



BERMUDA

ELECTRONIC COMMUNICATIONS ACT 2011

2011 : 45

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Communications Assistance for Law Enforcement

WHEREAS a new regulatory framework for electronic communications is necessary to promote increased investment and innovation and enable the people of Bermuda to enjoy the benefits of increased competition in the sector;

AND WHEREAS a regulatory authority is being established that shall, in accordance with general policies set by the Minister responsible for telecommunications, have powers to supervise, monitor and regulate the electronic communications sector for the purposes set out in this Act, including the promotion of effective and sustainable competition, investment and innovation, the management of scarce resources utilized by the sector, and the protection of the rights of consumers;

AND WHEREAS, in order to facilitate implementation of the new framework, it is in the public interest to apply this Act to the provision of electronic communications, including the provision of subscription audiovisual services and content, while for the time being retaining the extant regulatory framework applicable to non-subscription broadcasting services and content;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows—

PART 1 PRELIMINARY

Citation

- 1 This Act may be cited as the Electronic Communications Act 2011.

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Interpretation

2 (1) In this Act, unless the context otherwise requires—

“access seeker” means a communications provider that requests access, within the meaning of section 24(8), from another communications provider;

“administrative determination” includes a general determination, order, direction, decision, or other written determination by which the Authority establishes the legal rights and obligations of one or more sectoral participants, but does not include an advisory guideline or an adjudicative decision and order;

“affiliate” means any entity that directly or indirectly, controls, is controlled by or is under common control with another legal person, and for this purpose “control”—

(a) means the power, whether held directly or indirectly, to exercise decisive influence over another entity by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and

(b) is deemed to exist in any case involving the ownership of 25 per cent or more of the shares, stocks or other securities or voting rights in an entity, including through an agreement or arrangement of any type.

“allocation of spectrum” means the designation of a given frequency or frequencies for use by one or more types of radiocommunication service, under specified conditions where appropriate;

“applicable regulatory framework” means this Act, the Regulatory Authority Act 2011 and any regulations, administrative determination, adjudicative decision, order, direction, licence or other form of authorization made or issued in accordance with these Acts;

“assignment of spectrum” means the grant of spectrum usage rights to a particular licensee;

“associated facilities” means those associated services, physical infrastructures and other facilities or elements associated with electronic communications that enable or support the provision of services via an electronic communications network or service or have the potential to do so, and includes buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, cabinets and such other facilities that may be specified by the Authority;

“associated services” means those services associated with electronic communications which enable or support the provision of services by means of electronic communications or have the potential to do so, as specified by the Authority;

“Authority” means the Regulatory Authority established under the Regulatory Authority Act 2011;

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- “authorization holder” means a person that holds a valid licence, permit or other form of authorization, as the case may be, in accordance with this Act;
- “Bermuda Telephone Company Acts” means the Bermuda Telephone Company Acts of 1887, 1928 and 1929;
- “Bermudian airspace” means a radius of 180 nautical miles from the Bermuda Airport;
- “Board” means the Board of Commissioners of the Authority;
- “broadcasting” means the act of transmitting or re-transmitting in the frequency band allocated for broadcasting radiocommunications intended for direct reception and use by any member of the public without charge, and cognate expressions shall be construed accordingly;
- “broadcasting station” means a radio station that is used for broadcasting;
- “business day” means any day other than a Saturday, Sunday or other public holiday;
- “carrier pre-selection” means a mechanism that allows end-users to select, in advance, the communications provider of their choice to carry their calls without having to dial an operator-specific prefix or access code or install any special equipment at their premises;
- “cell ID” means the identity or location of the cell from which a mobile telephony call originated or in which it terminated;
- “class licence” or “class COL” means a licence that is granted by the Authority pursuant to section 16(1)(b) and the provisions of the Regulatory Authority Act 2011 to persons that meet the requirements of a particular class and any qualifications that may be required;
- “COL” means a communications operating licence granted under section 16(1) and, for the avoidance of doubt, includes an ICOL;
- “co-location” means the provision of physical space and technical facilities necessary to reasonably accommodate and connect the relevant equipment of an access seeker, as may be determined by the Authority in the given context;
- “communications provider” means an entity that constitutes a sectoral provider pursuant to the Regulatory Authority Act 2011 and provides electronic communications;
- “competitive bidding procedures” means an auction process or a combined comparative selection process and auction;
- “content” means any information embodied in electronic form, regardless of whether it consists of words, symbols, numbers, data, images, or sounds;
- “Convention” means the treaties of the International Telecommunications Union currently in force, to which Bermuda is a party, including any modifications;

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- “cost” means historical cost, total cost, stand-alone cost, incremental cost, marginal cost, opportunity cost or other measure, as determined by the Regulatory Authority;
- “cost orientation” means giving due consideration to the cost of producing a product or service;
- “customer premises equipment” means equipment utilized by end-users for the purpose of originating or receiving electronic communications;
- “Customs Department” means the Customs Department established under the Customs Department Act 1952;
- “day” means calendar day, but shall mean the first business day following a Saturday, Sunday or other public holiday in any case in which a deadline stipulated by this Act falls on a day other than a business day;
- “electromagnetic” means of or pertaining to electric waves propagated by an electrostatic and magnetic field of varying intensity covering the entire range of wavelengths of electromagnetic waves, including all forms of radiocommunication signals;
- “electronic communications” means electronic communications networks or electronic communications services, or both, as the context requires;
- “electronic communications network” means a transmission system and, where applicable, switching or routing equipment and other resources, including network elements that are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, irrespective of the type of information conveyed, including—
- (a) satellite networks;
 - (b) fixed (circuit and packet-switched, including Internet Protocol) and mobile networks;
 - (c) electricity cable systems to the extent used for the purpose of transmitting signals;
 - (d) wireless networks operating outside the band allocated for broadcasting and wireline circuits used for the purpose of transmitting programming or other content to, or for the reception of the same by, a broadcasting station; and
 - (e) networks used for the distribution of subscription audiovisual services;
- “electronic communications sector” means the regulated industry sector involving the supply and consumption of electronic communications;
- “electronic communications service” means a service normally provided for remuneration which consists wholly or mainly of the conveyance of signals by means of electronic communications networks, including the distribution and provision of subscription audiovisual services;

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- “end-user” means a person that uses goods or services provided by a communications provider on a retail basis;
- “*ex ante* remedy” means a type of regulatory obligation imposed by the Authority on one or more sectoral providers with significant market power in order to prevent anti-competitive conduct and promote effective competition;
- “*ex post* competition rules” means any rules, requirements or obligations established by the Authority in accordance with sections 84(1)(a), 85 and 86 of the Regulatory Authority Act 2011;
- “financial year” means the Authority’s financial year as defined in section 37 of the Regulatory Authority Act 2011;
- “functional Internet access” means a minimum speed and quality of service for accessing the Internet, as appropriate for Bermuda, taking into account local requirements and regional and international trends;
- “general determination” means a statutory instrument, made by the Authority pursuant to section 62 of the Regulatory Authority Act 2011, that is applicable to all sectoral participants, or to such sub-category of sectoral participants as falls within the scope of the general determination;
- “harmful interference” means an emission, radiation, induction, conduction or other electromagnetic effect which endangers the functioning of a radionavigation service or other safety services or seriously degrades, obstructs or repeatedly interrupts any radiocommunication service operating in accordance with applicable regulations or administrative determinations and the Convention, as determined by the Authority, but does not include interference from a radio transmitter operated on its allocated frequency in accordance with applicable regulations or administrative determinations and the Convention;
- “ICOL” means an integrated communications operating licence described in section 18(1);
- “individual licence” or “individual COL” means a licence that is granted by the Authority to a specific body corporate pursuant to section 16(1)(a);
- “inspector” means an officer of the Department of Telecommunications who is designated by the Minister as such under section 8(1);
- “interconnection” means the physical and logical linking of public electronic communications networks and any other networks specified by the Authority that are used by the same or a different communications provider in order to allow the users of one communications provider to communicate with users of the same or another communications provider, or to access services provided by another communications provider within the meaning of section 24(8);
- “Internet” means the global information system that is able to support communications using the Transmission Control Protocol/Internet Protocol

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(TCP/IP) suite or its subsequent extensions or follow-ons, and other IP-compatible protocols;

“Internet access service” means an electronic communications service that provides an end-user with the ability to access and send information by means of the Internet;

“interoperability” means the technical features or functional capability of a group of interconnected systems, including equipment owned and operated by the customer that is attached to a public electronic communications network, which ensure end-to-end provision of a given service in a consistent and predictable manner;

“licence holder” means a person that holds a valid licence in accordance with this Act;

“licensee” means a licence holder;

“location data” means 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—

- (a) the cell ID or the latitude, longitude or altitude of the terminal equipment;
- (b) the direction of travel of the user; or
- (c) the time the location information was recorded;

“loop” means the physical circuit connecting the network termination point to a distribution frame or equivalent facility in a fixed public electronic communications network;

“Minister” means the Minister responsible for telecommunications;

“network element” means a local loop, sub-loop or other element of an optical fibre, copper or co-axial network, as specified by the Authority in relation to a relevant product market;

“non-discriminatory” means not unreasonably discriminatory and cognate expressions shall be construed accordingly;

“normalize” means to modify the terms of a licence granted prior to the date of commencement of Part 12 to conform to the provisions of this Act and any regulations or administrative determinations made in accordance with this Act and cognate expressions shall be construed accordingly;

“North American Numbering Plan” means an integrated telephone numbering plan serving various North American countries and Bermuda, which share its resources;

“numbering system” or “numbering plan” means the system or plan established in accordance with Part 8 that establishes a format of codes and subscriber numbers for routing public electronic communications services to specific locations in Bermuda and facilitates switching to international destinations;

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“permit holder” means a person that holds a valid permit in accordance with this Act;

“personal data” means information relating to an identified or identifiable person including but not limited to subscriber details, traffic data, and location data;

“Police” means the Bermuda Police Service;

“premium rate service” means a service involving the provision of content via an electronic communications service or by means of which the user of an electronic communications service is allowed to make use, by making a transmission by means of that service, of a facility made available to users of the electronic communications service if—

- (a) there is a charge for the provision of the service or facility;
- (b) the charge is required to be paid to a person providing the electronic communications service by means of which the service or facility in question is provided; and
- (c) the charge is imposed by that person in the form of a charge for use of the electronic communications service, over and above the tariff for the underlying electronic communications service involved;

“private electronic communications” means an electronic communications network or an electronic communications service that is not a public electronic communications network or a public electronic communications service;

“proportionate” means no more than reasonably necessary to achieve a given regulatory objective, taking into account the relative cost of compliance and the ultimate benefit to consumers;

“public COL” is a COL held by a licensee that is authorized to provide public electronic communications;

“public electronic communications” means a public electronic communications network or a public electronic communications service;

“public electronic communications network” means an electronic communications network that is used wholly or mainly for the provision of public electronic communications services;

“public electronic communications service” means an electronic communications service that is offered, and is generally available, to members of the public and, where a general determination has been made under section 14(d), is classified as such in accordance with the general determination;

“public telecommunications licence” means a licence to provide a public telecommunications service, including any subscription television licence, subscription radio licence or any other form of authorization allowing the provision of electronic communications, held in the name of any person listed in Schedule 1 as at the date of commencement of Part 12;

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- “public telecommunications service” means a service as defined in section 2 of the Telecommunications Act 1986, whether or not subject to a licence issued by the Minister;
- “radio apparatus” means any equipment, machinery or device used for the transmission of radio signals utilizing radio spectrum;
- “radio apparatus permit” means an authorization that the Authority may grant to a person operating a radio apparatus;
- “radiocommunication” means the transmission or reception of signals by means of radio spectrum;
- “radiocommunication service” means an electronic communications service that is transmitted or received by means of radio spectrum;
- “radiocommunication system” or “radiocommunication equipment” means a system or equipment, as the case may be, that transmits or receives electronic communications by means of radio spectrum;
- “radio spectrum” or “spectrum” means a radio frequency or frequencies of naturally propagated electromagnetic waves that are used for the transmission and reception of electronic communications signals;
- “radio station” means facilities for the transmission of radio signals;
- “recognised spectrum usage rights” means rights to use radio spectrum that are enjoyed without a licence or licence exemption in accordance with the provisions of this Act and applicable regulations by—
- (a) a Government Department; or
 - (b) a user to which the right to use spectrum has been transferred in whole or in part by a duly authorized spectrum licensee where permitted by applicable regulations and the terms of the original licence;
- “regulations” means a statutory instrument, made by the Minister pursuant to the Statutory Instruments Act 1977, that is applicable to all sectoral participants, or to such sub-category of sectoral participants as fall within the scope of the regulations;
- “relevant geographic market” means the geographic area in which sectoral providers offer products or services in competition with each other;
- “relevant product market” means the market for products or services that consumers perceive as substitutable or interchangeable based on the characteristics of the products or services, their pricing and their intended use;
- “relevant turnover” means, for the purposes of calculating applicable fees under this Act, the portion of a licence holder’s total turnover minus payments to other COL holders, as specified by the Authority;

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- “retail” means a type of market or service that involves the provision of public electronic communications services to end-users which do not themselves operate or provide public electronic communications to others;
- “sectoral participant” means suppliers of electronic communications, consumers, users and subscribers of such services, and any other persons who provide, use or seek to use a good or service in the electronic communications sector of Bermuda;
- “sectoral provider” means a person, whether or not an authorization holder, who provides a good or service in the electronic communications sector;
- “significant market power” means a position of economic strength in the relevant market or markets that affords an undertaking, either individually or jointly with others, the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers, which may provide the basis for the imposition of *ex ante* remedies;
- “social tariff” means a tariff set pursuant to section 33(2)(b) which contains terms, conditions and charges that are designed to assist or benefit a defined group or groups of disadvantaged users or persons with special needs, including provisions specifying any special services or facilities that may be covered by the tariff;
- “subscriber” means any natural person or legal entity that is party to a contract with a communications provider for the supply of public electronic communications services or subscription audiovisual services;
- “subscription audiovisual services” means programming, applications, electronic programming guides and other services that are provided by a body corporate on the basis of a subscription for a fee or some other form of prior individual permission, by means of electronic communications networks, and may include subscription radio services, subscription television services or both;
- “subscription radio service” means a service provided by a body corporate consisting of programmes and other services to authorized subscribers for their instruction, information and entertainment by means of visual images or sounds conveyed by radiocommunication from a common centre but does not include any service for which—
- (a) no fee or charge is levied or made in respect thereof; and
 - (b) the transmission includes only matter which is being simultaneously broadcast to the public in Bermuda by a licensed broadcasting station;
- “subscription television service” means a service provided by a body corporate consisting of programmes and other services to persons for their instruction, information and entertainment by means of visual images and sounds conveyed by wire or wireless communication from a common centre but does not include—
- (a) any such service that serves—

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- (i) fewer than five dwelling houses; or
 - (ii) persons in one or more contiguous multiple unit dwelling (or dwellings) under common ownership, control or management; and
- (b) any service for which—
- (i) no fee or charge is levied or made in respect thereof; and
 - (ii) the transmission includes only content which is being simultaneously broadcast to the public in Bermuda by a licensed broadcasting station;
- “support structure” means towers, masts, buildings or other facilities upon which radiocommunication equipment may be affixed;
- “telecommunication” means a message, signal or any other information transmitted by means of electronic communications;
- “telecommunication officer” means any person employed in connection with a public electronic communications service or a government operated electronic communications service other than a service operated by the Police or Royal Bermuda Regiment;
- “total turnover” means all revenue generated by or otherwise attributable to the provision of any and all electronic communications under a licence holder’s COL, which either originate or terminate in Bermuda, or both, regardless of where the agreement for the provision of such services is executed or remuneration for the provision of such services is paid;
- “unbundled access” means the provision to an access seeker of a network element which is owned by, or under the control of, another communications provider that has been determined to have significant market power in the relevant market;
- “universal service” means the minimum set of services defined pursuant to sections 32 and 33;
- “user” means any natural person using an electronic communications service, for residential or business purposes, whether or not the person has subscribed to such service;
- “user ID” means a unique identifier allocated to persons when they subscribe to or register with an Internet access service;
- “voice telephony” means the transmission of signals representing the human voice over a public electronic communications network, including transmissions using Internet Protocol technology that involves the origination and termination of voice transmissions over the public switched telephone network, as may be determined by the Authority;
- “wholesale” means a type of market or service that involves the provision of public electronic communications networks or public electronic communications services by one holder of a public COL to another holder of a public COL or other type of licensee deemed eligible by the Authority;

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- (2) Unless a term is defined in this Act or the context otherwise requires—
- (a) terms defined by the Regulatory Authority Act 2011 shall have the same meaning when used in this Act; and
 - (b) terms not otherwise defined in this Act or the Regulatory Authority Act 2011 shall be interpreted in a manner consistent with the Convention.

[Section 2 subsection (1) definition "telecommunication officer" amended by 2015 : 48 s. 25 effective 1 November 2017]

Relationship to the Regulatory Authority Act 2011

3 (1) This Act constitutes sectoral legislation within the meaning of the Regulatory Authority Act 2011.

