



BERMUDA

TELECOMMUNICATIONS ACT 1986

1986 : 35

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## PART I

### PRELIMINARY

#### Short title and commencement

- 1 This Act may be cited as the Telecommunications Act 1986.

*[commencement provisions omitted]*

#### Interpretation

- 2 In this Act, unless the context otherwise requires—

“Bermudian air space” means a radius of 180 nautical miles from the aerodrome in Bermuda;

“Bermuda Regiment” means the regiment raised and maintained in Bermuda under the Defence Act 1965 [*title 7 item 21*];

“broadcasting” means the act of transmitting or re-transmitting radiocommunications intended for direct reception and use by any member of the public without charge and cognate expressions shall be construed accordingly;

“Carrier” means a person to whom a licence has been granted pursuant to section 9(1) of the Act and includes a person who provides—

- (a) “cable television service” meaning a service under common ownership and control providing programmes to persons for their instruction, information

and amusement by means of visual images and sounds conveyed by wire communication from a common centre but does not include—

- (i) any such service that serves—
    - (a) fewer than five dwelling houses; or
    - (b) persons in one or more contiguous multiple unit dwellings under common ownership, control or management; and
  - (ii) any service for which—
    - (a) no fee or charge is levied or made in respect thereof;
    - (b) the transmission includes only matter which is being simultaneously broadcast to the public in Bermuda by a broadcasting station licensed under this Act;
- (b) “subscription radio service” meaning a service under common ownership and control providing programmes to authorized subscribers for their instruction, information and amusement by means of visual images or sounds conveyed by radiocommunication from a common centre but does not include any service for which—
- (i) no fee or charge is levied or made in respect thereof;
  - (ii) the transmission includes only matter which is being simultaneously broadcast to the public in Bermuda by a broadcasting station licensed under this Act;

“circuit” means a connection between one place and another place whereby transmission at a distance and reception of signs, signals, writing, images and sounds or intelligence of any nature is possible by electromagnetic or optical systems or by both, either along wires, cables or optical fibres joining those places or partly by wires or cables and partly by radiocommunication or wholly by radiocommunication or partly or wholly by light;

“Commission” means the Telecommunications Commission established under section 7;

“Commissioner” means a person appointed under section 7 to be a member of the Commission;

“Convention” means the International Telecommunication Convention currently in force which is applicable to Bermuda or to which Bermuda is a party, and includes any modifications thereof, or any agreements or regulations made under it from time to time which are applicable to Bermuda or to which Bermuda is a party;

“decryption” means the act of returning to its original state a signal which has been encrypted and cognate expressions shall have the same meaning;

“Department” means the Department of Telecommunications;

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- “Director” means the Director of Telecommunications referred to in section 6(2);
- “encryption” means the changing of a signal whereby the aural or visual characteristics are modified or altered for the purpose of preventing the unauthorized receipt of the information conveyed by persons without authorized equipment, and cognate expressions shall have the same meaning;
- “frequencies”, or “radio waves”, or “Hertzian waves” means electromagnetic waves of frequencies arbitrarily lower than 3000 Gigahertz propagated in space without artificial guide;
- “harmful interference” means any emission, radiation, induction, conduction or other electromagnetic effect which endangers the functioning of a radionavigation service or other safety services or seriously degrades, obstructs or repeatedly interrupts any radiocommunication service operating in accordance with the regulations and the Convention, but does not include interference from a radio transmitter operated on its allocated frequency in accordance with the regulations and the Convention;
- “licensee” means the holder of a licence for the time being in force under this Act;
- “message” means any communication sent or received or made by telecommunication or given to a telecommunication officer to be sent by telecommunication or to be delivered;
- “Minister” means the Minister responsible for telecommunications;
- “Police” means the Bermuda Police Service;
- “prescribed” means prescribed by regulations under section 59;
- “private wire telecommunications system” means a system of instruments and lines not rented from a Carrier intended exclusively for the use of a particular person and not available for use by others, the circuit connections of which terminate at private locations and access to which cannot be obtained ordinarily from a public network;
- “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;
- “radio” means a general term applied to the use of radio waves, and cognate expressions shall be construed accordingly;
- “radio apparatus” means any apparatus or article, or any part thereof, intended for, or capable of, transmitting writing, signs, signals, pictures, visual matter, impulses and sounds by radio;
- “radiocommunication” means telecommunication by means of radio waves and cognate expressions shall be construed accordingly;
- “radio station” means—

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- (a) apparatus other than generation apparatus capable of being used for the transmission or emission of writing, signs, signals, pictures, visual matter impulses and sounds of all descriptions whatsoever wholly or partly by means of Hertzian waves; or
- (b) apparatus other than apparatus mentioned in section 3(6)(b) capable of being used for the reception of writing, signs, signals, pictures, visual matter impulses and sounds of all descriptions whatsoever wholly or partly by means of Hertzian waves; or
- (c) apparatus referred to in paragraph (a) of this definition and apparatus referred to in paragraph (b) of this definition in combination;

“rates and charges” means the rates, the charges for, the terms and conditions applying to the offer of, and the provision of any services in connection with—

- (i) the transmission of intelligence by telecommunication and rental charges;
- (ii) the rental of equipment;
- (iii) the use of the lines of communication of a Carrier, whether derived from wire or radio facilities or incidental to radio communication of any kind; and
- (iv) the interconnection of telecommunications facilities or networks, including the interchange of traffic between networks,

and includes single rates or charges, ranges or bands of rates or charges, and any ancillary rates or charges;

“regulations” means regulations under section 59;

“scheduled rates and charges” means rates and charges published in the Gazette;

“signal” means information transferred over a telecommunication system by electromagnetic or optical means;

“specified Carrier” means a Carrier specified in the First Schedule;

“telecommunication” means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic system and cognate expressions shall be construed accordingly;

“telecommunication apparatus” means equipment used for telecommunications;

“Telecommunications Inspector” means the person referred to in section 6(2) *[reference deleted by 2001:28]*;

“telecommunication officer” means any person employed in connection with a public telecommunications service or a government operated telecommunication service other than a service operated by the Police or Bermuda Regiment;

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“telecommunication service” means a service consisting in the conveyance of anything by means of telecommunication whether or not the circuits are provided by the service provider or others;

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

*[Section 2 amended by 1993:31 effective 7 July 1993; by 1997:8 effective 27 March 1997; by 1997:37 effective 6 May 1999; “Carrier” amended, “public telecommunication service” substituted, “Director” and “telecommunication apparatus” inserted, and “telecommunication installation” deleted, by 2001:28 s.2 effective 13 August 2001]*

### Application of Act

3 (1) Save as otherwise expressly provided, this Act shall not apply or have effect in relation to any telecommunication service operated by the Police or the Bermuda Regiment, except in so far as they relate to—

- (a) the establishment of radio stations at permanent sites approved by the Minister;
- (b) the allocation of frequencies by the Minister;
- (c) the approval by the Minister of the mode of transmission to be used in connection with radio stations and the power to be radiated therefrom;
- (d) the prevention of harmful interference;
- (e) distress calls, distress messages and distress signals;
- (f) the manner of carrying on radiocommunication services governed by the Convention.

(2) At any time during which a proclamation of emergency under section 14 of the Constitution [*title 2 item 1*] is in force, the Minister may provide by order that the provisions of this Act and of the Convention relating to the matters specified in paragraphs (a) to (f) of subsection (1) shall, notwithstanding anything to the contrary contained in the subsection, cease to apply to the Police and the Bermuda Regiment until such time as the Minister may revoke the order, and the said provisions shall thereupon cease to apply until the revocation of his order by the Minister or the proclamation of emergency ceases to be in force, whichever may be the earlier.

(3) Subject to subsection (1), a Government Department or a Government Board may operate a radiocommunication system, construct a radio station, and import and manufacture radiocommunication equipment only under a permit granted by the Minister and in accordance with this Act and any regulations made thereunder.

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(4) Nothing in this Act authorizes the imposition of a fee for any permit granted by the Minister in respect of any telecommunication system established or maintained by the Crown or in respect of any apparatus for telecommunication possessed or used by the Crown for the purposes of or in connection with any such telecommunication system.

(5) Diplomatic or consular missions established in Bermuda may install and use a radio transmitter only with the consent of the Governor.

(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.

*[Section 3 subsection (6) para (a) repealed by 2002:6 s.4 & Sch 3 effective 18 June 2002, but amendment unnecessary as subsection (6) was substituted by 2001:28 s.3 effective 13 August 2001]*

### International obligations in the field of telecommunications

4 (1) The Convention shall form part of this Act in so far as it is applicable to Bermuda.

(2) The Minister shall be responsible for discharging or facilitating the discharge of any obligations in the field of telecommunications binding on the Government by reason of its being a member of an international organization or a party to or subject to an international convention or agreement.

### Saving of Crown rights

5 Nothing in this Act shall prevent the Government from establishing and maintaining any means of telecommunication.

### Department of Telecommunications

6 (1) There shall continue in existence the Department of Government known as the Department of Telecommunications which is charged with the duty of assisting the Minister in the discharge of his functions under this Act and to fulfill any duties assigned to it under this Act or the regulations.

(2) Subject to section 61(5) of the Constitution [*title 2 item 1*] and to the general direction and control of the Minister, the Department shall be under the supervision of a public officer who shall be known as the Director of Telecommunications and shall consist of that officer and such number of other public officers as may from time to time be authorized by the Governor.

*[Section 6 amended by 1997:8 effective 27 March 1997; by 1998:20 effective 18 June 1998; subsection (2) amended by 2001:28 s.21 & Sch effective 13 August 2001]*

PART II

ESTABLISHMENT AND FUNCTIONS OF TELECOMMUNICATIONS COMMISSION

Establishment of Telecommunications Commission

7 (1) There shall be established a body to be called the Telecommunications Commission which shall advise the Minister in the discharge of his functions under this Act and discharge such other functions as may be imposed or conferred upon them by or under this Act or any statutory provision.

(2) The Commission shall consist of not less than five persons and not more than nine persons who shall be appointed as Commissioners by the Minister by notice in the Gazette to hold office during good behaviour for such terms not exceeding three years at a time as may be specified in their respective letters of appointment.

(3) The Second Schedule shall have effect in relation to the Commission.

*[Section 7(2) amended by 2001:28 s.4 effective 13 August 2001]*

Delegation of functions

8 (1) The Minister may, in writing, delegate to the Commission or any member thereof, or to any public officer, either generally or for any particular occasion, such of his functions under this Act as he considers necessary:

Provided that—

- (a) no delegation made under this subsection shall preclude the Minister from exercising or performing at any time any of the functions so delegated;
- (b) nothing in this subsection shall authorize the Minister to delegate any power to grant, amend, suspend or revoke a licence to establish, maintain and operate a public telecommunication service or a radio station for the purpose of a broadcasting service or to amend any of the Schedules to this Act;
- (c) no delegation made under this subsection shall prevent a person from making representations to the Minister after receiving written notice under section 13(4) from the Minister or his delegated representative;
- (d) no person to whom the Minister has delegated any function under this section shall delegate such function to any other person.

(2) A reference in this Act to the Minister includes, in relation to any particular function of the Minister under this Act, a reference to Delegation of functions any person authorized by the Minister to exercise or perform such function.

PART III

PROHIBITION OF ESTABLISHMENT AND MAINTENANCE OF TELECOMMUNICATIONS  
ETC. EXCEPT UNDER LICENCE

Licence or permit for public telecommunication service

9 (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.

