assisting or advising but a co-opted person does not have the right to vote.
- (7) If a member has a commercial, financial or other business interest in a matter before the Board in which the member's personal interest conflicts with his duties as a member, the member shall, as soon as practicable after becoming aware of his interest in the matter, disclose the interest to the Chairperson and shall not, participate in the deliberations or decisions of the Board with respect to that matter.
- (8) A member of the Board who –
 - (a) fails to comply with subsection (7) and votes in respect of a matter before the Board in which he or she is materially interested, whether directly or indirectly, or
 - (b) seeks to influence the vote of any other Board member in relation to a matter before the Board in which he or she is materially interested,

is guilty of misconduct and his or her appointment shall be revoked with immediate effect.

(9) For the purposes of subsection (7) “commercial, financial or other business interest” includes a situation where –

- (a) a person or his nominee is a member of a company or other body which has a direct or indirect pecuniary interest in the matter;
- (b) a person is a partner, or in the employment of another person who has a direct or indirect pecuniary interest in the matter;
- (c) a person or a partner of the person is a professional advisor to another person who has a direct or indirect pecuniary interest in the matter; or
- (d) a spouse or co-habiting partner of the member who has a direct interest in the matter or is a person within paragraphs (a) to (c).

(10) Subject to the provisions of this Act the Board may regulate its own procedure.

12. Service of notice on the Commission

The Commission shall at all times have a fixed address in Antigua and Barbuda for the service of a notice, order or other document on the Commission and the address for such service shall be published in the official Gazette.

13. Duties of the Executive Director

(1) The Executive Director shall serve as the Chief Executive Officer of the Commission and subject to the other provisions of this Act and to the general direction of the Board, the Executive Director shall be responsible for –

- (a) implementing, monitoring and executing the decisions of the Board in accordance with this Act the Regulations and any other law in force in Antigua and Barbuda;
- (b) ensuring the day to day management of the Commission;
- (c) managing the funds and property of the Commission;
- (d) initiating and processing any recruitment process of the Commission, subject to the recruitment terms and conditions determined by the Commission;
- (e) administering, organizing and supervising the staff of the Commission, through performance appraisals;
- (f) keeping the Board informed of the activities of the Commission;
- (g) keeping a record of all the transactions of the Commission and preparing and submitting the annual report of the activities of the Commission to the Board for approval;

- (h) negotiating contracts, with the approval of the Board, for the purposes of the Commission;
- (i) elaborating and presenting to the Board for approval the annual budget report of the Commission;
- (j) attending all meetings of the Board and taking part in its deliberations, but shall have no right to vote;
- (k) undertaking any other duty as may be assigned or delegated by the Board or as stated in the contract of employment;

(2) In the performance of his duties, the Executive Director is answerable to the Board.

14. Protection of members of the Board and officers of the Commission

- (1) A member of the Board or an officer of the Commission or a person acting on the direction of the Board or of an officer of the Commission may not be held liable for —
 - (a) any damage caused during the execution of his duties; or
 - (b) any act or omission done or omitted to be done in good faith in the exercise of the functions under this Act.
- (2) Subsection (1) shall not apply where such damage is as result of fraud or gross negligence committed by the member of the Board, officer of the Commission or person acting on the direction of the Board or officer of the Commission.
- (3) Any sums of money, damages or costs recovered against the Commission for anything done, omitted or permitted in good faith in the course of the operations of the Commission shall be paid out of such amounts as may be appropriated by Parliament.

PART III

FUNCTIONS AND POWERS OF THE COMMISSION

15. Functions of the Commission

- (1) Subject to the provisions of this Act, the Commission shall exercise such functions as are conferred on it by or under this Act and in particular, shall —
 - (a) ensure the orderly and systematic development of telecommunications throughout Antigua and Barbuda;
 - (b) classify telecommunications networks and services as public telecommunications networks, public telecommunications services, closed user group services, private telecommunications services, value added services or any other type of telecommunications service;

- (c) make recommendations to the Minister regarding the granting of licences and monitoring and ensuring compliance with the conditions set out in the licences;
- (d) 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 Antigua and Barbuda or on any vessel, aircraft, or other satellite registered in Antigua and Barbuda;
 - (ii) the allocation, assignment and reallocation or reassignment of frequency bands where necessary;
- (e) consult with the Bureau of Standards on the setting of telecommunications standards and measures to ensure compliance;
- (f) certify and type-approve telecommunications equipment through testing for promoting and safeguarding the interests of a consumer and an operator and maintaining compliance with international standards and environmental health and safety standards, including electromagnetic radiation and emissions;
- (g) advise the Minister on technical standards and policies governing the telecommunications industry and issues arising at international, regional and national levels;
- (h) advise the Minister with respect to which telecommunications services should be universal services and monitor the funding mechanisms for those services;
- (i) conduct, or authorise any person to conduct, technical evaluations relating to telecommunications networks and telecommunications services;
- (j) coordinate and collaborate with the relevant national, regional and international organizations in matters relating to telecommunications;
- (k) promote competition, including the protection of operators from acts and practices of other operators that are damaging to competition, and to facilitate the entry into markets of new and modern systems and services;
- (l) monitor telecommunications and telecommunications service providers to advise the Minister of acts that might tend to lessen competition;
- (m) regulate rates and charges for telecommunications services with a view to protecting a consumer from excessive tariffs and to prevent unfair competitive practices;
- (n) regulate interconnection and access systems between operators and users of telecommunications services;
- (o) collect all fees, including licence fees, and any other charges levied under this Act;

- (p) establish, amend, administer and enforce a national numbering plan and electronic addresses plan, administer, manage, assign numbers and electronic addresses including domain names;
 - (q) establish a consumer complaints committee to collect, decide on and report on consumer complaints, such report to be included in the Commission's annual report;
 - (r) promote research into the development and use of new telecommunications techniques and technologies, including those which promote accessibility of differently-abled persons and other members of society to telecommunications services;
 - (s) collaborate with educational institutions in order to promote specialised education in the field of telecommunications;
 - (t) monitor or cause the passive monitoring of traffic coming into Antigua and Barbuda for active monitoring of quality of service of operators and revenue assurance for the Government;
 - (u) carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of a person to enable it to determine whether and to what extent any person is engaging in conduct in contravention of this Act;
 - (v) cause the investigation of a complaint to be carried out on its own initiative or at the request of users, operators of telecommunications networks, providers of telecommunications services or other persons arising out of the operation of a public telecommunications network, or the provision of a telecommunications service in respect of rates, billings and services provided generally and to facilitate relief where necessary; and
 - (w) 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 Commission shall require that all persons operating or intending to operate any of the services listed in subsection (1)(b) notify the Commission accordingly and the Executive Director shall establish a Register of all such persons and services.
- (3) In the performance of its functions, the Commission shall have regard to the interests of a consumer and in particular—
- (a) to the quality and reliability of the service provided at reasonable cost;
 - (b) to fair treatment of a consumer and service provider similarly situated;
 - (c) in respect of a consumer similarly placed, to non-discrimination in relation to access, pricing and quality of service; and
 - (d) to the current national environmental policy.

- (4) In the performance of its functions under subsection (1) (a), (e), (g) (h) and (w), and any other provision of the Act as the Commission considers appropriate, the Commission shall adopt procedures by which it will —
- (a) afford interested parties and the public opportunities for consultation;
 - (b) permit affected persons and the public to make appropriate submissions to the Commission.

16. Powers of the Commission

Subject to the provisions of this Act, the Commission shall in the performance of its functions exercise such powers as are granted to it by this Act and shall —

- (a) charge and collect fees associated with the provision of its services, as may be prescribed;
- (b) convey, assign, surrender and mortgage, demise, re-assign, transfer or otherwise dispose of, or deal with any real or personal property vested in the Commission, on such terms as the Commission considers fit;
- (c) accept surrenders, assignments, transfers, or exchange any property and enter into contracts;
- (d) with the permission of the Minister, acquire, purchase, take and hold real and personal property of every description;
- (e) delegate any of its functions for the efficient operation or implementation of the Act except the power to delegate such functions;
- (f) do such things as may in its opinion be conducive to the proper exercise of its functions under this Act.

17. State's domain name (.ag)

- (1) The Commission shall —

- (a) determine —
 - (i) the administration and management of the .ag domain name space;
 - (ii) pricing policy for domain names;
 - (iii) the terms of the domain name registration agreement which registries and registrars must adopt and use in registering domain names, including related issues in respect of privacy, consumer protection and alternative dispute resolution;
 - (iv) the creation of new sub-domains consistent with the National Numbering and Electronic Address Plan;

- (b) establish —
- (i) the requirements which registries and registrars must meet in order to be licensed, including objective standards relating to operational accuracy, stability, robustness and efficiency;
 - (ii) the circumstances and manner in which registrations may be assigned, registered, renewed, refused, or revoked by the registries with due regard to the express recognition of the rights of groups and members of groups within the State to identify with, use or communicate cultural, linguistic, geographical, indigenous or any other expressions of heritage including any visual or aural elements or attributes thereof;
 - (iii) provisions for the restoration of a domain name registration and penalties for late payments;
 - (iv) processes and procedures to avoid unfair and anti-competitive practices, including bias to, or preferential treatment of actual or prospective registrants, registries or registrars, protocols or products;
 - (v) procedures for ensuring the monitoring of regular .ag domain name space technical audits;
- (c) ensure compliance with international best practice in the administration of the .ag domain name space;
- (d) make recommendations to the Minister in relation to policy, on any matter relating to the .ag domain name space;
- (e) conduct research into and keep abreast of developments in the State and elsewhere on the domain name system;
- (f) regularly survey and evaluate the extent to which the .ag domain name space meets the needs of the citizens of the State;
- (g) issue information on the registration of domain names in the State;
- (h) be responsible for the administration of such other matters relating to the .ag domain name space as may be necessary to achieve the objectives of this Act.
- (2) The Minister on the recommendation of the Commission may, grant licences authorising persons to administer a sub-domain in the Country Code Top-Level Domain.
- (3) An application for a licence to operate a subdomain in the country code Top-Level Domain must be in the prescribed form and the licence may be granted subject to such conditions as the Minister deems necessary.
- (4) In exercising the powers under this section, the Minister shall not disclose to third parties any confidential information that he or it has obtained.

18. Request for information

(1) The Commission may —

- (a) order any licensee to provide it with information about its licensed activities and this information may relate to —
 - (i) the disclosure of financial, technical, scientific, marketing, or commercial information;
 - (ii) legal cases and product information; and
 - (iii) information which is in the possession of any licensee, which is easily accessible by that licensee;
- (b) order the licensee to provide the information within a reasonable time; and
- (c) issue an enforcement notice to a licensee that refuses to provide the information without reasonable excuse.

(2) Where the Commission finds it necessary to request information from a licensee, the Commission shall provide reasons and shall treat any information obtained from a licensee as confidential.

(3) A Licensee that fails to provide information ordered pursuant to subsection (1) commits a summary offence and is liable to a fine of \$20,000 and in the case of a continuing offence to a further fine of \$5000 for each day on which the offence is continued after conviction.

(4) A licensee that provides false or misleading information in response to an order made by the Commission commits an offence and is liable on conviction to a fine of \$50,000.00

19. Exercise of functions of the Commission

The Commission shall, in the performance of its functions and exercise of its powers, act in an objective, transparent and non-discriminatory manner.

20. Directions by the Minister

(1) Subject to this Act, the Minister may give to the Commission directions of a general character as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Minister to concern the public interest, and the Commission shall give effect to any such directions.

(2) The Minister may at any time request the Commission to provide him or her with information concerning any matter relating to the functions of the Commission and the Commission shall provide the Minister with the information requested within 14 days of the request or within such other period as may be specified by the Minister.

(3) The Commission may from time to time provide the Minister with a report on any matter investigated which, in its opinion, requires the special attention of the Minister.

(4) The Minister may at any time request the Commission to provide a report of its performance.

PART IV

FUNDING AND FINANCES

21. Funds of the Commission

(1) Subject to subsections (2) and (3), the funds of the Commission shall consist of —

- (a) such amounts as may be appropriated by Parliament;
- (b) special grants, loans, gifts or donations from Government and, with the approval of the Minister and the Minister with responsibility for Finance, other sources as may from time to time be provided for the financing of any special projects;
- (c) fees collected in respect of licences issued under this Act;
- (d) sums collected in respect of universal service obligations;
- (e) money borrowed by the Commission;
- (f) all fines imposed by or collected on behalf of the Commission;
- (g) all sums from time to time received by or falling due to the Commission as fees or payments for services rendered; and
- (h) all other sums that may in any manner become lawfully payable to the Commission in respect of any matter incidental to its functions.

(2) The Commission shall not accept any special grants, loans, gifts or donations from a licensee or any of its affiliates.

(3) The Commission shall not accept any special grants, loans, gifts or donations from an entity in exchange for the Commission giving special consideration to that entity or to any other entity in the form of waivers or concessions or an unfair advantage over other licensees.

22. Application of the funds of the Commission

(1) The funds of the Commission in any financial year shall, with the exception of those sums referred to in Section 21(1)(d), be applied in defraying all the expenses of the Commission, including —

- (a) the remuneration, fees and allowances of the Chairperson 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 Commission;
- (c) research and development projects, training and certification and other related matters;
- (d) membership contribution to international organizations;
- (e) liabilities incurred in connection with the performance of the functions or exercise of the powers of the Board; and
- (f) any other expenditure authorised by the Board for the discharge of the functions and contractual obligations of the Commission.

(2) Funds arising in respect of section 21(1)(d) shall only be applied to facilitate the provision of universal services in accordance with section 54.

23. Bank accounts, business plans, auditing, annual reports

(1) The provisions of the Finance and Administration Act, as it relates to statutory corporations shall be applicable to the Commission as a statutory body, with respect to the preparation of a business plan for each financial year, guarantees and loans made by the Commission, the opening, maintenance and other business relevant to the accounts of the Commission, the production of annual audited financial statements by the Commission and the annual tabling of annual audited financial statements in the House of Representatives.

(2) The Executive Director shall keep and maintain a record of funds deposited into the Universal Service Fund established under section 53 and shall table annual audited financial statements relating to the Universal Service Fund in the House of Representatives.

(3) The Executive Director shall declare to the Minister and Minister of Finance any surplus funds that the Commission may have at the end of each financial year and any funds of the Commission not immediately required for any purpose under this Act, may be invested —

- (a) on a fixed deposit account with a bank approved by the Board;
- (b) in treasury bills and securities of the Government; or
- (c) in any other manner determined by the Board with the approval of the Minister and Minister of Finance.

(4) The financial year of the Commission shall be a period of 12 months beginning the 1st of January in each year and ending the 31st day of December of the same calendar year, or such other period of 12 months as may be prescribed.

PART V

LICENCES

24. Requirement for a licence

- (1) A person shall not, without a licence granted under this Act—
- (a) establish or operate an electronic communications network station;
 - (b) provide a telecommunications service;
 - (c) construct, maintain or operate a telecommunications network or apparatus;
 - (d) establish or use any radio station or provide radio communication services;
 - (e) sell, let, hire or otherwise dispose of any radio communications apparatus;
 - (f) manufacture, possess, install, connect or operate any radio communications apparatus or interference-causing apparatus; or
 - (g) run an international cable, or provide another medium that can be used for the transmission of telecommunications, whether for public or private use.
- (2) A person who contravenes subsection (1) commits an offence.

25. Licence categories

(1) The following categories of licences may be granted by the Minister on the recommendation of the Commission in respect of telecommunications services and telecommunications networks —

- (a) an individual licence;
- (b) a class licence; and
- (c) a frequency licence.

(2) The Minister may, on the recommendation of the Commission, regroup the telecommunications services and telecommunications networks that fall under each category of licences referred to in subsection (1).

26. Individual licence

(1) An individual licence may be granted to an applicant in respect of a service, the provision of which has an enormous and significant economic and social impact and requires greater regulatory obligations and may result in the provision of public networks and the use of scarce resources, such as radio frequency spectrum, if granted.

(2) The Minister may on recommendation of the Commission, grant an individual licence to

- (d) (a) a provider of network facilities, that owns and controls infrastructure for providing basic connectivity and bandwidth to support a variety of applications;
- (e) (b) an operator; and
- (f) (c) a public broadcaster of content for commercial purposes.