(2) To the extent possible, the provisions of this Act shall be construed consistently with the provisions of the Regulatory Authority Act 2011.

(3) In the event of an irreconcilable conflict between this Act and the Regulatory Authority Act 2011, the provisions of this Act shall prevail.

Application

- 4 (1) This Act shall apply to the electronic communications sector, including—
- (a) the establishment, construction, operation, provision and use of electronic communications;
 - (b) the use or exploitation of radio spectrum within the territorial limits of Bermuda for the transmission of electronic communications;
 - (c) associated facilities and services; and
 - (d) content transmitted or received by means of electronic communications.
- (2) Save as otherwise expressly provided, this Act shall not apply or have effect in relation to any electronic communications service operated by the Police or the Royal Bermuda Regiment, except in so far as they relate to—
- (a) the establishment of radio stations, apparatus and support structures at permanent sites;
 - (b) the allocation and assignment of frequencies;
 - (c) the mode of transmission to be used in connection with radio stations and apparatus and the power to be radiated therefrom;
 - (d) the prevention of harmful interference;
 - (e) distress calls, distress messages and distress signals; or
 - (f) the manner of conveying radiocommunications pursuant to the Convention.

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(3) Subject to subsection (2), a Government Department or a Government Board may operate a radiocommunication system, construct a radio station, and import and manufacture radiocommunication equipment only under a permit granted by the Minister and in accordance with this Act and any administrative determinations made hereunder.

(4) Diplomatic or consular missions established in Bermuda may install and use radio stations and radio apparatus only with the written consent of the Governor.

(5) This Act shall not apply to or have effect in relation to—

- (a) the broadcasting of audio or video services;
- (b) the use of radio stations and radio apparatus and associated spectrum for the broadcasting of audio or video services; or
- (c) broadcasting content.

[Section 4 subsection (2) amended by 2015 : 48 s. 25 effective 1 November 2017]

Purposes of this Act

5 (1) The purposes of this Act shall be to—

- (a) ensure that the people of Bermuda are provided with reliable and affordable access to quality electronic communications services;
- (b) enhance Bermuda's competitiveness in the area of electronic communications so that Bermuda is well-positioned to compete in the international business and global tourism markets;
- (c) encourage the development of an electronic communications sector that is responsive to the requirements of users (both individuals and businesses) and provides them with choice, innovation, efficiency and affordability;
- (d) encourage the development and rapid migration of innovative electronic communications technologies to Bermuda;
- (e) promote the orderly development of Bermuda's electronic communications sector;
- (f) encourage sustainable competition and create an invigorated electronic communications sector that will lay the groundwork for the further development of communications-reliant industries;
- (g) encourage the development and maintenance of resilient and fault-tolerant communications infrastructures;
- (h) promote investment in the electronic communications sector and in communications-reliant industries, thereby stimulating the economy and employment; and
- (i) promote Bermudian ownership and Bermudian employment at all levels of the electronic communications sector.

(2) Where any of these purposes appear to be in conflict, the priorities shall be set or the conflict otherwise resolved in a way that best serves the public interest in the opinion of the Minister or the Authority, as the case may be.

PART 2

FUNCTIONS OF THE MINISTER AND THE AUTHORITY

Functions of the Minister

6 The Minister shall have the power to establish general policies and to make regulations for the electronic communications sector, in accordance with sections 4 and 5 of the Regulatory Authority Act 2011, with respect to—

- (a) the licensing of public electronic communications as provided in Part 3;
- (b) the provision and funding of universal services as provided in Part 6;
- (c) management of the radio spectrum as provided in Part 7;
- (d) management of the numbering system as provided in Part 8;
- (e) content provided by means of electronic communications; and
- (f) such other matters as may be necessary for the performance of the Minister's functions under this Act.

Department of Telecommunications

7 (1) There shall continue in existence a Department of Government known as the Department of Telecommunications which shall—

- (a) assist the Minister in the discharge of his functions under this Act; and
- (b) have such functions as are assigned to it by this, or any other, Act.

(2) Subject to section 61(5) of the Constitution of Bermuda, and to the general direction and control of the Minister, the Department of Telecommunications shall be under the supervision of a public officer who shall be known as the Director of Telecommunications and shall consist of that officer and such number of other public officers as may from time to time be authorized by the Governor.

Inspectors

8 (1) The Minister may from time to time designate for such period as he deems fit any officer of the Department to be an inspector for the purposes of this Act.

(2) The Director of Telecommunications or an inspector may at any reasonable time, without a warrant, enter any premises for the purpose of inspecting—

- (a) any radio apparatus or radio station or any records maintained in connection therewith which are required to be kept by any provision of this Act or the regulations or by the Convention; or

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(b) any equipment or system used for the provision of an electronic communications network or any records maintained in connection therewith which are maintained by a communications provider in connection with the provision of a public electronic communications service.

(3) The Minister shall provide every inspector with a written instrument of appointment and on entering any premises, pursuant to subsection (2), an inspector shall, if required to do so, produce his instrument of appointment to the person in charge of the premises.

(4) The owner or person in charge of any premises, entered by an inspector pursuant to subsection (2) and every person found therein, shall give the inspector all reasonable assistance in their power, and shall furnish him with such information as he may reasonably require.

(5) In this section “premises” includes any British ship, aircraft, hovercraft, platform or rig registered in Bermuda whether within or outside Bermuda, or any structure or formation attached to any submarine area adjacent to the coast of Bermuda in respect of which Bermuda has the right to the exploitation of the seabed and subsoil thereof and used for any purpose authorized by or pursuant to any Act.

Functions of the Authority

9 (1) The Authority shall—

- (a) implement the provisions of this Act and the general policies and regulations made by the Minister; and
- (b) supervise, monitor and regulate the electronic communications sector and enforce compliance with the applicable regulatory framework.

(2) The functions of the Authority shall include—

- (a) those accorded to it by the Regulatory Authority Act 2011;
- (b) those accorded to it by this Act, including the functions necessary to effectively and efficiently achieve the purposes set out in section 5;
- (c) the making of administrative determinations to provide for the control and conduct of public electronic communications, including—
 - (i) the award, renewal, modification, termination or revocation of licences for the provision of electronic communications;
 - (ii) transparency measures and notice requirements relating to the rates, charges and other terms and conditions for the provision of public electronic communications services for the benefit of consumers;
 - (iii) restrictions on the marketing and advertising of public electronic communications services;

- (iv) procedures to be followed in transferring a customer from one communications provider to another to effectuate customer requests for a change of provider;
 - (v) procedures for the credit vetting of applicants for service and for disconnection of customers for non-payment;
 - (vi) the establishment and supervision of technical standards for equipment used in connection with the provision or use of public electronic communications services, including equipment used by communications providers and equipment to be connected to the electronic communications networks of communications providers;
 - (vii) the specification of key performance indicators or minimum service level commitments by communications providers for the provision of designated public electronic communications at the wholesale or retail levels, and applicable penalties in the event of non-compliance;
 - (viii) the reporting and publication of statistics relating to the quality of service of public electronic communications services offered by communications providers;
 - (ix) procedures and standards for the discontinuation of a public electronic communications service;
 - (x) the establishment and enforcement of procedures and technical standards for interconnection;
 - (xi) the establishment and enforcement of procedures, technical standards and cost sharing arrangements, where necessary, for the use and sharing of support structures by communications providers where, in the Authority's view, such measures are necessary for environmental, touristic, health and safety, or other public interest reasons;
 - (xii) the assignment of spectrum and the establishment of conditions and requirements for the operation and use of radio stations and apparatus for the provision of electronic communications;
 - (xiii) classification of the various types of electronic communications services;
 - (xiv) detailed measures implementing any of the licence conditions set out in section 17;
 - (xv) the establishment of any other terms, conditions or requirements that are authorized or stipulated by this Act;
- (d) those accorded by any other enactment; and
- (e) those expressly delegated to the Authority in respect of the electronic communications sector.

(3) In carrying out its functions, the Authority shall endeavour to remain informed of the viewpoints of the residents and consumers of Bermuda, including by—

- (a) making arrangements for ascertaining from time to time the state of public opinion about the manner in which electronic communications services are provided and the experiences of consumers in relation to the same, including the handling of complaints made to providers of communications networks and facilities and the resolution of disputes; and
- (b) establishing and maintaining effective arrangements for seeking the views of consumers and consumer groups in the electronic communications sector, and for disseminating information to consumers relevant to the sector, including by facilitating consumer advisory committees.

Authority to carry out functions in accordance with general directions and delegations by Minister

10 (1) The Authority shall carry out its functions in accordance with such general directions as may be given to it by the Minister for the following purposes—

- (a) protecting national security interests or in the event of national emergency;
- (b) furthering relations with the government of a country outside Bermuda;
- (c) negotiating, and securing compliance with, Bermuda's international obligations, including in the area of spectrum management;
- (d) to protecting the safety of the public or public health;
- (e) implementing the general policies and regulations made by the Minister for the electronic communications sector in accordance with section 6;
- (f) ensuring that the Authority establishes and adheres to a reasonably prompt timetable in carrying out its various functions, including the issuance and enforcement of administrative determinations;
- (g) coordinating and facilitating the establishment and sharing of support structures necessary for the efficient provision of radiocommunication services;
- (h) implementing the modification of the public telecommunications licences and related licences held by the communications providers listed in Schedule 1 and the transition to ICOLs, in accordance with section 73.

(2) The Authority shall comply with the directions of the Minister.

(3) The Authority shall undertake such functions as may be delegated by the Minister from time to time in accordance with section 9 of the Regulatory Authority Act 2011, including the following—

- (a) becoming or serving as a member of an international body or subscribing to such a body, and providing representation on behalf of Bermuda on international and other bodies having communications functions;
- (b) providing representation at international meetings about electronic communications; and

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- (c) providing research, analysis or similar support to the Minister in connection with any or all of these activities.

Regulatory Authority fees

11 (1) Regulatory Authority fees for the electronic communications sector, both general regulatory fees and service fees, shall be established for each financial year in accordance with the principles and procedures set out in section 44 of the Regulatory Authority Act 2011 and those specified in this section.

(2) In making a request for the establishment of general regulatory fees, the Authority shall recommend the types of COLs that will be subject to such fees, having due regard for—

- (a) the comparative costs of regulatory administration attributable to different types of authorization holders when proposing the applicable general regulatory fees for the various types of authorizations;
- (b) the cumulative effect of all sources of Regulatory Authority fees on each type of authorization holder;
- (c) the financial and commercial impact of the timing of the payment or payments for general regulatory fees on authorization holders, taking into account the financial requirements of the Authority; and
- (d) the efficient management of the Authority's resources.

(3) The Authority's request to the Minister shall be accompanied by reasonable supporting data to justify the requested fees.

(4) The general regulatory fees that are recommended by the Authority for application to ICOL holders shall be based on a percentage of the relevant turnover of the licensee.

PART 3

PROVISION OF ELECTRONIC COMMUNICATIONS

Licences for operation or provision of electronic communications

12 No person may establish, construct or operate an electronic communications network or provide an electronic communications service within the territorial limits of Bermuda or between Bermuda and another country, without a valid COL authorizing such activities, unless the Authority has made a general determination expressly authorizing a licence exemption for the provision of the particular type or types of electronic communications that the person is operating or providing, in accordance with section 16(2) (c).

Licensing policy

13 The Minister shall establish general policies and, as necessary, regulations with regard to—

- (a) the limit, if any, on the number of public COLs that may be in effect at any given time for any particular type of individual licence and the timing of the grant of such licences;
- (b) if not otherwise specified in this Act, the scope and duration of such licences and any conditions that the Minister deems to be necessary as a matter of general policy;
- (c) any general limitations on eligibility for the grant of such licences; and
- (d) the timing of and procedures for the award of such licences and provisions for renewal, if applicable.

Functions of the Authority

14 The Authority shall be responsible for—

- (a) implementing the licensing policies and regulations made by the Minister under section 13;
- (b) establishing a licensing framework for the operation and provision of electronic communications, other than public electronic communications, by general determination, including the applicable procedures, eligibility criteria, terms and conditions;
- (c) granting licences, permits and other authorizations;
- (d) making general determinations to establish or clarify the distinction between public and private electronic communications networks and services, as necessary, in accordance with this Act and any applicable policies or regulations made by the Minister;
- (e) monitoring compliance with licence terms and conditions and enforcing such provisions; and
- (f) exercising any of the other functions set out in this Act or the Regulatory Authority Act 2011 to promote an efficient and effective licensing framework for the electronic communications sector.

Duties of communications providers

15 Every communications provider has the duty to—

- (a) comply with any applicable conditions, obligations, requirements or limitations set out in the applicable regulatory framework; and
- (b) pay on a timely basis any and all applicable Regulatory Authority fees and Government authorization fees.

Communications operating licences

16 (1) The Authority, in accordance with this section and the general policies and regulations made by the Minister may grant—

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- (a) COLs in the form of individual licences, including ICOLs referred to in section 18;
 - (b) class COLs; and
 - (c) exemptions from the requirements to hold a COL.
- (2) The Authority shall, by general determination, specify the criteria, conditions, requirements and procedures that shall apply to the grant of individual COLs, class COLs and licence exemptions, in accordance with the following principles—
- (a) individual licences shall be granted by administrative determination in accordance with sections 48(2) and (3) of the Regulatory Authority Act 2011, and the terms and conditions applicable to all licensees that are eligible for a particular type of individual COL, and to applicants for such licences, shall be as homogeneous as possible and not unreasonably discriminatory;
 - (b) the provision of electronic communications by means of a class licence may be authorized, with or without a registration or notification requirement, where the conditions applicable to a particular group of communications providers or the provision of a particular type or types of electronic communications are limited in number and scope and can be applied generally to all of the members of a specified class in a manner that is administratively efficient;
 - (c) a licence exemption may be authorized by the Authority if—
 - (i) no conditions, or only limited conditions, need apply to the exempted group of communications providers or the provision of the exempted type or types of electronic communications; and
 - (ii) no Regulatory Authority fees or Government authorization fees are required in respect of the exempted providers of electronic communications;
 - (d) a class COL or licence exemption may be authorized in any or all of the following circumstances, as determined and defined by the Authority—
 - (i) cases in which electronic communications are provided on a private rather than a public basis;
 - (ii) cases in which electronic communications are provided on other than a commercial basis;
 - (iii) cases in which electronic communications are self-provided by a natural person or legal entity whose principal line of business does not include the provision of electronic communications; or
 - (iv) any other circumstances in which the Authority deems the authorization of a class licence or the grant of a licence exemption to be appropriate and administratively efficient, in accordance with paragraphs (b) and (c).

(3) Each COL holder shall be responsible for securing any related spectrum licences or permits for radio stations or apparatus that may be useful or necessary for the provision of any electronic communications to which the COL applies in accordance with Part 7.

(4) The Authority, if feasible, shall coordinate the timing of the grant, the duration, and any relevant provisions of related spectrum licences and radio apparatus permits; provided, however, that nothing in this section shall be construed as an entitlement on the part of a COL holder to a spectrum licence or a radio apparatus permit.

(5) Any COL granted under Part 12 is deemed to be granted under subsection (1) of this section.

Communications operating licence conditions

17 (1) A general determination referred to in section 16(2) shall specify the terms and conditions with which COL holders must comply under each type of individual licence and class licence, which may include any or all of the following, depending on the type of electronic communications covered by the applicable licence—

- (a) the conditions provided in section 50 of the Regulatory Authority Act 2011;
- (b) the duration of the licence;
- (c) the conditions, if any, for renewal of the licence upon expiry; and
- (d) any other terms, conditions and obligations that the Authority deems necessary or appropriate, in accordance with the applicable regulatory framework.

(2) In addition to the conditions set out in subsection (1), the following may be specified as conditions in any type of licence that is applicable to operators or providers of public electronic communications—

- (a) any of the obligations specified by the Authority in administrative determinations made under section 9(2)(c);
- (b) the duty to comply with any applicable universal service obligations imposed in accordance with Part 6;
- (c) the obligation to interconnect directly or indirectly with the electronic communications networks of other COL holders on reasonable terms, where permitted by the applicable rules and where necessary to provide consumers with any-to-any connectivity;
- (d) the requirement to comply with any *ex ante* remedies in respect of significant market power that may be imposed by the Authority in accordance with Part 4;
- (e) obligations in respect of emergency call services;
- (f) obligations in respect of directory information and directory enquiry facilities;

- (g) the obligation to provide performance bonds in respect of compliance with specified conditions or requirements if required by the Authority; and
- (h) any other conditions allowed or required by regulations.

Integrated communications operating licences

18 (1) An ICOL shall constitute a particular type of COL authorizing the licence holder to operate and provide public electronic communications networks and electronic communications services transmitted by means of such networks, within the territorial limits of Bermuda or between Bermuda and another country, subject to the availability of spectrum and the grant of any necessary spectrum licences or permits in accordance with Part 7.

(2) The Minister shall by regulations establish the maximum number of ICOLs, if the number is limited, and the procedures pursuant to which the Authority may grant ICOLs.

(3) The term of an ICOL shall not exceed 20 years.

