

A BILL

ENTITLED

AN ACT to Amend the Telecommunications Act.

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

1. This Act may be cited as the Telecommunications (Amendment) Act, 2012 and shall be read and construed as one with the Telecommunications Act (hereinafter referred to as the “principal Act”) and all amendments thereto. Short title, construction.

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 definitions—

“Authority” means the Spectrum Management Authority established under section 21;

“authorized officer” means—

- (a) for the purposes of section 4(1), a member of the Jamaica Constabulary Force or the Island Special Constabulary Force, member of staff of the office or any other authorized by the Office to assist it in the performance of its functions under this Act;
- (b) for the purposes of section 23A(9), a member of the Jamaica Constabulary Force or the Island Special Constabulary Force, and any member of staff of the office or any other person authorized by the Authority to assist it in the performance of its functions under this Act;

“Board” means the Board of Management of the Universal Service Fund established under section 38C;”;

- (b) by deleting the definition of “customer” and substituting therefor the following definition—

“court” means the Supreme Court of Judicature of Jamaica;

“customer” means a person who is provided with a facility or specified service by a service provider or carrier and includes the end user of that service or facility;”;

(c) in the definition of “interconnection”, by deleting the word “voice”;

(d) by deleting the definitions of “licence” and “licensee” and substituting therefor next after the definition of “internet access” the following definition—

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

(e) by deleting the definitions of “subscriber television service” and “specified service” and substituting therefor the following—

“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” or “Fund” means the fund established under section 38A;”.

3. Section 4 of the principal Act is amended—

Amendment of
section 4 of
principal Act.

(a) in subsection (1), by—

(i) renumbering paragraphs (c) to (i) as paragraphs (d) to (j) respectively and inserting the following as paragraph (c)—

“(c) make such recommendations 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 (e) as renumbered and substituting therefor the following—

“(e) 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 exercise of this function the Office may—

- (i) summon and examine witnesses
- (ii) summon the production by a licensee of equipment, records, documents or other information so maintained or stored, in whatever manner, as it considers necessary;
- (iii) require that any equipment, record, document or other information so 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 subparagraph (ii); and

(v) conduct or make any other necessary enquiries;”;

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

“ (4) The Office may, in the exercise of its functions, in writing—

(a) direct any licensee to maintain such records, documents or other information for such period as the Office may specify; and

(b) require a licensee to furnish, to the Office, such records, documents or other information in relation to that licensee’s operations, within such reasonable time and for such reason, as the Office may specify.”; and

(c) in subsection (5), by deleting the words “subject to affirmative resolution” .

4. Section 7 of the principal Act is amended—

Amendment of
section 7 of
principal Act.

(a) in subsection (1), by inserting after the word “Licences” the words “or spectrum licences, as the case may be,” and inserting after the word “licensees” the words “or spectrum licensees, as the case may be,”;

(b) in subsection (2), by inserting next after the words “ the Office” the words “ or Authority, as the case may be”;

(c) in subsection (3)—

(i) in paragraph (a)—

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

“(iii) to the Minister, an agent of or consultant providing professional services to the Office or Authority, as the case may be, or the Fair Trading Commission.”;

(B) in paragraph (iv), by inserting immediately after the word “Office” the words “or the Authority, as the case may be,” and by inserting immediately after the semicolon appearing at the end of the paragraph the 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;”;

(ii) in paragraph (b), by inserting immediately after—

(A) the word “Office” wherever it appears, the words “or the Authority, as the case may be”; and;

(B) the word “licensee” wherever it appears, the words “or spectrum licensee, as the case may be,”;

the word “Office” wherever it appears, the words “or the Authority, as the case may be”;

- (iii) in paragraph (c), by deleting the full stop appearing at the end of the paragraph and substituting therefor the symbol and word “; or”; and
- (iv) by inserting next after paragraph (c) the following as paragraph (d)—
 - “ (d) disclosure is required under any other enactment.”; and
- (d) by deleting subsection (6) and substituting therefor the following—
 - “ (6) Subject to section 7A, in this section “confidential information” means any information classified by the Office or the Authority, as the case may be, as confidential, in accordance with the following procedure—
 - (a) any licensee or spectrum licensee or applicant for a licence or spectrum licence who submits information to the Office or the Authority, as the case may be (hereinafter called “the submitting party”) may, in so doing, claim that the information is confidential for any of the following reasons, namely that—
 - (i) the information is a trade secret;
 - (ii) the information is subject to a claim of legal professional privilege;
 - (iii) the disclosure of the information would or could reasonably be expected to—
 - (A) result in significant financial loss or gain to any person;

