

MONTSERRAT**NO. 4 OF 2009****INFO-COMMUNICATIONS DEVELOPMENT ACT 2009****ARRANGEMENT OF SECTIONS**

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I ASSENT

Peter Waterworth
Governor

DATE: 9.4.09

MONTSERRAT**NO. 4 OF 2009**

WHEREAS, THE GOVERNMENT OF MONTSERRAT IS COMMITTED TO RESTRUCTURE AND INTEGRATE THE TELECOMMUNICATIONS, INFORMATION TECHNOLOGY AND BROADCAST INDUSTRIES TO FORM AN INFO-COMMUNICATIONS SECTOR TO SERVE AS THE MAIN VEHICLE FOR THE TRANSFORMATION OF THE ISLAND INTO AN INTELLIGENT ISLAND WITH THE NECESSARY AND SUFFICIENT SOCIO-ECONOMIC INFRASTRUCTURE TO ACCELERATE AND SUSTAIN GROWTH AND DEVELOPMENT OF THE ECONOMY, IT IS IMPERATIVE TO ESTABLISH A COMPREHENSIVE LEGAL FRAMEWORK WHICH WOULD ENABLE THE REALIZATION OF A COMPETITIVE INFO-COMMUNICATIONS MARKET BY ALLOWING ENTRY OF NEW PROVIDERS OF TECHNOLOGY NEUTRAL INFO-COMMUNICATIONS NETWORKS WITH THE CAPABILITY TO DELIVER MULTIPLE SERVICES ON A SINGLE PLATFORM UNDER THE MARKET CONDITIONS THAT FACILITATE FAIR COMPETITION.

AND WHEREAS, IT IS NECESSARY THAT AN INFO-COMMUNICATIONS AUTHORITY BE ESTABLISHED WITH TRANSPARENT, NON-DISCRIMINATORY AND FAIR REGULATORY PROCESSES TO: GUIDE THE TRANSFORMATION PROCESS OF THE SECTOR FROM VIRTUAL MONOPOLY, IN WHICH CABLE AND WIRELESS AND CARIBBEAN CABLE COMMUNICATIONS ARE MONOPOLY NETWORK AND SERVICE PROVIDERS IN DIFFERENT SEGMENTS OF THE INFO-COMMUNICATIONS MARKET, INTO A TECHNOLOGY NEUTRAL, FINANCIALLY SUSTAINABLE AND COMPETITIVE ENVIRONMENT; MONITOR AND REGULATE THE CERTAIN BEHAVIOUR IN THE SECTOR; AND, IN PARTICULAR, TO PREVENT ANTI-COMPETITIVE PRACTICES.

AND WHEREAS, A NECESSARY PRE-CONDITION FOR ACHIEVING THESE STATED GOALS IS REPEALING THE EXISTING, OUTDATED TELECOMMUNICATIONS LEGISLATION (AND ANY OTHER LEGISLATION RELATED TO ANY BROADCAST OR INFORMATION TECHNOLOGY SERVICES) AND ENACT NEW LEGISLATION, AS HEREUNDER PROPOSED:

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows—

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Info-Communications Development Act 2009 and shall come into force by Order of the Governor in Council.

Interpretation

“**access**” means the ability of a user or provider to utilize the available network of another provider or user;

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

“**Authority**” means the Info-Communications Authority of Montserrat established under section 4;

“**broadcasting service**” means the offering of the transmission of programmes whether or not encrypted, by any means of an info-communications platform, for reception by the general public;

“**Public Service**” has the meaning assigned to by the Constitution;

“**closed user group**” means a group of persons who have a common business or other economic interest other than the provision of an info-communications service;

“**closed user group service**” means an info-communications service used by a closed user group, operated without interconnection to a public info-communications network;

“**computer**” means an electronic, magnetic optical, electro-chemical or other data processing device performing logical arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include—

(a) an automated typewriter,

(b) a portable hand-held calculator,

(c) a similar device which is non-programmable or which does not contain any data or storage facility,

(d) such other devices as the Governor in Council may prescribe;

“**concession**” means an authorization to operate a public info-communications network or provide a public info-communications service pursuant to section 21;

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

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

“**facility**” means any physical component of an info-communications network, other than terminal equipment used, for the purpose of communication;

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

- “harmful interference”** means interference which endangers the functioning of info-communications so as to impede, degrade, obstruct or interrupt an info-communications service;
- “info-communications”** includes the transmission, emission or reception of signs, signals writing, images, sounds or intelligence of any nature by wire, radio, optical or other electro-magnetic systems whether or not such signs, signals writing, images, sounds or intelligence have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception, and includes any technology employed in collecting, storing, using or sending information involving the use of computer or any telecommunications system;
- “info-communications network”** means a system or any part thereof used for the provision of an info-communications service;
- “info-communications service”** includes voice, data, image sound and any other form of intelligence transmitted over closed user group networks, private networks, or public networks and also includes a radio-communication service;
- “Intelligent Island”** means an island where most of the people have the requisite level of info-communications knowledge and skills that enable them to use info-communications applications to derive solutions to improve their daily lives;
- “interconnection”** means the linking of public info-communications networks and public info-communications services, to allow the users of one provider of a public info-communications service to communicate with the users of another provider of a public info-communications service, and to access the services provided by such other provider;
- “Island”** means Montserrat;
- “licence”** means an authorization granted under section 31;
- “Minister”** means the member of the Executive Council to whom responsibility for info-communications is assigned;
- “network termination point”** means the point designated for connection of equipment by a user to an info-communications network;
- “pension fund plan”** has the meaning assigned to it by the relevant Act;
- “pension law”** has the meaning assigned to it by the relevant Pensions Legislation;
- “private info-communications service”** means an info-communications service used within one enterprise or its affiliates, to satisfy its or their internal needs and operated without any interconnection to a public info-communications network;
- “public info-communications network”** means a communications network used to provide a public info-communications service;
- “public info-communications service”** means any computer technology, telecommunication or broadcasting service, including a public telephone service, offered to members of the general public, whereby one user can communicate with any other user in real time, regardless of the technology or equipment used to provide such service;
- “public telephone service”** means the commercial provision to the public of the direct transport and switching/routing of voice in real time from one point to points at which users are connected to a network such that a user can use terminal equipment to communicate with another user;
- “spectrum”** means the continuous range of electromagnetic wave frequencies used for communication;

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

“**terminal equipment**” means equipment on the user’s side of the network termination point that is connected to an info-communications network and with which a user can originate, process or terminate info-communications services;

“**universal service**” means the provision of info-communications services throughout Montserrat in accordance with the criteria stipulated in section 27;

“**user**” means a customer or a subscriber;

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

“**utility installation owner**” means the owner or operator of any utility installation, and includes any concessionaire or licensee;

“**value added service**” means a service, other than a basic public info-communications service, that is modified in form, content, code, protocol or other similar aspect of the communication, in a manner which restructures, adds or supplies information or permits user interaction with information.