(4) An ICOL may be renewed for an additional term or terms if—

- (a) the licence holder files an application requesting renewal no earlier than nine months and no later than six months prior to the expiry date; and
- (b) the Authority determines that renewal of the licence would be in the public interest, subject to any modifications that the Authority may deem it necessary or appropriate to impose at the time of renewal.

(5) An ICOL may be revoked by the Authority for cause or based on a determination that revocation is necessary in the public interest; provided, however, that no such decision may be taken without—

- (a) an adjudication;
- (b) the adoption of a final adjudicative decision and order by unanimous vote of the Board of Commissioners; and
- (c) the written consent of the Minister.

(6) An ICOL shall not be transferred or assigned, and may be terminated by the Authority in the event of any such transfer or assignment or if there is a change of control over the licensed entity unless the transfer, assignment or change of control is authorized in advance, in writing, by the Authority acting with the written consent of the Minister.

(7) For the purposes of this section, “control”—

- (a) means the power, whether held directly or indirectly, to exercise decisive influence over an ICOL holder, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and

- (b) shall, in any event, be deemed to exist in any case involving the ownership of 25 per cent or more of the shares, stocks or other securities or voting rights, including through an agreement or arrangement of any type.

Government authorization fees for communications operating licences

19 (1) The Authority, pursuant to section 52 of the Regulatory Authority Act 2011, shall submit recommendations to the Minister concerning—

- (a) the types of COLs that shall be subject to Government authorization fees, which shall apply to all ICOLs and may include other types of COLs;
- (b) the amount of, or the basis for, setting such fees for each type of COL to which the fees apply, which in the case of ICOLs shall be based on the relevant turnover of each licensee; and
- (c) the timetable for payment.

(2) In preparing a recommendation on the Government authorization fees that shall apply to ICOL holders, the Authority—

- (a) shall take into consideration the combined relevant turnover of all licensees subject to Government authorization fees; and
- (b) notwithstanding any other Act, may recommend variations in the total amount of the Government authorization fees payable by individual ICOL holders in the specified period, based on a formula that takes into account—
 - (i) the degree to which each licensee is owned or controlled, directly or indirectly, by persons possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956; and
 - (ii) the proportion of each licensee's employees possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956.

PART 4

PROCESS FOR IMPOSING SIGNIFICANT MARKET POWER OBLIGATIONS *EX ANTE*

Determination of significant market power in relevant markets

20 (1) The Authority may make administrative determinations that impose *ex ante* remedies on a communications provider in respect of its provision of electronic communications or the provision of subscription audiovisual programming content in a relevant market or markets if, individually or together with others, the communications provider has significant market power in that market.

(2) In order to determine whether a communications provider has significant market power, the Authority shall conduct a review of a relevant market or markets in

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accordance with section 23 of this Act and section 59(2) of the Regulatory Authority Act 2011.

Principles and objectives of the market review process

21 In determining whether to impose, modify or withdraw significant market power obligations with respect to a particular provider or providers based on its review of the relevant market, and in deciding which types of obligations to apply, the Authority shall seek to—

- (a) develop or maintain effective and sustainable competition for the benefit of consumers with regard to price, innovation and choice;
- (b) promote investment in the electronic communications sector;
- (c) establish *ex ante* remedies that are effective but proportionate, taking into account the costs of compliance and the ultimate benefits to consumers;
- (d) establish *ex ante* remedies that apply on a technology-neutral and service-neutral basis whenever feasible; and
- (e) rely on market forces and withdraw, reduce or limit *ex ante* remedies in circumstances where the Authority concludes that markets are effectively competitive or likely to become so within a reasonable period of time, taking into account actual and expected market circumstances.

Preliminary identification of markets susceptible to *ex ante* regulation

22 (1) The Authority shall issue a notice that identifies any relevant product and geographic market which in its view appears to be susceptible to the imposition of *ex ante* remedies, based on a forward-looking assessment.

(2) The markets identified pursuant to subsection (1) may include retail markets and wholesale markets and shall be identified on the basis of the Authority's preliminary assessment that the markets meet all of the following criteria and any other criteria that the Authority deems to be pertinent—

- (a) the relevant market is characterised by high and non-transitory barriers to entry;
- (b) taking into account actual and expected market circumstances during the period under review, the relevant market either—
 - (i) is not likely to be affected by technological changes or other developments that would render it effectively competitive, or
 - (ii) is likely to cease to be effectively competitive; and
- (c) the application of *ex post* competition rules alone would not be sufficient to promote or preserve effective competition in the relevant market.

(3) The Authority may, in its discretion, confer formally or informally with sectoral participants and others, and may consider relevant international benchmarks in order to make a preliminary assessment of significant market power under subsection (1).

(4) The Authority shall provide a summary explanation of its preliminary views as part of the notice referred to in subsection (1).

Market review procedures

23 (1) The Authority may publish advisory guidelines that identify or clarify the criteria for—

- (a) defining relevant product markets based upon demand and supply-side characteristics;
- (b) defining relevant geographic markets;
- (c) assessing market power in such markets based on a forward-looking assessment;
- (d) establishing effective *ex ante* remedies and obligations; and
- (e) any other aspect of the market review process.

(2) The Authority shall, in conducting a market assessment pursuant to subsections (1)(a), (b) or (c), consider all of the factors that it deems relevant under the circumstances, which may include the following—

- (a) the overall size of the communications provider and its share of the relevant market;
- (b) the volatility of shares in the relevant market;
- (c) the communications provider's control over infrastructure not easily duplicated;
- (d) the communications provider's technological advantages or superiority;
- (e) the degree of countervailing buyer power;
- (f) the communications provider's ability to access capital and financial markets relative to that of its competitors;
- (g) the existence of economies of scale or scope;
- (h) the diversification of products or services (including bundles);
- (i) the relative advantages of vertical integration enjoyed by the sectoral provider;
- (j) the presence of *de jure* or *de facto* barriers to market entry or expansion; and
- (k) evidence of previous anti-competitive behaviour.

(3) In assessing whether two or more communications providers operating in the same relevant market jointly have significant market power, the Authority shall consider, among other relevant factors, whether—

- (a) the relevant market is concentrated;

- (b) each provider has a relatively high and stable share of the relevant market;
- (c) significant and enduring barriers to entry exist; and
- (d) there are reasonable grounds for concluding that these factors, in combination with any relevant factors set out in subsection (2), are evidence of a market structure that is likely to give rise to tacit coordination and thereby prevent, restrict or distort competition in the provision of products or services in the relevant market.

(4) The Authority shall conduct a public consultation to review those markets identified in accordance with section 22 that in its view are susceptible to *ex ante* regulation, if any, or pursuant to subsection (6), for the purposes of—

- (a) evaluating whether these relevant markets are, or continue to be, correctly defined based on an economic assessment of supply and demand;
- (b) analysing whether a communications provider, individually or with others, in fact possesses, or continues to hold, significant market power in one or more of these relevant markets based on the applicable facts and circumstances; and
- (c) deciding which obligations, if any, should be imposed in respect of each relevant market characterised by significant market power in order to promote or preserve effective competition, in accordance with section 24.

(5) The Authority shall issue one or more general determinations designating the communications provider, if any, which, individually or with others, has significant market power in each relevant market reviewed pursuant to subsection (4) and specifying any *ex ante* obligations that shall apply in accordance with section 24.

(6) A further review of any relevant product or geographic market identified as requiring *ex ante* regulation pursuant to subsection (5) may be carried out by the Authority on its own initiative or, at its discretion, upon the request of an interested party, provided that—

- (a) the Authority shall conclude a further review of each relevant market within a period of not more than four years from the date of its completion of the previous review of the same relevant market in any case in which it has made a finding of significant market power; and
- (b) in determining when to initiate an initial or further review of a relevant product or geographic market, the Authority shall take into account requests from sectoral participants, the views of consumers and relevant market developments.

(7) A general determination made by the Authority finding that a communications provider possesses significant market power in a relevant market shall be considered interim, and shall not constitute final Authority action for purposes of the Regulatory Authority Act 2011, until the Authority makes a determination specifying the *ex ante* obligations, if any, that shall apply in respect of such relevant market in accordance with section 24.

Imposition of *ex ante* remedies

24 (1) If, as part of the market review process, the Authority concludes that the imposition of one or more *ex ante* remedies is necessary to prevent or deter anti-competitive effects that are, or are likely to be, caused by the presence of significant market power in a relevant market, the Authority may make an administrative determination imposing one or more of the following obligations on any communications provider found to have significant market power in a relevant market—

- (a) the obligation to interconnect its electronic communications network with the network of another communications provider for the purpose of originating, transiting or terminating traffic, and to provide such interconnection pursuant to terms and conditions specified by the Authority;
- (b) the obligation to provide wholesale services to other communications providers for resale and, where the Authority deems it necessary, to offer specified minimum features, functionality or other attributes;
- (c) the obligation to meet reasonable requests for access to, and the use of, specified network elements and associated facilities and services and to provide such access pursuant to specifications, terms and conditions that may be established or approved by the Authority 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 and associated databases;
 - (iii) information about technical interfaces, protocols or key technologies that are required for the interoperability of services and timely information with regard 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 pursuant to terms and conditions that may be established by the Authority 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 may be determined by the Authority to be necessary to promote or protect effective competition in a relevant market;
- (e) the obligation to provide access and interconnection subject to terms and conditions that are transparent, including the publication of reference interconnection and access offers, pursuant to a framework approved by the Authority;
- (f) the obligations of transparency and non-discrimination in the provision of retail services to end-users and wholesale services to other communications providers, including the requirements to—
 - (i) apply equivalent terms and conditions in equivalent circumstances to end-users or to other communications providers; 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 requirements relating to the pricing of wholesale and retail electronic communications and the provision or distribution of subscription audiovisual programming, including obligations relating to the cost orientation of prices and transparency;
- (h) the obligation to provide certain types of wholesale access or interconnection prior to the introduction of associated downstream services that rely on such inputs by the communications provider 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 stipulated or approved by the Authority for the purpose of ensuring that a vertically integrated communications provider'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 deemed commercially sensitive by the Authority;
- (k) the obligation not to unreasonably bundle other services with a service that is subject to *ex ante* regulation, whether provided by the communications provider, 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, as defined by the Authority;
 - (l) the obligation to provide carrier selection and related terms and conditions in the manner specified by the Authority;
 - (m) in exceptional cases where the Authority determines that other measures have not prevented or deterred anti-competitive effects, the obligation to offer specified access and interconnection facilities and services through a functionally separate and independently operated business entity, and to provide such services and facilities to competing communications providers and its own retail business operators on the same terms and conditions including those relating to pricing, availability and service quality, and by means of the same systems and processes;
 - (n) the obligation to provide subscription audiovisual programming content or distribution on a wholesale basis on reasonable terms and conditions; or
 - (o) such other obligations as the Authority may, following a public consultation, deem necessary to promote or preserve effective competition in a relevant market or markets.
- (2) The Authority shall specify, in a general determination, the categories of communications providers that are eligible to obtain interconnection, access or associated facilities and services in accordance with subsection (1), which shall at a minimum include all ICOL holders.
- (3) A full and complete copy of any access or interconnection agreement entered into by a communications provider with significant market power in accordance with subsection (1) shall be filed by that communications provider with the Authority within three business days of its execution, and—
- (a) the Authority may, within 60 days of the filing, object to any provision that it preliminarily concludes is unreasonably discriminatory or contrary to the interests of consumers and conduct an adjudication; and
 - (b) any disputes that arise in connection with the negotiation or fulfilment of any such agreement shall be ineligible for referral to binding arbitration pursuant to section 93(4)(b) of the Regulatory Authority Act 2011.
- (4) Any obligations imposed in accordance with this section shall be proportionate and justified in light of the relevant circumstances and the purposes and objectives set out in sections 5 and 21 and shall, in the case of any access obligations, take account of—
- (a) the technical and economic feasibility of using or installing competing facilities, taking into account the type of interconnection or access involved;
 - (b) the feasibility of providing access in relation to available capacity;
 - (c) relevant investment risks incurred by an operator designated as having significant market power; and

- (d) the ability of the communications provider with significant market power to impede the development of effective competition through its subsidiaries, partners and affiliates.

(5) Following further review by the Authority of a relevant market that is already subject to one or more *ex ante* remedies and that continues to be characterised by the lack of effective competition, the Authority may, following a public consultation, make an administrative determination modifying any relevant obligations or imposing such additional remedies as it deems necessary, taking into account the impact and efficacy of the existing obligations and the costs and benefits of any changes.

(6) For the purposes of assessing the costs and benefits of imposing, modifying or withdrawing a proposed *ex ante* remedy and evaluating the relevant evidence, including cost data and factors relating to technical or commercial feasibility, the burden of proof for demonstrating that a remedy should not be imposed, or should be modified or withdrawn, shall rest with the communications provider that is designated as having significant market power in the relevant market.

(7) A communications provider on which the Authority imposes *ex ante* remedies shall comply promptly, fully and in good faith with any and all such obligations.

(8) For the purposes of this section, “access” means the making available of facilities or services to another undertaking, under defined conditions, on either an exclusive or a non-exclusive basis, for the purpose of providing electronic communications services.

(9) The Authority may impose transparency and accounting separation obligations on a communications provider in respect of relevant markets in which the provider does not have significant market power if the Authority determines that such measures are—

- (a) proportionate; and
- (b) necessary to ensure the efficacy of any remedies imposed under this section in respect of relevant markets that the Authority has determined are characterised by significant market power.

Withdrawal of *ex ante* remedies

25 Where, as a result of a market review conducted pursuant to section 23, the Authority determines that a relevant market is effectively competitive it shall not impose any *ex ante* remedies in respect of that market and shall remove any *ex ante* remedies previously imposed within a reasonable period of time, but the Authority may decide not to remove certain obligations, including transparency and accounting separation obligations, if they continue to be necessary to preserve effective competition in cases where a closely related relevant market is subject to *ex ante* regulation.

PART 5

CONSUMER PROTECTION PROVISIONS

Functions of the Authority

26 The Authority may make general determinations—

- (a) governing the commercial and marketing practices of ICOL holders and any other types of communications providers specified by the Authority to protect the rights of customers, subscribers, users and consumers, having due regard for the vulnerability of certain categories of consumers; and
- (b) issuing or approving codes of practice relating to such practices.

Unsolicited communications

27 The Authority shall make general determinations to establish the requirements and procedures that shall govern the activities of ICOL holders and other types of communications providers specified by the Authority, when engaged in unsolicited direct marketing by means of electronic communications networks in order to minimize intrusion, annoyance, inconvenience or anxiety to consumers, including activities by means of—

- (a) automated calling and communications systems or machines that do not involve human interaction;
- (b) facsimile machines; and
- (c) electronic mail.

Premium rate services

28 The Authority may make general determinations governing the provision of premium rate services for the purpose of ensuring that consumers are treated fairly and reasonably by providers of public electronic communications and persons responsible for providing content, transaction services or other offerings using the services of such providers.

Confidentiality of customer information

29 The Authority may make general determinations governing the processing, disclosure and use by ICOL holders and any other types of communications providers designated by the Authority of personal data that they obtain from electronic communications customers, subscribers or users in the course of business other than for the purpose of conveying electronic communications, including—

- (a) disclosure of a customer's name, address and telephone number (including fixed and mobile numbers), including for purposes of inclusion in a printed or electronic directory;
- (b) use or disclosure of traffic or location data;
- (c) use or disclosure of subscription data provided when a customer orders a service; and

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- (d) any other customer-related data, as defined for this purpose by the Authority, that is obtained by communications providers from users or sub-users.

Privacy of telecommunication

30 (1) The privacy of any telecommunication is inviolable except as provided in this Act.

(2) No person, not being authorized by the sender or the addressee, shall intercept any signal in the course of transmitting information by electronic communications and wilfully divulge or publish the existence, purport, effect or meaning of such intercepted signal to any person.

(3) No person not being entitled thereto shall receive, or assist in receiving, any such intercepted signal and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto.

(4) No person having received such intercepted signal or having become acquainted with the same (or any part thereof), knowing that such information was so obtained, shall divulge or publish the contents, substance, purport, effect or meaning of the same (or any part thereof) or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto, provided that—

- (a) subsections (2) and (3) and this subsection shall not apply to the transmitting, receiving, divulging, publishing or utilizing the contents of any radio message or communication broadcasted or transmitted by amateurs or others for the use of the general public or relating to ships or aircraft in distress;
- (b) it shall not be unlawful under this section for an operator of a switchboard or an officer, employee or agent of any communications provider the facilities of which are used in the transmission of a wire communication, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or the protection of the rights or property of the communications provider transmitting such communication;
- (c) the said communications provider shall not utilize service observing or random monitoring except for mechanical, electronic, optical or service quality control checks; and
- (d) it shall not be unlawful under this section for an officer, or employee or agent of the Authority or of the Government in the normal course of his employment and in discharge of the radio monitoring responsibilities exercised by the Authority in the pursuance of its powers under section 36(2)(h) and (i), to intercept a communication transmitted by radio, or to disclose or use the information thereby obtained.