- (B) prejudice significantly the competitive position of any person; or
 - (C) affect contractual or other liabilities of any person; or
 - (iv) the information relates to the private affairs of an individual and publication of that information would or might seriously and prejudicially affect the interests of that individual;
- (b) where the submitting party makes a claim that any document or part thereof is confidential for the purposes of this section, and one of the reasons indicates that specific direct harm would be caused to the submitting party or will seriously and prejudicially affect the interests of an individual, details shall be provided as to the nature and extent of such harm or prejudice;
- (c) where the Office or the Authority is of the opinion that, based on all the material before it,
- (i) specific direct harm or prejudice would be likely to result and outweighs any public interest in disclosing the information, the Office or the Authority, as the case may be, shall classify the information as confidential;
 - (ii) no specific direct harm or prejudice would be likely to result from disclosure, or where any such specific direct harm or prejudice is shown but is not sufficient to outweigh the public interest in disclosing the information, the Office or the Authority, as the case may be, shall not classify the information as confidential.

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

Insertion of
new section
7A in principal
Act.

"Information
that not
regarded as
confidential.

7A. For the purposes of section 7, the following information is not required to be regarded and dealt with as secret and confidential namely—

- (a) information that will facilitate customers in their choice of facilities or specified services and development of the telecommunications industry; and
- (b) information relating to—
 - (i) quality of service measurements;
 - (ii) prices charged to customers or other Licences;
 - (iii) network coverage of licensees;
 - (iv) the market share of licensees;
 - (v) the volume of services of licensees however measured;
 - (vi) the subscriber base of licensees; and
 - (vii) the capacity and usage of international submarine cables."

6. Section 14 of the principal Act is amended—

Amendment of
section 14 of
principal Act.

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

" (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—
 - (i) paragraph (b) the word “would” and substituting therefor the word “may”
 - (ii) paragraphs (c) and (d) the word “wilfully” wherever it appears;
 - (iii) paragraph (e) the word “violated” and substituting therefor the word “contravened”;
 - (iv) paragraph (h) the word “obligation”; and
- (c) in subsection (7) , by deleting the numeral “(1)” and substituting therefor the numeral “(6)”.

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—

- “ (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; and
 - (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 regulations made hereunder.”.

8. Subsection (1) of section 21 of the principal Act is amended by— Amendment of section 21 of principal Act.

- (a) inserting immediately after the word “establish” the words “ a body to be known as the”;
- (b) deleting the words “ (hereinafter referred to as “the Authority”)”.

9. Subsection (1) of section 23 of the principal Act is amended by deleting the words “licence (hereinafter referred to as a “spectrum licence”)” and substituting therefor the words “spectrum licence”. Amendment of section 23 of principal Act.

10. The principal Act is amended by inserting next after section 23 the following as section 23A— Insertion of new section 23A in principal Act.

“ 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 its 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 may have resulted in a refusal to grant a spectrum licence;
- (c) failed to comply with the terms and conditions of the spectrum licence;
- (d) contravened any provision of this Act or any rules or regulations made under this Act;
- (e) contravened 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 determined or imposed pursuant to section 23(7) or 26;
- (h) failed to utilize the spectrum efficiently at all.

(7) Where a licensee holds both a licence (in this section called a "telecommunications licence") and a spectrum licence, the Minister may, upon the recommendation of the Authority, revoke the spectrum licence in any case where it has been proposed that the telecommunications licence be assigned or where the control of the licensee's operations are being transferred (whether directly or indirectly).

(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 purposes of this section, the Authority may—

- (a) summon and examine witnesses;
- (b) summon the production by the spectrum licensee concerned of equipment, records, documents or other information maintained or stored by the spectrum licensee in whatever manner;
- (c) require that any equipment, record, document or information 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 any equipment, record, document or other 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.