(2) For the purposes of subsection (1) the Bermuda Telephone Company Acts of 1887, 1928, 1929 [1887:2, 1928:20 and 1929:28] and any amendments thereto shall together be deemed to constitute the grant of a licence authorized by law to the Bermuda Telephone Company.

(3) Subject to section 3 and subsection (3A) of this section, no person shall, save under and in accordance with a licence, permit or certificate granted by the Minister—

- (i) construct, establish, maintain or operate any telecommunication system; or
- (ii) possess or use any radio station, radio apparatus or any radio receiving apparatus not excluded from the application of this Act by section 3(6)(b) or any apparatus of any kind that generates and emits radio waves, notwithstanding that the apparatus is not intended for radiocommunication.
- (iii) possess or use telecommunications apparatus that transmits or receives information by means of wireless light signals.

(3A) Notwithstanding subsection (1) and subsection (3)(ii), where—

- (a) the Minister considers it necessary to allow the provision of public telecommunication service pending his decision whether to grant a licence, or for any other reason;
- (b) the Minister considers it necessary to allow the possession or use of a radio station pending his decision whether to grant a licence, permit or certificate; or
- (c) a person applies for temporary permission to provide public telecommunication service or to possess or use a radio station,

the Minister may issue a temporary permit for the provision of such public telecommunication service or for the possession or use of such radio station, as the case may be.

(3B) A temporary permit shall be issued for a period not exceeding six months and shall be subject to such conditions as the Minister considers necessary.

(4) The grant of a licence, permit, or certificate under this Act, shall be in the discretion of the Minister except where a licence, permit or certificate is required in order

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to comply with any statutory provision rendering the establishment or maintenance of any means of telecommunication mandatory.

(5) Subject to section 3(4), a fee prescribed under the Government Fees Act 1965 shall be payable in respect of every licence, permit or certificate granted under this Act and different fees may be prescribed in respect of licences or permits, as the case may be, granted in respect of different classifications of public telecommunication services or radio stations.

(5A) A fee referred to in subsection (5) shall be paid either prior to the grant of a licence, permit or certificate referred to in that subsection or at such other time as may be specified in the Government Fees Regulations 1965.

Provided that, in the case of the Bermuda Telephone Company, the fee payable for the licence mentioned in subsection (2) shall be such periodic fee as may be prescribed under that Act.

(6) Nothing in any of the Acts mentioned in subsection (2) shall exempt the Bermuda Telephone Company from compliance with subsection (3)(ii).

(7) The fact that the person from whom any radiocommunication equipment is borrowed, leased or hired, or the person maintaining a means of telecommunication of which other equipment forms part or with which other equipment is connected, is the holder of a licence or permit granted under this Act, does not exempt the person to whom the equipment is loaned, leased or hired, or the person maintaining, possessing or using the equipment forming part of, or connected with, such means of telecommunication, as the case may be, from the necessity to obtain such licence or permit as may be required under this Act.

(8) Nothing in this section shall affect any private wire telecommunications system nor any system in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived by the eye and without more.

*[Section 9 amended by 1990:24 effective 1 April 1990; by 1997:8 effective 27 March 1997; subsection (1) substituted, and (3)(iii) inserted, by 2001:28 s.5 effective 13 August 2001]*

### Licences in general

10 (1) Every licence, permit or certificate granted under this Act by the Minister, shall be valid for the period or until the day prescribed but, save as otherwise provided by the regulations, may be renewed.

(2) Any licence, permit or certificate granted under this Act by the Minister, shall be subject to the conditions (if any) prescribed and to such other conditions as the Minister specifies on the grant or renewal thereof, being conditions that the Minister considers necessary for the purposes of carrying out the objects of this Act.

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### Licence

10A No licence shall be granted under this Act to any person other than a body corporate to establish, maintain or operate a public telecommunication service.

*[Section 10A inserted by 1993:31 effective 7 July 1993]*

### Annual report etc to be submitted to Minister

10B (1) The secretary of a body corporate which operates a public telecommunication service shall submit to the Minister—

- (a) on an annual basis not later than six months after the closing of its financial year or such longer period as the Minister may allow—
  - (i) a copy of its annual report;
  - (ii) a copy of its annual financial statement and its auditor's report; and
  - (iii) a list of shareholders owning 1% or more of the total shares in the body corporate and specifying therein their nationality, the number of shares held by each and whether or not control of the body corporate is vested in persons possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956;
- (b) on a semi-annual basis, commencing at such time as may be specified by the Minister—
  - (i) a list of all of its telecommunication services including the rates and charges for the services;
  - (ii) market size and market share estimates for each public telecommunication service offered by the Carrier; and
  - (iii) monthly traffic data for each public telecommunication service offered by the Carrier; and
- (c) such other periodic reports as may be specified by the Minister.

(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 to do so,

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.

(2) A secretary who—

- (a) contravenes subsection (1); or

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- (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.

*[Section 10B inserted by 1993:31 effective 7 July 1993; amended by 1997:8 effective 27 March 1997; subsection (1A) inserted, and (2) substituted, by 2001:28 s.6 effective 13 August 2001]*

### Licences for public telecommunication services or broadcasting stations

11 (1) The Minister shall refer all applications for the grant of a licence to establish, maintain or operate a public telecommunication service or to operate a radio station for the purposes of a broadcasting service to the Commission with a direction that they hold an enquiry on such matters as he may specify and report with recommendations to him within thirty days or such longer period as he may allow.

(2) Upon receipt of a direction by the Minister under subsection (1), the Commission shall fix a date for the hearing and notify the applicant of the date, and shall publish a notice thereof in the Gazette; however, the Commission may as it thinks fit exclude any member of the public or any representative of the media from any proceedings of the hearing.

(3) The applicant shall have the right to give evidence, either in writing or orally, in support of his application and to produce witnesses.

(4) Carriers or persons possessing licences to operate broadcasting stations, as the case may be, and any other interested parties may submit written or oral comments on the application.

(5) Upon receipt of a report under subsection (1), the Minister, after taking into consideration the recommendations of the Commission, may—

- (i) grant the licence upon such terms and conditions as he deems fit and appropriate; or
- (ii) refuse to grant the licence for the reason stated; or
- (iii) remit the matter to the Commission for further enquiry, report and recommendations within a period not exceeding thirty days or such longer period as he may allow.

(6) In a case mentioned in subsection (5)(iii) the Minister shall make and communicate his final decision to the applicant as soon as possible after receiving the second report and the recommendations of the Commission.

*[Section 11 amended by 1993:31 effective 7 July 1993]*

Licences for broadcasting stations

12 (1) No licence shall be granted under this Act to any person other than a body corporate to operate a radio station for the purpose of a broadcasting service and no such licence shall be granted or renewed unless the Minister is satisfied that the control of such body corporate is vested in persons who possess Bermudian status in accordance with the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*].

(2) The secretary of every body corporate operating a radio station for the purpose of a broadcasting service shall submit annually to the Minister not later than six months after the closing of its financial year—

- (a) a copy of its annual financial statement and auditor's report; and
- (b) a list of shareholders specifying their nationality and the number of shares held by each and in the case of a body corporate whether or not control is vested in persons possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*].

Minister may issue or revoke licences

13 (1) Subject to this Act, the Minister may—

- (a) issue—
  - (i) a licence, permit or certificate required by section 9; and
  - (ii) a technical certificate or a radio operator's certificate required under the Convention or the regulations;
- (b) at any time upon an application in that behalf made by a licensee or a permit or certificate holder, or of his own motion, vary any term or condition of a licence, permit or certificate issued under paragraph (a), where the Minister considers such variation necessary for the purpose for which the original condition was imposed or for any other cause, but he shall not of his own motion vary any of the terms or conditions without first giving to the licensee or permit or certificate holder reasonable notice of his intention to make such variation and shall take into account any representations made to him by or on behalf of the licensee or permit or certificate holder;
- (c) from time to time appoint such public officers within the Department and such other persons as he considers desirable to be examiners for the purpose of examining applicants for licences and permits to operate radio stations, or for certificates.

(2) A licensee or a permit or certificate holder may at any time request the Commission in writing, stating reasons, to review the terms or conditions of the licence, permit or certificate, as the case may be, and the Commission shall within thirty days or such longer period as the Minister may allow conduct such review and submit its recommendations to the Minister, and the decision of the Minister shall be final.

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(3) The Department, the applicant and any party having an interest in the application may be represented during a review, which may be held in camera at the request of either party.

(4) The Minister may, after giving the holder thereof written notice and affording him a reasonable opportunity to make representations, revoke or suspend any licence, permit or certificate, issued under this section where—

- (a) the holder thereof has wilfully or negligently failed to operate the facilities or services in respect of which the licence, permit, or certificate was issued in accordance with the regulations or the terms or conditions of the licence, permit or certificate or the Convention; or
- (b) false statements of material facts, fraud or misrepresentation have been made or committed by the licensee, the permit or certificate holder in the application for the licence, permit or certificate, or related to any subsequent statement in connection with it required by him; or
- (c) he is satisfied that there is other just and reasonable cause for so doing.

(5) Notwithstanding subsection (4), the Minister may revoke or suspend any licence, permit, certificate, technical certificate or radio operator certificate without giving the holder thereof written notice or affording him an opportunity to make representations to him if the holder thereof fails to pay the fees relating thereto in the manner prescribed.

(6) Where—

- (a) the Minister is satisfied that there may be grounds for revoking a licence granted under this Act to operate a public telecommunication service; or
- (b) the Minister is satisfied that the control of a body corporate granted a licence to operate a radio station for the purposes of a broadcasting service is vested in persons who do not possess Bermudian status within the meaning of the Bermuda immigration and Protection Act 1956 [*title 5 item 16*]; or
- (c) the Minister is satisfied that a body corporate granted a licence to operate a radio station for the purpose of a broadcasting service has failed to comply with any term, condition or limitation imposed upon it by the licence; or
- (d) the Broadcasting Commissioners, established under the Broadcasting Commissioners Act 1953 [*title 24 item 11*] or any succeeding Act, have recommended to the Minister that a licence to operate a radio station for the purposes of a broadcasting service should be revoked,

the Minister may request the Commission to enquire into the facts in accordance with its procedure and to report thereon to him and if after consideration of the report the Minister is satisfied that the licence should be revoked, he may revoke the licence.

(7) A licence may be transferred with the consent of the Minister.

[Section 13 subsections (3) and (4) amended by 2001:28 s.7 effective 13 August 2001]

Minister may amend First Schedule

14 (1) Subject to subsection (8), no Carrier specified in the First Schedule shall impose rates and charges for a telecommunication service operated by it or vary the amount thereof, unless notice in writing of the amount of such rates and charges or the proposed variation thereof has been given to the Commission pursuant to this section or to section 23, as the case may be, and the Commission has made an enquiry into the matter.

(2) Subject to subsection (3), where the Minister is of the opinion that—

- (a) a Carrier or a group of Carriers is in substantial control of a public telecommunication service so that there is insufficient competition to stimulate reductions in rates and charges and to provide adequate freedom of choice to the public; or
- (b) a Carrier is not providing to the general public or any section thereof or to another Carrier fair and reasonable access to its services or is making unjust or unreasonable discrimination in rates, charges, practices, classifications, regulations, facilities or service; or
- (c) such a step is in the public interest,

he may by order amend the First Schedule by adding thereto another Carrier.

(3) Before the Minister makes an order under subsection (2) he shall notify the Carrier concerned of his intention and shall allow the Carrier fourteen days, or such longer period as he may specify, to submit reasons in writing why it should not be included in the First Schedule; and the Minister may direct the Commission to enquire into the matter and report to him within thirty days or such longer period as he may allow.