(5) No person, not being authorized by all the parties to any private signal shall tap any wire, cable or optical fibre or by using any other device or arrangement, shall secretly overhear, intercept, or record such signal in the course of transmitting information

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by electronic communications by using any electronic or other device, provided that it shall be lawful for any police officer or officer of a communications provider acting with the consent of the person renting a circuit to tap or trace such circuit, or by using any other device secretly to overhear, intercept or record a communication passing over such circuit in order to detect an offence under section 68.

(6) No person, be he a participant or not in the act or acts prohibited in this section, shall knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured in the manner prohibited by this Act, or replay the same for any other person or persons, or communicate the contents thereof, either verbally or in writing, or furnish transcriptions thereof, whether complete or partial, to any other person.

(7) Nothing contained in this section shall render it unlawful or punishable for any police officer or other person who is authorized by a written order of the Governor under the powers granted to him by section 53 to execute, in accordance with Schedule 2, any of the acts declared to be unlawful in this section, and subsection (8) shall not apply to evidence thus secured.

(8) Any message, communication or spoken word, or the existence, contents, substance, purport, effect or meaning of the same or any part thereof, or any information therein contained, obtained or secured by any person in contravention of this section shall not be admissible in evidence in any judicial, quasijudicial, legislative or administrative hearing except for the purpose of proving the contravention of those subsections and for that purpose the person adjudicating shall make such order as he considers appropriate to preserve confidentiality.

Security of customer data and reporting of data breaches

31 (1) A provider of public electronic communications shall take adequate technical and organisational measures to protect the security of electronic communications at a level commensurate with the degree of risk presented, including measures to ensure that personal data that is stored or transmitted by it in connection with the provision of electronic communications—

- (a) can be accessed by authorized personnel for legally authorized purposes only; and
- (b) is protected against accidental or unlawful loss, destruction, or alteration and unauthorized or unlawful storage, processing, access or disclosure,

having due regard to the state of the art and the cost of implementation.

(2) The provider of public electronic communications shall develop a security policy and processes designed to ensure compliance with subsection (1), which shall be subject to review, approval and audit by the Authority.

(3) If there is a breach of the security obligations in subsection (1) or the policy approved pursuant to subsection (2), the communications provider shall, without undue delay, notify the breach to—

- (a) the Authority; and

- (b) any subscriber or individual affected by the breach if, in the view of the Authority, the breach is likely to have an adverse effect on the subscribers or individuals concerned.

(4) The notification required under subsection (3) shall describe the nature and consequences of the breach, the measures which the communications provider has taken or proposes to take to address the breach and its effects, and any other information which the Authority may require.

(5) In any case in which the Authority finds that there has been a security breach, the Authority shall issue an adjudicative decision and order requiring the communications provider to take specific measures to prevent future data breaches from occurring and may impose appropriate financial penalties in cases where such obligations are not met.

(6) For the purposes of subsection (1), "processing" means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise, alignment or combination, blocking, erasure or destruction.

PART 6

UNIVERSAL SERVICE PROVISION AND FUNDING

Universal service policy

32 (1) The Minister may make general policies and, as necessary, regulations concerning the provision of universal service by one or more providers of public electronic communications, including—

- (a) the types of services that shall be subject to mandatory universal service provision;
- (b) whether any particular type or group of users should be eligible for certain universal services pursuant to social tariffs; and
- (c) the sources of any special funding for the provision of these services, if required, and the basic framework of any funding scheme that may be deemed necessary, in accordance with section 34.

(2) Any policies made by the Minister, and any applicable regulations, shall ensure that requests for connection by end-users at a fixed location to a public electronic communications network or networks covering the geographic area of Bermuda and offering international access via undersea cable can be met by at least one ICOL holder, and that the connection provided is at a minimum capable of supporting voice telephony, facsimile and functional Internet access.

Functions of the Authority

33 (1) The Authority shall assist the Minister in formulating and implementing any general universal service policies and regulations that may be considered or made pursuant

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to section 32, including by consulting with sectoral participants and consumers concerning relevant issues and options.

(2) The Authority may make general determinations implementing the policies and regulations made by the Minister, including—

- (a) defining the specific characteristics of the electronic communications services designated by the Minister pursuant to section 32(1)(a), based on consideration of the relevant costs, needs of the public, affordability of the service or services, and advances in technology;
- (b) specifying the criteria of eligibility for any social tariffs that may be imposed by regulations;
- (c) establishing the terms and conditions pursuant to which one or more designated communications providers shall be obligated to provide universal services defined or specified pursuant to paragraphs (a) or (b);
- (d) establishing detailed provisions for implementing a universal service funding scheme, if applicable, pursuant to section 34;
- (e) identifying, as necessary, the communications providers that shall be required to provide the services designated by the Minister pursuant to section 32(1)(a); and
- (f) providing for the monitoring and enforcement of compliance with any universal service obligations or conditions that may be imposed and facilitating the functioning of any funding scheme that may be established.

(3) The Authority, by administrative determination, may require providers of public electronic communications networks to ensure, as necessary—

- (a) the interoperability of public electronic communications throughout Bermuda; and
- (b) access on the part of end-users to any-to-any communications by means of direct or indirect interconnection among communications providers.

(4) Following the establishment of a universal service policy by the Minister and the making of any regulations pursuant to section 32, the Authority shall periodically submit to the Minister, following a public consultation, a report that—

- (a) details the implementation measures taken by the Authority and sectoral participants, including the operation of any funding scheme that may be established; and
- (b) makes recommendations for any changes in policy that it deems to be in the public interest.

Establishment of a universal service funding scheme

34 (1) The Authority on its own initiative may, and upon request of the Minister shall, prepare a report, following a public consultation, that assesses whether the establishment of a funding scheme to support or promote the provision of universal service is necessary

and proportionate, taking into account all factors specified by the Minister or found to be relevant by the Authority, including—

- (a) whether the mandatory provision of access to universal services or the offering of social tariffs imposes a financial burden on one or more designated communications providers, and the extent of any such burden; and
- (b) whether any financial burden identified under paragraph (a) is unreasonable, based on an evaluation of all relevant factors, including the value of any historic commercial advantages enjoyed by a communications provider as a result of special rights previously enjoyed.

(2) The Authority shall submit the report referred to in subsection (1) and any accompanying recommendations to the Minister, and shall publish the report and recommendations on the official website.

(3) If the Authority recommends the establishment of a universal service funding scheme, its submission to the Minister shall propose the procedures and requirements for—

- (a) establishing the type of funding scheme and the means by which one or more designated communications providers shall contribute to or participate in the scheme;
- (b) estimating, on an annual basis, the total amount of funding required to compensate for the provision of universal services at prices below cost, in accordance with the approved scheme;
- (c) designating the communications providers that shall be required to make such contributions and the basis on which the payments shall be calculated; and
- (d) determining the eligibility of communications providers that offer universal service below cost to receive contributions to fund the deficit, including any accounting, reporting and true-up obligations that it deems appropriate.

(4) Any recommendation provided by the Authority shall—

- (a) be consistent with the purposes of this Act and the universal service policy or regulations established by the Minister pursuant to section 32(1);
- (b) provide for administration of the funding scheme, including the distribution of funds, in a reasonable, transparent, non discriminatory and competitively neutral manner; and
- (c) be no more burdensome than is necessary to achieve the objectives of the universal service policy.

(5) The Minister shall give due consideration to the recommendation of the Authority in deciding whether to make regulations establishing a funding scheme for the provision of universal service.

(6) Any regulations made by the Minister pursuant to this section shall—

- (a) establish the basis for determining the amount of the universal service contribution to be made by designated communications service providers or others;
- (b) provide for the establishment and administration of a fund or other funding scheme by the Authority or such other person as may be specified in the regulations;
- (c) stipulate the manner in which any contributions are to be made and determine whether and how dedicated charges may be assessed on and invoiced to end-users;
- (d) provide for annual independent audits of the funding scheme and publication of the results of such audits;
- (e) comply with the criteria in subsection (4); and
- (f) be subject to the affirmative resolution procedure.

PART 7

USE OF RADIO SPECTRUM AND EQUIPMENT FOR ELECTRONIC COMMUNICATIONS

Spectrum policy and management

35 (1) The Minister, giving due regard to the purposes and objectives of this Act and the importance of radio spectrum as a scarce national resource and a public good of significant social, cultural and economic value, shall make general policies and, as necessary, regulations for the electronic communications sector with respect to—

- (a) the management and allocation of spectrum for particular or liberalised uses in accordance with the provisions of this Act; and
- (b) the procedures to be followed by the Authority in the assignment of spectrum for use in connection with the provision of electronic communications, whether by means of the grant of an individual licence, the designation of a class licence, or the grant of a licence exemption.

(2) The Minister shall confer and coordinate with any Government Department or agency that has recognised spectrum usage rights prior to adopting any policies or issuing any directions that could affect such rights.

Functions of the Authority

36 (1) The Authority shall implement the general policies and regulations made by the Minister in respect of radio frequencies comprising the electromagnetic spectrum which are, or are available to be, used to transmit or receive electronic communications.

(2) The Authority shall have the power to carry out the following functions in respect of radio spectrum—

- (a) maintaining and publishing the Bermuda Frequency Allocation Table which shall detail, among other things, the purposes and priorities for which the Minister has allocated the frequencies;
- (b) specifying the criteria and procedures for the assignment of radio frequencies, awarding individual spectrum licences, establishing spectrum class licences and granting licence exemptions;
- (c) establishing the applicable licence terms and conditions, including technical conditions and usage priorities and limitations;
- (d) coordinating licensing procedures and conditions with associated operating licences for the provision of electronic communications;
- (e) conducting comparative selection processes, auctions, lotteries or hybrid processes for the award of spectrum licences in cases where demand for the right to use a specific portion of the radio spectrum is expected to exceed supply;
- (f) establishing, maintaining and providing convenient access by the public to a frequency database and register which identifies spectrum licence holders, relevant technical conditions, priorities of use, and any additional information that the Authority deems helpful to actual and potential users of spectrum;
- (g) classifying the various types of radio stations and apparatus, issuing permits and establishing technical requirements and conditions for the same;
- (h) conducting tests to monitor the use of frequencies and ensure compliance with technical requirements;
- (i) conducting tests to check for harmful interference;
- (j) conducting adjudications to consider—
 - (i) the merits of complaints alleging harmful interference; and
 - (ii) whether to order the release of spectrum in accordance with section 41;
- (k) conducting public consultations on its own initiative or at the request of the Minister, licence holders or consumers, and undertaking studies where appropriate, to evaluate the extent to which spectrum is available for use for radiocommunications in Bermuda, to assess current and potential demand, and to consider any other factors relevant to the Minister in formulating or modifying spectrum policies or regulations;
- (l) examining persons in connection with the operation of apparatus for radiocommunication, the grant and endorsement of certificates of competency in the operation of such apparatus, the fees payable in respect of any such examination or the grant or endorsement of any such certificates, the authorization of persons to hold positions in radio stations and the cancellation or suspension of any such authority;

- (m) specifying requirements for standby facilities to be maintained by radio stations for use in case of natural disasters or other emergencies;
- (n) prohibiting or regulating the sale or use of any apparatus or machinery causing or capable of causing harmful interference to radio reception;
- (o) prohibiting and controlling electrical or radiated interference with the working of apparatus for electronic communications;
- (p) authorizing foreign registered or licensed mobile radio stations while in or over Bermuda or its territorial waters of Bermuda or in Bermuda airspace;
- (q) authorizing mobile radio stations licensed in Bermuda which are not for the time being in or over Bermuda, Bermuda airspace, or its territorial waters;
- (r) the licensing of persons wishing to maintain or repair radio apparatus and the qualifications to be held by such persons;
- (s) regulating the importation, sale, trading in and demonstration of radio apparatus and radio receiving apparatus not excluded from the application of this Act;
- (t) the dismantling, sealing or confiscation of any radio station, radio apparatus and radio receiving apparatus, not excluded from the application of this Act; and
- (u) exercising such other functions as the Authority deems necessary to implement or facilitate the Minister's policies with regard to radio spectrum.

Objectives of spectrum management

37 (1) In performing their functions under this Part, the Minister and the Authority shall ensure that radio spectrum is managed in a manner that—

- (a) is objective, transparent and non-discriminatory;
- (b) is economically and technically efficient;
- (c) facilitates the introduction and evolution of new technologies and innovative electronic communications services;
- (d) gives due recognition to the level of investment in existing equipment configured for specific frequencies and the cost of migrating to other frequencies;
- (e) preserves or promotes effective and sustainable competition in the provision of electronic communications services subject to this Act;
- (f) is compatible with the Convention; and
- (g) meets the radiocommunications needs of Government Departments and agencies.

(2) Where any of these objectives appear to be in conflict, the Minister shall, after conferring with the Authority, prioritise the objectives or otherwise resolve the conflict in a way that, in the Minister's opinion, best serves the public interest.

Spectrum licences, permits and exemptions

38 (1) No person shall—

- (a) use the electromagnetic spectrum within the territorial waters of Bermuda to transmit or receive any electronic communications without first obtaining a spectrum licence; or
- (b) import, install, place in operation, repair, or maintain any radio station or radio apparatus without a permit issued by the Authority,

unless the Authority has granted the spectrum use and the radio station or apparatus a specific exemption by administrative determination.

(2) The holder of a spectrum licence or permit shall conform to the conditions and standards specified in such licence, including—

- (a) the frequencies assigned to that licence or permit holder;
- (b) the location, type and specifications of radio stations and apparatus;
- (c) the geographical area covered by the licence; and
- (d) any other technical conditions that may assist in the efficient and effective use of the radio spectrum.

(3) The Authority shall be responsible for monitoring and enforcing compliance with the use of any radio frequencies assigned to the holder of a spectrum licence or permit issued in accordance with this section.

(4) Nothing in this section shall be construed to allow a communications provider to engage in any of the activities specified in section 12 without holding a duly authorized COL or qualifying for a COL exemption.

(5) The Authority may impose in a spectrum licence or permit for radio stations or apparatus, for a limited or indefinite period—

- (a) proportionate and non-discriminatory service or technology restrictions if the Authority determines that such restrictions are necessary to—
 - (i) avoid harmful interference;
 - (ii) protect public health against electromagnetic fields;
 - (iii) ensure technical service quality;
 - (iv) maximise radio frequency sharing;
 - (v) provide for the efficient use of spectrum;
 - (vi) protect or promote effective competition in the provision of electronic communications;

- (vii) promote investment in new or innovative technologies or electronic communications services;
 - (viii) protect the environment and sites of historical or cultural significance; or
 - (ix) otherwise advance the public interest; and
- (b) the obligation to provide one or more forms of wholesale wireless access, including a resale offer, on a non-discriminatory basis, if the Authority determines that such arrangements are necessary for the benefit of consumers.
- (6) The Authority shall make general determinations establishing—
- (a) the basic provisions of spectrum licences and permits for radio stations and apparatus;
 - (b) the criteria and eligibility for any exemptions, which may be granted in those cases in which no Regulatory Authority or Government authorization fees are to be collected and the Authority determines that—
 - (i) there is no reasonable probability of harmful interference; and
 - (ii) the level of demand for use of the spectrum in the relevant frequency band or bands is not expected to exceed the spectrum available;
 - (c) procedures, criteria and conditions for the award of individual spectrum licences and the grant of permits for radio stations and apparatus, including competitive bidding procedures and comparative selection procedures;
 - (d) procedures, criteria and conditions for obtaining class licences for the use of specified frequencies or radio stations and apparatus; and
 - (e) procedures, criteria and conditions for obtaining temporary licences or permits for technical testing or non-commercial trials involving the use of spectrum.
- (7) The term of a spectrum licence or a permit for radio stations and apparatus shall not exceed 10 years and shall in any event not exceed the remainder of the term of the associated COL.
- (8) A spectrum licence associated with an ICOL shall be renewed for an additional term or terms co-extensive with that of the ICOL if the licence holder files an application requesting renewal no earlier than nine months and no later than six months prior to the expiry date—
- (a) unless the Authority determines that renewal of the licence would not be in the public interest; and
 - (b) subject to any modifications that the Authority may deem it necessary or appropriate to make at the time of renewal.

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(9) A permit for a radio station or apparatus shall be renewed by the Authority in accordance with the procedures, terms and conditions specified in the permit.

(10) ICOL holders and other communications providers specified by the Authority shall, where technically feasible, construct and share masts and other support structures suitable for the placement of radiocommunication equipment in a manner that allows for the sharing of such facilities with other communications providers on terms and conditions that are fair, reasonable and transparent.

Spectrum liberalisation and trading

39 (1) Spectrum licences and permits shall, to the extent practicable, allow the radio frequencies to which they pertain to be used liberally with all types of technologies and for all types of electronic communications, subject to the prohibition against harmful interference contained in section 42 in respect of any superior usage rights held by other authorized users of the same frequencies.

(2) The Authority, following a public consultation, may make recommendations to the Minister proposing the liberalisation of specific frequencies or frequency bands in any or all of the following ways—

- (a) with respect to the types of electronic communications that may be provided using the specified frequencies;
- (b) with regard to the technologies that may be utilized in providing electronic communications authorized in connection with the specified frequencies; or
- (c) by designating the specified frequencies that are eligible for sublicensing or for one or more forms of spectrum trading, including the sale or lease of recognised spectrum usage rights under duly authorized spectrum licences.