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

(3) The Governor in Council may, by Order, amend this section, subject to negative resolution of Legislative Council.

Objects of the Bill

3. This Bill is purposed on establishing conditions for—

- (a) encouraging competitive markets for info-communications networks and services, including conditions for fair competition in such markets;
- (b) facilitating the orderly development of an info-communications system that serves to safeguard, enrich and strengthen the national, social, cultural and economic well being of the society;
- (c) promoting and protecting the interests of the public by—
 - (i) promoting access to info-communications services delivered over technology platforms;
 - (ii) ensuring that services provided to subscribers meet the financial and technical obligations stipulated for those services;
 - (iii) providing for the protection of customers;
 - (iv) promoting the interests of customers, purchasers and other users in respect of the quality and variety of info-communications services and equipment supplied;
 - (v) ensuring that competition is introduced and managed in a manner which does not lead to unsustainable economic situations for suppliers and consumers of info-communications networks and services.
 - (vi) promoting a regulatory framework that is transparent, non-discriminatory and fosters innovation, investment and affordable access to info-communications services for all persons in Montserrat, to the extent that is reasonably practicable to provide such access;

- (d) facilitating the achievement of the objects referred to in paragraphs (a) and (b) in a manner consistent with existing international commitments in relation to the liberalization of info-communications market;
- (e) promoting the info-communications industry in Montserrat by encouraging investment in, and the use of, infrastructure to provide info-communications services;
- (f) ensuring regulatory flexibility and technology neutrality in a manner that supports legacy and internet protocols network and any other network that evolves; and
- (g) regulating info-communications activities on the Island within the parameters of the law in order to achieve and sustain fair competition for purposes of the public good.

PART II

THE INFO-COMMUNICATIONS AUTHORITY

Establishment of the Authority

4. (1) There is hereby established a body corporate to be known as the Info-Communications Authority of Montserrat (hereinafter referred to as “the Authority”) with perpetual succession and shall by that name be capable of—

- (a) suing and be sued;
- (b) acquiring, owning, holding and developing and disposing of property both movable and immovable; and
- (c) doing such other acts a body corporate may do or suffer.

(2) The Authority shall have a common seal which may, from time to time, be broken, altered, or make anew as the Authority thinks fit.

(3) All courts, judges, and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed.

Management of Authority by Board

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

Composition of Board

6. (1) The Board shall consist of at least three (3) members but not more than five (5) appointed by the Governor in Council, one of whom shall be appointed Chairman on such terms and conditions as the Governor in Council may determine.

(2) Of the members appointed under subsection (1)—

- (a) at least one member shall be qualified, by reason of training and experience, in an info-communications discipline;
- (b) one member shall be an Attorney-at-law within the meaning of the Legal Profession.

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

(4) The Chairman may at any time resign his office as Chairman or as a member of the Board or both by letter addressed to the Governor in Council.

(5) A member of the Board may at any time resign by letter addressed to the Chairman who shall forthwith cause it to be forwarded to the Governor in Council.

(6) The appointment of any person as member of the Board and the termination thereof whether by death, resignation, revocation, effluxion of time or otherwise, shall be notified in the *Gazette*.

(7) The Governor in Council may terminate the appointment of a member of the Board where the member—

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

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

(9) A person appointed pursuant to subsection (8), may complete any unfinished business of the Authority in which the person has taken part, notwithstanding the resumption of duty of the Board member in whose place the person was appointed under this subsection.

(10) Section 15 applies mutatis mutandis to a person appointed under subsection (8).

Corporate Secretary

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

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

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

(4) Service upon the Authority of any document, by facsimile or other electronic means, shall be supported by hard copy as soon as possible thereafter.

(5) The Board may terminate the appointment of the Secretary where the person—

- (a) becomes of unsound mind or is incapable of carrying out his duties;
- (b) is convicted of any offence which brings the Authority into disrepute;
- (c) is found guilty of misconduct or inefficiency in relation to his duties or under section 15, subject to a process consistent with good industrial relations practices.

Executive manager

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

(2) Any subsequent renewal or extension of the term of office of the Executive Manager shall not exceed three-year durations.

(3) The Executive Manager shall—

(a) manage the affairs of the Authority subject to the directions of the Board;

(b) attend all meetings of the Board and take part in its deliberations but he shall have no right to vote.

(4) The Board may terminate the appointment of the Executive Manager where the person—

(a) becomes of unsound mind or is incapable of carrying out his duties;

(b) is convicted of any offence which brings the Authority into disrepute;

(c) has been declared bankrupt;

is found guilty of misconduct or inefficiency in relation to his duties or under section 15, subject to a process consistent with good industrial relations practices.

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

Absence from office of Executive Manager

9. (1) Where a vacancy arises in the office of the Executive Manager either—

(a) by a resignation, termination of appointment; or

(b) by absence approved by the Board, the Board shall appoint a person to act as Executive Manager.

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

(a) shall have and may exercise all the powers and perform all the functions of the Executive Manager;

(b) shall receive the same remuneration as the Executive Manager during the period of his acting; and

(c) shall, where the vacancy arose as a result of a resignation or termination, continue to act until such time as an Executive Manager is appointed, such appointment to be no later than six months from the date of the acting appointment.

Seal

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

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

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

Ordinary Meetings

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

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

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

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

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

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

(7) Copies of the confirmed Minutes referred to in subsection (6), shall be made available to the Minister.

Special meetings

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

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

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

Quorum

13. At any meeting of the Board, two (2) of its members shall constitute a quorum where the number of persons appointed to the Board is three (3) or three (3) where the number of persons appointed to the Board is greater than three (3).

Decisions of the Board

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

Disclosure of interest

15. (1) Every member of the Board shall, on appointment and annually thereafter, submit to the Governor in Council through the Minister a declaration stating whether or not he has an actual or contingent pecuniary interest—

(a) in any network or service regulated by the Authority; and

(b) in any business or any business entity carrying on any business with the Authority in the exercise of its functions.