(4) When the Minister has added a Carrier to the list of specified Carriers in the First Schedule he shall direct the Carrier to submit to the Commission a list of its telecommunication services, and its rates and charges.

(5) On receipt of the submission made under subsection (4) the Commission shall publish in the Gazette a notice which shall—

- (a) identify the Carrier;
- (b) state that the Minister has added the Carrier to the list of specified Carriers in the First Schedule;
- (c) state that the Carrier has submitted to the Commission a list of its telecommunications services and the rates and charges for such services; and
- (d) specify a time and a place for the inspection of the matters referred to in paragraph (c),

and shall make such enquiry into the matter as the Commission may think fit for the purpose of ascertaining whether the rates and charges are just and reasonable and comply with the provisions of this Act or the regulations.

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(6) In the exercise of their functions under subsection (5) the Commission shall apply mutatis mutandis the criteria laid down in section 24(2).

(7) the Commission shall conclude their enquiries as expeditiously as possible and in no case in more than sixty days and may give a direction—

- (a) approving the rates and charges; or
- (b) changing the rates and charges.

(8) Until the Commission give a directive under subsection (7) the rates and charges submitted to the Commission by the Carrier under subsection (4) shall apply.

(9) The Minister may by order at any time amend the First Schedule.

(10) The negative resolution procedure shall apply to an order of the Minister under this section.

*[Section 14 amended by 1997:8 effective 27 March 1997]*

Minister may give directives to Carriers

15 If, from any report submitted by the Commission or Director, it appears to the Minister that a Carrier is acting in a manner not in accord, with the duties and obligations of a Carrier under this Act and that in consequence it should take, or refrain from taking, or amend any actions, procedures or practices or otherwise follow any recommendations contained in the report of the Commission or Director, the Minister may issue a directive to the Carrier accordingly, and the Carrier shall comply therewith.

*[Section 15 amended by 1997:8 effective 27 March 1997; and by 2001:28 s.21 & Sch effective 13 August 2001]*

Minister may give directions to Commission

16 (1) *[Deleted by 1997:8]*

(2) *[Deleted by 1997:8]*

(3) The Minister may, of his own volition, refer any matter regarding telecommunications to the Commission for their investigation and report and it shall be the duty of the Commission thereupon to hold such an enquiry and to report thereon to the Minister.

*[Section 16 amended by 1997:8 effective 27 March 1997]*

Minister may require Carrier to furnish information for an enquiry

17 (1) The Minister may, for the purposes of an enquiry, under this Act, by notice in writing require a Carrier—

- (a) to furnish, whether by periodical returns or other means, such estimates or other information as may be specified or described in the notice;
- (b) to produce to an officer of the Department or to the Commission, any documents so specified or described;

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(c) to keep such records as may be so specified or described.

(2) A notice under subsection (1) may specify the way in which and the period during which it is to be complied with.

(3) *[Deleted by 1997 : 8]*

*[Section 17 amended by 1997:8 effective 27 March 1997]*

### Designation of inspectors

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

(2) The Director of Telecommunications or an inspector may at any reasonable time enter any premises for the purpose of inspecting—

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

(b) any apparatus or any records maintained in connection therewith which are maintained by a Carrier in connection with the provision of a public telecommunication service.

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

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

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

*[Section 18 amended by 1997:8 effective 27 March 1997; subsection (2) amended by 2001:28 s.21 & Sch effective 13 August 2001]*

### Power of Commission to obtain information for an enquiry

19 For the purpose of an enquiry under this Act the commission shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses, expert or otherwise, their examination on oath or otherwise and the compelling of the production of any document, record or thing relevant to the subject matter of the enquiry.

Reports by Commission

20 (1) The Commission may, and if so directed by the Minister shall, make interim reports to the Minister on any matter submitted to them under this Act, and on the conclusion of the investigation concerned shall make a final report to the Minister.

(2) Subject to subsection (3), the Minister shall forward a copy of any such report to the parties concerned and may also cause the report to be printed.

(3) A report of the Commission shall be prepared and made public in accordance with the provisions of section 61A and 61B.

*[Section 20 amended by 1997:8 effective 27 March 1997]*

Interim and *ex parte* decisions

20A (1) The Minister or the Commission may make any decision under this Act on an interim basis and may make the final decision effective from the day the interim decision came into effect.

(2) The Minister or the Commission may make an *ex parte* decision whenever the Minister or the Commission, as the case may be, considers that the urgency of a particular case justifies such *ex parte* decision, so, however, that within fourteen days or such longer period as the Minister or the Commission may determine, after an *ex parte* decision is made under this subsection the Minister or the Commission, as the case may be, shall hold an *inter partes* enquiry for the purpose of making an interim or final decision.

*[Section 20A inserted by 1997:8 effective 27 March 1997]*

PART IV  
CARRIERS

Duties of Carriers

21 (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, 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.

(3) For the purpose of paragraph (1)(k) any Carrier that is party to an agreement may furnish a copy of the agreement to the Commission on behalf of all the Carriers that are party to the agreement.

(4) Upon receipt of a copy of an agreement under paragraph (1)(k) the Commission shall within ten days either indicate its approval of such agreement or its intention to enquire into the agreement.

(5) Where the Commission approves an agreement and informs the Carrier in writing of such approval, the agreement shall either be executed within seven business days by all parties or remain in force as the case may be.

(6) If the Commission decides to enquire into any aspect of an agreement the Commission shall conclude its enquiries as expeditiously as possible and in no case in more than thirty days or such longer period as the Minister may allow and give a direction—

- (a) approving the agreement;
- (b) approving the agreement on a provisional basis;
- (c) changing the agreement in whole or in part; or
- (d) suspending the agreement or postponing the date upon which the agreement is intended to be executed to such other date as may be specified,

and the Carriers shall comply therewith.

(7) Where a Carrier has established to the satisfaction of the Commission that an existing service is unprofitable or loss-making, the Commission shall not refuse permission to discontinue that service unless—

- (a) the Commission considers that it is in the public interest to refuse permission, having regard to the utility of the service, the availability of suitable substitutes and the degree of reliance on the service by the public or segments of the public; and
- (b) the Commission is satisfied that the Carrier will be adequately compensated for the loss involved in continuing the service by the rates and charges it charges for other services it provides.

(8) No Carrier may disconnect another Carrier without the consent in writing of that Carrier or the Minister.

(9) A Carrier may only seek the permission of the Minister to disconnect another Carrier if—

- (a) that Carrier fails to settle its accounts due within a period of thirty days after receipt of a written warning notice and within a further period of thirty days after receipt of a written notice of intention to seek permission for disconnection;
- (b) that Carrier fails to comply with any term of the contract or agreement for the provision of the service;
- (c) that Carrier fails to conform to the agreed technical specification for the provision and operation of the service; or
- (d) there is other just and reasonable cause for disconnection.

(10) A Carrier which seeks the Minister's permission to disconnect another Carrier shall give notice to the Minister in writing not less than thirty days before the date of the

proposed disconnection, informing the Minister of the reasons for the proposed disconnection, and the Minister shall forthwith refer the matter to the Commission for enquiry and report.

(11) Upon referral of a matter to the Commission under subsection (10), the Commission shall conclude its enquiry as expeditiously as possible and report to the Minister with recommendations within twenty days of the date of referral by the Minister.

(12) The Minister shall render a decision on a proposed disconnection of one Carrier by another within thirty days of receipt by the Minister of the notice by the Carrier under subsection (10).

*[Section 21 substituted by 1997:8 effective 27 March 1997; repealed and substituted by 1999:17 s.2 effective 18 June 1999; subsections (1), (1A) and (2) substituted for (1) and (2) by 2001:28 s.8 effective 13 August 2001]*

#### Enquiry into failure of a Carrier to discharge a duty

22 (1) A person other than a Carrier who is aggrieved by the failure of a Carrier to discharge a duty to which it is subject by virtue of this Act or any regulation or directive of the Minister or the Commission may make a written complaint on that account to the Commission and shall provide a copy of the complaint to the Carrier concerned.

(2) As soon as possible after the receipt of a complaint under subsection (1) the Commission shall investigate the matter and if the Commission is satisfied on the evidence submitted that there are *prima facie* grounds for the holding of an enquiry, the Commission shall hold an enquiry and shall report thereon to the Minister.

(3) On receipt of a report under subsection (2) the Minister may, after giving due consideration to the report, give such directive to the Carrier as he thinks fit and the Carrier shall comply therewith.

(4) A Carrier aggrieved by the failure of another Carrier to discharge a duty to which it is subject by virtue of this Act or any regulation may make a written complaint on that account to the Commission and shall provide a copy of the complaint to the Carrier concerned.

(5) Upon receipt of a complaint under subsection (4) the Carrier against which the complaint is made shall immediately attempt to resolve the dispute, but any party to the dispute may request the assistance of the Department in resolving the dispute.

(6) If the dispute is unresolved within thirty days after the complaint is received by the Carrier against which the complaint is made, any party to the dispute may submit the dispute to the Commission for resolution, or the parties to the dispute may—

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

(7) In the event the dispute is referred to the Commission pursuant to subsection (6), the Commission shall enquire into and render a decision on the dispute within forty-five days from the date of the referral.

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(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.

(8) In its decision the Commission may direct one or more of the parties to take such action as is necessary to comply with the requirements of this Act and the regulations.

(9) The Commission may upon the recommendation of the Department or of its own initiative investigate any complaint made by a Carrier under subsection (4) and render a decision on the dispute and give such directive as the Commission thinks fit and the Carrier against which the complaint has been made shall comply therewith.

*[Section 22 substituted by 1997:8 effective 27 March 1997; repealed and substituted by 1999:17 s.2 effective 18 June 1999; subsection (7A) inserted by 2001:28 effective 13 August 2001]*

Specified Carriers must give notice to Commission of charges

23 (1) Subject to this Act, no specified Carrier shall initiate a new telecommunication service or vary its rates and charges for existing telecommunication services unless it gives notice in writing of the new service and the proposed rates and charges therefor, the proposed variation in the rates and charges for the existing service and the amount thereof to the Commission and publishes a notice in accordance with subsection (2).

(2) A notice under subsection (1) shall be published in such form approved by the Commission on two separate days in not less than one local newspaper approved by the Commission and shall specify therein that any person may make objections and forward such objections to the Commission within twenty-one days from the second date of publication of the notice

(3) Where a notice under subsection (1) is given, then subject to subsection (4) or subject to the Commission giving a direction under section 24 a new service and the rates and charges therefor or a variation in the existing rates and charges shall not be introduced.

(4) Where the Commission is satisfied with the notice given under subsection (1) and informs the specified Carrier in writing or by notice published in the Gazette that it does not intend to inquire into the matter, the specified Carrier may introduce the new service and the rates and charges therefor or the variation in the existing rates and charges, as the case may be.

(5) *[Deleted by 1997:8]*

(6) *[Deleted by 1997:8]*

(7) *[Deleted by 1997:8]*

*[Section 23 amended by 1993:3 effective 7 July 1993; and by 1997:8 effective 27 March 1997]*

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### Carriers to maintain lists of rates and charges

23A (1) A Carrier shall at all times keep at its place of business in Bermuda or such other place approved by the Commission, and on its website if any, a current list of all its rates and charges and shall make the list available for inspection by any person without charge during business hours subject to such reasonable restrictions as the Carrier may impose.

(2) A Carrier shall prior to initiating a new telecommunication service or varying the rates or charges for existing telecommunication services as the case may be furnish to the Department in such form as may be specified by the Commission, notice in writing of the new service and the rates and charges therefor or the revised rates and charges for the existing service as the case may be and such information shall be available for inspection at the offices of the Department or such other location as may be specified by the Commission.