Fees for spectrum licences and permits for radio stations and apparatus

40 (1) Government authorization fees for specified types of spectrum licences and permits for radio stations and apparatus shall be established in accordance with section 52 of the Regulatory Authority Act 2011, and the following criteria shall apply to any recommendation made by the Minister or the Authority pertaining to such fees—

- (a) the fees applicable for the use of spectrum suitable for similar types of radiocommunication services shall be set in a reasonable, objective and transparent manner;
- (b) in order to optimise the use of spectrum, competitive bidding procedures, subject to a minimum reserve price, shall be used where practicable and, in particular, in circumstances where the level of demand for a particular frequency or band of frequencies is expected to exceed the spectrum available, in accordance with subsection (2);

- (c) where spectrum licences or permits for radio stations and apparatus are to be, or have been granted, other than on the basis of competitive bidding procedures, fees shall be imposed that reflect —
 - (i) a reasonable measure of the value of the spectrum assigned, based on an assessment of the opportunity costs of the current use and other potential uses of a particular frequency or frequency band; or
 - (ii) relevant benchmarks or other appropriate proxies where the information required to assess the value stipulated in subparagraph (i) is not reasonably available.

(2) In cases where a competitive bidding procedure is to be used in accordance with subsection (1)(b)—

- (a) the Minister, after conferring with the Authority, and with the consent of the Minister of Finance, shall make regulations, subject to the affirmative resolution procedure, specifying—
 - (i) the type of auction and the rules, standards and procedures governing the bidding process;
 - (ii) the reserve price or minimum Government authorization fee that must be paid by the winning bidder;
 - (iii) any applicable payment terms; and
 - (iv) procedures for re-auctioning the spectrum of a winning bidder that defaults on the payment of any applicable Regulatory Authority or Government authorization fee or becomes insolvent;
- (b) the Authority shall conduct the auction pursuant to the standards and procedures specified by the Minister;
- (c) the Authority shall grant the licence to the entity or entities, if any, satisfying the selection requirements specified in the regulations; and
- (d) in any case in which the Authority grants a licence pursuant to an auction process specified by the Minister in regulations, the amount of the Government authorization fee shall be conclusively established through the auction process provided that the amount equals or exceeds the reserve price established pursuant to subparagraph (2)(a)(ii).

(3) The Authority may recommend, and the Minister may make, regulations in accordance with section 44 of the Regulatory Authority Act 2011 for the purpose of establishing Regulatory Authority fees to recover the administrative costs of conducting a competitive bidding procedure, undertaking a valuation, issuing a spectrum licence, testing for electromagnetic interference or power levels, approving a licence exemption and undertaking similar activities if the imposition of such fees is reasonable under the circumstances.

Measures to ensure the efficient use of spectrum

41 (1) The Authority may at any time, following an adjudication, issue an order requiring a spectrum licence holder to release or vacate any or all frequencies covered by its licence in order to ensure efficient use of the spectrum and may re-licence the vacated spectrum to others.

(2) The Authority shall, by general determination, establish—

- (a) the criteria that shall be applied by the Authority to determine the circumstances in which such measures are appropriate and proportionate; and
- (b) the factors that shall be considered to determine whether and, if so, how much compensation shall be paid to the vacating licensee, if any, the categories of costs that may be covered and the source or sources of funding for any such compensation.

(3) The licence holder shall comply with any adjudicative decision and order duly issued by the Authority which mandates the vacation of a frequency or band of frequencies in accordance with this section.

(4) The Authority, having due regard to the objectives of promoting the efficient use of spectrum and preventing or deterring the hoarding of spectrum, may impose spectrum licence conditions in accordance with section 50 of the Regulatory Authority Act 2011 which, among other things—

- (a) set out a fixed timetable, including the specification of milestones, for the effective exploitation of the rights granted to a spectrum licence holder; and
- (b) in the event of material non-compliance with the prescribed timetable, provide for modification or revocation of the spectrum licence and the imposition of financial penalties, including by means of performance bonds.

Harmful interference

42 (1) No person may use communications equipment for the purpose, or having the effect, of causing harmful interference to—

- (a) the operation of an authorized radio apparatus or station; or
- (b) the spectrum used by a duly licensed person conducting its activities in accordance with the rights granted by its spectrum licence or permit and any applicable technical requirements or limitations.

(2) The Authority shall adjudicate any complaints alleging harmful interference in accordance with this Act, any applicable general determinations, and the respective rights and obligations of the licence or permit holders involved.

(3) The Authority may, by general determination, establish a framework governing the basic procedures, rights and obligations applicable to spectrum licence and permit holders for the purpose of minimizing the risk of harmful interference.

Operation of radio stations and apparatus

- 43 (1) A radio station or apparatus shall not be used by any person to carry out—
- (a) unnecessary transmissions;
 - (b) the transmission of superfluous signals and correspondence;
 - (c) the transmission of false or misleading signals;
 - (d) the transmission of signals without identification except for—
 - (i) radio beacons or certain other radio navigation services where identification signals are removed in case of malfunction or other non operational service as a means of warning that transmissions cannot safely be used for navigational purposes;
 - (ii) survival-craft stations transmitting distress signals automatically; or
 - (iii) emergency position-indicating radio beacons;
 - (e) the transmission of signals containing profane or obscene words or language; or
 - (f) trials or tests, except pursuant to a temporary authorization and under circumstances that preclude the possibility of interference with other stations.
- (2) The operation of a radio station or apparatus shall be limited to the performance of such services as are specified in the relevant permit or spectrum licence.
- (3) Radio stations and apparatus—
- (a) shall not radiate more power than is necessary to ensure a satisfactory service;
 - (b) shall be established and operated in such a manner as not to cause harmful interference with other licensed radio installations and other electronic communications; and
 - (c) shall be maintained in a condition which complies with the Convention, the terms and conditions of the licence, and any applicable regulations or administrative determinations.
- (4) A radio station or apparatus shall only transmit on frequencies or in frequency bands authorized by the Authority and prescribed in the licence or permit.
- (5) A radio station or apparatus shall accept distress calls and messages with absolute priority regardless of their origin and shall immediately take such action with regard thereto as may be required by the Convention.
- (6) A radio station or apparatus may during a period of emergency in which normal communications facilities are disrupted as a result of a hurricane, flood, earthquake or similar natural disaster or force majeure event, be used for emergency communications and may be operated in a manner other than that provided in the Convention, the regulations

or as specified in the licence, and any such emergency use shall be discontinued as soon as substantially normal communication facilities are again available.

(7) The Minister may coordinate the transfer of the processing of particular types of permits for radio stations or radio apparatus, including permits for aviation and nautical uses, to a Minister with responsibility for a portfolio relevant to the particular use, provided that the Minister to whom the processing is transferred consents and assumes full responsibility for—

- (a) the full costs of administration associated with such permits; and
- (b) the establishment and collection of any applicable Regulatory Authority fees and Government authorization fees.

Provisions relating to foreign ships and aircraft

44 (1) Unless otherwise provided by regulations, mobile radio stations and apparatus on board foreign-registered aircraft or ships that are temporarily located within the territorial waters of Bermuda or in Bermuda airspace shall not require a licence or permit under section 38; however, the Convention and any relevant international agreements in respect of ships and aircraft shall apply to such stations.

(2) Mobile radio stations and apparatus located on foreign-registered aircraft and ships temporarily located in the territorial waters of Bermuda or Bermuda airspace shall comply with section 42, as it relates to avoidance of harmful interference, and with relevant international regulations under the Convention and international agreements in respect of ships and aircraft.

(3) No radio apparatus on board an aircraft shall be used while the aircraft is in Bermuda airspace or on the ground in Bermuda except for the purpose of communication with a licensed ground station, for operational and commercial control service, or for testing prior to flight of the apparatus used for air traffic control and air navigation purposes, notwithstanding that a licence, whether granted under this Act or the law of any other country or territory, is in force in respect of such apparatus.

(4) At all times when an aircraft is in Bermuda airspace or is on the ground in Bermuda in an operational state, a watch shall be maintained on the relevant traffic control service.

(5) The Authority may permit the use, on such occasions or for such periods as it specifies, of radio apparatus on board an aircraft that is in Bermuda airspace or at an aerodrome in Bermuda or on board a ship that is located in the territorial waters of Bermuda for purposes not specified in subsections (3) or (4).

PART 8

NUMBERING, ADDRESSING AND NAMING SYSTEMS FOR ELECTRONIC
COMMUNICATIONS

Numbering policy

45 The Minister shall make general policies and, as necessary, regulations with respect to management of the national numbering system.

Numbering plan and assignment of numbers

46 (1) The Authority shall adopt, by general determination, and publish a national numbering plan for those categories of communications providers that it deems eligible for participation in the national numbering scheme.

(2) Eligible participants in the national numbering scheme shall include all ICOL holders and may include other licensees.

(3) The Authority shall update the national numbering plan from time to time as it deems appropriate, following a public consultation addressing any material revisions to the plan.

(4) The Authority shall make general determinations governing the assignment and use of numbers and the implementation of numbering conventions or schemes applicable to particular types of electronic communications services as it deems appropriate, and it may authorize or restrict the assignment of numbers to certain licensees or groups of licensees based on objectively justifiable criteria.

(5) The numbering plan and any regulations or administrative determinations applicable to the assignment or use of numbers by communications providers shall—

- (a) not unreasonably discriminate against any eligible communications provider;
- (b) take account of relevant international regulations and, in particular, the requirements of the North American Numbering Plan;
- (c) ensure that sufficient numbers are available for the current and reasonably anticipated future needs of eligible communications providers;
- (d) specify whether and under what conditions assigned numbers may be reclaimed or reassigned;
- (e) assign particular blocks or series of numbers having regard to the role that numbers can play in conveying useful information to customers, including information about the type of service being used;
- (f) promote the efficient use of numbers;
- (g) promote fair and sustainable competition; and
- (h) endeavour to avoid or minimize the imposition of costs on consumers as a result of changes in the numbering system.

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(6) The Authority may make a general determination designating numbers or ranges of numbers that the Authority deems to be of exceptional economic value and establish requirements for their allocation pursuant to a competitive or a comparative bidding process.

(7) The Authority may recommend, and the Minister may make, regulations in accordance with section 44 of the Regulatory Authority Act 2011 for the purpose of establishing Regulatory Authority fees to recover the reasonable costs of administering the numbering plan from any communications providers to which numbers are assigned, taking into account the level of numbering resources required by individual communications providers.

(8) Government authorization fees may be established for number ranges of exceptional economic value in accordance with section 52 of the Regulatory Authority Act 2011, and the following criteria shall apply to any recommendation made by the Minister or the Authority pertaining to such fees—

- (a) the fees shall reflect a reasonable measure of the value of a number or block of numbers based on an assessment of the opportunity costs of the current use and other potential users, including numbers or blocks of numbers that the Authority deems to be of exceptional economic value; and
- (b) if an auction process is utilized, the procedures referred to in section 40(2) shall apply.

Number Portability

47 (1) The Authority shall make a general determination to facilitate subscribers to retain a fixed or mobile telephone number assigned to them by their existing communications provider under the numbering plan pursuant to section 46, when such subscribers elect to switch to another communications provider.

(2) No later than six months following the date of commencement of this Part, the Authority shall identify the technical requirements and timetable for implementing number portability or the equivalent and shall impose any conditions on the relevant communications providers that it concludes are necessary to facilitate switching between communications providers by customers and promote effective competition.

(3) If the Authority concludes that a fee should be applied to the relevant communications providers or their customers in order to fund number portability pursuant to subsection (1), the Authority shall make a recommendation to the Minister proposing the amount of the fee and requesting the Minister to make regulations which shall—

- (a) establish the basis for determining, the manner of assessing and the amount of the applicable fee;
- (b) establish the framework for administering a fund or other funding scheme required to implement number portability, which shall be reasonable, transparent, non-discriminatory and competitively neutral;

- (c) provide for the establishment and administration of a fund or other funding scheme including the distribution of funds, by the Authority or such other person as may be specified in the regulations;
- (d) stipulate the manner in which any contributions are to be made and determine whether and how dedicated charges may be assessed on and invoiced to end-users;
- (e) provide for annual independent audits of the funding scheme and publication of the results of such audits; and
- (f) be subject to the affirmative resolution procedure.

Emergency numbers

48 The Authority shall require providers of public electronic communications to make available to users, free of charge, access to a national three-digit number for emergency purposes, and may require communications providers to provide any user possessing a fixed or mobile terminal with automatic access to their networks for the purpose of making emergency calls by means of the national three-digit number, irrespective of whether such users are their customers or subscribers.

Country code top-level domain and domain names

- 49 (1) The Minister shall co-ordinate—
- (a) the management of the country code top-level domain of Bermuda; and
 - (b) the allocation and assignment of all domain names under the country code top-level domain of Bermuda.
- (2) Fees for the initial registration of such a domain name and annual registration shall be prescribed in the Government Fees Regulations 1976.

[Section 49 repealed and replaced by 2015 : 16 s. 2 effective 1 April 2015]

PART 9

TYPE APPROVAL AND HOMOLOGATION OF EQUIPMENT

Type approval procedures

- 50 (1) No equipment or system used for the provision of electronic communications networks or any radio apparatus shall be imported into or sold in Bermuda by any person unless it meets the standards of—
- (a) the Federal Communications Commission of the United States of America;
 - (b) the Canadian Standards Association International;
 - (ba) the United Kingdom; or
 - (c) the European Union,

and is imported under a certificate issued by the Authority confirming that the equipment, system or radio apparatus meets the standards referred to in paragraph (a), (b) or (c) and any relevant standards established under subsection (2)(a).

(2) The Authority may—

- (a) by general determination, establish technical standards relating to electronic communications networks or radio apparatus and customer premises' equipment or to any specified network, apparatus or equipment; and
- (b) following an adjudication, prohibit the sale, supply or use of any electronic communications network, radio apparatus or customer premises' equipment which does not comply with the requirements of any such standard.

(3) A technical standard established under this section shall include only requirements that the Authority determines to be necessary to—

- (a) protect the integrity of any licensed electronic communications network; or
- (b) protect the health and safety of any person.

(4) The Authority may recommend, and the Minister may make, regulations in accordance with section 44 of the Regulatory Authority Act 2011 for the purpose of establishing Regulatory Authority fees to recover the costs of issuing a certificate under subsection (1) and of administering the type approval and homologation process.

(5) The Collector of Customs, on becoming aware that any electronic communications equipment, system or radio apparatus has been imported into Bermuda, shall notify the Authority thereof and shall cooperate fully with the Authority by allowing its duly authorized representatives to undertake any or all of the following activities in relation to the type approval or homologation process with respect to such equipment, system or radio apparatus—

- (a) entering a customs area (within the meaning of the Revenue Act 1898) and obtaining access to such equipment, system or radio apparatus for the purposes of on-site inspection;
- (b) temporarily removing representative samples thereof for testing;
- (c) clearing such equipment, system or radio apparatus for importation into Bermuda if the Authority issues a certificate confirming that it complies with subsection (1) and any relevant standards established under subsection (2)(a), provided that it is otherwise compliant with applicable legislation and regulations relating to the importation of goods; or
- (d) removing and confiscating such equipment, system or radio apparatus if the Authority, after conferring with the Collector of Customs, makes an

administrative determination that it fails to comply with subsection (1) or any relevant standards or restrictions established under subsection (2).

[Section 50 subsection (1)(ba) inserted by 2020 : 4 s. 6 effective 31 January 2020]

PART 10

MISCELLANEOUS PROVISIONS

Emergency Powers

51 (1) Notwithstanding anything in this or any other Act or regulations or administrative determination to the contrary, when Her Majesty is at war or there is in force a proclamation of emergency made or continued in force under section 14 of the Constitution of Bermuda, the Governor may, when the public interest so requires, by warrant under his hand—

- (a) direct and cause any electronic communications system, or any part thereof, which is in Bermuda or the territorial waters thereof to be taken possession of in the name and on behalf of Her Majesty to be used for Her Majesty's service and subject thereto for such ordinary service as the Governor may see fit, and in that event, any person authorized by the Governor may—
 - (i) enter upon the premises, ship, aircraft or vehicle where such electronic communications system, or any part thereof, is situated and take possession thereof; and
 - (ii) use the apparatus therein as stated in this paragraph;
- (b) direct and authorize such persons as he thinks fit to assume control of any electronic communications service or radio apparatus operated either wholly or partly within Bermuda in such manner as he may direct, and such person may accordingly enter upon the premises of any person within Bermuda operating such electronic communications service and assume control of the whole or part thereof;
- (c) suspend or amend, for such time as he thinks fit, the laws, rules and regulations applicable to any or all radio stations or devices capable of emitting electromagnetic radiation within Bermuda or the territorial waters thereof and—
 - (i) cause the closing of any radio station or any part thereof, or any device capable of emitting electromagnetic radiation which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment; or
 - (ii) authorize the use and control of any such radio station or device or its apparatus and equipment by any Government Department under such regulations as he may prescribe,

and direct and authorize such persons as he thinks fit to enter upon the premises, ship, aircraft or vehicle where any radio station or device as aforesaid is located for the purposes of closing and sealing such radio station or device, and the removal of any apparatus or equipment or for the purpose of using or controlling any such radio station or device, as the case may be; and

- (d) direct any communications provider—
- (i) to submit to him, or any person authorized by him, all messages tendered within Bermuda for transmission or arriving in Bermuda by the system of electronic communications of any communications provider or any class or classes of such messages;
 - (ii) to stop or delay the transmission of or delivery of any such messages or deliver the same to him or his agent or transmit any messages or class or classes of messages according to a priority to be prescribed by the Governor; and
 - (iii) to obey all such directions with reference to the public electronic communications services within Bermuda or between Bermuda and other countries as he may prescribe and any such person operating an electronic communications service in Bermuda shall obey and conform to all such directions.

