

**A BILL  
ENTITLED**

**AN ACT** to Amend the *Telecommunications Act*.

**BE IT ENACTED** by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:-

**Short title,  
construction  
and com-  
mencement.**

1. This Act may be cited as the Telecommunications (Amendment) Act, 2011 and shall be read and construed as one with the *Telecommunications Act* (hereinafter referred to as the "principal Act") and all amendments thereto, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

**Amendment  
of section 2  
of principal  
Act.**

2. Subsection (1) of section 2 of the principal Act is amended –

(a) by inserting next after the definition of "assign" the following definition -

“ “authorized officer” means for purposes of sections 4(1) and 23A(9), any member of staff of the Office, a member of any of the Constabulary Forces, and any other person authorized by the Office to assist it in the performance of its functions under this Act;”;

(b) in the definition of "interconnection", by deleting the word "voice";

(c) by deleting the definition of "licence" and substituting therefor the following definition –

“ “licence”, other than a spectrum licence, means a licence issued under this Act and "licensee" shall be construed accordingly;”;

(d) by inserting next after the definition of "prescribed equipment" the following definition -

“ “public body” means –

- (a) a Ministry, department, Executive Agency or other agency of Government;
- (b) a statutory body or authority;
- (c) any Government company which is wholly owned by the Government or an agency of the Government, or in which the Government holds more than fifty *per centum* of the shares;”;
- (e) by deleting the definitions of “subscriber television service” and “specified service” and substituting therefor the following definitions –
  - “specified service” means a telecommunications service or such other service as may be prescribed;
  - “spectrum licence” means a licence granted under Part IV and
  - “spectrum licensee” shall be construed accordingly;
  - “subscriber television service” has the same meaning as in the *Broadcasting and Radio Re-Diffusion Act*,” and
- (f) by inserting next after the definition of “uncontrollable forces” the following definition –
  - “ “Universal Service Fund” means the fund established pursuant to section 38A;”.

**Amendment  
of section 4  
of principal  
Act.**

- 3. Section 4 of the principal Act is amended –
  - (a) in subsection (1), by –
    - (i) inserting next after paragraph (b) the following as paragraph (bb) –
      - “(bb) make such recommendation to the Minister as the Office considers necessary or desirable as to whether a licence should be suspended for such period as the

Office considers appropriate or should be revoked;”;

- (ii) deleting paragraph (d) and substituting therefor the following as paragraph (d) -

“(d) carry out, on its own initiative or at the request of any person, investigations in relation to a licensee’s conduct as will enable it to determine whether, and to what extent, the licensee is acting in contravention of this Act; and in the exercise of this function the Office may -

- (i) summon and examine witnesses;
- (ii) as it considers necessary, summon the production by a licensee of equipment, records, documents or other information maintained or stored by the licensee, in whatever manner;
- (iii) require that any record, document or other information produced, be verified by affidavit;
- (iv) enter and search, in the company of an authorized officer, the premises or other property of a licensee, and inspect, or seal or remove, such equipment, records, documents or other information referred to in sub-paragraph (i); or
- (v) conduct or make any other necessary enquiries;”;

- (b) by deleting subsection (4) and substituting therefor the following

as subsection (4) -

- “ (4) The Office may, in the exercise of its functions –
- (a) direct any licensee to maintain such records, documents or other information for such period as the Office may prescribe; and
  - (b) require a licensee to furnish such records, documents or other information as it may specify in relation to that licensee’s operations,

and, where the Office so directs or requires, the Office shall grant to the licensee a reasonable time within which to furnish the records, documents or other information and state, in writing, the reason for which the record, document or other information is required.”; and

(c) in subsection (5), by deleting -

- (i) the word “office” and substituting therefor the word “Office”; and
- (ii) the words “subject to affirmative resolution” and substituting therefor the words “by order after consultation with the Minister and published in the *Gazette*”.

**Amendment  
of section 7  
of principal  
Act.**

4. Section 7 of the principal Act is amended -

(a) in subsection (3) –

(i) in paragraph (a) –

(A) by deleting sub-paragraph (iii) and substituting therefor the following as sub-paragraph (iii) –

“(iii) to the Minister, an agent of the Office or consultant providing his professional

services to the Office, or to the Fair Trading Commission; or”;

(B) in paragraph (iv), by deleting the semi-colon appearing at the end of the sub-paragraph and substituting therefor the symbol and word “; or”;

(C) by inserting next after sub-paragraph (iv) the following as sub-paragraph (v) –

“(v) to any person carrying out regulatory or other functions under this Act or any other enactment;”;

(ii) in paragraph (c), by deleting the full stop appearing at the end of the paragraph and substituting therefor the symbol and word “; or”; and

(iii) by inserting next after paragraph (c), as amended, the following as paragraph (d) -

“(d) disclosure is required under any other enactment.”;

and

(b) in subsection (6), by deleting the words “In this” and substituting therefor the words “Subject to section 7A, in this”.