(3) A Carrier which contravenes any provision of this section is guilty of an offence and is liable on conviction by a court of summary jurisdiction to a fine not exceeding five thousand dollars and, in the case of a continuing offence, is liable to a further fine of five hundred dollars for each day during which the contravention continues.

*[Section 23A inserted by 1997:8 effective 27 March 1997; subsection (1) amended by 2001:28 s.21 & Sch effective 13 August 2001]*

### Decision of Commission

24 (1) On receipt of a notice under section 23(1) the Commission may, after making such enquiry into the matter as they may think fit, give a direction—

- (a) approving the new service and the rates and charges in respect thereof; or
- (b) approving the new service and the rates and charges in respect thereof on a provisional basis; or
- (c) changing the rates and charges for the new service in whole or in part; or
- (d) disallowing the new service and the rates and charges proposed therefor; or
- (e) approving the variation in the existing rates and charges; or
- (f) disallowing the variation in the existing rates and charges either wholly or in part; or
- (g) postponing the date upon which the variation in the existing rates and charges is intended to be effective to such other date as may be specified; or
- (h) otherwise setting out the terms and conditions upon which new service or rates and charges in respect of a new service or the variation of existing rates and charges may be made,

and subject to section 25(5), the specified Carrier shall comply therewith.

(2) In the exercise of their discretion under subsection (1), or subsection (5) the Commission shall have regard inter alia to—

- (i) the cost to the Carrier of the service in question;
- (ii) the desirability and need to subsidize other non-profitable services offered by the Carrier in the public interest;
- (iii) the needs of the Carrier for adequate working capital and to establish reasonable reserves;
- (iv) international accounting standards where applicable and modifications thereto;
- (v) technological advances;
- (vi) market conditions in Bermuda and overseas including the likely impact of a new service on other Carriers;
- (vii) regulatory changes where applicable;
- (viii) the need to afford investors a reasonable rate of return on their investment;
- (ix) the question whether in the light of the foregoing, any proposed tariff is just and reasonable and any rates and charges contained therein are applied equally to all persons in substantially similar circumstances and conditions;
- (x) the question whether the Carrier, in respect of the application of rates and charges, the provision of services and the use of its facilities—
  - (a) gives any preference or advantage to any person or to any particular description of telecommunication;
  - (b) subjects any person or any particular description of telecommunication to any disadvantage;
- (xi) the public interest.

(3) The burden of proof to show that, on the balance of probabilities, any new service, the rates or charges in respect thereof or any variation in the rates or charges of an existing service are just and reasonable is upon the specified Carrier seeking to introduce the new service or the variation, as the case may be.

(4) The Commission shall conclude their enquiries as expeditiously as possible and in no case in more than thirty days or such longer period as the Minister may allow.

(5) On receipt of a complaint regarding a Carrier's rates and charges, on the direction of the Minister, or of its own motion, the Commission may review the Carrier's rates and charges after making such enquiry into the matter as the Commission may think fit and having regard to subsection (2), where applicable, and may give a direction changing the rates and charges for the service in whole or in part.

(6) Before the Commission gives a direction under subsection (5) the Commission shall notify the Carrier of its intention and shall allow the Carrier fourteen days or such

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longer period as the Commission may specify to submit reasons in writing why the direction should not be given.

*[Section 24 amended by 1997:8 effective 27 March 1997; subsection (1)(h) and (2)(vi) amended by 2001:28 s.10 effective 13 August 2001]*

### Appeal to Minister against a direction of the Commission

25 (1) Any person aggrieved by a direction of the Commission under section 14, 22 or 24 may, within twenty-one days of being notified thereof, or such longer period as the Minister may allow, by notice in writing appeal to the Minister.

(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.

(3) On an appeal under subsection (1) the Minister may, if he thinks fit, vary any direction of the Commission and such variation shall take effect on such date as the Minister may determine.

(4) The Minister shall give his decision as soon as possible after the hearing of the appeal but in no case later than sixty days after receipt of the notice of appeal.

(5) When a person gives notice of appeal to the Minister, the Minister may suspend the implementation of the direction of the Commission pending the outcome of the appeal.

*[Section 25 amended by 1993:31 effective 7 July 1993; by 1997:8 effective 27 March 1997; subsection (2) substituted by 2001:28 s.11 effective 13 August 2001]*

### Unjust or unreasonable discrimination

26 (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.

(2) All rates and charges made by a Carrier must be just and reasonable.

*[Section 26 amended by 1997:8 effective 27 March 1997; subsection (1) substituted by 2001:28 s.12 effective 13 August 2001]*

### Officers and agents of Carrier to aid investigation

27 It shall be the duty of all officers and agents of a Carrier where an enquiry or investigation under this Act is being held in relation to that Carrier, upon request by the Commission, to give the Commission all assistance in connection with the enquiry or investigation which they are reasonably able to give and to furnish such estimates or information as have been requested, to produce all books and documents of the Carrier that are demanded by the Minister and to keep such records as have been specified by the Minister.

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### Charges for unauthorized telecommunication service not recoverable

28 (1) No specified Carrier shall be entitled to recover in any court of law any charge for a telecommunication service which has been introduced in contravention of this Act.

(2) Any charge made by a specified Carrier for a telecommunication service in excess of any amount permitted under section 23 or 24 shall be unenforceable to the extent of the excess.

Carriers may construct facilities on public roads etc.

28A (1) Any Carrier, with the prior consent in writing of the Minister responsible for Telecommunications and of the Minister responsible for Works and Engineering, may enter upon any public road now existing or which may hereafter exist or be made in Bermuda and may place thereunder or erect thereon in such places and positions and in such manner as the Minister responsible for Works and Engineering may sanction, any telecommunications line or lines with all necessary posts, supports, wires, pipes, and other apparatus; and with the like permission may at all times alter the position or arrangement of such posts, supports and pipes, and alter, diminish or add to the wires or other apparatus.

(2) The Corporation of the City of Hamilton or the Corporation of the Town of Saint George, as the case may be, shall have the like powers with respect to the streets of the said City and Town respectively as are conferred on the Minister responsible for Telecommunications and the Minister responsible for Works and Engineering by subsection (1) in reference to public roads, and the provisions of subsection (1) shall apply, *mutatis mutandis*, to the streets of the said City and Town as if the same were re-enacted with reference thereto:

Provided that the public traffic on the roads shall not be unreasonably impeded, obstructed or interfered with.

*[Section 28A inserted by 1997:8 effective 27 March 1997]*

### 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.

*[Section 28B inserted by 2001:28 s.13 effective 13 August 2001]*

## PART IVA

### COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT

#### Definitions

28C In this Part—

“call-identifying information” means dialing or signalling information that identifies the origin, date, time, size, duration, direction, destination or termination of each communication generated or received by a subscriber by means of any telecommunication apparatus, facility or service of a Carrier;

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

“electronic communication” means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, but does not include—

- (a) any oral communication; or
- (b) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

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

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

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

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

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

“telecommunication support services” means a product, software, or service used by a Carrier for the internal signalling or switching functions of its telecommunications network;

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

*[Section 28C inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Assistance capability requirements

28D (1) Subject to subsections (2) to (5), a Carrier shall ensure that its telecommunication apparatus, facilities and services that provide a customer or subscriber with the ability to originate, terminate or direct communications are capable of—

- (a) expeditiously isolating and enabling the Police, pursuant to a warrant issued by the Governor under section 62, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the Carrier within a telecommunication service area to or from telecommunication apparatus, facilities or services of a subscriber of such Carrier—
  - (i) concurrently with their transmission to or from the subscriber’s telecommunication apparatus, facility or service; or
  - (ii) at such later time as may be acceptable to the Police;
- (b) expeditiously isolating and enabling the Police, pursuant to a warrant issued by the Governor under section 62, to access call-identifying information that is reasonably available to the Carrier—
  - (i) before, during or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the Police); and
  - (ii) in a manner that allows it to be associated with the communication to which it pertains;
- (c) delivering intercepted communications and call-identifying information to the Police, pursuant to a warrant issued by the Governor under section 62, in a format such that they may be transmitted by means of telecommunication apparatus, facilities, or services procured by the Police to a location other than the premises of the Carrier; and
- (d) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber’s telecommunications service and in a manner that protects—
  - (i) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

(ii) information regarding the interception by the Police of communications and Police access to call-identifying information.

(2) This section does not authorize the Police—

- (a) to require any specific design of telecommunication apparatus, facilities, services, features, or system configurations to be adopted by any Carrier or provider of telecommunication support services; or
- (b) to prohibit the adoption of any telecommunication apparatus, facility, service or feature by any Carrier or provider of telecommunication support services.

(3) The requirements of subsection (1) do not apply to telecommunication apparatus, facilities and services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting Carriers.

(4) In emergency circumstances, a Carrier at its discretion may comply with subsection (1)(c) by allowing monitoring at its premises if that is the only means of accomplishing the interception or access.

(5) A Carrier that—

- (a) provides a commercial mobile service offering a feature or service which allows subscribers to redirect, hand off or assign their wire or electronic communications to another service area or another Carrier or to utilize facilities in another service area or of another Carrier; and
- (b) had been providing assistance for the interception of wire or electronic communications or access to call-identifying information pursuant to a warrant issued by the Governor under section 62, but no longer has access to the content of such communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service,

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

*[Section 28D inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

#### Capacity requirements

28E (1) The Minister shall, after consulting with the Minister responsible for public safety, publish in the Gazette a notice of —

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

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

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

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

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

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

*[Section 28E inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

#### Exemptions from capacity requirements

28F (1) The Minister, after consulting with the Minister responsible for public safety, may issue a directive to a Carrier exempting it from meeting its obligations under sections 28E(2) and (3) and directing the Carrier to accommodate such reduced number of interceptions, pen registers and trap and trace devices as are specified in the directive, within the time referred to in those sections.

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

*[Section 28F inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

#### Cooperation of providers of telecommunication support services

28G (1) A Carrier shall consult, as necessary, in a timely fashion with providers of telecommunication support services for the purpose of ensuring that current and planned telecommunication apparatus, facilities and services comply with the requirements referred to in sections 28D and 28E(2) and (3).

(2) A provider of telecommunication support services shall, on a reasonably timely basis and at a reasonable charge, make available to Carriers using its telecommunication

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apparatus, facilities or services such features or modifications as are necessary to permit such Carriers to comply with the requirements of sections 28D and 28E(2) and (3).

*[Section 28G inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### No degradation of capabilities

28H A Carrier that meets, in whole or in part, a requirement referred to in sections 28D or 28E(2) or (3) in respect of telecommunication apparatus that the Carrier operates shall continue to so meet that requirement.

*[Section 28H inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Maintaining capabilities in respect of new services

28I A Carrier that meets, in whole or in part, a requirement under sections 28D or 28E(2) or (3) in respect of telecommunication apparatus that the Carrier operates in connection with any of the Carrier's telecommunication services shall meet that requirement to the same extent in respect of any new service that the Carrier begins to provide using that telecommunication apparatus.

*[Section 28I inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Beginning to operate telecommunication apparatus

28J (1) A Carrier that begins to operate any telecommunication apparatus for the purpose of providing telecommunication services shall meet the requirements under sections 28D and 28E(2) and (3), whether by means of the telecommunication apparatus itself or by any other means.

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

(3) Notwithstanding subsection (2), the acquiring Carrier shall continue to meet any requirement referred to in subsection (1) that the Carrier from whom the telecommunication apparatus was acquired was obligated to meet.