(2) At any time during which a proclamation of emergency under section 14 of the Constitution of Bermuda is in effect, the Minister may issue an order stating that the provisions of this Act and of the Convention relating to the matters specified in paragraphs (a) to (f) of section 4(2) shall not apply to the Police and the Royal Bermuda Regiment until such time as the Minister may revoke the order or the proclamation of emergency ceases, whichever is the earlier.

[Section 51 subsection (2) amended by 2015 : 48 s. 25 effective 1 November 2017]

Compensation for the exercise of emergency powers

52 (1) If the Governor exercises his powers under section 51 and a communications provider shows that as a result of the exercise of such powers its receipts during the period of such exercise of powers from public electronic communications services with respect to which the said powers have been exercised, or from any other systems of electronic communications owned or operated by it, have been less than its receipts from the same source during the corresponding period (averaged over the three-year period immediately preceding the exercise of such powers) the communications provider shall, other things being equal and subject to subsection (3), be entitled to reasonable compensation.

(2) Any compensation to be paid pursuant to subsection (1) shall be settled by agreement between the communications provider and the Governor or in case agreement cannot be reached may be determined by arbitration.

(3) The communications provider shall not be entitled to compensation if and so far as the exercise of the Governor's powers under section 51 is made for the purpose of preventing direct communication with any of Her Majesty's enemies and, except with the

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consent of the Governor, no such compensation shall be paid if and so far as those powers are exercised for the purpose of—

- (a) preventing indirect or suspected communication with any of Her Majesty's enemies; or
- (b) protecting the interests of Her Majesty under the apprehension of impending war.

(4) In the event of an arbitration pursuant to subsection (2), the arbitrator shall take into account all the circumstances of the case including not only such loss as described in subsection (1) but also any additional profit accruing to a communications provider by reason of the emergency which gave rise to the exercise of those powers whether from—

- (a) the use of the communications provider's electronic communications system or services so taken possession of or controlled; or
- (b) the use by it of any other system of electronic communications for the transmission of traffic which would normally have been handled by the communications provider's electronic communications services so taken possession of or controlled.

(5) A certificate signed by the Minister to the effect that an order under the terms of section 51 was made in time of war or during a proclamation of emergency and in the public interest shall be conclusive evidence of a state of war or the existence of a proclamation of emergency and that the order was made in the public interest.

Governor may in public interest prohibit transmission, or authorize interception, of telecommunication

53 Where the Governor is satisfied that the interests of defence, public safety, public order or public morality so require, he may, acting in his discretion, by warrant under his hand, direct that any message or other information, or any class of message or other information—

- (a) brought for transmission by electronic communications shall not be transmitted; or
- (b) brought for transmission, or transmitted or received or being transmitted, by electronic communications shall be intercepted or detained or disclosed to the Governor or to the public officer specified in the warrant.

Powers of search and forfeiture

54 (1) Where a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act or regulations has been committed and that evidence of the commission of the offence is to be found on any premises specified in the information, he may grant a search warrant to enter, at any time within one month from the date of such warrant, the premises specified in such information, and to search such premises, and to examine, test or take possession of or seal any electronic communications equipment, any information or record pertaining to any electronic

communications equipment, or any information or record relating to the provision of public electronic communications services found thereon.

(2) In subsection (1), “premises” includes any British ship, aircraft, hovercraft, platform or rig registered in Bermuda whether within or outside Bermuda, or any structure or formation attached to any submarine area adjacent to the coast of Bermuda in respect of which Bermuda has the right to the exploitation of the seabed and subsoil thereof and used for any purpose authorized by or pursuant to any Act.

(3) A magistrate may, upon application by or on behalf of the Minister or by or on behalf of the Authority, order that any equipment in respect of which there has been a contravention or attempted contravention of this Act be forfeited, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

Limitation of certain restrictions in leases, licences and other agreements

55 (1) The Authority may, in order to promote effective competition and consumer choice, issue an adjudicative decision and order which shall have the effect of limiting or voiding any provision—

- (a) contained in a lease, licence or other agreement relating to a particular end-user’s premises which imposes on the occupant a prohibition or restriction limiting the occupant’s choice of communications provider, or the person through which such services are arranged, to a person with an interest in the premises or that person’s designee; or
- (b) contained in a lease whose term is one year or more in duration which imposes any other prohibition or restriction on a lessee with respect to an electronic communications service or a related activity inside the building or on the premises such as installation, maintenance or repair by giving such provisions effect as if the lessor, licensor or other party to the agreement had agreed not to withhold consent unreasonably for deviations from the applicable restrictions or prohibitions.

(2) The Authority shall consider all of the relevant circumstances in determining whether consent has been unreasonably withheld, subject to the principle that no end-user shall unreasonably be denied access to electronic communications.

(3) In respect of leases, licences or agreements granted or entered into before the commencement of this Act, the consent of the Minister shall be required before an adjudicative decision and order issued by the Authority pursuant to this section may take effect.

PART 11
OFFENCES

Contravention of section 12 or section 18(6) an offence

56 (1) Any communications provider and any director, officer or employee of a communications provider who has official duties in connection with a communications provider and who contravenes any provision of section 12, 18(6) or of any regulations or administrative determination concerning the provision of electronic communications commits an offence triable either way and is liable on conviction—

- (a) if an individual, to imprisonment for two years or a fine of \$50,000, or both; or
- (b) if a person, other than an individual, to a fine of \$150,000; and
- (c) in either case, in the event of a continuing offence, a further fine of \$25,000 for every day during which the offence continues.

(2) Where any person is convicted of an offence under this section the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus, may order the confiscation of the apparatus.

Contravention of sections 38(1), 38(2) or 43 an offence

57 (1) Any person who contravenes any provision of sections 38(1), 38(2) or 43 or of any regulations or administrative determination concerning radio spectrum, radio stations or radio apparatus commits an offence triable either way and is liable on conviction—

- (a) if an individual, to imprisonment for two years or a fine of to \$50,000, or both; or
- (b) if a person, other than an individual, to a fine of \$150,000; and
- (c) in either case, in the event of a continuing offence, a further fine of \$25,000 for every day during which the offence continues.

(2) Where any person is convicted of an offence under this section the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus, may order the confiscation of the apparatus and any antenna.

Failure to pay fees imposed in accordance with sections 11, 15(b), 19, 34(6), 40, 46, 47(3) or 50(4)

58 Any person who fails to pay a fee established in accordance with the provisions of sections 11, 15(b), 19, 34(6), 40, 46, 47(3) or 50(4) commits an offence triable either way and is liable on conviction—

- (a) to a fine of \$50,000 and a further fine of \$5,000 for every day during which the offence continues; and

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- (b) to pay to the Authority a sum equal to twice the amount of any fee that would have been payable pursuant to the relevant section but for the commission of the offence.

Contravention of section 42 an offence

59 (1) Any person who wilfully contravenes any provision of section 42 commits an offence and is liable—

- (a) if an individual—
 - (i) on summary conviction, to imprisonment for two years or a fine of \$20,000, or both; or
 - (ii) on conviction on indictment, to imprisonment for five years or a fine of \$50,000, or both; or
- (b) if a person, other than an individual, triable either way and on conviction to a fine of \$150,000 and in the case of a continuing offence a further fine of \$5,000 for every day during which the offence continues.

(2) Where any person is convicted of an offence under this section the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus, may order the confiscation of the apparatus and any antenna.

(3) Where the court finds that harmful interference has been caused, whether wilfully or not, it may direct that the person responsible shall bear the costs of any technical investigation made in order to establish the existence and cause of such harmful interference.

Contravention of section 44(2) an offence

60 In the event of a contravention of section 44(2) the master of the vessel or the captain of the aircraft, as the case may be, or the person at whose direction the radio apparatus was used, commits an offence triable either way and is liable on conviction to a fine of \$50,000.

Transmitting or receiving messages by unlicensed means of electronic communications

61 Any person who, knowing or having reason to believe that a means of transmitting telecommunication is being maintained in contravention of this Act, transmits or receives any messages by such means of electronic communications or performs any service incidental to the transmission or reception of any such message or delivers any message for transmission by such means of electronic communications or takes delivery of any message sent thereby commits an offence triable either way and is liable on conviction to a fine of \$50,000.

Offences by communications providers and their directors, officers or employees

62 Any provider of public electronic communications and any director, officer or employee of a communications provider who has official duties in connection with a public

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electronic communications service commits an offence triable either way if such person or persons—

- (a) wilfully destroy, secrete or alter any message that they have received for transmission or delivery;
- (b) forges any message, or utters or transmits any message that they know to be forged;
- (c) wilfully abstain from transmitting any message or wilfully intercept or detain or delay any message, unless for legitimate service purposes in accordance with Schedule 2;
- (d) otherwise than in pursuance of their duty or as directed by the Governor or a court, copy any message or disclose any message or the purport of any message to any person other than the person to whom the message is addressed; or
- (e) uses information (from any message they have received for transmission or delivery) for personal reasons unrelated to official duties,

and is liable on conviction to imprisonment for two years or a fine of \$50,000, or both.

Destruction of messages by a person other than a director, officer or employee of a communications provider

63 Any person, not being a director, officer or employee of a provider of public electronic communications commits an offence triable either way if he—

- (a) wilfully destroys, secretes, detains or delays a message intended for delivery to some other person;
- (b) having been required by a telecommunication officer to deliver up to him a message in the possession of that person and intended for delivery to some other person, refuses or neglects to do so; or
- (c) knowingly or negligently delivers a message or communication to any person not authorized to receive the same,

and is liable on conviction to imprisonment for one year or a fine of \$50,000, or both.

Importation or sale of equipment in contravention of section 50

64 (1) A person commits an offence triable either way if he imports or sells any apparatus or equipment used for the provision of electronic communications networks or any radio station or apparatus in breach of section 50(1) and (2) and is liable on conviction—

- (a) if an individual, to imprisonment for one year or a fine of \$25,000, or both; or
- (b) if a person, other than an individual, to a fine of \$50,000.

(2) Where any person is convicted of an offence under this section the court, where it is proved to its satisfaction that the contravention includes the illegal importation or sale of any apparatus or equipment used for the provision of electronic communications networks or any radio station or apparatus, may order the destruction of the apparatus or equipment.

Damaging electronic communications apparatus with intent

65 (1) Any person commits an offence triable either way if he damages, removes or interferes in any way whatsoever with a electronic communications apparatus or uses it with intent to—

- (a) prevent or obstruct the transmission or delivery of a message;
- (b) intercept or discover the contents of a message; or
- (c) defraud any person.

(2) Any person commits an offence triable either way if he without authorization connects to or wilfully damages, removes or interferes with any electronic communications apparatus including any apparatus which is designed or adapted for use in connection with the running of a cable television service and, in particular—

- (a) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is so designed or adapted;
- (b) any structure, pole or other thing in, on, by or from which any electronic communications apparatus is or may be installed, supported, carried or suspended.

(3) A person guilty of an offence under this section is liable—

- (a) if an individual, for each offence—
 - (i) on summary conviction, to a fine of \$20,000 or imprisonment for one year, or both, and in the case of a continuing offence a further fine of \$500 for every day during which the offence continues; or
 - (ii) on conviction on indictment, to imprisonment for five years or a fine of \$50,000, or both, and in the case of a continuing offence a further fine of \$1,000 for every day during which the offence continues; or
- (b) if a person, other than an individual, triable either way, for each offence on conviction to a fine of \$150,000 and in the case of a continuing offence a further fine of \$5,000 for every day during which the offence continues.

Transmission of false messages

66 Any person who transmits, or causes to be transmitted by electronic communications, a message that he knows to be false commits an offence triable either way and is liable on conviction to imprisonment for one year or a fine of \$20,000, or both.

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Obtaining public electronic communications service with intent to avoid charges

67 Any person who obtains a public electronic communications service with intent to avoid payment of applicable charges for such service commits an offence and is liable for each offence—

- (a) if an individual—
 - (i) on summary conviction, to imprisonment for one year or a fine of \$20,000, or both; or
 - (ii) on conviction on indictment, to imprisonment for two years or a fine of \$50,000, or both; or
- (b) if a person, other than an individual, triable either way, on conviction to a fine of \$150,000.

Improper use of public electronic communications service

68 (1) Any person commits an offence triable either way if he—

- (a) sends, by means of a public electronic communications service, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character;
- (b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public electronic communications service;
- (c) by means of the telephone—
 - (i) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent;
 - (ii) makes multiple telephone calls, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number;
 - (iii) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
 - (iv) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the dialled number; or
- (d) knowingly permits any electronic communications apparatus under his control to be used for any purpose prohibited by this subsection,

and is liable on conviction to imprisonment for one year or a fine of \$25,000, or both.

(2) Any person who by means of a public electronic communications service—

- (a) obtains information from a computer which he is not authorized by the owner of the computer or the owner of the information to possess; or

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- (b) without the authority of the owner of the computer or the owner of the information changes information stored in a computer or in any way interferes with the programme,

commits an offence and is liable on summary conviction to imprisonment for one year or a fine of \$20,000 or both or, on conviction on indictment, to imprisonment for two years or a fine of \$50,000 or both.

(3) Any person, be he a participant or not, in the act or acts penalized in subsection (2) who knowingly possesses any tape record, wire record, disk record or any other record of any information secured in the manner prohibited by subsection (2), or replays the same to any person or communicates the contents thereof whether complete or partial either verbally or in writing or in any other manner to any other person commits an offence and is liable—

- (a) on summary conviction, to imprisonment for one year or a fine of \$20,000 or both; or
- (b) on conviction on indictment, to imprisonment for two years or a fine of \$50,000 or both.

(4) For the purposes of subsection (2) “computer” means a programmable electronic device that can store and process data and from which data can be retrieved.

Contravention of section 30 an offence

69 Any person who contravenes section 30(2) to (6) commits an offence and is liable—

- (a) on summary conviction, to imprisonment for one year or a fine of \$20,000 or both; or
- (b) on conviction on indictment, to imprisonment for two years or a fine of \$50,000 or both.

Contravention of section 53 an offence

70 Any person who fails to comply with a warrant under section 53 commits an offence and is liable on summary conviction to imprisonment for one year or a fine of \$20,000 or both.

Obstruction of Minister, etc an offence

71 Any person who wilfully obstructs the Minister or the Authority or any public officer in the exercise of any power conferred upon him or them by section 54, or any other provision of this Act, commits an offence and is liable on summary conviction to imprisonment for six months or a fine of \$10,000 or both.

PART 12

TRANSITIONAL PROVISIONS

Application of Transitional Provisions

72 The provisions of this Part, including the procedures and timetables herein, shall apply notwithstanding any contrary provisions contained in this Act or the Regulatory Authority Act 2011.

Transition to ICOLs and associated spectrum licences and permits

73 (1) The Minister, no later than 10 days following the date of commencement of this Part, shall direct the Authority to initiate a public consultation concerning the basic terms and conditions of the ICOL, and the Authority shall—

- (a) initiate a public consultation no later than five days following receipt of the Minister's direction by publishing a document containing the proposed set of basic terms and conditions to be in the ICOL, including those provided in section 17(2); and
- (b) submit to the Minister a proposal for a standard form of ICOL no later than 60 days following the date of initiation of the consultation.

