

TELECOMMUNICATIONS ACT

CHAPTER 47:31

Act
4 of 2001
Amended by
17 of 2004

Current Authorised Pages

<i>Pages (inclusive)</i>	<i>Authorised by L.R.O.</i>
1-2	..
3-6	..
7-8	..
9-40	..
41-44	..
45-64	..
65-68	..
69-96	..
97-102	..
103-148	..
149-150	..
151-168	..
169-181	..

Index of Subsidiary Legislation

	<i>Page</i>
Telecommunications Tenders Rules (LN 74/2005)	62
Telecommunications (Access to Facilities) Regulations (LN 180/2006)...	83
Telecommunications (Interconnection) Regulations (LN 181/2006) ...	105
Telecommunications (Fees) Regulations (LN 206/2006)	131
Telecommunications (Universal Service) Regulations (LN 63/2015)...	150
Telecommunications (Accounting Separation) Regulations (LN 64/2015)	169

CHAPTER 47:31

TELECOMMUNICATIONS ACT

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

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. Executive Director.
9. Absence from office of Executive Director.
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.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

24. Conditions applicable to a concession for a public telecommunications network or service.
25. Interconnection.
26. Access to facilities.
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. Repairs and restoration.
35. Trees.

PART IV

**LICENCES, SPECTRUM MANAGEMENT
AND NUMBERING**

36. Requirement for a licence.
37. Conditions of 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 V

TECHNICAL STANDARDS

45. Standards.

PART VI

TESTING AND INSPECTION

46. Inspectors.
47. Power to request information.

SECTION

- 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 Act.
- 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.
- 72. Amendment of penalties.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

PART X

GENERAL

- 73. Directions for Minister.
- 74. Minister's certification.
- 75. Monitoring stations.
- 76. Harmful interference.
- 77. Obligations under international agreements.
- 78. Regulations.
- 79. Authority to promulgate Broadcasting Code.
- 80. Confidentiality.
- 81. Forbearance.
- 82. Dispute resolution.
- 83. Reconsideration and appeal.
- 84. Telecommunications during an emergency.
- 85. Repeal and transitional provisions.

SCHEDULE.

CHAPTER 47:31

TELECOMMUNICATIONS ACT

An Act for the regulation of Telecommunications in Trinidad and Tobago. 4 of 2001.

*[ASSENTED TO 5TH JULY 2001]

WHEREAS, the Government believes that in order to 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 anti-competitive practices:

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:

And whereas existing legislation in the related field of broadcasting is also outdated:

PART I

PRELIMINARY

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

*See section 1A for dates of commencement of this Act.

Commencement.
4 of 2001
126/2004.

1A. The commencement dates of this Act are set out hereunder—

- (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) section 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.
[17 of 2004].

2. (1) In this Act—

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

Ch. 81:01.

“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;

“broadcasting service” means the offering of the transmission 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;

“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 authorisation to operate a public telecommunications network or provide a public telecommunications service or broadcasting service, issued pursuant to section 21;

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

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

“facility” means a physical component of a telecommunications network, other than terminal equipment, 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 post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used for carrying, suspending, supporting or protecting the structure;

“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;

“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 authorisation issued pursuant to section 36;

“local authority” means the council of a municipal corporation within the meaning of the Municipal Corporations Act;

Ch. 25:04.

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

“network termination point” means the point designated for connection of equipment by a user to a telecommunications network;

- Ch. 75:01. “pension fund plan” has the meaning assigned to it by section 28(1) of the Income Tax Act;
- Ch. 23:59. “pension law” has the meaning assigned to it by the Law Reform (Pensions) Act except for the reference to the Defence Act;
- Ch. 14:01. “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;
- Ch. 1:01. “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;
- “radiocommunication 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 radiocommunication service;

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

Ch. 48:01.

“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;

“telecommunications service” means a service using telecommunications whereby one user can communicate with any other user in real time, 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 radiocommunication 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;

Ch. 25:03.

“traffic” means the electronic composition of a “telecommunications signal”;

“universal service” means the provision of telecommunications 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;

Ch. 54:73.

“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 services, including conditions for fair competition, at the national and international levels;
- (b) the facilitation of the orderly development of a telecommunications system that serves to safeguard, enrich and strengthen the national, social, cultural and economic well-being of the society;
- (c) promoting and protecting the interests of the public by—
 - (i) promoting access to telecommunications 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 services and equipment supplied;

- (d) promoting universal access to telecommunications services for all persons in Trinidad and Tobago, to the extent that is reasonably practicable to provide such access;
- (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 liberalisation of telecommunications;
- (f) promoting the telecommunications industry in Trinidad and Tobago by encouraging investment in, and the use of, infrastructure to provide telecommunications services; and
- (g) to regulate broadcasting services consistently with the existing constitutional rights and freedoms contained in sections 4 and 5 of the Constitution. Ch. 1:01.

PART II

THE TELECOMMUNICATIONS 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").

Establishment
of the
Authority.
[17 of 2004].

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.

Management of
Authority by
Board.

6. (1) The Board shall consist of 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.

Constitution of
Board.
[17 of 2004].

- (2) Of the members appointed under subsection (1)—
 - (a) one member shall be appointed on the recommendation of the Chief Secretary of the Tobago House of Assembly;

Ch. 90:03.

- (b) at least three members shall be qualified, by reason of training and experience, in telecommunications or the telecommunication 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 organisation 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) 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) 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).

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.

Corporate Secretary.

(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.

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

Executive Director.

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

Absence from
office of
Executive
Director.

9. (1) Where a vacancy arises in the office of the Executive Director 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 Executive Director.

- (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 Executive Director;
 - (b) shall receive the same remuneration as the Executive Director; and
 - (c) shall, where the vacancy arose as a result of a resignation or termination, continue to act until such time as an Executive Director 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 Executive Director 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.

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. Ordinary meetings.

(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.

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

(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.

13. (1) At any meeting of the Board, half of the members plus one additional member, shall constitute a quorum. Quorum. [17 of 2004].

(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. A decision of the Board, by a majority of members present and voting, shall be final and conclusive.

Disclosure of
interest.

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 pecuniary interest—

- (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 actual or contingent pecuniary interest is likely to be affected in any way by a decision of the Board on any matter specified in subsection (1) shall, as soon as possible after the relevant facts come to his knowledge, disclose to the 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 under subsection (2) shall be recorded in the minutes of a meeting of the Board and the member shall—

- (a) not take part after disclosure in any deliberation or decision of the Board with respect to that matter; and
- (b) be disregarded for the purpose of constituting a quorum of the Board.

(5) For the purposes of this section, a person who, or a nominee or relative of whom, is a shareholder who owns shares in excess of five per cent, or is a partner in a company or other body of persons other than a 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 Cohabitation Relationships Act, father, mother, brother, sister, son or daughter of a person.

(7) Any person to whom this section applies who fails to comply with the provisions of this section commits an offence and is liable on summary conviction to a fine of 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.

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.

Inducement, collusion, concealment or connivance. Ch. 11:11.

- 17.** (1) No personal liability shall attach to any member for—
- (a) any act or omission of the Board; or
 - (b) anything done or permitted in good faith in the course of the operations of the Authority under this Act.

Personal liability of members. [17 of 2004].

(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.

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—

Functions and powers of the Authority. [17 of 2004].

- (a) make recommendations to the Minister on the granting of concessions and licences and

- monitor and ensure compliance with the conditions set out therein;
- (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 telecommunication 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 industry standards and technical standards;
 - (e) advise the Minister on policies governing the telecommunications industry and issues arising at international, regional and national levels;
 - (f) advise the Minister on technical standards;
 - (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;
 - (j) plan, administer, manage and assign telecommunications numbering for telecommunications services;
 - (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 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 and certify telecommunications equipment, subject to section 48(3), to ensure compliance with—
 - (i) international standards; and
 - (ii) environmental health and safety standards, including electromagnetic radiation and emissions;
 - (p) ensure the orderly and systematic development of telecommunications throughout Trinidad and Tobago;
 - (q) establish a consumer complaints committee to collect, decide on and report on consumer complaints, such reports to be included in the Authority's annual report; and
 - (r) carry out such other functions imposed by or under this Act and do anything incidental or conducive to the performance of any of its functions.
- (2) In the performance of its functions under subsection (1)(b), the Authority shall require that all persons operating or intending to operate any of the services listed in subsection (1)(b) 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.

(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.
Schedule.

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

21. (1) No person shall operate a public telecommunications network, provide a public telecommunications service or broadcasting service, without a concession granted by the Minister. Requirement for a concession. [17 of 2004].

(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-year intervals when such services are in existence.

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 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.

23. In addition to the conditions stipulated in section 22, a concession for a broadcasting service shall require the concessionaire to adhere to the Broadcasting Code promulgated pursuant to this Act.

Conditions applicable to a concession for a broadcasting service.

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

Conditions applicable to a concession for a public telecommunications network or service. [17 of 2004].

- (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 concessionaire and Authority fail to agree with respect to the plans

- required under this paragraph, the Minister may be asked to commission a dispute arbitration 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 to cross-subsidise any other telecommunications network or service, without the prior written approval of the Authority;
 - (d) meet prescribed standards of quality;
 - (e) file annually with the Authority forms of user agreements with users for the provision of public telecommunications services for approval by the Authority;
 - (f) permit the resale of its telecommunications 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 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 user, other operator of a public telecommunications network or other provider of a telecommunications service originating from—

- (i) any such user, 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

Interconnection.
[17 of 2004].

public telecommunications service shall include conditions obliging the concessionaire to 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;
- (b) provide, upon request, points of interconnection in addition to those offered generally to other concessionaires, subject to rates that reflect the concessionaire's total economic cost of constructing additional facilities necessary to satisfy such request;
- (c) publish, in such manner as the Authority may prescribe, the prices and the technical and other terms and conditions pertaining to its offer for the elements of interconnection;
- (d) provide the elements of interconnection, to other concessionaires of public 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) promptly negotiate, upon the request of another concessionaire of a public telecommunications

- network or a public telecommunications service, and endeavour to conclude, subject to paragraph (h), an agreement with regard to the prices and the technical and other terms and conditions for the elements of interconnection;
- (f) deposit with the Authority a copy of any agreement concluded pursuant to paragraph (e) within twenty-eight days of its making;
 - (g) offer the terms and conditions of an 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 (h);
 - (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;
 - (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; and

- (m) 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.

(3) }
to } (*Deleted by Act No. 17 of 2004*).
(5) }

Access to
facilities.
[17 of 2004].

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 non-discriminatory and equitable basis and, at the request of either party, the Authority may assist in negotiating a settlement between such parties.

(3) A concessionaire may deny access only where it demonstrates that there is insufficient capacity in the facility, taking into account its reasonably anticipated requirements and its obligations pursuant to section 27, or, 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.

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 signalling 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.

Government
essential
services.

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

Universal
service.
[17 of 2004].

(2) Such services, as are referred to in subsection (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 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 closed user group services, private telecommunications services and value added services as well as the users of such services and all telecommunications services generally, 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 non-discriminatory basis as between all similarly situated telecommunications service providers and users.

Prices.
[17 of 2004].

29. (1) Prices for telecommunications 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 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 service cross-subsidises another telecommunications service provided by such concessionaire; or
- (c) the Authority detects anti-competitive pricing or acts of unfair competition.

(3) The Authority shall regulate prices for public telecommunications 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) In respect of any telecommunications services provided on an exclusive basis by a concessionaire, the Authority shall establish the maximum rate-of-return that the concessionaire may receive on its investment or shall prescribe the use of any other measures for determining the concessionaires profitability, as it deems appropriate.

(6) For any public telecommunications service provided on a non-exclusive basis, the Authority may introduce a method for regulating the prices of a dominant provider of such telecommunications service by establishing caps and floors on such prices, or by such other methods as it may deem appropriate.

(7) Prices, terms and conditions for public telecommunications 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) For the purposes of this Part and wherever the issue of dominance otherwise arises in the Act, the Authority may determine that an operator or provider is dominant where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers and, for such determination, the Authority shall take into account the following factors:

- (a) the relevant market;
- (b) technology and market trends;
- (c) the market share of the provider;
- (d) the power of the provider to set prices;
- (e) the degree of differentiation among services in the market;
- (f) any other matters that the Authority deems relevant.

(9) Where a concessionaire, deemed dominant by the Authority pursuant to subsection (8), considers that it has lost its

dominance, it may apply to the Authority to be classified as non-dominant and should the Authority so classify, the relevant concession shall be amended to reflect such classification.

Termination,
suspension or
amendment 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 by the Minister, where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to a 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 Authority;
- (b) take into consideration any representation made to the Authority 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.

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—

Renewal of concession. [17 of 2004].

- (a) the concessionaire failed to operate within the terms of the first concession; and
- (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 shall be as agreed between the concessionaire and the Minister acting upon the recommendation of the Authority.

32. Any terminal equipment may be connected to a public telecommunications network where the Authority, after consultation with the concessionaire, has certified such terminal equipment as—

Terminal equipment.

- (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;
- (c) meeting requirements of electromagnetic compatibility if specified;
- (d) 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; and
- (f) being compatible with the network.

Road works.
[17 of 2004].

33. (1) In connection with the operation of a telecommunications network or the provision of a telecommunications 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.

Ch. 48:01.

(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 subsection (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.

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. Repairs and restoration. [17 of 2004].

(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).

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. Trees.

PART IV
LICENCES, SPECTRUM MANAGEMENT AND
NUMBERING

Requirement for
a licence.
[17 of 2004].

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

- (a) establish, operate or use a radiocommunication service;
- (b) install, operate or use any radio-transmitting equipment; or
- (c) establish, operate or use any radiocommunication 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 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 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 spectrum plan established pursuant to section 41 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.

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.

Conditions of
licence.
[17 of 2004].

(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 radiocommunication service; and
- (e) any other matter as may be agreed between the Authority and the licensee.

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 radiocommunication equipment as long as

Authorisation to
operate in
territorial waters
or airspace.

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 radiocommunication in respect of ships or aircraft.

Termination,
suspension,
amendment or
renewal of
licence.
[17 of 2004].

39. (1) Subject to this section, the Authority or the Minister, on the recommendation of 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 Minister or Authority, as the case may be, where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to the licence.

(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 Minister or Authority, as the case may be, 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 Minister or Authority, as the case may be, 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 Minister or the Authority pursuant to this section may be reviewed by the High Court.

(8) Upon application by a licensee for the renewal of the first licence issued to him under this Act, the Authority or the Minister, on the recommendation of the Authority, in respect of frequencies assigned for the operation of services to which Part III refers, 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 Minister acting upon the recommendation of the Authority or the licensee and the Authority, as the case may be.

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

Operation of
equipment.

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.

Spectrum.
[17 of 2004].

(2) The Authority shall develop a 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 and the procedures for licensing frequency bands.

(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 spectrum plan allocate and re-allocate frequency bands.

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

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 spectrum plan on existing and future use;
- (c) the efficient use 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.

44. (1) The Authority shall develop a plan for the numbering of telecommunications services and shall administer and manage such numbers. Numbering plan. [17 of 2004].

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

(3) The numbering plan may establish procedures by which providers of telecommunications services may assign or reassign telephone numbers to users.

(4) The numbering plan shall be made available to the public in the manner prescribed by the Authority.

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

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

PART V

TECHNICAL STANDARDS

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. Standards.

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

PART VI

TESTING AND INSPECTION

46. The Authority may, for the purpose of this Act, appoint suitably qualified and experienced officers to be telecommunications inspectors, (hereinafter referred to as “inspectors”). Inspectors.

47. (1) To ensure compliance with the conditions of a concession or licence, or for any other purpose authorised Power to request information.

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 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.
[17 of 2004].

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 service is provided, or in which any telecommunications equipment, excluding broadcast receivers, is located, 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 service;

- (b) examine records or other documents relating to the operation of the telecommunications network or the provision of the telecommunications service;
- (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.

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.

Magistrate may issue warrant.

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

PART VII

FINANCIAL PROVISIONS

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

Financial powers of the Authority.

- (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) fees 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 Executive Director, Secretary and other members of staff of the Authority;
- (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.

(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.

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

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.

Exemption from tax and provisions of Central Tenders Board Act.

(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.

Ch. 71:91. (3) The Authority shall, in the performance of its functions, be subject to the provisions of the Central Tenders Board Act 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) For the purpose of this Part, “GAAP” means Generally Accepted Accounting Practice which includes the International Accounting Standards adopted by the Institute of Chartered Accountants of Trinidad and Tobago.

(2) The Authority shall prepare a budget in accordance with GAAP 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 deadline 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 GAAP,

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 GAAP are inappropriate or inadequate for any type of accounting method the Comptroller of Accounts may provide such instructions as may be necessary.

57. (1) The accounts of the Authority are public accounts of Trinidad and Tobago for the purpose of section 116 of the Constitution. Audit of accounts. Ch. 1:01.

(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. Ch. 69:01.

(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.

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. Financial year.

59. The Authority may, by resolution subject to the prior approval, in writing, of the Minister with responsibility for Authority may make rules.

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) 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 subsection (1) is effected, arrangements shall be made to preserve the rights of the officer so transferred 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.
[17 of 2004].

65. A person who—

- (a) fails to comply with or acts in contravention of section 21(1), 33, 36(1), or 73;
- (b) commits a material breach of any condition contained in a concession or licence issued under this Act;
- (c) operates a station or uses any equipment in such a manner as to cause harmful interference to any telecommunications network or telecommunications or radiocommunication 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,

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

66. A person who wilfully 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.

Obstructing an inspector.

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 fifty thousand dollars and to imprisonment for two years.

False signals.

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 one hundred thousand dollars and to imprisonment for three years.

False communications.

(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.

69. (1) A person who maliciously damages, removes or destroys any facility, works or other installation of a public

Damage to equipment.

telecommunications network or a public telecommunications service or of any telecommunications service operated by 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 two hundred and fifty 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.

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 X

GENERAL

Directions for
Minister.
[17 of 2004].

73. (1) Where the Executive Director has reasonable grounds for believing that any person is operating a telecommunications network or providing a telecommunications or radiocommunication service—

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

- (b) that disrupts a telecommunications network or a telecommunications or radiocommunication service on land or on board any ship, aircraft, vessel or other floating or airborne contrivance;
- (c) that causes harmful interference to any telecommunications network or telecommunications or radiocommunication service established in respect of natural disasters and emergencies; or
- (d) without first having obtained a concession or licence pursuant to the requirements of this Act,

the Executive Director shall immediately notify the Minister of National Security, the Minister and the Board, in writing.

(2) Upon such notification by the Executive Director, in accordance with subsection (1), the Minister may direct that person, in writing, to cease operating such telecommunications network or providing such telecommunications or radiocommunication service.

(3) Where a person fails to comply immediately with a direction given by the Minister under subsection (2), the Minister may direct the Authority to suspend the concession or licence, if any, granted to that person.

(4) A person aggrieved by a direction of the Minister given under subsection (2) may apply to the High Court for judicial review.

74. Where, on an application for review of a decision made by the Minister under section 73(1)(a), (b) or (c), the Minister 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 radiocommunication service in the manner described in section 73(1)(a), (b) or (c), then, unless the High Court thinks fit to order otherwise, the Minister is presumed to have had reasonable grounds for so believing.

Minister's
certification.

Monitoring
stations.

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

- (a) ascertaining whether radiocommunication 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 Executive Director 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 minimise 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 Executive Director 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 High Court for judicial review.

Obligations
under
international
agreements.

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

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

Regulations.
[17 of 2004].

- (a) application procedures 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 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 fifty thousand dollars for offences committed thereunder.

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

79. (1) Subject to this Act, the Authority shall, within a year of its establishment, by Order subject to affirmative resolution of Parliament, promulgate a Broadcasting Code to regulate the practices of concessionaires of broadcasting services.

Authority to
promulgate
Broadcasting
Code.

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

(3) 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.

Forbearance.