**Insertion of  
new section  
7A in  
principal  
Act.**

5. The principal Act is amended by inserting next after section 7 the following as section 7A -

**“Information  
that is not  
confidential.**

7A. For the purposes of section 7, the following information is not confidential -

(a) information that will facilitate customer choice and industry development; and

(b) information relating to –

(i) quality of service measurements;

- (ii) prices;
- (iii) network coverage of licensees; and
- (iv) the market share of licensees.”.

**Amendment  
of section 14  
of principal  
Act.**

6. Section 14 of the principal Act is amended –
- (a) by deleting subsection (4) and substituting therefor the following as subsection (4) -
- “ (4) Where a licensee fails to comply with any requirement of a notice under subsection (1), the Office may recommend to the Minister that the licence –
- (a) be suspended for such period as the Office considers appropriate; or
  - (b) be revoked.”; and
- (b) in subsection (6), by deleting from paragraph (h) the word “obligation”.

**Amendment  
of section 20  
of principal  
Act.**

7. Subsection (2) of section 20 of the principal Act is amended, by deleting paragraphs (c) and (d) and substituting therefor the following as paragraphs (c) and (d) -
- “ (c) issue spectrum licences, authorizing the use of specified portions of the spectrum, on condition that the spectrum is to be used and operated -
- (i) in an efficient manner; or
  - (ii) in accordance with international best practices;
- (d) institute procedures for ensuring the compliance by spectrum licensees with any obligation regarding the use and operation of the spectrum, imposed by or under the spectrum licence, any provisions of this Act or any regulation made hereunder.”.

**Insertion of  
new section  
23A in  
principal  
Act.**

8. The principal Act is amended by inserting next after section 23 the following as section 23A -

**“Suspension  
or revocation  
of spectrum  
licence.**

23A. - (1) Where the Authority has reason to believe that a spectrum licensee has contravened any term or condition of the spectrum licence or has failed to pay any amount required under section 23(7) or 26, the Authority shall give to that spectrum licensee notice in writing -

(a) specifying the particulars of the contravention;  
and

(b) requiring the spectrum licensee to justify his actions to the Authority, or otherwise take such remedial action within such time as may be specified in the notice.

(2) Where the Authority gives any notice under subsection (1), the Authority shall send a copy thereof to the Minister, for his information.

(3) Where a spectrum licensee fails to justify its actions to the satisfaction of the Authority or fails or refuses to take any remedial action specified in the notice issued under subsection (1), the Authority shall notify the Minister, in writing, of the fact of such failure or refusal.

(4) Where a spectrum licensee fails to comply with any requirements of a notice under subsection (1), the Authority may recommend to the Minister that the spectrum licence -

(a) be suspended for such period as the Authority considers appropriate; or

(b) be revoked.

(5) Before suspending or revoking a spectrum licence, the Minister shall direct the Authority to notify the spectrum licensee accordingly and shall afford the spectrum licensee an opportunity to show cause why the spectrum licence should not be suspended or revoked.

(6) Subject to subsection (8), the Authority may recommend to the Minister that a spectrum licence be suspended or revoked, as the case may be, if, on its own initiative or on representations made by any other person, the Authority is satisfied that the spectrum licensee has -

- (a) knowingly made any false statement in an application for a spectrum licence or in any statement made to the Authority;
- (b) knowingly failed to provide information or evidence that would have resulted in a refusal to grant a spectrum licence;
- (c) wilfully failed to comply with the terms and conditions of the spectrum licence;
- (d) wilfully contravened any provision of this Act or any regulation made hereunder;
- (e) violated or failed to comply with a cease and desist order under this Act;



- (f) provided services not authorized by its spectrum licence;
- (g) failed to pay in a timely manner any fee imposed pursuant to section 23(7) or 26; or
- (h) failed to utilize the spectrum efficiently or failed to use the spectrum.

(7) The Minister may, upon the recommendation of the Authority, revoke a spectrum licence where the licence of a spectrum licensee is being assigned or where the control of its operations is being transferred.

(8) Before taking action under subsection (6), the Authority shall carry out such investigations as may be necessary and afford the spectrum licensee concerned an opportunity to be heard.