(2) The Minister, within 30 days of the date on which the Authority submits the proposed standard form of ICOL, shall—

- (a) make regulations that establish the basic terms and conditions of the ICOL; and
- (b) direct the Authority, in the public interest, to modify the terms and conditions of each licence or deemed licence held under the Telecommunications Act 1986, on the date of commencement of this Part, by an entity listed in Schedule 1, for the purposes of—
 - (i) expanding the scope of all such pre-existing licences to authorize each licence holder to operate and provide any and all public electronic communications in accordance with section 18(1), for a period not exceeding 20 years from the date on which the licence modifications come into operation, subject to the limitations in subsection (5);
 - (ii) normalizing all such pre-existing licences to ensure that they conform to the provisions of this Act and the regulations referred to in paragraph (a); and
 - (iii) ensuring that the terms and conditions applicable to all ICOL holders are as homogenous as possible and not unreasonably discriminatory; and
- (c) direct the Authority to issue any associated spectrum licences reflecting each such licence holder's spectrum assignments as at the date of commencement of this Part, in accordance with section 38, provided that—

- (i) any such spectrum licences shall have a duration of 18 months from the date of issue;
 - (ii) the holders of any such licences shall be subject to a requirement to pay any fees for use of the spectrum that may be imposed in accordance with section 40; and
 - (iii) all such licence holders that were responsible for paying, or for collecting and remitting, to the Minister any licence fees for the use of radiocommunication equipment as at the date of commencement of this Part in accordance with the Government Fees Regulations 1976 shall continue to be required to pay such fees until a new Schedule of fees is established.
- (3) The Authority shall issue a decision and order modifying each of the licences of the communications providers in Schedule 1, which shall—
- (a) have the effect of converting their pre-existing licences into ICOLs in conformity with the regulations made by the Minister under subsection (2) (a);
 - (b) provide for the issuance of associated spectrum licences, if any; and
 - (c) be issued by the Authority no later than 150 days following the date of commencement of this Part.
- (4) The modifications ordered by the Authority for all pre-existing licences held by the communications providers listed in Schedule 1 shall—
- (a) take effect on the date specified by the Minister in a direction to the Authority and stipulated in each of the modified licences, subject to the limitations of subsection (5) respecting the operation of certain provisions of the modified licences;
 - (b) come into operation in any event no later than 30 days following publication of the modification orders issued by the Authority; and
 - (c) take effect on the same date, subject to the limitations of subsection (5) respecting the operation of certain provisions of the modified licences.
- (5) The operation of certain provisions of any ICOL referred to in subsection (3) shall be suspended automatically insofar as they authorize the licence holder to construct, provide or offer any additional electronic communications networks or electronic communications services that were not authorized by the licence holder's pre-existing public telecommunications licence, or otherwise lawfully permitted as at the date of commencement of this Part, under either of the following circumstances—
- (a) if the Authority determines, in accordance with section 74(b), that a licence holder, individually or together with others, has significant market power in one or more relevant markets, in which case suspension of the relevant provisions shall continue in effect as applied to that licence holder until the Authority issues a written notice, and publishes such notice on its official website, confirming that such licence holder has satisfactorily

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complied with any *ex ante* obligations imposed by the Authority in accordance with section 24; or

- (b) if the Authority determines, in accordance with section 74(c), that a licence holder has failed to pay any fees found to be due and payable under its pre-existing licence, in which case suspension of the relevant provisions shall continue in effect until the Authority issues a notice, and publishes such notice on its official website, confirming that all amounts in arrears have been paid in full to the Authority for transfer to the Consolidated Fund.

(6) For the purposes of this section, the Bermuda Telephone Company Acts shall together be deemed to constitute a licence granted to the Bermuda Telephone Company and in effect as at the date of commencement of this Part.

(7) The licence held by the Bermuda Land Development Company Limited (“BLDC”) as at the date of commencement of this Part shall be modified in accordance with subsection (3), provided, however, that—

- (a) the geographic scope of the modified licence shall be coextensive with the scheduled properties in the Base Lands Development Act 1996 in respect of BLDC’s provision of electronic communications networks;
- (b) BLDC shall be authorized to market, offer, sell or provide services only to customers that are tenants occupying one or more of the scheduled properties referred to in paragraph (a) for their use in connection with such property, or to other duly authorized communications providers serving or seeking to serve such customers; and
- (c) these geographic limitations shall remain in effect for at least as long as the total number of ICOLs in effect remains limited in accordance with the licensing policy established by the Minister.

(8) Until such time as the Authority has determined that number portability or the equivalent has been implemented in accordance with section 47—

- (a) ICOL holders that have been assigned numbers under the numbering plan shall provide end-users with carrier pre-selection for international calls; and
- (b) the Authority, following a consultation, may adopt an interim solution to ensure that end-users are able to port their telephone numbers from one ICOL holder to another for some or all categories of calls on reasonable terms and conditions, unless the Authority determines that it is in the public interest to maintain carrier pre-selection.

(9) Notwithstanding subsection (8), the Authority has a discretion to retain or eliminate carrier pre-selection.

Timing of other actions by the Authority to facilitate the transition to ICOLs

74 The Authority shall—

- (a) issue a notice in accordance with section 22 no later than 10 days following the commencement of this Part;
- (b) initiate one or more public consultations by publishing a preliminary decision and order, including a proposed general determination, in accordance with section 23(4) no later than 30 days after the date of commencement of this Part and, notwithstanding the process in section 72 of the Regulatory Authority Act 2011—
 - (i) on that basis make one or more general determinations designating any operator with significant market power, whether individually or together with others, in a relevant market or markets no later than 90 days after initiating the consultation; and
 - (ii) following a public consultation, issue decisions and orders specifying any applicable *ex ante* remedies in accordance with section 24 no later than 240 days following the date of commencement of this Part;
- (c) initiate an investigation no later than 60 days after the commencement of this Part to determine whether all fees due and payable by any licence holder listed in Schedule 1 as at the date of commencement of this Part under its pre-existing licence have in fact been paid in accordance with the Government Fees Regulations 1976, and issue an administrative determination within 60 days following initiation of the investigation that specifies—
 - (i) any amounts which the Authority determines are in arrears, including any applicable interest and penalties; and
 - (ii) the calculations supporting its determination; and
- (d) initiate a public consultation by—
 - (i) publishing a preliminary decision and order, including a proposed general determination, in accordance with sections 16(2)(b) to (d) and section 17(1) in relation to class licenses, licence exemptions and any other types of COL that the Authority deems necessary as a transitional measure, no later than 30 days after the date of commencement of this Part; and
 - (ii) on that basis, notwithstanding the process set out in section 72 of the Regulatory Authority Act 2011, make a general determination no later than 90 days after initiating the consultation in respect of the relevant licensing procedures that shall be in effect during the moratorium period established pursuant to section 75 of this Act.

Moratorium on the award of ICOLs and other public communications operating licences

75 (1) No earlier than one year following the date of commencement of this Part and no later than three years after such date, the Minister shall direct the Authority to commence a review to determine whether further liberalisation of the electronic

communications sector would be in the public interest, including by means of awarding any additional ICOLs or other types of public COLs, taking into account among other factors the impact on investment and sustainable competition in the electronic communications sector and the benefits to consumers.

(2) The Authority shall conduct the review referred to in subsection (1), following the procedures and timetable for sectoral reviews in section 17 of the Regulatory Authority Act 2011, unless the Minister directs otherwise.

(3) The Authority shall submit its recommendations to the Minister, and the Minister shall give due consideration to the Authority's findings and conclusions in making a decision whether to authorize the grant of additional ICOLs or other types of public COLs and establishing a date or dates for the grant of any such licences.

(4) The Authority may, after conferring with the Minister, delay the commencement of the first sectoral review provided for in section 17(5) of the Regulatory Authority Act 2011 by no more than two years if the Authority concludes that such a postponement is justified in light of the data obtained or expected to be obtained from the market reviews and the liberalisation review referred to in subsection (1) and section 74(b).

(5) Prior to the date or dates determined by the Minister pursuant to subsection (3), neither the Minister nor the Authority may grant—

- (a) any additional ICOLs to licensees not listed in Schedule 1; or
- (b) any COLs not otherwise authorized by section 73, with the exception of—
 - (i) COLs authorizing the provision of satellite services; and
 - (ii) COLs for the provision of other public electronic communications networks or services to any communications provider that was providing public telecommunications services for a period of at least the six months immediately before the date of assent to this Act, provided that all of the following conditions are met—
 - (A) the communications provider applies for a new COL or a normalized COL no later than 150 days following the date of commencement of this Part;
 - (B) any such communications provider is determined by the Authority to have paid any and all fees due and payable in accordance with the Government Fees Regulations 1976;
 - (C) the scope of electronic communications authorized by any licence issued or normalized pursuant to this paragraph shall be limited to the type or types of electronic communications that the communications provider can document it was providing on a commercial basis six months prior to the date of assent to this Act, as determined by the Authority; and
 - (D) the Minister, following a public consultation and an affirmative recommendation by the Authority, determines that the grant or normalization of any such licence is in the public interest and

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instructs the Authority to issue a limited COL, which shall have retroactive effect to the date of commencement of this Act.

- (c) any class COLs or exemptions from the obligation to hold a COL, except as provided in section 16(2)(d)(i) to (iii).

Normalization of other licences and grant of associated spectrum licences and permits

76 The Authority, with the written consent of the Minister, shall establish procedures for—

- (a) the normalization of any licences granted prior to the date of commencement of this Part and authorized in accordance with this Act, and not otherwise covered by section 73 or 75(5); and
- (b) the grant of any associated spectrum licences and permits reflecting each such licence holder's spectrum assignments as at the date of commencement of this Part, in accordance with section 38, provided that such spectrum licences shall have a duration of 18 months from the date of issue.

Nullification of certain licences

77 Any licences authorizing the provision of electronic communications that were granted prior to the commencement of this Part and which the Authority determines, following an adjudication, are not eligible to be authorized under this Act in accordance with Schedule 1 or sections 75(5)(b) and (c) shall be null and void and deemed to be revoked by the Minister.

Transitional spectrum investigation

78 The Authority shall conduct an investigation of the spectrum assignments reflected in the spectrum licences granted to ICOL holders pursuant to section 73(2)(c) and any other COL holders pursuant to section 76 for the purpose of determining whether the frequencies assigned are being utilized efficiently, and the Authority may, upon expiry of the 18 month term—

- (a) decline to renew the spectrum licence; or
- (b) modify the spectrum licence to authorize the use of a reduced amount of spectrum,

if the licence holder fails to demonstrate a reasonable need for some or all of the spectrum assigned to it, and the Authority concludes that such measures are necessary to ensure the efficient use of spectrum.

Status of pre-existing instruments

79 (1) All statutory instruments, administrative determinations, authorizations and adjudicative decisions and orders or their equivalent that—

- (a) relate to electronic communications;

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(b) were made or given effect in accordance with the Telecommunications Act 1986; and

(c) were in operation as at the date of commencement of this Act,

shall remain in full force and effect until their disposition is determined by the Minister or the Authority, as the case may be, in accordance with the provisions of this Act and section 17 of the Interpretation Act 1951.

(2) Notwithstanding subsection (1), in the event of an irreconcilable conflict between this Act and any legal instruments remaining in effect during the transition pursuant to subsection (1), the provisions of this Act shall prevail from the date of commencement of the relevant section of this Act.

Transitional provisions relating to pending matters and pre-existing agreements

80 (1) The provisions of sections 21, 23, 23A, 42A and 43 of the Telecommunications Act 1986, shall remain in full force and effect—

(a) in the case of any communications provider that is designated as having significant market power in any relevant market pursuant to section 74(b)(i), until the Authority publishes a written notice confirming that the communications provider has complied with all applicable *ex ante* obligations in accordance with section 73(5)(a); or

(b) in the case of a communications provider that is not designated as having significant market power in any relevant market pursuant to section 74(b)(i), one day after the date on which the Authority issues a general determination pursuant to section 74(b)(i).

(2) In reaching a decision or decisions in the first round of market reviews in accordance with section 74(b) or in any other consultation that is completed within one year of the date of commencement of this Part, the Authority may rely on information and evidence obtained or conclusions reached by the Minister, the Department of Telecommunications or the Telecommunications Commission on or after 30 June 2008.

(3) Any matters relating to the electronic communications sector pending before the Minister or the Telecommunications Commission as at the date of commencement of this Part shall be transferred to the Authority for resolution in accordance with the procedures established by the Regulatory Authority Act 2011, subject to any modifications that the Authority may deem appropriate and efficient, depending on the status of each case.

(4) The Authority may require modifications to any interconnection agreement to which a communications provider with significant market power is a party, and which was in effect as at the date of commencement of this Part, in order to bring such agreement into conformity with the provisions of this Act when imposing obligations pursuant to section 24(1).

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Transitional provisions relating to government authorization fees

81 The fees applicable to participants in the electronic communications sector under the Government Fees Regulations 1976 immediately prior to the commencement of this Part shall remain in effect without change until modified, suspended or withdrawn by amendment to the Government Fees Regulations 1976.

PART 13

FINAL PROVISIONS

Interpretation of the Bermuda Telephone Company Acts and the Base Lands Development Act 1996

82 To the extent possible, the provisions of the Bermuda Telephone Company Acts and the Base Lands Development Act 1996 shall be construed consistently with the provisions of this Act and, in the event of an irreconcilable conflict, the provisions of this Act shall prevail.

Application of Telecommunications Act 1986

83 (1) The Minister may make regulations which amend or repeal provisions of the Telecommunications Act 1986 in their application to the electronic communications sector (other than broadcasting) as may be necessary or expedient as a result of, or in anticipation of, the coming into operation of provisions of this Act.

(2) Accordingly, and as provided by such regulations, the Telecommunications Act 1986, or specified provisions of that Act, will cease to apply to the electronic communications sector (other than broadcasting) or to any class or category of communications provider.

(3) For the avoidance of doubt, regulations under this section shall not affect the continuing application of the Telecommunications Act 1986 to broadcasting.

Crown binding

84 This Act binds the Crown.

Parliamentary scrutiny

85 Unless this Act expressly provides to the contrary, any statutory instrument made by the Minister pursuant to this Act shall be subject to the negative resolution procedure.

Commencement

86 This Act, or any provisions of this Act, shall come into operation on such day or days, and in respect of such class or category of communications provider, as the Minister appoints by notice in the Gazette, provided that all the provisions of Part 12 shall come into operation on the same day.

SCHEDULE 1

(section 73)

LIST OF ENTITIES WITH LICENCES ELIGIBLE FOR CONVERSION TO INTEGRATED
COMMUNICATIONS OPERATING LICENCES IN ACCORDANCE WITH SECTION 73

The following are the entities referred to in section 73(2)(b)—

- 1 BDB Ltd.
- 2 Bermuda Cablevision Limited
- 3 Bermuda Digital Communications Ltd.
- 4 Bermuda Land Development Company Limited (subject to the geographic
limitations set out in section 73(7))
- 5 Bermuda Telephone Company Limited
- 6 Brasil Telecom Subsea Cable Systems (Bermuda) Ltd.
- 7 Cable Co. Ltd.
- 8 Deltronics Limited
- 9 Digital Mobile Television Limited
- 10 Electronic Communications Limited
- 11 FKB Net Ltd.
- 12 iTech (Bermuda) Limited
- 13 LinkBermuda Ltd.
- 14 Logic Communications Ltd.
- 15 North Rock Communications Ltd.
- 16 Quantum Communications Limited
- 17 TeleBermuda International Limited
- 18 Telecommunications (Bermuda & West Indies) Limited
- 19 Telecommunications Networks Limited
- 20 Transact Limited
- 21 World on Wireless Limited

SCHEDULE 2

(section 30(7))

COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT

Interpretation

1 In this Schedule, unless the context otherwise requires—

“call-identifying information” means dialling or signalling information that identifies the origin, direction, destination or termination of each telecommunication generated or received by a subscriber by means of any electronic communications facility or service of a communications provider;

“commercial mobile service” means any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public;

“electronic communications support services” means a product, software, or service used by a communications provider for the internal signalling or switching functions of its electronic communications network;

“facility” means any facility, electronic communications apparatus or other thing that is used for electronic communications or for any operation directly connected with electronic communications;

“mobile service” means a radiocommunication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves, and includes—

- (a) both one-way and two-way radiocommunication services; and
- (b) a radiocommunication service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative or multiple basis) for private one-way or two-way land mobile radiocommunications by eligible users over designated areas of operation;

“pen register” means a device or process which records or decodes dialling, routing, addressing or signalling information (other than the contents of a communication) transmitted by an instrument or facility from which a telecommunication is transmitted, but does not include—

- (a) any device or process used by a provider or customer of an electronic communications service for billing or recording as an incident to billing, for communications services provided by such provider; or
- (b) any device or process used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

“telecommunication” means a message, signal or any other information transmitted by means of electronic communications, but does not include—

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- (a) a communication made through a tone-only paging device;
- (b) a communication from a tracking device; or
- (c) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

“trap and trace device” means a device or process which captures the incoming electronic or other impulses which identify the originating number or other dialling, routing, addressing and signalling information (other than the contents of a communication) that is reasonably likely to identify the source of a telecommunication;

“wire” or “wire communication” means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable, optical fibre, or other such like physical connection between the points of origin and the reception of such transmission, including all instrumentalities, facilities, apparatuses, and services (including, the receipt, forwarding, and delivery of communications) incidental to such transmission and cognate expressions shall be construed accordingly.