81. The Authority shall refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty in relation to a telecommunications network, telecommunications service, broadcasting service, radiocommunication 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 utilised in the event of a complaint or dispute arising between parties in respect of any matter to which section 18(1)(m) or 25(2)(h) applies, or where a negotiated settlement, as required under section 26, cannot be achieved, or in respect of any other matter 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, within thirty days after the filing of the dispute.

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

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. Reconsideration and appeal.

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

(a) authorise 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 authorise 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 subsection (1).

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

(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.
[17 of 2004].
Ch. 36. No. 2.

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 subsection (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.

(4A) 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.

(4B) 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 licence 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. Ch. 36. No. 3.

(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. Ch. 47:30.

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.

SUBSIDIARY LEGISLATION

TELECOMMUNICATIONS TENDERS RULES

ARRANGEMENT OF RULES

RULE

1. Citation.
 2. Interpretation.
 3. Establishment of Committees.
 4. Composition of Committees.
 5. Functions of Committees.
 6. Power of Executive Director to award contracts.
 7. Duties of Secretary.
 8. Meetings of Committees.
 9. Quorum.
 10. Decisions of Committees.
 11. Disclosure of interest.
 12. Tendering process.
 13. Invitation to tender.
 14. Submission of tenders.
 15. Rejection of tenders.
 16. Tenders Box.
 17. Withdrawal of tender.
 18. Opening of tenders box.
 19. Consideration of tenders.
 20. Deviations, errors and omissions in tender.
 21. Acceptance of tender.
 22. Form of contract.
 23. Tender performance deposit.
 24. Disposal of surplus.
 25. Confidentiality of documents.
 26. Maintenance of records, etc.
 27. Central Tenders procedures.
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TELECOMMUNICATIONS TENDERS RULES

74/2005.

made under section 54(3)

1. These Rules may be cited as the Telecommunications Tenders Rules, hereinafter referred to as “the Rules”. Citation.

2. (1) In these Rules— Interpretation.

“Act” means the Telecommunications Act;

“articles” means all goods, materials, stores, vehicles, machinery, equipment and things of all kinds;

“Authority” means the Telecommunications Authority of Trinidad and Tobago established under section 4 of the Act;

“Board” means the Board of the Authority established under section 6 of the Act;

“Board Tenders Committee” means the Committee established by the Board pursuant to subrule 3(2);

“committees” means the Board Tenders Committee and the Operations Tenders Committee, and “committee” means either of them;

“competitive bidding process” means the tendering process described under subrule 12;

“competitive selection” means the process of selection of the most competitive tender based on the evaluation criteria prescribed by the Authority and stated in the relevant Invitation to Tender;

“Invitation to Tender” means any invitation issued by the Authority to members of the public to supply articles, undertake works or services, apply for the right to use a telecommunications resource, or apply for a right to be given by the Authority or the Minister under the Act, whether such invitation is referred to as an Invitation to Tender, Request for Proposal or otherwise;

“Operations Tenders Committee” means the Committee established by the Board pursuant to subrule 3(1);

“public tendering process” means a tendering process open to the public, as described in subrule 11(5);

Ch. 45:55. “relative” means spouse, cohabitant within the meaning of the Cohabitation Relationships Act, father, mother, brother, sister, son or daughter of a person;

“selective tendering process” mean a tendering process involving only persons or entities selected by the Authority in accordance with subrule 11(3);

“services” means consultancy services of all kinds;

“State” means the Republic of Trinidad and Tobago;

“telecommunications resource” means a national resource used to provide a telecommunications network or telecommunications service;

“works” means construction and maintenance of buildings, equipment and engineering works and works of all kinds.

(2) Unless otherwise defined herein, terms used in these Rules shall have the meanings given in the Act.

(3) References to a “Rule” are references to the relevant rule in these Rules.

Establishment
of Committees.

3. (1) There is hereby established an Operations Tenders Committee for the purpose of—

(a) inviting, considering, accepting or rejecting offers for the supply of such articles, works or services, as are necessary for carrying out the functions of the Authority; and

(b) disposing of any surplus articles belonging to the Authority with the approval of the Board,

where the total value of such articles, works or services is more than one hundred thousand dollars, but less than five hundred thousand dollars.

(2) There is hereby established a Board Tenders Committee for the purpose of—

(a) inviting, considering, accepting or rejecting offers for the supply of such articles, works or services, as are necessary for carrying out the

functions of the Authority, where the total value of such articles, works or services is more than five hundred thousand dollars;

- (b) when instructed by the Board, inviting and evaluating on behalf of the Board, tenders submitted in respect of a competitive bidding process for—
 - (i) the grant of the right to use a telecommunications resource; or
 - (ii) the grant of the right to provide a public telecommunications network or telecommunications service or a broadcasting service; and
- (c) disposing of any surplus articles belonging to the Authority where the total value of such articles, works or services is more than five hundred thousand dollars.

4. (1) The Operations Tenders Committee shall be appointed by the Board and shall comprise—

Composition of Committees.

- (a) the Executive Director;
- (b) the Corporate Secretary who shall be an *ex officio* member and Secretary of the Committee; and
- (c) three officers of the Authority (at least one of whom shall be a senior finance/accounting officer), one of whom the Board shall appoint as Chairman.

(2) The tenure of a member of the Operations Tenders Committee appointed under paragraph (1)(c), shall be for such period as the Board considers appropriate.

- (3) The Board Tenders Committee shall comprise—
 - (a) any three members of the Board determined by resolution of the Board from time to time;

- (b) two persons such as the Board considers appropriate, having regard to the subject matter being considered and the expertise of such persons; and
- (c) the Corporate Secretary, who shall be an *ex officio* member and Secretary to the Committee.

(4) In exercise of the authority vested in them under these Rules, the Committee may from time to time consult with such officers of the Authority or the required other persons having regard to the award of a contract or tender.

(5) A member of the Board Tenders Committee appointed under Rule 4(3)(b) shall be appointed by the Board only for the duration of any evaluation under Rule 3(2)(b).

(6) The Board shall be entitled by resolution to remove any member of any Committee at any time, save that—

- (a) a member of a Committee shall only be removed while that Committee is engaged in a tendering process if that member is guilty of misconduct, dishonesty or corrupt practices in relation to that process or has otherwise acted to prejudice the fairness of that process; and
- (b) if the removal of a member of a Committee makes inadequate the composition of that Committee as required by subrule 4(1), that member shall be replaced by a suitably qualified person forthwith.

(7) Subject to the provisions of subrule 4(4), the Board shall forthwith remove any member of any Committee who for any reason is no longer eligible to sit on that Committee under the conditions set out in subrule 4(1).

Functions of
Committees.

5. (1) The Board Tenders Committee shall—

- (a) in respect of tenders for the supply of goods or services or the undertaking of works of all kinds necessary for the carrying out of the functions

of the Authority, where the total value of such articles, works or services is more than five hundred thousand dollars—

- (i) act for the Authority in inviting and considering tenders;
 - (ii) make recommendations to the Board or make decisions on behalf of the Authority on the acceptance or rejection of tenders; and
 - (iii) award contracts in respect of accepted tenders;
- (b) invite, and using a competitive bidding process, evaluate tenders for the right to—
- (i) use a telecommunications resource;
 - (ii) provide a public telecommunications network or telecommunications service; or
 - (iii) provide a broadcasting service,

and make recommendations to the Board on the acceptance or rejection of such tenders.

(2) The Operations Tenders Committee shall—

- (a) in respect of tenders for the supply of articles or services or the undertaking of works of all kinds necessary for the carrying out of the functions of the Authority, where the total value of such articles, services or works is more than one hundred thousand dollars, but less than five hundred thousand dollars—
- (i) act for the Authority in inviting and considering tenders;
 - (ii) make recommendations to, or make decisions on behalf of the Authority on the acceptance or rejection of tenders;
 - (iii) award contracts in respect of accepted tenders; and

(b) subject to the provisions of rule 24, dispose of surplus articles of the Authority.

Power of Executive Director to award contracts.

6. (1) The Executive Director shall—

(a) have power to award contracts up to the value of one hundred thousand dollars and in respect of the award of contracts may delegate such authority to officers of the Authority, setting such limits as he deems appropriate; and

(b) submit to the Board Tenders Committee on a quarterly basis, reports in respect of contracts awarded under the authority granted to him.

(2) For the purpose of enabling action under this provision, neither the Operations Tenders Committee nor the Executive Director (or any officer so authorised by the Executive Director) shall subdivide the quantity of articles to be supplied or works and services to be undertaken into two or more portions so that the value of any portion empowers them to act.

Duties of Secretary.

7. (1) The duties of the Secretary shall include the organisation of agendas, the circulation of documents and the recording of the Minutes of each meeting.

(2) In the absence of the Corporate Secretary an officer of the Authority shall be appointed by the Executive Director to carry out the functions of Secretary.

Meetings of Committees.

8. (1) Each Committee shall meet as often as it considers necessary or expedient for the proper carrying out of its functions as determined by its Chairman.

(2) Notice of meetings together with agendas shall be circulated to members at least forty-eight hours before the time fixed for such meetings.

(3) Minutes of all meetings in proper form shall be kept by the Secretary and shall be confirmed and certified by the Secretary at the next succeeding meeting of the relevant Committee.

(4) Copies of certified Minutes of the meetings of all Committees shall be forwarded to the Board for information together with copies of such relevant documentation that the Committee considers appropriate.

(5) The Board may from time to time request and the relevant Committee shall provide, such additional documentation as the Board may require regarding any matter contained in the Minutes of any meeting of a Committee.

9. For the purpose of any vote on any matter, whether carried out at the meeting of a Committee or on the basis of papers circulated, a simple majority shall constitute a quorum.

Quorum.

10. (1) Decisions shall be taken at meetings or, in cases where the Chairman of a Committee shall so direct, by each member casting his or her vote in writing following the circulation of relevant papers among the members.

Decisions of Committees.

(2) Papers shall not be circulated to a member who through illness, absence from office or otherwise is incapacitated from voting.

(3) At the next meeting of a Committee following the circulation of papers the decision of that Committee in respect of a matter that was circulated shall be recorded in the Minutes of the meeting.

(4) The dissent of any member in respect of a decision shall be properly recorded.

(5) Decisions shall be by a majority of votes and for that purpose the Chairman shall have both an original and a casting vote.

(6) Any document purporting to record a decision of a Committee and signed by the Secretary of the relevant Committee or the person designated in accordance with subrule 7(2), is admissible as *prima facie* proof that the decision was recorded.

11. (1) A person involved on behalf of the Authority in the process of tendering for articles, works, services, a right to use a

Disclosure of interest.

telecommunications resource, a right to provide a public telecommunications network or telecommunications service or a broadcasting service who has—

- (a) a financial or other vested interest; or
- (b) a relative who is a member of, or has a financial or other vested interest,

in a business entity which has submitted a tender for the supply or purchase of articles, the undertaking of works or services, a right to use a telecommunications resource, or a right to provide a public telecommunications network or telecommunications service or a broadcasting service, shall disclose his financial or other vested interest or that of his relative and shall remove himself from all aspects of the tendering process.

(2) A person who fails to comply with the provisions of this rule, shall be subject to the disciplinary action of the Authority, unless he can prove that he did not know that the relevant business entity had submitted that tender.

Tendering
process.

12. (1) Whenever—

- (a) articles are required to be supplied to, or works or services are required to be undertaken on behalf of the Authority, and the total value of such articles, works or services exceeds one hundred thousand dollars;
- (b) a right to use a telecommunications resource is to be granted by the Authority via a competitive bidding process; or
- (c) a right to provide a public telecommunications network or telecommunications service or a broadcasting service is to be recommended to the Minister by the Authority via a competitive bidding process,

the Executive Director shall make a written request to the Secretary of the relevant Committee to invite tenders.

(2) Where the selective tendering process may not be used in the case of a matter referred to the Board Tenders Committee under subrule (1)(b) or (1)(c), the relevant Committee or the Executive Director, as the case may be, shall determine whether an Invitation to Tender shall be public or selective.

- (3) A selective tendering process may be utilised where—
- (a) there is only one source or a limited number of sources of supply of articles, works or services;
 - (b) the articles are spares or replacement parts or from part of a system already in use by the Authority;
 - (c) articles that form part of the inventory of stock items of the Authority, the replenishment of which is repetitive and can be obtained at the same price or less than that previously negotiated; or
 - (d) the articles, works or services are—
 - (i) propriety or specialised goods or services;
 - (ii) supplied or disposed of on a repetitive basis; and
 - (iii) the work to be carried out is on a site where a contractor is already operating and the employment of a second contractor would hinder the progress of the project.

(4) Where a selective tendering process is to be implemented in accordance with subrule (3), the Authority shall identify as many suppliers of the required articles, works or services as is reasonably practicable, and shall issue Invitations to Tender to all such suppliers, save those who have indicated their unwillingness to participate.

(5) Unless a selective tendering process is implemented in accordance with subrule (3), the tendering process shall be a public tendering process and the Invitation to Tender shall be open to any qualified member of the public, wherever situated, and shall be posted on the official website of the Authority and

published in at least one daily newspaper circulating in the Republic of Trinidad and Tobago.

(6) In relation to either a public tendering process or a selective tendering process, the Executive Director or the relevant Committee (whichever is responsible), shall consider all valid tenders received, and where more than one tender is received the process of evaluation shall be a competitive bidding process, which may include—

- (a) prequalification of tenders; and
- (b) competitive selection,

or such other processes the relevant Committee or the Executive Director may consider appropriate in each circumstance having regard to the nature of the subject of the tender.

Invitation to tender.

13. (1) The Invitation to tender shall contain—

- (a) a sufficient description of the articles required, the scope of works or services to be undertaken, the telecommunications resource to be granted or the right to be recommended;
- (b) the criteria for evaluation of tenders as prescribed by the Authority;
- (c) the place where additional information can be obtained;
- (d) the form or manner in which the offer is to be made; and
- (e) the time and place for the closing and opening of the tenders.

(2) Invitation to Tender shall be signed by the Chairman or the Secretary of the relevant Committee, or in the case of tenders for articles, works or services of a value of less than one hundred thousand dollars, by the Executive Director.

(3) The information that is required to be posted or published in relation to Invitations to Tender in respect of

articles to be supplied, or works or services to be undertaken, shall include the following:

- (a) a description of the articles, works or services for which the tender is invited;
- (b) a tentative indication of the period of the year for which such articles, works or services are required;
- (c) a brief description of the Authority's bidding processes; and
- (d) the name of the contact person and mailing address, telephone number, fax and/or e-mail address from whom additional information may be obtained.

(4) Where the Invitation to Tender is in relation to matters referred to in subrule 3(2)(b), the information that is required to be posted or published as the case may be, shall include the following:

- (a) the right or resource for which the proposals are being invited;
- (b) the opening and closing dates for the tender;
- (c) the name of the contact person and mailing address, telephone number, fax and/or e-mail address from whom additional information may be obtained; and
- (d) other information deemed appropriate by the Authority.

(5) The Authority shall be entitled to extend the time for the submission of tenders in relation to any Invitation to Tender, by publishing in the *Gazette* and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect.

14. (1) A tender shall be submitted in the manner specified in the Invitation to Tender and signed by the person submitting the tender or proposal or in the case of a business entity, by a duly authorised officer and shall be enclosed in a sealed envelope addressed to the Secretary of the relevant Committee.

Submission of
tenders.

(2) The tender shall contain such certification as is necessary to satisfy the requirements of the Income Tax and Value Added Tax legislation and shall be submitted along with the bid documents and where relevant, such certification as is relevant to its incorporation as required under Companies legislation.

(3) Where a tender has been altered in any way the alteration shall be initialled by a duly authorised officer.

(4) The Committees may require, as a condition for the collection of tender documents, the payment of non-refundable deposits in such sums as may be determined by the Authority.

(5) The relevant Committee may require persons desirous of submitting tenders to deposit with the Authority such sums as may be determined by the Authority and in respect of any sum to be deposited in excess of one hundred thousand dollars the approval of the Board shall first be sought and obtained in writing.

(6) Sums deposited in accordance with subrule (5) may be forfeited where—

- (a) the person making the deposit fails to submit a tender;
- (b) the person whose tender is accepted fails or refuses to enter into a formal contract; or
- (c) the person submitting a tender withdraws the same.

Rejection of tenders.

15. (1) A Committee or the Executive Director, as the case may be, shall reject any tender that does not comply with these Rules.

(2) The Authority shall make available within seven days of a request from a rejected bidder, reasons for the rejection of the tender.

Tenders Box.

16. (1) Specially constructed boxes, bearing the inscription “Tenders Box” shall be kept at the offices of the Authority and in such other places as may be necessary in which all tenders shall be placed.

(2) Each box shall have two independent locks, which shall be usually kept in the custody of the Corporate Secretary.

(3) During any tendering process the key to one of the locks shall be kept in the custody of the Chairman of the Committee inviting a tender or the Executive Director, as the case may be, and returned to the Corporate Secretary on completion of the tendering exercise.

17. (1) Prior to the opening of a tender, it may be withdrawn by the tenderer or the duly authorised representative, sending a letter to that effect to the Chairman of the relevant Committee, or the Executive Director. Withdrawal of tender.

(2) Withdrawal of a tender is effective, if the letter is delivered to and received by the relevant Chairman or the Executive Director, prior to the opening of the relevant tender.

18. (1) On the date and the time fixed for the opening of the tenders, the persons having custody of the keys shall unlock the box and remove and open the tenders found therein, and every person submitting a tender shall be entitled to be present either personally or through a duly authorised representative at the opening of the Tenders Box. Opening of tenders box.

(2) The persons opening the tenders box shall initial the offers found therein, cause a note to be taken of the number of tenders submitted, the names of the tenderers and such further information as the Committee directs.

(3) The announcement of received tenders shall be an open event for a competitive bidding process.

19. (1) After tenders have been opened, they shall be considered by the relevant Committee or the Executive Director as the case may be. Consideration of tenders.

(2) All tenders shall be considered based on the evaluation criteria prescribed by the Authority for that process, as specified in the relevant Invitation to Tender.

(3) The evaluation of each bid shall be recorded, signed and dated by the members of the relevant Committee or the Executive Director as the case may be and a written decision on the winning bid and reasons therefore, included as part of the record.

(4) Where a competitive bidding process involves procurement of articles, works or services or any other process in relation to which the Authority will create a liability for itself or the State, or make a recommendation which would, if followed, create a liability for itself or the State the lowest evaluated bid shall ordinarily be recommended.

(5) Where the lowest evaluated bid is not recommended, a justification for rejecting that bid shall be included as part of the record.

(6) Where a competitive bidding process is an auction or any other process in relation to which the Authority will generate revenue for itself or the State or make a recommendation which would, if followed, generate revenue for itself or the State, the highest evaluated bid shall, ordinarily be accepted.

(7) Where the highest evaluated bid is not recommended, a justification for rejecting that bid shall be included as part of the record.

(8) All tenders and associated working papers shall be held fully confidential before and after the award, including any price lists or other documents containing competitive information from bidders and tenders sent for evaluation shall be kept in a locked cabinet.

Deviations,
errors and
omissions in
tender.

20. (1) In this Rule, the following definitions apply:

- (a) “deviation” means departure from the specified requirements;
- (b) “error” means a mistake in the presentation of arithmetic information or its expression in words; and
- (c) “omission” means the failure to include some or all of the required information or documentation.

(2) The Authority shall determine whether an application or bid is substantially responsive to the requirements set out in the Invitation to Tender based solely on the application or the bid itself.

(3) An application or bid is substantially responsive to the requirements set out in the Invitation to Tender if it conforms to all of the terms, conditions and specifications of those requirements, without non-reparable deviations, reservations, omissions or errors.

