

THE TELECOMMUNICATIONS ACT, 2001

Arrangement of Sections

PART I

PRELIMINARY

Section

- 1. Short title
- 1A. Commencement
- 2. Interpretation**
- 3. Objects of the Act**

PART II

THE TELECOMMUNICATIONS AUTHORITY

- 4. Establishment of the Authority
- 5. Management of Authority by Board
- 6. Constitution of Board**
- 7. Corporate Secretary**
- 8. Chief Executive Officer**
- 9. Absence from office of Chief Executive Officer**
- 10. Seal
- 11. Ordinary meetings
- 12. Special meetings
- 13. Quorum**
- 14. Decisions of the Board**
- 15. Disclosure of interest**
- 16. Inducement, collusion, concealment or connivance
- 17. Personal liability of members
- 18. Functions and powers of the Authority**
- 19. Directions by the Minister
- 20. Assets transferred to the Authority

PART III

CONCESSIONS

- 21. Requirement for a concession
- 22. Conditions applicable to all concessions
- 23. Conditions applicable to a concession for a broadcasting service**

- 24** **Conditions applicable to a concession for a public telecommunications network or service or subscription broadcasting service**
- 25** **Interconnection**
- 26** **Access to facilities**
- 26A** **Access to bottleneck telecommunications services**
- 27. Government essential services
- 28. Universal Service
- 29.** **Prices**
- 30. Termination, suspension or amendment of concession
- 31** **Renewal of concession**
- 32** **Terminal equipment**
- 33.** **Road works**
- 34. Repair and restoration
- 35. Trees

PART IV

LICENCES, SPECTRUM MANAGEMENT AND NUMBERING

- 36.** **Requirement for a licence**
- 37.** **Conditions of a licence**
- 38.** **Authorisation to operate in territorial waters or airspace**
- 39.** **Termination, suspension, amendment or renewal of licence**
- 40 Operation of equipment
- 41.** **Spectrum**
- 42.** **Allocation of frequency bands**
- 43. Exercise of functions
- 44.** **Numbering plan**

PART IVA

MERGERS, ACQUISITIONS, ANTI-COMPETITIVE AGREEMENTS OR PRACTICES AND DOMINANCE

- 44A** **Definition of Mergers and anti-competitive mergers**
- 44B** **Mergers and qualifying mergers**
- 44C** **Interlocking directorship**
- 44D** **Order of divestment**
- 44E** **Definition of anti-competitive agreement**

44F	Horizontal and vertical agreements
44G	Transitional amnesty
44H	Definition of markets and dominance
44I	Abuse of Dominance
44J	Authority's power to investigate abuse
44K	Referral to Caribbean Community Competition Commission
44L	Commission's power to investigate
44M	Decision of the Commission Binding
44N	Regulations for this Part

PART V

TECHNICAL STANDARDS

45.	Standards
45A.	Import restriction of uncertified equipment

PART VI

TESTING, INSPECTION AND INVESTIGATION

46.	Inspectors
47.	Power to request information
48.	Pre-installation testing
49.	Standards for testing
50.	Entry and search
51.	Magistrate may issue warrant

PART VII

FINANCIAL PROVISIONS

52.	Financial powers of the Authority
53.	Funds of the Authority
54.	Exemption from tax and provisions of Central Tenders Board Ordinance, 1961
55.	Estimates of expenditure
56.	Preparation of annual reports and accounts by Authority
57.	Audit of accounts
58.	Financial year
59.	Authority may make rules

PART VIII

STAFF AND RELATED MATTERS

- 60. Employment of staff
- 61. Secondment
- 62. Transfer of officers to the Authority
- 63. Pension fund plan
- 64. Employment of persons for specific tasks

PART IX

OFFENCES

- 65. Offences**
- 66. Obstructing an inspector
- 67. False signals
- 68. False communications
- 69. Damage to equipment
- 70. Recovery of civil debt
- 71. General penalty
- 71A Authority to recover outstanding fees as civil debt**
- 72. Amendment of penalties

PART IXA

CONTRAVENTION AND ADMINISTRATIVE PENALTIES

- 72A Notification of persons in contravention of the Act**
- 72B Enforcement determination against a person duly notified**
- 72C Imposition penalties on persons duly notified**
- 72D Considerations for the imposition of penalties**
- 72E Administrative infringements by bodies corporate**
- 72F Prescription for offences and administrative infringements**

PART IXB

ROLE OF THE COURTS

- 72G Jurisdiction of the Court in relation to enforcement of this Act**
- 72H Deferment of Penalties**
- 72I Appeals of decisions**

- 72J Disposals of appeals**
- 72K Duty owed of persons in breach of this Act, regulations or directions of the Authority**
- 72L Available remedy of Judicial Review**

PART X

GENERAL

- 73. Directions for Minister**
- 74. Chief Executive Officer's certification**
- 75. Monitoring stations
- 76. Harmful interference
- 77. Obligations under international agreements
- 78. Regulations**
- 79. Authority to promulgate Broadcasting Code**
- 80. Confidentiality
- 80A Authority may prescribe by publication**
- 81. Forbearance
- 82. Dispute resolution**
- 83. Reconsideration and appeal
- 84. Telecommunications during an emergency
- 85. Repeal and transitional provisions
- 86. Validation of acts or omissions**

SCHEDULE

First Session Sixth Parliament Republic of Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 4 of 2001

AN ACT for the regulation of Telecommunications in Trinidad and Tobago

[Assented to 5th July, 2001]

WHEREAS, the Government believes that in order to Preamble promote the country as the regional centre for the new information economy, it is necessary to establish a comprehensive and modern legal framework for an open telecommunications sector by permitting new providers of telecommunications services to enter the market and compete fairly:

And whereas it is appropriate that an Authority be established with transparent regulatory processes to guide the sector's transformation from virtual monopoly, in which Telecommunications Services of Trinidad and Tobago is the principal provider of telecommunications services, to a competitive environment, to monitor and regulate the sector so transformed and, in particular, to prevent anticompetitive practices:

And whereas it is appropriate in a competitive environment to provide adequate safeguards to ensure that such competition operates effectively, and that there are no abuses of market power or other anticompetitive conduct on the part of providers and operators within the telecommunications and broadcasting sectors;

And whereas having regard to the fact that spectrum is a public resource, it is necessary and appropriate in a diverse and competitive broadcasting environment to provide adequate safeguards to ensure that broadcasters utilize that resource for the good of the public, exercising their constitutional rights and freedoms with due regard for the need to protect the rights of and freedoms of the individual within the society and respect for the laws of the nation;

And whereas, in order to achieve these stated goals, it is necessary to repeal the existing, outdated legislation and enact new legislation, as hereunder proposed:

ENACTED by the Parliament of Trinidad and Tobago as follows:—

PART I

PRELIMINARY

- | | |
|--------------|---|
| Short Title | 1. (1) This Act may be cited as the Telecommunications Act, 2001. |
| Commencement | 1A. The commencement dates of this Act are set out hereunder: <ul style="list-style-type: none"> (a) sections 1 to 20 came into operation on 5th July, 2001; |

- (b) sections 21 to 51 came into operation on 30th June, 2004;
- (c) sections 52 to 64 came into operation on 5th July, 2001;
- (d) sections 65 to 72 came into operation on 30th June, 2004;
- (e) sections 73 to 76 came into operation on 5th July, 2001;
- (f) sections 77 came into operation on 30th June, 2004;
- (g) sections 78 to 80 came into operation on 5th July, 2001;
- (h) sections 81 to 85 came into operation on 30th June, 2004.

Interpretation

2. (1) In this Act—

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

“affiliate” means an affiliated body corporate within the meaning of section 5 of the Companies Act;

"Authority" means the Trinidad and Tobago Telecommunications Authority established under section 4;

“bottleneck telecommunications or broadcasting services” means network services that are provided exclusively or predominantly by a monopolist or a small number of suppliers and that cannot easily be replicated or substituted by competitors for economic or technical reasons;

“broadcaster” means the person who owns or controls the telecommunications network and or channel for the delivery of a broadcasting service, and or is responsible for the programmes delivered within a broadcasting service via that telecommunications network and or channel and does not include the person who, without ownership or control of the distributing telecommunications network and or channel, provides programmes for scheduling and subsequent delivery;

"broadcasting service" means the **offering of** programmes whether or not encrypted, by any means of telecommunications, for reception by the general public, including sound, radio, television and other types of transmissions, such as those on a

point to multipoint basis;

“channel” means the discrete unit of a telecommunications service, effected either through segmentation of time and/or frequency or through the utilisation of encryption systems, which facilitates the passage of information associated with telecommunications or broadcasting;

"closed user group" means a group of persons, who have a common business or other economic interest other than the provision of a telecommunications service;

"closed user group service" means a telecommunications service, used by a closed user group, operated without interconnection to a public telecommunications network;

"concession" means an authorization to operate a public telecommunications network or provide a public telecommunications service or broadcasting service, issued pursuant to section 21;

“consumer” means a user of a telecommunications or broadcasting service;

"Convention" means the International Telecommunication Union Convention adopted from time to time and in force, to the extent ratified by Trinidad and Tobago;

“Court” means the High Court of Justice established under the Supreme Court of Judicature Act

"Chief Executive Officer" means the Chief Executive Officer of the Authority appointed by the Board in accordance with section 8;

“enterprise” shall have the meaning ascribed to it in the Fair Trading Act, 2006

“facility” means a physical component of a telecommunications network including wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or object connected therewith, used for the purpose of telecommunications and includes any **building**, post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used for **housing**, carrying, suspending, supporting or protecting the **physical component but shall not include terminal equipment;**

"frequency band" means a continuous frequency range of spectrum;

"harmful interference" means interference which endangers the functioning of telecommunications so as to impede, degrade, obstruct or interrupt a telecommunications service;

“IFRS” means the International Financial Reporting Standards adopted from time to time by the International Accounting Standards Board;

"interconnection" means the linking of public telecommunications networks and public telecommunications services, to allow the users of one provider of a public telecommunications service to communicate with the users of another provider of a public telecommunications service, and to access the services provided by such other provider;

"licence" means an authorization issued pursuant to section 45 ;

"local authority" means the council of a municipal corporation within the meaning of the Municipal Corporations Act, 1990;

“market” means any market for the operation of a telecommunications network or provision of telecommunications or broadcasting service or the supply of any related equipment or service, as defined by the Authority in accordance with section 18;

"Minister" means the member of Cabinet to whom responsibility for telecommunications is assigned;

"network termination point" **means the physical point at the boundary of a network intended to accept the connection with terminal equipment or another network;**

"pension fund plan" has the meaning assigned to it by section 28(1) of the Income Tax Act;

"pension law" has the meaning assigned to it by the Law Reform (Pensions) Act, 1997 except for the reference to the Defence Act;

"private telecommunications service" means a telecommunications service used within one enterprise or its affiliates, to satisfy its or their internal needs and operated without any interconnection to a public telecommunications network;

"public ground" includes any open or enclosed space to which, for the time being, the public has or is permitted to have access;

"Public Service" has the meaning assigned to it under section 3 of the Constitution;

"public telecommunications network" means a telecommunications network used to provide a public telecommunications service;

"public telecommunications service" means a telecommunications service, including a public telephone service, offered to members of the general public, whereby one user can communicate with any other user in real time, regardless of the technology used to provide such service;

"public telephone service" means the commercial provision to the public of interactive voice communication in real time from and to points at which users are connected to a network such that a user can use terminal equipment to communicate with another user;

"radio-communication service" means a service performed or intended to be performed or facilities provided or intended to be provided involving the transmission, emission or reception of electromagnetic waves for telecommunications purposes;

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

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

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

"street" has the same meaning assigned to it in section 2 of the Highways Act;

“subscription broadcasting service” means a broadcasting service that is made available to members of the general public on payment of a subscription fee, whether such payment is periodic or otherwise, and whether or not such fee is charged on its own or forms part of a fee for multiple services including the broadcasting service

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

"telecommunications network" means a system or any part thereof used for the provision of a telecommunications **service or a broadcasting service**;

"telecommunications service" means a service using telecommunications whereby one user can communicate with any other **user, regardless** of the technology used to provide such a service and includes a public telecommunications service, a private telecommunications service, a closed user group service and a radio communication service;

"terminal equipment" means equipment on the user's side of the network termination point that is connected to a telecommunications network by wire, wireless, optical or electromagnetic means and with which a user can originate, process or terminate telecommunications;

"testing of traffic" means the examination of the codes and protocols used in order to verify the type of telecommunications signal being transmitted and received;

"Tobago House of Assembly" means the Assembly established under the Tobago House of Assembly Act;

"traffic" means the electronic composition of a "telecommunications signal";

"universal service" means the provision of telecommunications **and broadcasting** services throughout Trinidad and Tobago, taking into account the needs of the public, affordability of the service and advances in technologies;

"user" means a customer or a subscriber;

"utility installation" means any facility in or over a street or public ground;

"utility installation owner" means the owner or operator of any utility installation, and includes any concessionaire or licensee, statutory authority and any other entity defined to be a public utility in the Regulated Industries Commission Act”;

"value added service" means a service, other than a public telecommunications service that, using a telecommunications service, provides or modifies content and applications not associated with the telecommunications service.