Assistance capability requirements

2 (1) Subject to subparagraphs (2) to (5), a communications provider shall ensure that its electronic communications facilities and services that provide a customer or subscriber with the ability to originate, terminate or direct communications are capable of—

- (a) expeditiously isolating and enabling the Police, pursuant to a warrant issued by the Governor under section 53, to intercept, to the exclusion of any other communications, all electronic communications carried by the communications provider within an electronic communications service area to or from electronic communications facilities or services of a subscriber of such communications provider—
 - (i) concurrently with their transmission to or from the subscriber’s electronic communications facility or service; or
 - (ii) at such later time as may be acceptable to the Police;
- (b) expeditiously isolating and enabling the Police, pursuant to a warrant issued by the Governor under section 53, to access call-identifying information that is reasonably available to the communications provider—
 - (i) before, during or immediately after the transmission of a telecommunication (or at such later time as may be acceptable to the Police); and
 - (ii) in a manner that allows it to be associated with the communication to which it pertains;

- (c) delivering intercepted communications and call-identifying information to the Police, pursuant to a warrant issued by the Governor under section 53, in a format such that they may be transmitted by means of electronic communications facilities or services procured by the Police to a location other than the premises of the communications provider; and
 - (d) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's electronic communications service and in a manner that protects—
 - (i) the privacy and security of communications and call-identifying information not authorized to be intercepted; and
 - (ii) information regarding the interception by the Police of communications and Police access to call-identifying information.
- (2) This paragraph does not authorize the Police—
- (a) to require any specific design of electronic communications facilities, services, features, or system configurations to be adopted by any communications provider or provider of electronic communications support services; or
 - (b) to prohibit the adoption of any electronic communications facility, service or feature by any communications provider or provider of electronic communications support services.
- (3) The requirements of subparagraph (1) do not apply to electronic communications facilities and services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting communications provider.
- (4) In emergency circumstances, a communications provider at its discretion may comply with subparagraph (1)(c) by allowing monitoring at its premises if that is the only means of accomplishing the interception or access.
- (5) A communications provider that—
- (a) provides a commercial mobile service offering a feature or service which allows subscribers to redirect, hand off or assign their electronic communications to another service area or another communications provider or to utilize facilities in another service area or of another communications provider; and
 - (b) had been providing assistance for the interception of electronic communications or access to call-identifying information pursuant to a warrant issued by the Governor under section 53, but no longer has access to the content of such communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service,

shall ensure that information is made available to the Police (before, during or immediately after the transfer of such communications) identifying the provider of an electronic communication service that has acquired access to the communications.

Capacity requirements

3 (1) The Minister shall, after consulting with the Minister responsible for public safety, publish in the Gazette a notice of —

- (a) the actual number of communication interceptions, pen registers and trap and trace devices, representing a portion of the maximum capacity under paragraph (b), that the Minister responsible for public safety estimates the Police may conduct and use simultaneously by the date that is three years after the date of publication of the notice; and
- (b) the maximum capacity required to accommodate all of the communication interceptions, pen registers and trap and trace devices that the Minister responsible for public safety estimates the Police may conduct and use simultaneously after the date that is three years after the date of publication of the notice.

(2) Within one year after the publication of a notice under subparagraph (1), a communications provider shall ensure that its systems are capable of accommodating simultaneously the number of interceptions, pen registers and trap and trace devices specified in the notice under subparagraph (1)(a).

(3) Within three years after the publication of a notice under subparagraph (1), a communications provider shall ensure that it can accommodate expeditiously any increase in the actual number of communication interceptions, pen registers and trap and trace devices that the Police may seek to conduct and use, up to the maximum capacity requirement specified in the notice under subparagraph (1)(b).

(4) The Minister may from time to time, after consulting with the Minister responsible for public safety, vary the maximum capacity requirement issued under subparagraph (1)(b) and the Minister shall publish a notice of any such variance in the Gazette.

(5) Section 6 of the Statutory Instruments Act 1977 does not apply to a notice issued under this paragraph.

Exemptions from capacity requirements

4 (1) The Minister, after consulting with the Minister responsible for public safety, may issue a directive to a communications provider exempting it from meeting its obligations under paragraphs 3(2) and (3) and directing the communications provider to accommodate such reduced number of interceptions, pen registers and trap and trace devices as are specified in the directive, within the time referred to in those paragraphs.

(2) A directive issued to a particular communications provider under this paragraph is not a statutory instrument and need not be published in the Gazette but the directive shall have no legal effect until it is delivered to the communications provider.

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Cooperation of providers of electronic communications support services

5 (1) A communications provider shall consult, as necessary, in a timely fashion with providers of electronic communications support services for the purpose of ensuring that current and planned electronic communications facilities and services comply with the requirements referred to in paragraphs 2 and 3(2) and (3).

(2) A provider of electronic communications support services shall, on a reasonably timely basis and at a reasonable charge, make available to communications providers using its electronic communications facilities or services such features or modifications as are necessary to permit such communications providers to comply with the requirements of paragraphs 2 and 3(2) and (3).

No degradation of capabilities

6 A communications provider that meets, in whole or in part, a requirement referred to in paragraphs 2 or 3(2) or (3) in respect of electronic communications apparatus that the communications provider operates shall continue to so meet that requirement.

Maintaining capabilities in respect of new services

7 A communications provider that meets, in whole or in part, a requirement under paragraphs 2 or 3(2) or (3) in respect of electronic communications apparatus that the communications provider operates in connection with any of the communications provider's electronic communications services shall meet that requirement to the same extent in respect of any new service that the communications provider begins to provide using that electronic communications apparatus.

Beginning to operate electronic communications apparatus

8 (1) A communications provider that begins to operate any electronic communications apparatus for the purpose of providing electronic communications services shall meet the requirements under paragraphs 2 and 3(2) and (3), whether by means of the electronic communications apparatus itself or by any other means.

(2) Subparagraph (1) does not apply in respect of electronic communications apparatus that a communications provider acquires from another communications provider and operates in order to continue to provide the same electronic communications service to approximately the same users.

(3) Notwithstanding subparagraph (2), the acquiring communications provider shall continue to meet any requirement referred to in subparagraph (1) that the communications provider from whom the electronic communications apparatus was acquired was obligated to meet.

New software

9 (1) When a communications provider installs new software for any electronic communications apparatus that the communications provider operates, the communications provider shall meet the requirements under paragraphs 2 and 3(2) and (3) in respect of that electronic communications apparatus to the extent that the communications provider would be enabled to meet those requirements by the installation

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of the software in the form available from the software's manufacturer that would most increase the communications provider's ability to meet those requirements.

(2) Subparagraph (1) applies even if the form of the software in question would require the communications provider to acquire additional software licences or electronic communications facilities to achieve that increased ability.

Maximum capacity limit

10 A communications provider is not required, under paragraphs 6 to 8, to increase the communications provider's capability to enable simultaneous interceptions beyond the maximum capacity limit referred to in paragraph 3.

Order suspending obligations

11 (1) The Minister may, by order made on the application of a communications provider, suspend in whole or in part any obligation of the communications provider to meet a requirement under paragraph 2 or 3(2) or (3) that would arise from the operation of paragraph 7 or 8.

(2) Before making an order, the Minister shall take into account the public interest in national security and law enforcement and the commercial interests of the communications provider as well as any other matter that the Minister considers relevant.

(3) The Statutory Instruments Act 1977 does not apply to an order issued under subparagraph (1) in respect of an individual communications provider.

Minister may issue directive

12 (1) The Minister may, at the request of the Minister responsible for public safety, if in the Minister's opinion it is necessary to do so, issue a directive to a communications provider requiring that communications provider—

- (a) to comply with any obligation under paragraphs 2 and 3(2) and (3) in a manner or within a time that the Minister specifies;
- (b) to comply, in a manner or within a time that the Minister specifies, with any confidentiality or security measures respecting interceptions that the Minister specifies; or
- (c) to meet a requirement under paragraph 2 or 3(2) or (3) in respect of electronic communications apparatuses operated by the communications provider that the communications provider would not otherwise be required to meet.

(2) Section 6 of the Statutory Instruments Act 1977 does not apply to a directive issued under subparagraph (1).

Mandatory reporting — acquisition of electronic communications apparatus

13 (1) A communications provider that acquires electronic communications apparatus referred to in paragraph 8(2) shall, before using it in providing electronic

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communications services, submit to the Minister a report containing the following information—

- (a) the prescribed information concerning the extent to which the communications provider meets the requirements under paragraphs 2 and 3(2) and (3) in respect of the electronic communications apparatus; and
- (b) any prescribed information relevant to the administration of this Act.

(2) A communications provider shall, at the request of the Minister, submit a report or further report in the form and manner, and within the period, that the Minister specifies containing the information referred to in paragraphs (1)(a) and (b) and any additional related information that the Minister specifies.

(3) Every report submitted under this paragraph must include a written statement certifying—

- (a) that it does not contain any untrue statements or omissions of material facts;
- (b) that it fairly presents the communications provider's operations at the time of submission;
- (c) that the signatory has taken steps to ensure the report's accuracy and undertakes—
 - (i) to correct any material error that is detected in the report after its submission; and
 - (ii) to submit a revised report to the Minister as soon as possible, with another similar written statement accompanying it.

(4) The statement must be signed—

- (a) if the communications provider is a corporation, by one of its officers or directors; and
- (b) in any other case, by an individual who is an owner of the communications provider or by an officer or a director of a corporation that is an owner of the communications provider.

Exemption order

14 (1) The Minister may, after consultation with the Minister responsible for public safety, by order, exempt any class of communications provider from all or part of the obligations under paragraphs 2, 3(2) and (3), 6 to 8, 13 or under any regulations made for the purposes of any of those paragraphs.

(2) Before making an order under subparagraph (1) the Minister shall take into consideration—

- (a) whether compliance with the assistance capability requirements is reasonably achievable through application of technology available within the compliance period;

- (b) the extent to which the exemption would adversely affect national security or law enforcement;
 - (c) whether the communications providers can comply with the obligations from which they would be exempted;
 - (d) whether the costs of compliance with those obligations would have an unreasonable adverse effect on the business of the communications provider; and
 - (e) whether compliance with those obligations would unreasonably impair the provision of electronic communications services to the public or the competitiveness of Bermuda's electronic communications industry.
- (3) An order under this paragraph shall be subject to such conditions as the Minister may impose and shall extend for no longer than the earlier of—
- (a) the date determined by the Minister as necessary for the communications provider to comply with the assistance capability requirements; or
 - (b) the date that is two years after the date on which the order was granted.
- (4) An order made under this paragraph shall be subject to the negative resolution procedure.

Extension of compliance date for electronic communications apparatus, facilities and services

15 (1) A communications provider proposing to install or deploy, or having installed or deployed, any electronic communications apparatus, facility or service prior to the date that this paragraph comes into operation may petition the Minister for one or more extensions of the deadline for complying with the requirements under paragraph 2.

(2) The Minister may, after consultation with the Minister responsible for public safety, grant an extension if the Minister determines that compliance with the requirements under paragraph 2 is not reasonably achievable through application of technology available within the compliance period.

- (3) An extension under this paragraph shall extend for no longer than the earlier of—
- (a) the date determined by the Minister as necessary for the communications provider to comply with the assistance capability requirements; or
 - (b) the date that is two years after the date on which the extension is granted.

Enforcement orders

16 (1) The Supreme Court, on application by the Attorney-General, may issue an enforcement order—

- (a) directing a communications provider to comply with any of the requirements of any of paragraphs 2, 3(2) and (3) and 6 to 9 forthwith; or

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- (b) directing a provider of electronic communications support services to the communications provider to furnish forthwith any modifications necessary for the communications provider to comply with the requirements of paragraph 2 or 3(2) or (3).
- (2) The Supreme Court may only issue an order under subparagraph (1) if it finds that—
- (a) the communications provider has failed to comply with any of paragraphs 2, 3(2) or (3) or 6 to 9;
 - (b) alternative technologies or capabilities or the facilities of another communications provider are not reasonably available to the Police for implementing the interception of communications or access to call-identifying information; and
 - (c) compliance with the requirements of this Schedule is reasonably achievable through the application of available technology to the electronic communications facility or service at issue or would have been reasonably achievable if timely action had been taken.
- (3) Upon issuing an order under subparagraph (1), the Supreme Court shall specify a reasonable time and conditions for complying with its order, considering—
- (a) the good faith efforts of the communications provider or provider of electronic communications support services to comply in a timely manner;
 - (b) any effect on the ability of the communications provider or provider of electronic communications support services to continue to do business;
 - (c) the degree of culpability of the communications provider or provider of electronic communications support services or their delay in making efforts to comply; and
 - (d) such other matters as justice may require.

Civil penalty

17 (1) Where an order is issued under paragraph 16 against a communications provider or a provider of electronic communications support services, the Supreme Court may impose a civil penalty of up to \$10,000 per day for each day—

- (a) after the order is issued that the communications provider or provider of electronic communications support services is in contravention of it; or
 - (b) after such future date as the Court may specify that the communications provider or provider of electronic communications support services is in contravention of the order.
- (2) In determining whether to impose a civil penalty and its amount, the Supreme Court shall take into account—

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- (a) the nature, circumstances, and extent of the contravention and degree of culpability of the communications provider or provider of electronic communications support services;
- (b) the ability of the communications provider or provider of electronic communications support services to pay and any effect the penalty may have on their ability to continue to do business;
- (c) the good faith efforts of the communications provider or provider of electronic communications support services to comply in a timely manner and the length of any delay in undertaking efforts to comply; and
- (d) such other matters as justice may require.

Record keeping requirements

18 (1) A communications provider shall keep—

- (a) accurate records of subscriber information and changes to that information as they arise; and
- (b) a separate database containing the names and addresses of all subscribers to which the communications provider provides electronic communications services, the type of services provided and, where applicable, information concerning the communication device used by the subscriber.

(2) The communications provider shall, on demand by an inspector designated under section 8(1), provide access to the subscriber records and database referred to in subparagraph (1).

(3) For the purposes of inspecting the subscriber records and database, an inspector shall have all the powers, and a communications provider shall have all the duties, referred to in sections 8(2) to (4).

(4) A communications provider shall keep information entered on subscriber records or the subscriber database available for inspection for a period of at least one year after the date on which the information was entered or modified.

Provision of subscriber information to Police

19 (1) A communications provider shall extract from the database referred to in paragraph 18, and provide to the Police, a database containing the prescribed subscriber information.

(2) If there is any change in the subscriber information or records maintained by the communications provider under paragraph 18, the communications provider shall immediately—

- (a) update the database referred to in subparagraph (1); and
- (b) provide the updated information to the Police.

Failure to comply with directive

20 A communications provider that refuses or fails to comply with a directive issued to it by the Minister under paragraph 12 is guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$5,000 for each day during which the refusal or failure continues.

Contravention of paragraph 13 an offence

21 A communications provider that fails to comply with the reporting requirements of paragraph 13 commits an offence and is liable on summary conviction to a fine of \$5,000 per day for each day that the communications provider fails to comply.

Contravention of paragraph 18 an offence

22 A communications provider that fails to comply with the record keeping requirements of paragraph 18 commits an offence and is liable on summary conviction—

- (a) in the case of a failure to comply with paragraph 18(1), to a fine of \$5,000 per day for each day that the communications provider fails to comply; and
- (b) in the case of a failure to comply with paragraph 18(2), to a fine of \$25,000.

Contravention of paragraph 19 an offence

23 A communications provider that fails to comply with the requirements of paragraph 19(1) or (2) commits an offence and is liable on summary conviction to a fine of \$5,000 per day for each day that the communications provider fails to comply.

Regulations

24 (1) The Minister may, after consultation with the Minister responsible for public safety, make regulations for the carrying out of the purposes and provisions of this Schedule and in particular, without prejudice to the generality of the foregoing, respecting the obligations of communications providers under this Schedule including—

- (a) the requirements referred to in paragraphs 2 and 3(2) and (3) and the obligations to be performed by communications providers under those paragraphs;
- (b) the time, manner and form in which an intercepted communication must be provided to the Police;
- (c) the information to be provided in reports required under paragraph 13 and the time, manner and form for providing that information; and
- (d) the content of the subscriber information to be contained in the database referred to in paragraph 19 and the time, manner and form in which it must be provided to the Police.

(2) Regulations made under this paragraph may provide that contraventions of specified provisions of such regulations shall be an offence and may provide penalties—

- (a) not exceeding a fine of \$10,000; and

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(b) in the event of a continuing offence, a further fine of \$1,000 for each day during which the offence continues.

(3) The negative resolution procedure shall apply to regulations made under this paragraph.

Transitional provision

25 (1) Until such time as regulations are made under paragraph 24, a communications provider shall provide to the Police, on demand from an officer above the rank of inspector, any information in the communication provider's possession concerning a subscriber's name, address, telephone number and information concerning the communication device used by the subscriber.

(2) A police officer may only make a demand under subsection (1) in performing a duty of the Police, including any duty related to the enforcement of the laws of Bermuda or a foreign jurisdiction.

Commencement

26 (1) This Schedule shall come into operation on such day or days as the Minister may appoint, under section 86, by notice published in the Gazette.

(2) For the avoidance of doubt, this Schedule may come into operation in respect of Information Service Providers on a date or dates later than the date or dates on which it comes into operation in respect of other communications providers.

(3) In this paragraph, "Information Service Provider" means a communications provider that offers a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via electronic communications, including—

- (a) a service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;
- (b) software-based services that enable the sharing of data, images, sound, writing, or other information among computing devices controlled by the senders or recipients of the messages; and
- (c) electronic publishing,

but does not include a communications provider that offers such capability only for its internal management, control, or the operation of its electronic communications network.

[Other than Schedule 2 in its application to Information Service Providers (as defined in paragraph 26 of that Schedule), this Act shall come into operation on 28 January 2013 - see BR 3 / 2013]

[Assent Date: 18 December 2011]

[Operative Date: 28 January 2013]

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Amended by

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