(4) A non-reparable deviation, reservation, omission or error is one that, if accepted by the Authority, would do the following:

- (a) affect in a substantial manner the scope, quality or performance of the articles, works or services to be provided;
- (b) limit in a substantial manner, inconsistent with the requirements of the Invitation to Tender the Authority's rights or the obligations of the applicant or bidder; or
- (c) significantly affect the competitive position of other applicants or bidders who submitted substantially responsive applications or bids.

(5) If an application or bid is not substantially responsive to the requirements of the Invitation to Tender, the Authority shall reject it and it may not subsequently be made responsive by a correction of the non-reparable deviations, reservations, omissions or errors that originally rendered it non-responsive.

(6) The tendering process shall allow for the possibility of correcting deviations, reservation, omissions and errors that are reparable, provided that the application or bid is substantially responsive to the requirements of the Invitation to Tender and in such cases the Authority may —

- (a) waive any deviation, reservation or omission in the application or bid that does not constitute a material deviation;

- (b) request that the applicant or bidder submit the necessary information or documentation within a reasonable period of time, to rectify such reparable omissions, provided that such omission is not related to any aspect of the price of the bid; and
- (c) correct arithmetical errors on the following basis:
 - (i) if there is a discrepancy between the unit price and the total price obtained by multiplying the unit price and the corresponding quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Authority the decimal point in the unit price has been obviously misplaced, in which case the total price as quoted shall govern and the unit price shall be corrected;
 - (ii) if there is an error in the total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; or
 - (iii) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error in which case the amount in figures shall prevail subject to (i) and (ii) above.

(7) Where the applicant or bidder does not accept the correction of errors, the application or bid shall be rejected.

Acceptance of tender.

21. (1) Where a tender has been accepted, the tenderer shall be notified of its acceptance and, in the appropriate case, of the requirement to enter into a formal contract with the Authority and provide security in the manner and to the extent that may be required under these Rules.

(2) Prior to the finalisation of the contract, the relevant Committee may approve a variation that increases or decreases the total value of the contract by less than ten per cent unless such variation is in excess of one hundred thousand dollars, in which case the approval of the Board is required.

(3) Subrule 21(2) shall not be applicable to a competitive bidding process in respect of a matter referred to the Board Tenders Committee under subrule 3(2)(b).

22. (1) Every written contract shall be in such form as the Authority shall determine and in this regard the Authority shall consult with the Solicitor General on the form of its contracts from time to time.

Form of contract.

- (2) Every contract shall, *inter alia*, specify where applicable—
- (a) a description of the articles to be supplied, the works or services to be undertaken, the use of a telecommunications resource, the right to provide a public telecommunications network or telecommunications service, or a broadcasting service, as the case may be;
 - (b) the price to be paid for the supply of such articles, the undertaking of such works or services, the use of a telecommunications resource or the right to provide a public telecommunications network or telecommunications service, or a broadcasting service;
 - (c) the duration of the contract;
 - (d) the amount of damages payable by the contractor for delay or non-completion within the period stipulated;
 - (e) termination for breach of conditions;
 - (f) the voiding of the contract where the tenderer is found to have made any gift or given any reward to a member of the relevant Committee

- or a member of the Authority for the purpose of being considered favourably for the contract;
- (g) terms and conditions as determined by the Authority;
- (h) technical specifications relevant to the contract, as determined by the Authority; and
- (i) signature of an agreement between the successful tenderer and the Authority or Minister, as the case may be.

Tender performance deposit.

23. (1) Where a performance deposit or bond is a condition of the contract and such contract is completed in accordance with the terms and conditions of the contract, the performance deposit shall be refunded or the performance bond released.

(2) Where the contractor fails to complete the contract in accordance with the terms and conditions of the contract, the performance deposit or the amount secured by the bond or a proportionate part thereof as agreed between the parties in the contract shall be forfeited.

(3) The Corporate Secretary shall certify the fulfillment of the contract terms and conditions as agreed between the Authority and the tenderer.

Disposal of surplus.

24. (1) The Operations Tenders Committee may authorise the sale and disposal of any surplus articles by public auction or such other method of disposal, as it considers appropriate.

(2) Where articles are valued in excess of five hundred thousand dollars, the approval of the Board shall be required for the disposal of such articles.

(3) Where the articles are valued at less than one hundred thousand dollars, the Executive Director may likewise authorise the sale and disposal of such articles.

(4) A member of staff of the Authority shall attend every such sale and a written report shall be submitted to the Executive Director or the Operations Tenders Committee, as the case may be, on the results of the sale.

(5) For the purpose of purporting to give itself authority to act under this rule, neither the Operations Tenders Committee nor the Executive Director shall assume authority under this rule by subdividing the quantity of the goods to be disposed of into two or more portions so that the value of the portions falls within their respective financial authority.

(6) The Executive Director shall cause the proceeds of sale to be credited to the appropriate revenue item of the budget of the Authority.

25. (1) The Authority shall not disclose any information relating to the examination, evaluation or comparison of applications and technical or price proposals, or the recommendations for prequalification, selection and award of the contract to participants in a prequalification or bidding process, to any other person not officially involved in the evaluation.

Confidentiality
of documents.

(2) A person who performs a duty on behalf of the Executive Director in respect of tenders shall regard all document and information relating thereto as confidential.

(3) A Board member, member of staff of the Authority or any appointee to a Committee having possession or control of a document or information relating to any tender, who at any time communicates or attempts to communicate information contained in such a document to an unauthorised person shall be subject to the disciplinary action of the Authority.

(4) The Executive Director shall not be entitled to tender for the supply of articles or the undertaking of works and services.

(5) A member of staff of the Authority, other than the Executive Director, may tender for the supply of articles or the undertaking of works and services where the value of the articles, works or services is less than twenty thousand dollars.

26. For the procurement of any articles, works and services, the use of a telecommunications resource or the right to use a

Maintenance of
records, etc.

public telecommunications network or telecommunications service, or a broadcasting service, the Authority shall maintain proper records and in particular shall maintain the following:

- (a) a document explaining the procedure used in the tendering process, including prequalification and bidding documents, comparative selection procedures, auction procedures (rules), if any;
- (b) the recommendations of the selection committee;
- (c) proof of the notification of the result of the bidding process to all participants; and
- (d) a copy of the contract, duly signed.

Central Tenders
procedures.

Ch. 71:91.

27. In respect of any matter not expressly provided for in these Rules, the Authority shall be guided by the provisions of the Central Tenders Board Act, however in instances of any conflict between these Rules and the procedures of the Central Tenders Board, these Rules shall apply.

**TELECOMMUNICATIONS (ACCESS TO
FACILITIES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.

PART I

PRELIMINARY

2. Interpretation.

PART II

OBLIGATION OF CONCESSIONAIRES

3. General obligation to provide access to facilities.
4. Access to be provided.
5. Non-discrimination.
6. Evidence of feasibility.
7. Requirement to specify availability of collocation.
8. Requirement to supply information for access.

PART III

NEGOTIATING ACCESS AGREEMENTS

9. Access request.
10. Access request pending approval of concession application.
11. Time for conclusion of access agreement.
12. Content of access agreement.
13. Access agreement available.
14. Access charges reciprocal.
15. Attendance by Authority at meetings.
16. Submission of access agreements.
17. Publication of access agreements.

PART IV

COMMERCIAL ARRANGEMENTS

18. Basis of access charges.

ARRANGEMENT OF REGULATIONS—*Continued*

REGULATION

PART V

IMPLEMENTATION OF ACCESS AGREEMENTS

19. Access agreement to stipulate time for access.
20. Effecting access.
21. No deprivation of access.
22. Costs of modification recoverable.

PART VI

DENIAL OF ACCESS REQUESTS

23. Grounds for denial of access request.

PART VII

DISPUTE RESOLUTION

24. Request for consultation and guidance.
25. Referral of dispute in accordance with dispute resolution procedures.
26. Interim arrangements.
27. Effective date of interim arrangement.
28. Penalty for breach of Regulations.

FIRST SCHEDULE.

SECOND SCHEDULE.

**TELECOMMUNICATIONS (ACCESS TO FACILITIES)
REGULATIONS**

180/2006.

made under section 78(1)

1. These Regulations may be cited as the Citation.
Telecommunications (Access to Facilities) Regulations.

PART I

PRELIMINARY

2. (1) In these Regulations — Interpretation.

“access agreement” means a binding agreement between concessionaires permitting access by an access seeker to the facilities of an access provider pursuant to section 26 of the Act;

“access charge” means any charge for access to any facility of a public telecommunications network or broadcasting services concessionaire;

“access provider” means the concessionaire who provides access to its facilities to an access seeker;

“access request” means a request made pursuant to regulation 7, for access to the facilities of a concessionaire;

“access seeker” means a concessionaire who seeks access to the facilities of another concessionaire;

“the Act” means the Telecommunications Act;

“collocation” means the provision of space on the premises of an access provider for the use of an access seeker for the purpose of installing equipment in connection with the latter’s public telecommunications network or broadcasting services;

“concessionaire” means a person authorised to operate a public telecommunications network or provide a broadcasting service under section 21 of the Act;

“local access loop” means the facilities which connect the customer terminal equipment to the first switching or routing point in a network;

First Schedule. “Non-disclosure Agreement” means an agreement substantially in the form set out in the First Schedule.

(2) For the purpose of these Regulations, access includes collocation.

PART II

OBLIGATION OF CONCESSIONAIRES

General obligation to provide access to facilities.

3. A holder of a concession for the provision of a public telecommunications network or broadcasting service shall—

- (a) upon written request, provide access to its facilities and such access shall not be unreasonably withheld;
- (b) negotiate in good faith on matters concerning access to facilities; and
- (c) neither withdraw nor impair access once already granted, except—
 - (i) where authorised by the Authority; or
 - (ii) in accordance with—
 - A. a dispute resolution process under section 82 of the Act; or
 - B. an Order made by a Court.

Access to be provided.

4. Without prejudice to the generality of the foregoing, a concessionaire shall provide access to the following facilities including where applicable, their functional equivalents:

- (a) local access loop;
- (b) line side facilities including the connection between an access loop termination at the main distribution frame and the switch line card or such points which are functionally equivalent;
- (c) trunk-side facilities, including the trunk-side cross connect panel and a switch trunk card or such points which are functionally equivalent;

- (d) trunk connect facilities, including the connection between trunk termination at a cross connect panel and a switch trunk card or such points which are functionally equivalent;
- (e) inter-office transmission facilities;
- (f) signalling networks including signalling links and signalling transfer points;
- (g) service control points; and
- (h) ducts, poles and towers used for supporting or carrying telecommunication facilities.

5. (1) A concessionaire shall provide access under the same terms and conditions and of the same quality as it provides for its own networks and services, the networks and services of its subsidiaries and partners or the networks and services of any other concessionaire to which it provides access.

Non-discrimination.

(2) Where a concessionaire fails to comply with subregulation (1), it shall upon request from the Authority, prove to the satisfaction of the Authority that it is not technically feasible to replicate the level of quality of access or to provide access under the same terms and conditions as it provides for its own use.

6. (1) Previous successful access to a facility at a particular point on a network shall constitute evidence of technically feasible access at that point or at a similar point on the networks where similar facilities are used.

Evidence of feasibility.

(2) Adherence to the same interfaces at other points of the network shall constitute evidence of similar facilities.

7. A concessionaire shall specify, upon request from an access seeker, the availability of collocation within its facilities, including—

Requirement to specify availability of collocation.

- (a) information on the relevant sites along with security arrangements and conditions;
- (b) collocation options at the relevant sites;

- (c) restrictions, if any, on equipment which can be collocated;
- (d) security standards and measures to be put in place by access seekers to guarantee security of the facilities;
- (e) principles governing allocation of collocation space to access seekers; and
- (f) principles governing the rights of entry to collocation space by the staff of the access seeker.

Requirement to supply information for access.

8. (1) Subject to subregulation (4), a concessionaire shall supply to any other concessionaire upon request, such information about its network and services as is required in relation to procuring access to the concessionaire's facilities.

(2) Subject to subregulation (3), the information referred to in subregulation (1) shall be supplied within twenty-eight days of the request.

(3) The concessionaire may request from the Authority, an extension in writing, not later than seven days before expiry, of the period referred to in subregulation (2).

(4) The Authority may exempt certain particulars from the requirements of subregulation (1) on the grounds of confidentiality or competitive sensitivity, subject to the procedures set out in the Second Schedule.

Second Schedule.

(5) The Authority may revoke an exemption granted under subregulation (4), at the request of a concessionaire where there has been a material change in the relevant circumstances, but in such case shall afford to both parties, a reasonable opportunity to make submissions to the Authority.

(6) All information provided under this regulation shall be used for the purpose of facilitating access only, and shall not be disclosed to any third party without the prior written permission of the concessionaire who provided the information.

(7) A concessionaire who receives information under this regulation shall, prior to receipt of the information, execute a Non-disclosure Agreement for the benefit of the concessionaire who provided the information.

PART III

NEGOTIATING ACCESS AGREEMENTS

9. (1) A concessionaire may make an access request at any time. Access request.

(2) For the purpose of processing an access request, a concessionaire shall—

- (a) provide the Authority with a designated contact or contacts; and
- (b) make sufficient provision to ensure that the access request is dealt with promptly.

(3) An access request shall be forwarded to the designated contact except that where no contact has been provided, the request may be forwarded to the registered address of the access provider.

(4) An access request shall, unless otherwise agreed between the access provider and the access seeker, include—

- (a) the reference number of the access seeker's concession (or proof of a submitted application for a concession);
- (b) the facility or facilities to which access is required;
- (c) details of the access required;
- (d) the date by which access is required;
- (e) the period for which access is required;
- (f) details of any equipment to be installed at the facility, together with details of the security, safety, environmental, and spatial requirements of such equipment;

(g) the extent to which access is required by the access seeker's personnel to the facility to install, maintain or use the equipment to be installed; and

(h) any other requirement which the Authority may from time to time, prescribe.

(5) The access seekers shall forward to the Authority, a copy of the access request.

(6) The access provider shall acknowledge receipt of the access request within seven days of its receipt of the request.

(7) The access provider may upon its receipt of the access request, request any further information that it may reasonably require, in order to process the access request.

(8) A request made under subregulation (7) shall be copied to the Authority and complied with by the access seeker within seven days of receipt of the request.

(9) Where the request made under subregulation (7) is not satisfied in accordance with subregulation (8), the period specified in regulation 11 respecting the negotiation of the access agreement shall be increased by a period corresponding to the delay in the provision of the information.

Access request pending approval of concession application.

10. (1) Nothing in this regulation shall be construed as preventing any person who has applied to the Authority for a concession under section 21 of the Act, but whose application is still pending, from making a valid access request.

(2) The effecting of access in accordance with a request made pursuant to these Regulations shall be conditional upon the grant of a concession to the applicant.

(3) The applicant shall provide to the access provider at the time of the access request, such security as the access provider may reasonably require to indemnify the access provider from any loss that he may suffer in the event that the application for a concession is unsuccessful.

11. (1) A concessionaire shall use all reasonable endeavours to conclude an access agreement within forty-two days of its receipt of an access request, unless such period has been expressly extended by the Authority in writing, or pursuant to regulation 9(9) except that where the request is made under regulation 10, the request shall be deemed to have been received by the access provider on the date of grant of the concession.

Time for conclusion of access agreement.

(2) Failure by a concessionaire to comply with this regulation shall constitute a dispute referable to the Authority under regulation 25.

12. Every access agreement shall include prices for access to facilities as well as the technical, operational, billing and planning conditions for access.

Content of access agreement.

13. (1) The terms and conditions for access contained in the most recent access agreement under which a concessionaire is the access provider shall be made available to any other concessionaire requesting access.

Access agreement available.

(2) Each access agreement shall provide for amendment or modification to permit incorporation of the terms and conditions referred to in subregulation (1) and such amendment or modification shall be effected within fourteen days of a request from an access seeker.

(3) Failure by a concessionaire to comply with subregulation (2), shall constitute a dispute referable to the Authority under regulation 25.

(4) For the purposes of this regulation, “access agreement” includes amendments and modifications to such agreement.

14. Access charges for equivalent access in equivalent circumstances shall be reciprocal between concessionaires.

Access charges reciprocal.

15. (1) Every access provider and access seeker shall notify the Authority in a timely manner of every meeting scheduled for the purpose of negotiating access.

Attendance by Authority at Meetings.

(2) The Authority may, upon the giving of twenty-four hours prior written notice to the relevant concessionaires, attend any meeting referred to in subregulation (1) in the capacity of observer only.

Submission of access agreements.

16. (1) Every access agreement or modification thereto shall be submitted to the Authority within fourteen days of signature by the parties.

(2) The Authority may, within twenty-one days of the submission of an access agreement or modification thereto, serve notice on the parties to the agreement requiring the access provider's compliance with regulation 18.

(3) Compliance referred to in subregulation (2) shall be effected by the access provider within fourteen days of service of notice from the Authority and a modified agreement shall be resubmitted to the Authority for its consideration.

Publication of access agreements.

17. Every access agreement shall be published by the Authority on the website of the Authority within fourteen days of its acceptance by the Authority.

PART IV

COMMERCIAL ARRANGEMENTS

Basis of access charges.

18. (1) A concessionaire shall set access rates based on its costs determined in accordance with such costing methodologies, models or formulae as the Authority may, from time to time, establish.

(2) Where the relevant data for the establishment of the costing methodologies, models or formulae are unavailable within a reasonable time, the concessionaire may set access rates with reference to such costing benchmarks, as determined by the Authority, that comport with internationally accepted standards for such benchmarks.

(3) A concessionaire shall within twenty-eight days of a written request from the Authority, unless this period is expressly extended by the Authority in writing, supply to the Authority such

data as the Authority may require, for the purpose of determining that its access rates are in accordance with this regulation.

PART V

IMPLEMENTATION OF ACCESS AGREEMENTS

19. (1) Every access agreement shall stipulate a period not exceeding twenty-eight days within which access shall be effected except with the prior approval of the Authority in writing.

Access agreement to stipulate time for access.

(2) Notwithstanding subregulation (1), the Authority may upon written application of a concessionaire extend the period referred to in subregulation (1).

20. A concessionaire shall use all reasonable endeavours to effect access within twenty-eight days of concluding the relevant access agreement, or such longer period as may be approved by the Authority in accordance with regulation 19.

Effecting access.

21. An access provider shall not deprive an access seeker of any benefit granted under their access agreement except in accordance with the access agreement or with the prior written consent of the Authority.

No deprivation of access.

22. Where access requires modification of the facilities of an access provider, the reasonably incurred costs of such modification shall be recoverable from the access seeker, such costs to be determined in the manner prescribed by the Authority.

Costs of modification recoverable.

PART VI

DENIAL OF ACCESS REQUESTS

23. (1) A concessionaire shall not deny a request for access at a particular location except for insufficient capacity, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

Grounds for denial of access request.

(2) Every concessionaire who denies a request for access shall notify the access seeker and the Authority within fourteen days of receipt of the access request.

(3) Upon written request by the Authority, the access provider shall provide justification for the denial, to the Authority in writing within seven days of receipt of the request.

(4) The Authority may—

- (a) request of the access provider, the production of any records or documents and copies thereof; and
- (b) with the agreement of the access provider, enter the premises of the access provider and inspect any or all relevant facilities,

to determine the reasonableness of any denial of access.

(5) Where the Authority deems that the access has been unreasonably withheld, the Authority may instruct the access provider in writing to make arrangements for access within a time specified by the Authority.

(6) An instruction pursuant to subregulation (5)—

- (a) shall include such interim terms and conditions for access as the Authority may consider appropriate and be applicable until an access agreement is concluded between the parties;
- (b) may request a concessionaire to modify its facilities to provide or facilitate access.

(7) In acting under subregulation (6), the Authority shall take into account any relevant factors which may include but are not limited to the extent to which the access requested impacts on the networks or services of the access seeker, the availability and cost of alternatives, and the cost of any required modifications.