(9) For the purpose of this section, the Authority may -

- (a) summon and examine witnesses;
- (b) as it considers necessary, summon the production by the spectrum licensee of equipment, records, documents or other information maintained or stored by the spectrum licensee in whatever manner;
- (c) require that any document submitted be verified by affidavit;
- (d) enter and search, in the company of an authorized officer, the premises or other

property of a spectrum licensee and inspect, or seal or remove such equipment, records, documents or other information for the purpose of carrying out its investigations.

(10) If a person fails or refuses without reasonable cause, to furnish information to the Authority when required to do so or obstructs the Authority in the exercise of its functions under this section, the Authority may apply to the Court for an order to compel the person to comply with the requirements of the Authority.”.

**Amendment  
of section 27  
of principal  
Act.**

9. Section 27 of the principal Act is amended –
  - (a) in the definition of “dominant public voice carrier”, by deleting the words “voice carrier” wherever they appear and substituting therefor, in each case, the words “telecommunications carrier”;
  - (b) in the definition of “interconnection provider”, by deleting the words “voice carrier” wherever they appear and substituting therefor, in each case, the words “telecommunications carrier”;
  - (c) in the definition of “interconnection seeker”, by deleting the words “voice carrier” wherever they appear and substituting therefor, in each case, the words “telecommunications carrier”;
  - (d) in the definition of “point of interconnection”, by deleting the word “voice”;
  - (e) in the definition of “public voice carrier”, by deleting –
    - (i) the word “voice carrier” and substituting therefor the word “telecommunications carrier”;
    - (ii) the words “public voice network” and substituting therefor

the words “public network”;

(iii) the words “voice service” and substituting therefor the words “telecommunications service”; and

(f) in the definition of “reference interconnection offer”, by deleting -

(i) the word “price” and substituting therefor the word “charge”;

(ii) the words “public voice carrier” and substituting therefor the words “public telecommunications carrier”; and

(iii) the words “public voice network” and substituting therefor the words “public network”.

**Amendment  
of section 28  
of principal  
Act.**

10. Section 28 of the principal Act is amended by deleting from –

(a) subsection (1), the words “voice carriers” and substituting therefor the words “telecommunications carriers”; and

(b) subsection (3), the words “voice carrier” and substituting therefor the words “telecommunications carrier”.

**Amendment  
of section 29  
of principal  
Act.**

11. Section 29 of the principal Act is amended -

(a) in subsection (1), by deleting –

(i) the words “public voice network” and substituting therefor the words “public network”; and

(ii) the words “voice services” and substituting therefor the words “telecommunications services”;

(b) in subsection (2), by deleting -

(i) the words “voice carrier” and substituting therefor the words “telecommunications carrier”; and

(ii) from paragraph (a), the words “public voice network” wherever they appear and substituting therefor, in each case, the words “public network”;

(c) by deleting subsection (4) and substituting therefor the following as

subsection (4) -

“ (4) The Office may –

(a) on its own initiative, in assessing an interconnection agreement, make a determination of the terms and conditions, including charges; or

(b) resolve post-contract disputes; and in resolving such disputes brought by a licensee before the Office for resolution –

(i) make such determination as it thinks fit; and

(ii) the provisions of section 34 (2) and (3) apply, *mutatis mutandis*, as they apply to pre-contract disputes.”; and

(d) by deleting subsections (5) and (6) and substituting therefor the following as subsections (5), (5A) and (6) -

“ (5) When making a determination of an operator’s interconnection charges, the Office shall have regard to -

(a) the principles of cost orientation;

(b) reciprocity;

(c) local and international benchmarks; or

(d) any other approach that is relevant to the determination of interconnection charges.

(5A) Any determination of the Office made pursuant to subsection (4) shall be binding on the operator.

(6) For the purposes of subsections (4) and (5) –

“reciprocity” means basing a carrier’s interconnection charges on the interconnection charges of another carrier; and

“post-contract dispute” means a dispute between an

interconnection provider and interconnection seeker after the terms of the interconnection agreement have been settled.”.

**Amendment  
of section 30  
of principal  
Act.**

12. Section 30 of the principal Act is amended by deleting from -
  - (a) subsection (1) –
    - (i) the words “voice carrier” and substituting therefor the words “telecommunications carrier”; and
    - (ii) the words “public voice network” and substituting therefor the words “public network”; and
  - (b) subsection (2), the words “voice carrier” and substituting therefor the words “telecommunications carrier”.

