

TELECOMMUNICATIONS AMENDMENT ACT 2001



BERMUDA

2001 : 28

TELECOMMUNICATIONS AMENDMENT ACT 2001

[Date of Assent: 13 August 2001]

[Operative Date: 13 August 2001]

WHEREAS it is expedient to amend the Telecommunications Act 1986:

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:—

Citation

1 This Act which amends the Telecommunications Act 1986 (hereinafter referred to as "the principal Act") may be cited as the Telecommunications Amendment Act 2001.

Amends section 2 of principal Act

2 Section 2 of the principal Act is amended—

- (a) in the definition of "Carrier", by deleting all the words beginning with "means a person" and ending with "who provides" and substituting the words "means a person to whom a licence has been granted pursuant to section 9(1) of the Act and includes a person who provides";
- (b) by deleting the definition of "public telecommunication service" and substituting the following—

TELECOMMUNICATIONS AMENDMENT ACT 2001

"public telecommunication service" means the provision, whether by one person or by a number of persons jointly, of telecommunication services to members of the public upon payment of a fee;"

- (c) by inserting next after the definition of "Department" the following—

"Director" means the Director of Telecommunications referred to in section 6(2);" and

- (d) by deleting the definition of "telecommunication installation" and substituting the following—

"telecommunication apparatus" means equipment used for telecommunications;"

Amends section 3 of principal Act

3 Section 3 of the principal Act is amended by deleting subsection (6) and substituting the following—

"(6) This Act shall not apply or have effect in relation to any radio receiving apparatus which is designed primarily for the direct reception and use by members of the public of the transmissions of broadcasting services."

Amends section 7 of principal Act

4 Section 7 of the principal Act is amended in subsection (2), by deleting all the words beginning with "Initially" and ending with "one year".

Amends section 9 of principal Act

5 Section 9 of the principal Act is amended—

- (a) by deleting subsection (1) and substituting the following—

"(1) Subject to subsection (3A), no person shall establish, maintain or operate a public telecommunication service in Bermuda without first obtaining the grant of a licence from the Minister under this Act or without being authorized by law."; and

- (b) in subsection (3), by inserting next after paragraph (ii) the following—

"(iii) possess or use telecommunications apparatus that transmits or receives information by means of wireless light signals."

TELECOMMUNICATIONS AMENDMENT ACT 2001

Amends section 10B of principal Act

6 Section 10B of the principal Act is amended—

(a) by inserting next after subsection (1) the following—

"(1A) Where—

- (a) pursuant to subsection (1) (a) (ii), a secretary submits to the Minister a copy of the financial statement and auditor's report of a public telecommunication service; and
- (b) the Minister considers it necessary or expedient so to do,

the Minister may require the secretary to allow the Director or the Commission, or both, to review the books and financial or other records of the public telecommunication service, and for this purpose, to allow physical access to its premises during ordinary business hours."; and

(b) by deleting subsection (2) and substituting the following—

"(2) A secretary who—

- (a) contravenes subsection (1); or
- (b) refuses to allow the Director or the Commission to review the books and financial or other records of a public telecommunication service; or
- (c) refuses access to the premises of a public telecommunication service for the purpose of such review,

is guilty of an offence and is liable, on conviction by a court of summary jurisdiction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding six months, or to both such fine and imprisonment."

Amends section 13 of principal Act

7 Section 13 of the principal Act is amended—

(a) in subsection (3), by deleting the words "and the applicant" and substituting the words "the applicant and any party having an interest in the application may"; and

TELECOMMUNICATIONS AMENDMENT ACT 2001

- (b) in subsection (4), by deleting all the words beginning with "(other than" and ending with "broadcasting service)".