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

(3) The Minister may, by Order, amend this section, subject to affirmative resolution of Parliament.

Objects of the Act

3. The objects of the Act are to establish conditions for—

- (a) an open market for telecommunications **and broadcasting** services, including conditions for fair competition, at the national and international levels;
- (b) the facilitation of the orderly development of a telecommunications **and broadcasting sectors** that serve to safeguard, enrich and strengthen the national, social, cultural and economic well-being of the society;
- (c) promoting and protecting the interests of the public by -
 - (i) promoting access to telecommunications **and broadcasting** services;
 - (ii) ensuring that services are provided to persons able to meet the financial and technical obligations in relation to those services;
 - (iii) providing for the protection of customers;
 - (iv) promoting the interests of customers, purchasers and other users in respect of the quality and variety of telecommunications **and broadcasting** services and equipment supplied;
- (d) promoting access to telecommunications **and broadcasting** services for all persons in Trinidad and Tobago, to the extent that is reasonably practicable to **do so**;
- (e) facilitating the achievement of the objects referred to in paragraphs (a) and (b) in a manner consistent with Trinidad and

Tobago's international commitments in relation to the liberalization of telecommunications;

- (f) promoting the telecommunications **and broadcasting industries** in Trinidad and Tobago by encouraging investment in, and the use of, infrastructure to provide telecommunications **and broadcasting** services; and
- (g) **regulating the provision of** broadcasting services **for the benefit of the public in Trinidad and Tobago** consistent with the existing constitutional rights and freedoms contained in sections 4 and 5 of the Constitution.

PART II

THE TELECOMMUNICATIONS AUTHORITY

- | | |
|----------------------------------|--|
| Establishment of the Authority | 4. There is hereby established a body corporate to be known as the Telecommunications Authority of Trinidad and Tobago (hereinafter referred to as "The Authority"). |
| Management of Authority by Board | 5. The Authority shall be managed by a Board (hereinafter referred to as "the Board") for the purpose of exercising and performing such duties as are conferred upon it by this Act and by any other written law. |
| Constitution of the Board | <p>6. (1) The Board shall consist of—</p> <ul style="list-style-type: none"> (a) a Chairman, a Deputy Chairman and not less than five or more than nine members appointed by the President on such terms and conditions as the President may determine; <p>(2) Of the members appointed under subsection (1)(a) -</p> <ul style="list-style-type: none"> (a) one member shall be appointed on the recommendation of the Chief Secretary of the Tobago House of Assembly; (b) at least two members shall be qualified, by reason of training and experience, in telecommunications or the telecommunications sector; (ba) one member shall be qualified by reason of training and experience, in broadcasting or the broadcasting sector; (c) one member shall be an Attorney-at-law within the meaning of the Legal Profession Act; |

- (d) one member shall be a representative of art and culture;
- (e) one member shall be a representative of the non-governmental organization movement; and
- (f) the remainder shall be qualified, by reason of training and experience, in the fields of economics, finance or business.

(3) Subject to subsection (4) an appointment under subsection (1)(a) shall be for such period, being not more than three years at any one time, as the President shall specify in the instrument of appointment, and the appointments of members shall not all expire at the same time.

(4) The first Board shall consist of a Chairman, Deputy Chairman and two members appointed for a term of three years, three members appointed for a term of two years and any other members that may be appointed for a term of one year each.

(5) The Chairman or Deputy Chairman may at any time resign his office as Chairman or Deputy Chairman or as a member of the Board or both by letter addressed to the President and forwarded through the Minister.

(6) A member of the Board may at any time resign by letter addressed to the Chairman who shall forthwith cause it to be forwarded to the Minister to be submitted to the President.

(7) The appointment of any person to an office or membership of the Board and the termination thereof whether by death, resignation, revocation, effluxion of time or otherwise, shall be notified in the Gazette.

(8) The President may terminate the appointment of a member of the Board where he—

- (a) becomes of unsound mind or is incapable of carrying out his duties;
- (b) has been declared bankrupt;
- (c) is convicted of any offence which brings the Authority into disrepute;
- (d) is guilty of misconduct in relation to his duties;
- (e) is absent, except on leave granted by the Board, from three consecutive meetings of the Board; or

(f) fails materially and willfully to carry out any of the duties or functions conferred or imposed on him under this Act.

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

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

(11) Section 15 applies *mutatis mutandis* to a person appointed under subsection (9).

Corporate Secretary

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

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

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

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

(5) The provisions of Section 15 shall apply *mutatis mutandis* to a person appointed as Secretary

Chief Executive Officer

8. (1) The Board shall appoint a Chief Executive Officer for the Authority, for a term not exceeding five years, which may be renewed upon approval of the Board, on such terms and conditions not less than the average of that awarded to chief executives of state enterprises and as agreed upon between the Board and the Chief Executive Officer.

(2) The **Chief Executive Officer** shall—

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

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

(3) The appointment of the **Chief Executive Officer** and the termination of his appointment, whether by death, resignation or otherwise, shall be published in the Gazette.

(4) The provisions of Section 15 shall apply *mutatis mutandis* to a person appointed as Chief Executive Officer

Absence from office of the
Chief Executive Officer

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

- (a) by a resignation or termination of appointment;
- (b) by absence approved by the Board,

the Board shall appoint, from amongst the staff of the Authority, a person to act as **Chief Executive Officer**.

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

- (a) shall have and may exercise all the powers and perform all of the functions of the **Chief Executive Officer**;
- (b) shall receive the same remuneration as the **Chief Executive Officer**; and
- (c) shall, where the vacancy arose as a result of a resignation or termination, continue to act until such time as an **Chief Executive Officer** is appointed, such appointment to be no later than six months from the date of the acting appointment.

(3) At no time shall an appointment to act as **Chief Executive Officer** exceed a period of six months.

Seal

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

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

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

Ordinary Meetings

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

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

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

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

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

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

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

Special Meetings

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

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

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

Quorum

13. (1) At any meeting of the Board, **more than** half of the **members shall** constitute a quorum.

(2) Decisions of the Board shall be by a majority of votes of the members present and voting.

(3) The Chairman, or other member duly presiding, shall have an original, and if the vote is equal, a casting vote.

Decisions of the Board

14. Decisions of the Board may be taken at meetings by a majority of members present and voting, or in cases in which the Chairman shall so direct, by the recording of the opinions of members on papers circulated among them. Decisions taken in either manner shall be final and conclusive.

15. (1) The Minister and every member of the Board shall, on appointment and annually thereafter, submit to the President a declaration stating whether or not he has an actual or **contingent interest, whether directly or indirectly**—

- (a) in any network or service regulated by the Authority; and
- (b) in any business or any body corporate carrying on any business with the Authority in the exercise of its functions.

(2) The Minister and a member of the Board whose interest is likely to be affected in any way by a decision of the Board on any matter specified in subsection (1) shall, as soon as possible after the relevant facts come to his knowledge, disclose to the President the nature of that interest.

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

(4) A disclosure **made** under subsections (1) or (2) shall be recorded in the minutes of **the meeting immediately following the disclosure, and any subsequent meetings at which the relevant matter is discussed, deliberated or decided upon** and the member shall—

- (a) not take part after disclosure in any deliberation or decision of the Board with respect to that matter;
- (b) be disregarded for the purpose of constituting a quorum of the Board; **and** –
- (c) **not be entitled to receive or consider any Board documents or have disclosed to him any information regarding the Board’s deliberation or discussion of that matter.**

(5) For the purposes of section **and without prejudice to the generality of subsection (1)**, a person who, or a nominee or relative of whom, is a shareholder who owns shares in excess of five per cent, or is a partner in a company or other body of persons other than a statutory authority or who is an employee thereof, shall be treated as having an actual or contingent pecuniary interest.

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

(6A) Where a member of the Board has any interest in any matter being considered by the Board that had not been previously disclosed pursuant to subsection 15 (4) above, that member shall at the start of any meeting at which the matter is considered, or at the outset of the Board's deliberation of the matter, or as soon as the interest or the Board's deliberation of the relevant matter becomes known to him (whichever is earliest), disclose the fact and the nature of his interest to the Board and shall-

- (a) not take part after disclosure in any deliberation or discussion of the Board;**
- (b) not be provided with any Board documents or have disclosed to him any information regarding the Board's deliberation or discussion; and**
- (c) be disregarded for the purpose of constituting a quorum of the Board;**

with respect to that matter

(7) Any person to whom this section applies who fails to comply with the provisions of this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars unless he proves, to the satisfaction of the Court, that he did not know that—

- (a) the matter in which he had an interest was the subject of consideration at the meeting; or**
- (b) he had an interest in the matter under consideration at the meeting.**

Inducement, collusion,
concealment and
connivance

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

Personal liability of
members

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

- (a) any act or omission of the Board; or
- (b) anything done or permitted in good faith in the course of the operations of the Authority under this Act.

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

Functions and powers of
the Authority

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

- (a) make recommendations to the Minister on the granting of **concessions and** monitor and ensure compliance with the conditions set out therein;
- (aa) **authorize the use of spectrum and monitor and ensure compliance with the conditions set out to regulate such use;**
- (b) classify telecommunications networks and services as public telecommunications networks, public telecommunications services, closed user group services, private telecommunications services, value added services, broadcasting services or any other type of telecommunications service;
- (c) determine universal service obligations throughout Trinidad and Tobago, pursuant to section **28**, and ensure that such obligations are realised;
- (d) establish national telecommunications **and broadcasting** industry standards and technical standards **in accordance with:**
 - (i) **international standards; and**
 - (ii) **environmental health and safety standards, including electromagnetic radio emissions;**
- (e) advise the Minister on policies governing the telecommunications industry and issues arising at international, regional and national levels;
- (f) *{Deleted}*
- (g) ensure compliance with the Convention;

- (h) implement and enforce the provisions of this Act and the policies and regulations made hereunder;
- (i) plan, supervise, regulate and manage the use of the radio frequency spectrum, including—
 - (i) the licensing and registration of radio frequencies and call signs to be used by all stations operating in Trinidad and Tobago or on any ship, aircraft, or other vessel or satellite registered in Trinidad and Tobago;
 - (ii) the allocation, assignment and reallocation or reassignment of frequency bands where necessary; and
 - (iii) **the registration and certification of operators of radio-communication stations where deemed applicable by the Authority**
- (j) plan, administer, manage and assign telecommunications numbering **and/ or addressing** for telecommunications services **in conformance with and subject to international rules and regulations where applicable**;
- (k) collect all fees, including concession and licence fees, and any other charges levied under this Act;
- (l) investigate and resolve all allegations of harmful interference;
- (m) investigate complaints by users, operators of telecommunications networks, providers of telecommunications and broadcasting services or other persons arising out of the operation of a public telecommunications network, or the provision of a **public** telecommunications service or broadcasting service, in respect of rates, billings and services provided generally and to facilitate relief where necessary;
- (n) train and certify its personnel in accordance with the Convention;
- (o) **test, certify and ensure compliance of telecommunications, radio-transmitting and radio-communications equipment used, manufactured, imported, sold or leased in Trinidad and Tobago with national telecommunications and broadcasting industry standards prescribed by the Authority pursuant to subsection (d)**;

- (p) ensure the orderly and systematic development of telecommunications **and broadcasting** throughout Trinidad and Tobago;
- (q) establish a consumer complaints committee to[
 - (i) **consider complaints received by the Authority,**
 - (ii) **decide on relief to be provided,]** and
 - (iii) report on consumer complaints such reports to be included in the Authority's annual report
- (qa) **carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business, as to enable it to determine whether a concessionaire is engaging in business practices in contravention to Part IVA of this Act, the extent of such practices and take such action as it considers necessary in accordance with the provisions of the Act;**
- (qb) **notwithstanding the provisions of subsection (l) and (m) above, carry out such investigations as may be requested by any person or as it may consider necessary or desirable in connection with matters falling within the provisions of this Act;**
- (qc) **impose administrative fines on concessionaires or licensees deemed to have breached relevant provisions of this Act, or its Regulations;**
- (qd) **request and acquire information relevant to the performance of its functions;**
- (qe) **enter into contracts;**
- (qf) **enter into Memoranda of Understanding with such other governmental, regional and international entities so as to establish mechanisms for regulation of telecommunications and broadcasting sectors;**
- (r) carry out such other functions imposed by or under this Act **or any other law** and do anything incidental or conducive to the performance of any of its functions.