(8) The reasonably incurred costs of a modification shall be—

- (a) recoverable from the access seeker; and
- (b) determined in accordance with such methodology as the Authority may establish.

PART VII

DISPUTE RESOLUTION

24. Where a dispute arises with respect to any matter respecting access, the matter may, on the agreement of both parties, be referred to the Authority for consultation and guidance prior to either party submitting the matter to the Authority as a dispute.

Request for consultation and guidance.

25. Save as provided in regulation 24, every dispute regarding access shall be submitted to the Authority for resolution in accordance with the dispute resolution process established by the Authority under section 82 of the Act.

Referral of dispute in accordance with dispute resolution procedures.

26. (1) The Authority may, in relation to any dispute referred to under these Regulations, direct that the parties implement such interim arrangement for access as the Authority considers appropriate having regard to the nature of the dispute.

Interim arrangements.

(2) An interim arrangement may speak to prices and include any other term or condition for access whether or not the Authority considers submissions made by the parties subject to such times for submissions as the Authority shall establish.

(3) An interim arrangement shall be instituted by the parties within a period determined by the Authority and shall remain in force until such time as the dispute has been resolved.

27. The final resolution of a dispute in respect of which an interim arrangement was implemented shall—

Effective date of interim arrangement.

- (a) be effective on the date on which the interim arrangement was effected; and
- (b) include provisions for compensation to any party that has suffered any loss and damage as a result of the arrangement.

28. A concessionaire who contravenes any provision of these Regulations commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Penalty for breach of Regulations.

FIRST SCHEDULE

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made this day of

Between

(INSERT NAME OF THE CONCESSIONAIRE SEEKING ACCESS) a company incorporated under the laws of (INSERT PLACE OF INCORPORATION) whose registered office is at (INSERT REGISTERED OFFICE ADDRESS) (“Access Seeker”)

And

(INSERT NAME OF THE CONCESSIONAIRE PROVIDING ACCESS), a company incorporated under the laws of (INSERT PLACE OF INCORPORATION) whose registered office is at (INSERT REGISTERED OFFICE ADDRESS) (“Access Provider”)

Each a “Party” and collectively the “Parties”.

WHEREAS the Parties are discussing certain matters in relation to the provision of services by Interconnection Provider to Interconnecting Concessionaire and by Interconnecting Concessionaire to Interconnection Provider which may require each Party to disclose certain proprietary, secret or confidential information to the other Party; and

Whereas the Party disclosing information shall hereinafter be referred to as the “Disclosing Party” and the Party receiving such information shall hereinafter be referred to as the “Receiving Party”.

Now, therefore in consideration of the premise and the mutual covenants contained in this Agreement, the Parties hereto agree as follows:

1. DEFINITIONS

“Confidential Information” as referred to in this Agreement means the business, commercial, economic, financial, operational, technical and planning information and data disclosed to the Receiving Party by the Disclosing Party during the discussions whether in written, oral or in machine-readable or representational form including this Agreement, communicated to the Receiving Party, acquired by the Receiving Party from the Disclosing Party, prepared by the Receiving Party from or in

connection with any of the above information or which contain or are based in whole or in part upon such information to the extent it includes or is derived from such information. (For the avoidance of doubt, this Agreement apply to all such information whether disclosed or prepared before or after the date of this Agreement);

“the Discussions” means any discussions relating to the Business Purpose or constituting advice in respect of it;

“the Business Purpose” means the objective and/or intention of agreeing suitable terms for the provision of services by Interconnection Provider to Interconnecting Concessionaire and by Interconnecting Concessionaire to Interconnection Provider including but not limited to agreement of terms for an interconnection agreement.

2. DISCLOSURE OF INFORMATION

The Parties acknowledge that the Confidential Information is a valuable asset belonging to the Disclosing Party. Except as expressly provided for in this Agreement, the Parties agree that they will not during or after the term of this Agreement disclose the Confidential Information of the other Party to any person, firm, corporation, association or any other entity for any reason or purpose whatsoever without the prior written consent of the Disclosing Party. Notwithstanding the above, the Parties agree the Confidential Information may be disclosed to their agents, professional advisers and associated companies (associated companies means a subsidiary or holding company of a Party or another subsidiary of such a holding company) strictly for the Business Purpose provided that such agents, professional advisers and companies have a need to know such information, and agree to comply with the obligations as contained herein. The Receiving Party shall procure that such persons comply with the undertakings and terms of this Agreement as if such persons were made direct parties to it and do not disclose the Confidential Information further. The Parties further agree that they shall not utilise, employ, exploit or in any other manner whatsoever use the Confidential Information disclosed by the other Party for any purpose other than the Business Purpose without the prior express written consent of the Disclosing Party, including, but not limited to, for purposes of competing in any way with the other party or any of its subsidiaries or affiliates.

3. TITLE

All Confidential Information is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Receiving Party.

FIRST SCHEDULE—Continued

4. RESTRICTIONS ON DISCLOSURE AND USE OF THE CONFIDENTIAL INFORMATION

The Receiving Party will restrict the possession, knowledge and use of Confidential Information to the officers, employees, agents, and professional advisers of the Receiving Party who have a need to know Confidential Information for the Business Purpose. The Receiving Party will not use the Confidential Information other than for the Business Purpose. Nothing in this Agreement shall transfer to the Receiving Party any right or interest whatsoever in any intellectual property belonging to the Disclosing Party.

5. STANDARD OF CARE

The Parties agree that they shall protect the Confidential Information of the other Party using not less than the same standard of care that each party applies to its own proprietary, secret or Confidential Information and that the Confidential Information shall be stored and handled in such a way as to prevent unauthorised disclosure. Further, in the standard of care applied, proper account will be taken, where applicable, of the fact that the Confidential Information relates in any way to a company which is publicly traded.

6. RETURN OF CONFIDENTIAL INFORMATION

The Disclosing Party may request in writing at any time that any Confidential Information disclosed pursuant to the terms of this Agreement and any copies thereof be returned, or in the case of machine-readable or electronic information be permanently erased, with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within seven days of receipt of such request.

7. EXCLUDED INFORMATION

The obligations pursuant to this Agreement shall not apply to any information that—

- (a) is in the possession of the Receiving Party prior to receipt from the Disclosing Party;
- (b) is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;
- (c) is developed independently by the Receiving Party;

- (d) is disclosed by the Receiving Party to the Telecommunications Authority of Trinidad and Tobago;
- (e) is disclosed by the Receiving Party to satisfy a legal demand by a competent court of law or governmental body (“Government Authorities”) having jurisdiction over the parties, or valid legal requirements of any applicable stock exchange, provided however that in these circumstances the Receiving Party shall advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such production or disclosure; provided further that the Receiving Party will disclose only that portion of the Confidential Information which is legally required to be disclosed and the Receiving Party will exercise its reasonable efforts to obtain a protective order or other reliable assurance from such Government Authorities or stock exchange that confidential treatment will be accorded to any Confidential Information required to be disclosed;
- (f) is disclosed to a third party pursuant to written authorisation from the Disclosing Party;
- (g) is received from a third party without similar restrictions and without breach of this Agreement.

8. INDEPENDENT DEVELOPMENT

The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

9. TERM

This Agreement is intended to cover Confidential Information disclosed or received by either Party prior or subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement shall remain in effect for five years from the date provided, however, that each Party’s obligations with

FIRST SCHEDULE—Continued

respect to the other Party's Confidential Information disclosed or received prior to termination or expiration will survive for ten additional years following the expiration or termination of this Agreement.

10. PUBLIC ANNOUNCEMENTS

The Parties shall maintain in strict confidence and not disclose publicly or to any third party, the substance of any discussions or negotiations between them, the terms of any proposed arrangements or agreements, or any other information relating thereto unless it has first consulted the other Party and obtained its written consent. The Parties agree that each shall not, and shall not permit any of its affiliates, subsidiaries, persons, or other entities or their professional advisers to make any public announcements about the substance of any discussions regarding such arrangements or agreements and any other business and operating plans being discussed or negotiated, whether in the form of press release or otherwise, without first consulting with the other Party and obtaining its written consent.

11. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other that it is a corporation duly organised and validly existing in the jurisdiction of its incorporation. Each Party represents that it has full corporate power and authority to enter into this Agreement and to do all things necessary for the performance of this Agreement.

12. ADDITIONAL ACTION

Each Party to this Agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to carry out the terms, provisions and purposes of this Agreement.

13. AMENDMENTS

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless made in writing and signed by the Parties to this Agreement.

14. ENFORCEMENT

No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or

partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. The Parties agree that the Disclosing Party would be irreparably injured by a breach of this Agreement by the Receiving Party and that the Disclosing Party shall be entitled to equitable relief, including by way of injunction and specific performance in the event of any breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

15. HEADINGS

The headings of paragraphs are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

16. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement.

17. GOVERNING LAW

This Agreement and the relationships of the Parties in connection with the subject matter of this Agreement shall be governed by and constructed in accordance with the laws of Trinidad and Tobago and the Parties agree that any dispute hereunder shall be referred to the Telecommunications Authority of Trinidad and Tobago in accordance with the provisions of the Telecommunications Act, 2001.

18. NOTICES

Any notice or other communication required to be given or sent hereunder shall be in writing and shall be delivered personally, sent by prepaid certified or registered post (airmail if overseas) with written receipt requested or sent by international courier to the Party concerned at its address given below in this Agreement or such other address as the Party concerned shall have notified in accordance with this clause to the other Party with a copy sent by facsimile at the number below or such other number as notified from time to time in accordance with this clause. Any such notice shall be deemed to be served and received—

- (a) if left at any such address, at the time when it is so left;

FIRST SCHEDULE—Continued

- (b) if sent by post, on the seventh day following the day of posting;
- (c) if sent by international courier, on the fourth day following the day of placing it with the relevant courier service.

The initial addresses and facsimile numbers of the Parties hereto for the purposes of this Agreement are as follows:

Access Seeker: (INSERT ACCESS SEEKER'S ADDRESS)

Access Provider: (INSERT ACCESS PROVIDER'S ADDRESS)

19. COUNTERPARTS

This Agreement may be executed in counterparts, all of which shall constitute one agreement, and each such counterpart shall be deemed to have been made, executed and delivered on the date set out at the head of this Agreement, without regard to the dates or times when such counterparts may actually have been made, executed or delivered.

20. SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. If any provision is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this Agreement and shall be deemed to be deleted from it and the validity of the remaining provisions shall not be affected and the Agreement shall be carried out as nearly as possible according to its original terms and intent. If such deletion materially affects the interpretation of this Agreement, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

21. EXPLORATORY DISCUSSION NOT BINDING

The Parties agree that this Agreement, continuing discussions, future exchange of Confidential Information and non-confidential information, past or future correspondence (including without limitation, correspondence indicating interest or intent) and other communications between the Parties

shall not commit either Party to continue discussions or negotiate or be legally binding as an informal agreement or agreement to agree to a potential business relationship. The only way the Parties shall be bound to a business relationship, if at all, shall be by a mutually satisfactory definitive written agreement signed by the Parties. Any research and development, prototyping, or other action or expense which either Party takes or incurs in anticipation that a business relationship will be consummated shall be entirely at the acting Party's risk and expenses and shall not impose any liability on any other party.

22. SUCCESSORS AND ASSIGNS

References in this Agreement to either Party shall include any successors or assigns of that Party.

23. LIMITED RELATIONSHIP

This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind or an obligation to form any such relationship or entity. Each Party will act as an independent contractor and not as an agent of the other Party for any purpose and neither will have the authority to bind the other.

24. CUMULATIVE OBLIGATIONS

Each Party's obligations hereunder are in addition to and not exclusive of any and all of its other obligations and duties to the other Party.

In Witness Whereof the Parties have caused their duly authorised representatives to execute this Agreement as of the date set out at the head of this Agreement.

For and on behalf of Access Seeker

By: _____

Name: _____

Title: _____

For and on behalf of Access Provider

By: _____

Name: _____

Title: _____

SECOND SCHEDULE

**PROCEDURE TO BE FOLLOWED IN SEEKING
EXEMPTION OF CERTAIN INFORMATION ON THE
GROUNDS OF CONFIDENTIALITY OR COMPETITIVE
SENSITIVITY UNDER REGULATION 8(4)**

1. A concessionaire seeking to have information exempted shall make a written request to the Authority, copied to the concessionaire requesting the information, not later than seven days before the expiration of the period for supplying the information.

2. The concessionaire requesting the information may make representations to the Authority on the request for exemption, such representations to be provided to the Authority within seven days of receipt of the request for exemption.

3. The Authority shall notify both interested concessionaires of its determination within twenty-one days of the request. The Authority may include in its determinations such reasonable conditions for the disclosure as it considers appropriate, including the manner of provision of the information, and the time for such provision.

4. The Authority shall be entitled to grant an exemption in relation to the whole or part only of the request made.

**TELECOMMUNICATIONS (INTERCONNECTION)
REGULATIONS**

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.

PART I

PRELIMINARY

2. Interpretation.

PART II

OBLIGATION OF CONCESSIONAIRES

3. General obligation of concessionaire to interconnect.
4. Access to facilities for the purpose of interconnection.
5. Non-discrimination.
6. Evidence of feasibility.
7. Facilitating equal access.
8. Facilitation of dialing parity.
9. Facilitation of number portability.
10. Requirement to supply information for interconnection.

PART III

NEGOTIATING INTERCONNECTION AGREEMENTS

11. Interconnection request.
12. Interconnection request pending approval of concession application.
13. Time for conclusion of interconnection agreement.
14. Content of interconnection agreement.
15. Interconnection charges.
16. Interconnection agreements available.
17. Attendance by Authority at meetings.
18. Submission of interconnection agreements.

PART IV

REFERENCE INTERCONNECTION OFFER

19. Requirement to provide a Reference Interconnection Offer.

ARRANGEMENT OF REGULATIONS—*Continued*

REGULATION

20. Submission of a RIO.
21. Amendment of RIO.
22. Publication of RIO.
23. Interconnection agreement to be consistent with RIO.

PART V

IMPLEMENTATION OF INTERCONNECTION
AGREEMENTS

24. Interconnection agreement to stipulate time for interconnection.
25. Effecting operational interconnection.
26. No deprivation of interconnection.
27. Costs of modification recoverable.

PART VI

DENIAL OF INTERCONNECTION REQUEST

28. Denial of interconnection.
29. Interconnection ordered by Authority.
30. Order for network adjustment.

PART VII

DISPUTE RESOLUTION

31. Request for consultation and guidance.
32. Referral of dispute in accordance with dispute resolution procedures.
33. Interim arrangements.
34. Effective date of interim arrangement.

PART VIII

GENERAL

35. Penalty for breach of Regulations.

FIRST SCHEDULE.
SECOND SCHEDULE.

**TELECOMMUNICATIONS (INTERCONNECTION)
REGULATIONS**

181/2006.

made under section 78(1)

1. These Regulations may be cited as the Citation.
Telecommunications (Interconnection) Regulations.

PART I

PRELIMINARY

2. (1) In these Regulations — Interpretation.

“Act” means the Telecommunications Act;

“Authority” means the Telecommunications Authority;

“concessionaire” means the holder of a concession issued under section 21 of the Act but does not include the holder of a concession to provide a broadcasting service;

“equal access” means the ability of a customer to choose in a transparent and equal manner between two or more competing service providers;

“essential interconnection resource” means an interconnection resource for which no practical and viable alternative exists;

“interconnection agreement” means a legally binding agreement between concessionaires made in accordance with section 25(2)(e) of the Act, respecting the linking of their networks in order to provide telecommunication services;

“interconnecting concessionaire” means a concessionaire who seeks interconnection from another concessionaire;

“interconnection provider” means a concessionaire who provides interconnection to an interconnecting concessionaire;

“interconnection request” means a request for interconnection made in accordance with regulation 11;

“interconnection resource” means a component of a network or a combination of such components that is required for the provision of an interconnection service;

“interconnection service” means a service provided by an interconnection provider to an interconnecting concessionaire linking the public telecommunications networks or public telecommunications services of both concessionaires to—

(a) allow the users of the public telecommunications services of either concessionaire to communicate with the users of the public telecommunications services of the other; and

(b) to access the services provided by the other concessionaire;

“interconnection link” means a transmission path connecting the point of interconnection with the network of an interconnecting concessionaire;

“network termination point” means the point at the customer’s premises where the physical connection to the interconnection provider’s network is effected;

First Schedule.

“Non-disclosure Agreement” means an agreement substantially in the form set out in the First Schedule, that seeks to protect the confidentiality of information provided by one concessionaire to another for the purpose of interconnection;

“number portability” means the ability of a customer to retain the same telephone number on changing telephone service providers;

“point of interconnection” means a point on the interconnection provider’s network where physical connection is allowed to any interconnecting concessionaire to act as a gateway between networks and enable the exchange of telecommunications services between or among networks so interconnected;

“Reference Interconnection Offer” or “RIO” means a document setting out the terms on which an interconnection provider proposes to offer interconnection to an interconnecting concessionaire;

“traffic origination” means an interconnection service providing connectivity from a network termination point on a customer’s premises to the point of interconnection;

“traffic termination” means an interconnection service providing connectivity from a point of interconnection to a network termination point on a customer’s premises;

“transit services” means the transmission and routing of the services of other concessionaires over the network of an interconnection provider.

PART II

OBLIGATION OF CONCESSIONAIRES

3. A concessionaire shall—

- (a) provide direct and indirect interconnection of the networks and services of other concessionaires to its own networks and services;
- (b) provide transit services to other concessionaires at any technically feasible point in the concessionaire’s network;
- (c) neither withdraw nor impair interconnection or transit services once already granted unless so authorised by the Authority under a dispute resolution process pursuant to section 82 or by an order made by a Court;
- (d) on request from any concessionaire, disaggregate its network and offer to other concessionaires, interconnection to the individual network elements;
- (e) grant access to technical interfaces, protocols or other key technologies that are indispensable for the inter-operability of public network services for the purposes of interconnection; and
- (f) provide interconnection link capacity within its network and between its network and that of the interconnecting concessionaire to enable—
 - (i) transmission; and
 - (ii) switching or routing,of voice, data and images over their networks.

General obligation of concessionaire to interconnect.

Access to facilities for the purpose of interconnection.

4. Where access to any facilities is required to effect interconnection such access shall be provided, in accordance with the Act and any regulations made thereunder, together with the interconnection.

Non-discrimination.

5. (1) A concessionaire shall provide interconnection under the same terms and conditions and of the same quality as it provides for its own networks and services, the networks and services of its subsidiaries and partners, or the networks and services of any other concessionaire to which it provides interconnection.

(2) Where a concessionaire fails to comply with subregulation (1), it shall upon request from the Authority prove to the satisfaction of the Authority that it is not technically feasible to replicate the level of quality of the interconnection or to provide interconnection under the same terms and conditions as it provides for its own use.

Evidence of feasibility.

6. (1) Previous interconnection at a particular point of interconnection is evidence of technically feasible interconnection at that point of interconnection, or at similar points on the network where similar resources are used or equivalent functionality is achieved.

(2) Adherence to the same interfaces or protocol standards at other points of interconnection shall constitute evidence of similar resources.

Facilitating equal access.

7. An interconnection provider shall, upon request by an interconnecting concessionaire, supply details of number ranges that are hosted on each of its local exchanges to enable an interconnecting concessionaire using the service to route calls to those number ranges directly on the interconnection link to the local exchange.

Facilitation of dialing parity.

8. Whenever concessions are granted by the Authority to alternative operators to provide international voice services, a concessionaire shall—

(a) configure its network to facilitate dialing parity; and

(b) programme its switches or routers to enable carrier selection or preselection where applicable, for access to international telecommunications services.

9. A concessionaire shall configure its network to facilitate number portability between similar networks as and when directed by the Authority.

Facilitation of number portability.

10. (1) Subject to subregulation (4), an interconnection provider shall supply to any interconnecting concessionaire upon request, such information about its networks and services as is required, in relation to procuring interconnection to such networks and services.