Amends section 21 of principal Act

8 Section 21 of the principal Act is amended—

- (a) by deleting subsections (1) and (2) and substituting the following—

"(1) Subject to this section, it shall be the duty of every Carrier—

- (a) to furnish telecommunication service upon any reasonable request therefor and upon reasonable terms and conditions;
- (b) to establish, upon reasonable terms and conditions, interconnection, at any technically feasible point within its network, with other Carriers; and such interconnection shall be at least equal in quality to that provided to itself, a subsidiary, affiliate or any other Carrier, to which it provides interconnection;
- (c) to provide, on reasonable terms and conditions, for physical collocation of interconnection at its premises;
- (d) to establish, and provide facilities for operating, through routes, on reasonable terms and conditions;
- (e) subject to subsection (1A), to maintain the confidentiality of any information provided by a customer or another Carrier;
- (f) to refrain from any act or practice which is intended, or is likely, to have the effect of lessening competition;
- (g) to refrain from marketing practices or advertisements which are false or misleading in a material respect;
- (h) to provide to other Carriers, upon reasonable terms and conditions, access to support structures including telephone poles,

TELECOMMUNICATIONS AMENDMENT ACT 2001

underground conduits and communication towers;

(i) to maintain existing services unless permitted by the Commission to discontinue such services;

(j) to display—

(i) in a conspicuous place in the Carrier's principal place of business or in such other place as may be specified in writing by the Minister; and

(ii) in such a manner that all the terms and conditions subject to which the licence is granted are visible and legible,

every licence granted under this Act or authorized by law to establish, maintain or operate a public telecommunication service;

(k) to submit to the Commission either prior to, or not later than ten days after, execution, and in such form as the Commission may specify, copies of all agreements in respect of interconnection or access to support structures between that Carrier and another Carrier, including any amendments to any existing agreements between Carriers.

(1A) Subsection (1)(e) does not apply—

(a) where one Carrier wishes to transfer certain classes of services to another Carrier;

(b) in respect public telecommunication services which are directly connected with the delivery of emergency services; or

(c) where in the special circumstances of a particular case the Minister determines that it is in the public interest that such confidentiality should not apply.

(2) A carrier shall comply with a request under paragraph (1)(a), (b), (c) or (d) within thirty days of the request being made or within such longer period as the Commission may allow, and a Carrier is not relieved of the duty imposed by those paragraphs by reason only of the Carrier's inability to comply with the request within the time specified."

TELECOMMUNICATIONS AMENDMENT ACT 2001

Amends section 22 of principal Act

9 Section 22 of the principal Act is amended by inserting next after subsection (7) the following—

"(7A) If the Commission fails to render a decision within the time specified in subsection (7), the parties to the dispute may—

- (a) jointly agree to negotiation or mediation; or
- (b) jointly agree to submit the dispute to binding arbitration in accordance with the provisions of the Arbitration Act 1986."

Amends section 24 of principal Act

10 Section 24 of the principal Act is amended—

- (a) in subsection (1)(h), by inserting next after the word "new" where it first appears the words "service or"; and
- (b) in subsection (2)(vi), by inserting next after the word "overseas" the words "including the likely impact of a new service on other Carriers".

Amends section 25 of principal Act

11 Section 25 of the principal Act is amended by deleting subsection (2) and substituting the following—

"(2) For the purposes of an appeal under subsection (1) the Commission shall, at the time of giving, or not later than three working days after the date on which it gives, a direction, give reasons, in writing, for the direction."

Amends section 26 of principal Act

12 Section 26 of the principal Act is amended by deleting subsection (1) and substituting the following—

"(1) It shall be unlawful for any Carrier to make any unjust or unreasonable discrimination in rates, charges, practices, classifications, regulations, facilities, or services, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, Carrier or class of person, or locality, or subject any particular person, Carrier or class of person or locality, to any undue or unreasonable prejudice or disadvantage."

TELECOMMUNICATIONS AMENDMENT ACT 2001

Inserts new section 28B in principal Act

13 The principal Act is amended by inserting next after section 28A the following new section—

"Apparatus standards

28B No telecommunication apparatus shall be imported into Bermuda unless such apparatus meets the standards of—

- (a) the Federal Communications Commission of the United States of America;
- (b) the Canadian Standards Association International; or
- (c) the International Telecommunications Union."

Repeals section 37 of principal Act

14 Section 37 of the principal Act is repealed.

Repeals and replaces section 39 of principal Act

15 Section 39 of the principal Act is repealed and replaced by the following—

"Contravention of section 9 an offence

39(1) A person who contravenes section 9 is guilty of an offence and is liable—

- (a) on conviction by a court of summary jurisdiction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment; or
- (b) on conviction on indictment to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years, or to both such fine and imprisonment.