(2) In the performance of its functions under subsection (1)(o), the Authority shall require that all persons operating or intending to operate any of the services listed in subsection (1)(o) notify the Authority accordingly and the Authority shall establish a Register of all such persons and services.

(3) In the performance of its functions, the Authority shall have regard to the interests of consumers and in particular—

- (a) to the quality and reliability of the service provided at the lowest possible cost;
- (b) to fair treatment of consumers and service providers similarly situated;
- (c) in respect of consumers similarly placed, to non-discrimination in relation to access, pricing and quality of service; and
- (d) current national environmental policy.

(4) In the performance of its functions under subsection (1)(c), (d), (e), (m) and (p), sections 28, 78 and 79 and any other provisions of the Act as the Authority deems appropriate, the Authority shall adopt procedures by which it will—

- (a) afford interested parties and the public opportunities for consultation;
- (b) permit affected persons and the public to make appropriate submissions to the Authority.

(4A) The Authority may in such manner as it considers appropriate:-

- (a) make available general information to users and consumers with respect to their rights and obligations under this Act; and**
- (b) undertake studies and publish reports and information regarding matters affecting the interests of stakeholders**

(5) At all times the Authority shall, in the performance of its functions and exercise of its powers, act in an objective, transparent and non-discriminatory manner.

Directions by the Minister

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

Assets transferred to the Authority

20. (1) All rights, claims or interests of the Government in the assets set out in the Schedule are hereby vested in the Authority

(2) The Auditor General shall within thirty days of the commencement of this Act, cause an audit of the assets vested in the Authority.

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

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

PART III CONCESSIONS

Requirement for a Concession

21. (1) No person shall operate a public telecommunications network or provide a public telecommunications service or broadcasting service, without a concession granted by the Minister.

(2) A person who wishes to operate a network or provide a service described in subsection (1), shall apply to the Authority in the manner prescribed.

(3) On its receipt of an application, the Authority shall cause to be published in the Gazette and in at least one daily newspaper circulating in Trinidad and Tobago, a notice to the effect that it has received and is reviewing the application.

(4) A notice published pursuant to subsection (3) shall state the time, which shall not be less than twenty-eight days from the date of publication of the notice, within which any comment on or objection to the application may be submitted to the Authority and the Authority shall consider the comments and objections prior to making its recommendations to the Minister.

(5) The Authority shall forward its recommendations to the Minister within ninety days of receiving all relevant information pertinent to the application and the Minister shall indicate his approval, modification or rejection of the recommendation within sixty days of receipt of the Authority's recommendation.

(6) Where the Minister approves the recommendation of the Authority or modifies or rejects it, he shall give his reasons in writing for so doing and

the Authority shall publish both the recommendations and the Minister's position in respect thereof in the Gazette and at least one daily newspaper circulating in Trinidad and Tobago.

(7) On the granting of a concession by the Minister, the Authority shall cause to be published in the Gazette and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect.

(8) The terms of a concession shall be available for public scrutiny in the manner prescribed by the Authority.

(9) If on the expiration of the period referred to in subsection (5), the Minister has not indicated to the Authority, in writing, his approval, modification or rejection of the recommendation, it shall be deemed to have been approved.

(10) The Authority may conduct public hearings in respect of applications for concessions for public telecommunications services and broadcasting services, when such applications are made in the first instance or subsequently at five years intervals when such services are in existence.

(11) Where it appears to the Authority that the concession contains information, the publication of which would be contrary to national security or other international obligations, the Authority shall withhold such information from public scrutiny.

Conditions
applicable to all
concessions

22. (1) Every concession for a public telecommunications network, a public telecommunications service or a broadcasting service shall—

- (a) require the concessionaire to pay fees annually to the Authority;
- (b) prohibit anti-competitive pricing and other related **unfair competition** practices;
- (c) prohibit the transfer of control of the concessionaire without the prior written approval of the Authority;
- (d) prohibit the assignment of the concession without the prior written approval of the Authority;
- (e) require the concessionaire, upon request made by the Minister of National Security and subject to any written law, to collaborate with the Ministry in matters of national security; and
- (f) require the observance of regulations made pursuant to this Act.

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

(3) Every concession for a public telecommunications network, a public telecommunications service or a broadcasting service shall contain conditions regarding—

- (a) the expiration of the concession and the time required for an application for renewal;
- (b) the circumstances under which the concession may be amended, e.g., *force majeure*, national security, changes in national legislation, implementation of international obligations;
- (c) the provision of information and reports to the Authority;
- (d) the overall performance of the concessionaire;
- (e) the provision of information to users and procedures for handling and responding to user complaints and disputes;
- (f) the submission to the Authority of disputes with other concessionaires, users and any person, where such disputes arise out of the concessionaire's exercise of his rights and obligations under the concession, subject to section 82; and
- (g) any other matter as may be agreed between the Minister and the concessionaire.

Conditions applicable to concession for a broadcasting service

23. In addition to the conditions stipulated in section 22, a concession for a broadcasting service shall require the concessionaire to –

- (a) **adhere to the Broadcasting Code promulgated pursuant to this Act; and**
- (b) **in the instance of the channel line-up of a multi-channel broadcasting service provider, include a minimum number of domestic broadcasters on such terms and conditions as the Authority may prescribe.**

Conditions applicable to a concession for a public telecommunications network or service or subscription broadcasting service

24. In addition to the conditions stipulated in section 22, a concession for a public telecommunications network, a **public telecommunications service or subscription broadcasting service shall require the concessionaire to adhere, where applicable, to conditions requiring the concessionaire to—**

- (a) submit to the Authority plans for its approval respecting—
 - (i) the development of its network or service;
 - (ii) quality of service; and

(iii) any other related matter as the Authority may require,

and in the event that **the Authority does not approve any plans submitted** under this paragraph, the Minister may be asked to commission a dispute **resolution** procedure to resolve the dispute in the context of the concession;

- (b) provide users, under conditions which are published or are otherwise filed with the Authority, with access to and the opportunity to use such network or service on a fair and reasonable basis, and without discrimination among similarly situated users;
- (c) refrain from using revenues or resources, from a telecommunications network or service or subscription broadcasting service, to cross subsidise any other telecommunications network or service or subscription broadcasting service, without the prior written approval of the Authority;
- (d) meet standards of quality **prescribed by the Authority**;
- (e) file annually with the Authority forms of user agreements with users for the provision of public telecommunications services or subscription broadcasting service for approval by the Authority;
- (f) permit the resale of its telecommunications service or subscription broadcasting service by not imposing unreasonable or discriminatory conditions or limitations on such resale;
- (g) provide and contribute to universal service in accordance with section **28**;
- (h) account for costs and keep such books of accounts and where the Authority prescribes by regulation the manner in which such books are to be kept, to keep such books of accounts in accordance with such regulations;
- (i) refrain from impairing or terminating the telecommunications service or subscription broadcasting service to a user or other provider of a telecommunication service during a dispute, without first having undertaken to resolve the dispute in accordance with established procedures approved by the Authority and where such dispute cannot be resolved, to seek written approval from the Authority; but in respect of a billing

dispute the concessionaire shall collect such amounts that are not in dispute from such user or other provider;

(j) refrain from using, and maintain the confidentiality of any confidential, personal and proprietary information of any consumer, other operator of a public telecommunications network or other provider of a telecommunications service originating from—

(i) any such consumer, operator or provider; or

(ii) any information regarding usage of the service or information received or obtained in connection with the operation of the concessionaire's network or service,

for any purpose other than to—

(iii) operate such network or service;

(iv) bill and collect charges;

(v) protect the rights or property of the concessionaire;

(vi) protect users or other providers from the fraudulent use of the concessionaire's network or service,

or as otherwise permitted by the concessionaire, user or other provider, as the case may be; and

(k) make available on a timely basis, to other providers of telecommunications services, such technical information as the Authority may prescribe regarding the concessionaire's network, including planned deployment of equipment, and other relevant information necessary for the provision of such services.

(2) *(Repealed by Act No. 17 of 2004)*

25. (1) In addition to the requirements of sections 22 and 24, a concession for a public telecommunications network or a public telecommunications service shall provide for—

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

(2) In respect of a concessionaire's obligations pursuant to subsection (1), the Authority shall require a concessionaire to—

- (a) comply with guidelines and standards established by the Authority to facilitate interconnection, **which guidelines and standards may include, but not be limited to:**
 - (i) **technical standards and network design requirements associated with all systems necessary to facilitate interconnection; and**
 - (ii) **ranges within which concessionaires may negotiate interconnection rates.**
- (b) **provide at its own cost and expense, and in accordance with any guidelines and standards as the Authority may establish under subsection (2)(a), no less than one point of interconnection for the general use of other concessionaires in relation to interconnection under this section,** and provide, upon request, further points of interconnection, subject to rates that reflect the total economic cost of constructing additional facilities necessary to satisfy such request;
- (ba) **disaggregate the network and on a cost basis, in such manner as the Authority may prescribe, establish prices for its individual elements and offer the elements at the established prices to other concessionaires of public**

telecommunications networks and public telecommunications services;

- (c) **submit to the Authority at such intervals as the Authority may prescribe for its approval, such approval not to be unreasonably withheld, the prices and the technical and other terms and conditions pertaining to its offer for the elements of interconnection, and publish in such manner as the Authority may prescribe terms and conditions approved pursuant to this subsection;**
- (d) provide the elements of interconnection, to other concessionaires of public telecommunications networks and public telecommunications services, in a manner that is at least equal in both quality and rates to that provided by the concessionaire to a subsidiary, affiliate or any other party to which the concessionaire provides interconnection;
- (e) **upon the request of another concessionaire of a public telecommunications network or a public telecommunications service, promptly negotiate and endeavour to conclude, subject to paragraph (i), an agreement with regard to the prices and the technical and other terms and conditions for the elements of interconnection, such negotiations and agreement to be consistent with any terms and conditions approved pursuant to subsection (c) above;**
- (f) deposit **forthwith** with the Authority a copy of any agreement concluded pursuant to paragraph (e) **for its approval, such approval not to be unreasonably withheld. The Authority may deny approval of such agreements where, in the opinion of the Authority, such terms and conditions are anti-competitive, or in breach of the Act or standards and guidelines established by the Authority;**
- (g) offer **within twenty-eight days of its approval by the Authority,** the terms and conditions of any agreement concluded pursuant to paragraph (e) to any other concessionaire of a public telecommunications network or public telecommunications service on a non-discriminatory basis;
- (h) submit to the Authority for prompt resolution in accordance with such procedures as the Authority may adopt, any disputes that may arise between concessionaires relating to any aspect of interconnection, including the failure to conclude an agreement

made pursuant to paragraph (e), or disputes as to price and any technical or other term and condition for any element of interconnection;

- (i) submit to any decision rendered by the Authority made pursuant to paragraph (j);
- (j) provide, to the extent technically feasible, number portability when required to do so and in accordance with the requirements prescribed, by the Authority;
- (k) provide dialing parity to other concessionaires of public telecommunications networks and public telecommunications services in accordance with requirements prescribed by the Authority; **and**
- (l) permit other concessionaires of public telecommunications networks and public telecommunications services to have equal access to telephone numbers, operator services, directory assistance and directory listing at a cost efficient rate without unreasonable delay, in accordance with requirements prescribed by the Authority.

(m) *{Deleted}*

(3)

to

(5)

(Deleted by Act No. 17 of 2004)

Access to Facilities

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

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

(2A) Within twenty-eight days of the completion of negotiations in respect of access to any facilities the parties to the negotiations shall deposit with the Authority for its approval a copy of the agreement reached, such approval not to be unreasonably withheld.

(3) A concessionaire may deny access only where it demonstrates **to the Authority that –**

- (a) there is insufficient capacity in the facility, taking into account its reasonably anticipated requirements and its obligations pursuant to section 27; or
- (b) **access must be denied** for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(4) The Authority may regulate the rates, terms and conditions for access to any facility, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to facilitate, by such means as the Authority deems appropriate, the determination of complaints concerning such rates, terms and conditions.