**Amendment  
of section 32  
of principal  
Act.**

13. Section 32 of the principal Act is amended, by deleting from -
  - (a) subsection (1) -
    - (i) the words “public voice network” and substituting therefor the words “public network”; and
    - (ii) the words “voice services” and substituting therefor the words “telecommunications services”;
  - (b) subsection (2) -
    - (i) the words “voice carrier” and substituting therefor the words “telecommunications carrier”; and
    - (ii) the words “voice service” and substituting therefor the words “telecommunications services”;
  - (c) subsection (3), the word “prescribed” and substituting therefor the words “specified by the Office and shall remain in force for a period not exceeding five years or such shorter period as the Office considers necessary having regard to technology and market developments”; and

- (d) subsection (4), the words “in the prescribed manner” and substituting therefor the words “and all existing interconnection agreements executed by that carrier shall be amended in accordance with the approved reference interconnection offer”.

**Amendment  
of section 33  
of principal  
Act.**

14. Section 33 of the principal Act is amended -

- (a) in subsection (1), by deleting –
  - (i) the words “prices at which interconnection is to be provided” and substituting therefor the words “charges for the provision of interconnection”; and
  - (ii) from paragraph (e) -
    - (A) the words “prices for interconnection” and substituting therefor the words “interconnection charges”; and
    - (B) the word “prices” and substituting therefor the word “charges”; and
- (b) by deleting subsection (2) and substituting therefor the following as subsection (2)–
  - “ (2) The Office may take into account local and international benchmarks when determining charges.”.

**Amendment  
of section 34  
of principal  
Act.**

15. Section 34 of the principal Act is amended -

- (a) in subsection (2), by deleting the full stop appearing at the end of the subsection and substituting therefor the symbol and words “; and such rules shall be made by the Office, after consultation with the Minister, by order published in the *Gazette*.”; and
- (b) in subsection (4), by deleting the words “voice carrier” and substituting therefor the words “telecommunications carrier”.

**Amendment  
of section 35  
of principal**

16. Section 35 of the principal Act is amended by deleting –

- Act.**
- (a) from subsection (1) -
    - (i) the words “subject to subsection (3), make rules subject to affirmative resolution” and substituting therefor the words “, after consultation with the Minister, by order and published in the *Gazette*”; and
    - (ii) the words “voice carriers” and substituting therefor the words “telecommunications carriers”; and
  - (b) subsection (3).
- Amendment of section 36 of principal Act.**
17. Section 36 of the principal Act is amended –
- (a) in subsection (1), by deleting –
    - (i) the words “subject to affirmative resolution” and substituting therefor the words “by order after consultation with the Minister and published in the *Gazette*”; and
    - (ii) the words “voice carrier” and substituting therefor the words “telecommunications carrier”; and
  - (b) by deleting subsection (2) and substituting therefor the following as subsection (2) –
 

“ (2) In subsection (1), "indirect access" means the method whereby customers are able to access specified services provided by another carrier through the telecommunications network and the telecommunications services of the carrier with whom the customer is directly and physically connected.”.
- Amendment of section 37 of principal Act.**
18. Subsection (1) of section 37 of the principal Act is amended, in subsection (1) by deleting the words “voice carrier” and substituting therefor the words “telecommunications carrier”.
- Insertion of new section 37A in principal**
19. The principal Act is amended by inserting next after section 37 the following as section 37A -

**Act.**

**“Minister  
may set interim  
rates for whole-  
sale and retail  
services.**

37A. – (1) Subject to subsection (2), where there is a marked diversity in rates or where there is market shock, the Minister may, after consultation with the Office, set interim rates for wholesale and retail services.

(2) Interim rates set pursuant to subsection (1) shall –

(a) be applicable for a defined period, (not exceeding twelve months) and shall not be lower than the lowest price for the particular service offered in the market; and

(b) be established, pending the completion of the Office’s rate determination process.

(3) In the event that the Office does not, or is unable to, determine the rates before the expiration of the defined period, the Minister may extend the application of the interim rates for a further period, not exceeding six months; and thereafter, if the rates are still not determined by the Office, the rates which existed prior to implementation of the interim rates shall be reinstated until such determination is made by the Office, so, however, that the original rates shall not have retroactive effect.”.