11. Section 27 of the principal Act is amended—

- (a) by deleting the definition of “dominant public voice carrier” and substituting therefor the following—

“dominant public telecommunications carrier”
means a public telecommunications carrier that holds a dominant position in the telecommunications market in Jamaica within the meaning of section 19 of the *Fair Competition Act*;”;

- (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) by deleting the definition of “public voice carrier”, and substituting therefor the following—

“public telecommunications carrier” means a carrier who owns and operates a public network used to provide telecommunications service to the public;

- (f) by deleting the definition of “reference interconnection offer” and substituting therefor the following—

“reference interconnection offer” means an offer document setting out matters relating to the charges and terms and conditions under which a public telecommunications carrier will permit interconnection to its public network.”.

12. Section 28 of the principal Act is amended by deleting from—

Amendment of
section 28 of
principal Act.

- (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”.

13. Section 29 of the principal Act is amended—

Amendment of
section 29 of
principal Act.

- (a) in subsection (1), by deleting—
 - (i) the words “public voice network” wherever they appear and substituting therefor, in each case, 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 subsections (4), (5) and (6) and substituting therefor the following—
 - “ (4) The Office may—
 - (a) on its own initiative, in assessing an interconnection agreement, make a deter-

mination 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 subsections (2) and (3) of section 34 apply, with such modifications as are appropriate, as they apply to pre-contract disputes.

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

(a) the principles of cost orientation or reciprocity;

(b) local or international benchmarks; or

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

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

(7) 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 the parties to an interconnection agreement arising out of that agreement.”.

14. The principal Act is amended by inserting next after section 29 the following as section 29A—

Insertion of
new section
29A in the
principal Act.

“Infra-
structure
sharing.

29A.—(1) Subject to subsection (3) the Office may—

- (a) impose an infrastructure sharing obligation on a licensee, where the Office considers it to be justified having regard to any of the following considerations—
 - (i) matters relating to public health or to the environment or town planning or other development considerations;
 - (ii) economic inefficiencies; or
 - (iii) physical or technical impracticability; and
- (b) determine the terms and conditions of any infrastructure sharing obligation imposed pursuant to paragraph (a); 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.

(2) All infrastructure sharing arrangements made by the Office shall include the making of rules, after consultation with the Minister, for the apportionment of the costs of sharing infrastructure; and the rules shall be made in accordance with the principles set out in section 33.

(3) In determining whether to impose an infrastructure sharing obligation on a licensee, or in determining the terms and conditions of an infrastructure sharing obligation imposed under

subsection (1), the Office shall consult with licensees, the relevant environmental and planning authorities and the Authority.

(4) In this section—

“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, leases, licences, franchises, rights-of-way, easements and, other similar interests;

“tangibles” includes—

- (a) lines, cables and wires;
- (b) equipment and apparatus;
- (c) towers, risers and masts;
- (d) conduits, tunnels and ducts;
- (e) manholes and other holes and pits;
- (f) poles and antennae;
- (g) hats and landing stations; and
- (h) land, building and other real property.”.

Amendment of
section 30 of
principal Act.

15. 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”.
- 16. Section 32 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) the words “voice services” and substituting therefor the words “telecommunications services”;
 - (c) in subsection (3), by deleting 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) in subsection (4), by deleting the words “in the prescribed manner” and substituting therefor the words “and all existing interconnection agreements executed by the filing carrier shall be amended in accordance with the approved reference interconnection offer and until actually amended are deemed to be so amended”.

Amendment of
section 32 of
principal Act.

Amendment of
section 33 of
principal Act.

17. Section 33 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the words “prices at which interconnection is to be provided” and substituting therefor the words “charges for the provision of interconnection”;
- (ii) by deleting from paragraph (e) the words “prices for interconnection” and substituting therefor the words “with the exception of interconnection charges for wholesale termination services, interconnection charges”;
- (iii) by deleting the full stop appearing at the end of paragraph (f) and substituting therefor a semi-colon; and
- (iv) by inserting next after paragraph (f) the following as paragraph (g)—

“(g) in the case of charges for wholesale termination services, charges shall be calculated on the basis of forward looking long run incremental cost, whereby the relevant increment is the wholesale termination service and which includes only avoidable costs.”;

(b) by deleting subsection (2) and substituting therefor the following—

“(2) Where the Office has been unable to obtain cost information that it is reasonably satisfied is relevant and reliable it may take into account local and international benchmarks, reciprocity and any other approach that in the opinion of the Office is relevant.”;

- (c) by deleting subsection (3) and substituting therefor the following —

“ (3) In this section—

- (a) “access deficit” means the amount by which a carrier’s revenue from connection and line rental charges falls short of the cost of providing access lines due to regulatory constraints on those charges;
- (b) “avoidable costs” means the difference between—
 - (i) the identified total long run costs of a carrier providing its full range of telecommunications services; and
 - (ii) the identified total long run costs of the carrier providing its full range of telecommunications services, except for the wholesale call termination service supplied to any third party (which costs exclude non-traffic-related costs).”.