Requirement to supply information for interconnection.

(2) Subject to subregulation (3), the information referred to in subregulation (1) shall be supplied within twenty-eight days of the request.

(3) The interconnection provider may request from the Authority, an extension in writing not later than seven days before expiry of the period referred to in subregulation (2).

(4) The Authority may exempt certain particulars from the requirements of subregulation (1) on the grounds of confidentiality or sensitivity, subject to the procedures set out in the Second Schedule.

Second Schedule.

(5) The Authority may revoke an exemption granted under subregulation (4) at the request of a concessionaire where there has been a material change in the relevant circumstances, but in such a case shall afford to both parties, a reasonable opportunity to make submissions to the Authority.

(6) All information provided under this regulation shall be used for the purpose of facilitating interconnection only, and shall not be disclosed to any third party without the prior written permission of the concessionaire who provided the information.

(7) A concessionaire who receives information under this regulation shall, prior to receipt of the information, execute

a Non-disclosure Agreement for the benefit of the concessionaire disclosing the information.

(8) Every concessionaire shall implement internal procedures to ensure that information provided to the concessionaire in respect of interconnection is not utilised by the concessionaire for any purpose other than the interconnection, and in particular for commercial or other gain by the concessionaire.

(9) Every concessionaire shall limit access to any traffic forecasting and commercially sensitive information, only to such persons within the concessionaire's organisation or employ who are required to have such access for the performance of their duties relating to interconnection and ensure that such persons are not engaged in the ordinary day-to-day commercial operations of the concessionaire.

PART III

NEGOTIATING INTERCONNECTION AGREEMENTS

Interconnection
request.

11. (1) A concessionaire may make an interconnection request at any time.

(2) For the purpose of processing an interconnection request, a concessionaire shall—

- (a) provide the Authority with a designated contact; and
- (b) ensure that requests for interconnection are dealt with promptly.

(3) An interconnection request shall—

- (a) be forwarded to the designated contact except that where no contact has been designated, the request shall be forwarded to the registered address of the interconnection provider;
- (b) at the time of the request be copied to the Authority by the interconnecting concessionaires; and

- (c) unless otherwise agreed between the interconnection provider and the interconnecting concessionaire, include—
- (i) the reference number of the interconnecting concessionaire's concession or proof of a submitted application for a concession;
 - (ii) reference to the points of interconnection at which interconnection is required;
 - (iii) details of the interconnection required;
 - (iv) the date by which interconnection is required;
 - (v) the period for which interconnection is required;
 - (vi) details of any equipment to be installed or additional equipment required at the points of interconnection or to be interconnected, together with details of the security, safety, environmental, and spatial requirements of the equipment;
 - (vii) the extent to which access to the facilities or premises of the interconnection provider is required by the interconnecting concessionaire to install or maintain any equipment;
 - (viii) traffic forecasts and other related information for no less than three years with sufficient detail to enable the interconnection provider to assess the impact of the interconnection on its networks and services, and to enable the interconnection provider to effectively dimension its network during the period forecasted; and
 - (ix) any other particular which the Authority may from time to time specify.

(4) The interconnection provider shall acknowledge receipt of the interconnection request within seven days of the receipt of the request.

(5) The interconnection provider may upon its receipt of the interconnection request, request any further information that it may reasonably require in order to process the interconnection request.

(6) A request made under subregulation (5) shall be copied to the Authority and satisfied by the interconnecting concessionaire within seven days of its receipt of the request.

(7) Where the request made under subregulation (5) is not satisfied in accordance with subregulation (6), the period specified in regulation 13 for negotiating an interconnection agreement shall be increased by a period corresponding to the delay.

Interconnection request pending approval of concession application.

12. (1) Nothing in regulation 11 shall be construed as preventing any person who has applied to the Authority for a concession under section 21 of the Act, but whose application is still pending, from making an interconnection request and concluding an interconnection agreement.

(2) The effecting of interconnection in accordance with a request made under this regulation shall be conditional upon the grant of a concession to the applicant.

(3) The applicant shall provide to the interconnection provider at the time of the interconnection request, such security as the interconnection provider may reasonably require to indemnify the interconnection provider against any loss that it may suffer in the event that the application referred to in subregulation (1) is unsuccessful.

Time for conclusion of interconnection agreement.

13. (1) A concessionaire shall use its best endeavours to conclude an interconnection agreement as soon as possible following its receipt of an interconnection request, but in any event shall conclude the agreement no later than—

(a) six weeks after its receipt of the request from an interconnecting concessionaire, where either the

interconnection provider or interconnecting concessionaire has published a RIO pursuant to regulation 19; or

(b) ten weeks after its receipt of the interconnection request in all other circumstances,

except that where the request was made under regulation 12, the request shall be deemed to have been received by the interconnection provider on the date of the grant of the concession.

(2) Failure by a concessionaire to comply with this regulation shall constitute a dispute referable to the Authority under regulation 32.

14. Every interconnection agreement shall include prices for interconnection services and interconnection resources as well as the technical, operational, billing and planning conditions for interconnection.

Content of interconnection agreement.

15. (1) A concessionaire shall set interconnection rates based on costs determined in accordance with such costing methodologies, models or formulae as the Authority may, from time to time, establish.

Interconnection charges.

(2) Where the relevant data for the establishment of the costing methodologies, models or formulae are unavailable within a reasonable time, the concessionaire may set interconnection rates with reference to such costing benchmarks, as determined by the Authority, that comport with internationally accepted standards for such benchmarks.

(3) A concessionaire shall within twenty-eight days of a written request from the Authority, unless this period is expressly extended by the Authority in writing, supply to the Authority such data as the Authority may require, for the purpose of determining that its interconnection rates are in accordance with this regulation.

16. (1) The terms and conditions for interconnection contained in the most recent interconnection agreement under which the concessionaire is the interconnection provider shall be made available to any other concessionaire requesting interconnection.

Interconnection agreements available.

(2) Each interconnection agreement shall provide for amendment or modification to permit incorporation of the terms and conditions referred to in subregulation (1) and such amendment or modification shall be effected within fourteen days of a request from an interconnecting concessionaire.

(3) Failure by an interconnection provider to comply with subregulation (2) shall constitute a dispute referable to the Authority under regulation 32.

(4) For the purposes of this regulation, “interconnection agreement” includes amendments and modifications to such agreement.

Attendance by
Authority at
meetings.

17. (1) Every interconnection provider and interconnecting concessionaire shall notify the Authority in a timely manner of every meeting scheduled for the purpose of negotiating interconnection.

(2) The Authority may, upon the giving of twenty-four hours prior written notice to the relevant concessionaires, attend any meeting referred to in subregulation (1) in the capacity of observer only.

Submission of
interconnection
agreements.

18. (1) Every interconnection agreement or modification thereto shall be submitted to the Authority in such format as the Authority shall reasonably require, within fourteen days of signature by the parties.

(2) The Authority shall—

(a) publish every interconnection agreement by posting on its website within fourteen days of its receipt by the Authority; and

(b) provide copies of interconnection agreements to any concessionaire upon request,

except that such publication and provision shall not disclose commercially sensitive information.

PART IV

REFERENCE INTERCONNECTION OFFER

19. (1) Upon a request by the Authority, a concessionaire shall prepare, publish and maintain a RIO substantially in the form published by the Authority on its website or in such other manner as the Authority may determine.

Requirement to provide a Reference Interconnection Offer.

- (2) The basis for a request by the Authority shall be—
- (a) the extent to which the concessionaire will be required by other concessionaires to provide interconnection;
 - (b) the concessionaire's control over essential interconnection resources; and
 - (c) the extent to which the concessionaire has failed to promptly negotiate interconnection or has unjustifiably denied interconnection in the past.

20. (1) A concessionaire who is required to prepare a RIO under regulation 19 shall within sixty days of notice to that effect by the Authority and annually thereafter until such time as the requirement is withdrawn by the Authority, submit its RIO to the Authority for approval.

Submission of a RIO.

(2) The Authority may with reasons, require the concessionaire to effect changes to the RIO prior to the Authority's grant of approval, except that the changes shall not be in respect of any matter which the concessionaire is entitled to negotiate or determine under section 25 of the Act.

(3) Changes shall be effected by the concessionaire and the RIO resubmitted to the Authority for approval within twenty-one days of the concessionaire's receipt of the Authority's request under subregulation (2).

21. Where a decision arising from a dispute resolution process modifies the terms and conditions on which interconnection shall be offered, a concessionaire required to provide a RIO under

Amendment of RIO.

regulation 19 shall within twenty-one days of notice from the Authority, amend its RIO to comply with the decision and submit the amended RIO to the Authority for approval.

Publication of RIO.

22. Within fourteen days of approval by the Authority a concessionaire shall publish its RIO by—

- (a) posting the RIO on its website; and
- (b) making printed and electronic copies of the RIO available to any concessionaire or applicant for a concession, upon request.

Interconnection agreement to be consistent with RIO.

23. Every concessionaire shall ensure that its interconnection agreement and its RIO are consistent.

PART V

IMPLEMENTATION OF INTERCONNECTION AGREEMENTS

Interconnection agreement to stipulate time for interconnection.

24. (1) Every interconnection agreement shall stipulate a period not exceeding twenty-eight days within which interconnection shall be effected.

(2) Notwithstanding subregulation (1), the Authority may, upon written application of a concessionaire, extend the period referred to in subregulation (1).

Effecting operational interconnection.

25. A concessionaire shall use all reasonable endeavours to effect operational interconnection within twenty-eight days of concluding a relevant interconnection agreement or such longer period as may be approved by the Authority in accordance with regulation 24.

No deprivation of interconnection.

26. An interconnection provider shall not deprive an interconnecting concessionaire of any benefit granted under their interconnection agreement unless in accordance with the agreement or with the prior written consent of the Authority.

Costs of modification recoverable.

27. Where interconnection requires modification of the network or equipment of an interconnection provider, the cost of

the modification shall be recoverable from the interconnecting concessionaire, such costs to be determined in the manner prescribed by the Authority.

PART VI

DENIAL OF INTERCONNECTION REQUEST

28. (1) Every concessionaire who denies an interconnection request shall forthwith notify the Authority of the denial and reasons for denial.

Denial of interconnection.

(2) Upon request by the Authority the concessionaire shall provide in writing within seven days of the request, justification for the denial.

(3) The Authority may request of the concessionaire, the production of any records or documents to determine the justification for the denial of interconnection.

(4) The Authority may at all reasonable times and with the permission of the concessionaire, enter the premises of the concessionaire and inspect equipment and facilities to determine the justification of any denial of interconnection.

29. Where in the opinion of the Authority the denial of interconnection is not justified, the Authority may order the concessionaire who denied interconnection to grant the interconnection in a time and on such conditions as the Authority may specify.

Interconnection ordered by Authority.

30. (1) Where the Authority considers it appropriate, whether the denial is determined to have been justified or not, the Authority may require an interconnection provider to, within such reasonable period as the Authority may stipulate, make network adjustments or construct additional facilities as the Authority deems necessary to provide interconnection.

Order for network adjustment.

(2) In acting under subregulation (1), the Authority may take into account any relevant factors which may include the need for interconnection, the presence of essential interconnection

resources, the availability and cost of alternatives, or the cost of network adjustment or additional facilities.

(3) The reasonably incurred costs of an adjustment or additional facilities shall be—

- (a) recoverable from the interconnecting concessionaire; and
- (b) determined in accordance with such methodology as the Authority may prescribe.

PART VII

DISPUTE RESOLUTION

Request for consultation and guidance.

31. Where a dispute arises between concessionaires with respect to interconnection, the matter may be referred to the Authority for consultation and guidance, on the agreement of both parties, prior to either party submitting the matter to the Authority as a dispute.

Referral of dispute in accordance with dispute resolution procedures.

32. Save as provided in regulation 31, every dispute regarding interconnection shall be submitted to the Authority for resolution in accordance with the dispute resolution process established by the Authority under section 82 of the Act.

Interim arrangements.

33. (1) The Authority may, in relation to any dispute referred to under these Regulations, direct that the parties implement such interim arrangement for interconnection as the Authority considers appropriate having regard to the nature of the dispute.

(2) An interim arrangement may speak to prices and include any other terms or conditions for interconnection, whether or not the Authority considers submissions made by the parties, subject to such times for submissions as the Authority shall, in its sole discretion determine.

(3) An interim arrangement shall be instituted by the parties within a period determined by the Authority and shall remain in force until the dispute has been resolved.

34. The final resolution of a dispute in respect of which an interim arrangement was implemented shall—

Effective date of interim arrangement.

- (a) be effective on the date on which the interim arrangement was effected; and
- (b) include provisions for compensation to any party that has suffered any loss and damage as a result of the arrangement.

PART VIII

GENERAL

35. A concessionaire who contravenes any provision of these Regulations commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Penalty for breach of Regulations.

FIRST SCHEDULE

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made this day of

Between

(INSERT NAME OF INTERCONNECTING CONCESSIONAIRE) a company incorporated under the laws of (INSERT PLACE OF INCORPORATION) whose registered office is at (INSERT REGISTERED OFFICE ADDRESS) (“Interconnecting Concessionaire”)

And

(INSERT NAME OF INTERCONNECTION PROVIDER), a company incorporated under the laws of (INSERT PLACE OF INCORPORATION) whose registered office is at (INSERT REGISTERED OFFICE ADDRESS) (“Interconnection Provider”)

Each a “Party” and collectively the “Parties”

WHEREAS the Parties are discussing certain matters in relation to the provision of services by Interconnection Provider to Interconnecting Concessionaire and by Interconnecting Concessionaire to Interconnection Provider which may require each Party to disclose certain proprietary, secret or confidential information to the other Party; and

Whereas the Party disclosing information shall hereinafter be referred to as the “Disclosing Party” and the Party receiving such information shall hereinafter be referred to as the “Receiving Party”.

Now, therefore, in consideration of the premise and the mutual covenants contained in this Agreement, the Parties hereto agree as follows:

1. DEFINITIONS

“Confidential Information” as referred to in this Agreement means the business, commercial, economic, financial, operational, technical and planning information and data disclosed to the Receiving Party by the Disclosing Party during the discussions whether in written, oral or in machine-readable or representational form including this Agreement, communicated to the Receiving Party, acquired by the Receiving Party from the Disclosing Party, prepared by the Receiving Party from or in connection with any of the above information or which contain or are based in whole or in part upon such

information to the extent it includes or is derived from such information.
(For the avoidance of doubt, this Agreement apply to all such information
whether disclosed or prepared before or after the date of this Agreement);

“the Discussions” means any discussions relating to the Business Purpose or
constituting advice in respect of it;

“the Business Purpose” means the objective and/or intention of agreeing
suitable terms for the provision of services by Interconnection Provider
to Interconnecting Concessionaire and by Interconnecting
Concessionaire to Interconnection Provider including but not limited to
agreement of terms for an interconnection agreement.

2. DISCLOSURE OF INFORMATION

The Parties acknowledge that the Confidential Information is a valuable
asset belonging to the Disclosing Party. Except as expressly provided for in
this Agreement, the Parties agree that they will not during or after the term of
this Agreement disclose the Confidential Information of the other Party to any
person, firm, corporation, association or any other entity for any reason or
purpose whatsoever without the prior written consent of the Disclosing Party.
Notwithstanding the above, the Parties agree the Confidential Information
may be disclosed to their agents, professional advisers and associated
companies (associated companies means a subsidiary or holding company of
a Party or another subsidiary of such a holding company) strictly for the
Business Purpose provided that such agents, professional advisers and
companies have a need to know such information, and agree to comply with
the obligations as contained herein. The Receiving Party shall procure that
such persons comply with the undertakings and terms of this Agreement as if
such persons were made direct parties to it and do not disclose the
Confidential Information further. The Parties further agree that they shall not
utilise, employ, exploit or in any other manner whatsoever use the
Confidential Information disclosed by the other Party for any purpose other
than the Business Purpose without the prior express written consent of the
Disclosing Party, including, but not limited to, for purposes of competing in
any way with the other party or any of its subsidiaries or affiliates.

3. TITLE

All Confidential Information is acknowledged by the Receiving Party to
be the property of the Disclosing Party and the disclosure of the Confidential
Information shall not be deemed to confer any rights to that Confidential
Information on the Receiving Party.

4. RESTRICTIONS ON DISCLOSURE AND USE OF THE CONFIDENTIAL INFORMATION

The Receiving Party will restrict the possession, knowledge and use of Confidential Information to the officers, employees, agents, and professional advisers of the Receiving Party who have a need to know Confidential Information for the Business Purpose. The Receiving Party will not use the Confidential Information other than for the Business Purpose. Nothing in this Agreement shall transfer to the Receiving Party any right or interest whatsoever in any intellectual property belonging to the Disclosing Party.

5. STANDARD OF CARE

The Parties agree that they shall protect the Confidential Information of the other Party using not less than the same standard of care that each party applies to its own proprietary, secret or Confidential Information and that the Confidential Information shall be stored and handled in such a way as to prevent unauthorised disclosure. Further, in the standard of care applied, proper account will be taken, where applicable, of the fact that the Confidential Information relates in any way to a company which is publicly traded.

6. RETURN OF CONFIDENTIAL INFORMATION

The Disclosing Party may request in writing at any time that any Confidential Information disclosed pursuant to the terms of this Agreement and any copies thereof be returned, or in the case of machine-readable or electronic information be permanently erased, with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within seven days of receipt of such request.

7. EXCLUDED INFORMATION

The obligations pursuant to this Agreement shall not apply to any information that—

- (a) is in the possession of the Receiving Party prior to receipt from the Disclosing Party;
- (b) is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;
- (c) is developed independently by the Receiving Party;
- (d) is disclosed by the Receiving Party to the Telecommunications Authority of Trinidad and Tobago;

- (e) is disclosed by the Receiving Party to satisfy a legal demand by a competent court of law or governmental body (“Government Authorities”) having jurisdiction over the parties, or valid legal requirements of any applicable stock exchange, provided however that in these circumstances the Receiving Party shall advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such production or disclosure; provided further that the Receiving Party will disclose only that portion of the Confidential Information which is legally required to be disclosed and the Receiving Party will exercise its reasonable efforts to obtain a protective order or other reliable assurance from such Government Authorities or stock exchange that confidential treatment will be accorded to any Confidential Information required to be disclosed;
- (f) is disclosed to a third party pursuant to written authorisation from the Disclosing Party;
- (g) is received from a third party without similar restrictions and without breach of this Agreement.

8. INDEPENDENT DEVELOPMENT

The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

9. TERM

This Agreement is intended to cover Confidential Information disclosed or received by either Party prior or subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement shall remain in effect for five years from the date provided, however, that each Party’s obligations with respect to the other Party’s Confidential Information disclosed or received prior to termination or expiration will survive for ten additional years following the expiration or termination of this Agreement.

10. PUBLIC ANNOUNCEMENTS

The Parties shall maintain in strict confidence and not disclose publicly or to any third party, the substance of any discussions or negotiations between them, the terms of any proposed arrangements or agreements, or any other information relating thereto unless it has first consulted the other Party and obtained its written consent. The Parties agree that each shall not, and shall not permit any of its affiliates, subsidiaries, persons, or other entities or their professional advisers to make any public announcements about the substance of any discussions regarding such arrangements or agreements and any other business and operating plans being discussed or negotiated, whether in the form of press release or otherwise, without first consulting with the other Party and obtaining its written consent.

11. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other that it is a corporation duly organised and validly existing in the jurisdiction of its incorporation. Each Party represents that it has full corporate power and authority to enter into this Agreement and to do all things necessary for the performance of this Agreement.

12. ADDITIONAL ACTION

Each Party to this Agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to carry out the terms, provisions and purposes of this Agreement.

13. AMENDMENTS

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless made in writing and signed by the Parties to this Agreement.