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

(3) In respect of any matter which, pursuant to the provisions of this Act, requires the Board to seek the approval of any office a disclosure by the office holder pursuant to subsection (2) shall preclude such person from withholding that approval.

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

(a) not take part after disclosure in any deliberation or decision of the Board with respect to that matter; and

(b) be disregarded for the purpose of constituting a quorum of the Board.

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

(6) In this section, “**relative**” means spouse, cohabitant within the meaning of the relevant Legislation, father, mother, brother, sister, son or daughter of a person.

(7) Any person to whom this section applies who fails to comply with the provisions of this section commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars (\$250,000.00).

Inducement collusion, concealment or connivance

16. The provisions of any existing Legislation apply where a member of the Board or an employee of the Authority demands or accepts any fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, from any person, on account of anything done or to be done, omitted or to be omitted by such person, in any way relating to his office or employment, or if such a person attempts to make any collusive agreement to neglect his duty or to conceal or connive at any act whereby any provision of this Act or any other law may be evaded or violated, such person commits an offence and is liable, on summary conviction, to a fine of not less than two hundred and fifty thousand dollars(\$250,000.00) and imprisonment for two years.

Personal liability of members

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

(a) any act or omission of the Board; or

(b) anything done or permitted in good faith in the course of the operations of the Authority under this Act.

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

Functions of the Authority

18. (1) Subject to the provisions of this Act, the Authority may exercise such functions and powers as are imposed on it by this Act and in particular to—

(a) promote the efficiency and regional and international competitiveness of the info-communications industry in Montserrat;

(b) ensure that info-communications services are reasonably accessible to all people in Montserrat and are provided as economically as practicable and at performance and standards that meet the social, industrial and commercial needs of Montserrat;

- (c) promote effective participation of all segments of the info-communications industry on the Island in the domestic, regional and international markets;
- (d) serve as the national, regional and international representative body of Montserrat in respect of info-communications matters;
- (e) advise the Government on national needs and policies in respect of all info-communications technology matters and those pertaining to the Authority in general;
- (f) make recommendations to the Governor in Council through the Minister on the granting of concessions and monitor and ensure compliance with the conditions set out therein;
- (g) exercise licensing functions, and regulatory functions in respect of info-communications systems and services in Montserrat, including establishment of standards and codes relating to equipment attached to info-communications systems, and any software or software used as an adjunct to or in conjunction with such systems and the monitoring of access to such equipment and software;
- (h) exercise licensing and regulatory functions in respect of the allocation and use of satellite orbits and allocation, reallocation and monitoring of radio frequency spectrum in Montserrat for all purposes, including the establishment of standards and codes relating to any matter connecting therewith;
- (i) exercise licensing and regulatory functions in respect of installation, use and provision of undersea cable, cable frontier stations and satellite stations, receivers and transmitters in Montserrat and all equipment used in connection therewith;
- (j) where required by the Minister, use its facilities to provide training for the purpose of advancing the skill and knowledge of persons in Montserrat in any area of the info-communications industry where the Authority has developed the requisite skill and knowledge to undertake such training;
- (k) promote, develop, facilitate and implement info-communications systems and services for Government, ministries, departments and agencies;
- (l) advise on, establish and maintain standards of education and training in info-communications technology in Montserrat;
- (m) establish and maintain, to the extent permitted by any law, standards and codes for monitoring and regulating of such aspects of info-communications technology, data privacy and protection as the Authority thinks fit;
- (n) promote the use of Internet and electronic commerce, the acceptance of info-communications technology in Montserrat and establish regulatory framework for that purpose;
- (o) provide consultancy and advisory services concerning info-communications technology;
- (p) determine universal service obligations throughout the Island, pursuant to section 27, and ensure that such obligations are realised;
- (q) ensure compliance with the Convention;
- (r) determine and approve prices, charges and tariffs for provision of info-communication services and facilities and bill and collect all fees, including concession and license fees, numbering fees and any other charges levied under this Act;
- (s) investigate and resolve all allegations of harmful interference;

- (t) investigate complaints by users, operators of info-communications services or other persons arising out of the operation of a public info-communications network, or the provision of public info-communications networks, providers of info-communications services, in respect of rates, billings and services provided generally and to facilitate relief where necessary; and
 - (u) implement and enforce the provisions of the Act and the policies, regulation and rules made hereunder.
- (2) In the performance of its functions the Authority shall have regard to—
 - (a) efficiency and economy;
 - (b) the social, industrial and commercial needs of Montserrat for info-communications services;
 - (c) the state and trends in the development of info-communications technology and the evolution of international standards and protocols in the info-communications industry;
 - (d) ongoing convergence among broadcasting, telecommunication and computing platforms and the need to accommodate technology applications which are driving such change;
 - (e) improvement in the effective and efficient use of radio frequency spectrum;
 - (f) fair treatment of consumers and service providers similarly situated;
 - (g) respect of consumers similarly placed, to non-discrimination in relation to access, pricing and quality of service; and
 - (h) national environmental policy.
- (3) In the performance of its functions under subsection (1)(b), (c), (e), (h) and (r) and any other provisions of the Act as the Authority shall have discretion to adopt procedures by which would—
 - (a) afford interested parties and the public opportunities for consultation;
 - (b) permit affected persons and the public to make appropriate submissions to the Authority.
- (4) At all times, the Authority shall, in the performance of its functions and duties and exercise of its powers, act in an objective, transparent and non-discriminatory manner.

Directions by the Minister

19. Subject to the provisions of this Act or any other written law, the Minister may give written directions to the Authority on matters of general public policy and the Authority shall give effect to such directions.

Assets transferred to the Authority

20. (1) The Government shall transfers assets to the Authority to assist with commencement of its operation and/or thereafter.

(2) Where the Government transfers assets under subsection 1 the Auditor General shall within thirty (30) days of the date of transfer cause an audit of the assets vested in the Authority.

(3) The Auditor General shall within thirty (30) days of completion of the audit cause a copy of the audited statement together with an inventory to be laid in Legislative Council or if Legislative Council is not then in session, within thirty days after commencement of its next session.

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

PART III CONCESSIONS

Requirement for a concession

21. (1) No person shall operate a public info-communications network, provide a public info-communications service without a concession granted by the Governor in Council and issued by the Authority.