**Amendment  
of section 38  
of principal**

20. Section 38 of the principal Act is amended –



- Act.
- (a) by renumbering the section as subsection (1) of the section;

(b) in subsection (1), as renumbered, by –

(i) deleting from paragraph (a) the word “voice”;

(ii) deleting the full stop appearing at the end of paragraph (d) and substituting therefor a semicolon; and

(iii) inserting next after paragraph (c), the following as paragraph (cc) –

“(cc) there shall be a universal service levy that shall be imposed, by the Minister, on licensees under this Act, in support of universal service;”;

and

(c) by inserting next after subsection (1), as renumbered, the following as subsection (2) –

“(2) The Minister may make regulations, subject to affirmative resolution of the House of Representatives, in relation to the computation of the universal service levy.”.

Insertion of new sections 38A, 38B, 38C, 38D, 38E, 38F, 38G and 38H in principal Act.	21. The principal Act is amended by inserting next after section 38 the following as sections 38A, 38B, 38C, 38D, 38E, 38F, 38G and 38H -	
	<b>“Universal Service Fund.</b>	38A. There is hereby established a fund to be known as the Universal Service Fund, which shall form part of the Consolidated Fund.
	<b>Objectives of Fund.</b>	38B. The objectives of the Fund shall be to support the implementation of the obligation to provide universal service, as approved by the Minister, in accordance with the principles set out in section 39(2) and the uses specified in section 42A.

**Designation of  
manager of Fund.**

38C. For the purposes of this Act, the Minister shall, by order published in the *Gazette*, designate a public body to be the manager of the Fund.

**Functions  
of manager  
of Fund.**

38D. The manager of the Fund shall be responsible for achieving the objectives of the Fund, and for the management of the Fund.

**Funds and  
resources  
of Fund.**

38E. - (1) The funds and resources of the Fund shall consist of the universal service levy imposed on licensees pursuant to this Act and shall be paid into the Consolidated Fund.

(2) The expenses of the Fund shall be paid out of the Fund.

**Accounts.**

38F. - (1) The manager of the Fund shall keep proper accounts and other records in relation to the Fund and shall prepare annually a statement of accounts in a form satisfactory to the Minister responsible for Finance and conforming to established accounting principles.

(2) The accounts of the Fund shall be audited annually by an auditor appointed by the manager of the Fund.

(3) The Auditor-General shall be entitled at all times to examine the accounts of the Fund.

**Reports on Fund.**

38G. - (1) The manager of the Fund shall, within four months after the end of each financial year, cause to be made and shall transmit to the

Minister a report dealing generally with the activities of the Fund during the preceding financial year.

(2) The Minister shall cause a copy of the report, together with the annual statement of accounts and the auditor's report thereon to be laid in the House of Representatives and the Senate.

**Returns, etc.**

38H. The manager of the Fund shall furnish the Minister with such returns, accounts and other information as he may require with respect to the Fund, and shall afford to the Minister the facilities for verifying such information in such manner and at such times as he may reasonably require.”.

**Amendment  
of section 39  
of principal  
Act.**

22. Section 39 of the principal Act is amended –

- (a) in subsection (1), by deleting the word “and” appearing at the end of paragraph (a) and substituting therefor the word “or”;
- (b) in subsection (2), by deleting paragraph (d) and substituting therefor the following as paragraph (d) –

“ (d) to the extent technically feasible, and insofar as the necessary resources are available, to -

- (i) promote Internet access in educational institutions, public libraries and post offices throughout Jamaica;
- (ii) pursue strategies to increase access to high capacity networks and the dissemination of

information and communications technology services in unserved and under-served areas of Jamaica;

- (iii) support information and communications technology programmes that specifically target vulnerable groups, including low-income households, the elderly, the youth and disabled persons;
- (iv) provide access points and multifunction telecentres;
- (v) fund connectivity services and support the provision of infrastructure to educational institutions, public libraries and post offices throughout Jamaica to facilitate the use of information and communications technology; or
- (vi) provide Internet access devices and applications for the training of students in the use of the Internet and other information and communications technology services to support Government's plan of creating an information and knowledge-based society.”.

**Amendment  
of section 42  
of principal  
Act.**

23. Section 42 of the principal Act is amended, by deleting –

- (a) from subsection (2) (b), the words “universal service obligation levy” and substituting therefor the words “universal service levy”;  
and
- (b) subsection (3).

**Insertion of  
new section  
42A in  
principal  
Act.**

24. The principal Act is amended by inserting next after section 42, the following as section 42A -

**“Uses of  
universal  
service  
levy.**

42A. – (1) The universal service levy shall be utilized to fund the obligation to provide universal service determined based on the principles set out in section 39(2) and the following –

- (a) the provision of loans or grants for information and communications technology projects operated by local non-profit organizations and loans, grants or equity investment for information and communications technology projects operated by local micro-businesses (excluding domestic network operators) for the purpose of stimulating the expansion of information and communications technology access;
- (b) the facilitation of lifelong learning and a knowledge-based society, by providing universal access to information;
- (c) the promotion of information, together with the enhanced development of local content; and
- (d) the promotion of information and communications technology literacy through literacy programmes and the Government’s delivery of e-services.