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

Access to Bottleneck
telecommunications or
broadcasting Services

26A.(1) The Authority may from time to time prescribe bottleneck telecommunications or broadcasting services for which, in the opinion of the Authority, the regulation of access thereto is necessary for the orderly development of telecommunications and broadcasting services.

(2) Subject to the provisions of this section, a concessionaire shall provide on request by other concessionaires access to such bottleneck services;

(3) Access to such services shall be negotiated between concessionaires on a nondiscriminatory and equitable basis and, at the request of either party, the Authority may assist in negotiating a settlement between such parties.

(4) The Authority may regulate the terms and conditions for access to any bottleneck service, and it may take such steps as it considers necessary and appropriate to ensure and facilitate the provision of access to bottleneck services.

(5) A concessionaire may deny access to such services only where it demonstrates to the satisfaction of the Authority that there is insufficient service availability, taking into account reasons of safety, security, reliability or difficulty of a technical or engineering nature.

Government essential
services

27. A concessionaire of a public telecommunications network shall permit the Minister to place, at his request, one cross-arm on any or all of its poles in

Trinidad and Tobago free of all rental charges for the purpose of providing essential fire-alarm, police signaling or other services of the Government, but any cross-arm so placed shall be provided, placed and maintained at the expense of the Government, and any damage caused to the property of such concessionaire or any expense, cost, damage or claim incurred by such concessionaire by the exercise by the Minister of the powers conferred by this subsection shall be made good and paid to such concessionaire by the Government

Universal Service

28. (1) In accordance with the policy established by the Minister, the Authority shall determine the public telecommunications **and broadcasting** services in respect of which the requirement of universal service shall apply.

(2) Such services, as are referred to in sub section (1), shall include, at a minimum, a quality public telephone service.

(3) In accordance with the policy established by the Minister, the Authority shall periodically determine the manner in which a public telecommunications service, **broadcasting service** or value added service shall be provided and funded in order to meet the requirements of universal service for that service, including the obligations, if any, of the providers and users of the service.

(4) The Authority may, with the approval of the Minister, require that **providers of** closed user group services, private telecommunications services and value added services contribute to the funding of universal service.

(5) The Authority shall forward its recommendations to the Minister pursuant to this section and the Minister shall indicate his approval, modification or disapproval of the recommendation within sixty days of receipt of the Authority's recommendation.

(6) Where the Minister accepts the recommendation of the Authority or modifies or rejects it, he shall give his reason in writing for so doing and the Authority shall arrange for the publication of both the recommendation and the Minister's position in respect thereof.

(7) If on the expiration of the period referred to in subsection (5), the Minister has not indicated to the Authority, in writing, his approval, modification or rejection of the recommendation, it shall be deemed to have been approved.

(8) The obligations to provide and contribute to the funding of the services referred to in subsection (1) shall be applied on a nondiscriminatory basis as between all similarly situated telecommunications **and broadcasting** service providers.

Prices

29. (1) Prices for telecommunications **and [subscription] broadcasting** services, except those regulated by the Authority in accordance with this section, shall be determined by providers in accordance with the principles of supply and demand in the market.

(2) The Authority may establish price regulation regimes, which may include setting, reviewing and approving prices, in any case where—

(a) there is only one concessionaire operating a public telecommunications network or providing a public telecommunications **or [subscription] broadcasting** service, or where one concessionaire has a dominant position in the relevant market;

(b) a concessionaire operating a public telecommunications network or providing a public telecommunications **or [subscription] broadcasting** service cross-subsidises another telecommunications **or broadcasting** service provided by such concessionaire **in the relevant market**;

(c) the Authority detects anti-competitive pricing or acts of unfair competition **in the relevant market**.

(3) The Authority shall regulate prices for public telecommunications **services, broadcasting** services and international incoming and outgoing settlement tariffs by publishing pricing rules and principles.

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

(5) *{Deleted}*

(6) For any public telecommunications **or broadcasting** service provided on **either an exclusive or** a nonexclusive basis, the Authority may introduce **any** method for regulating the prices of **the sole or** dominant provider, **as the case may be, including the establishment of** caps and floors on such prices, or by such other methods as it may deem appropriate.

(7) Prices, terms and conditions for public telecommunications **or broadcasting** services shall be published by the concessionaire at such times and in such manner as the Authority shall prescribe and shall thereafter, subject to this Act and the conditions of any concession, be the lawful prices, terms and conditions for such services.

(8) }
 to } { Deleted }
 (9) }

Termination , amendment
 or suspension of
 concession

30. (1) Subject to this section, the Minister, on the recommendation of the Authority, may suspend or terminate a concession where—

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

(2) A concession may be amended -

- (a) by the Minister where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to a concession;
- (b) **by the Minister acting upon the recommendation of the Authority, making regulations under section 78 amending the concession.**
- (c) **by any method or procedure provided for within the terms and conditions of the concession.**

(3) Where a concession is amended pursuant to subsection (2), on grounds of national security, the rights of the concessionaire to compensation shall not be prejudiced.

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

- (a) serve on the concessionaire, a written notice to the effect that—
 - (i) he is considering exercising the power and setting out the ground on which it may be exercised; and
 - (ii) the concessionaire may within thirty days of the notice being served, make written representation to the **Minister**;
- (b) take into consideration any representation made to the **Minister**

under paragraph (a) (ii).

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

(6) Before amending a concession, the Minister shall serve on the concessionaire written notice of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect

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

Renewal of Concession

31. (1) Upon application by a concessionaire for the renewal of the first concession issued to him under this Act, the Minister shall, on the recommendation of the Authority, renew that concession unless—

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

(2) The period of renewal under subsection (1) shall be as determined by the Minister acting upon the recommendation of the Authority.

(3) Where a concession is renewed by the Minister in accordance with subsection (1), the Authority shall cause to be published in the *Gazette* and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect.

(4) In respect of all other applications for renewal of concessions issued under this Act, the procedure set out in section 21 shall be applied *mutatis mutandis*.

Terminal Equipment

32 Terminal equipment **shall only** be connected to a public telecommunications network where the Authority, **upon receipt of a request and** after consultation with the concessionaire, has certified such terminal

equipment as –

- (a) being safe for the user;
- (b) being in compliance with international standards, and environmental health and safety standards including standards for electromagnetic radiation and emissions as adopted by the Authority;
- (c) meeting requirements of electromagnetic compatibility if specified;
- (d) **being compatible with the network** and not posing a risk of harm to the network;
- (e) effectively utilising the electromagnetic spectrum and preventing interference between satellite and terrestrial-based systems and between terrestrial systems;

Road Works

33. (1) In connection with the operation of a telecommunications network or the provision of a telecommunications service **or broadcasting service**, a concessionaire may install or maintain a facility in or over a street or public ground or remove the facility therefrom and, for that purpose, may, in accordance with the development plan for the area and the provisions of the Highways Act and any other written law, carry out road works.

(2) Before carrying out any road works for the purposes specified in subsection (1), a concessionaire shall—

- (a) obtain from the Ministry with responsibility for highways, the local authority or the Tobago House of Assembly, as the case may be (hereinafter referred to as "the relevant authority"), plans showing all utility installations that might be affected;
- (b) submit detailed plans of the intended road works to each utility installation owner likely to be affected thereby;
- (c) not commence any road works that might affect a utility installation without first having requested and obtained written permission from the said utility installation owner; and
- (d) notify the Authority of any intended road works.

(3) Pursuant to the notification received by the Authority under subsection (2)(d), the Authority shall notify other concessionaires of the intended road works and inquire of them whether they have any intention of undertaking, similar type road works.

(4) }
 to } *(Deleted by Act No. 17 of 2004)*
 (7) }

(8) No concessionaire notified under sub section (3) shall carry out road works within six months of the receipt of such notification except where such concessionaire proves to the satisfaction of the Authority the necessity of carrying out emergency works.

(9) The Authority shall require that, at least two weeks prior to carrying out road works, a concessionaire publish a description thereof in at least one daily newspaper.

(10) Where required to do so by the Authority in respect of any road works, a concessionaire shall coordinate its road works with those of other concessionaires desirous of installing facilities or undertaking similar type works at the same or any equivalent location, and in particular shall, subject to recovery of its reasonable costs of so doing, permit such other concessionaires to install facilities at the same time and utilising the same road works. Such cooperation shall be deemed to be access to facilities of the concessionaire subject to the provisions of section 26 of this Act.

Repair and restoration

34. (1) Where a concessionaire damages any utility installation in carrying out road works, he shall immediately request the utility installation owner to repair the damage to the utility installation.

(2) The concessionaire shall compensate the utility installation owner for the full cost of repair.

(3) A concessionaire shall, as speedily as possible, complete all road works and restore the street and public grounds, including the removal of any debris, to the satisfaction of the relevant utility installation owner, such satisfaction to be expressed in writing.

(4) Where a concessionaire fails to comply with subsection (2), he shall be held liable for any expenditure that the relevant utility installation owner

incurs in such restoration and for any other loss by any other person.

(5) The liability of the concessionaire under subsection (4) shall continue for a period of four years or until the relevant utility installation owner expresses its satisfaction in writing pursuant to subsection (3).

Trees

35. Where trees on private lands overhang or interfere with any facility or road works, a concessionaire shall, before cutting down, pruning or trimming the trees, obtain the consent of the owner or person in possession of the land.

PART IV

LICENCES, SPECTRUM MANAGEMENT AND NUMBERING

Adherence to the Licensing
Framework

36. (1) Subject to subsection (2) no person shall --

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

without a licence granted by the Authority.

(2) Where spectrum is required in respect of a concession that has been applied for under Part III, the licence application shall be processed as part of the concession application pursuant to section 21.

(3) The Authority shall notify the applicant of its determination within ninety days of receipt of **[all relevant information pertinent to]** the application.

(4) The Authority shall cause to be published in the *Gazette* and at least one daily newspaper circulating in Trinidad and Tobago, a notice of licences issued.

(5) The terms of a licence shall be made available for public scrutiny in the manner prescribed by the Authority.

(6) Where it appears to the Authority that the licence contains information **the publication of which would be** contrary to national security or other international obligations, the Authority shall withhold that information from public scrutiny.

(7) A licence shall be consistent with the **National Spectrum Plan** and regulations made pursuant to this Act and shall confer the right on the licensee to use a certain frequency band or bands subject to such conditions as may be set out in the licence.

Conditions of licence

37. (1) Every licence shall—

- (a) require the licensee to pay fees annually to the Authority;
- (b) require strict adherence to the allotted frequency band;
- (c) prohibit the transfer of control of the licensee without the prior

written approval of the Authority;

- (d) prohibit the assignment of the licence, without the prior written approval of the Authority;
- (e) require the licensee, upon request made by the Minister of National Security and subject to any written law, to collaborate with the Ministry in matters of national security; and
- (f) require the observance of regulations made pursuant to this Act.

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

(3) Every licence shall contain conditions regarding—

- (a) the use of the frequency or frequencies so licensed;
- (b) the expiration and renewal of a licence;
- (c) the circumstances under which the licence may be amended, e.g., *force majeure*, national security, changes in national legislation, implementation of international obligations;
- (d) type of emission, power and other technical requirements for the radio-communication service; and
- (e) any other matter as may be agreed between the Authority and the licensee.

Authorization to operate in the territorial waters or airspace

38. Notwithstanding section 36(1), a ship or aircraft being a ship or aircraft not registered in Trinidad and Tobago while operating in the territorial waters or airspace of Trinidad and Tobago, is not required to have authorisation from the Authority for the establishment, operation or use of any telecommunications network or service or radio-communication equipment as long as the service or equipment is operated or used under a valid authority or licence issued elsewhere than in Trinidad and Tobago in accordance with international agreements relating to telecommunications or radio-communication in respect of ships or aircraft.

Termination or suspension, of a specific licence

39. (1) Subject to this section, the **Authority** in respect of frequencies assigned for the operation of services to which Part III refers, may suspend or terminate a licence where—

- (a) the licensee has failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of the licence; or
- (b) the licensee has failed to comply materially with any lawful

direction of the Authority.

(2) A licence may be amended by the Authority:

- (a) where *force majeure*, national security considerations, changes in national legislation, provisions, regulations and plans made under this Act, or the implementation of international obligations requires amendment of a licence, but where a licence is amended on grounds of national security, the rights of the licensee to compensation shall not be prejudiced; or**
- (b) in accordance with a procedure agreed between the Authority and the licensee.**

(3) Where a licence is amended pursuant to subsection (2), on grounds of national security, the rights of the concessionaire to compensation shall not be prejudiced.