18. Section 34 of the principal Act is amended—

Amendment of
section 34 of
principal Act.

- (a) by deleting subsection (2) and substituting therefor the following—

“ (2) The Office may, after consultation with the Minister, make rules applicable to the arbitration of pre-contract disputes.”; and

- (b) in subsection (4), by deleting the words “voice carrier” and substituting therefor the words “telecommunications carrier”.

Amendment of
section 35 of
principal Act.

19. Section 35 of the principal Act is amended by deleting—

- (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, make rules”; and
 - (ii) the words “voice carriers” and substituting therefor the words “telecommunications carriers”; and
- (b) subsection (3).

Amendment of
section 36 of
principal Act.

20. Section 36 of the principal Act is amended—

- (a) in subsection (1), by deleting—
 - (i) the words “subject to affirmative resolution”; and
 - (ii) the words “voice carrier” and substituting therefor the words “telecommunications carrier”; and
- (b) by deleting subsection (2) and substituting therefor the following—
 - (2) In this section—

“calling platform” means an automated gateway which authenticates the caller for access, such as by way of an access code, credit card number, prearranged billing based on the calling number.”.

“indirect access”—

- (a) means the method whereby customers of a particular carrier are able to access specified services provided by another carrier through the telecommunications network and the telecommunications services of the first mentioned carrier with whom the customer is directly connected; but

- (b) does not include two stage dialling, this being the method by which the customer of one licensee is able to dial a ITU-TE164 number to reach a calling platform which facilitates the customer's access to the specified services of other licensees;

21. Section 37 of the principal Act is amended by deleting subsection (1) and substituting therefor the following as subsection (1)— Amendment of section 37 of principal Act.

“ (1) The Minister may after consultation with the office make rules imposing on any public telecommunications carrier the responsibility to offer number portability.”.

22. The principal Act is amended by inserting next after section 37 the following as section 37A— Insertion of new section 37A in principal Act.

“ Office may set interim rates and charges for wholesale and retail services.

37A.—(1) Subject to subsection (2), the Office may set Interim interconnection charges and an interim price cap for retail rates for telecommunications services.

(2) Interim interconnection charges and Interim price caps for retail rates set pursuant to subsection (1) shall—

- (a) be applicable for a defined period, (being a period not exceeding twelve months);
- (b) be established, pending the completion of the process to determine interconnection charges or to make price cap rules, as the case may be, in accordance with section 4(2), 33 and or 46.

(3) When setting an interim interconnection charge or an interim price cap for retail rates, the Office shall have regard to reciprocity, local or international benchmarks or such other relevant data or information as may be available to the Office, from time to time.

(4) In the event that the Office is unable to determine interconnection charges or make price cap rules for retail rates before the expiration of the defined period, the Minister may extend the application of the interim interconnection charges or interim price caps for retail rates for a further period, being a period not exceeding six months.

(5) If, after the further period, the interconnection charges or price cap rules for retail rates are still not determined by the Office, the midpoint between the interconnection charges or price cap rules for retail rates that were applicable before and after the setting of the interim interconnection charges or interim price cap rules for retail rates shall apply until such determination is made by the Office, but shall not have retroactive effect.

(6) The power of the Office to set interim interconnection charges or price cap rules for retail rates under this section shall not be subject to the provisions of section 4(2), 33, 46, 60 or 62.”.

Amendment of
section 38 of
principal Act.

23. Section 38 of the principal Act is amended—

- (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) renumbering paragraph (d) as paragraph (e);
 - and
 - (iii) inserting next after paragraph (c), the following as paragraph (d)—
 - “(d) there shall be a universal service levy that shall be imposed, by the Minister, on licensees, in support of universal service;”;
 - and

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

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

24.—(1) The provisions of subsection (2) shall come into operation on such date as the Minister may by order published in the Gazette specify.

Insertion of new sections 38A, 38B, 38C, 38D, 38E, 38F, and 38G in principal Act.