27. Class licence

(1) A class licence may be granted to an applicant, with or without conditions, in respect of a service the provision of which has a lesser social and economic impact than that required in respect of an individual licence.

(2) The Minister may, on the recommendation of the Commission, grant a class licence to a provider of an application service that —

- (a) authorises the resale of telecommunications capacity or services to the public; or
- (b) procures services with particular functions from a provider of network services including —
 - (i) value added services;
 - (ii) voice services;
 - (iii) data services;
 - (iv) dedicated networks for private communications services;
 - (v) Internet access services;
 - (vi) IP telephony, and other transmission services; and
 - (vii) other similar services as may be prescribed.

(3) The conditions of a class licence may include —

- (a) the scope of the licensed networks or services;
- (b) any applicable technical and operational standards or conditions;
- (c) the location in which the authorised networks are to be operated;
- (d) the location in which the authorised services are to be provided; and
- (e) the duration of the class licence.

28. Application for a licence

(1) A person who wishes to obtain a licence to conduct any activity referred to in section 24 shall apply to the Commission in the prescribed form and shall pay the prescribed fee.

(2) An application referred to in subsection (1) shall contain —

- (a) a declaration of intention to commence the business of building, or operating a telecommunications network or providing telecommunications service or application;
- (b) the business name and registration particulars of the applicant;
- (c) the names, addresses and contact numbers of the applicant;
- (d) a certificate of good standing;
- (e) information on the shareholding status of the applicant;
- (f) a description of the telecommunications network, telecommunications services or applications with roll out targets where applicable;
- (g) the geographical area of activity;
- (h) a description or plan concerning the telecommunications network;
- (i) an estimation of the investments and their financing required for the activity;
- (j) a business plan;
- (k) the telecommunications network standards and technology to be used;
- (l) the technical specifications of the equipment to be used within the telecommunications network;
- (m) a declaration of the commitment of the applicant to comply with the laws and regulations governing the operations of the licence to which the application relates; and
- (n) any other information relevant to the application for the licence requested by the Commission from the applicant.

(3) On receipt of the application, the Commission shall examine the application against applicable policies and the criteria as may be prescribed and shall, as soon as possible, but in any case not later than 90 days after receipt of the application, make a recommendation to the Minister for the grant or refusal the application for a licence.

(4) The Minister may grant or refuse to grant a licence within 30 days of the receipt of the recommendation from the Commission.

(5) Notwithstanding subsection (4), the Minister shall not grant a licence unless the Commission recommends the grant of such licence.

(6) The Commission shall notify the applicant of the grant or refusal and shall give reasons in writing for a refusal.

(7) On the granting of a licence the Commission shall cause to be published in the Gazette and on its website a notice to that effect.

(8) The Commission, shall make available for public scrutiny at the Office of the Commission, the terms and conditions of licences and may provide a copy of a licence to a member of the public on request and payment of the prescribed fee.

(9) Where it appears to the Commission that the licence contains information prejudicial to national security or other international obligations, the Commission shall withhold that information from public scrutiny.

(10) The Commission may conduct public hearings in respect of an application for a licence granted under this Act or prior to the renewal of a licence under this Act.

(11) The Commission may require the operator of a closed user group to obtain a licence even though the service is not a public telecommunications service, if the Commission, in consultation with the appropriate law enforcement agency, determines that it is in the public interest to do so.

29. Accuracy and publication of information provided by applicant

(1) An applicant that submits a written application under this Act shall be responsible for the accuracy of the information provided in the application.

(2) The applicant shall inform the Commission of any changes to the information submitted not later than 5 working days from the date of any change in the information.

(3) The Executive Director may publish on the Commission's official website the names, addresses and telephone numbers of licensees.

30. Special criteria for the issuance of a licence

(1) A licence may be granted for a maximum of 15 years if the Minister is satisfied that —

- (a) the applicant has sufficient and proven economic resources to meet the conditions of the licence;
- (b) the applicant will not contravene the provisions of this Act or any other law; and
- (c) the activity of the applicant would not endanger national security or public safety.

(2) A licence to operate a public telecommunications network shall be granted if the applicant, in addition to fulfilling the requirements referred to in subsection (1), has the ability and professional skills needed with regard to the special nature of the operation.

(3) Where a licence referred to under this section is not granted to an applicant due to the scarcity of special numbers or spectrum, it shall be granted to an applicant through a tendering procedure as determined by the Minister which may include, but is not limited to, auctioning, beauty contest or other competitive tendering method having regard to the objectives of this Act.

31. Grounds for not granting a licence

(1) The Minister may not grant a licence to an applicant —

- (a) in order to protect the national integrity and/or national security;
- (b) if the frequency spectrum or numbering resources are limited;
- (c) if the Minister is satisfied that the electronic telecommunications sector may be adversely affected;
- (d) if the applicant has failed to provide the information required and failed to meet related obligations.

(2) The Minister shall provide the applicant with written reasons for the refusal to grant a licence, but may not provide reasons if, after consultation with the national security service, the grounds of refusal to grant the licence to the applicant will be prejudicial to national security.

32. Exemptions from licensing

(1) A licence is not required for telecommunications apparatus for use by the police and other security forces of Antigua and Barbuda in the performance of their official functions.

(2) The Minister may, on the recommendation of the Commission, by order published in the Gazette, exempt any category of ship or aircraft, or entity from obtaining a licence under this Act.

33. Treatment of certain licensees and exclusions

(1) Where applicable and considered necessary by the Commission for reasons of market requirements and or the availability of frequency spectrum, an announcement inviting the public to acquire an available licence shall be made —

- (a) by stating the purpose and laying down the grounds for commencing a tendering for the granting of any available licence; and
- (b) by publication in a newspaper of the full details of the available licences and the procedure for tendering for the award of the licences.

(2) The publication referred to in subsection (1)(b) shall include details relating to tender fees, duration of the licence, the criteria for the award of the licence, initial and renewal and regulatory fees, and other conditions which will be attached to the licence.

(3) A person taking part in the tender must be treated fairly and without discrimination.

(4) The licence conditions for radio transmitters involving considerable risk of causing interference may stipulate that such transmitters shall not be used without the approval of the Commission and the Commission shall issue details of any inspection procedure.

(5) During the validity of a radio communications licence, the Minister may, upon the recommendation of the Commission, amend the conditions of the licence in accordance with section 39(6) after giving due consideration to —

- (a) the procedures on consultation as provided under this Act;
- (b) the frequency Regulations;

- (c) international contractual obligations;
- (d) alterations in the plans for the radio frequencies; and
- (e) the prevention or removal of interference in radio communications.

(6) For the purposes of re-farming, the Commission shall provide at least 6 months' notice of its intention to make changes to the allocated use of the frequency or to withdraw the frequency from public use.

(7) A licensee who has had its radio frequency licence amended under subsections (5) and (6) may be entitled to compensation in accordance with the regulations.

34. Withdrawal of assigned frequency

- (1) The Commission may withdraw an assigned frequency from an Operator by giving written notice to the Operator of such action where—
 - (a) it is necessary for reasons of national security; or
 - (b) the licensee has not used the frequency for a period of 12 months from the date of the assignment of the frequency;
- (2) Before the withdrawal of an assigned frequency under subsection (1), the Commission shall —
 - (a) give the licensee one month's written notice of its intention to do so;
 - (b) specify in the notice the grounds for the withdrawal; and
 - (c) give the licensee an opportunity to—
 - (i) make representations; and
 - (ii) submit to the Commission, within a time specified, a written statement of any objections to the withdrawal of the assigned frequency.

35. Assignment of spectrum right

- (1) Subject to subsection (2), the Commission may, by notice in writing, exclude any person from participating or limit any person's participation in the assignment of any spectrum right —
 - (a) for the purpose of developing the telecommunications industry and maintaining effective competition between persons engaged in the provision of radio-communication services; or
 - (b) in the public interest.
- (2) Before excluding any person from participating, or limiting any person's participation, in the allocation of any spectrum right, the Commission shall give the affected person an opportunity to be heard and the Commission shall give its decision in writing.

(3) A person that is aggrieved by the decision of the Commission under this section may appeal to the Court.

36. Validity and cancellation of a radio frequency licence

(1) The validity of the radio frequency licence is dependent upon the validity of the parent or main licence granted to the operator.

(2) Subject to this Act, the Minister may, on the recommendation of the Commission cancel a radio frequency licence or part of a radio frequency licence if—

- (a) the licensee, despite an order of the Commission, repeatedly violates the conditions essential for non-interference in radio communications provided in the Regulations, or fails to comply with any other obligation.
- (b) the licensee, deliberately or through carelessness, transmits a false distress signal or disturbs or interferes with the safety of radio communication in some other way;
- (c) a radio transmitter uses radio frequencies in an inappropriate way due to its technical characteristics;
- (d) a licence granted ceases to be valid or expires; or
- (e) it conflicts with Antigua and Barbuda's international treaty obligations, and in such a case, the operator may be entitled to compensation in accordance with the regulations.

37. Cancellation, suspension and revocation of a licence

The Minister may, on the recommendation of the Commission, cancel, suspend or revoke a licence in whole or in part, if the licensee —

- (a) has repeatedly violated the provisions of this Act, the regulations, any other law relating to telecommunications, the terms and conditions of the licence, or any guidelines or orders issued by the Commission;
- (b) no longer has sufficient financial resources to meet its obligations in view of the nature and extent of the operation;
- (c) despite being requested to do so, fails to rectify its conduct or replenish its financial resources to a sufficient level within 3 months of such request;
- (d) loses effective control of the licence or ownership of the licence undergoes a change without the approval of the Minister.

38. Change of Control of Licensee

(1) A license holder shall not cause, permit or acquiesce in any change of control unless the licensee submits a written application for written approval to the Commission at least 90 days prior to such change of control.

(2) A licensee who contravenes subsection (1) is liable to have his or her licence revoked under section 37.

(3) Without prejudice to subsection (5), within 21 days of receipt of the application under subsection (1), the Commission shall, conduct an evaluation of the application, and shall take into account –

- (a) whether the change of control would be inconsistent with the terms of the licence;
- (b) whether the change of control would have, or is likely to have, the effect of substantially lessening competition in the market;
- (c) whether the change of control would have an effect contrary to public interest or for reasons of national security; and
- (d) the market position of the licensee and the economic and financial power of the licensee, the alternatives available to suppliers and users, access of the licensee to suppliers or markets, any legal or other barriers to entry, supply and demand trends for the electronic communication services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided by competition.

(4) Upon completion of the evaluation of the application under subsection (3), the Commission shall submit its recommendations to the Minister, along with a copy of the application.

(5) Before making a recommendation under subsection (4), the Commission shall –

- (a) give the acquirer, the licensee and any interested person a reasonable opportunity to make representations; and
- (b) consider the representations, if any, made under paragraph (a).

(6) Within 21 days of receipt of the recommendation from the Commission, the Minister may, acting on the recommendation inform the applicant in writing –

- (a) of the grant of approval of the change of control; or
- (b) of the grant of approval of the change of control subject to the conditions that the acquirer or the licensee takes the actions that the Commission considers necessary to eliminate or avoid any adverse effects; or
- (c) of the refusal of grant approval for the change of control, giving the reasons for his refusal.

(7) In this section –

“change of control” in relation to a licensee or frequency authorization holder means when a person, alone or with other persons, takes charge of the licensee –

(a) by acquiring directly or indirectly including by merger –

(i) 50% or more of the licensee's voting share;

(ii) rights or contracts which confer decisive influence on the composition, voting or decisions of organs of the licensee;

(iii) while not holding the rights or entitled to the rights under a contract under subparagraph (ii), has the power to exercise the rights deriving from such right or contract;

through the licensee divesting its shares;

(b) by any direct or indirect sale or transfer of substantially all of the assets of the licensee;

(c) by an approved and completed plan of liquidation of the licensee or an agreement for the sale on liquidation of the licensee;

(d) by the licensee determining and declaring that a change of control has occurred;

“merger” means the cessation of two or more persons, at least one of which is or controls a licensee from being distinct, whether by purchase or lease of shares, amalgamation, combination, joint venture or any other method through which influence over the policy of another licensee is acquired.

39. Notification of Change of significant interest

(1) A licensee shall not issue or allot any shares or cause, permit or acquiesce in any other reorganization of its share capital that results in –

(a) a person acquiring a significant interest in the licensee; or

(b) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his or her interest, unless the licensee notifies the Commission in writing of the issue, allotment or other reorganization.

(2) A notification under subsection (1) must include evidence of the acquisition of the significant interest in the licensee or the increase in the size of the significant interest.

(3) A licensee whose shares are publicly traded on a stock exchange approved in writing by the Minister responsible for finance, may submit a written application to the Commission to waive a notification of an issue, allotment or other reorganization of shares.

(4) The Commission may grant the application under subsection (3) and in granting the waiver include a condition that the licensee shall, as soon as reasonably practicable, notify the Minister through the Commission of any change in significant interest.

(5) A licensee who fails to comply with subsection (1) is subject to a fine of up to 1% of that licensee's annual gross revenue for the previous year or revocation of the licensee's licence.

40. Transfer or assignment of a licence or interest

(1) A licensee shall not sell, transfer, lease or otherwise dispose of the licence without the prior approval of the Minister.

(2) A person owning or holding a significant interest in a licensee shall not sell, transfer, charge or otherwise dispose of the said interest or any part thereof without the prior written approval of the Minister.

(3) An application for approval shall state the following —

- (a) the objective of the transfer of the licence;
- (b) the details of the entity to which the transfer is to be effected;
- (c) the date of the intended transfer;
- (d) the special resolution of the Board of Directors of the licensed entity;

(4) The Commission shall process a request for approval under this section within 21 working days commencing from the date of receipt of the request.

(5) The Minister shall not grant approval if —

- (a) he has reason to believe that the person to whom the licence is proposed to be sold, transferred or assigned would not have qualified for the grant of a licence had he or she been the original applicant; or
- (b) The transfer or assignment of the licence or share interest would be contrary to the public interest.

41. Amendment of a licence

(1) Subject to this Act, the Minister may amend a licence on the written request of the licensee; or on the recommendation of the Commission.

(2) If the Minister intends to amend a licence, he shall give the licensee advance notice in writing, which, absent exigent circumstances, shall not be less than 90 days, of his intention, specifying the reasons for the proposed amendment and the date by which the amendment is intended to take effect.

(3) The Minister shall give the licensee the opportunity to —

- (a) submit to the Minister, within the notice period, a written statement of objections to the amendment of the licence, which may include proposed alternatives to the amendment; and
- (b) make representations;

(4) During the notice period referred to in sub-section (2), the licensee may continue to operate until the determination of the matter and, if the licence would otherwise expire before the

matter is determined, the licence is renewed on the same terms until the matter is finally determined.

(5) The Minister shall, before the end of the notice period referred to in sub-section (2) amend the licence if he is satisfied, that an amendment is warranted.

(6) A licence may be amended for either of the following reasons—

- (a) force majeure or the occurrence or happening of other events that impact on the objective of the licence or its performance;
- (b) national security considerations;
- (c) the implementation of international obligations requires that it be amended; or
- (d) the Minister is satisfied that an amendment is necessary to achieve the objectives of this Act.

(7) Where a licence is amended pursuant to subsection (6), the rights of the licensee to compensation shall not be prejudiced.

(8) This section does not preclude the Minister in his discretion, or on the recommendation of the Commission, from amending a licence where there is a risk to national security.

42. Renewal of a licence and a frequency authorisation

(1) The Minister shall, on the recommendation of the Commission, automatically renew a license or a frequency authorisation for a period equivalent to the period granted in the first license or frequency authorisation.

(2) Subject to subsection (5), if the Minister does not intend to renew a license or frequency authorisation, he shall, except in the absence of exigent circumstances, serve written notice on the licensee or frequency authorisation holder not be less than 180 days before the expiration of the license.

(3) A notice served under subsection (2) shall –

- (a) specify the reasons for the proposed non-renewal; and
- (b) give the licensee or the frequency authorisation holder the opportunity to –
 - (i) make representations; and
 - (ii) submit to the Minister, through the Commission, within the notice period, a written statement of objections to the decision not to renew the license or frequency authorisation.