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

- (a) serve on the licensee, a written notice to the effect that—
 - (i) he is considering exercising the power and setting out the ground on which it may be exercised; and
 - (ii) the licensee may within thirty days of the date on which the notice was served, make written representation to the Authority;
- (b) take into consideration any representation made to the Authority under paragraph (a)(ii).

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

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

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

(8) Upon application by a licensee for the renewal of the first licence issued to him under this Act, **the Authority** shall renew that licence for a period equivalent to the period for which the first licence was granted unless—

- (a) the licensee failed to operate within the terms of the licence;
- (b) during the period for which the first licence was granted the licensee engaged in any conduct amounting to a material contravention of this Act, or Regulations made hereunder; and
- (c) the licensee failed to comply materially with any lawful direction of the Authority.

(9) The period of renewal shall be as agreed between the licensee and the Authority.

Operation of equipment

40. Radiocommunication equipment shall not be operated in a manner likely to cause harmful interference to any other means of telecommunication.

Spectrum

41. (1) The Authority shall regulate the use of the spectrum in order to promote the economic and orderly utilisation of frequencies for the operation of all means of telecommunications and to recover the cost incurred in the management of the spectrum.

(2) The Authority shall develop a plan **known as the National Spectrum Plan** in order to regulate the use of the spectrum.

(3) The National Spectrum Plan shall be made available to the public in the manner prescribed by the Authority.

(4) The National Spectrum Plan shall state how the spectrum shall be used.

(5) The procedures referred to in subsection (4) may include, but are not limited to—

- (a) procedures for licensing frequency bands by auction;
- (b) procedures for licensing frequency bands by tender;
- (c) procedures for licensing frequency bands at a fixed price; or
- (d) procedures for licensing frequency bands based on stated criteria

Allocation of Frequency
Bands

42. (1) Subject to subsection (2), the Authority may, in accordance with the **National Spectrum Plan**, allocate and reallocate frequency bands.

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

(3) A licensee shall not, by reason of any assignment of spectrum, acquire any property right to such spectrum

(4) The Authority shall not be obliged to compensate any person as a result of any loss suffered arising out of or in connection with any allocation or reallocation of frequency bands or assignment or reassignment of frequencies.

Exercise of Functions

43. The Authority, in exercising the functions under sections 36 to 42, shall take into account—

- (a) the objects of the Act;
- (b) the impact of the **National Spectrum Plan** on existing and future use;
- (c) the efficient use of the spectrum;
- (ca) the economic value of the spectrum**
- (d) the Convention;
- (e) any applicable international standards conventions and other agreements; and
- (f) any other relevant matters having regard to the circumstances of the case.

Numbering plan

44. (1) The Authority shall develop a plan **known as the National Numbering Plan** for the numbering of **public telecommunications networks and services** and shall administer and manage such numbers **including requiring the payment of fees as prescribed by the Authority for assignment of such numbers.**

(1A) In the administration and management of numbers the

Authority shall seek to promote the economic and orderly utilisation of numbers for the provision of telecommunications services.

(2) Subject to subsection (5), numbers shall be made available to **operators of public telecommunications networks and providers of public telecommunications services** on an equitable basis.

(3) The **National Numbering Plan** may establish procedures by which providers of telecommunications services may assign or re-assign telephone numbers to users.

(4) The **National Numbering Plan** shall be made available to the public in the manner prescribed by the Authority.

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

(6) The Authority shall notify all **public telecommunications network operators and public telecommunications service providers** of any new numbering assignments made.

(7) **The Minister may by regulation, designate the Authority as the agency responsible for the administration of other relevant telecommunications addressing schemes as are necessary to support the objects of this Act.**

PART IVA

MERGERS, ACQUISITIONS, ANTI-COMPETITIVE AGREEMENTS OR PRACTICES AND DOMINANCE

Definition of Mergers and anti-competitive mergers

44A. (1) Merger means the cessation of two or more enterprises, at least one of which either is or controls a concessionaire, from being distinct whether by purchase or lease of shares, amalgamation, combination, joint venture or any other means through which influence over the policy of another concessionaire is acquired;

(2) **An anti-competitive merger is a merger which restricts or distorts competition in a market as defined in this Act.**

Mergers and qualifying mergers

44B. (1) Subject to the provisions of this section, from the commencement of this Part –

- (a) all anti-competitive mergers are prohibited; and
- (b) concessionaires shall not enter into a merger unless they obtain permission from the Authority.

(2) Where any of the enterprises concerned is not a concessionaire, such enterprises shall also apply to the Fair Trading Commission, as required under the Fair Trading Act 2006.

(3) Where subsection (2) applies, the Authority shall be responsible for the determination of the application but shall act in consultation with the Fair Trading Commission and the provisions of this Part shall apply to all enterprises involved in the merger.

(4) Within three months of receipt of an application under paragraph (1) (b), the Authority shall make its determination whether or not to grant permission and inform the applicant concessionaire of its determination in writing. The Authority in its determination shall consider among other things, asset and/ or shareholding interest limits.

- (5) Before granting permission for a merger, the Authority shall –
 - (a) Satisfy itself that the proposed merger would not adversely affect competition or would not be detrimental to the consumer or the economy;
 - (b) consult with the Fair Trading Commission; and
 - (c) consult with the Securities Exchange Commission to ensure that the procedure required under the Securities Industry Act 1995 for mergers has been followed.

Interlocking directorship

44C. Where a person serves as a director of two or more enterprises, one of which is a concessionaire, and such person is likely to amalgamate the policies and decision making of such enterprises in a way that will adversely affect competition, the enterprises in which he serves shall, subject to section 44B (1) (b) apply to the Authority for permission to merge.

Order of Divestment

44D. (1) Where the Authority has reason to believe that two or more enterprises have merged within the meaning of this Part and the enterprises have not obtained permission for the merger, the Authority shall initiate an investigation into the matter.

(2) Where upon the investigation of the matter, the Authority is of the conclusion that enterprises have structured themselves in such a way that they have merged within the meaning of this Part without the permission of the Authority as required under section 44B, the Authority may apply to the Court for an Order of Divestment of assets under Section 72G

(3) At any time before the Authority makes an application for an Order under Section 72G, the Authority and the concessionaire may negotiate and enter into a consent agreement whereby the concessionaire would divest within an agreed period, part of their combined business or operations, if the Authority is satisfied that such divestment would make the merger less likely to lessen competition in Trinidad and Tobago.

(4) An enterprise which fails to keep an undertaking given under subsection (3), is liable upon summary conviction to a fine of five hundred thousand dollars and to a further fine of ten thousand dollars for each day in which the offence continues after conviction.

Definition of anti-competitive agreements

44E. (1) An agreement which relates to the operation of a telecommunications network or the provision of a telecommunications or broadcasting service and which—

- (a) fixes prices directly or indirectly other than in circumstances where the agreement is reasonable necessary to protect the interests of the parties concerned and not detrimental to the interests of the public;
- (b) limits or controls markets, technical development or investment;
- (c) shares markets or sources of supply;
- (d) applies dissimilar conditions to equivalent transactions and thus places some trading partners at a disadvantage to others; and
- (e) makes contract subject to extraneous conditions, or
- (f) otherwise significantly impedes effective competition

is anti-competitive and is prohibited under this Act.

(2) Any decision or concerted practice of an association of enterprises, the object of which is the prevention, restriction or distortion

of competition in a market, is anti-competitive and prohibited under this Act.

(3) Where the Authority is of the opinion that an agreement, practice or decision is anti-competitive the Authority shall apply to the Court for an Order under Section 72G to determine whether the agreement, decision or practice is anti-competitive.

(4) Where the Court has made a determination that an agreement, decision or practice is anti-competitive, an individual or company that has suffered loss as a result of an anti-competitive agreement may apply to the Court for damages.

Horizontal and vertical agreements

44F. (1) For the purpose of this section –

- (a) “horizontal agreement” means an agreement between two or more concessionaires whose relationship is that of actual or potential competitors;
- (b) “vertical agreement” means an agreement between two or more concessionaires whose relationship is that of actual or potential customers, dealers or suppliers.

(2) It is an offence for a group of two or more enterprises, one of which is a concessionaire, to enter into or give effect to a *vertical agreement* which –

- (a) restricts, distorts or prevents competition;
- (b) has the object or effect of monopolizing any market in Trinidad and Tobago; or
- (c) fixes prices for any telecommunications or broadcasting service, and interconnection service or the use of any facility.

(3) It is an offence for a group of two or more concessionaires to enter into or give effect to *horizontal agreements* which have the effect of fixing prices without prior approval of the agreement from the Authority.

Transitional Amnesty

44G. (1) Where a concessionaire is party to or engaged in an anti-competitive agreement or practice before the coming into force of this Act –

- (a) the concessionaire shall notify the Authority within one month thereafter of the details of the anti-competitive

agreement or practice;

(b) The Authority may apply to the Court for an Order to determine the agreement or practice.

(2) At any time before the Authority applies for an Order under Section 72G, the Authority and the concessionaire may enter into an agreement as to the manner and timetable for the phasing out or termination of the anti-competitive agreement or practice.

(3) A concessionaire which fails to either notify the Authority pursuant to (1)(a) or terminate the anti-competitive agreement or practice within the time agreed to with the Authority, is liable upon summary conviction to a fine of five hundred thousand dollars

Definition of markets
and dominance

44H. (1) For the purposes of this Part and wherever the issue of dominance otherwise arises in the Act, the Authority may determine that an operator of a telecommunications network or a provider of a telecommunications or broadcasting service is dominant in a particular market where, individually or jointly with other, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, potential competitors, customers and ultimately consumers;

(2) In determining the dominance of a concessionaire, the Authority shall consider:

(i) the relevant market;

(ii) technology and market trends;

(iii) the market share of the concessionaire;

(iv) the power of substitution of the service within the market or potential market;

(v) the degree of differentiation among services in the market;
and

(vi) any other matters that the Authority deems relevant.

(3) Notwithstanding the generality of subsection (2), a concessionaire which has forty per cent of the gross revenue in a relevant market, or such percentage as the Minister may by regulation prescribe, shall be deemed dominant in that market.

(4) The Authority may adopt procedures necessary and appropriate to facilitate, by means as the Authority deems appropriate, the determination of dominance under subsection (1);

(5) The Authority shall determine the relevant markets for the purposes of this Act, and may adopt such procedures as the Authority considers necessary and appropriate for such determination of markets

(6) Where a concessionaire, deemed dominant by the Authority pursuant to subsection (1), considers that it has lost its dominance, it may apply to the Authority to be classified as non-dominant

(7) The Authority shall consider and determine an application under subsection (6), and make such findings as it considers appropriate.

Abuse of Dominance

44I. (1) A dominant concessionaire abuses its position of dominance if, in the opinion of the Authority, it impedes the maintenance or development of effective competition in any market;

(2) Without prejudice to the generality of the foregoing, an abuse of dominance occurs where a concessionaire:

- (a) restricts the entry of any person into that or any market;**
- (b) prevents or deters any person from engaging in competitive conduct in any market;**
- (c) eliminates or removes any person from that or any market;**
- (d) directly or indirectly imposes unfair purchase or selling prices;**
- (e) limits the provision of services to the prejudice of users;**
- (f) makes the conclusion of agreements subject to the acceptance by other parties of supplementary obligations which by their nature, or according to commercial usage, have no connection with the subject of such agreements;**
- (g) unduly limits the provision of value added services by any other provider, through the acquisition of significant or controlling interest in the providers of such services in the relevant market;**
- (h) engages in exclusive dealing;**

(i) engages in market restriction;

(j) engages in tied selling.

(3) A concessionaire shall not be treated as abusing its dominance -

(a) if it is shown to the satisfaction of the Authority that –

(i) its behaviour was exclusively directed to improving the production and distribution of goods or to promoting technical or economic progress; and

(ii) users were allowed a fair share of the resulting benefits; and

(b) by reason only that the concessionaire enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trademark

(4) For the purposes of this section—

“exclusive dealing” means—

(a) any practice whereby a concessionaire as a condition of providing services to a customer requires that customer to—

(i) deal only or primarily in goods or services supplied by or designated by the concessionaire or his nominee; or

(ii) refrain from dealing in a specified class or kind of goods or services except as supplied by the concessionaire or his nominee; and

(b) any practice whereby a concessionaire as a condition of providing services induces a customer to meet a condition referred to in paragraph (a), by offering to provide the services to the customer on more favourable terms or conditions if the customer agrees to meet that condition;

“market restriction” means any practice whereby a concessionaire as a condition of providing services to a customer, requires that customer to provide services only in a defined market, or exacts a penalty of any kind from the customer if he provides services outside a defined market;

“tied selling” means—

- (a) any practice whereby a concessionaire, as a condition of providing services to a customer, requires the customer to—**
 - (i) acquire any other services from the concessionaire or its nominee; or**
 - (ii) refrain from using or distributing, in conjunction with the tied services, goods or services not of a brand or manufacturer or from a provider designated by the concessionaire or its nominee; and**
- (b) any practice whereby a concessionaire induces a customer to meet a condition set out in paragraph (a), by offering to supply the tied services to the customer on more favourable terms or conditions if the customer agrees to meet that condition.**

“predatory pricing” means any practice whereby a concessionaire maintains the price of a good or service below cost until equally efficient competitors are forced to incur unsustainable losses and exit the market, after which the concessionaire raises its price in order to recoup its lost profits.