(2) In this Part -

“domestic network operators” means domestic carriers

that own or operate a public network;

“eligible revenues” means revenues which form the basis of calculation of contributions by licensees, as determined in the prescribed manner.”.

**Amendment  
of section 43  
of principal  
Act.**

25. Section 43 of the principal Act is amended, by deleting -
- (a) the heading appearing immediately before the section and substituting therefor the following heading -
 

“ PART VII. *Consumer Protection and Infrastructure Sharing* ”;

and
  - (b) the definition of “consumer” and substituting therefor the following definition -
 

“ “consumer” means a person to whom facilities or specified services are provided or are intended to be provided in the course of a business carried on by a carrier or service provider;”.

**Amendment  
of section 44  
of principal  
Act.**

26. Section 44 of the principal Act is amended -
- (a) in subsection (1), by deleting -
    - (i) the words “retail services” and substituting therefor the words “facilities or specified services”; and
    - (ii) the words “those services” wherever they appear and substituting therefor, in each case, the words “those facilities or specified services”;
  - (b) in subsection (2), by deleting the word “services” and substituting therefor the words “facilities or specified services”; and
  - (c) by deleting subsections (3) and (4) and substituting therefor the following as subsections (3), (4) and (5) -
 

“ (3) The Office may -

- (a) make rules, after consultation with the Minister, by order published in the *Gazette*, prescribing quality standards for the provision of facilities or specified services in relation to all licensees, and relating to the administration and resolution of customer complaints; and
  - (b) direct the licensees to conduct all required associated measurements.
- (4) Rules made under subsection (3) regarding customer complaints shall be applicable to and shall be observed by all licensees.
- (5) The Office may –
- (a) examine and approve customer contracts in respect of wholesale and retail services; and
  - (b) direct the modification of any term of a contract which appears to the Office to be unfair.”.

**Repeal and replacement of section 45 of principal Act.**

27. Section 45 of the principal Act is repealed and the following substituted therefor –

**“Restriction on licensee to refuse to provide facilities and services.**

45. A licensee may -

- (a) refuse to provide facilities or specified services to consumers; or
  - (b) discontinue or interrupt the provision of such facilities and specified services to a customer pursuant to an agreement with that customer,
- only on grounds which are reasonable and non-discriminatory and where any such action is taken, the licensee shall state the reasons therefor.”.

**Amendment  
of section 46  
of principal  
Act.**

28. - (1) Section 46 of the principal Act is amended -

- (a) in subsection (1), by inserting the following definitions in their correct alphabetical sequence –

“infrastructure sharing” means the provision to licensees of access to tangibles used in connection with a public network or intangibles facilitating the utilization of a public network;

“intangibles” includes agreements, arrangements, licences, franchises, rights-of-way, easements and, other similar interests;

“tangibles” includes –

- (a) lines, cables and wires;
- (b) equipment and apparatuses;
- (c) towers, risers and masts;
- (d) conduits, tunnels and ducts;
- (e) manholes and other holes and pits;
- (f) poles and antennae;
- (g) landing stations and huts; and
- (h) lands, buildings, property and other similar facilities.”;

- (b) in subsection (2), by inserting immediately after the word “rules” the words “, after consultation with the Minister , by order published in the *Gazette*”;

- (c) by inserting next after subsection (2), the following as subsections (3), (4) and (5) -

“ (3) The Office may –

- (a) impose an infrastructure sharing obligation on a licensee, where it is reasonably justified on grounds such as –



- (i) matters relating to public health or to the environment or town planning or other development considerations;
  - (ii) economic inefficiencies; or
  - (iii) physical impracticability;
- (b) after consultation with the operators of public networks, establish the terms and conditions that shall be fulfilled in infrastructure sharing arrangements; and
- (c) hear and determine complaints made by licensees, and disputes in respect of charges and other terms and conditions of the infrastructure sharing arrangement.
- (4) All infrastructure sharing arrangements made by the Office shall include the making of rules by order, after consultation with the Minister, and published in the *Gazette*, for the apportionment of the costs of sharing infrastructure; and such rules shall be made in accordance with the principles set out in section 34.
- (5) In determining the terms and conditions of infrastructure sharing under subsection (3), the Office shall consult with the relevant environmental and planning authorities and the Authority.”.