14. ENFORCEMENT

No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. The Parties agree that the Disclosing Party would be irreparably injured by a breach of this Agreement by the Receiving Party and that the Disclosing Party shall be entitled to equitable relief, including by way of injunction and specific performance in the event of any breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

15. HEADINGS

The headings of paragraphs are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

16. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement.

17. GOVERNING LAW

This Agreement and the relationships of the Parties in connection with the subject matter of this Agreement shall be governed by and constructed in accordance with the laws of Trinidad and Tobago and the Parties agree that any dispute hereunder shall be referred to the Telecommunications Authority of Trinidad and Tobago in accordance with the provisions of the Telecommunications Act, 2001.

18. NOTICES

Any notice or other communication required to be given or sent hereunder shall be in writing and shall be delivered personally, sent by prepaid certified or registered post (airmail if overseas) with written receipt requested or sent by international courier to the Party concerned at its address given below in this Agreement or such other address as the Party concerned shall have notified in accordance with this clause to the other Party with a copy sent by facsimile at the number below or such other number as notified from time to time in accordance with this clause. Any such notice shall be deemed to be served and received—

- (a) if left at any such address, at the time when it is so left;
- (b) if sent by post, on the seventh day following the day of posting;
- (c) if sent by international courier, on the fourth day following the day of placing it with the relevant courier service.

The initial addresses and facsimile numbers of the Parties hereto for the purposes of this Agreement are as follows:

Interconnecting Concessionaire: (INSERT INTERCONNECTING
CONCESSIONAIRE'S ADDRESS)

Interconnection Provider: (INSERT INTERCONNECTION
PROVIDER'S ADDRESS)

19. COUNTERPARTS

This Agreement may be executed in counterparts, all of which shall constitute one agreement, and each such counterpart shall be deemed to have been made, executed and delivered on the date set out at the head of this Agreement, without regard to the dates or times when such counterparts may actually have been made, executed or delivered.

20. SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. If any provision is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this Agreement and shall be deemed to be deleted from it and the validity of the remaining provisions shall not be affected and the Agreement shall be carried out as nearly as possible according to its original terms and intent. If such deletion materially affects the interpretation of this Agreement, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

21. EXPLORATORY DISCUSSION NOT BINDING

The Parties agree that this Agreement, continuing discussions, future exchange of Confidential Information and non-confidential information, past or future correspondence (including without limitation, correspondence indicating interest or intent) and other communications between the Parties shall not commit either Party to continue discussions or negotiate or be legally binding as an informal agreement or agreement to agree to a potential business relationship. The only way the Parties shall be bound to a business relationship, if at all, shall be by a mutually satisfactory definitive written agreement signed by the Parties. Any research and development, prototyping, or other action or expense which either Party takes or incurs in anticipation that a business relationship will be consummated shall be entirely at the acting Party's risk and expenses and shall not impose any liability on any other party.

22. SUCCESSORS AND ASSIGNS

References in this Agreement to either Party shall include any successors or assigns of that Party.

23. LIMITED RELATIONSHIP

This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind or an obligation to form any such relationship or entity. Each Party will act as an independent contractor and not as an agent of the other Party for any purpose and neither will have the authority to bind the other.

24. CUMULATIVE OBLIGATIONS

Each Party's obligations hereunder are in addition to and not exclusive of any and all of its other obligations and duties to the other Party.

IN WITNESS WHEREOF, the Parties have caused their duly authorised representatives to execute this Agreement as of the date set out at the head of this Agreement.

For and on behalf of Interconnecting Concessionaire

By: _____

Name: _____

Title: _____

For and on behalf of Interconnection Provider

By: _____

Name: _____

Title: _____

SECOND SCHEDULE

**PROCEDURE TO BE FOLLOWED IN SEEKING
EXEMPTION OF CERTAIN INFORMATION ON THE
GROUNDS OF CONFIDENTIALITY OR COMPETITIVE
SENSITIVITY UNDER REGULATION 10(4)**

1. A concessionaire seeking to have information exempted shall make a written request to the Authority, copied to the concessionaire requesting the information, not later than seven days before the expiration of the period for supplying the information.

2. The concessionaire requesting the information may make representation to the Authority on the request for exemption, such representations to be provided to the Authority within seven days of the concessionaire's receipt of the copy referred to in paragraph 1.

3. The Authority shall notify both interested concessionaires of its determination within fourteen days of the request for exemption. The Authority may include in its determinations such reasonable conditions for the disclosure as it considers appropriate, including the manner of provision of the information, and the time for such provision.

4. The Authority shall be entitled to grant an exemption in relation to the whole or part any of the request made.

TELECOMMUNICATIONS (FEES) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.

PART I

PRELIMINARY

2. Interpretation.
3. First invoice for concession fees.
4. Concession granted for less than one year.
5. Requirement to submit details of revenues.
6. Publication by Authority of information for calculation of concession fees.
7. Invoices for concession fees.
8. Use of projected revenues to calculate concession fee.
9. Recalculation of concession fee.
10. Fee minimum for certain concessions.
11. First invoice for licence fee.
12. Authority to serve invoice.
13. Licence granted for a term of less than one year.
14. Numbering fees.
15. Payment of numbering fees.
16. Application fees.
17. Refund of application fees.
18. Service fees.
19. Fees determined by auction or competitive process.
20. Submission of financial statements.
21. Submission of unaudited accounts.
22. Verification of information.
23. Authority may estimate information.
24. Offences.
25. Manner of payment of fees.

FIRST SCHEDULE.

SECOND SCHEDULE.

THIRD SCHEDULE.

FOURTH SCHEDULE.

206/2006.

TELECOMMUNICATIONS (FEES) REGULATIONS

made under section 78(1)

Citation. **1.** These Regulations may be cited as the Telecommunications (Fees) Regulations.

PART I

PRELIMINARY

Interpretation. **2.** In these Regulations —

- “Act” means the Telecommunications Act;
- “concessionaire” means the holder of a concession granted by the Minister under section 21 of the Act;
- “concession fee payment date” means the date determined pursuant to regulation 3 for payment of fees due under a concession;
- “concession period” and “licence period” means the period from the grant of a concession or licence to the end of the term of the last renewal of the concession or licence, respectively;
- “financial year” means the financial year of the Authority as set out in section 58 of the Act;
- “licensee” means the holder of a licence granted by the Authority under section 36 of the Act;
- “licence fee payment date” means the date determined pursuant to regulation 10 for payment of fees due under a licence;
- “major territorial” in relation to a concession, means the entitlement of the concessionaire to operate a public telecommunications network or provide public telecommunications or broadcasting services within the island of Trinidad only;
- “minor territorial” in relation to a concession, means the entitlement of the concessionaire to operate a public telecommunications network or provide public telecommunications or broadcasting services within the island of Tobago only;

“national” in relation to a concession, means the entitlement of the concessionaire to operate a public telecommunications network or provide public telecommunications or broadcasting services throughout Trinidad and Tobago; and

“niche” in relation to a concession, means the entitlement of the concessionaire to operate a public telecommunications network or provide public telecommunications or broadcasting services in only that part of Trinidad and Tobago defined by the Authority and specified in the concession.

3. (1) Where the Minister grants a concession for a term exceeding one year, the Authority shall issue and serve on the relevant concessionaire an invoice for the fees set out in the fourth column of the First Schedule to these Regulations, based on the type and sub-type of concession set out in the first and second columns, respectively, of the said Schedule calculated in accordance with the formula set out in the third column.

First invoice for concession fees.

First Schedule.

(2) The applicable fee shall be for such period, not exceeding one year, as the Authority considers appropriate.

(3) The invoice shall be payable within twenty-eight days of its date and prescribe the concession fee payment date.

(4) The concession fee payment date shall be the day immediately following the last day of the period for which the fees are payable under the invoice.

4. (1) Where the Minister grants or renews a concession for a term of one year or less, the concession fee shall be the annual fee set out in the fourth column of the First Schedule based on the type and sub-type of concession set out in the first and second columns, respectively, of the said Schedule, adjusted on a *pro rata* basis for the term of the concession.

Concession granted for less than one year.

(2) The fee shall be payable in full on the date of the grant or renewal of the concession as the case may require.

Requirement to submit details of revenues.

5. (1) Every concessionaire shall within thirty days of the grant of a concession and thereafter no later than 15th November in each year, submit to the Authority details of its gross revenues in each month for the twelve-month period (or such part thereof for which the concessionaire was in operation) ending on 30th September immediately preceding, arising from each telecommunications network, telecommunications service or broadcasting service which the concessionaire operates or provides.

(2) The details shall be submitted in the form specified by the Authority by publication on its website or notification to any or all relevant concessionaires, and shall be verified by the concessionaire's chief financial officer.

Publication by Authority of information for calculation of concession fees.

6. The Authority shall no later than 1st March in each year publish on its website—

(a) the total of the revenues for each part of the telecommunications and broadcasting sectors in Trinidad and Tobago in the financial year immediately preceding;

(b) the total costs of the Authority in respect of concessions, calculated on the basis of the Authority's expenditure budget for the then current financial year, approved in accordance with section 55 of the Act.

Invoices for concession fees.

7. (1) No earlier than the concession fee payment date in each year, the Authority shall issue and serve on the concessionaire in respect of whose concession the concession fee payment date pertains, an invoice setting out the fee payable for the twelve-month period commencing on the concession fee payment date or the period from the payment date to the end of the concession period, whichever is shorter.

(2) The fee shall be calculated as set out in regulation 3(1) and shall become due and payable within twenty-eight days of the date of the invoice.

8. The Authority shall—

- (a) where the concessionaire did not operate at any time during the twelve-month period, utilise the concessionaire's projected revenues for its first full twelve-month period of operation as notified to the Authority in the concessionaire's application for the concession; or
- (b) where the concessionaire operated for a period less than the twelve-month period, utilise—
 - (i) the concessionaire's gross revenues for the months of the year that it has been in operation, as submitted to the Authority pursuant to regulation 5; and
 - (ii) the concessionaire's projected revenues for its first full twelve-month period of operation as notified to the Authority in the concessionaire's application for the concession, adjusted *pro rata* for the remainder of the twelve-month period,

Use of projected revenues to calculate concession fee.

to calculate the applicable concession fee for the relevant financial year.

9. (1) The Authority shall, at the end of each financial year recalculate the concession fees payable by each concessionaire on the basis of the total revenues of the telecommunications and broadcasting sectors in that financial year inclusive of any projected revenues taken into account under regulation 8.

Recalculation of concession fee.

(2) Any difference between the concession fee so calculated and the concession fee actually paid by the concessionaire for the relevant year will be refunded or recovered as the case may require in the next invoice issued to that concessionaire.

10. Notwithstanding the provisions of the First Schedule to these Regulations, the total annual concession fee for any concessionaire that holds a national territorial or major territorial

Fee minimum for certain concessions.

concession shall not be less than ten thousand dollars and the annual concession fee for any other concessionaire shall not be less than one thousand dollars.

First invoice for licence fee.

11. (1) Where the Authority grants a licence for a term exceeding one year, the Authority shall issue and serve on the licensee, a first invoice for the fees set out in the third column of the Second Schedule to these Regulations, based on the spectrum bands and the type of service set out in the first and second columns, respectively, of the said Schedule.

Second Schedule.

(2) The applicable fee shall be for the period from the date of grant for such period, not exceeding one year, as the Authority considers appropriate.

(3) The invoice shall be payable within twenty-eight days of its date and prescribe the licence fee payment date.

(4) The licence fee payment date shall be the day immediately following the last day of the period for which the fees are payable under the invoice.

Authority to serve invoice.

12. (1) No earlier than the licence fee payment date in each year, the Authority shall issue and serve on the licensee in respect of whose licence the licence fee payment date pertains, an invoice setting out the fee payable for the twelve-month period commencing on the licence fee payment date or the period from the payment date to the end of the licence term, whichever is shorter.

(2) The fee shall be calculated in accordance with regulation 11(1) and shall become due and payable within twenty-eight days of the date of the invoice.

Licence granted for a term of less than one year.

13. Where the Authority grants or renews a licence for a term which is one year or less, the licence fee shall be the applicable annual fee for the relevant type of licence adjusted on a *pro rata* basis for the term of the licence and shall be payable in full upon the date of grant or renewal of the licence.

Numbering fees.

14. A concessionaire authorised to provide a domestic public telecommunications service which includes the right to provide

a public telephone service shall, in relation to each number assigned to that concessionaire, pay to the Authority the numbering fee specified in the Third Schedule to these Regulations.

Third Schedule.

15. (1) The first payment of fees for each number shall be payable on assignment and on a *pro rata* basis from the date of assignment until the 30th September next following, and payment of such fees thereafter shall be in respect of each financial year and made annually in advance on the first day of the relevant financial year.

Payment of numbering fees.

(2) No later than 15th September in each year the Authority shall provide every concessionaire to whom numbers have been assigned, with a statement setting out the numbers assigned to that concessionaire and the corresponding fees due for the coming financial year.

16. Every applicant for a concession, licence or any other authorisation to be granted or renewed by or upon the recommendation of the Authority, shall pay to the Authority upon submission of the application, the relevant application fee as specified in the fourth column of the First or Second Schedule to these Regulations, as the case may require.

Application fees.

17. Application fees shall only be refunded where—

Refund of application fees.

- (a) the Authority does not accept the submission of the application and informs the applicant to that effect, in writing; or
- (b) the Authority, in its sole discretion deems that the particular circumstances warrant the refund of the application fee.

18. The fees set out in the Fourth Schedule to these Regulations shall be payable to the Authority in respect of the services referred to therein.

Service fees. Fourth Schedule.

19. (1) The Authority may select persons for the grant of licences for spectrum or frequency within certain bands through an auction or other competitive process.

Fees determined by auction or competitive process.

74/2005. (2) Where such a process is utilised, the procedures set out in the Telecommunications Tenders Rules, shall apply, and the licence fee for licences granted, after the competitive process, within such bands shall be as determined in the competitive process.

(3) The use of a competitive process to grant a licence shall not affect any concession fee payable for any concession in respect of which that licence is granted.

Submission of financial statements.

20. Each concessionaire shall, within twenty weeks of the end of the concessionaire's annual accounting period, submit to the Authority, its full audited accounts including but not limited to—

- (a) balance sheet;
- (b) income and expenditure statements; and
- (c) related notes to the accounts.

Submission of unaudited accounts.

21. Notwithstanding regulation 20, the Authority may—

- (a) where a concessionaire is not required by law or its internal procedures to produce annual audited accounts; and
- (b) upon written application to the Authority prior to the end of the relevant accounting period,

by written notice to the relevant concessionaire, permit the concessionaire to submit in relation to the requirements of regulations 5 and 20, and in respect of a particular accounting period, accounts or statements which have not been audited.

Verification of information.

22. The Authority may, upon the giving of seven days notice to a concessionaire, inspect any records of the concessionaire to verify the accuracy of any information provided to the Authority pursuant to these Regulations.

Authority may estimate information.

23. Where a concessionaire fails to submit information or any part of the information required under regulation 5 or 20 by the date on which such information is due, the Authority may for

the purposes of these Regulations and fulfilling its functions, estimate the information based on its assessment of the market or industry benchmarks or any other reasonable method.

24. A concessionaire who knowingly submits false information to the Authority under these Regulations commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

25. Fees payable under these Regulations shall be paid at such place and by such methods as the Authority may from time to time publish on its website.

Offences.

Manner of payment of fees.

Regulations 3 and 16.

FIRST SCHEDULE
CONCESSION FEES

Type	Sub-Types	Concession Fee	Application Fee
Type 1—Network Only	Domestic Mobile	Concession fee= $(TR_j t-1 / TR t-1) * TC t$	\$16,000
	Domestic fixed (national or major territorial)	Where:	\$10,000
	Domestic fixed (niche or minor territorial)	$TR_j t-1$ = total revenue earned by the concessionaire, j in year t-1;	\$1,000
	International	$TR t-1$ = total revenue of the telecommunications and broadcasting sector in the country in year t-1; and	\$10,000
Type 2—Network and Services (Service Neutral)	Domestic Mobile		\$32,000
	Domestic fixed (national or major territorial)		\$20,000
	Domestic fixed (niche or minor territorial)	$TC t$ = total cost of the Authority related to concessions budgeted for year t	\$1,000
	International		\$20,000
Type 3—Virtual Network and Services (Service Neutral)	Virtual Networks (national or major territorial)		\$8,000
	Virtual Networks (niche or minor territorial)		\$1,000

Telecommunications (Fees) Regulations

[Subsidiary]

CONCESSION FEES—Continued

Type	Sub-Types	Concession Fee	Application Fee
Type 4— Specific Telecommunications Services	Telecommunications services (national or major territorial)		\$1,000
	Telecommunications services (niche or minor territorial)		\$200
Type 5— Specific Broadcasting Services	Broadcast Services—free to air TV (national or major territorial)		\$1,000
	Broadcast Services—free to air TV (niche or minor territorial)		\$200
	Broadcast Services—free to air Radio (national or major territorial)		\$1,000
	Broadcast Services—free to air Radio (niche or minor territorial)		\$200
	Broadcast Services—Subscription (national or major territorial)		\$1,000
	Broadcast Services—Subscription (niche or minor territorial)		\$200

Regulations 11 and 16.

SECOND SCHEDULE

LICENCE FEES

Table 1 – Shared Spectrum

Spectrum Bands	Type of Service	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
All bands allocated in the Frequency Allocation Table for these services	Aeronautical Station Licence	\$700	\$100
	Amateur Station Licence	\$100	\$20
	CB Station Licence	\$100	\$20
	Maritime Station Licence	\$200	\$50
	Spread Spectrum Station Licence	\$400 per base station	\$50
All Assigned Bands	Shared Spectrum Station Licence <5W (RF output power)	\$100 per station	\$20
	Shared Spectrum Station Licence 5W –25W (RF output power)	\$200 per station	\$20
	Shared Spectrum Station Licence >25W (RF output power)	\$400 per station	\$20

Telecommunications (Fees) Regulations

[Subsidiary]

Table 2—Satellite Services

Spectrum Bands	Type of Service	Sub-categories	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
All bands allocated in the Frequency Allocation Table for these services. C-Band, KU-Band, L-Band, KA-Band	Satellite Services:	VSAT—Telecommunications Station Licence	\$150 per KHz	\$500
		VSAT—Control/Telemetry Station Licence	\$50 per KHz	\$500
	Broadcasting (BSS), Mobile (MSS) & Fixed Satellite Services (FSS)	Earth Station Station Licence	\$15,000 per MHz	\$700
		Portable Satellite Communication System Station Licence	\$1.60 per KHz	\$500
	Commercial TVRO Station Licence	\$1,500 per MHz	\$700	

SECOND SCHEDULE—Continued

Table 3—Other Services

SPECTRUM BAND 30—216 MHz

Type of Service	Sub-categories	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
Land Mobile	Conventional	\$50 per KHz pair	\$200
	Spectrum Licence		
Broadcasting Station Licences	Station Licence	\$40 per KHz pair	\$100
	National or major territorial	\$252 per KHz	\$500
	Niche or minor territorial	\$80 per KHz	\$200
	Radio (FM)		
	Television — VHF		
	National or major territorial	\$45 per KHz	\$500
	Niche or minor territorial	\$21 per KHz	\$200

Telecommunications (Fees) Regulations

[Subsidiary]

Table 3—Other Services—Continued
SPECTRUM BAND 216—960 MHz

Type of Service	Sub-categories	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
Cellular Mobile	Spectrum Licence	\$542,160 per MHz pair	\$32,000
	Trunked and conventional	\$99 per KHz pair \$79 per KHz pair	\$200 \$100
Fixed	Point-to-Point Station Licence	\$20 per KHz pair	\$100
	Point-to-Multipoint Spectrum Licence	\$59 per KHz pair	\$200
Broadcasting Station Licences	Television —UHF	\$25 per KHz \$21 per KHz	\$500 \$200
	Station Licence	\$10 per KHz pair	\$100
FM radio—STL's	Spectrum Licence	\$10 per KHz pair	\$100
	SCADA	\$50 per KHz pair \$40 per KHz pair	\$200 \$100

SECOND SCHEDULE—Continued

Table 3—Other Services—Continued

SPECTRUM BAND 960—2200 MHz

Type of Service	Sub-categories	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
Cellular Mobile	Spectrum Licence	\$542,160 per MHz pair	\$32,000
	Point-to-Point Station Licence	\$4,000 per MHz pair	\$100
Fixed	Point-to-Multipoint Spectrum Licence	\$4,000 per MHz pair	\$100
	Outside broadcasts Spectrum Licence	\$790 per MHz pair	\$100

SPECTRUM BAND 2200—5850 MHz

Type of Service	Sub-categories	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
Fixed (Low Capacity, Long Distances)	Point-to- Multipoint	\$4,000 per MHz pair	\$300
	Point-to-Point Station Licence	\$4,000 per MHz pair	\$100
Television	Point-to-Point Station Licence	\$4,000 per MHz pair	\$100
	Outside broadcasts Spectrum Licence	\$790 per MHz pair	\$100

Telecommunications (Fees) Regulations

[Subsidiary]

Table 3—Other Services—Continued

SPECTRUM BAND 5850—8500 MHz

Type of Service	Sub-categories	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
Fixed (Medium to High Capacity)	Point-to-Point	\$4,000 per MHz pair	\$300
	Spectrum Licence		
Television—Studio to transmitter link	Station Licence	\$400 per MHz pair	\$100
	STL's Station Licence	\$400 per MHz pair	\$100

SPECTRUM BAND >8500 MHz

Type of Service	Sub-categories	Licence Fee (Administrative plus Operating plus Spectrum Usage)	Application Fee
Fixed	Point-to-Point	Spectrum Licence	\$400
		Station Licence	\$100
	Point-to-Multipoint	Spectrum Licence	\$400
		Station Licence	\$100

Regulation 14.