“price squeezing” means any practice whereby a concessionaire demands a price for an essential facility or service from a customer that is so high that it is not possible for an equally efficient retail-stage competitor to operate profitably or survive given the level of retail prices, and whereby the concessionaire does not charge its own downstream operation the same high price.

Authority’s power to
investigate abuse

44J. (1) Where a concessionaire is determined by the Authority to be dominant and has abused or is abusing that dominant position, the Authority shall initiate an investigation into the matter.

(2) At the end of each investigation the Authority shall prepare a report indicating the practices it considers an abuse of dominance if any and submit such report to the concessionaire concerned, having regard to the circumstances of either or both –

- (a) A request for the concessionaire to cease the abusive practice within such period as the Authority may reasonably stipulate, having regard to the tendency of the abuse of dominance to**

harm, restrict or distort competition in any market.

- (b) A request for the concessionaire to remove its dominance within the relevant market within six months.**

(3) Where the Authority has made a request under subsection 2 (b) above, the concessionaire shall within thirty days of receipt of the request submit to the Authority an undertaking comprising the measures it intends to take to remove its dominance in the relevant market or markets and the timetable for giving effect to those measures. Such measures shall be to the reasonable satisfaction of the Authority and the concessionaire shall cooperate with the Authority in the formulation of such measures. Once the Authority is satisfied with the undertaking, it shall so inform the concessionaire in writing;

(4) Where the concessionaire does not comply with the request under subsection (2), or fails to provide an undertaking acceptable to the Authority in accordance with subsection (3), or does not fulfill the undertaking given under subsection (3), the Authority may apply to the Court for an Order under section 72G (1).

Referral to the
Caribbean Community
Competition Commission

44K. (1) Where an inquiry or investigation by the Authority involves anti-competitive conduct in another Member state, which has the effect of lessening competition in a relevant market in Trinidad and Tobago, the Authority shall refer the matter to the Community Competition Commission.

(2) In referring the matter to the Community Competition Commission, the Authority shall send all documents relevant to the enquiry or investigation.

(3) In this section “Member State” means a member state of the Community excluding an Associate Member within the meaning of Article 231 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the Single Market Economy.

Commission’s power to
investigate

44L. (1) The Community Competition Commission shall have the power to undertake such investigations as may be necessary in Trinidad and Tobago.

(2) The Community Competition Commission shall, in relation to any matter referred to it under this Part or any request made to it, have the same powers of the Authority in Trinidad and Tobago given under Part IVA of this Act.

Decisions of the

44M. A decision of the Community Competition Commission under

commission binding **this Act shall be binding on all parties to which it relates and is enforceable in Trinidad and Tobago in accordance with Rules made by the Supreme Court under the Supreme Court Judicature Act, as though it were a judgment of the High Court.**

Regulations for this Part **44N. The Minister on the recommendation of the Authority shall make such regulations subject to negative resolution of Parliament as may be necessary for the carrying out or giving effect to this Part.**

PART V

TECHNICAL STANDARDS

Standards **45. (1) Subject to the other provisions of this Act, concessionaires and licensees may implement such technical standards as they deem appropriate and which are in conformity with accepted international standards.**

(2) Notwithstanding subsection (1), the Authority may identify, adopt or establish preferred technical standards.

Import restriction of uncertified equipment **45A. (1) No person shall import, supply, sell, distribute, install, operate or use in Trinidad and Tobago radio-communications equipment, and terminal equipment which is not certified by the Authority.**

(2) The Authority may prescribe—

(a) the types of terminal and radio-communications equipment, the use of which does not require approval, where such equipment has been approved for use by competent standards body where the equipment complies with type approval standards prescribed by the Authority; and

(b) circumstances under which the use of radio-communications equipment and terminal equipment does not require approval, including uses for research and development, demonstrations of prototypes and testing.

PART VI

TESTING, INSPECTION AND INVESTIGATION

Inspectors **46. The Authority may, for the purpose of this Act, Inspectors appoint**

suitably qualified and experienced officers to be telecommunications inspectors, (hereinafter referred to as "inspectors").

Power to request information

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

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

Pre-installation testing

48. (1) The Authority shall, for the purpose of certifying or approving terminal equipment and other equipment to be installed or used for a public telecommunications network or telecommunications service or broadcasting service, or radio-transmitting or radio-communications equipment determine whether such equipment fulfills the criteria stipulated in section 32 and such other requirements as the Authority may prescribe.

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

(3) The requirement for testing may be waived by the Authority, after consultation with the concessionaire or licensee, if the Authority is satisfied that the equipment has been certified in accordance with international standards.

standards for testing

49. The tests stipulated under sections 48 and 50 shall be carried out in compliance with international standards and other standards prescribed by the Authority

entry and search

50. An inspector may, at all reasonable times, enter any place, vehicle, ship, aircraft, vessel or other contrivance from which any telecommunications network is operated or telecommunications or broadcasting service is provided, or in which any telecommunications equipment, excluding broadcast receivers, is located, **or from which a concessionaire carries on any part of its business, or in which information relating to its business is stored** and—

(a) test any equipment, traffic or article found therein which is used or intended to be used for the purpose of operating a telecommunications network or of providing a telecommunications

or broadcasting service;

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

magistrate may issue
warrant

51. (1) Notwithstanding section **50**, an inspector shall not exercise the powers vested in him under that section except upon warrant of a magistrate issued to him for the purpose and, in the execution of the warrant, the inspector shall be accompanied by a police officer.

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

(3) Where equipment has been seized pursuant to section 50, the Court may on application by the Authority grant an order permitting the Authority to:

- (a) dispose of the equipment by auction;**
- (b) destroy the equipment; or,**
- (c) return the equipment or any part thereof to the person from whom it was seized.**

PART VII

FINANCIAL PROVISIONS

Financial powers of the Authority 52. (1) The Authority shall, in accordance with the policy framework established by the Minister,—

- (a) charge fees for any concession or licence; and
- (b) charge fees for any service that it provides.

(2) Except as provided under section 41, fees charged by the Authority under subsection (1) shall be commensurate with the cost of—

- (a) providing a service under subsection (1) (a);
- (b) operating the Authority; and
- (c) administering concessions or licences,

and shall be charged to concessionaires, licensees or other persons where applicable, on a just and reasonable basis.

Funds of the Authority 53. (1) The funds of the Authority shall consist of—

- (a) such amounts as may be appropriated by Parliament for the purposes specified in subsection (2);
- (b) special grants of funds as may from time to time be provided for the financing of any special project;
- (c) collected in respect of concessions granted or licences issued under this Act;
- (d) sums collected in respect of universal service obligations;
- (e) all sums from time to time received by or falling due to the Authority as fees or payments for services rendered;
- (f) all other sums that may in any manner become lawfully payable to the Authority in respect of any matters incidental to its functions.

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

defraying the following expenditure:

- (a) the remuneration, fees and allowances of the Chairman and other members of the Board;
- (b) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the **Chief Executive Officer**, Secretary and other members of staff of the Authority;
- (ba) the acquisition and holding of real and personal property for the purposes for which the Authority is constituted;**
- (c) research and development projects, training and certification and other related matters; and
- (d) any other expenditure authorised by the Authority in the discharge of its duties, functions and contractual obligations.

(2A) The Authority may, in accordance with IFRS, make provisions for future expenditure in any category referred to in subsection (2).

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

(4) A percentage of the funds collected in respect of concessions and licences may be transferred to the account opened in accordance with subsection (6), at the discretion of the Authority.

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

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

(6A) Funds of the Authority not immediately required for the meeting of its obligations or the discharge of its functions may be invested from time to time in securities approved by the Minister of Finance.

(7) At the end of each financial year, any surplus of funds remaining in **any** account opened in accordance with subsections (5) **and (6A)**, after defraying the expenditure referred to in subsection (2), **and any provisions made under subsection (2A)**, shall be paid into the Consolidated Fund.

Exemption from tax and provision of Central Tenders Board Ordinance 1961

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

(2) Where—

- (a) goods are imported by the Authority for and on behalf of the Authority;
- (b) the commercial sale of goods or services is in the opinion of the Board of Inland Revenue required for the purposes of the Authority,

the goods and services shall be exempt from Value Added Tax.

(3) The Authority shall, in the performance of its functions, be subject to the provisions of the Central Tenders Board Ordinance until such time as the Authority develops its own tendering rules, approved by the Minister and subject to negative resolution of Parliament.

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

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

Estimates of Expenditure

55. (1) ~~Deleted~~

(2) The Authority shall prepare a budget in accordance with **IFRS** or such other form as the Minister, with responsibility for Finance, may direct for each financial year and the Authority shall submit estimates so prepared to the Treasury not later than the dead line date stipulated by the Minister of Finance, having first obtained approval of the estimates of expenditure from the Minister.

(3) The Authority shall, at such time as the Minister directs, furnish him with any further information in relation to the estimates as he may require.

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

Preparation of annual reports and accounts by Authority

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

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

- (a) a report setting out the activities of the Authority; and
- (b) financial statements prepared in accordance with **IFRS**,

and a copy of such report and financial statements shall be forwarded to the Minister and shall be laid in Parliament as soon as possible thereafter.

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

Audit of accounts

57. (1) The accounts of the Authority are public accounts of Trinidad and Tobago for the purpose of section 116 of the Constitution.

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

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

(4) As soon as the accounts of the Authority have been audited, the Auditor General shall submit his report in accordance with section 116 of the Constitution and shall simultaneously forward a copy of the said report to the Minister.

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

Financial year

58. The financial year of the Authority shall be 1st October to 30th September in every year or such other period as the Authority may prescribe, but the period from the date of commencement of this Act to the end of September next following shall be deemed to be the first financial year.

Authority may make rules

59. The Authority may, by resolution subject to the prior approval, in writing, of the Minister with responsibility for finance, make rules for the proper control of the system of accounting and the finances of the Authority.

PART VIII

STAFF AND RELATED MATTERS

- Employment of staff 60. (1) **Subject to the provisions of sections 7 and 8 of this Act, the** Authority may employ on such terms and conditions as it thinks fit such persons as it considers necessary for the due and efficient performance of its functions and exercise of its powers under this Act on such terms and conditions as are agreed between the Authority and the person and subject to such maximum limit of remuneration as the Board, in consultation with the Minister, determines.
- (2) Section 15 applies *mutatis mutandis* to persons employed under this Part.
- Secondment 61. (1) Subject to subsection (2) and to the approval of the Authority, the appropriate Service Commission and with the consent of the officer, any officer in the public service or a statutory authority may be seconded to the service of the Authority.
- (2) Where a secondment referred to in sub section (1) is effected, arrangements shall be made to preserve the rights of the officer so **seconded** to any pension, gratuity or other allowance for which he would have been eligible had he not been seconded to or from the service of the Authority.
- (3) A period of secondment shall not, in any case, exceed three years.
- Transfer of officers to the Authority 62. Subject to the approval of the Authority, the appropriate Service Commission and with the consent of the officer, an officer in the Public Service or a statutory authority may be transferred to the service of the Authority on terms and conditions no less favourable than those enjoyed by the officer in the Public Service or statutory authority, as the case may be.
- Pension fund plan 63. (1) The Authority shall establish a pension fund plan, or where the establishment of a plan is not feasible, join an existing plan.
- (2) All employees of the Authority shall be eligible to become members of the pension fund plan.
- (3) Superannuation benefits which had accrued to a person who transferred in accordance with section 62 shall be preserved as at the date of his employment by the Authority and such benefits shall continue to accrue under the relevant pension law up to the date of establishing or joining a

pension fund plan on the basis of pay, pensionable emoluments or salary, as the case may be, applicable, at the time of his transfer, to the office held by him immediately prior to his employment by the Authority.