(4) The Minister shall not renew the license or frequency authorisation, if, after considering all relevant information before the end of the notice period, he is satisfied that—

- (a) the licensee or frequency authorisation holder failed to operate within the terms of the first license or the first frequency authorisation granted to him;
- (b) the licensee or frequency authorisation holder failed to comply materially with any of the provisions of this Act or the terms and conditions of the license or frequency authorisation; or
- (c) the Minister has determined, on recommendation of the Commission, that it is not in the public interest to renew the license

43. Special licence

(1) The Minister may, on the recommendation of the Commission, grant a special licence where the Commission determines that an emergency or other exigent circumstances exist for the grant of a special licence

(2) Application for a special licence is subject to the procedure set out in section 28(3) to (7).

(3) The period of a special licence shall not be greater than 60 days in any single period, but may be extended for further periods of 60 days each on up to three (3) consecutive occasions.

44. Advance notification to the Commission

(1) The Commission shall determine the notification requirements for certain classes of telecommunications networks, telecommunications services and associated facilities.

(2) A licensee shall not provide service without a notification referred to in subsection (1).

(3) The condition of notification requirements may be extended to a person that can provide certain services without a licence.

45. Notifications of contravention and enforcement

(1) If the Executive Director has reasonable grounds to believe that a licensee has contravened its obligations under the license or the conditions of notification prescribed by the Commission, the Executive Director shall –

- (a) issue an enforcement order to the licensee in the form of a written notice;
- (b) specify in the order the grounds for his believe; and
- (c) specify the period within which the licensee must remedy the breach;

(2) If the licensee believes that it –

- (a) has been complying with the conditions of its license;
- (b) is impossible to comply with any of the conditions of the licence

the licensee shall within 7 days of the receipt of the enforcement order, make a written request to the Commission for a hearing.

(3) The Commission shall, within 14 days of receiving the request under subsection (2), set a date for a hearing which shall not be longer than 3 months from the date of the request.

(4) The Commission must consider all the evidence before it and the representations made by the licensee and may –

(a) affirm the enforcement order; or

(b) withdraw the enforcement order.

(5) A licensee who fails to comply with an enforcement order commits an offence.

46. Register and updates of licences

(1) The Commission shall maintain a register, in both physical form and electronic media, of all matters required to be registered under this Act and the regulations of licensing activities such as transfers, surrenders, amendments, suspensions or revocations of a license.

(2) The register shall be accessible to the public during the Commission's hours of business and the public may, upon paying the prescribed fee, obtain copies of any part of the register, except where the disclosure of the information is a potential threat to national security.

47. Interconnection

(1) Subject to the provisions of this Act, an operator shall, if requested in writing by another operator, interconnect its telecommunications networks with the telecommunications networks of the requesting operator.

(2) An operator shall provide all necessary information and technical specifications to another operator requesting interconnection with that operator's telecommunications network including all proposed changes which may relate to the requested interconnection.

(3) Technical and commercial arrangements for interconnection must be concluded by written agreement between the relevant operators.

(4) An operator may not refuse a request for interconnection that is reasonable with regards to an applicant's requirements and the operator's capacity to satisfy them.

48. Commission to facilitate interconnection

(1) An interconnection agreement between operators shall be subject to the approval of the Commission.

(2) Where an agreement cannot be reached between operators, either of them may refer the matter to the Commission.

(3) If the Commission is unable to facilitate an interconnection agreement by the parties, the Commission may impose interconnection conditions on both parties, the terms of which shall, to the extent possible, be objective, fair, reasonable and non-discriminatory.

49. Guidelines for interconnection

(1) The Commission may issue guidelines on the general conditions and pricing principles governing all interconnection agreements, consistent with the regulations.

(2) An operator shall apply similar terms and conditions to other operators providing similar services to which it is interconnected.

(3) Subject to this Act, an operator or service provider shall —

- (a) provide for the interconnection of the services of other operators, at any technically feasible point specified by the Commission in accordance with the regulations; and
- (b) not, with respect to its telecommunications network or telecommunications services, refuse, obstruct or in any way impede, other than for reasonable technical grounds stated in writing, another operator or service provider from making a direct interconnection, or an indirect interconnection through the public telecommunications network or public telecommunications services of other operators or service providers.

(4) In complying with interconnection obligations under this Act and the regulations every operator or service provider shall —

- (a) comply with any guidelines and standards established by the Commission or prescribed to facilitate interconnection that are set out in the Regulations; and
- (b) comply with the Commission's decisions on dispute references.

(5) The Commission shall make available for public scrutiny at its office the terms and conditions of interconnection agreements, and shall provide a copy of an interconnection agreement, other than a portion of it that, in the opinion of the Commission, deals with the commercial strategy of the parties or confidential matter, to a member of the public on request and on payment of the prescribed fee.

(6) All charges for interconnection shall cover the effective cost of using the network and shall be sufficiently unbundled so that an applicant is not required to take or to pay for any facility not strictly related to the service requested.

50. Interconnection and obligations of a provider with significant market power

(1) A provider with significant market power shall in complying with the conditions under this section for interconnection —

- (a) disaggregate the portion of its telecommunications network or its telecommunications service for which it is a provider with significant market power and on the cost-oriented basis set out in the regulations made under this Act;
- (b) establish prices for its individual elements and offer the elements at the established prices to other operators and service providers;
- (c) publish, in the manner required by the Regulations, the prices, and the technical, commercial and other terms and conditions pertaining to its reference offer for elements of interconnection; and
- (d) permit other service providers to have equal access to telephone numbers, operator services, directory assistance and directory listings without unreasonable delay, in accordance with Regulation made under this Act.

(2) Where a provider with significant market power fails to comply with its obligations under this section, the Commission may issue an order requiring compliance.

51. Standard Reference Interconnection Offer

(1) A licensee shall provide the Commission details of a Standard Reference Interconnection Offer which shall be made available to other licensees determined by the Commission.

(2) A Standard Reference Interconnection Offer shall –

- (a) itemize each interconnection facility offered;
- (b) include the associated terms and conditions of the proposed agreement and the tariffs;
- (c) be subject to the approval of the Commission.

(3) A licensee requiring interconnection with a provider with significant market power may rely solely upon the Standard Reference Interconnection Offer and related requirements provided that other telecommunications network facilities and telecommunications services not included in the Standard Reference Interconnection Offer may negotiated with the provider on an individual basis.

(4) The Commission may request that a Standard Reference Interconnection Offer be modified –

- (a) to take account of commercial and technological changes;
- (b) to correct any infringement of the law relating to fair competition and interoperability of electronic telecommunications services.

(5) The Commission may issue an enforcement notice to a provider with significant market power that fails to provide a Standard Reference Interconnection Offer.

(6) If the Commission refuses to approve any standard Reference Interconnection Offer, it shall give a written notice of its refusal to the provider together with reasons in writing.

(7) A licensee whose Standard Reference Interconnection offer is not approved shall have the right to present its views to the Commission or make adjustments.

52. Access to facilities

(1) An operator may be required to provide to other operators on a timely basis, access to the facilities or public rights of way that it owns or controls, in accordance with this Act and any regulations made pursuant to this Act.

(2) Where, in connection with its network, an operator requests the use of a utility installation of a public utility, it shall use the utility installation in accordance with this section and the Regulations made under this Act, and, where any public utility requests the use of facilities of an operator, it shall have the rights of an operator under this section.

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

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

(5) The Commission may regulate the rates, terms and conditions for access to any facility and such rates, terms and conditions shall be reasonable.

(6) The Commission may adopt the necessary procedures to facilitate access under this section and shall address any complaint made in this regard by an operator.

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

53. Creation of Universal Service Fund

(1) The Minister may establish a fund to be known as the Antigua and Barbuda Universal Service Fund.

(2) The Minister may by regulations make provision for the administration of the Fund.

54. Universal service

(1) The Minister shall, on the advice of the Commission, determine the public telecommunications services in respect of which the requirements of universal service apply, taking into account the needs of the public, affordability of the service and advances in technologies.

(2) The services referred to in subsection (1) may include a high quality public telephone service, including a free telephone directory for subscribers, operator assisted information services, broadband internet service, free emergency telecommunications service and the provision of services to enable a differently-abled user to make and receive a call.

(3) In accordance with the policy established by the Minister, the Commission shall periodically determine the manner in which a public telecommunications service is to 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 Commission may require providers of private telecommunications services, closed user group services and value added services, as well as the users of those services and of other telecommunications services, to contribute to the funding of universal service in accordance with the Regulations made under this Act.

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

(6) The Commission shall make a decision whether or not to approve the termination of the service as soon as is practicable and communicate the decision to the licensee, but if the Commission has not communicated a decision to the licensee 90 days after the licensee applies for approval, the termination is deemed to have been approved.

55. Designation of universal service provider

(1) The Commission may designate one or more operators or service providers to provide Universal Service as provided for in this Act.

(2) The Commission may designate different operators or service providers to provide and cater for different telecommunications networks or telecommunications services.

(3) The designation process of the universal service provider shall be open, transparent, fair and non-discriminatory.

(4) The Minister shall determine the conditions for the competitive process in designating a universal service provider.

56. Financing Universal Service Fund

(1) A licensee shall pay the prescribed contributions to the Universal Service Fund unless the licensee has been granted a waiver of the payment of such contribution in accordance with regulations made under this Act.

(2) The Minister may, on the recommendation of the Commission, suspend or revoke a licence granted under this Act to a licensee where there is persistent failure on the part of the licensee to make properly assessed payments to the Universal Service Fund on the due date.

57. Directory and enquiry access

(1) Subject to any law on the protection of personal data and privacy, a designated universal service provider shall —

- (a) ensure the provision of a comprehensive telephone directory for fixed line services;
- (b) update the directory at least every 2 years;
- (c) maintain a record to be known as the National Directory Database of all subscribers of publicly available telephone services in Antigua and Barbuda; and
- (d) allow access to any information contained in the National Directory Database to any other person in accordance with non-discriminatory terms and conditions, which terms and conditions shall be approved by the Commission.

(2) The universal service provider shall not discriminate against any licensee who provides information for use in the National Directory Database.

(3) The form and content of the National Directory Database shall be as prescribed.

(4) Publication of the National telephone directory and maintenance of the National Directory Database shall be funded by the Universal Service Fund.

58. Specific measures for a differently-abled user

The Commission may impose obligations on a licensee to ensure that differently-abled users have access to telecommunications and electronic communication services comparable with other users who are not differently-abled.

59. Quality of service

(1) A designated universal service provider shall provide the Commission with information on the quality of the service as stipulated in the licence and any quality of service guidelines issued by the Commission.

(2) The Commission shall specify the content, form and manner for the provision of information in order to ensure that an end-user and consumer have access to clear, comprehensive and comparable information.

(3) The Commission shall review from time to time the full list of quality of service parameters, which list shall be published and made accessible to the public.

(4) The Commission shall specify in particular, additional service quality rules to assess the performance of an universal service provider with regards to the provision of services to the differently-abled end-user and consumer.

60. Tariffs

(1) The Commission may regulate affordability of tariffs having regard to the economic feasibility of such regulation, national consumer prices, consumer income, issues of transparency and the principle of non-discrimination.

(2) The Commission may impose, change or withdraw measures that may result in the provision of tariff options or packages by the designated universal service provider to ensure that a consumer of low income or with a special social need is not prevented from accessing or using the public telecommunications service.

(3) The Commission shall keep under review universal service tariffs to ensure that a customer of the designated universal service provider is not required to pay for any service which is not necessary for the provision of the universal service in question.

PART VI**FREQUENCY LICENCES, SPECTRUM MANAGEMENT AND NUMBERING****61. Requirement for a frequency licence**

(1) Subject to subsection (2), a person shall not, without a licence granted by the Commission —

- (a) establish, operate or use a radio communication service;
- (b) install, operate or use any radio transmitting equipment; or
- (c) establish, operate or use any radio communication service on board any ship, aircraft, or other vessel in the territorial waters or territorial airspace of Antigua and Barbuda, other than a ship of war or a military aircraft or satellite registered in Antigua and Barbuda.

(2) An application for a frequency licence shall be made to the Commission in the prescribed form and accompanied by the prescribed fee.

(3) An application for a frequency licence shall set out details of —

- (a) the frequency range sought,
- (b) the purpose, precise manner and the geographical area in which the applicant proposes to use the frequency spectrum; and
- (c) the type and technical specifications of the equipment that the applicant intends to use.

(4) Where spectrum is required in respect of a licence that has been applied for under Part V, the frequency licence application under this section shall be processed as part of the licence application pursuant to section 28.

(5) The Commission shall notify the applicant of its determination within 90 days of receipt of the application.

(6) The Executive Director shall publish in the official Gazette a notice of the frequency licences issued.

(7) Any spectrum license or frequency licence that is granted by the Commission shall be made available for public scrutiny in the manner prescribed by the Commission.

(8) A frequency licence shall be consistent with the spectrum plan established pursuant to section 64 and the regulations and subject to such conditions as may be set out in the licence, shall confer on the licensee the right —

(a) to use a certain frequency band; and

(b) to transmit, receive or transmit and receive messages by means of radio communications or using radio communications devices.

62. Conditions of a frequency licence

(1) Every frequency licence shall —

(a) require the licensee to pay fees annually to the Commission;

(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 Minister;

(d) prohibit the assignment of the licence, without the prior written approval of the Minister;

(e) prohibit the sale of the spectrum;

(f) stipulate the conditions for the surrender of the spectrum to the Commission;

(g) require the licensee, upon request made by the Minister with responsibility for national security and subject to any written law, to collaborate with the Ministry with responsibility for national security; and

(h) require the observance of the regulations made under this Act.

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

(3) Every frequency licence shall contain conditions regarding —

- (a) the use of the frequency or frequencies so licensed;
 - (b) the expiration and renewal of the frequency licence;
 - (c) the circumstances under which the frequency licence may be amended, e.g., force majeure, national security, changes in the laws, and implementation of international obligations;
 - (d) the type of emission, power and other technical requirements for the radio-communication service; and
 - (e) any other matter as may be agreed between the Commission and the licensee.
- (4) A licensee shall ensure that a station or network is operated in a safe manner without impairing or interfering with the services, station and or network of electronic communication system.
- (5) The Commission may direct a licensee to cease operating the station or the network if the operation causes interference or poses a risk to public safety.
- (6) The Commission may, in consultation with the Minister, impose limitations on the use of particular frequencies if the imposition is considered appropriate, and necessary for bringing efficiency in the use of frequencies and the services provided by the licensee.

63. Harmful interference and its elimination

(1) A person shall not operate a facility, terminal equipment or other radio communication equipment in a manner likely to cause harmful interference.

(2) A person who uses any electronic communications equipment or system, which hinders network interoperability, commits an offence.

(3) An owner, licensee or user of electrical, electronic or radio communication equipment causing or suspected of causing interference or disturbance to electronic communication equipment, stations, networks or systems shall permit personnel authorized by the Commission in writing to inspect the equipment using the monitoring tools or equipment approved by the Commission in order to determine whether the interference is in fact caused by the radio communication equipment.

(4) Where the Commission determines that interference or disturbance to electronic communications equipment, stations, networks or systems is caused by any particular electrical, electronic or radio communication equipment, it shall by notice in writing, direct the owner, licensee or user of that electrical, electronic or radio communication equipment, at the expense of the owner of the equipment, to —

- (a) take appropriate measures to eliminate or reduce the interference or disturbance;
- (b) remedy a fault in or the improper operation of the equipment;
- (c) modify or alter the equipment installation;

- (d) disconnect the equipment;
- (e) cease the use of the equipment within 7 days from the date of service of the notice; or
- (f) to use the facility, terminal equipment or other equipment in accordance with the directions of the Commission.

(5) A person in receipt of a notice shall comply with the notice.

64. Spectrum

(1) The Commission 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 Commission shall, in consultation with the Minister, develop a Radio Spectrum and Frequency Plan in order to regulate the use of the spectrum.

(3) The Radio Spectrum and Frequency Plan shall be made available to the public in the manner prescribed by the Commission.

(4) The Radio Spectrum and Frequency 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 is not limited to procedures for licensing frequency bands —

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

65. Allocation of frequency bands

(1) Subject to subsection (2), the Commission may, in accordance with the Radio Spectrum and Frequency Plan, allocate, assign, or re-allocate or reassign frequency bands.

(2) In the allocation or assignment or re-allocation or reassignment of frequency bands by the Commission, priority shall be given to the needs of the State in respect of matters of national security.