*[Section 28J inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### New software

28K (1) When a Carrier installs new software for any telecommunication apparatus that the Carrier operates, the Carrier shall meet the requirements under sections 28D and 28E(2) and (3) in respect of that telecommunication apparatus to the extent that the Carrier would be enabled to meet those requirements by the installation of the software in the form available from the software's manufacturer that would most increase the Carrier's ability to meet those requirements.

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(2) Subsection (1) applies even if the form of the software in question would require the Carrier to acquire additional software licences or telecommunication facilities to achieve that increased ability.

*[Section 28K inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Maximum capacity limit

28L A Carrier is not required, under sections 28H to 28J, to increase the Carrier's capability to enable simultaneous interceptions beyond the maximum capacity limit referred to in section 28E.

*[Section 28L inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Order suspending obligations

28M (1) The Minister may, by order made on the application of a Carrier, suspend in whole or in part any obligation of the Carrier to meet a requirement under section 28D or 28E(2) or (3) that would arise from the operation of section 28I or 28J.

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

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

*[Section 28M inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Ministerial directives

28N (1) The Minister may, at the request of the Minister responsible for public safety, if in the Minister's opinion it is necessary to do so, issue a directive to a Carrier requiring that Carrier—

- (a) to comply with any obligation under sections 28D and 28E(2) and (3) in a manner or within a time that the Minister specifies;
- (b) to comply, in a manner or within a time that the Minister specifies, with any confidentiality or security measures respecting interceptions that the Minister specifies; or
- (c) to meet a requirement under section 28D or 28E(2) or (3) in respect of telecommunication apparatus operated by the Carrier that the Carrier would not otherwise be required to meet.

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

*[Section 28N inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

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### Mandatory reporting — acquisition of telecommunication apparatus

28O (1) A Carrier that acquires telecommunication apparatus referred to in subsection 28J(2) shall, before using it in providing telecommunication services, submit to the Minister a report containing the following information—

- (a) the prescribed information concerning the extent to which the Carrier meets the requirements under sections 28D and 28E(2) and (3) in respect of the telecommunication apparatus; and
- (b) any prescribed information relevant to the administration of this Act.

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

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

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

(4) The statement must be signed—

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

*[Section 28O inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Exemption order

28P (1) The Minister may, after consultation with the Minister responsible for public safety, by order, exempt any class of Carrier from all or part of the obligations under sections 28D, 28E(2) and (3), 28H to 28J, 28O or under any regulation made for the purposes of any of those sections.

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

- (a) whether compliance with the assistance capability requirements is reasonably achievable through application of technology available within the compliance period;
  - (b) the extent to which the exemption would adversely affect national security or law enforcement;
  - (c) whether the Carriers can comply with the obligations from which they would be exempted;
  - (d) whether the costs of compliance with those obligations would have an unreasonable adverse effect on the business of the Carrier; and
  - (e) whether compliance with those obligations would unreasonably impair the provision of telecommunication services to the public or the competitiveness of Bermuda's telecommunications industry.
- (3) An order under this section shall be subject to such conditions as the Minister may impose and shall extend for no longer than the earlier of—
- (a) the date determined by the Minister as necessary for the Carrier to comply with the assistance capability requirements; or
  - (b) the date that is two years after the date on which the order was granted.

(4) An order made under this section shall be subject to the negative resolution procedure.

*[Section 28P inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

Extension of compliance date for telecommunication apparatus, facilities and services

28Q (1) A Carrier proposing to install or deploy, or having installed or deployed, any telecommunication apparatus, facility or service prior to the date that this section comes into operation may petition the Minister for one or more extensions of the deadline for complying with the requirements under section 28D.

(2) The Minister may, after consultation with the Minister responsible for public safety, grant an extension if the Minister determines that compliance with the requirements under section 28D is not reasonably achievable through application of technology available within the compliance period.

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

*[Section 28Q inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

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### Enforcement orders

28R (1) The Supreme Court, on application by the Attorney-General, may issue an enforcement order—

- (a) directing a Carrier to comply with any of the requirements of any of sections 28D, 28E(2) and (3) and 28H to 28K forthwith; or
- (b) directing a provider of telecommunication support services to the Carrier to furnish forthwith any modifications necessary for the Carrier to comply with the requirements of section 28D or 28E(2) or (3).

(2) The Supreme Court may only issue an order under subsection (1) if it finds that—

- (a) the Carrier has failed to comply with any of sections 28D, 28E(2) or (3) or 28H to 28K;
- (b) alternative technologies or capabilities or the facilities of another Carrier are not reasonably available to the Police for implementing the interception of communications or access to call-identifying information; and
- (c) compliance with the requirements of this Part is reasonably achievable through the application of available technology to the telecommunication apparatus, facility or service at issue or would have been reasonably achievable if timely action had been taken.

(3) Upon issuing an order under subsection (1), the Supreme Court shall specify a reasonable time and conditions for complying with its order, considering—

- (a) the good faith efforts of the Carrier or provider of telecommunication support services to comply in a timely manner;
- (b) any effect on the ability of the Carrier or provider of telecommunication support services to continue to do business;
- (c) the degree of culpability of the Carrier or provider of telecommunication support services or their delay in making efforts to comply; and
- (d) such other matters as justice may require.

*[Section 28R inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Civil penalty

28S (1) Where an order is issued under section 28R against a Carrier or a provider of telecommunication support services, the Supreme Court may impose a civil penalty of up to \$10,000 per day for each day—

- (a) after the order is issued that the Carrier or provider of telecommunication support services is in contravention of it; or
- (b) after such future date as the Court may specify that the Carrier or provider of telecommunication support services is in contravention of the order.

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(2) In determining whether to impose a civil penalty and its amount, the Supreme Court shall take into account—

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

*[Section 28S inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Record keeping requirements

28T (1) A Carrier shall keep—

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

(2) The Carrier shall, on demand by an inspector designated under section 18, provide access to the subscriber records and database referred to in subsection (1).

(3) For the purposes of inspecting the subscriber records and database, an inspector shall have all the powers, and a Carrier shall have all the duties, referred to in sections 18(2) to (4).

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

*[Section 28T inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

### Provision of subscriber information to Police

28U (1) A Carrier shall extract from the database referred to in section 28T, and provide to the Police, a database containing the prescribed subscriber information.

(2) If there is any change in the subscriber information or records maintained by the Carrier under section 28T, the Carrier shall immediately—

- (a) update the database referred to in subsection (1); and

- (b) provide the updated information to the Police.

*[Section 28U inserted by 2010 : 34 s. 2 effective 1 November 2010 in respect of Carriers other than Information Service Providers as defined by s.8(2) of 2010 : 34]*

PART V

SPECIAL PROVISIONS REGARDING RADIO

Radio communication equipment operated by Government Department or Board

29 Subject to section 3, no Government Department or Government Board shall construct, install or operate any radiocommunication equipment, without a permit from the Minister.

*[Section 29 amended by 1993:31 effective 7 July 1993]*

Licence or permit for radio station

30 No person shall, on behalf of another person, install, place in operation, repair or maintain radio apparatus, radio receiving apparatus not excluded from the application of this Act or a radio station, for the possession, maintenance, installation and operation of which a licence or permit is required, if no such licence or permit has been granted by the Minister.

Operation of radio stations

31 (1) A radio station shall not carry out—

- (a) unnecessary transmissions;
- (b) the transmission of superfluous signals and correspondence;
- (c) the transmission of false or misleading signals;
- (d) the transmission of signals without identification except for—
  - (i) radiobeacons or certain other radio navigation services where identification signals are removed in case of malfunction or other nonoperational service as a means of warning that transmissions cannot safely be used for navigational purposes;
  - (ii) survival-craft stations transmitting distress signals automatically;
  - (iii) emergency position - indicating radiobeacons;
- (e) the transmission of signals containing profane or obscene words or language;
- (f) trials or tests except under such circumstances as preclude the possibility of interference with other stations.

(2) The operation of a radio station shall be limited to the performance of such services as are specified in the licence.

(3) Radio apparatus and radio stations shall not radiate more power than is necessary to ensure a satisfactory service and shall be established and operated in such a manner as not to cause harmful interference with other radio installations and other telecommunication services. The equipment shall be maintained in a condition which complies with the Convention, the regulations and the terms and conditions of the licence.

(4) Radio apparatus shall only transmit on frequencies or in frequency bands authorized by the Minister under section 33 and prescribed in the licence or permit.

(5) The Minister may in writing authorize the Telecommunications Inspector to require by notice in writing to a licensee that in respect of the radio apparatus which the licensee is licensed to operate the licensee shall perform such periodic tests, measurements and maintenance as the Telecommunications Inspector deems appropriate and necessary to ensure compliance with this Act, the Convention, the regulations and the terms of the licence.

(6) A licensee served with a notice under subsection (5) shall keep a record in writing, signed by him or by the officer responsible, of the dates and times and results of the tests and measurements and the details of the maintenance, and the record may be inspected at all reasonable times by an officer of the Department and shall be kept for not less than one year.

(7) A radio station shall accept distress calls and messages with absolute priority regardless of their origin and shall immediately take such action with regard thereto as may be required by the Convention.

(8) A radio station may during a period of emergency in which normal communications facilities are disrupted as a result of a hurricane, flood, earthquake or similar natural disaster, be used for emergency communications and may be operated in a manner other than that provided in the Convention, the regulations or specified in the licence, and any such emergency use shall be discontinued as soon as substantially normal communication facilities are again available.

#### Proprietary rights in respect of certain programmes

32 (1) Every person who is authorized by licence under this Act to make charges in Bermuda for the reception of any programmes, information or other material included in a service to which this section applies shall be entitled to the proprietary rights therein conferred by this section.

(2) This section applies to the following services in Bermuda—

- (a) any cable television service;
- (b) any subscription radio service; and
- (c) any service (other than a broadcasting service) which consists wholly or mainly in the sending, by means of a telecommunication system, of sounds or visual images or both and is provided for a person providing a service falling within paragraph (a) or (b).

(3) The rights conferred by this section are infringed by the manufacture, possession, importation, sale or letting on hire of any apparatus or device which is designed or adapted, or the publication of any information which is calculated, to enable or assist persons to receive the programmes, information or other material without payment.

(4) Subject to subsection (6), infringements of the rights conferred by this section on any person shall be actionable at the suit of that person; and in any proceedings for such an infringement such relief, by way of damages, shall be available as provided in subsection (7).

(5) Where rights conferred by this section on any person have been infringed by the manufacture, possession, importation, sale or letting on hire of any apparatus or device, then, subject to subsection (6), that person shall be entitled in respect of the conversion by any other person of the apparatus or device to all such relief, by way of an order for its delivery or otherwise, as he would be entitled to if he were its owner and had been its owner since the time of the infringement.

(6) A person shall not be entitled to recover damages from another person by virtue of this section if, at the time of the infringement or conversion, that other, person was not aware, and had no reasonable grounds for suspecting that the rights conferred by this section on the first-mentioned person would be or had been infringed.

(7) Any person aggrieved by any infringement of the rights conferred by this section may recover in the courts of Bermuda an award of statutory damages in the action in a sum of four hundred dollars and in any case in which the court finds that the infringement was for business purposes the court may increase the award of statutory damages to a sum of one thousand dollars.

(8) For the purposes of this section the occupier, or the person in control of any premises in which any programme, information or material in a service described in subsection (2) is intercepted or received shall be prima facie liable to any person aggrieved by the infringement of rights conferred by this section.

(9) Nothing in this section shall affect any right, obligation, or liability under the Copyright Act 1956 [*title 17 item 47*], any statutory instrument made thereunder or any other applicable law.