(2) A person who wishes to operate a network or provide a service described in subsection (1), shall apply to the Authority in accordance with procedures set out in the rules established by the Authority for that purpose.

Conditions applicable to all concessions

22. (1) All concessions shall conform to the regulations and rules made under this Act and provisions of the concession.

(2) The approval of the concession as required under section 21 shall not be unreasonably withheld.

Conditions applicable to a concession for a broadcasting service

23. In addition to the conditions stipulated in section 22, a concession specific to broadcasting service shall require the concessionaire to adhere to broadcasting principles which do not violate the Constitution.

Interconnection

24. (1) A concession for a public info-communications network or a public info-communications service shall also include conditions obliging the concessionaire to provide for—

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

(2) A concession shall also require the concessionaire to—

- (a) comply with the relevant regulations and rules made under this Act and terms and conditions of the concession to facilitate interconnection;
- (b) provide, upon request, a point or points of interconnection in addition to those offered generally to other concessionaires and which are technology neutral, subject to rates that reflect the concessionaire's economic cost of constructing additional facilities necessary to satisfy such request;

- (c) publish, in such manner as the Authority may decide, the prices and the technical and other terms and conditions pertaining to its offer for the elements of interconnection;
- (d) provide the elements of interconnection, to other concessionaires of public info-communications networks and public info-communications services, in a manner that is technology neutral and at least equal in both quality and rates to that provided by the concessionaire to a subsidiary, affiliate or any other party to which the concessionaire provides interconnection;
- (e) promptly negotiate, upon the request of another concessionaire of a public info-communications network or a public info-communications service, and endeavour to conclude an agreement with regard to the prices and the technical and other terms and conditions to effect interconnection within a period set forth in the concession or the interconnection regulations.
- (f) deposit with the Authority a copy of any agreement concluded pursuant to subsection (2) (e) within twenty-eight (28) days of its making;
- (g) offer the terms and conditions of an agreement concluded pursuant to subsection (2)(e) to any other concessionaire of a public info-communications network or public info-communications service on a non-discriminatory basis;
- (h) submit to the Authority for prompt resolution, in accordance the Dispute Resolution Rules made under this Act any disputes that may arise with another concessionaire relating to any aspect of interconnection, including the failure to conclude an agreement made pursuant to subsection (2)(e) or disputes as to price and any technical or other term and condition for any element of interconnection;
- (i) provide, to the extent technically feasible, number portability when required to do so and in accordance with the rule of the Authority;
- (j) provide, to the extent feasible, dialing parity to other concessionaires of public info-communications networks and public info-communications services in accordance with the rule made by the Authority;
- (k) permit other concessionaires of public info-communications networks and public info-communications services to have equal access to numbers, operator services, directory assistance and directory listing without unreasonable delay, in accordance with rule made by the Authority; and
- (l) offer cost-based prices for a bundle or individual network elements to other concessionaires as they require.

Access to facilities

25. (1) Subject to the provisions section 18 and of this section, it shall be a further condition of a concession for a public info-communications network or service that the concessionaire be required to provide other concessionaires with access to the facilities that it owns or controls and such access not be unreasonably withheld.

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

(3) A concessionaire may deny access only where the Authority determined that there is insufficient capacity in the facility, taking into account its reasonably anticipated requirements and its obligations pursuant to section 26, or, for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(4) Pursuant to its powers under section 18 (1)(r) the Authority may regulate the rates, terms and conditions for access to any facility, such rates, terms and conditions should be just and reasonable and shall be negotiated between the parties unless a situation arises which necessitates the Authority's intervention to determine such rates, terms and conditions.

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

Government essential services

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

Universal service

27. (1) In the exercise of its powers under section 18 (1)(b) and (p), the Authority shall in accordance with the policy set by the Minister determine the public info-communications services to which universal service shall apply.

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

(3) The policy in reference at subsections (1) and (2) may require that closed user group services, private info-communications services and value added services as well as the users of such services and all info-communications services generally, contribute to the funding of universal service.

(4) Obligations to provide and contribute to the funding of the services referred to in subsection (1) shall be applied on a non-discriminatory basis as between all similarly situated info-communications service providers and users.

Prices

28. (1) Prices for info-communications services, except those regulated by the Authority in accordance with this section, shall be determined by market conditions.

(2) In the exercise of its powers under section 18 (1)(r), the Authority in making pricing rules for info-communications services, may take into consideration any case where—

- (a) a concessionaire operating a public info-communications network or providing a public info-communications elects to bundle services.
- (b) evidence indicate anti-competitive pricing or acts of unfair competition; or
- (c) prices for outgoing international info-communications services are significantly above the costs of providing such services.

(3) Such rules made pursuant to subsection (2), shall require rates to be fair and reasonable and shall prohibit unreasonable discrimination among similarly situated persons.

(4) Prices and related terms and conditions for public info-communications services shall be published by concessionaires at such times and in such manner as the Authority shall set forth in its pricing rules and shall thereafter, subject to this Act and the conditions of any concession, be the lawful prices and related terms and conditions for such services.

Termination, suspension or amendment of concession

29. (1) Subject to this section, the Governor in Council, on the recommendation of the Authority, may suspend a concession where—

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

(2) Where the Authority is satisfied that a concessionaire whose operation has been suspended under this subsection has taken the necessary measures and has given a written promise to comply as required by this subsection the Authority shall recommend to the Governor in Council that such operation be resumed and the Governor in Council shall issue an order of resumption on terms and conditions he may determine.

(3) The Governor in Council, on the recommendation of the Authority may terminate a concession where a concessionaire whose operation was resumed under subsection (1)(c) consequent upon—

- (i) any further non-compliance under subsection (1)(a) and/or (1)(b); or
- (ii) any breach of the terms and conditions that attend the order of resumption.

(4) A concession may be amended by the Governor in Council, where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to a concession.

(5) Where a concession is amended pursuant to subsection (4), on grounds of national security, the rights of the concessionaire to compensation shall not be prejudiced.

(6) The Governor in Council shall, before exercising the power of suspension or termination conferred by this section serve on the concessionaire through the Authority, a written notice to the effect that he is considering exercising the power and setting out the ground on which it may be exercised.

(7) During the period that the Governor in Council is considering exercising his power to suspend or terminate the concession, the concessionaire shall continue to operate until such time as the Governor in Council makes a determination and in the event that the period of the concession comes to an end before the determination by the Governor in Council is made, an interim renewal of the concession on the same terms shall be granted.