66. Exercise of functions

The Commission shall, in exercising the functions under this Part, take into account —

- (a) the objects of this Act;
- (b) the impact of the spectrum plan on its existing and future use;

- (c) the efficient use of the spectrum;
- (d) applicable regional agreements, standards and arrangements;
- (e) applicable international standards, the Convention and other agreements; and
- (f) other relevant matters having regard to the circumstances of the case.

67. Monitoring

(1) The Commission may operate frequency-monitoring stations for:

- (a) ascertaining whether frequency bands are being used in accordance with this Act;
- (b) monitoring the use of the spectrum; and
- (c) carrying out technical functions necessary for fulfilling the requirements of the Radio Regulations of the International Telecommunication Union for the time being in force.

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

68. Suspension or termination of a frequency licence

(1) Subject to this section, the Minister may, on recommendation of the Commission, in respect of frequencies assigned for the operation of services to which Part V refers, suspend or terminate a frequency licence where —

- (a) the licensee has failed to comply materially with any of the provisions of this Act, the regulations 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 Commission.

(2) A frequency licence may be amended by the Minister on recommendation of the Commission, where force majeure, national security considerations, changes in the laws or the implementation of international obligations requires amendment to the frequency licence.

(3) Where a frequency licence is amended pursuant to subsection (2), the rights of the licensee to compensation shall not be prejudiced.

(4) The Minister shall, on recommendation of the Commission, and before exercising the power of suspension or termination conferred by this section —

- (a) serve on the licensee, a written notice stating that —
 - (i) it is considering exercising the power of suspension or termination and setting out the ground on which it may be exercised; and

(ii) the licensee may within 30 days of the date on which the notice was served, make written representation to the Minister; and

(b) take into consideration any representation made to the Minister under paragraph (a) (ii).

(5) A licensee shall continue to operate in accordance with the terms of the frequency licence until such time as the Minister, as the case may be, makes a determination and in the event that the period of the frequency licence comes to an end before the determination by the Minister is made, an interim renewal of the frequency licence on the same terms shall be granted.

(6) Before a frequency licence is amended, the licensee shall be served with a written notice of the proposed amendment, giving reasons for the amendment and the date on which the amendment shall take effect.

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

(8) Upon application by a licensee for the renewal of the first licence issued to the licensee under this Act, the Minister, in respect of frequencies assigned for the operation of services to which Part V refers, shall renew that licence for a period equivalent to the period for which the first licence was granted unless—

(a) the licensee failed to operate within the terms of the licence;

(b) during the period for which the first licence was granted the licensee engaged in any conduct amounting to a material contravention of this Act or the regulations; and

(c) the licensee failed to comply materially with any lawful direction of the Minister.

69. Varying conditions of spectrum rights

(1) Subject to this Act, if on the recommendation of the Commission, the Minister is satisfied that it is necessary or convenient to vary a spectrum right or the conditions of the grant of a spectrum right to give effect to any assignment, the Minister may vary —

(a) a spectrum right by changing the name of the person to whom the spectrum right was granted;

(b) any of the conditions of the grant of a spectrum right to include further conditions, the issue of new spectrum rights or to terminate existing spectrum rights.

(2) Where the Minister varies the spectrum right in accordance with subsection (1), he shall give at least 3 months' notice and provide the licensee with the reason for the change.

(3) Where a spectrum right is varied or terminated pursuant to subsection (1), the right of the licensee to compensation shall not be prejudiced.

70. Management of radio spectrum

For the purposes of ensuring the effective management of frequency spectrum and its optimum use, the Commission may, subject to Section 67, through spectrum re-farming, withdraw spectrum where it is satisfied that the spectrum is not utilized optimally or efficiently.

71. Numbering and electronic address

(1) The Commission shall administer, manage and assign numbers for telecommunications services to licensees on an equitable and a non-discriminatory basis.

(2) In carrying out its functions under this section the Commission shall develop a plan for the numbering of telecommunications services and may make rules pursuant to that plan regarding the assignment and reassignment of telephone numbers by licensees to users.

(3) For the purposes of subsection (2), the Commission shall —

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

72. Withdrawal and cancellation of numbers and electronic address

(1) Subject to subsection (2) the Commission may withdraw an allocated number or electronic address —

- (a) by consent or where necessary for the transfer of numbers as may be provided for in the numbering and electronic address plan;
- (b) where the person to whom the number was allocated has repeatedly and seriously contravened the numbering condition and where no other remedy is likely to secure compliance; and
- (c) for the purposes of numbering reorganization.

(2) A withdrawal under subsection (1) shall not unduly discriminate against any particular licensee and user of the particular numbers or electronic addresses.

73. Number portability

(1) Subject to this Act, the Commission may make rules imposing on any licensee, the responsibility to offer number portability if the Commission is satisfied on reasonable grounds that —

- (a) the market conditions and the benefits likely to arise from the requirement to provide a particular form of number portability outweigh the likely cost of implementing it; and
- (b) the requirement will not impose an unfair burden on any licensee or service provider.

(2) The holder of a licence shall configure its network to facilitate number portability between similar networks as and when directed by the Commission.

(3) Number portability shall be applicable to mobile numbers only.

PART VII

TERMINAL EQUIPMENT, STANDARDS AND ACCESS

74. Terminal equipment and type approval

(1) A licensee shall provide the Commission with accurate and adequate technical specifications of any interface offered by its network before the services provided through such interface are made publicly available.

(2) A terminal equipment sold or otherwise provided in Antigua and Barbuda may be connected to a public telecommunications network where the Commission has certified such terminal equipment as —

- (a) being safe for the user;
- (b) being in compliance with international environmental, health and safety, and electromagnetic emissions and absorption standards, and other relevant international standards;
- (c) meeting requirements of electromagnetic compatibility;
- (d) effectively utilising the electromagnetic spectrum and preventing interference between satellite and terrestrial-based systems and between terrestrial systems; and
- (e) being compatible with the network.

(3) A person shall not import or attempt to import, supply, whether by sale or rent, loan or gift, and thereafter connect, or allow to remain connected to an electronic communications

network, or put into service any item of terminal equipment which does not comply with the technical, safety, marking and other specifications issued by the Commission or as prescribed.

(4) The Commission may establish terminal equipment approval standards consistent with standards approved by the internationally recognized certification bodies including the International Telecommunication Union, IEEE and ISO.

(5) Terminal equipment certified pursuant to this section shall bear the labels or other markings set out in the regulations.

(6) The Commission may, in certifying terminal equipment pursuant to subsection (2), recognise type approvals from other jurisdictions specified in the Regulations.

(7) The Commission may design and maintain a register of approved terminal equipment, which shall be made accessible to the public.

(8) The Minister may regulate or prohibit the sale or other provision, or the connection, of any terminal equipment or other device that is provided in Antigua and Barbuda primarily for the purposes of circumventing, or facilitating the circumvention of, any requirement of this Act.

(9) The Minister may, by regulations, specify the means —

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

(b) to facilitate or require users', as opposed to a licensee's, ownership of inside wiring and other facilities specified in the Regulations.

(10) The Commission may register certifying agencies or classes of certifying agencies, including agencies outside the State, for the purposes of certifying compliance with codes or standards under this Act.

(11) An approval by a registered certifying agency shall be part of the considerations of the Commission in its type approval process.

75. Standards

(1) Subject to this Act, a licensee may implement technical standards if the standards conform to accepted international standards.

(2) Notwithstanding subsection (1), the Minister may by regulation, adopt or establish preferred technical standards in the regulations or, where necessary, require that a licensee conform to a single standard.

76. Standards and certification of technicians

(1) The Commission, acting on the advice and authority of the Bureau of Standards for Antigua and Barbuda, may make rules prescribing certification standards in relation to —

(a) customer equipment;

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

(2) A licensee shall comply with the prescribed certification standards.

(3) The Commission may, acting on the advice and authority of the Bureau of Standards for Antigua and Barbuda establish preferred technical standards that shall be complied with by a licensee.

(4) The Commission may issue directives and guidelines to a licensee governing the technicians who provide independent technical services or expertise, as independent contractors.

77. Installation and maintenance of equipment

(1) A person wishing to install and maintain an electronic communications equipment, other than a terminal equipment, on a telecommunications network shall satisfy the conditions prescribed by the Commission.

(2) The Commission may establish general conditions and guidelines for laying down all telecommunications cables for purposes of connection to public telecommunication networks or the provision of telecommunications services.

PART VIII

ROAD WORKS AND ACCESS TO LAND

78. Road works

(1) In connection with its operation of a wireless public telecommunications network, an operator may maintain its existing facility in or over a road or public ground, or on the shore and bed of the sea, or remove the facility from such a place, if these actions are performed in accordance with the regulations of the Development Control Authority and, for that purpose, may, in accordance with the Public Utilities Act, the Public Works and Road Act and any other enactment, carry out road works.

(2) Before carrying out road works for the purposes specified in subsection (1), an operator shall —

- (a) obtain from the Public Utilities Authority and the Ministries with responsibility for works, transportation and the environment, 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 by the works;

(c) request and obtain written permission from the Commission and any relevant Ministry of the Government; and

(d) notify the Commission of any intended road works.

(3) On receiving a notification under subsection (2) (d), the Commission shall notify other operators or public utilities of the intended road works and inquire whether they have any intention of undertaking similar road works.

(4) Unless there is an emergency, no road works shall commence until the expiration of 14 days from the date of the receipt of the permission.

(5) An operator need not obtain the permission required by paragraph (2) (c) where the Commission certifies in writing that the intended road works are necessitated by an emergency.

(6) The removal or alteration of a utility installation shall be undertaken by the affected utility installation owner, and the operator shall pay the costs associated with the removal or alteration at the utility owner's standard rates, which must be cost oriented.

(7) An operator or public utility that has been notified shall not carry out road works in the area to which the notification relates within 3 months of receiving the notification unless the operator proves to the satisfaction of the Commission that it is necessary to carry out emergency works.

(8) A member of the Board, officer of the commission, agent or advisor of the Antigua Public Utilities Authority, a public utility or a public body shall not use or transmit information acquired in the course of their duties with respect to providing plans or permissions under this section in a way that would not disclose the intentions of an operator and shall treat any such information as confidential.

(9) Prior to carrying out road works, a licensee shall publish a description of the works in at least one newspaper in circulation in the area where the road works are to be carried out and shall otherwise inform affected persons in such manner as the Commission may determine.

79. Access to crown lands.

(1) Subject to subsection (2), an operator may, with the written permission of the Minister responsible for crown or public lands, enter any crown lands for the purpose of —

(a) inspecting the land to determine whether the land is suitable for the purposes of that operator;

(b) installing a facility on the land; and

(c) maintaining any facility situated on the land.

(2) Before entering any crown or public lands for the purposes specified in subsection (1)(a) and (b) the operator shall, not later than 7 days before the date of the proposed entry, in writing notify the Minister referred to in subsection (1) of its intention to do so and such notice shall —

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

80. Access to land or facilities of other operators

(1) Subject to subsection (3) and section 52 of this Act, if the requirements of subsection (2) are satisfied, an operator (hereinafter in this section referred to as the “provider operator”) may permit another operator (hereinafter in this section referred to as the “requesting operator”) to enter, on a non-discriminatory basis, any land or facility owned or controlled by the providing operator.

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

- (a) the requesting operator shall, before the proposed date of entry on the land, give reasonable notice of the purposes for which such entry is required and the approximate dates and duration of such entry;
- (b) the providing operator shall be entitled to reasonable compensation in relation to that entry, to be determined in accordance with the relevant provisions of the Land Acquisition Act Cap.233; and
- (c) entry on the land shall be carried out or supervised by the providing operator and any action taken thereon shall be carried out by a certified technician.

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

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

81. Installation of network facilities on private land or buildings

(1) An operator may install and maintain network facilities along, on or over land or buildings and may enter upon land and place and maintain network facilities there and repair or renew network facilities placed on the land.

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

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

- (a) may lop or trim a tree that, in its opinion, is likely to damage or obstruct its network facilities;
- (b) shall cause as little damage as possible and shall pay full compensation to all persons for damage sustained by them resulting in the exercise of the powers; and
- (c) shall act in accordance with the following rules —
 - (i) it shall not place facilities on private land or buildings in a manner that causes interference with or obstruction of an occupier of lands in the business or cultivation carried out on the land or building; and
 - (ii) it shall not place facilities on private land or buildings, or lop or trim any trees on the land, until it has given at least 14 days' notice in writing to the owner or occupier of the land or building of its intention to do so, specifying the work to be done and notifying the person of the right to give notice of an objection to the Commission pursuant to subsection (4).

(4) Not later than 14 days after receiving a notice of an operator's intention to place facilities on private land or buildings, or to lop or trim trees on land, the owner or occupier of the land may, if the owner objects to the proposed work, give notice to the Commission in writing.

(5) When the Commission receives a notice under subsection (4), it shall notify the operator and the operator shall not proceed with the work until authorised by the Commission to do so.

(6) To minimize disruption to landowners, an operator shall, to the extent feasible, provide other operators with access to its facilities in accordance with section 52 and shall coordinate its installation or maintenance of facilities on or over private land or buildings.

82. Enforcement of access

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

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

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

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

(3) The court may grant an order under this section if it is satisfied that the applicant has complied with the requirements of sections 79, 80 or 81 as the case may be.

83. Access to lands for inspection and maintenance

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

(2) Where, in an exercise of the power conferred by this section, damage is caused to land or to chattels, the operator shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage.

(3) Where, in consequence of an exercise of that power, a person's enjoyment of land or chattels is disturbed, the operator shall pay to that person compensation in respect of the disturbance.

84. Damage to installation, repair and restoration

(1) Where an operator in the course of carrying out road works, damages an installation of a utility, it shall immediately notify the utility owner and make plans to repair the damage to the utility installation.

(2) The operator shall compensate the utility installation owner for the full cost of repair at the utility owner's standard rates, which must be cost oriented.

(3) An operator shall, as speedily as possible, complete all works on, around and by the roads and public grounds and restore the road and public grounds, including removing any debris, to the satisfaction of the Minister with responsibility for work and transportation.

(4) Where an operator fails to comply with subsection (3), it shall be held liable for any expenditure that the Minister referred to in subsection (3) incurs in such restoration and for any other loss by any other person.

(5) The liability of the operator under sub-section (4) shall continue for a period of 6 months or until the Ministry expresses its satisfaction in writing pursuant to sub-section (3).

PART IX

COMPETITION

85. Anti-competitive business conduct

(1) Subject to subsection (5), a licensee shall not engage in any anti-competitive business conduct which has the purpose or effect of substantially lessening competition in any aspect of electronic communications in Antigua and Barbuda.

(2) The Commission may, from time to time, publish guidelines which clarify the meanings of substantial lessening of competition in electronic communications and such guidelines may include reference to the following –

- (a) (a) agreements between licensees, decisions by associations of licensees and concerted practices by licensees which have as their object or effect the prevention, restriction or distortion of competition within Antigua and Barbuda;
- (b) (b) actions by which a licensee abuses its significant market power within Antigua and Barbuda;

(3) Subject to subsection (5), the clauses, agreements and commitments generally having the object or effect of restricting, limiting or affecting competition are void.

(4) A licensee shall not be treated as engaging in anti-competitive business conduct if he or she establishes that the activity complained of –

- (a) contributes to –
 - (i) the improvement of production or distribution of goods and electronic services, or
 - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) imposes on another licensee affected only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a) and does not afford the licensee engaged in the activity the possibility of eliminating competition in respect of a substantial [part of the market for goods or electronic communication services.

(5) A licensee shall not –

- (a) use information obtained from competitors for anti-competitive purposes;
- (b) subsidize an electronic communications service in competition with an electronic communications service not in competition.
- (c) commercialize a bundle of services in competition with an electronic communications service not in competition;

- (d) refuse to make available on a timely manner to other licensees, technical information about facilities and commercially relevant information necessary for the exercise of their activity

(6) In this section, “anti-competitive business conduct” includes –

- (a) the direct or indirect fixing of purchase or selling prices;
- (b) the limitation or control of production, markets, investment or technical development;
- (c) the artificial dividing up of markets or restriction of supply sources;
- (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;
- (e) making the conclusion of a contract⁶ subject to the acceptance by the other party to the contract of additional obligations which, by nature or according to commercial practice, have no connection with the subject matter of the contract;
- (f) predatory pricing;
- (g) price discrimination;
- (h) exclusionary vertical restrictions;
- (i) bid-rigging; and
- (j) any unauthorized denial of access to networks.