(2) The principal Act is amended by inserting next after section 38 the following as sections 38A, 38B, 38C, 38D, 38E, 38F, and 38G—

“Universal
Service
Fund.

38A.—(1) There is hereby established for the purposes of this Act, a body to be known as the Universal Service Fund which shall be a body corporate to which section 28 of the *Interpretation Act* shall apply.

Third
Schedule.

(2) The provisions of the Third Schedule shall have effect as to the constitution of the Fund and otherwise in relation thereto.

Objectives of
Fund.

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 use specified in section 42A.

Establishment
of Board of
Management
of Fund.

38C.—(1) There shall be established for the purposes of this Act, a Board of Management of the Fund which shall, subject to the provisions of this Act, be responsible for—

- (a) the general management of the resources of the Fund within the guidelines established by the Minister;

- (b) the policy and general administration of the affairs of the Fund;
- (c) recommending to the Minister such projects and programmes to be financed from the Fund, the purposes of which fall within section 39(2) and 42(A);
- (d) investing the moneys of the Fund;
- (e) monitoring the implementation of projects financed by the Fund;
- (f) doing or causing to be done such other things as are necessary or expedient for or in connection with the proper performance of the functions of the Fund.

Third
Schedule.

(2) The provisions of the Third Schedule shall have effect as to the constitution of the Board of Management and otherwise in relation thereto.

Funds,
resources and
expenses of
Fund.

38D.—(1) The funds and resources of the Fund shall consist of—

- (a) the universal service levy imposed on licensees pursuant to this Act;
- (b) all amounts which accrue from interest, realized gains on investments, loan repayments and other accretions to the Fund; and
- (c) any other sum lawfully paid into, or credited to, the Fund.

(2) All moneys of the Fund not immediately required to be expended in meeting any of its obligations or discharging any of its functions may with due regard to the level of inflows, be invested

in such interest bearing securities in Jamaican currency local and foreign currency as may be approved either generally or specifically by the Minister responsible for finance, who shall (as regards any proposed investment in foreign securities or foreign currency instruments) act after consultation with the Bank of Jamaica.

(3) The expenses of the Fund shall be managed so as to maximize operational efficiency, and shall be paid out of the Fund.

Accounts.

38E.—(1) The Fund shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister and conforming to established accounting principles.

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

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

Reports on Fund.

38F.—(1) 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.

38G. 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.

25. 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—
 - “ (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 un-served 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 multi-function 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;
 - (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;"

- (c) by inserting next after subsection (6) the following as subsection (7)—

"(7) in this Part "eligible revenues" means revenues which form the basis of calculation of contributions by licensees, determined in the prescribed manner".

26. Section 42 of the principal Act is amended, by deleting—

Amendment of
section 42 of
principal Act.

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

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

Insertion of
new section
42A in
principal Act.

"Use of
universal
service
levy.

42A.—(1) The universal service levy shall be utilized to fund the obligation to provide universal service as determined pursuant to section 39(2) and the following, namely—

- (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, small and medium-sized-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 development of local content; and
- (d) the promotion of information, and 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 operator" means a domestic carrier that owns or operates a public network.

Amendment of
section 43 of
principal Act.

28. Section 43 of the principal Act is amended by deleting the definition of "consumer" and substituting therefor the following—

"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.

29. 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";
- (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 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 and to report to the Office thereon in such manner and at such intervals as the Office may determine.

(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 customer contracts in respect of facilities or specified services; and
- (b) direct the modification of any term of such a contract which appears to the Office to be unreasonable or unfair.”.

30. Section 45 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 45 of principal Act.

“ Restriction on power of 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 or 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.

31. Section 46 of the principal Act is amended in subsection (2) by inserting immediately after the word “rules” the words “, after consultation with the Minister”.

Amendment of
section 48 of
principal Act.

32. 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.

33. Section 57 of the principal Act is amended by deleting the words “subject to affirmative resolution”.

Amendment of
section 60 of
principal Act.

34. Section 60 of the principal Act is amended—

- (a) by deleting from the marginal note the words “or Office” and substituting therefor the words “, Office or Authority”;
- (b) in subsections (4), (5), (6) and (8) by inserting next after the word “Office” wherever it appears, the words “or Authority, as the case may be,” in each case.

Amendment of
section 62 of
principal Act.