(2) Where any such offence is a continuing offence, the person guilty of the offence shall, in addition to any punishment provided in this section, be liable in respect of each day during which the offence continues to a fine of \$5,000,00."

Inserts new section 42A in principal Act

16 The principal Act is amended by inserting next after section 42 the following new section—

"Contravention of section 21 an offence

42A Any person who contravenes any provision of section 21(1), (2) or (8) is guilty of an offence and is liable on conviction by a court of summary jurisdiction to a fine not exceeding \$50,000."

TELECOMMUNICATIONS AMENDMENT ACT 2001

Amends section 53A of principal Act

17 Section 53A of the principal Act is amended by deleting the definition of "callback telecommunication service" and substituting the following—

"callback telecommunication service" means a telecommunications service offered to a customer within Bermuda which enables that customer to make a telecommunication from Bermuda to a place outside Bermuda, where such service is not initiated, processed and billed through a facilities-based telecommunications Carrier licensed in Bermuda to provide such a telecommunications service from Bermuda to a place outside Bermuda; and includes the telecommunication callback services specified in the Third Schedule."

Amends section 60 of principal Act

18 Section 60 of the principal Act is amended—

- (a) in subsection (2), by deleting "twenty one" and substituting "thirty";
- (b) in subsection (3), by deleting the words "On any such" and substituting the words "Subject to subsection (6), on any such";
- (c) by deleting subsection (5) and substituting the following—

"(5) Pending the hearing and determination of an appeal, the Court shall not order a stay of a decision, or direction, of the Minister.

(6) Notwithstanding section 17 of the Crown Proceedings Act 1966, where a person appeals successfully against a decision or a direction of the Minister, then, unless there is evidence of bad faith on the part of the Minister in making the decision or giving the direction, as the case may be, the Court shall not order costs against the Minister."

Amends section 61 of principal Act

19 Section 61 of the principal Act is amended in subsection (8) by inserting next after "hearing" the words "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", and by deleting the words "or investigation".

TELECOMMUNICATIONS AMENDMENT ACT 2001

Amends Second Schedule to principal Act

20 The Second Schedule to the principal Act is amended in paragraph 12 by deleting all the words beginning with "a majority and ending with "three" and substituting the words "not less than four".

Amendment of penalty provisions, etc.

21 The provisions of the principal Act set out in column 1 of the Schedule are amended in the manner set out in column 2 of that Schedule.

TELECOMMUNICATIONS AMENDMENT ACT 2001

**SCHEDULE (section 21)
AMENDMENTS OF PENALTY PROVISIONS, ETC.**

COLUMN 1	COLUMN 2
section 6	Delete "Telecommunications Inspector" and substitute "Director of Telecommunications"
section 15	Insert next after the word "Commission" wherever it appears the words "or Director"
section 18	Delete "Telecommunications Inspector" and substitute "Director of Telecommunications"
section 23A(1)	Insert next after the word "Commission" the words "and on its website, if any"
section 41	Delete "\$500" and substitute "\$5,000"
section 42	Delete "\$500" and substitute "\$5,000"
section 45	Delete "\$2,000", "\$5,000" and "\$1,000" and substitute therefor respectively "\$5,000", "\$10,000" and "\$2,000"
section 46(1)	Delete "\$5,000" and "\$1,000" and substitute therefor respectively "\$10,000" and "\$2,000"
section 47	Delete "\$2,000" and substitute "\$5,000"
section 48	Delete "\$2,000" and substitute "\$5,000"
section 49	Delete "\$1,000" and substitute "\$2,000"
section 50	Delete "\$500" and substitute "\$2,000"

TELECOMMUNICATIONS AMENDMENT ACT 2001

section 51	Delete "\$5,000" and "\$1,000" and substitute therefor respectively "\$10,000" and "\$2,000" Delete "installation" whenever it appears in the heading and in subsections (1) and 2(a) and substitute therefor in each case "apparatus" Delete "installation or" in subsection (2)(b)
section 56	Delete "\$500" and substitute "\$5,000"
section 63(1)(a)	Delete "installations" and substitute "apparatus"

TELECOMMUNICATIONS AMENDMENT ACT 2001