(7) Any exclusive right for the provision of electronic communications networks or electronic communications services is prohibited.

86. Anti-Competitive Agreement, Arrangement or Understanding

(1) Subject to subsection (2), a licensee shall not enter into or give effect to any agreement, arrangement or understanding –

- (a) including an agreement, arrangement or understanding for an acquisition which has as its purpose, or is likely to have, the effect of substantially lessening competition in any market for the supply of an electronic communication service or any product used in connection with the electronic communication service;
- (b) with another licensee which has the purpose or has, or is likely to have, the effect of fixing, controlling or maintaining the prices for, or any discount, allowance, credit or rebate from, an electronic communications service or any product used in connection with an electronic communications service.

(2) Subsection (1) does not apply to an agreement, arrangement or understanding which –

- (a) contributes to –

- (i) the improvement of production or distribution of goods and electronic communication services, or
- (ii) the promotion of technical or economic progress;
- (b) imposes on the licensees affected only such restrictions as are indispensable to the attainment of the objectives under paragraph (a) and does not afford the licensee engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or electronic communication services concerned.

87. Reasonable allowance

Nothing in section 86 shall prevent a licensee from making a reasonable allowance, subject to the approval of the Commission, for the cost of providing an electronic communications service where the difference results from –

- (a) different quantities in which the electronic communications service is supplied;
- (b) different transmission capacities needed for the supply of the electronic communications service;
- (c) different places from or to which the electronic communications service is provided;
- (d) different periods for which the electronic communications service is provided;
- (e) different performance characteristics of the electronic communications service provided; or
- (f) doing an act in good faith to meet a price or benefit offered by a competitor.

88. Regulation of Competition

(1) A person may submit a complaint to the Commission that a licensee, service provider or an operator is engaging or has engaged in anti-competitive business conduct.

(2) The Commission shall have competence to investigate complaints of anti-competitive business conduct, and to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws whether of a general or specific nature, as it relates to electronic communications in Antigua and Barbuda.

(3) Where the Commission is conducting an investigation into an allegation anti-competitive business conduct which has the effect of substantially lessening competition in a relevant market in Antigua and Barbuda, the Commission may consult the Competition body established for Antigua and Barbuda.

(4) In consulting with the Competition body, the Commission shall send all documents relevant to the investigation to the Competition body, subject to the Competition body applying the same confidentiality obligations regarding trade secrets as the Commission.

(5) A decision of the Competition body under this section is binding on the Commission and is enforceable in accordance with the Rules made by the Supreme Court under the Supreme Court Judicature Act, as though it were a judgment of the High Court.

(6) The Commission may share information with other completion bodies.

89. Market Analysis and Significant Market Power

(1) The Commission shall, at regular intervals, analyse the competitive situation of the relevant markets and produce and publish a report accordingly, such report shall, among other things, be the basis for the identification of a telecommunications network provider or telecommunications service provider that has Significant Market Power.

(2) Prior to conducting the market analysis under subsection (1), the Commission shall publish the objectives and methodology to be used and after publish the results.

(3) The Commission shall conduct market analysis and assessment of significant market power in accordance with guidelines relating to market analysis and assessment of significant market power for electronic communication networks and electronic communications services.

(4) In assessing the significant market power of a licensee, the Commission shall take into account –

- (a) the ability of a person to behave to an appreciable extent independently of competitors, customers and consumers;
- (b) the market share of a licensee or the traffic volume of the licensee with respect to the size of the relevant market;
- (c) the possible significant market power of the licensee on an upstream market strengthening its leading position on a downstream market;
- (d) control of the means of access to the retail customer;
- (e) access to financial resources and experience in providing products and electronic communications services;
- (f) more generally, the ability of the licensees to influence market conditions.

(5) The Commission shall prepare a list of licensees designated as having significant market power in the relevant market.

(6) Notwithstanding this section, a licensee may apply to the Commission to have its status as having significant market power reviewed, on such terms and according to such procedures as the Commission may determine.

90. Abuse of Significant Market Power

(1) A licensee shall not take advantage of its significant market power in a market for the supply of an electronic communications service with a view to preventing, restricting or distorting competition in the market.

(2) Without prejudice to subsection (1), in determining whether a licensee has abused its significant market power, the Commission shall take into account the provisions of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy and its further amendments, and the Revised Treaty of Basseterre establishing the OECS Economic Union.

91. Obligations on Licensees having Significant Market Power

(1) Where, following a market analysis, a licensee is designated as having significant market power in a given market, the Commission may impose one or more of the following obligations –

- (a) the obligation to interconnect its electronic communications network with the network of another licensee for the purpose of originating, transiting or terminating traffic, and to provide such interconnection under prescribed terms and conditions;
- (b) the obligation to provide wholesale services to other licensees for resale and, where necessary, to offer prescribed minimum features, functionality or other attributes;
- (c) the obligation to meet reasonable requests for access to, and the use of specified network elements and relevant facilities and services and to provide such access under prescribed specifications, terms and conditions including, as the circumstances may warrant, the obligation to provide –
 - (i) co-location with third parties or other forms of facility sharing, including the sharing of ducts, conduit, buildings, cabinets or masts;
 - (ii) unbundled access to specified network elements including access to local loop and broadband capacities available on terrestrial electronic communication networks, backhaul facilities, ducts, dark fiber associated databases;
 - (iii) information about technical interfaces, protocols or key technologies that are required for the interoperability of services and timely information with regards to any planned changes to the same;
 - (iv) software systems necessary for provisioning electronic communications, including operational support systems, and
 - (v) up-to-date information systems or databases containing information relating to the location or availability of particular mandated access components or for ordering, provisioning, maintenance and repair requests and billing;
- (d) the obligation to meet reasonable requests for access under prescribed terms and conditions including, as the circumstances may warrant –

- (i) access to physical infrastructure including buildings, ducts and masts,
 - (ii) access to number translation or systems offering equivalent functionality,
 - (iii) access to fixed and mobile networks, in particular, access necessary to facilitate virtual network services,
 - (iv) access to subscription audiovisual services; and
 - (v) such other forms of access to wireline or wireless network features and functionality as prescribed to promote or protect effective competition in a relevant market;
- (e) the obligation to provide access and interconnection subject to prescribed terms and conditions that are transparent, including the publication of reference interconnection and access offers in the prescribed manner;
- (f) the obligations of transparency and non-discrimination in the provision of retail services to retail customers and wholesale services to other licensees, including the requirements to —
- (i) apply equivalent terms and conditions in equivalent circumstances to retail customers or to other licensees; and
 - (ii) in the case of wholesale services, to provide facilities, services and information to others under the same conditions and of the same quality as it provides for its own internal purposes or to those of its divisions, subsidiaries, partners and affiliates;
- (g) the obligation to comply with prescribed requirements relating to the pricing of wholesale and retail tariff regulation regimes of electronic communications, including obligations relating to the cost orientation of prices and transparency;
- (h) the obligation to provide prescribed types of wholesale access or interconnection prior to the introduction of prescribed downstream services that rely on such inputs by a licensee or its subsidiaries, partners and affiliates;
- (i) the obligation to establish and maintain a cost accounting system in accordance with cost allocation and separation rules that are prescribed for the purpose of ensuring that a vertically integrated licensee's costs and revenues are properly attributed or assigned to specific activities and facilitate the detection of anti-competitive cross-subsidies by an independent auditor;
- (j) the obligation to publish audit information in a format that contributes to an open and competitive market while preserving the confidentiality of accounting data prescribed as commercially sensitive;

- (k) the obligation not to unreasonably bundle other services with a prescribed service, whether provided by the licensee, its subsidiaries, partners or affiliates, including a prohibition against—
 - (i) anti-competitive tying arrangements, and
 - (ii) offering bundles at retail prices that are predatory or cannot be replicated by an efficient competitor;
 - (l) the obligation to provide carrier selection and related terms and conditions in the prescribed manner;
 - (m) any other obligations that the Commission, determines.
- (2) In order to support the retail tariff regulation regime under subsection (1)(g), a determination of the cost accounting methods should be made publicly available by the Commission, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs.
- (3) Where market failures persist despite the implementation of the obligations under subsection (1), the Commission, may direct a licensee to –
- (a) transfer its wholesale supply business to an independent economic entity, distinct of the economic entity operating retail electronic communication services or;
 - (b) divest specified assets under the conditions set out by the Commission and the Commission shall approve the company interested in acquiring the divested assets before divestment occurs.
- (4) Where a licensee that has a significant market power fails to comply with subsections (1) and (3), the Commission may apply for injunctive relief.
- (5) In assessing the proportionality of the obligations it is likely to impose on a licensee having significant market power, the Commission shall take into account the following criteria -
- (a) the technical and economic viability of using or setting up competing facilities, given the pace of market development and the nature and type of interconnection and access involved;
 - (b) the feasibility of providing the access proposed, in view of the available capacity and technical conditions;
 - (c) the investment made by the licensee and the licensee allow reasonable rate of return on capital employed efficiently, in view of the risks involved;
 - (d) the need to preserve long-term competition;
 - (e) any relevant intellectual property rights;

- (f) the available offers and prices in available markets;
- (g) the real impact of the provision of competition;
- (h) the desirability of securing electronic communication services throughout Antigua & Barbuda.

(6) The obligations imposed on licensees having significant market power on one or more markets pursuant to subsections (2) and (3) is subject to a public decision of the Commission, accessible to all interested parties but confidential information including trade secrets is excluded.

PART X

PROTECTION OF PERSONAL INFORMATION

92. Interpretation of words used in this Part

In this Part —

“automated calling system” means a system which is capable of —

- (a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- (b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called;

“called subscriber” means the subscriber receiving a call by means of the service in question whose line is the called line, whether or not it is also the connected line;

“emergency call” means a call to the national emergency call number as determined by the Commission.

93. Security of electronic communications services

(1) Subject to subsection (2), a service provider shall take appropriate technical and organizational measures to safeguard the security of electronic communications service:

(2) An operator may take other measures in conjunction with the service provider for the security of the electronic communications network by which the electronic communications service is provided.

(3) Where, notwithstanding the taking of measures referred to in subsection (2), there remains a significant risk to the security of the electronic communications service, the operator shall inform the subscribers concerned of —

- (a) the nature of that risk;

- (b) any appropriate measures that the subscriber may take to safeguard against that risk; and
 - (c) the likely costs to the subscriber involved in the taking of such measures.
- (4) Measures to be taken shall only be taken to be appropriate if —
 - (a) due regard is given to the state of technological developments, and the cost of implementing it; and
 - (b) it is proportionate to the risks against which it would safeguard.
- (5) Information provided for this purpose shall be provided to the subscriber free of any charge other than the cost that the subscriber incurred in receiving or collecting the information.

94. Itemized billing and privacy

- (1) The Commission shall, when exercising its functions have regard to the need —
 - (a) to reconcile the right of a subscriber receiving an itemised bill with the right to privacy of a calling subscriber;
 - (b) for sufficient alternative privacy enhancing methods of communications; or
 - (c) for payments to be available to such a user and subscriber.
- (2) At the request of a subscriber, a service provider shall provide that subscriber with a bill that is not itemised.

95. Prevention of calling line identification – Outgoing call

- (1) This section applies to an outgoing call where a facility enabling the presentation of calling line identification is available.
- (2) The service provider shall —
 - (a) provide users originating a call by means of that service with a simple means to prevent presentation of the identity of the calling line on the connected line in respects of that call;
 - (b) provide subscribers to the service, in respects of their line and a call originating from that line, with a simple means of preventing presentation of the identity of that subscriber's line on any connected line.
- (3) The measures to be provided under section 95 shall be provided free of charge.

96. Prevention of calling line identification – Incoming call

- (1) Where a facility enabling the presentation of calling line identification —

- (a) is available, the service provider shall provide the called subscriber with a simple means to prevent, free of charge for reasonable use of the facility, presentation of the identity of the calling line on the connected line;
- (b) is available prior to the call being established, the service provider shall provide the called subscriber with a simple means of rejecting an incoming call, where the presentation of the calling line identification has been prevented by the calling user or subscriber.

(2) Where a facility enabling the presentation of connected line identification is available, the service provider shall provide the called subscriber with a simple means to prevent, without charge, presentation of the identity of the connected line on any calling line.

97. Publication of information for calling line identification

Where a service provider provides network facilities for calling or connected line identification, it shall provide information to the customers regarding the availability of such network, including information regarding the options to be made available.

98. Cooperating on calling and connected line identification

A service provider shall comply with any reasonable requests made by another service provider by means of which network facilities for calling or connected line identification are provided.

99. Tracing of a malicious or nuisance call

(1) When directed by an Order of the Court, a service provider may override anything done to prevent the presentation of the identity of a calling line where —

- (a) a subscriber has requested the tracing of a malicious or nuisance call received on the subscriber's line; and
- (b) the service provider is satisfied that such action is necessary and expedient for the purposes of tracing such a call.

(2) Any term of a contract for the provision of electronic communications services, which permits such prevention shall have effect subject to the provisions of subsection (1).

(3) Notwithstanding any other provision in this Act, a service provider is permitted to store and make available to a person with a legitimate interest, data containing the identity of a calling subscriber which were obtained pursuant to subsection (1).

100. Emergency Call

In order to facilitate a response to an emergency call —

- (a) a person shall not prevent the presentation on the connected line of the identity of the calling line; and
- (b) any restriction on the processing of location data shall not apply.

101. Termination of automatic call forwarding

(1) Where —

- (a) a call originally directed to another line is being automatically forwarded to a subscriber's line as a result of action taken by a third party; and
- (b) the subscriber requests his or her service provider ("the subscriber's provider") to stop the forwarding of that call, the subscriber's provider shall ensure, free of charge, that the forwarding is stopped without any avoidable delay.

(2) A service provider shall comply with any reasonable requests made by the subscriber's provider to assist in the prevention of the forwarding referred to in subsection (1).

102. Unsolicited goods, services or communications

(1) A person who sends unsolicited commercial communications to a consumer, must provide the consumer —

- (a) with the option to cancel his or her subscription to the mailing list of that person; and
- (b) with the identifying particulars of the source from which that person obtained the consumer's personal information, on request of the consumer.

(2) An agreement is concluded where a consumer has failed to respond to an unsolicited communication.

(3) A person who fails to comply with or contravenes subsection (1) commits an offence.

(4) A person who sends an unsolicited commercial communication to a person who has advised the sender that such a communication is unwelcome, commits an offence.

103. Unsolicited call for direct marketing purposes

(1) A person shall not use, or instigate the use of, an electronic communications service for the purposes of making an unsolicited call for direct marketing purposes where —

- (a) the called line is that of a subscriber who has previously notified the caller that such a call should not for the time being be made on that line; or
- (b) the number allocated to a subscriber in respect of the called line is one listed in a register.

(2) A person shall not permit his or her line to be used in contravention of subsection (1).

(3) A person shall not be held to have contravened subsection (2) where the number allocated to the called line has been listed in the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to his or her line to be listed in the register kept under this Act has notified a caller that he or she does not, for the time being,

object to such a call being made on that line by that caller, such a call may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to subsection (4) the subscriber shall be free to withdraw that notification at any time, and where such notification is withdrawn, the caller shall not make such a call on that line.

104. Use of automated calling systems

(1) A person shall not transmit, or instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling system except in the circumstances where the called line is that of a subscriber who has previously notified the caller that for the time being he or she consents to such communications being sent by, or at the instigation of the caller on that line.

(2) A subscriber shall not permit his line to be used in contravention of subsection (1).

105. Use of facsimile machines for direct marketing purposes

(1) A person shall not transmit, or instigate the transmission of, unsolicited communications for direct marketing purposes by means of a facsimile machine where the called line is that of —

- (a) an individual subscriber, except in the circumstances where the individual subscriber has previously notified the caller that the subscriber consents for the time being to such communications being sent by, or at the instigation of the caller;
- (b) a corporate subscriber, who has previously notified the caller that such communications should not be sent on that line; or
- (c) a subscriber, and the number allocated to that line is listed in the register kept under this Act.

(2) A subscriber shall not permit his or her line to be used in contravention of subsection (1).

(3) A person shall not be held to have contravened subsection(1)(c) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the communication is made.