35. Section 62 of the principal Act is amended—

- (a) in subsections (1) and (2) by inserting next after the word “Office” wherever it appears, the words “or Authority, as the case may be,” in each case;
- (b) by deleting subsection (3) and substituting therefor the following—

“ (3) Except where the Office or the Authority, as the case may be, considers the circumstances of any appeal to be exceptional so as to justify its staying the decision to which the appeal relates, it is hereby declared that, until the determination of the appeal, the decision of the Office or the Authority, as the case may be, to which an appeal relates shall not be affected by the appeal proceedings.”; and

- (c) in subsection (4), as renumbered, by inserting next after the word "Office" the words "or Authority, as the case may be".

36. Section 63 of the principal Act is amended—

Amendment of
section 63 of
principal Act.

- (a) in the marginal note by inserting immediately after the word "Power" the words "of the Office.";
- (b) by deleting subsections (1) and (2) and substituting therefor the following as subsections (1), (2), (3), (4) and (5)—

" (1) A person commits an offence if he—

- (a) provides false or misleading information to the Office;
- (b) fails to furnish any equipment, record, document or other information requested by the Office; or
- (c) destroys or alters or causes to be destroyed or altered, any equipment, record, document or other information required to be so furnished.

(2) A person commits an offence if he engages in any of the following conduct—

- (a) operates or knowingly facilitates any bypass operation in contravention of this Act or regulations made under this Act;
- (b) owns or operates an unlicensed facility;
- (c) provides any specified services to the public without a licence issued under this Act;

- (d) undertakes or embarks upon any course of action which could reasonably be expected to result in the disruption or interruption of the telecommunications industry; or
- (e) breaches any order of the Office issued pursuant to subsection (3).

(3) The Office 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 paragraphs (a) to (c) of subsection (2) or paragraph (a) of section 65 is being carried out by any person—

- (a) issue to the person concerned—
 - (i) a cease and desist order in accordance with section 64;
 - (ii) an order requiring a licensee to pay compensation to any person affected by any action of the licensee in contravention of this Act or any regulations made under this Act or any licence, determination, memorandum, order or directive of the Office;
 - (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 in contravention of this Act, any regulations made under this Act or any licence, determination, memorandum, order or directive of the Office;

- (iv) an order to terminate, modify or nullify agreements activities or decisions of the licensee which are found to be in contravention of this Act or, any regulation made under this Act or any licence, determination, memorandum, order or directive of the Office;
- (b) apply to the court for an injunction against a licensee, whose actions, in the opinion of the Office, could cause severe disruption to the operations of another licensee or could cause irreparable damage.
 - (4) In a case where a court issues an interim injunction in response to an application under subsection (3)(2)(b), the court shall not require a financial undertaking by the Office.
 - (5) A person who commits an offence under subsection (1) or (2) shall be liable—
 - (a) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding [six months], or to both such fine and imprisonment; or
 - (b) on conviction on indictment in a Circuit Court, to a fine not exceeding two years, or to both such fine and imprisonment.”;
 - (c) in subsection
 - (6), as renumbered, by deleting the words “subsection (1)” and substituting therefor the words “subsection (3)”; (d) in subsection (7) as renumbered by

deleting the numerals “(3)(a)” and substituting therefor the numerals “(6)(a)”; (e) in subsection 8, as renumbered by deleting the numerals “(4)(b)” and substituting therefor the numerals “(7)(b)”.

Insertion of
new sections
63A and 63B
in principal
Act.

37. The principal Act is amended by inserting next after section 63 the following as sections 63A and 63B—

“ Power of
Authority to
issue cease
and desist
order.

63A.—(1) A person commits an offence if he engages in any of the following conduct—

- (a) provides false or misleading information to the Authority or to the Minister whether in support of an application under or any other matter in relation to this ad;
- (b) engages in the use of the spectrum without first obtaining a spectrum licence;
- (c) fails to furnish any equipment, record, document or other information requested by the Authority pursuant to this Act;
- (d) destroys or alters or causes to be destroyed or altered, any equipment, record, document or other information required to be so furnished;
- (e) being a spectrum licensee, utilizes frequencies other than those for which authorization was granted by the Authority or the Minister;
- (f) fails to comply with a request or directive issued by the Authority or Minister in the manner and within the timeframe stipulated;