THIRD SCHEDULE
NUMBERING FEES

Number Category	Numbering Fee
Fixed Line Services	Ten cents (\$0.10)
Mobile Services	Twenty cents (\$0.20)
N00 numbers	Thirty-five cents (\$0.35)
Information/Premium/Number Translation Services	Thirty-five cents (\$0.35)
Plant Test Code Services	Thirty-five cents (\$0.35)
555-xxxx, 666-xxxx	Thirty-five cents (\$0.35)

Regulation 18.

FOURTH SCHEDULE

SERVICE FEES

Service Provided by the Authority	Fee
Copy of document (including printed documents and soft copies produced on CD-ROM or other storage media provided by the Authority)	\$20

**TELECOMMUNICATIONS (UNIVERSAL SERVICE)
REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY

REGULATION

1. Citation.
2. Interpretation.

PART II

**UNIVERSAL SERVICE FUND AND IMPLEMENTATION
OF UNIVERSAL SERVICE INITIATIVES**

3. Authority to administer the Universal Service Fund.
4. Contents of the Universal Service Fund.
5. Contributions to the Universal Service Fund.
6. Amount in fund insufficient for implementation.
7. Contributions to the Universal Service Fund exceeding disbursements.
8. Prohibition against charging users the cost of contribution.
9. Submission of financial statements.
10. Issuance of invoices.
11. Calculation after issuance of first invoice.
12. Payment of contribution.
13. Submission of unaudited financial statements.

PART III

**OVERSIGHT OF THE UNIVERSAL SERVICE
PROGRAMME**

14. Oversight of Universal Service Committee.
15. Committee may procure professional services.

PART IV

MANDATORY UNIVERSAL SERVICE INITIATIVES

16. Implementation of Universal Service initiatives identified by the Authority as mandatory for all concessionaires.
17. Refund from the Fund pursuant to Mandatory Universal Service initiatives.

REGULATION

PART V

CONTRACTUAL UNIVERSAL SERVICE INITIATIVES

18. Identification of Contractual Universal Service projects.
19. Submission of bids for the implementation of Contractual Universal Service initiatives.
20. General rules regarding disbursement of funds associated with Contractual Universal Service initiatives.
21. Recurrent charges associated with a Contractual Universal Service initiative.
22. Obligation to implement contractual Universal Service initiative.
23. Disbursement of funds pursuant to a Contractual Universal Service initiative.

PART VI

MISCELLANEOUS

24. Funding of community access centre.
25. Publication of Reports.
26. Offences.

SCHEDULE 1.
SCHEDULE 2.
SCHEDULE 3.

[Subsidiary]

63/2015.
11/2019.

**TELECOMMUNICATIONS (UNIVERSAL SERVICE)
REGULATIONS**

made under section 78(1)

PART I

PRELIMINARY

Citation.

1. These Regulations may be cited as the Telecommunications (Universal Service) Regulations.

Interpretation.
[11/2019].

2. In these Regulations—

“access gap” means those geographic areas where it is not economically feasible for a concessionaire to establish networks and services;

Schedule 1.

“basic telecommunications services” means the set of telecommunication services as defined in Schedule 1;

“Board” means the Board established pursuant to section 5 of the Act;

“concessionaire” means a person who has been granted a concession under the Act to—

(a) operate a public telecommunications network; or

(b) provide a public telecommunications service, either together or separately and is a contributor under these Regulations;

“Contractual Universal Service” means the provision on contract by retailers of universal service;

Schedule 2.

“contributor” means a concessionaire or other person as identified in Schedule 2 who contributes to the Universal Service Fund in accordance with these Regulations;

“disability” means—

(a) total or partial loss of a bodily function;

(b) total or partial loss of a part of the body;

(c) malfunction of a part of the body including mental or psychological disease or disorder; or

(d) malformation or disfigurement of part of the body or any restriction or lack, resulting from an impairment of ability to perform an activity in the manner or within the range considered normal for a human being;

“Mandatory Universal Service” means the requirement in law to provide universal service;

“population groups within the access gap” means such persons or population groups, as may be identified by the Authority from time to time, for whom it is economically challenging to access basic telecommunications services;

“reverse auction” means the competitive bidding process in which the Authority evaluates bids submitted by concessionaires based on the criteria identified by the Authority as necessary for the successful implementation of a Universal Service initiative and on the extent to which the cost of implementation requires funding from the Universal Service Fund. The concessionaire who requires the least funding from the Universal Service Fund and who meets the criteria identified by the Authority shall be successful;

“Universal Access” means the ability of the entire population to access affordable basic telecommunications services either on an individual or shared basis, as far as reasonably practicable;

“Universal Service Committee” means the committee established pursuant to regulation 14;

“Universal Service Fund” means the account opened pursuant to section 53(6);

“Universal Service initiative” means an initiative identified by the Authority to provide and to increase access and affordability to basic telecommunications services for the benefit of—

- (a) persons resident in Universal Service areas; and
- (b) population groups within the access gap,

the implementation of which may be identified by the Authority as mandatory under Part IV or which may be implemented by a concessionaire in accordance with the

terms and conditions of a contract with the Authority under Part V of these Regulations; and

“Universal Service area” means a geographical area in which the Authority has determined that it is not economically feasible to provide basic telecommunications services and in which a Universal Service initiative under Part V may be implemented.

PART II

UNIVERSAL SERVICE FUND AND IMPLEMENTATION
OF UNIVERSAL SERVICE INITIATIVES

Authority to
administer the
Universal
Service Fund.
[11/2019].

3. (1) The Universal Service Fund shall be administered by the Authority.

(2) The Authority shall collect contributions to the Universal Service Fund pursuant to regulation 5.

(3) The Authority shall disburse payments from the Universal Service Fund pursuant to—

Schedule 3.

(a) the Mandatory Universal Service initiatives in accordance with the charges set out in Schedule 3 and with the procedure set out in regulation 17; or

(b) the Contractual Universal Service initiatives in accordance with the procedure set out in regulation 20.

Contents of the
Universal
Service Fund.

4. The Universal Service Fund shall consist of contributions which shall be utilised for the implementation of Universal Service initiatives in accordance with these Regulations.

Contributions
to the
Universal
Service Fund.

Schedule 2.

5. (1) A contributor shall, in accordance with directions issued by the Authority, contribute annually such percentage of its gross annual revenue to the Universal Service Fund as set out in Schedule 2 and in such manner as may be prescribed by the Authority.

(2) The Authority may review every three years the percentage of total gross annual revenue that a contributor shall contribute to the Universal Service Fund under subregulation (1).

6. Where the total contribution to the Universal Service Fund in any financial year, is in the opinion of the Authority, not sufficient to fully implement the Universal Service initiatives scheduled for implementation in that year, the Authority may reschedule the implementation of such Universal Service initiatives for a later period as it sees fit.

Amount in fund insufficient for implementation.

7. Where the total contribution to the Universal Service Fund in any financial year exceeds the annual cost of implementation of the Universal Service initiatives scheduled for implementation in that year, the Authority may undertake any of the following:

Contributions to the Universal Service Fund exceeding disbursements.

- (a) apply the excess towards the funding of the Universal Service initiatives scheduled for the implementation during the following financial year;
- (b) expand the budget for the implementation of the Universal Service initiatives scheduled for implementation during the following financial year; or
- (c) implement incentive schemes to provide relief to contributors from the obligation to contribute to the Universal Service Fund or such other programme for the benefit of contributors, for such period of time as the Authority may see fit, such relief to be in proportion to the basis of the contribution made by the contributor.

8. A contributor shall not charge or otherwise pass on to users, without the approval of the Authority, any portion of the cost of any contribution made or due to be made to the Universal Service Fund in accordance with these Regulations.

Prohibition against charging users the cost of contribution.

9. A contributor shall submit its audited financial statements to the Authority within six months after the end of the contributor's financial year.

Submission of financial statements.

Issuance of invoices.

10. Notwithstanding regulation 9, the Authority shall, upon the commencement of the Authority's financial year subsequent to the coming into effect of these Regulations, issue the first invoice to the contributor based upon the contributor's latest available audited financial statements.

Calculation after issuance of first invoice.

11. (1) The Authority shall, after the issue of a first invoice, issue subsequent invoices at the commencement of each financial year of the Authority based upon the contributor's latest available audited financial statements.

(2) Any difference between the sum invoiced and that which, based upon submission of audited financial statements pursuant to regulation 10 should have been invoiced for the relevant period, shall be recovered or refunded, as may be required, in the next invoice issued to the contributor.

Payment of contribution.

12. The contributor shall pay to the Authority the amount specified in the invoice issued pursuant to this regulation within twenty-eight days of the date of the invoice.

Submission of unaudited financial statements. [11/2019].

13. (1) Where a contributor is not required by law to produce annual audited financial statements and make a written application to the Authority for a waiver of the obligation to submit same to the Authority prior to the end of the contributor's accounting period, the Authority may, by written notice to the contributor, permit such contributor to submit financial statements which have not been audited in relation to the requirement under regulation 9 in respect of a particular accounting period.

(2) Unaudited financial statements submitted under subregulation (1) shall be certified by the Chief Financial Officer of the contributor who shall be recognised by the Institute of Chartered Accountants of Trinidad and Tobago.

PART III

OVERSIGHT OF THE UNIVERSAL SERVICE PROGRAMME

Oversight of Universal Service Committee. [11/2019].

14. (1) The Authority shall establish a Universal Service Committee with the responsibility for the selection, execution

and monitoring of implementation of Universal Service initiatives under regulations 16 and 18.

(2) The Universal Service Committee shall comprise of the Chief Executive Officer and divisional heads of the Authority.

(3) The persons under subregulation (2) shall be persons with experience and qualifications in the areas of law, accounting, economics and engineering.

(4) At any meeting of the Universal Service Committee, one more than half the members of the Committee shall constitute a quorum.

(5) Decisions of the Universal Service Committee shall be by a majority of votes of the members of the Committee who are present and voting.

(6) The Universal Service Committee shall report to the Board and shall implement overall policy guidance from the Board on the Universal Service initiatives, and the funds to be collected and disbursed from the Universal Service Fund.

(7) Notwithstanding the generality of subregulation (1), the Universal Service Committee may, in the execution of its functions—

- (a) identify the underserved communities and population groups in Trinidad and Tobago in need of access to affordable basic telecommunications services;
- (b) organise and co-ordinate stakeholder group meetings to provide ideas and feedback when there is deliberation on Universal Service initiatives to be implemented;
- (c) provide cost estimates for proposed Universal Service projects;
- (d) make recommendations to the Board with respect to the selection of Universal Service initiatives and the priority to be given to Universal Service initiatives to be undertaken annually;

Schedule 2.

- (e) make recommendations to the Minister for the implementation of Universal Service Fund projects, pursuant to section 28 of the Act;
- (f) develop objectives, budgets and operational plans for the management of the Universal Service Fund in accordance with guidelines developed by the Authority;
- (g) ensure the Universal Service Fund remains financially sound such that moneys are available for the implementation of projects;
- (h) ensure collection of the contributions from concessionaires in accordance with the percentages stated in Schedule 2;
- (i) review the adequacy of the Universal Service Fund contributions received every three years and submit recommended changes, if any, to the Board for approval and consideration of the Minister;
- (j) recommend the amounts that should be disbursed from the Universal Service Fund within a timely manner and to whom the funds should be disbursed in accordance with the Authority's tendering rules and the Universal Service contracts signed with the concessionaires;
- (k) ensure that financial accounts, reports and records are prepared and published;
- (l) manage the competitive tendering process for the allocation of projects; and
- (m) monitor and oversee the implementation of all Universal Service Fund projects to ensure that all obligations are fulfilled within the required time frames.

(8) In any given year, the costs of the administrative activities undertaken by the Universal Service Committee, shall be a charge on the Universal Service Fund.

(9) The Administrative charge on the Universal Service Fund shall not exceed fifteen per cent of the funds collected for that period.

15. (1) The Universal Service Committee may procure, in accordance with the Telecommunications Tender Rules of the Authority, professional services to support the implementation of Contractual Universal Service initiatives.

Committee may procure professional services. Sub. Leg.

(2) The cost of professional services under subregulation (1) shall be a charge on the Universal Service Fund.

(3) The charge for professional services under this section for any Universal Service initiative shall not exceed the maximum set out in regulation 20.

PART IV

MANDATORY UNIVERSAL SERVICE INITIATIVES

16. (1) All concessionaires shall implement the Mandatory Universal Service initiatives identified in Schedule 3, in accordance with guidelines published by the Authority from time to time.

Implementation of Universal Service initiatives identified by the Authority as mandatory for all concessionaires. Schedule 3. [11/2019].

(2) Where a Mandatory Universal Service initiative is eligible for a refund from the Universal Service Fund, the concessionaire which implements such Mandatory Universal Service initiative shall apply to the Authority in accordance with the procedure outlined in regulation 17.

(3) A concessionaire shall implement at its own cost those Universal Service initiatives identified as mandatory for all concessionaires but which are not eligible for a refund from the Universal Service Fund.

(4) *(Revoked by LN 11/2019).*

17. (1) Where a concessionaire undertakes a Mandatory Universal Service initiative identified in Schedule 3 which is associated with a refund charged to the Universal Service Fund, then such concessionaire shall submit to the Authority in the form approved by the Authority, the relevant details associated

Refund from the Fund pursuant to Mandatory Universal Service initiatives.

with the Mandatory Universal Service initiative for which the refund is sought within three months of its submission of accounts in accordance with regulation 9.

- (2) The details under subregulation (1) shall include—
- (a) the names of the customers so supported;
 - (b) the Universal Service initiative for which the refund is sought;
 - (c) associated customer eligibility reference;
 - (d) records of utilisation of each basic service;
 - (e) records of charges for such utilisation; and
 - (f) records of billed charges for such utilisation.

(3) The Authority shall indicate its agreement with or rejection of the submission under subregulation (1), within twenty-eight days of the receipt of the submission and shall refund any agreed sums in accordance with its procedures.

PART V

CONTRACTUAL UNIVERSAL SERVICE INITIATIVES

Identification of
Contractual
Universal
Service
projects.

18. (1) The Authority shall, from time to time, issue an invitation for submission of Universal Service projects, by publication in the *Gazette* and at least two daily newspapers in daily circulation in Trinidad and Tobago.

(2) An invitation under subregulation (1) shall invite concessionaires and relevant Ministries and stakeholder groups to identify proposals for projects to be considered as Contractual Universal Service initiatives.

(3) Proposals under this regulation shall be limited to projects which—

- (a) targets the provision of infrastructure development areas identified within the access gap by the Authority;
- (b) targets the resolution of structural deficiencies in the national telecommunications grid;

- (c) can be implemented by all similarly situated concessionaires in a given market or sub-market; and
- (d) meet other conditions as specified by the Authority in the Notice.

(4) Interested concessionaires, Ministries and stakeholder groups may submit proposals within the time frame specified in the Notice.

(5) The Authority may consider proposals submitted under subregulation (4) in conjunction with projects proposed by the Authority pursuant to its evaluation of network coverage and service capacity.

(6) The Authority shall submit to the Minister its recommendations, in accordance with section 28 of the Act.

(7) Upon approval, modification or rejection of its recommendation by the Minister, the Authority shall publish the recommendation and, where applicable, the Minister's reasons for modification or rejection in respect thereof on its website for public viewing.

(8) Where a person who has made a submission pursuant to this regulation wishes to dispute the decision of the Minister, he may, within thirty days of the publication of such decision, request in writing, a review or reconsideration by the Minister of his decision, stating the grounds or reasons upon which such review or reconsideration is requested.

(9) The Minister shall determine such a review or reconsideration as soon as practicable but in any event no later than sixty days after the receipt of the request for the review or reconsideration and shall notify the applicant in writing, of his decision.

19. (1) In implementing the Contractual Universal Service initiatives planned for a given fiscal period, the Authority shall prepare and issue Requests for Proposals in accordance with the

Submission of bids for the implementation of Contractual Universal Service initiatives.

Sub. Leg.

Telecommunications Tender Rules for the selected Universal Service initiatives identified by the Authority to be granted funding from the Universal Service Fund for that fiscal period.

(2) A concessionaire may submit a bid in accordance with the directions set out in any Request for Proposals that may be issued by the Authority from time to time pursuant to subregulation (1).

(3) Only a concessionaire authorised to provide the service or services that comprise a Universal Service initiative may submit a bid under subregulation (1) to be granted funding to implement the Universal Service initiative.

(4) Where more than one bid is submitted under subregulation (1), the Authority shall use the reverse auction method to evaluate the bids submitted by concessionaires.

General rules regarding disbursement of funds associated with Contractual Universal Service initiatives.

20. (1) In response to a request from the concessionaire implementing a Contractual Universal Service initiative, the Authority may disburse mobilisation funds to support project initiation.

(2) Mobilisation payments under subregulation (1) shall be no greater than fifteen per cent of the estimated cost of the project.

(3) Professional fees associated with any Contractual Universal Service initiative shall be no greater than six per cent of the total cost of the initiative.

(4) The executing concessionaire shall submit in a form approved by the Authority and for a period not to exceed a bimonthly schedule, status reports, on the progress of Contractual Universal Service initiatives to the Universal Service Committee.

(5) Where the Authority receives a report under subregulation (4), it shall publish the report within two weeks of its receipt on its website.

Recurrent charges associated with a Contractual Universal Service initiative.

21. (1) Where the Universal Service Committee determines, based on the projections of the Authority or on the presentation of relevant facts and trends by the concessionaire, that aspects of the recurrent costs associated with a completed project implemented as a Contractual Universal Service initiative

may require continued subsidisation from the Universal Service Fund, the Universal Service Committee may authorise an annual charge to the Universal Service Fund to cover such a subsidy.