(4) Where a subscriber who has caused a number allocated to his line to be listed in the register referred to in subsection (1) has notified a caller that the subscriber does not, for the time being, object to such communications being sent on that line by that caller, such communications may be sent by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to this section in relation to his or her line —

- (a) the subscriber shall be free to withdraw that notification at any time; and

- (b) where such notification is withdrawn, the caller shall not send such communications on that line.

106.Unsolicited electronic mail for direct marketing

(1) This section applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances referred to in subsection (3), a person shall not transmit, or instigate the transmission of, unsolicited communication for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he or she consents for the time being to such communication being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where —

- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;
- (b) the direct marketing is in respect of that person's similar products and services only; and
- (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his or her contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber shall not permit his or her line to be used in contravention of subsection (2).

107.Use of electronic mail for direct marketing purposes

A person shall not transmit, or instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail —

- (a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed; or
- (b) where a valid address to which the recipient of the communication may send a request that such communication cease has not been provided.

108.Information for the purposes of direct marketing

(1) Where an electronic communication service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication —

- (a) in relation to a communication to which the provisions on automated calling systems and facsimile machines apply, the particulars mentioned in subsection (2);
 - (b) in relation to a telephone call, the particulars mentioned in subsection (2)
- (2) The particulars referred to in this section include —
 - (a) the name of the person; and
 - (b) the address of the person; or
 - (c) a telephone number on which the person can be reached free of charge.

PART XI

CONSUMER PROTECTION

109.Principles

(1) Except as provided by this Act, a subscriber or other user of a telecommunications network or telecommunications service shall not be denied a service provided by a licensee, or have the service discontinued.

(2) A licensee shall —

- (a) make available all telecommunications networks and telecommunications services as may reasonably be provided to any person wishing to subscribe to the telecommunications network or telecommunications services;
- (b) ensure that all rates, charges, practices and classifications are just and reasonable;
- (c) provide efficient services and comply with the standards for quality as imposed by the Commission;
- (d) notify the Commission and publish by notice in the media when the services are to be interrupted for the installation, repair or changing of equipment;
- (e) establish an efficient mechanism for receiving complaints and repairing failures in the electronic telecommunications network or telecommunications services;
- (f) comply with the provisions of this Act and related regulations, directives and the terms and conditions of the licence;
- (g) comply with the terms and conditions of the General Code established by the Commission.

110.Consumer protection

(1) The Commission may establish General Codes for the use or adaptation by all the telecommunications networks and operators.

(2) The General Code shall be the basis for all the different Consumer Protection Code or Code of Practice that are used by an operator.

(3) The General Code, shall deal with, among other things —

- (a) the consumer's and user's right to a subscriber connection or service;
- (b) the deposits required of consumers and users before using the services;
- (c) the consumer's and user's right to the selection of the service;
- (d) the parallel use of subscriber connection;
- (e) the right to dialling tone and calling line identification;
- (f) the standard contract terms;
- (g) tariff information;
- (h) review of contracts;
- (i) dispute resolution;
- (j) disconnection to the service and termination;
- (k) standards of terminal equipment;
- (l) reasonable restrictions, itemized billing;
- (m) conditions relating to changes on numbers; and
- (n) any other information or issue that the Commission finds necessary to include in the General Code.

(4) The Commission shall establish penalties for breach of the directives provided in the General Code.

111. Right to deposit or security

An operator may require a reasonable deposit or security from a consumer for the payments under the telecommunications network subscriber connection agreement, but only for special reasons, including foreseeable insolvency or some other comparable circumstance subject to the terms of the General Code.

112. Amendments to terms of subscriber contracts

A provider of an electronic communications service may amend the price and other terms of a contract for a subscriber connection on grounds specified in the contract terms, on the basis of —

- (a) a change in legislation; or

- (b) a consequent decision by the Commission, except that any such amendment shall be consistent with the specific conditions laid down or provided in the General Code established by the Commission.

113. Dispute resolution

A licensee shall adopt the dispute resolution procedure under this Act to resolve a dispute involving a subscriber.

114. Itemized billing

A licensee shall, without charge, provide a bill for the use of its telecommunications network and or telecommunications service provided that the bill is itemized and shall be specific to —

- (a) network charges;
- (b) different categories of calls;
- (c) subscriber connection rates;
- (d) text messages;
- (e) picture messages;
- (f) data transfer services; and
- (g) (any other requirement stipulated in the General Code.

115. Applicability of foreign law and non-exclusion

- (1) The protection provided to a subscriber under this Act, applies irrespective of the legal system applicable to the agreement in question.
- (2) Any provision in an agreement between a licensee and a subscriber, which excludes any rights provided to a subscriber under this Act, is null and void.

PART XII

DATA PROTECTION

116. Privacy and data protection

- (1) Subject to the provisions of this Act, every subscriber and or user's voice or communications data carried by means of an electronic communications network and or electronic communications services shall remain confidential to that subscriber and or user for whom the voice or data is intended.
- (2) Subject to the provisions of this Act and of any other law, it is an offence for a person to intercept a subscriber or user communication unless by an order of the Court.

117. Duty of operators in providing network security

(1) A licensed electronic telecommunications network and a service provider shall take all technical and organizational measures necessary to ensure that the service and associated electronic communications network are fully secured.

(2) An operator shall inform users about any security risks, which may occur as a result of a breach of its network security measures, or protocols and the necessary remedies available to address the breach of network security.

118. Disaster plans

(1) The Commission may, in consultation with any relevant public body, direct an operator or service provider to develop, a disaster plan for the survivability and recovery of any network facilities, telecommunications network service, applications service or content applications service in case of a disaster or force majeure.

(2) An operator or service provider shall have or build the capability to contribute and assist in any national emergency rescue operations and services that affect the telecommunications sector.

119. Emergency powers of the Commission

(1) For the purposes of the public interest and safety and in ensuring subscriber data security, the Commission may, during a state of emergency —

- (a) direct an operator to operate a telecommunications network in a specified manner; or
- (b) take temporary possession of any telecommunications network within Antigua and Barbuda, and any facility which may be installed and used in the network, for a specified period not exceeding 6 months.

(2) The Minister may on recommendation of the Commission, grant a licence with special conditions where the Minister determines that an emergency or other exigent circumstance exists, but the term of such a licence must not exceed 90 days.

PART XIII**ADMINISTRATION AND DISPUTE RESOLUTION****120. Procedures for making decisions**

In exercising its functions under this Act, the Minister and the Commission shall observe reasonable standards of procedural fairness, act in a timely fashion and observe the rules of natural justice, and without prejudice to the generality of the foregoing, shall —

- (a) prior to making any such decisions, publish the matter for a decision in the Gazette, as required by this Act or as it deems appropriate;
- (b) give to a licensee or other person who is or who is likely to be affected by the decision an opportunity to make representations to be heard;
- (c) give a written statement of reasons for making the decisions; and
- (d) provide notification of the decisions in accordance with the regulations.

121.Returns and documentation

(1) The Minister may require a service provider and holder of a frequency licence to make returns or provide documentation to the Commission for statistical or regulatory purposes.

(2) A service provider or holder of a frequency licence that fails to make a return or provide documentation to the Commission in accordance with this section commits an offence and is liable on conviction to a fine of \$50,000.

122.Power to require information for enforcement purposes

(1) Notwithstanding any other provision of this Act, the Commission may serve written notice under subsection (2) if it appears to the Commission that a service provider or holder of a frequency licence may be contravening, or may have contravened —

- (a) a condition of its licence; or
- (b) this Act or a regulation made pursuant to this Act.

(2) A notice referred to in subsection (1) may be served on any person and may require that person —

- (a) to produce to the Commission, at a time and place specified in the notice, documents specified or described in the notice that the person possesses or controls; or
- (b) to provide the Commission, at the time and place and in the form or manner specified in the notice, the information specified or described in the notice.

(3) A person shall not be required to produce a document or give information under this section that the person could not be compelled to produce or give as evidence in civil proceedings in a court.

(4) If a person fails to comply with a notice served under subsection (2), the Court may, on the application of the Commission, make an order requiring the person to comply with the notice and may make other orders, whether as to costs or otherwise, that it considers necessary.

(5) A person who, without reasonable excuse, fails to comply with a notice issued under subsection (2) commits an offence and is liable on summary conviction to a fine of \$20,000.

123. Duties of an operator with regard to accounts and audit

- (1) An operator shall maintain accounting records that —
 - (a) are sufficient to record and explain its transactions, including its costs;
 - (b) will, at any time, enable its financial position to be determined with reasonable accuracy; and
 - (c) are sufficient to enable financial statements to be prepared and audited in accordance with this section.
- (2) An operator shall have its accounts audited by an auditor annually.
- (3) An operator shall submit to the Commission audited accounts within 6 months of the end of its financial year unless prior written approval for an extension has been granted by the Commission.

124. Settlement of disputes

- (1) Subject to this section, the Commission may assist licensees to resolve disputes between them in accordance with this Act.
- (2) The parties to a dispute shall fund the process of the dispute resolution in accordance with this Act and the regulations made under this Act.
- (3) The Commission shall resolve disputes —
 - (a) where the licensees involved in the dispute agree to submit themselves to the Commission for the settlement of the dispute; and
 - (b) the Commission is of the opinion that it would be in the public interest for the Commission to be involved in the resolution of the dispute.
- (4) A dispute referred to the Commission shall be resolved as soon as possible but in any case no later than 6 months after it is submitted to the Commission.
- (5) The Commission may conduct oral hearings or require the parties to submit written arguments and shall conduct the hearings in accordance with the procedure set out in the regulations.
- (6) The Commission may —
 - (a) make provisional or interim orders or awards relating to a part or all of the matter in dispute;
 - (b) dismiss or refrain from hearing or determining a part or all of the matter, if it appears that the matter or part is trivial or vexatious or that further proceedings are not desirable in the public interest; and
 - (c) charge a prescribed fee for its services under this section.

125. Mediation

(1) The Commission may, as a condition of the granting of a license, require licensees to settle as far as possible all disputes arising between them through mediation.

(2) If either of the parties or their mediator is of the opinion that the mediation is unsuccessful and that it would no longer be useful to continue the process of mediation, the dispute shall be submitted to arbitration before recourse to the court.

126. Arbitration

If a dispute is referred to arbitration, the provisions of the Arbitration Act, Cap. 33 with respect to the conduct of the arbitration shall apply.

PART XIV**INVESTIGATIONS AND PROCEDURES****127. Inspection**

(1) For the purpose of performing its function under this Act, the Commission may —

- (a) require an operator or a service provider to submit his telecommunication facility to a technical audit in order to monitor compliance with the obligations imposed under this Act;
- (b) perform an expansive monitoring and evaluation of all activities of a licensee if there are special reasons to suspect that the licensee is breaching the provisions of this Act or regulations or guidelines issued by the Commission;
- (c) access the equipment, facilities and other premises of an operator and to obtain for examination documents that are necessary for its monitoring role while conducting technical and/or financial inspection; and
- (d) obtain assistance from the police, the customs and other relevant authorities in discharging its duties under this section.

(2) Any person, who fails to comply with a request made by the Commission, commits an offence, and is liable on conviction to fine of \$100,000.00.

128. Investigation of complaints

(1) The Commission may investigate any matter, within its functions under this Act, which relates to —

- (a) telecommunications networks, telecommunications services or a facility provided or supplied in Antigua and Barbuda; and

(b) any representation made to the Commission by or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of the investigation.

(2) The Commission may —

(a) appoint any person or committee of persons appropriately qualified to investigate into and report to the Commission on any matter pending before the Commission; and

(b) give to a person or committee appointed under paragraph (a), directions regarding the procedures for conducting the investigation.

(3) The Commission shall conduct an investigation where the Commission is directed to do so by the Minister.

129. Report on investigations

(1) A person or committee appointed to carry out an investigation, shall submit a report to the Commission in a form and manner that the Commission may direct.

(2) Where an investigation is conducted in accordance with the direction of the Minister, the Commission shall submit a copy of the report to the Minister.

130. Access, search and seizure

(1) Where in the performance of his duties an investigator has reasonable grounds to believe that any stored data would be relevant for the purposes of an investigation or the prosecution of an offence, he may apply to a judge in chambers for a warrant to enter any premises to access, search and seize any stored data reasonably believed to be relevant for the purposes of an investigation or the prosecution of an offence.

(2) Where application is made under subsection (1), the judge may issue a warrant authorising the investigator, to use such force as is necessary and reasonable to —

(a) enter on the premises to search and inspect the premises;

(b) examine, inspect, seize or secure a computer system or any information and any facility;

(c) search any person on the premises entered if there are reasonable grounds for believing that the person is in possession of any article, document or record that is relevant to the investigation;

(d) take extracts from, or make copies of any book, document or record that is on or in the premises or in the information system and that is relevant to the investigation and make and retain a copy of such data or information;

(e) inspect the operation of any computer or equipment forming part of an information system and any associated apparatus or material which the investigator has

reasonable cause to suspect is or has been used in connection with any offence under this Act;

- (f) maintain the integrity of the relevant stored data or information;
- (g) render inaccessible or remove the stored data or information from an information and communication technologies medium; or
- (h) require a person –
 - (i) who or on whose behalf it is reasonably suspected that the computer or information system is or has been used;
 - (ii) otherwise involved with the operation of the computer or information system;to provide the investigator with such reasonable technical and other assistance as the investigator may require to facilitate the investigation.

(3) A person who refuses to co-operate with or hinders a person conducting a lawful search and seizure pursuant to this Act commits an offence.

131. Directions to remedy breach

If after an investigation the Commission is satisfied that licensee has breached a condition of a licence or an obligation under this Act, it may direct the licensee in writing to remedy the breach or to do such act as the Commission may specify in the direction, in accordance with the specified procedures.

132. Appointment of inspectors

(1) The Commission may appoint inspectors for the purposes of verifying compliance with this Act and the decisions of the Commission.

(2) An inspector shall, when exercising powers under this Act, produce the instrument of appointment and identification when required to do so by any person or authority.

133. Powers of an inspector

(1) Subject to subsection (3), an inspector may —

- (a) enter and inspect at any reasonable time any place owned by or under the control of a licensee in which the inspector believes on reasonable grounds to be any document, information or facility relevant to the enforcement of this Act and examine the document, information or facility or remove it for examination or reproduction;
- (b) enter any place in which the inspector believes that there is radio apparatus or interference-causing apparatus, and examine any radio apparatus, logs, books, reports, data, records, documents or other information, and remove the information, document, apparatus or equipment for examination or reproduction;

- (c) make reasonable use of any copying equipment or means of communication located at the place.

(2) The inspector shall sign for any information, document, article, apparatus or equipment removed by the inspector under this Part and shall leave a copy of the signed record with the licensee.

(3) Subject to subsection (1), an inspector may enter any premises where by reason of the exigent circumstances, it would not be practical for the inspector to obtain a warrant.

(4) For the purposes of subsection (3), “exigent circumstances” include circumstances in which it is reasonable to conclude that a delay arising from obtaining a warrant would result in danger to human life or safety, loss or destruction of evidence.

(5) The owner or person in charge of a place entered by an inspector shall give the inspector all reasonable assistance to enable the inspector to carry out the inspector’s duties under this Act.

134. Search warrant

(1) Subject to this Act, an inspector may apply to the court for a warrant to enter into any premises for the purpose of performing the duties conferred upon him under this Act.

(2) Where on an application under subsection (1), the court is satisfied that entry to any premises is necessary for the purpose of enabling an inspector to carry out his duties under this Act, the court may issue a warrant authorising the inspector named in the warrant to enter the premises subject to conditions specified in the warrant.

(3) In executing a warrant issued under this section, an inspector shall not use force unless accompanied by a police officer, and unless the use of force is specifically authorised in the warrant.

135. Entry on premises

(1) An employee of the Commission, who has reasonable grounds for suspecting —

- (a) that a telecommunications network or a telecommunications service has been established, installed, maintained, operated or provided in contravention of this Act or any regulations made under this Act, or in breach of any licence granted by the Commission;
- (b) that any electronic communication equipment used is of a type that is not approved by the Commission; or
- (c) that the electronic communication equipment is imported in contravention of any of the provisions of this Act or Regulations, may with the assistance of a police officer enter and inspect any place in which the electronic communication equipment is located or the electronic communication system or service is established, installed, maintained, operated or provided.