(8) Before amending a concession, the Governor in Council shall serve on the concessionaire written notice of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect.

(9) A decision of the Governor in Council pursuant to this section may be reviewed by the High Court.

Renewal of concession

30. (1) A concession granted under this Act shall, upon application to the Authority for renewal by the concessionaire to whom the concession was issued, be renewed by the Governor in Council for a period equivalent to the period for which the first concession was granted subject to the provisions of section 29 or where the period for that type of concession has been revised by the Governor in Council on the recommendation of the Authority.

PART IV

LICENCES, SPECTRUM MANAGEMENT AND NUMBERING

Licensing requirements

31. (1) No person shall—

- (a) establish, operate or use a radio-communication service; or
- (b) install, operate or use any radio-transmitting equipment; or
- (c) establish, operate or use any radio-communication service on board any ship, aircraft, or other vessel in the territorial waters or territorial airspace of Montserrat other than a ship of war or a military aircraft or satellite registered in Montserrat, without a licence issued by the Authority.

(2) Where a licence is required pursuant to subsection (1), the applicant shall apply to the Authority in accordance with the procedure set forth by the Authority in a document available to the public at its office or on its website.

(3) Where the Authority approves an application or modifies or rejects it, it shall give reasons in writing for so doing no later than seven (7) days after the day of the decision was taken and which shall be no later than thirty five (35) days after the application was submitted to the Authority.

(4) On the issuance of a licence, the Authority shall cause such to be published in the *Gazette* and on its website or other media as it deems necessary.

(5) The terms of a licence shall be made available for public scrutiny at the office of the Authority and may be reproduced by the Authority at the request of any member of the public, on payment of fee determined by the Authority in accordance with this Act.

(6) Where it appears to the Authority that the terms of a licence requested by any member of public contain information which compromises national security or other international obligations, the Authority shall withhold that information from public scrutiny.

(7) A licence shall be consistent with the spectrum plan established pursuant to section 36 and the relevant rules made pursuant to this Act and shall confer the right on the licensee to use a certain frequency band or bands subject to such conditions as may be set out in the licence.

(8) A person seeking to operate an info-communications network or provide an info-communications service which requires both a concession and a licence must first qualify for a licence before his application for a concession is considered.

Conditions of licence

32. (1) Every licence shall—

- (a) require the licensee to pay fees annually to the Authority;
- (b) require strict adherence to the allotted frequency band;
- (c) prohibit the transfer of control of the license without the prior written approval of the Authority;
- (d) prohibit the assignment of the licence, without the prior written approval of the Authority;

- (e) require the licensee, upon request made by the Governor subject to any written law, to collaborate with the Governor in matters of national security; and
 - (f) require the observance of rules and regulations made pursuant to this Act.
- (2) The approval of the Authority required under subsections (1)(c) and (d) shall not be unreasonably withheld.
- (3) Every licence shall contain conditions regarding—
- (a) the use of the frequency or frequencies so licensed;
 - (b) the expiration, renewal, suspension and termination of a licence;
 - (c) the circumstances under which the licence may be amended, e.g., *force majeure*, national security, changes in national legislation, implementation of international obligations;
 - (d) type of emission, power and other technical requirements for the radio-communication service; and
 - (e) any other matter as may be agreed between the Authority and the licensee.

Authorization to operate in territorial waters or airspace

33. Notwithstanding section 31(1), a ship or aircraft being a ship or aircraft not registered in Montserrat while operating in the territorial waters or airspace of Montserrat is not required to have authorization from the Authority for the establishment, operation or use of any info-communications network or service or radio-communication equipment as long as the service or equipment is operated or used under a valid authority or licence issued elsewhere other than in Montserrat in accordance with international agreements relating to radio-communication in respect of ships or aircraft.

Termination, suspension, amendment or renewal of licence

34. (1) The Authority may, suspend a licence of a person who is not a concessionaire where—
- (a) such licensee has failed to comply materially with any of the applicable provisions of this Act, regulations or rules made hereunder or the terms and conditions of the licence; or
 - (b) such licensee has failed to comply materially with any lawful direction of the Authority which apply to such licence.
- (2) Where the Authority is satisfied that such person whose operation has been suspended under subsection (1) has taken the necessary measures and/or has given a written promise to comply pursuant to subsection (1) the Authority shall issue an order of resumption of operation on terms and conditions it may determine.
- (3) The Authority may terminate the licence of a person who is not a concessionaire whose operation was resumed under subsection (2) consequent upon—
- (i) any further non-compliance under subsection (1)(a) and/or (1)(b); or
 - (ii) any breach of the terms and conditions that attend an order of resumption issued under subsection (2).
- (4) A licence may be amended by the Authority at the request of the Governor, where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to the licence.
- (5) Where a licence is amended pursuant to subsection (4), on grounds of national security, the rights of the licensee to compensation shall not be prejudiced.

(6) The Authority, before exercising the power of suspension or termination conferred by this section shall—

- (a) serve on the licensee, a written notice to the effect that he is considering exercising the power and setting out the ground on which it shall be exercised;
- (b) where the licence is accompanied by a concession, obtain the approval of the Governor before exercising its powers under subsection (6) (a);
- (c) permit the licensee a moratorium of thirty days of the date on which the notice was served to make written representations to the Authority;
- (d) take into consideration any representation made to the Authority under subsection 6(c).

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

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

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

(8) A licence granted under this Act shall, upon application to the Authority for renewal by the licensee to whom the licence was issued, be renewed by the Authority for a period equivalent to the period for which the first licence was issued subject to the provisions of section 34 or where the period for that type of licence has been revised by the Authority.

(9) For any renewal after the renewal of the first licence, the period of renewal shall be determined by the Authority.

Operation of equipment

35. Radio-communication equipment shall not be operated in a manner likely to cause harmful interference to any other means of info-communication.

Spectrum plan

36. (1) In exercising its powers under section 18 (1) (h), the Authority shall develop a spectrum plan to regulate the use of the spectrum.

(2) The spectrum plan shall be made available to the public on payment a fee set and published by the Authority for that purpose.

(3) The spectrum plan shall state the manner in which the spectrum shall be used and the procedures and criteria for licensing frequency bands.