(4) Where a person, who is transferred in accordance with section 62, dies, retires or his post in the Authority is abolished or he is retrenched by the Authority prior to establishing or joining the pension fund plan and, if at the date that his service is terminated by any of the above-mentioned methods he was in receipt of a salary higher than the pay, pensionable emoluments or salary referred to in subsection (3), the superannuation benefits payable to his estate or to him, as the case may be, shall be based on the higher salary.

(5) The difference between the superannuation benefits payable on the basis of the higher salary referred to in subsection (4) and the superannuation benefits payable under the relevant pension law, on the basis of the pay, pensionable emoluments or salary, referred to in subsection (3), shall be paid by the Authority.

(6) Where a person, who is transferred in accordance with section 62, dies, retires or his post in the Authority is abolished or he is retrenched from the Authority while being a member of the pension fund plan established by the Authority, he shall be paid superannuation benefits by the pension fund plan at the amount which, when combined with superannuation benefits payable under the relevant pension law, is equivalent to the benefits based on his pensionable service in the Public Service or a statutory authority combined with his service in the Authority and calculated at the final salary applicable to him on the date that his service was terminated by any of the above-mentioned methods.

(7) For the purposes of subsection (6), "final salary" shall have the meaning assigned to it by the pension fund plan.

(8) Where a person who is transferred in accordance with section 62, dies, retires or his post in the Authority is abolished or he is retrenched from the Authority while being a member of a pension fund plan that the Authority joined, superannuation benefits payable under that plan shall be no less favourable than those payable in accordance with subsection (6).

Employment of persons for
specific tasks

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

PART IX

OFFENCES

Offences

65. (1) A person who—

- (a) fails to comply with or acts in contravention of section **21(1) or 36(1)**;
- (b) *{Deleted}*
- (c) operates a station or uses any equipment in such a manner as to cause harmful interference to any telecommunications network or telecommunications or radio-communication service;
- (d) obstructs or interferes with the sending, transmission, delivery or reception of any communication;
- (e) manufactures or sells any system, equipment, card, plate or other device whatsoever, or produces, sells, offers for sale or otherwise provides any account number, mobile identification number or personal identification number, for the purpose of fraudulent use of or access to any telecommunications service;
- (f) aids or abets any telecommunications network or telecommunications, broadcasting or radiocommunication service to operate contrary to its concession or licence, as the case may be;
- (g) fails to contribute to the funding of the services referred to in section 28 in accordance with the directions of the Authority,
- (h) **misleads or submits information that is false to the Authority;**
or
- (j) **commits a breach of the Broadcasting Code;**

commits an offence and is liable on summary conviction to a fine of **five** hundred thousand dollars and to imprisonment for five years, and, in the case of a continuing offence, to a further fine of **twenty-five** thousand dollars for each day that the offence continues after conviction.

- Obstructing an inspector 66. A person who willfully obstructs, hinders, molests or assaults an inspector duly engaged in the performance of any duty or the exercise of any power conferred on him under this Act commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.
- False signals 67. A person who knowingly transmits or circulates false or deceptive distress, safety or identification signals commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years.
- False communications 68. (1) A person who by means of any telecommunications or radiocommunication service sends any communication that to his knowledge is false or misleading and likely to prejudice the efficiency of any life-safety service or endanger the safety of any person, ship, aircraft, vessel or vehicle commits an offence and is liable on summary conviction to a fine of **two** hundred thousand dollars and to imprisonment for three years.
- (2) For the purposes of subsection (1), a person is taken to know that a communication is false or misleading if he did not take reasonable steps to ensure that it was not false or misleading.
- Damage to equipment 69. (1) A person who maliciously damages, removes or destroys any facility, works or other installation of a public telecommunications network or a public telecommunications service or of any telecommunications service operated by **agencies responsible for national security or emergency services, including but not limited to** the Police Service, the Fire Service, the Prison Service or the Trinidad and Tobago Defence Force commits an offence and is liable on summary conviction to a fine of **five** hundred thousand dollars and to imprisonment for five years.
- (2) A person who negligently damages, removes or destroys any facility, works or other installation described in subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.
- Recovery of civil debt 70. A person convicted under section 69 is liable for all expenses reasonably incurred in the repairing, restoration or replacement of any facility, works or other installation damaged, removed or destroyed by him and the expenses are recoverable summarily as a civil debt.
- General Penalty 71. A person who contravenes or fails to comply with any of the provisions of this Act or any Regulations made hereunder commits an offence and except where the provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine of twenty-five thousand dollars, and in the case of a continuing offence to a

further fine of one thousand dollars for each day that the offence continues after conviction.

Authority to recover outstanding fees as a civil debt

71A. Where a concessionaire or licensee is in breach of its obligations to remit its annual concession or licence fees as the case might be to the Authority, the Authority may act to recover such as a civil debt.

Amendment of penalties

72. The Minister may, by Order, subject to negative resolution of Parliament amend the penalties set out in this Act and regulations made pursuant thereto.

PART IXA

CONTRAVENTION AND ADMINISTRATIVE PENALTIES

Notification of persons in contravention of the Act

72A. (1) Where the Authority determines that there are reasonable grounds for believing that a person has contravened, or is contravening any provision of this Act or any regulation or other instrument made under this Act, or any condition of any concession, licence or any other authorisation granted pursuant to this Act, the Authority may give that person a notification under this section.

(2) A notification under this section is one which –

- (a) sets out the determination made by the Authority;**
- (b) specifies the provision or condition and contravention in respect of which that determination has been made; and**
- (c) specifies the period during which the person notified has the opportunity to respond to the notification in the manner specified in subsection (3).**

(3) A person may respond to a notification by –

- (a) making representations about the matters notified;**
- (b) in the case of a concessionaire, complying with notified provisions or conditions of which the concessionaire remains in contravention; and**
- (c) remedying the consequences of notified contraventions.**

(4) Subject to subsections (5), (6) and (7), the period to respond as

specified in subsection (2) must be the period of one month beginning with the day after the date on which the notification was given.

(5) The Authority may, if it considers fit, allow a longer period to respond either –

- (a) by specifying a longer period in the notification; or
- (b) by subsequently, on one or more occasions, extending the specified period.

(6) The person notified shall have a shorter period to respond if a shorter period is agreed between the Authority and the person.

(7) The person may also have a shorter period to respond if –

- (a) the Authority has reasonable grounds to believe that the contravention is a repeated contravention;
- (b) the Authority has determined that, in those circumstances, a shorter period would be appropriate; and,
- (c) the shorter period, together with the reasons for it, have been specified in the notification.

(8) A notification under this section –

- (a) may be given in respect of more than one contravention; and,
- (b) if it is given in respect of a continuing contravention may be given in respect of any period during which the contravention has continued.

(9) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if –

- (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same provision or condition; and,
- (b) the subsequent notification is given no more that twelve months after the day of the making by the Authority of a determination for the purposes of this section that the contravention to which the previous notification related did occur.

Enforcement determination
against a person duly
notified

72B. (1) This section applies where –

- (a) a person (the “notified person”) has been given a notification under section 72A;**
- (b) the Authority has allowed the notified person an opportunity of making representations about the matters notified; and,**
- (c) the period allowed for the making of the representations has expired.**

(2) The Authority may give the notified person an enforcement notification if it is satisfied –

- (a) that the notified person has, in one or more respects notified, been in contravention of a provision or condition as specified in the notification under section 72A; and,**
- (b) that the notified person has not, during the period allowed under that section, taken all such steps as the Authority considers appropriate –**
 - (i) for complying with the provision or condition; and/
or**
 - (ii) for remedying the consequences of the notified contravention of that provision or condition.**

(3) An enforcement notification is a notification which imposes one or both of the following requirements on the notified person –

- (a) a requirement to take such steps for complying with the notified condition as may be specified in the notification;**
- (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.**

(4) A decision of the Authority to give an enforcement notification to a person –

- (a) must be notified by the Authority to that person, together with the reasons for the decision, no later than one week after the day on which it is taken; and,**

(b) must fix a reasonable period for the taking of the steps required by the notification.

(5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty shall be enforceable in civil proceedings by the Authority –

(a) for an injunction;

(b) for specific performance; or

(c) for any other appropriate remedy or relief.

Imposition of penalties on persons duly notified **72C. (1) This section applies (in addition to section 72B) where –**

(a) a person (“the notified person”) has been given a notification under section 72A;

(b) the Authority has allowed the notified person an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

(2) The Authority may impose an administrative penalty on the notified person if it is satisfied –

(a) that the notified person has, in one or more of the respects notified, been in contravention of a provision or condition as specified in the notification under section 72A; and/ or

(b) that the notified person has been given a notification under section 72B; and

(c) that the notified person has not, during the period allowed under section 72B, taken the steps the Authority considers appropriate –

(i) for complying with the notified provision or condition; and/ or

(ii) for remedying the consequences of the notified contravention of that provision or condition.

(3) Where a notification under section 72A relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.

(5) The Authority may also impose an administrative penalty on the notified person if he has contravened, or is contravening, a requirement of an enforcement notification given under section 72B in respect of the notified contravention.

(6) Where the Authority imposes a penalty on a person under this section, it shall –

(a) within one week of making its decision to impose the penalty, notify the person of that decision, the penalty in respect thereto, and of its reasons therefor; and

(b) in that notification, fix a reasonable period after the giving of the notification as the period within which the penalty is to be paid.

(7) A penalty imposed under this section –

(a) must be paid to the Authority; and

(b) if not paid within the period fixed by the Authority, is to be recoverable by the Authority as a civil debt.

(8) Notwithstanding anything to the contrary, in all cases where the Authority imposes an administrative fine in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against said person in respect of such criminal offence.

Considerations for the
imposition of penalties

72D. (1) The amount of a penalty imposed under section 72C is to be such amount not exceeding *five* percent of the gross revenue of the notified person's relevant business for the relevant period as the Authority determines to be –

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(2) In making that determination the Authority must have regard to –

- (a) any representations made to it by the notified person;**
- (b) any steps taken by the notified person towards complying with the provisions and conditions, the contravention of which has been notified under section 72A, and/or to remedy the consequences of the contraventions.**
- (c) its estimate of the cost of the contravention to the users of the network or services in question, or any other person affected by the contravention;**
- (d) its estimate of the economic benefit of the contravention to the notified person;**
- (e) the time during which the contravention was in effect, if continuing; and,**
- (f) the number and seriousness of other contraventions, if any, committed by the notified person.**

(3) In this section –

“relevant business” means any business carried on by the notified person as it relates to telecommunications or broadcasting.

“relevant period”, in relation to a contravention means –

- (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the time when notification of the contravention was given under section 72A;**
- (b) in the case of a person who at that time has been carrying on a relevant business or businesses for a period of less than a year, the period, ending with the time when notification of the contravention was given under section 72A, during which he has been carrying it on; and**
- (c) in the case of a person who, at the time when notification of the contravention was given under section 72A, has ceased to carry on relevant business, the period of one year ending with the time when he ceased to carry on such business.**

(4) In this section “the notified person” has the same meaning as in section 72B.

Administrative
infringements by bodies
corporate

72E. Where a contravention of any provision of this Act or any other law which the Authority is entitled to enforce is committed by a body corporate and is proved to have been committed with the consent or involvement of or to be attributable to any gross negligence on the part of a person being a director, manager, secretary or other officer however so described of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be liable to be proceeded against as if he were responsible for said infringement.

Prescription for offences
and administrative
infringements

72F. (1) The prosecution of a criminal offence or the initiation of proceedings to impose an administrative penalty under this Act or under any law which the Authority is entitled to enforce shall be prescribed by the lapse of two years from the date on which the offence of administrative infringement is alleged to have been committed.

(2) For the purposes of subsection (1), the initiation of proceedings to impose an administrative penalty under this Act shall be the issuance of a notification of contravention under section 72A.

PART IXB

ROLE OF THE COURTS

Jurisdiction of the Court in
relation to enforcement of
this Act

72G. (1) The Court shall have jurisdiction to –

- (a) hear and determine applications by the Authority for any Order which the Authority considers appropriate to facilitate the enforcement of this Act;**
- (b) hear and determine upon application by the Authority cases involving any contravention of the provisions of this Act and make appropriate Orders in relation thereto;**

(2) Without prejudice to the generality of subsection (1), in relation to any activities prohibited and restricted by Part IVA, the Court shall have jurisdiction to hear and determine:-

- (a) applications made by the Authority for an Order to-**
 - (i) prohibit or restrict the transfer of shares;**

- (ii) prohibit an agreement, practice or decision from being made or carried out;
 - (iii) declare void or terminate an agreement or practice;
 - (iv) prohibit the acquisition of assets of one concessionaire by another concessionaire except such acquisitions as are permitted under the mergers referred to in section 44B;
 - (v) require a concessionaire to divest specified assets or shares;
 - (vi) disqualify persistent offenders from serving as directors of companies;
- (b) applications for deferment under section 72H.