#### Minister to determine frequencies

33 (1) The Minister shall, in accordance with the Convention, determine the bands of frequencies or the individual frequencies which may be used by radio or other apparatus to which this Act applies and may determine the bandwidth, type of emission, power and call sign which shall be used.

(2) The assignment of a frequency or frequencies to any radio apparatus or radio station does not confer a monopoly of the use of such frequency or frequencies nor shall a licence or permit be construed as conferring any right of continued tenure in respect of any frequency or frequencies.

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### Labelling of radio apparatus

34 (1) No person shall mark or label any radio apparatus or radio receiving apparatus in such a manner as to indicate that such apparatus has been approved by the Minister if such apparatus has not been so approved.

(2) Each unit of radio apparatus or radio receiving apparatus that is marked or labelled contrary to subsection (1) shall be evidence of a separate contravention of that subsection.

### Harmful interference

35 No person shall cause harmful interference.

### Convention applies but regulations do not apply to foreign mobile stations on aircraft or ships

36 Unless otherwise provided in this Act, the regulations shall not apply to foreign mobile radio stations on aircraft or ships temporarily located within Bermuda or Bermudian air space but the Convention shall apply to such stations.

### Control of use of radio apparatus on vessels in territorial waters

37 *[Repealed by 2001:28]*

*[Section 37 repealed by 2001:28 s.14 effective 13 August 2001]*

### Control of use of radio apparatus on aircraft in Bermuda

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

(2) At all times when an aircraft is in Bermudian air space or is on the ground in Bermuda in an operational state a watch shall be maintained on the relevant traffic control service.

(3) The Minister may permit the use, on such occasions or for such periods as he specifies, of radio apparatus on board an aircraft that is in Bermuda air space or at an aerodrome in Bermuda for purposes not specified in subsections (1) and (2).

## PART VI

### OFFENCES AND PENALTIES

#### Contravention of section 9 an offence

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

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- (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.

*[Section 39 repealed and replaced by 2001:28 s.15 effective 13 August 2001]*

### Failure to comply with directives

40 Any Carrier which refuses or fails to comply with a directive issued to it—

- (a) by the Minister under section 15, 22(3), or 28N;
- (b) by the Commission under section 14, 22 or 24, or, as the case may be, such direction as varied by the Minister under section 25,

is guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding five thousand dollars for each day during which the refusal or failure continues.

*[Section 40 substituted by 1997:8 effective 27 March 1997; paragraph (a) amended by 2010 : 34 s. 3 effective 1 November 2010]*

### Failure to comply with a direction by the Minister under section 17 an offence

41 Any Carrier which refuses or fails after a reasonable delay to comply with the terms of a notice given by the Minister under section 17 commits an offence:

Punishment on summary conviction: a fine of \$5,000 for each day during which the refusal or failure continues.

*[Section 41 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

### Contravention of section 18 an offence

42 Any person who obstructs an inspector referred to in section 18 from entering any premises as defined in that section or hinders or obstructs him in the execution of his duty or who, being a licensee and having been notified to make available any radio station or records for inspection, fails without reasonable excuse so to do commits an offence:

Punishment on summary conviction: a fine of \$5,000 and in default of payment imprisonment for 6 months.

*[Section 42 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

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### 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.

*[Section 42A inserted by 2001:28 s.16 effective 13 August 2001]*

### Enforcement of price control provisions

43 A specified carrier which initiates a new telecommunication service or imposes a change in its authorized rates and charges without giving notice thereof to the Commission as required by section 23 is guilty of an offence and is liable on conviction by a court of summary jurisdiction to a fine not exceeding five thousand dollars and, in the case of a continuing offence, is liable to a further fine of five hundred dollars for each day during which the offence continues.

*[Section 43 substituted by 1997:8 effective 27 March 1997]*

### Contravention of section 28O an offence

43A A Carrier that fails to comply with the reporting requirements of section 28O commits an offence and is liable on summary conviction to a fine of \$5,000 per day for each day that the Carrier fails to comply.

*[Section 43A inserted by 2010 : 34 s. 4 effective 1 November 2010]*

### Contravention of section 28T an offence

43B A Carrier that fails to comply with the record keeping requirements of section 28T commits an offence and is liable on summary conviction—

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

*[Section 43B inserted by 2010 : 34 s. 4 effective 1 November 2010]*

### Contravention of section 28U an offence

43C A Carrier that fails to comply with the requirements of section 28U(1) or (2) commits an offence and is liable on summary conviction to a fine of \$5,000 per day for each day that the Carrier fails to comply.

*[Section 43C inserted by 2010 : 34 s. 4 effective 1 November 2010]*

### Unauthorized disclosure by member or staff of Commission of confidential information an offence

44 (1) Neither the Minister nor any member of the Commission, the staff of the Commission or the Department, shall reveal or in any manner communicate to any other person, except for the purposes of this Act and the regulations or as required by law—

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- (a) any information for which a confidentiality claim has been made by a Carrier under section 61B and not withdrawn by the Carrier or denied in accordance with that section; or
- (b) any information in respect of a customer which is designated as confidential pursuant to the regulations.

(2) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$2,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$5,000 or both such imprisonment and fine.

*[Section 44 amended by 1997:8 effective 27 March 1997]*

Contravention of sections 30, 31 and 34 an offence

45 (1) Any person who contravenes any provision of sections 30, 31 and 34 or of any regulation concerning radio, radio stations and radio services commits an offence:

Punishment of an individual on summary conviction: imprisonment for 1 year or a fine of \$5,000 or both such imprisonment and fine.

Punishment of a body corporate on summary conviction: a fine of \$10,000 and in the case of a continuing offence a further fine of \$2,000 for every day during which the offence continues.

(2) Where any person is convicted of an offence under subsection (1) the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus, may order the confiscation of the apparatus and any antenna.

*[Section 45 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

Contravention section 35 an offence

46 (1) Any person who wilfully contravenes any provision of section 35 commits an offence:

Punishment of an individual on summary conviction: imprisonment for 2 years or a fine of \$2,000 or both such imprisonment and fine.

Punishment of a body corporate on summary conviction: a fine of \$10,000 and in the case of a continuing offence a further fine of \$2,000 for every day during which the offence continues.

(2) Where any person is convicted of an offence under subsection (1) the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus, may order the confiscation of the apparatus and any antenna.

(3) Where the court finds that harmful interference has been caused, whether wilfully or not, it may direct that the person responsible shall bear the costs of any technical

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investigation made in order to establish the existence and cause of such harmful interference.

*[Section 46(1) amended by 2001:28 s.21 & Sch effective 13 August 2001]*

Contravention of section 37 or section 38 an offence

47 In the event of a contravention of section 37 or section 38 the master of the vessel or the captain of the aircraft, as the case may be, or the person at whose direction the radio apparatus was used, commits an offence:

Punishment on summary conviction: a fine of \$5,000.

*[Section 47 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

Transmitting or receiving messages by unlicensed means of telecommunication an offence

48 Any person who, knowing or having reason to believe that a means of telecommunication is being maintained in contravention of this Act, transmits or receives any messages by such means of telecommunication or performs any service incidental to the transmission or reception of any such message or delivers any message for transmission by such means of telecommunication or takes delivery of any message sent thereby commits an offence:

Punishment on summary conviction: a fine of \$5,000.

*[Section 48 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

Offences by telecommunication officer

49 Any telecommunication officer or employee of a Carrier or any person who has official duties in connection with a public telecommunication service, who—

- (a) wilfully destroys, secretes or alters any message that he has received for transmission or delivery; or
- (b) forges any message or utters any message that he knows to be forged; or
- (c) wilfully abstains from transmitting any message or wilfully intercepts or detains or delays any message unless for legitimate service purposes; or
- (d) otherwise than in pursuance of his duty or as directed by a court, copies any message or discloses any message or the purport of any message to any person other than the person to whom the message is addressed,

commits an offence:

Punishment on summary conviction: imprisonment for 2 years or a fine of \$2,000 or both such imprisonment and fine.

*[Section 49 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

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Destruction of messages by person other than telecommunication officer

50 Any person, not being a telecommunication officer or employee of a Carrier or a person who does not have official duties in connection with a public telecommunication service who—

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

commits an offence:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$2,000 or both such imprisonment and fine.

*[Section 50 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

Damaging telecommunication apparatus with intent

51 (1) Any person who damages, removes or interferes in any way whatsoever with a telecommunication apparatus or uses it with intent to—

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

commits an offence.

(2) Any person who without authorization connects to or wilfully damages, removes or interferes with any telecommunication apparatus including any apparatus which is designed or adapted for use in connection with the running of a cable television service and, in particular

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

commits an offence:

Punishment of an individual on summary conviction: for each offence a fine of \$3,000 or imprisonment for 2 years or both such fine and imprisonment and in the case of a continuing offence a further fine of \$500 for every day during which the offence continues.

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Punishment of a body corporate on summary conviction: for each offence a fine of \$10,000 and in the case of a continuing offence a further fine of \$2,000 for every day during which the offence continues.

*[Section 51 amended by 1993:31 effective 7 July 1993, and by 2001:28 s.21 & Sch effective 13 August 2001]*

### Transmission of false messages

52 Any person who transmits, or causes to be transmitted by telecommunication, a message that he knows to be false commits an offence:

Punishment on summary conviction: imprisonment for 2 years or a fine of \$500 or both such imprisonment and fine.

### Improper use of public telecommunication service

53 (1) Any person who—

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

commits an offence:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$2,000 or both such imprisonment and fine.

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

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

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

commits an offence:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$20,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$50,000 or both such imprisonment and fine.

Every distinct contravention shall be a separate offence.

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

Punishment on summary conviction: imprisonment for 1 year or a fine of \$20,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$50,000 or both such imprisonment and fine.

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

*[Section 53 subsections (2) and (3) amended by 2010 : 34 s. 4A effective 1 November 2010 — NOTE that in respect of Information Service Providers as defined in section 8(2) of 2010 : 34 the fines are still \$2,000 and \$5,000 respectively.]*

### Prohibition of callback services

53A (1) Any person who provides any callback telecommunication service commits an offence:

Punishment on summary conviction: a fine of \$50,000 or imprisonment for 2 years or both such fine and imprisonment.

(2) In this section—

“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.

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(3) The Minister may by order subject to the negative resolution procedure replace, add to or vary the Third Schedule.

*[Section 53A inserted by 2000:40 s.2 effective 15 December 2000; subsection (2) amended by 2001:28 s.17 effective 13 August 2001]*

Contravention of section 61 an offence

54 Any person who contravenes section 61(2) to (6) commits an offence:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$20,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$50,000 or both such imprisonment and fine.

*[Section 54 amended by 2010 : 34 s. 4B effective 1 November 2010 in respect of Carriers other than Information Service Providers]*

Contravention of section 62 an offence

55 Any person who fails to comply with a warrant under section 62 commits an offence:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$1,000 or both such imprisonment and fine.

Obstruction of Minister an offence

56 Any person who wilfully obstructs the Minister or the Commission or any public officer in the exercise of any power conferred upon him or them, by this Act commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$5,000 or both such imprisonment and fine.

*[Section 56 amended by 2001:28 s.21 & Sch effective 13 August 2001]*

Liability of directors, etc. where offence committed by corporation

57 Where a person by whom an offence under this Act is committed is a corporation and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the corporation, the director or other officer commits the like offence.

Liability of owner and manager of unincorporated specified Carrier

58 Where under this Act any obligation is imposed upon any specified Carrier which is not a body corporate or where any specified Carrier which is not a body corporate is declared by this Act to commit an offence, such obligation shall be deemed to be imposed upon, and such offence shall be deemed to be committed by, both the owner and the manager of the undertaking.