Allocation of frequency bands

37. (1) Subject to subsection (2), the Authority may, in accordance with the spectrum plan allocate, assign, reallocate and reassign frequency bands.

(2) In the allocation assignment, reallocation or reassignment of frequency bands by the Authority priority shall be given to the needs of the Government in respect of matters of national security.

Numbering plan

38. (1) The Authority shall develop a plan for the numbering of info-communications services and shall administer and manage such numbers.

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

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

(4) The numbering plan shall be made available to the public on payment of a fee set by the Authority for that purpose.

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

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

PART V**TECHNICAL STANDARDS AND TECHNOLOGY****Technology neutrality and international standards**

39. Subject to section 18(1) (g) and the other provisions of this Act, concessionaires and licensees may implement such technical standards as they deem appropriate on a technology neutral basis which are in conformity with accepted international standards.

PART VI**TESTING AND INSPECTION****Inspectors**

40. The Authority may, for the purpose of this Act, appoint suitably qualified and experienced persons as inspectors, (hereinafter referred to as “inspectors”).

Power to request information

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

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

Pre-installation and testing

42. (1) In exercising its functions as regards to certifying or approving terminal equipment and other equipment to be installed or used for a public info-communications network or service

the Authority shall determine whether such equipment fulfils the criteria stipulated in section 32 and such other requirements as the Authority may determine.

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

(3) In establishing or varying the requirement for testing the Authority shall consult licensee, and where the Authority is satisfied that the equipment has been certified in accordance with international standards it may vary any testing requirement.

Entry and search

43. An inspector may, at all reasonable times, enter any place, vehicle, ship, aircraft, vessel or other contrivance from which any info-communications network is operated or info-communications service is provided, or in which any info-communications equipment, excluding broadcast receivers, is located, and—

- (a) test any equipment or article found therein which is used or intended to be used for the purpose of operating a info-communications network or of providing a info-communications service;
- (b) examine records or other documents relating to the operation of the info-communications network or the provision of the info-communications service;
- (c) search, where necessary with the assistance of any other person authorized for the purpose by the Authority, for any equipment, articles, books, records or documents that may afford evidence of contravention of this Act or of any regulation or rule made hereunder, or of any breach of any condition of any concession or licence;
- (d) require the owner or person in charge of the place, vehicle, ship, aircraft, vessel or other contrivance to give him all reasonable assistance in the examination or search; and
- (e) seize and take away any equipment, articles, books, records or documents if it appears that there has been a contravention of this Act or of any regulation or rule made hereunder, or of any breach of any condition of any concession or licence, and such items so seized shall be lodged with the Authority.

Magistrate may issue warrant

44. (1) An inspector appointed under section 40 shall not exercise the powers vested in him under section 43 except upon a warrant of a magistrate issued to him for that purpose and, in the execution of the warrant, the inspector shall be accompanied by a police officer.

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

PART VII

FINANCIAL PROVISIONS

Funds of the Authority

45. (1) The funds of the Authority shall consist of—

- (a) such amounts as may be appropriated by Legislative Council for the purposes specified in subsection (2);

- (b) special grants of funds as may from time to time be provided for the financing of any special project;
- (c) fees collected pursuant to section 18(1) (r);
- (d) sums collected in respect of universal service obligations;
- (e) all sums from time to time received by or falling due to the Authority as fees or payments for services rendered;
- (f) all other sums that may in any manner become lawfully payable to the Authority in respect of any matters incidental to its functions.

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

- (a) remuneration to members of the Board;
- (b) the remunerations, gratuities, pensions and other payments to the members of staff of the Authority;
- (c) research and development projects, training and certification and other related matters; and
- (d) any other expenditure authorized by the Authority in the discharge of its duties, functions and contractual obligations.

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

(4) A portion of the funds collected in respect of concessions and licences may be transferred to the account opened in accordance with subsection (6), with the approval of Minister with responsibility for Finance.

(5) Subject to subsection (6), such amounts appropriated by Legislative Council and the other sums referred to in subsection (1) shall be deposited into a bank account opened with the approval of the Minister with responsibility for Finance.

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

(7) At the end of each financial year, any surplus of funds remaining in the account opened in accordance with subsection (5), after defraying the expenditure referred to in subsection (2), shall be debited from its allocation for the ensuing year.

Exemption from tax, provisions

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

(2) the Authority shall, in the performance of its functions relating to tenders be subject to the provisions of the Public Finance (Management and Accountability) Act, 2008 until such time as the Authority develops its own tender rules, approved by the Minister with responsibility for Finance.

(3) Rules made pursuant to subsection (2) shall govern the award of tenders and related matters.

(4) Every tender shall be opened in public and shall indicate the parties to and the content of each tender.

Accounting practice

47. For the purpose of this Part, “GAAP” means Generally Accepted Accounting Practice which includes the International Accounting Standards adopted by the Government.

Budget

48. (1) Within three months prior to the commencement of the financial year the Authority shall submit a budget prepared in accordance with GAAP or such other form as the Minister, with responsibility for Finance, may direct for each financial year to be laid in Legislative Council by the Minister no later than one month prior to the commencement of the financial year.

(2) The Authority shall, at such time as the Minister directs, furnish him with any further information in relation to the Estimates of Expenditure as he may require and such estimates as approved by the Minister shall be laid in Legislative Council in a timely manner.

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

Preparation of annual reports and accounts by Authority

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

(2) Within three (3) months after the end of each financial year the Authority shall cause to be prepared, in respect of that year—

- (a) a report setting out the activities of the Authority; and
- (b) financial statements prepared in accordance with GAAP, and a copy of such report and financial statements shall be forwarded to the Minister and the Minister with responsibility for Finance and shall be laid in Legislative Council, by the Minister as soon as possible thereafter.

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

Audit of accounts

50. (1) The accounts of the Authority are public accounts of Montserrat pursuant to the Public Finance (Management and Accountability) Act, 2008.

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

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

(4) As soon as the accounts of the Authority have been audited, the Auditor General shall submit his report to the Minister with responsibility for Finance and shall simultaneously forward a copy of the said report to the Minister.

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

Financial year

51. The financial year of the Authority shall correspond with that of the Government.

Financial rules

52. The Authority may subject to the approval, in writing, of the Minister with responsibility for Finance, make rules for the proper control of the system of accounting and the finances of the Authority.