(2) Where the Universal Service Committee undertakes the action outlined in subregulation (1), it shall ensure that the concessionaire enters into an agreement with the Authority outlining, *inter alia*—

- (a) the terms and conditions by which the recurrent costs are subsidised;
- (b) performance obligations of the concessionaire to encourage increased service utilisation to enhance economic viability of the initiative;
- (c) reporting obligations of the concessionaire to encourage accurate and timely measurement of the uptake of basic telecommunications services in the area in which the Universal Service initiative project is implemented;
- (d) the criteria through which the Universal Service Committee may determine that a recurrent operation of the Universal Service initiative has become sustainable and no longer requires supplemental financing from the Universal Service Fund; and
- (e) that the Authority may seek to recover funds provided to the concessionaire where there is non-compliance with the Universal Service initiative and where funds received under the regulation were not utilised for the specified purpose.

22. (1) The concessionaire who submits a bid under regulation 19 and is successful shall be awarded an offer or the grant of funding from the Universal Service Fund and shall, upon acceptance of the offer—

- (a) enter into and be bound by a contract of service with the Authority for the implementation of the Universal Service initiative;

Obligation to implement contractual Universal Service initiative.

- (b) have the obligation under these Regulations to implement the Universal Service initiative in accordance with the terms and conditions set out in the contract of service entered into with the Authority under paragraph (a); and
- (c) be granted from the Universal Service Fund such funding for which the concessionaire had bid on the terms and conditions set out in the contract of service entered into with the Authority under paragraph (a).

(2) Where no concessionaire submits a bid under regulation 19, the concessionaire who is authorised to provide the service or services that comprise the Contractual Universal Service initiative and who, in the opinion of the Authority, has the highest available network capacity and requires the least infrastructural build out to roll out services for that particular Contractual Service initiative—

- (a) may enter into and be bound by a contract of service with the Authority for the implementation of the Universal Service initiatives; and
- (b) shall have the obligation under these Regulations to implement the Contractual Universal Service initiatives in accordance with the terms of conditions set out in the contract of service entered into with the Authority under paragraph (a).

23. (1) The Authority shall only authorise payments out of the Universal Service Fund where invoices are submitted by the concessionaire.

(2) Invoices shall be in the form approved by the Authority.

(3) Concessionaires requesting disbursement of funds pursuant to a Contractual Universal Service initiative shall submit invoices to the Universal Service Committee for certification in keeping with the conditions of the contract.

(4) A concessionaire under this regulation shall submit reports to the Authority containing information to be specified by the Authority to ensure timely certification of invoices.

PART VI

MISCELLANEOUS

24. (1) The Authority may provide an amount not exceeding five per cent of the value of the contributions to the Universal Service Fund in any financial year towards the provision of services for Universal Service initiatives as approved by the Authority which are established by the State or State agencies.

Funding of
community
access centre.
[11/2019].

(2) Approved services for which funding may be provided pursuant to subregulation (1) shall be targeted towards subsidising the cost of the following services only:

- (a) telephone connectivity to service a stated usage volume;
- (b) internet bandwidth as defined by the Authority from time to time;
- (c) facsimile services; and
- (d) such other services as the Authority may approve.

25. (1) The Authority shall publish on a biennial basis a Universal Service Implementation Report by June of the financial year of the Authority which shall contain—

Publication of
Reports.

- (a) an outline of the Mandatory Universal Service initiatives and Contractual Universal Service initiatives and the proposed budget for the implementation of such Universal Service initiatives for the succeeding two years;
- (b) a report on the progress of the current Universal Service initiatives being funded by the Universal Service Fund; and
- (c) the objectives identified by the Authority for the regulation of Universal Service for the succeeding financial year or any revision of such objectives.

(2) The Authority shall publish annually a Universal Service Fund Accounting Report no later than three months after the end of the financial year of the Authority which shall contain an account on the collection and disbursement of funds from the Universal Service Fund for the preceding financial year.

Offences.

26. (1) A concessionaire who has an obligation to implement a Contractual Universal Service initiative under regulation 22 and who has failed to implement such initiative to the satisfaction of the Authority—

(a) may be deemed to be in breach of the contract of service entered into with the Authority under regulation 22 and the Authority may seek such redress as may be available to it in accordance with the terms of the contract; and

(b) commits an offence under section 71 of the Act and is liable to such penalties prescribed therein.

(2) A contributor who fails to contribute to the Universal Service Fund in accordance with these Regulations commits an offence under section 65(g) of the Act and is liable to such penalties prescribed therein.

(3) A person who fails to comply with any of the provisions of these Regulations commits an offence under section 71 of the Act and is liable to such penalties prescribed therein.

Telecommunications (Universal Service) Regulations

[Subsidiary]

SCHEDULE 1

Regulations 2
and 5.

BASIC TELECOMMUNICATION SERVICES

1. Voice Telecommunications Services
 - call origination
 - call termination.
2. Access to Emergency Services.
3. Directory Assistance.
4. Free Itemised Billing.
5. Internet Service Provision at throughputs (to be defined by the Authority from time to time).

SCHEDULE 2

Regulations 2
and 5.
[11/2019].

CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND

<i>Percentage of Gross Revenues</i>	<i>Types of Service Provided</i>
%	
0.5	Domestic telecommunications services or operation of domestic telecommunications network facilities.
1	International telecommunications services or operation of international telecommunications network facilities.

Regulations
3(3), 16 and 17.
[11/2019].

SCHEDULE 3

MANDATORY UNIVERSAL SERVICE INITIATIVES

Universal Service Initiative	Eligibility for Universal Service Funding	Charges to Universal Service Fund	Other Notes
1. Special provision of approved assistive technology for persons with disabilities to support use of basic telecommunications services.	Yes	Limit to set up costs, capital and recurrent costs to be defined by the Authority from time to time.	Customers eligibility determined in accordance with the Ministry with responsibility for social development and other agencies as determined by the Authority.
2. Provisions of public access nodes and other related equipment to basic telecommunications services to be made available at all— (a) public schools; (b) public libraries; (c) hospitals and health centres; (d) police stations; and (e) waiting areas at public transport hubs.	Yes	To be determined by the Authority on a case by case basis, in consultation with the relevant stakeholders.	Nodes such as pay phones, internet kiosks and access points.
3. The provisions of universal Access to the following locations: (a) all public schools; (b) all public libraries; and (c) all public hospitals and health centres.	No		Universal Access rate of up to 40% of commercial rates as defined by the Authority for— (a) telephone services; (b) internet bandwidth (as defined by the Authority from time to time); and (c) facsimile services.

**TELECOMMUNICATIONS (ACCOUNTING SEPARATION)
REGULATIONS**

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation.
2. Interpretation.

PART II

ACCOUNTING SEPARATION

3. Requirement for accounting separation.
4. Amendment of Schedule.
5. Preparation of separated accounts.
6. Submission of separated accounts.
7. Notification where accounts do not comply with requirements.
8. Authority to notify concessionaire of compliance.

PART III

GENERAL REGULATIONS

9. Publication.
10. Issuance of guidelines and directions.
11. Extension of time frames.
12. General penalty.

SCHEDULE.

64/2015.

TELECOMMUNICATIONS (ACCOUNTING SEPARATION) REGULATIONS

made under section 78(1)

PART I

PRELIMINARY

Citation. **1.** These Regulations may be cited as the Telecommunications (Accounting Separation) Regulations.

Interpretation. **2.** In these Regulations—
“concessionaire” means a person or an entity authorised to operate a public telecommunications network or provide a public telecommunications service or broadcasting service under section 21 of the Act;

“separated accounts” means accounts submitted in the manner and form required by these Regulations;

Schedule. “Separated Accounts Templates” means the detailed templates for the preparation of separated accounts as set out in the Schedule;

“Service” means the provision of a telecommunications service or broadcasting service as provided for in section 21(1) of the Telecommunications Act (the Act) in addition to any other service not under the purview of the Act.

PART II

ACCOUNTING SEPARATION

Requirement for Accounting Separation. **3.** A concessionaire who provides two or more services shall prepare, maintain and submit to the Authority within three months of the end of the concessionaire’s financial year its accounts, in accordance with the applicable Separated Accounts Templates set out in the Schedule.

Schedule.

Amendment of Schedule. **4.** (1) The Minister, may by Order, amend the Schedule on the recommendation of the Authority.

(2) The Authority shall, in recommending amendments to the Schedule under subregulation (1), have regard to the following:

- (a) separated accounts shall be based on a transparent cost allocation method;
- (b) transparent cost allocation method shall be based on the principle of cost causality;
- (c) allocations shall not be intended to bring, or have the effect of bringing, advantage to the concessionaire at the expense of its competitors;
- (d) separated accounts shall be prepared in accordance with generally accepted accounting conventions;
- (e) allocation methodology shall be applied consistently between accounting periods or, where a change in the method of application can be objectively justified, the change must be noted and comparative data provided between the original and revised bases of allocation; and
- (f) separated accounts shall be subject to independent annual audit in accordance with generally accepted accounting practices at the concessionaire's cost, and to standards required by any written law.

5. A concessionaire shall ensure that separated accounts are—

- (a) prepared in the format set out in the applicable separated accounts templates as specified in the Schedule;
- (b) consistent with accounting separation guidelines as may be published from time to time by the Authority on its website;
- (c) consistent with generally accepted accounting practice; and
- (d) audited annually.

Preparation of separated accounts.

Submission of separated accounts.

6. A concessionaire required to separate its accounts under regulation 3 shall—

- (a) within twenty-eight days of the coming into force of these Regulations, advise the Authority in writing of its financial year end date, and of all services currently provided;
- (b) immediately upon the coming into force of these Regulations, submit its separated accounts to the Authority within three months of the request being made or within nine months of the end of the concessionaire's financial year, whichever is later; and
- (c) thereafter, submit its separated accounts to the Authority annually within three months of the end of its financial year.

Notification where accounts do not comply with requirements.

7. (1) The Authority shall, within forty-two days of receiving separated accounts from a concessionaire, notify the concessionaire in writing of all aspects in which the accounts fail to conform to the requirement for separated accounts.

(2) Where a concessionaire is notified under subregulation (1), the concessionaire shall rectify those defects within twenty-eight days of receiving notice from the Authority.

Authority to notify concessionaire of compliance.

8. Where the Authority is satisfied that a concessionaire has complied with all the requirements in relation to the concessionaire's separated accounts, the Authority shall in writing, inform the concessionaire of its findings.

PART III

GENERAL REGULATIONS

Publication.

9. The Authority may from time to time, for the purpose of clarification, publish in the *Gazette* and in at least one daily newspaper circulating in Trinidad and Tobago, guidelines in relation to any standard arrangements under these Regulations.

Telecommunications (Accounting Separation) Regulations

[Subsidiary]

10. (1) The Authority may issue written directions to any concessionaire for the purpose of compelling compliance with these Regulations.

Issuance of guidelines and directions.

(2) A concessionaire shall comply within twenty-eight days of receiving any directions given by the Authority under subregulation (1).

11. (1) Where a concessionaire is required to comply with these Regulations within a specified period, the Authority may, where it sees fit, extend such period upon the written request of the concessionaire.

Extension of time frames.

(2) Where the Authority decides to extend a specified period under subregulation (1), the Authority shall notify the concessionaire in writing.

12. A concessionaire who fails to comply with any of the provisions of these Regulations commits an offence under section 71 of the Act and is liable to such penalties prescribed therein.

General penalty.

Regulation 3.

SCHEDULE

SEPARATED ACCOUNTS TEMPLATES

Template 1

**STATEMENT OF COMPREHENSIVE INCOME—CORE
NETWORK BUSINESS**

STATEMENT OF COMPREHENSIVE INCOME

	<i>Current Period</i>	<i>Prior Period</i>
Turnover:		
From Retail	X	X
Other Operators	X	X
<i>Total Turnover</i>	<u>X</u>	<u>X</u>
Operating Costs of which	X	X
Depreciation	X	X
Personnel Costs	X	X
Wages and Salaries		
Subsistence and Travelling	X	X
Overtime	X	X
CCA Adjustments ¹	X	X
Total Operating Costs	<u>X</u>	<u>X</u>
Return ²	<u>X</u>	<u>X</u>
Return on Capital Employed		
Return	X	X
Mean Capital Employed	X	X
Return on Mean Capital Employed	X%	X%

¹ Current Cost Accounting (CCA) Adjustment—The change to historical cost arising from the revaluation of assets on a current cost basis. In the statements for individual business areas adjustments comprise the unrealised holding gains or losses arising from changes in assets value, together with the effect on asset values and depreciation of the appropriate allocation of modern equivalent assets between businesses.

² The calculations of the return should be consistent with the basis on which the cost of capital is calculated.

Template 2

**STATEMENT OF FINANCIAL POSITION—CORE
NETWORK BUSINESS³**

STATEMENT OF FINANCIAL POSITION AS AT

		<i>Current As at</i>	<i>Prior As at</i>
Fixed Assets			
	Tangible Fixed Assets	X	X
	Intangible Fixed Assets	X	X
	Investments	X	X
		<hr/>	<hr/>
Total Fixed Assets		X	X
Working Capital			
	Inventory	X	X
	Trade Receivables	X	X
	Other Assets	X	X
	Cash on hand and Bank Deposits	X	X
		<hr/>	<hr/>
Total Working Capital		X	X
Liabilities			
	Trade Payables	X	X
	Fund for Liabilities and Charges	X	X
	Other Liabilities	X	X
		<hr/>	<hr/>
Total Liabilities		X	X
		<hr/>	<hr/>
Total Capital Employed		X	X
		<hr/>	<hr/>
Yield on Capital Employed		X	X

³ All entries in the “balance sheet” should be average values for the year to which they relate. Where possible and material, the average values should be weighted averages. If information is not available, a simple average of opening and closing balances may initially be used.

Template 3

**STATEMENT OF COMPREHENSIVE INCOME—LOCAL
ACCESS NETWORK BUSINESS**

STATEMENT OF COMPREHENSIVE INCOME

		<i>Current Period</i>	<i>Prior Period</i>
Turnover:			
	Transfer charges to Retail	X	X
	From other operators (if any)	X	X
	<i>Total Turnover</i>	<u>X</u>	<u>X</u>
Operating Costs		X	X
of which			
	Depreciation	X	X
	Personnel Costs	X	X
	Wages and Salaries		
	Subsistence and Travelling	X	X
	Overtime		
CCA Adjustments		X	X
Total Operating Costs		X	X
Return (excluding ADCs ⁴ , if any)		<u>X</u>	<u>X</u>
ADCs (if any)			
	From OLOs	<u>X</u>	<u>X</u>
	From Retail	<u>X</u>	<u>X</u>
Total ADCs		<u>X</u>	<u>X</u>
Return (including ADCs, if any)		<u>X</u>	<u>X</u>
RETURN ON CAPITAL EMPLOYED			
As for Core Network			
STATEMENT OF FINANCIAL POSITION			
As for Core Network			

⁴ Access Deficit Contributions (ADCs)—Contributions payable by Other Licensed Operators (OLO) and the Retail Business to the Access Business for losses it sustain on the provision of services on the access network.

Template 4

**STATEMENT OF COMPREHENSIVE INCOME—RETAIL
FIXED BUSINESS**

STATEMENT OF COMPREHENSIVE INCOME

	<i>Prior Period</i>	<i>Current Period</i>
Turnover		
Connection Charges	X	X
Installation Charges	X	X
Other Connection Charges	X	X
Subscription Charges		
Residential	X	X
Single Line Business	X	X
Other Business (non-single Line)	X	X
Call Master Services Charges	X	X
Other Subscription Charges	X	X
On-Net Toll Charges		
Intra-Exchange Toll Charges	X	X
Inter-Exchange Toll Charges	X	X
Off-Net Toll Charges		
Outgoing Toll (Mobile)	X	X
Incoming Toll (Mobile)	X	X
(Outpayments)	X	X
International		
Incoming Toll	X	X
Outgoing Toll	X	X
(Outpayments)	X	X
Other International Charges	X	X
Domestic Calling Cards	X	X
International Calling Card	X	X
Paystations	X	X
Local 800	X	X
Centrex	X	X
Operator and Director Assistance Charges	X	X
Other Turnover	X	X
	<u>X</u>	<u>X</u>
Operating Costs:		
Operating Costs specific to Fixed Retail	X	X

**STATEMENT OF COMPREHENSIVE INCOME—RETAIL
FIXED BUSINESS—Continued**

	<i>Prior Period</i>	<i>Current Period</i>
Transfer Charges from Fixed Core Network	X	X
Transfer Charges from Fixed Access Network	X	X
ADCs paid to Access Network (if any)	X	X
Depreciation	X	X
Personnel Costs		
Wages and Salaries	X	X
Subsistence and Travelling	X	X
Overtime	X	X
Other Costs	X	X
CCA Adjustments	X	X
<i>Total Operating Costs</i>	<u>X</u>	<u>X</u>
Return (excluding Universal Service Contribution, if any)	X	X
Universal Service Obligation Contributions from OLO		
Return (including USO Contribution, if any)	<u>X</u>	<u>X</u>
RETURN ON CAPITAL EMPLOYED		
As for Core Network		
STATEMENT OF FINANCIAL POSITION		
As for Core Network		

Template 5

**STATEMENT OF COMPREHENSIVE INCOME—
DATA SERVICES**

STATEMENT OF COMPREHENSIVE INCOME

	<i>Current Period</i>	<i>Prior Period</i>
Turnover	X	X
Dial-up Internet	X	X
xDSL Subscription	X	X
xDSL Connection	X	X
Lease lines	X	X
Other Data Services	X	X
	<u>X</u>	<u>X</u>
	<i>Total Turnover</i>	
Operating Costs		
Operating costs specific to Data Service	X	X
Transfer charges from Core Network	X	X
Transfer charge from Local Access Network	X	X
Depreciation	X	X
Personnel Costs	X	X
Wages and Salaries	X	X
Subsistence and Travelling	X	X
Overtime	X	X
ADCs paid to Local Access Network (if any)	X	X
CCA Adjustments	X	X
Total Operating Costs	<u>X</u>	<u>X</u>
Return (excluding USO Contribution, if any)	X	X
USO Contribution from OLO	X	X
Return (including USO Contribution, if any)	<u>X</u>	<u>X</u>

RETURN ON CAPITAL EMPLOYED

As for Core Network

STATEMENT OF FINANCIAL POSITION

As for Core Network

Template 6

**STATEMENT OF COMPREHENSIVE INCOME—
RETAIL MOBILE BUSINESS**

STATEMENT OF COMPREHENSIVE INCOME

	<i>Current Period</i>	<i>Prior Period</i>
Turnover		
Handsets Charges	X	X
Activation Charge	X	X
On-Net Charges	X	X
Off-Net Charges		
Outgoing (Fixed)	X	X
Incoming (Fixed)	X	X
(Outpayments)	X	X
Outgoing (Mobile)	X	X
Incoming (Mobile)	X	X
(Outpayments)	X	X
International		
Incoming	X	X
Outgoing	X	X
(Outpayments)	X	X
Roaming		
Inbound		
Incoming	X	X
Outgoing	X	X
Outbound	X	X
SMS		
On-Net	X	X
Off-Net	X	X
(Outpayment)	X	X
MMS		
On-Net	X	X
Off-Net	X	X
(Outpayment)	X	X
Data Services charges	X	X
Subscription	X	X
Other Turnover	X	X
<i>Total Turnover</i>	X	X

Telecommunications

Chap. 47:31

181

Telecommunications (Accounting Separation) Regulations

[Subsidiary]

Operating Costs:

Operating Costs specific to Retail	X	X
Operating Costs specific to Network	X	X
Depreciation	X	X
Personnel Costs		
Wages and Salaries	X	X
Subsistence and Travelling	X	X
Overtime	X	X
Other Costs	X	X
CCA Adjustments	X	X
Total Operating Costs	<u>X</u>	<u>X</u>
Return (excluding Universal Service Contribution, if any)	X	X
Universal Service Obligation Contributions from OLO	X	X
Return (including USO Contribution, if any)	X	X