PART VII  
SUPPLEMENTARY AND MISCELLANEOUS

Minister may make regulations

59 (1) The Minister may, after consultation with the Commission, make regulations for the proper carrying out of the provisions and purposes of this Act and for the implementation of those provisions of the Convention that are applicable to Bermuda and in particular, but without prejudice to the generality of the foregoing, may by regulation provide inter alia for—

- (a) the control and conduct of public telecommunication service including, without limiting the generality of the foregoing,—
  - (i) the regulation of the rates and charges for the provision of public telecommunication services;
  - (ii) restrictions on the marketing and advertising of public telecommunication services;
  - (iii) the regulation and prevention of anti-competitive practices by Carriers;
  - (iv) the establishment and regulation of technical standards for equipment used in connection with the provision of or use of public telecommunication services including equipment used by Carriers and equipment to be connected to the networks of Carriers;
  - (v) the regulation of quality of service of public telecommunication services offered by Carriers;
  - (vi) the establishment and regulation of procedures and technical standards for the interconnection of the facilities of Carriers;
  - (vii) the establishment and regulation of procedures and technical standards for the construction of telecommunications lines on public roads, highways and other public places;
  - (viii) the establishment and regulation of procedures and technical standards for the use and sharing of support structures by Carriers; and
  - (ix) the classification of the various types of public telecommunication services;
- (b) the classification of the various types of radio station, prescribing the nature of the services to be rendered, the frequencies to be used by each class of station and the qualifications of the operators and the technical support staff thereof, and for monitoring the use of frequencies;
- (c) the prescription of the minimum performance specifications for equipment which may be used in each class of radio station, with particular reference to the power output, necessary bandwidth, frequency stability and spurious emissions, and prohibiting the manufacture or importation of

radio apparatus which does not conform to the technical specifications prescribed in respect of such apparatus;

- (d) the grant, revocation, suspension and renewal of licences, permits and certificates, the various types of licences, permits and certificates which may be issued by the Minister, the manner in which they may be applied for, their respective forms, the period of their validity and the delegation of functions in respect of such licences, permits and certificates;
- (e) the grant, revocation, suspension and renewal of licences, permits or certificates for persons dealing in the course of trade or business in any apparatus for radiocommunications or in apparatus of any kind that generates or emits radio waves whether or not the apparatus is intended or capable of being used for radiocommunications;
- (f) the grant, revocation, suspension and renewal of licences, permits or certificates for persons who demonstrate with a view to sale in the course of trade or business any apparatus or material for radiocommunication;
- (g) the examination of persons in connection with the operation of apparatus for radiocommunication, the grant and endorsement of certificates of competency in the operation of such apparatus, the fees payable in respect of any such examination or the grant or endorsement of any such certificates, the authorization of persons to hold positions in radio stations and the cancellation or suspension of any such authority;
- (h) watches, if any, to be maintained at the various classes of radio stations;
- (i) the inspection of radio stations;
- (j) standby facilities to be maintained by radio stations for use in case of natural disasters or other emergencies;
- (k) the prohibition or regulation of the sale or use of any apparatus or machinery causing or capable of causing harmful interference to radio reception;
- (l) the prohibition or regulation of the sale, importation, or use of decryption or encryption devices and the regulation of the price;
- (m) the prohibition and control of electrical or radiated interference with the working of apparatus for telecommunication;
- (n) the preservation of the secrecy of telecommunications not intended for public reception;
- (o) the conditions and restrictions subject to which messages may be transmitted or received;
- (p) the period for which, and the conditions subject to which, messages and other documents connected with a telecommunication service shall be preserved;

- (q) the requirement that operators of radio stations or apparatus observe the provisions of the Convention and providing penalties for the suspension of licences or permits, for failure to observe those provisions;
- (r) the control or use by Government of any radio station or apparatus during a state of emergency or war;
- (s) the operation of foreign registered or licensed mobile radio stations while in or over Bermuda or its territorial waters or in Bermudian air space;
- (t) mobile radio stations licensed in Bermuda which are not for the time being in or over Bermuda, Bermudian air space, or its territorial waters;
- (u) the licensing of persons wishing to maintain or repair radio apparatus and the qualifications to be held by such persons;
- (v) the regulation of the importation, sale, trading in and demonstration of radio apparatus and radio receiving apparatus not excluded from the application of this Act;
- (w) the dismantling, sealing or confiscation of any radio station, radio apparatus and radio receiving apparatus, not excluded from the application of this Act;
- (x) generally regulating the conditions under which cable television service and subscription radio service may be established, maintained and operated;
- (y) any other matter or anything which may be, or is required by this Act to be prescribed.

(2) Without derogating from the generality of subsection (1) regulations may in respect of a licence to operate a radio station for the purpose of broadcasting service provide—

- (a) for the procedure to be followed where there is a transfer of financial interest in any undertaking operating a broadcasting service and for the revocation of any such licence where there is a change in the status of a person or persons having financial control of the undertaking contrary to the requirements of section 12(1); and
- (b) for the procedure to be followed in respect of any such licence upon any recommendation of the Broadcasting Commissioners under the Broadcasting Commissioners Act, 1953 or any succeeding Act.

(3) Regulations made under subsection (1)(m) may—

- (a) constitute the Minister as the sole authority for the making of tests and measurements in respect of electrical or radiated interference;
- (b) confer upon the Minister the power to determine the measuring apparatus to be used, the method by which and the conditions under which tests are to be made and the manner to be used in computing the amount of any such interference from readings afforded by the measuring apparatus;

- (c) in respect of any specified class or classes of apparatus confer upon the Minister, with or without restriction, the power to fix, in such manner as may be specified in the regulations, the limits of any such interference at any frequency or within any frequency range, whether in substitution for or by way of amendment of limits, frequencies or frequency ranges specified in any regulations made under that paragraph, or otherwise.

(3A) The Minister may, after consultation with the Minister responsible for public safety, make regulations for the carrying out of the purposes and provisions of Part IVA and in particular, without prejudice to the generality of the foregoing, respecting the obligations of Carriers under that Part including—

- (a) the requirements referred to in sections 28D and 28E(2) and (3) and the obligations to be performed by Carriers under those sections;
- (b) the time, manner and form in which an intercepted communication must be provided to the Police;
- (c) the information to be provided in reports required under section 28O and the time, manner and form for providing that information; and
- (d) the content of the subscriber information to be contained in the database referred to in section 28U and the time, manner and form in which it must be provided to the Police.

(4) Regulations made under this section may provide that contraventions of specified provisions of such regulations shall be an offence and may provide penalties therefor but no penalty so provided shall exceed—

- (a) in the case of regulations made under subsection (3A), a fine of \$10,000; and
- (b) in any other case, a fine of \$2,000 or imprisonment for a term of twelve months, or to both.

(5) The negative resolution procedure shall apply to regulations made under this section.

*[Section 59 amended by 1997:8 effective 27 March 1997; subsection (3A) inserted and subsection (4) amended by 2010 : 34 s. 5 effective 1 November 2010]*

#### Action for damages in the Supreme Court

59A (1) Subject to any limitation of liability imposed in accordance with this or any other Act, a person who has sustained loss or damage as a result of any act or omission that is contrary to any provision of this Act or any regulations made thereunder or any decision of the Minister or Commission as the case may be, may sue for and recover in the Supreme Court an amount equal to the loss or damage from any person who engaged in, directed, authorized, consented to or participated in the act or omission.

(2) Notwithstanding any other provision of law to the contrary, but subject to subsection (3), an action may not be brought in respect of any loss or damage referred to in subsection (1) more than two years after the day on which the act or omission occurred.

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(3) Nothing in subsection (1) or (2) applies to any action for breach of a contract to provide public telecommunication services.

*[Section 59A inserted by 1997:8 effective 27 March 1997]*

### Appeals to the Supreme Court

60 (1) Any person aggrieved by—

- (i) a decision of the Minister under section 11, 13 or 25; or
- (ii) a directive of the Minister under section 15 or 22,

may appeal on that account to the Supreme Court on a point of law or mixed fact and law.

(2) An appeal under subsection (1) shall be lodged in the Registry within thirty days after receipt of notification of such decision, directive or direction, or such longer period as the Court may allow.

(3) Subject to subsection (6), on any such appeal the Court may make such order, including an order for costs, as it thinks fit.

(4) Section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

(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.

*[Section 60 amended by 1997:8 effective 27 March 1997; subsections (2) and (3) amended, and (5) and (6) substituted for (5), by 2001:28 s.18 effective 13 August 2001]*

### Privacy of communication

61 (1) Privacy of communication shall be inviolable except as provided in section 62.

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

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

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

Provided that subsections (2), (3) and (4) shall not apply to the transmitting, receiving, divulging, publishing or utilizing the contents of any radio message or communication broadcasted or transmitted by amateurs or others for the use of the general public or relating to ships or aircraft in distress:

Provided also, that it shall not be unlawful under this section for an operator of a switchboard or an officer, employee or agent of any Carrier the facilities of which are used in the transmission of a wire communication, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or the protection of the rights or property of the Carrier transmitting such communication:

Provided further, that said Carrier shall not utilize service observing or random monitoring except for mechanical, electronic, optical or service quality control checks; that it shall not be unlawful under this section for an officer, or employee or agent of Government in the normal course of his employment and in discharge of the radio monitoring responsibilities exercised by the Minister in the pursuance of his powers under section 59(1) (b) to intercept a communication transmitted by radio, or to disclose or use the information thereby obtained.

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

Provided that it shall be lawful for any police officer or officer of a Carrier acting with the consent of the person renting a circuit to tap or trace such circuit, or by using any other device secretly to overhear, intercept or record a communication passing over such circuit in order to detect an offence under section 53.

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

(7) Nothing contained in subsections (2), (5) and (6) shall render it unlawful or punishable for any police officer, or other person who is authorized by a written order of the Governor under the powers granted to him by section 62, or a person designated by him, to execute any of the acts declared to be unlawful in subsections (2) to (6) and subsection (8) shall not apply to evidence thus secured.

(8) Any message, communication or spoken word, or the existence, contents, substance, purport, effect or meaning of the same or any part thereof, or any information therein contained, obtained or secured by any person in contravention of subsections (2) to (6) shall not be admissible in evidence in any judicial, quasijudicial, legislative or administrative hearing except for the purpose of proving the contravention of those

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subsections and for that purpose the person adjudicating shall make such order as he considers appropriate to preserve confidentiality.

*[Section 61(8) amended by 2001:28 s.19 effective 13 August 2001]*

### Access to information

61A Subject to section 61B, the Commission shall make available for public inspection any information submitted to the Commission in the course of proceedings before it.

*[Section 61A inserted by 1997:8 effective 27 March 1997]*

### Confidentiality of information

61B (1) A Carrier providing any information to the Minister, the Commission or the Department pursuant to this Act or the regulations may designate such information as confidential on the grounds that it is—

- (a) a trade secret;
- (b) financial, commercial, scientific or technical information which is confidential in nature and is consistently treated as such by the Carrier;  
or
- (c) information which, if made public, is likely to—
  - (i) result in material financial loss or gain to any person;
  - (ii) prejudice the competitive position of the Carrier or others; or
  - (iii) prejudice contractual or other negotiations.

(2) A Carrier claiming confidentiality in respect of any information under subsection (1) must provide full justification for its claim and must also provide a version of such information without the confidential provisions and in a form that may be made available to the public.