(2) Where a police officer enters any premises in accordance with subsection (1), the officer may —

- (a) seize any electronic communication system or equipment found therein which appears to be used for or in connection with electronic communication;
- (b) test equipment or other things found in the place which is used or intended to be used for the purpose of operating a telecommunications network, providing a telecommunications service or using spectrum;
- (c) examine records or other documents relating to the operation of the telecommunications network, the provision of the telecommunications services or the use of spectrum;
- (d) search for a thing that may afford evidence of contravention of this Act or of the Regulations, or of a breach of a condition of a licence;
- (e) require the owner or person in charge of the place to give all reasonable assistance in the examination or search; and
- (f) seize and take away a relevant thing if it appears that there has been a contravention of this Act or the Regulations, or a breach of a condition of a licence.

136. Seizure of equipment

(1) Where a police officer or any employee authorised by the Commission has reasonable grounds for suspecting that an offence has been or is being committed the police officer may seize any electronic communication system or equipment or any radio-communication system or equipment, or any other thing used in the commission of the offence.

(2) If there is no prosecution with regard to any equipment or system seized under this section, the equipment or system shall be forfeited to the Commission unless a claim is made within 2 months from the date of seizure:

Except that:

- (a) any person asserting that he is the owner of the equipment or system may personally or by his or her authorised agent give written notice to the Commission that he or she claims the same;
- (b) on receipt of the notice, the Commission may direct that the equipment or system be released or may refer the matter to the court; and
- (c) the court may proceed to examine of the matter and upon examination order that the equipment or system be forfeited or released.

137. Preservation order

(1) The Commission may cause an investigator to apply to a court for an order for the expeditious preservation of data that has been stored or processed by means of a computer system

or any other information and communication technologies, where there are reasonable grounds to believe that such data is vulnerable to loss or modification.

(2) An order made by the court for the expeditious preservation of data shall remain in force —

- (a) until such time as may reasonably be required for the investigation of an offence;
- (b) where prosecution is instituted, until the final determination of the case; or
- (c) until such time as the court may determine.

(3) For the purposes of this section, data includes traffic data and subscriber information.

138. Disclosure of preserved data

For the purposes of a criminal investigation or the prosecution of an offence, the Commission may cause any investigator to apply to a court for an order for the disclosure of —

- (a) all preserved data, irrespective of whether one or more service providers were involved in the transmission of such data;
- (b) sufficient data to identify the service providers and the path through which the data was transmitted; or
- (c) electronic key enabling access to or the interpretation of data.

139. Order compelling the submission of data

(1) Where the disclosure of data is required for the purposes of a criminal investigation or the prosecution of an offence, the Commission may cause any investigator to apply to a court for an order compelling —

- (a) any person to submit specified data in that person's possession or control, which is stored in a computer system; and
- (b) any service provider offering telecommunications services to submit subscriber information in relation to such services in that service provider's possession or control.

(2) Where any material to which an investigation relates consists of data stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the request shall be deemed to require the person to produce or give access to it in a form in which it can be taken away and in which it is visible and legible.

140. Limited use of disclosed data and information

Any data obtained under this Act or the Regulations shall not be used for any purpose other than that for which the data was originally sought except —

- (a) in accordance with any other law or regulation;
- (b) in compliance with an order of a court;

- (c) where such data is required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders, assessing or collecting tax, duty or other monies owed or payable to the Government;
- (d) for the prevention of injury or other damage to the health of a person or serious loss of or damage to property; or
- (e) in the public interest.

PART XV

OFFENCES

141. Offences and penalties for unlicensed persons

Any person who establishes, installs, maintains, provides or operates a radio communication station or a telecommunications network or telecommunications service without a licence issued under this Act, commits an offence and is liable on conviction to a fine of \$250,000 and in the case of a continuing offence, to a further fine of \$50,000 for each day or part of a day during which the offence continues after conviction.

142. Interception and disclosure of communication

(1) A licensee or any officer, employee or agent of a licensee who —

- (a) unlawfully intercepts any communication between other persons sent by means of electronic telecommunications network, telecommunications network service or system;
- (b) unlawfully interferes with, obstructs any radio communication or alters or modifies, diverts, unlawfully discloses, decodes or attempts to decode a transmitted message or data, or facilitates any of the activities mentioned under paragraph (a) and (b)
- (c) unlawfully discloses any information in relation to a communication of which that licensee, employee or agent is aware, commits an offence and is liable on conviction to a fine of \$250,000.00

(2) Any person who without lawful excuse, intercepts, makes use of or divulges any communication except where permitted by the originator of the communication, commits an offence and is liable on conviction to a fine of \$100,000.00

(3) For the purpose of subsection (2) where the conviction is a subsequent conviction, the person shall on conviction be liable to a fine of \$250,000. 00

143. Interception of Government communication

An operator, employee, officer or agent of an operator who intentionally intercepts, disrupts, denies accessibility to or diverts Government communication commits an offence and is liable on conviction to a fine of \$100,000 or imprisonment for a term of 3 years or both.

144. Sending false distress signals

A person who knowingly sends, transmits or causes to be sent or transmitted any false or fraudulent distress signal, message, call or radiogram of any kind commits an offence and is liable on summary conviction —

- (a) in the case where the message or call contains any reference to the presence in any place or location of a bomb or other thing liable to explode or ignite, to a fine of \$50,000.
- (b) in any other case, to a fine of \$10,000.

145. Fraudulent retention of messages

A person who —

- (a) fraudulently retains or wilfully divulges, makes away with or detains a message or record of a message which ought to have been delivered to some other person; or
- (b) being required by a licensee to deliver up any such message or record of such message neglects or refuses to do so, commits an offence.

146. Protection of electronic communication installations

(1) A person who —

- (a) prevents or obstructs the transmission or delivery of any message; or
- (b) damages, removes or tampers with any installation or plant or any part of it belonging to an operator, commits an offence and is liable on conviction to a fine of \$50,000.00 and on a subsequent conviction to a fine of \$100,000.00

(2) In addition to the penalty under sub-section (1), the court may order the person convicted to make good any damage occasioned.

147. Harmful interference and unlawful access

A person who —

- (a) uses equipment in such a manner as to cause harmful interference;
- (b) obtains, attempts to obtain, or procures another to obtain unlawful access to a communication transmitted over a telecommunications network;
- (c) uses, or attempts to use, the content of a communication, knowing or having reason to believe that the content was obtained through interception or access in contravention of this Act;
- (d) manufactures or sells a system, equipment, card, plate or other device, or produces, sells, offers for sale or otherwise provides an account number, mobile identification number or personal identification number, for the purpose of fraudulent use of or access to a telecommunications service; or

- (e) aids or abets another person to operate a telecommunications network or provides a telecommunications service contrary to its licence,

commits an offence and is liable on conviction to a fine of \$100,000.00 and on a subsequent conviction to a fine of \$200,000.00 and in the case of a continuing offence, to a further fine of \$10,000.00 for each day that the offence continues after conviction.

148. Offences against personnel of the Commission

A person who —

- (a) wilfully obstructs, hinders, molests or assaults personnel of the Commission engaged in the exercise of its functions or a power under this Act; or
- (b) fails to contribute to the Universal Service Fund, commits an offence and is liable on conviction to a fine of \$100,000.00 and on a subsequent conviction to a fine of \$200,000.00

149. Refusal to produce information or unlawful destruction

A person who —

- (a) refuses to produce a thing or information required under this Act; or
- (b) destroys or alters, or causes to be destroyed or altered, a thing required to be produced under this Act.

commits an offence and is liable on conviction to a fine of \$50,000.00 or to imprisonment for a term of 12 months or to both, and on a subsequent conviction to a fine of \$100,000.00

150. Offence by body corporate

(1) Where an offence under this Act is committed by a body corporate, a director, employee or officer of that body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits the offence and is liable on conviction to the fine of the amount specified for the offence;

(2) Notwithstanding subsection (1), where a person has violated a provision of this Act or the Regulations or a licensee, or an operator has breached a condition contained in its licence, or frequency licence, the Commission may —

- (a) warn the person, licensee or operator;
- (b) issue a cease and desist order or other mandatory order;
- (c) seek enforcement of the condition or the cease and desist order in a court;
- (d) seek to obtain an order to show cause or a mandatory injunction from a court;
- (e) recommend that the licence be amended by the Minister in accordance with this Act;
- (f) the licence be suspend or revoked by the Minister in accordance with this Act; or

(g) take other action consistent with this Act or the Regulations.

151. Giving false information

A person who knowingly gives false or misleading information to the Commission commits an offence and is liable on summary conviction to a fine of \$50,000.00 in the case of a continuing offence, to a further fine of \$5,000.00 for each day that the offence continues after conviction.

152. False communications

(1) A person who, by means of a telecommunications service, sends a communication that the person knows is false or misleading and likely to prejudice the efficiency of a life, safety service or to endanger the safety of a person, ship, aircraft, vessel or vehicle, commits an offence and is liable on conviction to a fine of \$100,000.00

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

153. Damage to equipment

A person who —

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

(b) recklessly or intentionally interferes with, or causes damage to, or who intentionally accesses without authorisation, a computer, switch or other facility used in connection with the operation or provision of a telecommunications network or telecommunications service, or a telecommunications service operated by the Antigua and Barbuda Police Force, the Antigua and Barbuda Defence Force or the Government,

Commits an offence and is liable on conviction to a fine of \$100,000.00 and on a subsequent conviction to a fine of \$200,000.00 and, in the case of a continuing offence, to a further fine of \$5,000.00 for each day that the offence continues after conviction.

154. Recovery of civil debt

A person convicted for damage, removal or destruction of a telecommunications equipment or a telecommunications facility is liable for all expenses reasonably incurred in repairing, restoring or replacing the equipment or facility that the person has damaged, removed or destroyed and such expenses may be recoverable summarily as a civil debt.

155. Confidentiality and disclosure of personal information

(1) A person who intentionally discloses a communication knowing it was obtained in contravention of this Act or who intentionally uses or discloses personal information in contravention of this Act commits an offence and is liable on conviction to a fine of \$50,000.00

(2) A person who is or who has been a member, employee, agent or adviser of the Commission commits an offence if he discloses to another person —

- (a) information concerning the affairs of an individual or business that the person has acquired in the course of duties or in the exercise of functions under this Act; and
- (b) without limiting paragraph (a), information, when designated by a person submitting information to the Commission, that is in the nature of a trade secret or other confidential financial, scientific or technical information the disclosure of which could reasonably be expected to result in material financial loss or gain to any person.

(3) A person who commits an offence under subsection (2) is liable on conviction to a fine of \$50,000.00

(4) It is a defence to a charge under this section that —

- (a) the disclosure was made to the Minister;
- (b) the Commission has determined, after considering representations from the person who communicated the information to the Commission and other persons with a demonstrable commercial or proprietary interest in the information, that the disclosure would facilitate the carrying out of its functions, powers or duties under this Act or any other enactment, or would otherwise be in the public interest;
- (c) the disclosure was made with the written consent of the person to whom the information relates;
- (d) the information is otherwise in the public domain;
- (e) the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of the person to whom the information relates to be determined;
- (f) the disclosure was made in connection with the investigation of a civil or criminal offence or for the purposes of civil or criminal proceedings;
- (g) the disclosure was made for the purposes of civil proceedings brought under this Act;
- (h) the disclosure was required or permitted by a court; or
- (i) in the case to which subsection (2) applies, the disclosure was made by one such person to another in the course of carrying out duties under this Act.

156. Penalties for anti-competitive practices

A licensee or any person who engages in any anti-competitive practices in contravention of this Act is liable to a fine determined by the Commission, but such fine shall not exceed ten per cent (10%) of the concerned licensee or person's turnover of all the business operations for the period of time in which the contravention took place.

157. Unlawful assignment and transfers of licence

(1) A person who assigns or transfers its licence in contravention of this Act commits an offence and is liable on summary conviction to a fine of \$10,000.00 and on a subsequent conviction to a fine of \$50,000.00

(2) The Minister may revoke the licence of a person convicted under this section or take any other action he deems necessary.

158. Unlawful obstruction and refusal to comply with order

(1) A person commits an offence who —

- (a) wilfully delays or obstructs an inspector or a police officer or any other person in the exercise of powers conferred upon him or her under this Act; or
- (b) fails or refuses to comply with any order, direction or enforcement notice lawfully given to him or her by the Commission,

(2) A person who commits an offence contrary to subsection (1) is liable on summary conviction —

- (a) to a fine of \$20,000.00 or to imprisonment for a term of 12 months or to both such fine and imprisonment; or
- (b) subject to subsection (3), on a subsequent conviction for the same or a similar offence, to a fine of \$50,000.00

(3) The Minister may, in addition to any other penalty imposed against a person convicted under subsection (2) (b) —

- (a) impose additional conditions on the licence of the convicted person;
- (b) suspend the licence of the convicted person for a specified period to be determined in a notice of suspension to be issued by the Commission; or
- (c) revoke the licence of the convicted person.

159. Violating conflict of interest conditions

An employee of the Commission who owns or acquires an interest in the activities of a licensee commits an offence and is liable on summary conviction to a fine of \$20,000.00 or to, and on a subsequent conviction to a fine of \$50,000.00

160. Compromising public safety

A person who uses any electronic communications equipment or systems which compromises public safety commits an offence and shall, on conviction, be liable to a fine of \$50,000.00 and on a subsequent conviction to a fine of \$100,000.00 or imprisonment for a term of 3 years or both.

161. Operating without renewing a licence

(1) An operator or service provider that continues to operate a telecommunications network and or provide a telecommunications service without renewing its licence in accordance with this Act commits an offence and is liable on conviction to a fine of \$50,000.00

(2) In addition to the above fine, if the operator or service provider continues to provide the network and or the services even after being notified then it shall be liable to pay an additional daily fine of \$5,000.00 for every day during which the operator or service provider operates his business without a renewed licence.

162. Fines after suspension or revocation of licence

An operator or service provider that has had its licence suspended or revoked by the Minister for failure to pay any periodic or renewal licence fee commits an offence and is liable on conviction to a fine of \$20,000.00 for each day on which that operator continues to provide an operational network and/or electronic communications service after notice of suspension or revocation has been served on it.

163. Failure to notify change of ownership

Notwithstanding any other provision relating to the change of ownership in contravention to this Act, an operator or holder of frequency licence that fails to notify a change of ownership in accordance with this Act commits an offence and is liable on summary conviction to a fine of \$5,000.00 and the Minister may revoke the licence.

164. Failure to comply with tariff control scheme

A provider with significant market power that fails to comply with the tariff controls scheme as provided in this Act or related Regulations and guidelines, commits an offence and is liable on conviction to a fine of \$50,000.00 and in the case of a continuing offence to a further fine of \$5,000.00 for each day that the offence continues after conviction.

165. Failure to provide a Standard Reference Interconnection Offer

An operator or a provider with significant market power that fails to provide a Reference Interconnection Offer as required by this Act, commits an offence and is liable on conviction to a fine of \$50,000.00 and in the case of a continuing offence to a further fine of \$5,000.00 for each day that the offence continues after conviction.

166. Failure to surrender radio communication licence

If a person —

- (a) fails to surrender or a radio communications licence to the Commission and continues to operate after the expiration of the licence;
- (b) who is a director, employee, or manager of an operator and who owns, leases, rents or manages a radio station or radio communications terminal equipment without proper authority,

commits an offence and is liable on conviction to a fine of \$50,000.00 and in the case of a continuing offence to a further fine of \$5,000.00 for each day that the offence continues after conviction.

167. Signals threatening security of the State

A person who transmits signals and communications which by their nature —

- (a) threatens or are likely to threaten the security of the Antigua and Barbuda
- (b) are contrary to public order or good moral standards; or
- (c) is an insult to the religious beliefs of others or an offence to a foreign state,

commits an offence and is liable on conviction to a fine of \$50,000.00 or to imprisonment for a term of 2 years or to both.

168. Terminal equipment not in compliance

A person who imports or attempts to import, supplies, (whether by sale or rent, loan or gift), connects, or allow to remain connected to a telecommunications network, or puts into service any item of terminal equipment which does not comply with the technical, safety, marking and other requirements specified by either the Minister or the Commission, commits an offence and is liable on conviction to a fine of \$40,000.00

169. General penalty

A person who contravenes or fails to comply with this Act or the regulations commits an offence and, except where another penalty is imposed, is liable on conviction to a fine of \$100,000.00 and in the case of a continuing offence to a further fine of \$5,000.00 for each day that the offence continues after conviction.