Deferment of Penalties

72H. (1) Where the Court has made an Order in respect of a decision of the Authority under section 44B, an aggrieved person may apply to the Court for a deferment of the Order on the grounds that the Order is unduly onerous having regard to all the circumstances of the case or the person has evidenced an intention to appeal, and the Court may make an Order for such deferment.

(2) An application for deferment under subsection (1), may be made whether or not an appeal against the Order was filed at the time of the making of the application, save however, that the appeal shall be filed in accordance with the provisions of section 72G.

(3) Where an appeal is not filed in accordance with section 72G, an Order for deferment made under this section shall lapse at the expiry of the time for the filing of the appeal.

(4) On the determination of an appeal against the Order made by the Court, the Court may discharge the Order for deferment under this section.

Appeal of decisions

72I. The aggrieved person or the Authority or other complainant or respondent, if dissatisfied with the decision of the Court may, within twenty-one days after the delivery of the decision or within such other time as may be prescribed, appeal against such decision.

Disposals of appeals

72J. (1) Subject to subsection (2), the Court of Appeal may dispose of an appeal by -

- (a) dismissing it;
- (b) allowing it;
- (c) allowing it and modifying the decision or action of the Court;
or
- (d) allowing it and referring the decision or action back to the Court for reconsideration.

(2) The Court of Appeal may make an Order for the payment of costs to the successful party in relation to the whole of the proceedings before it, or any part thereof including costs incurred in the summoning and attendance of necessary witnesses.

Duty owed of persons in breach of this Act, regulations or directions of the Authority

72K. (1) The obligation of a person to comply with –

- (a) the provisions of this Act and any regulations made hereunder;
- (b) the conditions set out in any concession or licence granted to him,
- (c) requirements imposed on him by an enforcement notification under section 72A, and
- (d) any lawful direction of the Authority,

shall be a duty owed to every person who may be affected by a contravention of the provision, condition, requirement or direction.

(2) Where a duty is owed by virtue of this section to a person –

- (a) a breach of the duty that causes that person to sustain loss or damage; and,
- (b) an act which –
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(3) In proceedings brought against a person by virtue of subsection (2) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition or requirement in question.

(4) The consent of the Authority is required for the bringing of proceedings by virtue of subsection (2).

(5) Where the Authority gives its consent under subsection (4) subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on by that person except in compliance with those conditions.

Available remedy of
Judicial Review **72L. Any decision of the Minister or the Authority, except for a decision**

(a) to apply to the Court for any remedy for contravention of this Act;

(b) or to commence proceedings in respect of any offence under this Act;

(c) made under Part IXA of this Act; or

shall be subject to Judicial Review.

PART X

GENERAL

Directions for Minister **73. (1) Where the Chief Executive Officer has reasonable grounds for believing that any person is operating a telecommunications network or providing a telecommunications or **broadcasting** service—**

(a) that is dangerous to the security of the State;

(b)

(c) that causes harmful interference to any telecommunications network or telecommunications or **subscription broadcasting or radio-communication service established in respect of natural disasters and emergencies; or**

(d)

the **Chief Executive Officer** shall immediately notify the Minister of National Security, the Minister and the Board, in writing.

(2) **The Authority** may direct that person, in writing, to cease operating such telecommunications network or providing such telecommunications or **broadcasting service and the person where so directed shall comply forthwith.**

(3) Where a person fails to comply immediately with a direction given by **the Authority** under subsection (2):

- (a) **the Minister, on the advice of the Chief Executive Officer,** may suspend the concession, if any, granted to that person;
- (b) **the Authority may suspend the licence, if any, granted to that person.**

(4) A person aggrieved by a **decision of Minister or the Chief Executive Officer as the case may be** given under subsection (3) may apply to the Court for judicial review.

Chief Executive Officer's
certification

74. Where, on an application for review of a decision made by the **Chief Executive Officer** under section **73 (3) based on factors set out in section 73 (1) (a), (b), (c),** the **Chief Executive Officer** certifies that in his opinion it is contrary to public order, public safety or national security to disclose the grounds for believing that the appellant is operating a telecommunications network or providing a telecommunications or radio-communication service in the manner described in section **73 (1)(a), (b) or (c),** then, unless the Court thinks fit to order otherwise, the **Chief Executive Officer** is presumed to have had reasonable grounds for so believing.

Monitoring stations

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

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

(2) The Minister may, by Order, exempt a frequency monitoring station

operated by the Authority from any of the provisions of this Act.

Harmful interference

76. (1) Where the **Chief Executive Officer** is of the opinion that the use of any facility or terminal equipment is likely to cause or has caused or is causing harmful interference, whether or not all reasonable steps to minimize interference have been taken, he may—

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

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

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

Obligations under international agreements

77. The obligations of a concessionaire operating a telecommunications network or providing a telecommunication **or broadcasting** service, or a licensee providing a radio-communication service, shall not be abrogated by reason of any international agreement to which Trinidad and Tobago is a party.

Regulations

78. (1) The Minister, on the recommendation of the Authority, shall make such regulations, subject to negative resolution of Parliament, as required for the purposes of this Act, including regulations prescribing—

- (a) application procedures and obligations in relation to concessions and licences;
- (b) fees payable to the Authority for or in relation to applications, concessions, licences or the provision of services provided by the Authority to any person;
- (c) procedures and obligations necessary for the management of the spectrum;
- (d) approvals and certification of terminal equipment;
- (e) price regulation;
- (f) interconnection;

- (g) universal service;
- (h) numbering;
- (i) quality of service standards;
- (j) procedures for investigating and resolving complaints by users with regard to public telecommunications services; and
- (k) procedures for investigating alleged breaches of any term or condition of a concession or licence or alleged violations of any provision of this Act or regulations made pursuant thereto.

(2) Regulations made pursuant to this Act may prescribe penalties, not exceeding **five hundred** thousand dollars for offences committed thereunder.

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

Authority to promulgate a
Broadcasting Code

79. (1) Subject to this Act, the **Minister** shall, **on the recommendation of the Authority**, by Order subject to affirmative resolution of Parliament, promulgate a Broadcasting Code to regulate the practices of concessionaires of broadcasting services.

(2) In the course of developing a Broadcasting Code, the provisions of section **78** (3) shall apply *mutatis mutandis*.

(3) The **Minister on the recommendation of the Authority** may, by Order, amend the Broadcasting Code, subject to affirmative resolution of Parliament.

Confidentiality

80. (1) The Board, employees of the Authority and every person concerned with the administration of this Act shall treat documents, information or other matters related to the administration of this Act as secret and confidential except that disclosures—

- (a) made by the Authority, or any other person, pursuant to the provisions of this Act or any regulations made hereunder; or
- (b) which the Authority considers necessary in the discharge of its functions, shall not be deemed inconsistent with any duty imposed under this section.

(2) Subject to subsection (1), any person has the right to request that any proprietary or confidential documents, information or matters provided or

submitted to the Authority be maintained secret and confidential.

Authority may prescribe
by publication

80A. Unless otherwise stated, where this Act or regulations made hereunder provide that any notice or document be published by the Authority, that publication shall be effected by:

- (a) in the case of a notice, causing the notice to be published in *the Gazette* and no less than two daily newspapers circulating in Trinidad and Tobago; or
- (b) in the case of a document, publishing in at least one daily newspaper circulating in Trinidad and Tobago a notice to the effect that the document is available for collection at the offices of the Authority or available via its website., and making copies of the document so available.

Forbearance

81. The Authority **may** refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty in relation to a telecommunications network, telecommunications service, broadcasting service, radio-communication service or a class of service provided by a concessionaire or licensee, where the Authority finds that to refrain would be consistent with the agreed telecommunications policy objectives.

Dispute resolution

82. (1) The Authority shall establish a dispute resolution process to be utilized in the event of a complaint or dispute arising between parties in respect of **any matter that the Act requires be referred to dispute resolution, or that the Authority considers appropriate for dispute resolution.**

(2) The Authority shall not be a party to any dispute resolution process.

(3) Such dispute resolution process shall be funded by the parties to the dispute and shall be conducted in an open, non-discriminatory and unbiased fashion,

(3A) The Authority in establishing a dispute resolution process under subsection (1) shall prescribe such procedures as it considers appropriate for the proper conduct of the process.

(4) The Authority may establish penalties for referral of frivolous disputes to the dispute resolution process.

(5) The hearing and determination of any dispute or complaint under the dispute resolution process shall include the power to make any appropriate ancillary orders and give appropriate ancillary relief, including but not limited to the power to make interim orders and grant interim relief.

Reconsideration and appeal 83. A person aggrieved by a decision of the Minister or Authority may request that such decision be reconsidered based upon information not previously considered, and the Minister or the Authority, as the case may be, shall consider the new information submitted and decide accordingly

Telecommunications during an emergency 84 (1) Where a state of emergency has been declared, the President may, on the advice of the Minister of National Security—

(a) authorize the taking of possession and control by the Government of any telecommunications equipment, installation, service, apparatus or station to be used—

(i) for Government service;

(ii) for such ordinary service as the Minister of National Security may determine; or

(b) direct or authorize the control of the transmission and reception of messages in any manner as he may direct.

(2) The Government shall, excluding loss of profit, compensate reasonably the owner or controller of any installation, service, apparatus or station, the possession or control of which was assumed under sub section (1).

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

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

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

the President.

Repeal and Transitional
provisions

85. (1) Subject to this section, the Wireless Telegraphy Ordinance is repealed.

(2) Regulations made under the Wireless Telegraphy Ordinance shall remain in force until replaced by corresponding regulations made pursuant to this Act.

(3) Licences issued under the Wireless Telegraphy Ordinance and in force at the commencement of this Act remain in force for one year but no more than two years thereafter as the Minister may determine, upon the advice and recommendation of the Authority.

(4) During the period referred to in sub section (3), any person licensed under the Wireless Telegraphy Ordinance to provide a telecommunications service or radiocommunication service shall apply to the Authority for a concession or a licence to provide such service under this Act, as the case may be.

(a) Persons other than those to whom subsection (4) relates and who commenced operations of a public telecommunications service prior to the coming into force of the Act may remain in operation thereafter pending an application to the Authority for a concession pursuant to section 21.

(b) An application shall be made within six months of the coming into effect of the Act and shall be considered in accordance with section 21.

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

(6) Any concession granted or licence issued in accordance with subsection (5) shall expire on the date that the licence issued under the Wireless Telegraphy Ordinance would have expired.

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

(8) The Cable and Wireless (West Indies) Limited Ordinance is repealed.

(9) The Trinidad and Tobago Telephone Act is repealed, with all rights and obligations thereunder remaining in force for one year or such longer period as the Minister may determine upon the advice and recommendation of

the Authority, or until the Company (as defined in such Act), having applied for a concession pursuant to Part III of this Act, is granted a concession hereunder, whichever is earlier.

(10) The Telecommunications Authority Act is repealed.

(11) The Tobago House of Assembly Act is amended by deleting item 10 of the Seventh Schedule and substituting it as follows:

“The Telecommunications Authority in respect of the issuing of concessions and licences.”

(12) The Regulated Industries Commission Act is amended by deleting items 3 and 6 of the First and Second Schedules, respectively.

Validation of acts or
omissions

87. All acts and things done or omitted to be done under the Act shall, notwithstanding any law to the contrary, be deemed to have been lawfully done under this amended Act as if this amended Act had been in force at the commencement of the Act and all legal proceedings pending and all decisions issued or taken or in force at the commencement of this amended Act, shall continue to have full force and effect as if commenced, made or issued under this amended Act.

SCHEDULE

(Section 20)

ASSETS VESTED IN THE AUTHORITY All the—

- (a) Vehicles;
- (b) Furniture;
- (c) Equipment, including office equipment, testing equipment and computers and their peripheral equipment and manuals;
- (d) Mobile monitoring and direction-finding facilities including maintenance equipment and spare parts; and
- (e) Miscellaneous items operated or used by the Telecommunications Division.

Passed in the Senate this 10th day of April, 2001.

N. COX

Clerk of the Senate

Passed in the House of Representatives this 28th day of May, 2001.

J. SAMPSON-JACENT

Clerk of the House

DRAFT