**Amendment  
of section 48  
of principal  
Act.**

29. Section 48 of the principal Act is amended, in the marginal note thereto and in subsection (1), by deleting the words “voice services” wherever they appear and substituting therefor, in each case, the words “telecommunications services”.

**Amendment  
of section 57  
of principal  
Act.**

30. Section 57 of the principal Act is amended by deleting the words “subject to affirmative resolution” and substituting therefor the words “by order

published in the *Gazette*".

**Amendment of section 62 of principal Act.** 31. Section 62 of the principal Act is amended by deleting subsection (3) and renumbering subsections (4), (5) and (6) as subsections (3), (4) and (5).

**Amendment of section 63 of principal Act.** 32. - (1) Section 63 of the principal Act is amended -

- (a) by deleting subsection (1) and substituting therefor the following as subsections (1), (1A) and (1B) –

“ (1) The Office or Authority, as the case may be, may, on its own initiative or on the application of any person, where it is satisfied that there are reasonable grounds for believing that any conduct specified in subsection (2) is being carried out by any person –

- (a) issue to the person concerned –

- (i) a cease and desist order under section 63;
- (ii) an order requiring a licensee or a spectrum licensee to pay compensation to any person affected by any action of either the licensee or spectrum licensee, in contravention of this Act or any enactment hereunder or any licence, spectrum licence, determination, memorandum, order or directive of the Office or the Authority;
- (iii) an order requiring the licensee to take such steps as are necessary to remedy the effects of any harm caused by the conduct of the licensee or the spectrum licensee in contravention of this Act, any enactment hereunder or any licence, spectrum licence, determination,

memorandum, order or directive of the Office or the Authority;

- (iv) an order to terminate, modify or nullify agreements activities or decisions of the licensee the spectrum licensee, which are found to be in contravention of this Act or, any enactment hereunder or any licence, spectrum licence determination, memorandum, order or directive of the Office or the Authority;
- (v) in the case of the Office, an order requiring the licensee to pay monetary penalties not exceeding ten *per centum* of the gross revenue of that licensee in the calendar year immediately preceding the year when the infringement was allegedly committed; or
- (vi) in the case of the Authority, an order requiring the spectrum licensee to pay monetary penalties not exceeding one million dollars; or

- (b) petition the court for an interim injunction against a licensee or spectrum licensee, whose actions, in the opinion of the Office or the Authority, could cause severe disruption to the operations of another such licensee or spectrum licensee or could cause irreparable damage.

(1A) In a case where a court issues an interim injunction, the court shall not require a financial undertaking by the Authority or Office.

(1B) The Office or the Authority shall not impose monetary penalties under this Act, unless -

(a) in all the circumstances of the case, the monetary penalty sought to be imposed is proportionate and reasonable; and

(b) the Office or Authority has considered –

- (i) any gain that has been derived by the telecommunications licensee or spectrum licensee in consequence of the alleged breach;
- (ii) the degree of harm caused to, or the cost incurred by, consumers of such licensee's facilities or specified services or by other involved parties;
- (iii) the revenue *per annum* of the relevant licensee;
- (iv) the extent to which the contravention was caused by a third party;
- (v) the duration of the contravention;
- (vi) previous breaches, if any, committed by that licensee;
- (vii) the steps, if any, taken by that licensee or spectrum licensee to remedy the breach or mitigate any loss or damage; and
- (viii) the circumstances in which the contravention took place.

(1C) Without prejudice to the any other method of recovery, any monetary penalty payable to the Office or

the Authority may be recovered as a civil debt in a court of competent jurisdiction. ”;

(c) in subsection (2), by inserting next after paragraph (c) the following as paragraphs (d), (e), (f), (g), (h), (i), and (j) –

“(d) providing false or misleading information to the Office or the Authority;

(e) failing to comply with requests for information made by the Office or the Authority;

(f) breaching orders, directives, determinations or memoranda of the Office or the Authority;

(g) behaving in a manner which is inconsistent with provisions of any -

(i) enactment, including this Act or any regulation hereunder or the *Office of Utilities Regulation Act* or any regulation thereunder;

(ii) licence or spectrum licence; or

(iii) orders, directives determinations or memoranda, of the Office or the Authority;

(h) breaching any quality of service standards established or approved by the Office or the Authority;

(i) undertaking or embarking upon any course of action which could reasonably be expected to result in the disruption or interruption of the telecommunications industry or interference with the use of the spectrum; or

(j) utilizing the spectrum without a spectrum licence granted by the Minister.”.