PART VIII**STAFF AND RELATED MATTERS****Employment of staff**

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

Secondment

54. (1) Subject to the approval of the Authority, the Governor with the consent of the officer, any officer in the public service or a statutory authority may be seconded to the service of the Authority.

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

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

Pension fund plan

55. (1) The Authority at its discretion may establish a contributory pension fund plan or may join an existing plan.

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

Employment of persons for specific tasks

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

PART IX

CONTRAVENTION OF CONCESSION AND LICENCE

Offences and penalties

57. A person who—

- (a) fails to comply with or acts in contravention of section 21(1) or 31(1);
- (b) breaches any condition contained in a concession or licence issued under this Act;
- (c) wilfully operates a station or uses any equipment in such a manner as to cause harmful interference to any info-communications network or info-communications or radio-communication service;
- (d) wilfully obstructs or interferes with the sending, transmission, delivery or reception of any communication;
- (e) manufactures or sells any system, equipment, card, plate or other device whatsoever, or produces, sells, offers for sale or otherwise provides any account number, mobile identification number or personal identification number, for the purpose of fraudulent use of or access to any info-communications service;
- (f) aids or abets any info-communications network provider or info-communications service provider to operate contrary to its concession or licence, as the case may be;
- (g) fails to contribute to the funding of the services referred to in section 27 in accordance with the directions of the Authority;
- (h) refuses to give access to, or assaults, obstructs, hinders or delays an officer, inspector or employee of the Authority in the discharge of his duties under sections 43 and 58;
- (i) wilfully mis-states or without lawful excuse refuses to give any information, produce books, documents or a copy thereof required of him by an inspector, office or employee of the Authority under sections 43 and 58; or
- (j) fails to comply with the lawful demand of an inspector, officer or employee of the Authority in the discharge of his duties pursuant to sections 43 and 58,

commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred and fifty thousand dollars (\$150,000.00).

Powers of enforcement

58. In addition to the powers conferred on him by any written law, an officer or employee of the Authority may, on declaration of his office and presentation to the person against whom he is acting, such identification as the Executive Manager may direct to be carried by officers or employees of the Authority, when conducting an investigation under this Act has the power to require—

- (a) any person who he reasonable believes to have committed and offence under this Act to furnish evidence of the person's identity;
- (b) any person, for the purposes of this Act, to furnish any information or produce any book, document or copy thereof in the possession of that person, and may, without fee or reward inspect, copy or make extracts from such book or document; and

- (c) by order in writing, the attendance before the officer or employee of any person being within the limits of Montserrat who from information given or otherwise to be acquainted with the case, and the person so ordered shall attend as so required.

Powers of Executive Manager

59. The exercise of all powers entrusted to officers and employees of the Authority under section 58 shall be subject to approval by the Executive Manager.

False signals

60. A person who knowingly transmits or circulates false or deceptive distress, safety or identification signals commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars (\$100,000.00) and to imprisonment for a period not exceeding two (2) years.

False communications

61. (1) A person who by means of any info-communications service sends any communication that to his knowledge is false or misleading and likely to prejudice the efficiency of any life-safety service or endanger the safety of any person, ship, aircraft, vessel or vehicle commits an offence and is liable on summary conviction to a fine not exceeding three hundred thousand dollars (\$300,000.00) and to imprisonment for a period not exceeding three (3) years.

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

Damage to equipment

62. (1) A person who maliciously damages, removes or destroys any facility, works or other installation of a public info-communications network or a public info-communications service or of any info-communications service operated by the Police Service, the Fire Service, the Prison Service commits an offence and is liable on summary conviction to a fine no less than two hundred and fifty thousand dollars (\$250,000.00) and to imprisonment for three (3) years.

(2) A person who negligently damages, removes or destroys any facility, works or other installation described in subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars (\$50,000.00).

Recovery of civil debt

63. A person convicted under section 62 is liable for all expenses reasonably incurred in the repairing, restoration or replacement of any facility, works or other installation damaged, removed or destroyed by him and the expenses are recoverable summarily by the Authority as a civil debt.

General penalty

64. A person who contravenes or fails to comply with any of the regulations and or rules made under this Act commits an offence and except where the provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine not exceeding twenty-five thousand dollars (\$25,000.00), and in the case of a continuing offence to a further fine of one thousand dollars for each day that the offence continues after conviction.

PART X
GENERAL

Illegal operation

65. Where the Authority has reasonable grounds for believing that a person is operating an info-communications network or providing an info-communications service—

- (a) that is dangerous to the security of the Island;
- (b) that disrupts an info-communications network or an info-communications or radio-communication service on land or on board any ship, aircraft, vessel or other floating or airborne contrivance;
- (c) that causes harmful interference to any info-communications network or service established in respect of natural disasters and emergencies,

the Executive Manager shall immediately notify the Governor in Council through the Minister, in writing.

Directions of the Governor in Council

66. (1) On receipt a notification in accordance with section 65, the Governor in Council shall cause such person to be directed, in writing, to cease operating such info-communications network or providing such info-communications service.

(2) Where a person fails to comply immediately with a direction given under subsection (1), the Governor in Council may direct the Authority to invoke its powers under section 43 to discontinue such operation and initiate prosecution under the Act.

(3) Where the offence committed under section 65 concerns the operation of a network or service which only requires a licence the Authority has the right to unilaterally exercise its powers pursuant to section 43 to discontinue such operation and initiate prosecution in accordance with the provisions of the Act.

(4) A person aggrieved by the decision taken under this section may apply to the High Court for relief.

Conditional resumption

67. (1) A person who has complied with an order to cease operation pursuant to section 66 may apply for and be authorized by the Governor in Council or the Authority in accordance with their powers under the Act to resume operations subject to—

- (i) provision of evidence that corrective measures as determined the Authority have been taken;
- (ii) a written promise of future compliance with the provisions of the Act, the terms and conditions of his concession and any applicable rules and regulations made under the Act; and
- (iii) any other terms and conditions that the Governor in Council or the Authority may determine.

(2) Without prejudice to any other applicable penalty under this Act where a person to whom subsection (1) applies repeats a similar offence under section 66 his concession or licence shall be revoked and he shall be permanently disqualified from obtaining any other concession or licence under this Act.

Monitoring stations

68. (1) The Authority may operate frequency monitoring stations for—

- (a) ascertaining whether radio-communication services are operated in accordance with this Act;
- (b) planning, supervising and regulating the use of the frequency spectrum; and
- (c) carrying out any technical function necessary for fulfilling the requirements of the Radio Regulations of the International Telecommunication Union for the time being in force.