PART XVI

MISCELLANEOUS

170. Equality of treatment, access and service

(1) An operator shall provide equal opportunity for access to the same type and quality of telecommunications service to all users at substantially the same rates, limiting variations to available or appropriate technologies required to serve a specific user.

(2) An operator shall not deny access or service to a user except for non-payment of dues or for any other just cause.

171. Maximum interconnection rates

(1) Notwithstanding the other provisions of this Act, the Commission may fix the maximum interconnection rates.

(2) For the purposes of determining the rate referred to in subsection (1) the Commission shall take into account —

- (a) accessibility and affordability of the telecommunications services in Antigua and Barbuda; and
- (b) equality of treatment and fair competition among the operators.

172.Certain restrictions on radio equipment

Notwithstanding any provision relating to type approval in this Act —

- (a) the importation and distribution of telecommunications equipment shall be in accordance with guidelines to be issued by the Commission;
- (b) the sale or transfer of radio-communication equipment in Antigua and Barbuda shall be in accordance with the Regulations;
- (c) The regulations shall lay down exceptions relating to certain communication equipment whose importation and distribution shall not be affected by the requirements of this section, including but not limited to equipment which is intended to be used —
 - (i) solely for amateur services and which is not available for commercial purposes;
 - (ii) for aeronautical mobile services; or
 - (iii) solely to ensure public security or State security or to identify or investigate an offence.

173.Appeals against decisions

(1) A person who is aggrieved by a decision of the Minister in relation to any of the matters mentioned in subsections (2) and (3) may appeal to the High Court within 14 days of the decision.

(2) The decisions referred to subsection (1) are as follows:

- (a) a decision by the Minister acting on the advice of the Commission in accordance with the provisions of this Act and relating to matters of directives, approval or any necessary grant, refusal, amendment, suspension, cancellation or withdrawal of a licence, and any other related matter;
- (b) a decision by the Minister in relation to matters in any regulation made under this Act.

(3) A person affected by a decision of the Commission or the Minister may appeal against it to the Court.

(4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against.

174. Grounds of appeal

- (1) A notice of appeal must set out —
 - (c) the provision under which the decision appealed against was taken; and
 - (d) the grounds of appeal.
- (2) The grounds of appeal must be set out in sufficient detail to indicate —
 - (a) to what extent, if any, the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
 - (b) to what extent, if any, the appellant is appealing against the exercise of a discretion by the Commission, the Minister or any other person.

175. Decisions of the Court

- (1) The Court shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (2) The Court's decision shall include a decision as to what, if any, is the appropriate action for the decision-maker to take in relation to the subject matter of the decision under appeal.
- (3) The Court may remit the decision under appeal to the decision-maker with such directions, if any, as the Court considers appropriate for giving effect to its decision.
- (4) In this section "the decision-maker" means the Commission or the Minister, according to who made the decision appealed against.

176. Services provided from outside Antigua and Barbuda

Notwithstanding any other provision of this Act, when a telecommunications service is being provided in Antigua and Barbuda by a person or a facility not located in Antigua and Barbuda, to the extent that the service affects the provision of, or otherwise compete unfairly with, a licensee under this Act, the Minister may, on the advice of the Commission, take appropriate action in the circumstances.

177. Telecommunications during a state of public emergency

- (1) Where a state of public emergency has been declared pursuant to section 20 of the Antigua and Barbuda Constitution Order 1981, an operator of telecommunications service or telecommunications systems shall give priority to requests and orders for the transmission of voice or data that is considered by the Minister as necessary in the interest of national security and defence.
- (2) A service provider may, during a period of emergency, in which a facility or network facilities are disrupted, use its telecommunications service for emergency telecommunications and may do so in a manner other than that specified in its licence or the Regulations.

(3) Emergency use permitted under subsection (2) shall be discontinued when normal telecommunications services are resumed or when the Minister terminates the special use of the facility or the network facilities.

(4) If the Minister requires a licensee to give priority to telecommunications of the Government of Antigua and Barbuda, such telecommunications shall have priority over other telecommunications, consistent with the Convention.

(5) A telecommunications service provider shall develop plans for operating networks facilities and providing telecommunications services during an emergency as a result of uncontrollable forces and where there is serious and substantial interruption in the provision of telecommunications services, and shall cooperate in the development and implementation of such plans.

(6) In the event of a declaration of war by Antigua and Barbuda, the Minister may assume direct control of the telecommunications services and issue operating Regulations.

178. Confidentiality obligations

(1) Except as required for a purpose set out in subsection (2) or as authorised by a user, other operator or other service provider, every operator and every service provider shall maintain the confidentiality of, and refrain from using or disclosing, any confidential, personal or proprietary information of the user, or other operator or service provider, originating from —

- (a) the user, operator or service provider; or
- (b) any information regarding usage of the service or information received or obtained in connection with the operation of the telecommunications network or provision of the telecommunications service.

(2) The purposes referred to in subsection (1) are —

- (a) the operation of a telecommunications network or telecommunications service;
- (b) the requirements of billing and collecting charges;
- (c) the protection of the rights or property of the operator or service provider;
- (d) the protection of users or other operators or service providers from the fraudulent use of the telecommunications network or telecommunications service;
- (e) compliance with a warrant, court order or order of another government agency; and
- (f) the disclosure of lists of subscribers, to the extent that this is necessary for the publication of directories or another similar purpose specified by the Commission.

179. Preservation of confidentiality

(1) A member of the Board, an officer or employee of the Commission and every person concerned with the administration of this Act shall treat documents, information to which access

has been obtained or other matters related to the administration of this Act, as secret and confidential except that disclosures —

- (a) made by the Commission, or any other person, pursuant to the provisions of this Act or any regulations;
- (b) which the Commission considers necessary in the discharge of its functions,
- (c) for the prosecution of an offence or pursuant to a Court order;

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

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

(3) Every member of the Board, officer and employee of the Commission shall be required to take an oath or affirmation of secrecy in the form approved by the Board.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.00

180. Exemption from tax

(1) The Commission 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 Commission for and on behalf of the Commission;
- (b) the commercial sale of goods or services is in the opinion of the Commissioner of Inland Revenue required for the purposes of the Commission, the goods and services shall be exempt from Antigua and Barbuda Sales Tax (ABST).

181. Regulations

(1) The Minister may, on the recommendation of the Commission make regulations regarding —

- (a) the management of the Universal Service Fund by the Commission;
- (b) telecommunications networks and telecommunications services not requiring a licence and the conditions under which such services may be provided or such networks may operate;
- (c) licensing conditions to be incorporated into electronic communications and radio communications licenses including but not limited to the licence fees, fees for electronic addresses, identifiers or codes, type approvals, matters of clearance etc;

- (d) the annual regulatory fee payable by an operator to the Commission;
- (e) general conditions and pricing principles in interconnection agreements;
- (f) installation of a facility and terminal equipment on public and private property and restrictions on certain electronic equipment;
- (g) content of the Commission's register of telecommunications activities;
- (h) radio communications licence fees including frequency licences;
- (i) unlicensed frequency bands;
- (j) disputes in respect of the .ag domain name space;
- (k) on cyber security;
- (l) revising, altering or amending any of the fines or penalties provided by this Act;
- (m) rights of way, infrastructure sharing and access to electronic communications networks and services;
- (n) the management of international incoming telecommunications traffic and revenue collected;
- (o) the conditions and assessment procedure under which certificates of compliance for terminal equipment are issued;
- (p) the technical specifications for terminal equipment which is subject to conformity testing;
- (q) the conditions governing connection of terminal equipment to telecommunications networks;
- (r) general authorisations for a ship or aircraft to operate in the territorial waters and air space of Antigua and Barbuda;
- (s) specify certain types of electronic communications equipment as being prohibited for import, or export, sale, rental, lease, hire, loan, gift or otherwise disposed of, without the written permission of the Commission;
- (t) on critical issues of national importance in the ICT Sector in order to cope with the changing pace of ICT; and
- (u) an alternative mechanism for the resolution of disputes in respect of the .ag domain name space;
- (v) quality of service standards;
- (w) net neutrality.

(2) The regulations made pursuant to subsection (1) shall be made with due regard to existing international practices and may prescribe —

- (a) measures to prevent unlawful actions or activities with respect to domain names;
- (b) procedures for the resolution of certain types of disputes determined in the regulations and which relate to a domain name registration;
- (c) the role of the Commission in the dispute resolution procedure;
- (d) the appointment, role and function of dispute resolution adjudicators;
- (e) the procedure and rules which must be followed in adjudicating disputes;
- (f) the manner, costs of and time within which a determination must be made;
- (g) the implementation of determinations made based on the dispute resolution procedure;
- (h) the limitation of liability of registrars and registries for implementing a determination;
- (i) the enforcement and publication of determinations; and
- (j) and any other specific issue for the promotion, access and usage of ICT.

(3) In fixing the annual regulatory fees to be based on a percentage of the turnover from the activities of an operator, in the regulation the percentage shall not exceed 3% of operator's annual turnover.

(4) In fixing the fees for licences, the Minister shall take into consideration the cost of administering the provisions of this Act, the administration of the licences issued under this Act and the provision of other services under this Act.

(5) Notwithstanding anything in this section, the Minister may waive a fee or reduce a fee otherwise payable to a nominal licence fee, in the case of operators serving low-income communities, underserved areas or implementing development objectives consistent with national policy where the cost of charging licence fees may be a deterrent to rapid investment or development.

(6) Where the Minister waives a licence fee or reduces a fee to a nominal licence fee through a regulation, another operator performing similar services is entitled to benefit from a similar benefit.

182. Directions relating to networks and spectrum functions

(1) The Commission shall on the recommendation of the Minister issue to any person a direction suspending or restricting that person's entitlement to provide an electronic communications network or electronic communications service or any associated facility where

the Minister has reasonable grounds to believe that it is necessary to do so in order to protect the public from any threat to public safety, public health or in the interest of national security.

(2) The installation of any electronic communications infrastructure or terminal equipment on, over or under any public or private land shall be consistent with the requirement of this Act and any other relevant law.

(3) An application to install electronic communication infrastructure or terminal equipment shall be in the prescribed form.

(4) Applications for rights of way shall be made to the Commission.

(5) Regulations may be made under this section concerning, among other things, provisions relating to feasibility, cost sharing, risk management, interface, responsibility matrix, registration of rights of way and infrastructure sharing agreements, compensation for damages to infrastructure, relocation of infrastructure, procedure and process of dealing with the implementation cost and any other corresponding duty or requirement.

(6) A licensee shall not discriminate between users when dealing with infrastructure sharing and all conditions of access to such lines should be observed with transparency and fairness.

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

183. Repeal and savings

(1) The following Acts are repealed —

(a) The Telecommunications Act 1951, Cap 423;

(b) The Telecommunications (Prevention and Prohibition of Unauthorised Use and Services) Act 1994, (No. 16 of 1994)

(2) Any subsidiary legislation made under the repealed Acts shall, in so far as it is not inconsistent with this Act, remain in operation until replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

(3) Any registration, act, order, direction, approval or decision done, made or given before the date of coming into operation of this Act shall be deemed to have been done, made or given under this Act and shall continue in full force and effect in relation to whom they apply until amended under this Act or new rules, regulations or other subsidiary legislation are made under it or until the date of its expiry.

(4) An existing licensee shall register with the Commission within 12 months of the publication of the Act in the Gazette.

(5) The Commission shall make a determination regarding the listing of all facilities and services available to a licensee under the licence granted under the Telecommunications Act 1951 Cap 423, for the purposes of ensuring end-to-end connectivity between end users.

(6) The Commission shall not be required to conduct an inquiry before making a determination under subsection (5).

184. Consequential amendments

The sections of the Public Utilities Act, Cap. 359 set out in column 1 of the Schedule are amended in the manner and to the extent set out in column 2.

EXPLANATORY MEMORANDUM

This Bill establishes a legislative framework for the provision of telecommunications services in Antigua and Barbuda, for the purpose of encouraging and facilitating competition in the sector.

In order to facilitate discussion on the Bill, the major clauses of each Part of the Bill will be highlighted.

Part I – Preliminary (Clauses 1 – 3)

Part 1 contains preliminary matters including definitions which are essential to proper understanding of the Bill and the regulatory function of the Commission. The key definitions relate to particular types of services such as electronic telecommunications services, value added services and radio communication services; since the Bill provides for regulatory oversight of different telecommunications service providers.

Part II – National Telecommunications Regulatory Commission (Clauses 4 – 14)

Part 2 establishes the National Telecommunications Regulatory Commission (clause 4) as the governing body for telecommunications, with the power to oversee and regulate the telecommunications sector.

Pursuant to clause 5, it is proposed that the Commission shall be managed by a Commission five members, including consisting of a person and to be than seven members appointed by the Cabinet, on such terms and conditions as the Cabinet determines. The members of the Commission 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 Commission does not end because appointments terminate at the same time.

The Commission shall be assisted, in its operations, by a Chief Executive Officer. The CEO shall be responsible for the management of the general administration of the Commission and implementation of the decisions of the Commission.

Part III – Functions and Powers of the Commission (Clauses 15 – 20)

The Bill proposes to give the Commission numerous functions and powers (clause 15), amongst which, the Commission may make recommendations to the Minister on matters such as issue of licences, classification of telecommunications services, determination of obligations relating to the provision and funding of universal service and implement and enforce any Regulations that are made pursuant to the Act.

Part IV – Funding and Finances (Clauses 21 – 23)

This Part contains financial provisions for the administration of the Commission e.g. the source of funding. The Commission is required to comply with the provisions of the Finance and

Administration Act with regard to borrowing, accounting practices and the in the preparation of its accounts and annual reports.

Part V - Licences (Clauses 24 – 60)

This Part sets out the requirements for the various types of licences (individual, class, special and frequency), and would provide for the amendment, suspension and revocation of licences under certain circumstances. It also would provide for the renewal of licences, generally and automatically. Part 5 also provides for interconnection between telecommunications service providers and for access to facilities among suppliers and public utilities and deals with universal service.

Part VI – Frequency Licences, Spectrum Management and Numbering (Clauses 61 – 73)

This Part deals with deals with the management of the spectrum and the creation of a plan for the management of allocation of frequencies.

The Commission would be empowered under clause 64 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 64.

Part VII - Terminal Equipment, Standards and Access (Clauses 74 – 77)

Part 7 would provide for technical standards for the installation and maintenance of terminal equipment.

Part VIII - Road Works and Access to Land (Clauses 78 – 84)

This Part contains provision concerning road works and access to lands (private or public) or facilities. Clause 84 dealing with damages to installation, repairs and restorations by an operator.

Part IX - Competition (Clauses 85 – 91)

This Part proposes to deal with the manner in which potential operators of telecommunications networks and providers of telecommunications services are authorised to enter the market; and contains provisions on economic regulations of service providers to ensure fair competition.

Part X - Protection of Personal Information (Clauses 92 – 108)

This Part contains provision for the protection and safeguard of personal information and seeks to deter the use of information for malicious purposes.

Part XI - Consumer Protection (Clauses 109 – 115)

This Part authorises the Commission to establish General Codes for use or adaptation by licensed networks and operators, in order protect consumers.

Part XII – Data Protection (Clauses 116 – 119)

This Part contains provisions concerning privacy and data protection and emergency powers held by the Commission.

Part XIII - Administration and Dispute Resolution (Clauses 120-126)

This Part contains provisions for the resolution and adjudication of disputes and for administrative matters such as returns and information-gathering required for the Commission to carry out its functions.

Part XIV - Investigations and Procedures (Clauses 127 – 140)

This Part contains provisions on investigations, the appointment of inspectors, the testing of equipment and inspection of facilities.

Part XV – Offences (Clause 141 – 169)

Part 16 provides for offences and penalties for contraventions of the Act for which this is the Bill and the Regulations made under it. The offences and penalties in respect thereof are comprehensively dealt with in this Part. In keeping with the Interpretation Act, the financial penalties are maximum penalties and the court will make a decision based on the circumstances of a particular case, the amount that an accused person should pay.

Part XVI – Miscellaneous (Clause 170 – 184)

This Part contains a number of miscellaneous and general provisions, (regulation-making, emergency powers, services provided from outside Antigua and Barbuda, immunity for officials acting in good faith,) as well as transitional provisions, and consequential amendments and repeals.

Hon. Milford Nicholas
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