(3) Upon receipt of a confidentiality claim pursuant to subsection (1) and after considering any representations of interested persons, the Minister, the Commission or the Department, as the case may be, shall assess such claim having regard to the public interest in disclosure, as well as the private interests of the Carrier and other persons identified by the Carrier, and shall determine whether disclosure of the relevant information is in the public interest.

(4) Following a decision by the Commission or Department, as the case may be, regarding disclosure of information, the Carrier or any interested person may appeal such decision to the Minister within five days of the decision and the Minister shall render a decision on any appeal within a further seven days.

(5) On appeal the Minister may uphold or vary any disclosure decision of the Commission or the Department as the case may be.

(6) A decision of the Minister under subsection (3) or (5) may be appealed to a Judge in Chambers.

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(7) A decision of the Minister under subsection (3) or (5) shall be suspended pending the outcome of the appeal to the Judge in Chambers under subsection (6).

(8) When a decision has been rendered, and any appeals completed, under this section, the Carrier shall forthwith comply with the decision.

*[Section 61B inserted by 1997:8 effective 27 March 1997]*

### Liability of Commission

61C No action, suit, prosecution or other proceedings shall lie against the Commission, the Chairman or any member thereof or any person acting on behalf of the Commission in respect of any act or omission done or made in good faith in execution or intended execution of any function under this Act.

*[Section 61C inserted by 1999:17 s.3 effective 18 June 1999]*

### Governor may prohibit transmission of messages in public interest

62 Where he is satisfied that the interests of defence, public safety, public order or public morality so require, the Governor, acting in his discretion may by warrant under his hand direct that any message or any class of messages brought for transmission by telecommunication shall not be transmitted or that any telephone call or message or any class of messages brought for transmission, or transmitted or received or being transmitted, by telecommunication shall be intercepted or detained or disclosed to the Governor or to the public officer specified in the warrant.

### Powers of Governor in time of war or emergency

63 (1) Notwithstanding anything in this or any other Act to the contrary, when Her Majesty is at war or there is in force a proclamation of emergency made or continued in force under section 14 of the Constitution [*title 2 item 1*] the Governor may, when the public interest so requires by warrant under his hand—

- (a) direct and cause any telecommunications system or any part thereof, which is within Bermuda or the territorial waters thereof to be taken possession of in the name and on behalf of Her Majesty and to be used for Her Majesty's service and subject thereto for such ordinary service as the Governor may see fit and in that event any person authorized by the Governor may enter upon the premises where such telecommunication system, or any part thereof, is situated and take possession thereof and use the apparatus therein as aforesaid; or
- (b) instead of making such order as aforesaid, direct and authorize such persons as he thinks fit to assume control of any telecommunication service within Bermuda either wholly or partly and in such manner as he may direct and such person may accordingly enter upon the premises of any person within Bermuda operating such telecommunication service and assume control of the whole or part thereof;
- (c) suspend or amend, for such time as he thinks fit, the laws, rules and regulations applicable to any or all radio stations or devices capable of

emitting electromagnetic radiations within Bermuda or the territorial waters thereof and may cause the closing of any radio station or any part thereof, or any device capable of emitting electromagnetic radiations which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment, or he may authorize the use and control of any such radio station or device or its apparatus and equipment by any department of Government under such regulations as he may prescribe and he may direct and authorize such persons as he thinks fit to enter upon the premises, ship, aircraft, or vehicle where any radio station or device as aforesaid is located for the purposes of closing and sealing such radio station or device, and the removal of any apparatus or equipment or for the purpose of using or controlling any such radio station or device:

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

(2) In any such case as aforesaid if a Carrier or broadcasting station shows that, as a result of the exercise of any of the powers aforesaid its receipts during the period of such exercise of powers from public telecommunication services or broadcasting as the case may be with respect to which the said powers have been exercised or from any other systems of telecommunication owned or operated by it have been less than its receipts from the same source during the corresponding period on the average of the three years last preceding the exercise of such powers there shall be paid to the Carrier or broadcasting station as compensation for any loss of profit sustained by the said Carrier or broadcasting station by reason of the exercise by the Governor of any of the powers hereby reserved such sum as may be settled by agreement or as in case of difference may be determined by arbitration:

Provided always that no such compensation as aforesaid shall be paid if and so far as the said powers are exercised for the purpose of preventing direct communication with any of Her Majesty's enemies and save with the consent of the Governor no such compensation shall be paid if and so far as the powers aforesaid are exercised for the purpose of preventing indirect or suspected communication with any of Her Majesty's enemies or of protecting the interests of Her Majesty under the apprehension of impending war.

(3) In the case of a Carrier in estimating such compensation as in subsection (2) provided, the arbitrator shall take into account all the circumstances of the case including not only such loss as aforesaid but also any additional profit accruing to a Carrier by reason of the emergency which gave rise to the exercise of the powers aforesaid whether from the

use of the Carrier's telecommunication services so taken possession of or controlled or from the user by it of any other system of telecommunication for the transmission of traffic which would normally have been handled by the Carrier's telecommunication services so taken possession of or controlled, and as regards the Carrier's telecommunication services with respect to which the said powers have been exercised the receipts of the Carrier on the average of the three years last preceding the exercise of the said powers during a period corresponding to that of the exercise of the said powers shall be deemed to be the receipts which the Carrier would have taken during the period of the exercise of the said powers had the powers not been exercised.

(4) A certificate signed by the Minister to the effect that an order under the terms of subsection (1) was made in time of war or during a proclamation of emergency and in the public interest shall be conclusive evidence of a state of war or the existence of a proclamation of emergency and that the order was made in the public interest.

*[Section 63(1)(a) amended by 2001:28 s.21 & Sch effective 13 August 2001]*

#### Powers of search

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

(2) Any person who obstructs any inspector, public officer or police officer in the exercise of the powers conferred by this section commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$500 or both such imprisonment and fine.

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

*[Section 64 amended by 1997:8 effective 27 March 1997]*

#### Forfeiture

65 A magistrate may, upon application by or on behalf of the Minister or by any public officer, order that any apparatus in respect of which there has been a contravention or attempted contravention of this Act shall be forfeited, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

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### Exemption

66 (1) The Minister may by order exempt any person, or any class of persons, any telecommunication service, or any apparatus or class of apparatus from this Act or from any regulations made thereunder, or from such of the provisions thereof as he thinks fit.

(2) Any order under subsection (1) may be made subject to any conditions the Minister considers appropriate.

(3) The negative resolution procedure shall apply to an order of the Minister under this section.

*[Section 66 amended by 1997:8 effective 27 March 1997]*

### Repeal and transitional provisions

67 *[omitted]*

### Amendment

68 *[omitted]*

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FIRST SCHEDULE

(Sections 14 and 23)

SPECIFIED CARRIERS

Bermuda Cablevision Limited

Bermuda Land Development Company Limited

Bermuda Telephone Company Limited

*[First Schedule amended by 1999:23 s.3(c) effective 1 November 1998; by BR 41/2001 effective 17 August 2001; by BR 75/2008 effective 15 November 2008]*

SECOND SCHEDULE

(Section 7)

PROVISIONS RELATING TO THE COMMISSION

1 *[Deleted by 1993:31]*

2 The Minister shall designate one of the Commissioners to be Chairman who shall hold office as such at the Minister's pleasure; however, if at any meeting of the Commission the Chairman is absent the Commissioners present shall elect one of their number to act as Chairman at that meeting.

3 A Commissioner may resign his office at any time by notice in writing given to the Minister.

4 The Minister may declare the office of a Commissioner vacant if he is satisfied that the Commissioner—

- (a) is unable through mental or physical incapacity or absence from Bermuda to perform the functions of his office; or
- (b) has failed, without adequate cause, to attend three successive meetings of the Commission; or
- (c) has been sentenced to imprisonment for the commission of a criminal offence.

5 A person appointed to fill the place of a Commissioner before the end of his term of office shall hold office so long only as the vacating Commissioner would have held office.

6 Where a Commissioner is absent from Bermuda, ill or otherwise temporarily incapacitated from performing his functions as a Commissioner, the Minister may appoint a person to act in the place of such Commissioner during the period of his incapacity and any person so appointed shall, while so acting, be deemed to be a Commissioner.

7 A person who has held office as a Commissioner shall be eligible for re-appointment.

8 No Commissioner shall take part in an enquiry or decision relating to any specified business in which he or his spouse, parent or child is a member or shareholder or has any private interest, direct or indirect, or there is any other reason whereby his private interest may conflict with his duties as a Commissioner, and the Minister may appoint a person to act in place of such Commissioner for the purposes of such enquiry or decision and any person so appointed shall while so acting be deemed to be a Commissioner.

9 The Commission may act notwithstanding any vacancy in their membership, and no act of the Commission shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

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10 The Commission shall meet as often as may be necessary for them to discharge their responsibilities under this Act.

11 A minute shall be made of every decision of the Commission in such form as the Minister may direct.

12 The quorum of the Commission shall be not less than four.

13 In any matter before the Commission the Chairman or person acting as Chairman shall have a deliberative as well as a casting vote.

14 Subject to the provisions of this Schedule the Commission may determine its own procedure.

15 For the purposes of this Schedule a reference to a member or the membership of the Commission shall, unless the context otherwise requires, be construed as including the Chairman.

16 Fees shall be paid to each Commissioner in accordance with the provisions of the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

17 The Telecommunications Inspector shall be the Executive Officer and secretary of the Commission, unless the Minister appoints another person.

18 The staff of the Commission shall be public officers of the Department.

19 Any direction of the Commission given under this Act or any other statutory provision shall be deemed to be duly authenticated if it is signed by the Chairman or, in his absence, the secretary thereof.

20 A notice shall be given to the Commission by service upon the secretary thereof.

21 Copies of all official documents and orders filed or deposited in the office of the Commission and certified by the Chairman or the secretary to be true copies of the originals shall be evidence in like manner as the originals in all courts.

*[Second Schedule amended by 1993:31 effective 7 July 1993; para 12 amended by 2001:28 s.20 effective 13 August 2001]*

THIRD SCHEDULE

(Section 53A(2) )

CALLBACK TELECOMMUNICATION SERVICES

- (1) In this Schedule, “call” includes a communication by telephone, facsimile, electronic or other communications medium.
- (2) Section 53A(2) includes any sequence of actions in which—
- (a) a call is made from a number in Bermuda to a telecommunication service provider located outside Bermuda and the provider makes a call to a number in Bermuda or causes such a call to be made following which a caller inputs call details;
  - (b) a call is made from a number in Bermuda to a telecommunication service switch located outside Bermuda and the switch automatically makes a call to a number in Bermuda or causes such a call to be made following which a caller inputs call details;
  - (c) a call is made from a number in Bermuda to a telecommunication service switch located outside Bermuda, details are given relating to the identity of a caller in Bermuda and the location of a number in Bermuda and the switch automatically makes a call to a number in Bermuda or causes such a call to be made following which a caller inputs call details;
  - (d) a call is made from a number in Bermuda to a telecommunication service switch located outside Bermuda, call details are given and the switch makes a call or a call attempt or causes such call or call attempt to be made to a destination outside Bermuda in accordance with the call details before connecting that call with a number in Bermuda.

*[Third Schedule inserted by 2000:40 s.3 effective 15 December 2000]*

*[This Act was brought into operation on 20 February 1987 by BR 2/1987]*

[Assent Date: 28 July 1986]

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*[Amended by:*

1990 : 24  
1993 : 31  
1997 : 8  
1997 : 37  
1998 : 20  
1999 : 17  
1999 : 23  
2000 : 40  
BR 41 / 2001

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2001 : 28  
2002 : 6  
BR 75 / 2008  
2010 : 34]