(2) The Governor in Council may, by Order, exempt a frequency monitoring station operated by the Authority from any of the provisions of this Act.

Harmful interference

69. Where the Executive Manager is of the opinion that the use of any facility or terminal equipment is likely to cause or has caused or is causing harmful interference, whether or not all reasonable steps to minimize interference have been taken, the discretionary powers to—

- (a) serve notice on the person, in possession of the facility or terminal equipment, requiring him to cease such use within seven days from the date of service of the notice; or
- (b) impose limits as to when the facility or terminal equipment may be used.
- (c) order resumption of use of the facility or terminal equipment within seven (7) days of correction of the interference.

Review of decision

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

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

Obligations under international agreements

71. The obligations of a concessionaire or a licensee operating an info-communications network or providing an info-communications service, shall not be abrogated by reason of any international agreement to which Montserrat is a direct or indirect party which is not prescribed in law.

Rules

72. (1) The Authority may, with the approval of the Governor in Council, make rules for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may, with the approval of the Governor in Council, make rules for or with respect to all or any of the following matters:

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

- (e) price regulation;
 - (f) universal service;
 - (g) numbering;
 - (h) investigating and resolving complaints by users with regard to public info-communications services;
 - (i) investigating alleged breaches of any term or condition of a concession or licence or alleged violations of any provision of this Act or regulations made pursuant thereto, and
 - (j) management of the Island's top level domain name.
- (3) Rules made pursuant to this Act shall apply equally to all similarly situated persons.

Regulations

73. (1) The Governor in Council, on the recommendation of the Authority, shall make regulations as may be required for the purposes of this Act, including regulations prescribing—

- (a) Interconnection;
- (b) Access to facilities; and
- (c) any other matter and the Minister deems necessary under this Act.

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

Confidentiality

74. (1) Except for the purpose of the performance of his duties or exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, no person who is or has been a member of the Board, an officer, an employee or an agent of the Authority or a member of a committee of the Authority shall disclose any information relating to the affairs of the Authority or of any person which has been obtained by him in the performance of his duties or functions or in the exercise of his powers conferred under this Act.

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

Penalty for breach of confidence

75. Any person who contravenes section 74 (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred and twenty five thousand dollars (\$225,000.00) or imprisonment for a term as determined by the court or both.

Forbearance

76. The Authority shall refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty in relation to an info-communications network, info-communications service or a class of info-communications service provided by a concessionaire or a licensee, where the Authority finds that to refrain would be consistent with its policy objectives.

Dispute resolution

77. (1) Subject to approval by the Governor in Council the Authority shall make Dispute Resolution Rules for establishing the process to resolve disputes arising between parties in respect of any matter submitted as a dispute pursuant to the provisions of the Act.

(2) The Dispute Resolution Rules shall provide for a process which ensures open, non-discriminatory and unbiased adjudication procedures.

(3) The Dispute Resolution Rules shall require the parties to any dispute to deposit with the Authority, prior to the commencement of the hearing of or during the dispute, a quantum of funds, as determined by the Authority to defray the cost of the dispute resolution process.

(4) The Dispute Resolution Rules shall mandate that where a party loses a dispute whether as the complainant or the defendant, it shall bear the full cost of the dispute resolution process.

(5) The Authority shall within seven days of the final ruling on the dispute prepare a detailed financial account as regards to the expenditure incurred by the dispute resolution procedure and return all surplus funds to the losing party or request same party to make good the deficit.

(6) The Dispute Resolution Rules may establish penalties for referral of frivolous disputes to the Authority for arbitration.

(7) Any party to a dispute has the right to object, on the grounds of perceived bias, to the participation of any member of an arbitration panel appointed by the Authority to hear and adjudicate a dispute in which the objector is a direct party.

(8) Where such objection is made the Authority is obliged to hear and determine the validity of the objection and rule accordingly before proceeding further with the dispute resolution procedure.

(9) Any decision by the Authority or an arbitration panel established by the Authority shall be binding on the parties and can only be contested in accordance with the appeal process provided in the Dispute Resolution Rules and thereafter in a court of law.

Reconsideration and appeal

78. A person aggrieved by a decision of the Authority or a dispute resolution panel may—

- (i) request that such decision be reconsidered by the Authority based upon information not previously considered, and the Authority shall consider the request and exercise its discretion in its own deliberate judgment; or
- (ii) appeal process decision of the dispute resolution panel pursuant to the provisions of the Dispute Resolution Rules.

Info-communications during a State of emergency

79. (1) Where a state of emergency has been declared, the Governor may, after consultation with the Executive Council—

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

(2) The Government shall in accordance with the relevant legislation, excluding loss of profit, compensate reasonably the owner or controller of any installation, service, apparatus or station, the possession or control of which was assumed under subsection (1).

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

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

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

Repeal and transitional provisions

80. (1) Subject to this section the following legislations are repealed—

- (i) Telecommunication Act, (Cap. 18.08);
- (ii) Cable and Wireless (West Indies) Ltd (Telephone & Telex System) Act (Cap. 18.08); and
- (ii) Telephone Act and Regulations (Cap. 18.07).

(2) Regulations made under the Telecommunication Act shall remain in force until replaced by corresponding rules or regulations made pursuant to this Act.

(3) Licences issued under the Telecommunication Act and in force at the commencement of this Act remain in force for no more than one year or a period thereafter as the Authority may determine.

(4) During the period referred to in subsection (3), any person licensed under the Telecommunication Act to provide a telecommunications service or radio-communication service shall apply to the Authority for a concession and/or a licence, as the case may be, to provide such service under this Act.

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

(6) Any exclusive provision in any licence granted under the Telecommunication Act or other legislation referred to at section 80 (1) herein is no longer valid.

(7) Any licence issued in accordance with subsection (5) shall expire on the date that the licence issued under the Telecommunication Act or any other legislation referred to at section 80 (1) herein would have expired.

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

(9) Any agreements in respect to the management of the top level domain name of Montserrat shall be reviewed under this Act and the Minister, on the recommendation of the Authority shall, where necessary amend such agreement accordingly.

Margaret Dyer-Howe (Mrs)
SPEAKER (Ag.)

Passed the Legislative Council this 31st day of March, 2009.

Judith Jeffers
CLERK OF COUNCILS