**Amendment of section 65 of principal Act.** 33. Section 65 of the principal Act is amended, by inserting -

- (a) immediately after the word “Office” wherever it appears the words “or the Authority” in each case;
- (b) immediately after the word “licensee” wherever it appears in each case the words “or spectrum licensee”;
- (c) immediately after the word “licensee’s” wherever it appears the words “or spectrum licensee’s” in each case;
- (d) immediately after the word “licence” wherever it appears the words “or spectrum licence” in each case.

**Amendment of section 71 of principal Act**      34.      Subsection (1) of section 71 of the principal Act is amended by deleting the words “The Office” and substituting therefor the words “Unless otherwise specified in this Act, the Office”.

**Insertion of new sections 71A and 71B in principal Act.**      35.      The principal Act is amended by inserting next after section 71 the following as sections 71A and 71B-

**“Office may forbear application of provision of Act, etc.**      71A.      Notwithstanding the powers of the Office under this Act, the Office may forbear from applying any provision of this Act or any rule made hereunder if the Office determines that –

- (a) enforcement of the provision or rule is not necessary to ensure the achievement of the objects of this Act;
- (b) forbearance from applying the provision will not impede the administration of this Act; or
- (c) forbearance from applying the provision or rule is consistent with the interest of the public.

Consultation.      71B. – (1) Where, pursuant to sections 5, 35, 37A(1), 46(3) (b) ,73(1) or any other section, the Office is

required to consult with the Minister, the Fair Trading Commission, or any other person or body, the consultation period shall not exceed eight months from the first day on which consultation was commenced by the Office, so, however, that the Office may, after consultation with the Minister, in special circumstances, allow such longer consultation period as it thinks necessary.

(2) In the exercise of its rule-making functions under this Act, the Office shall consult with the Minister responsible for finance in all matter relating to the imposition of fees, the expenditure of public moneys and in any other matter that has budgetary and fiscal implication.”.

### **MEMORANDUM OF OBJECTS AND REASONS**

An Information and Communications Technology (ICT) Policy for Jamaica was tabled in Parliament in April, 2011. The Policy recognizes the inadequacy of current legislation to meet the needs of a liberalized and converged ICT environment and, as such, makes recommendations for the promulgation of an ICT Act to address these concerns. A decision has been taken to overhaul the provisions of the *Telecommunications Act* comprehensively in the near future. In the interim, a decision has been taken to amend that Act to address some of the major concerns highlighted in the ICT Policy. Other provisions have been included for the purposes of facilitating the optimal functioning of the Telecommunications Industry at present.

Consequently, this Bill seeks to amend the *Telecommunications Act* in

order to, *inter alia*, address –

- (a) the sharing of telecommunications facilities and infrastructure, where feasible;
- (b) the allowing of the Office of Utilities Regulation (O.U.R.) to take into account, when determining rates, all relevant factors, including cost orientation and local and international bench marks;
- (c) the grant to the Minister of an express power, after consultation with the O.U.R., to set interim rates for wholesale and retail services where there is a marked diversity in rates; and without the application of such rates having retroactive effect;
- (d) procedures regarding the use and operation of the spectrum, so as to ensure its efficient use and operation;
- (e) provision for the O.U.R. and the Spectrum Management Authority (S.M.A) to be given direct enforcement powers, thereby enabling them to –
  - (i) impose remedies, including, *inter alia*, orders for compensation to persons adversely affected by any action by licensees, which contravene the Act, or any rule made hereunder or any spectrum licence, other licence, determination, memorandum, order, regulation or directive of the O.U.R. and the S.M.A, as the case may be, and orders to terminate, modify or nullify agreements, activities or decisions of licensees, found to be in contravention of the Act, any rule made hereunder or any licence, spectrum licence, determination, memorandum, order, regulation or directive of the O.U.R. and the S.M.A, as the case may be;
  - (ii) impose penalties up to a maximum of 10 *per centum* of the



gross revenue of the offending licensee and up to a maximum of one million dollars for the offending spectrum licensee; and

- (iii) the O.U.R. and the S.M.A will also be able to petition the court for an interim injunction against any licensee whose actions, in the opinion of the O.U.R. or the S.M.A, may cause irreparable damage; and, in this regard, prevent the O.U.R and the S.M.A from having to first provide a financial undertaking.

In addition, the Bill seeks to expand the principles of universal service, beyond physical access, to encompass resource access and basic access and to make the quantum of the universal service levy subject to affirmative resolution of the House of Representatives.

**Andrew Holness,  
Prime Minister**