- (g) being a spectrum licensee, fails to pay spectrum licence fees and regulatory fees prior to the commencement of the relevant licensing period and in accordance with the terms and conditions of the spectrum licence;
 - (h) breaches orders, directives, determinations or memoranda issued by the Authority;
 - (i) behaves in a manner which contravenes the provisions of—
 - (i) this Act or any regulations made under the Act;
 - (ii) any spectrum licence; or
 - (iii) orders, directives, determinations or memoranda of the Authority;
 - (j) breaches any order of the Authority issued pursuant to subsection (2).
 - (k) obstructs, hinders or prevents any authorized officer from entering premises for the purposes of carrying out an investigation under this Act;
 - (l) wilfully uses any apparatus for the purpose of causing harmful interference.
- (2) The Authority 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 paragraphs [(a) to (l)] of subsection (1) is being carried out by any person—
- (a) issue to the person concerned—
 - (i) a cease and desist order in accordance with section 64;

- (ii) an order requiring the spectrum licensee to take such steps as are necessary to remedy the effects of any harm caused by the conduct of the spectrum licensee in contravention of this Act, or regulation made under this Act, or any licence, determination, memorandum, order or directive of the Authority;
 - (iii) an order to terminate, modify or nullify agreements activities or decisions of the spectrum licensee which are found to be in contravention of this Act or regulation made under this Act or any spectrum licence, determination, memorandum, order or directive of the Authority;
- (b) apply to the court for an interim injunction against a spectrum licensee, whose actions, in the opinion of the Authority, could cause severe disruption to the operations of another spectrum licensee or could cause irreparable damage.

(3) In a case where a court issues an interim injunction in response to an application under subsection (2)(b), the court shall not require a financial undertaking by the Authority.

(4) An order under subsection (2) shall—

- (a) state the facts constituting the alleged conduct and where appropriate, the name of the person against whom the allegation is made; and
- (b) be accompanied by documents, if any, in support of the allegation.

(5) Before issuing a cease and desist order, the Authority shall cause to be served on the person concerned, a notice—

- (a) containing a statement of the facts referred to in subsection (4)(a); and

(b) specifying the period within which and a place at which a hearing will be held to afford to the person concerned an opportunity to show cause why the order should not be made.

(6) Where at a hearing referred to in subsection (5) (b)—

(a) the person concerned fails to show cause why the cease and desist order should not be made, the order shall be issued; or

(b) the Authority determines that the alleged conduct has not occurred, a cease and desist order shall not be issued.

(7) A person who commits an offence under subsection (1) shall be liable on summary conviction in a Resident Magistrate's Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Fixed penalty
Offences.

63B. —(1) This section applies to an offence against this Act and regulations made under this Act being a prescribed offence.

(2) Where the Office or Authority, as the case may be, believes that a person has committed an offence in relation to its area of regulation and to which this section applies, the Office or Authority may give that person the prescribed notice in writing offering the opportunity of the discharge of liability to conviction for that offence by payment to the Office or Authority, as the case may be, in the manner specified in the notice, of the prescribed pecuniary penalty applicable.

(3) A person shall not be liable to be convicted of any offence referred to in subsection (2) if the pecuniary penalty is paid in accordance

with this section and any requirement in respect of which the offence was committed is complied with before the expiration of the period specified in the notice referred to in subsection (2) and shall be a date not less than twenty-one days following the issue of the notice.

(4) Where any person pays the pecuniary penalty in accordance with subsection (3) and complies with any other requirement specified in the notice, the Office or Authority, as the case may be, shall accept that amount as complete satisfaction of any liability to conviction.

(5) Payment of a pecuniary penalty under this section shall be made to the Office or Authority, as the case may be, which shall cause it to be paid into the Consolidated Fund.

(6) In any proceedings for an offence to which this section applies, a certificate that payment of the pecuniary penalty was or was not made to the Office or Authority, as the case may be, by a date specified in the certificate shall, if the certificate purports to be signed by the Office or, as the case may be, the Authority, be sufficient evidence of the facts stated, unless the contrary is proved.

(7) A notice under subsection (2) shall—

- (a) specify the offence alleged;
 - (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
-

- (c) state the period during which, by virtue of subsection (3), proceedings will not be taken for the offence, the amount of the pecuniary penalty, and the address at which the pecuniary penalty may be paid.

(8) In any proceedings for an offence to which sub-section (2) applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a penalty there-under unless, in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice or, as the case may be, to such a payment or non-payment.

(9) The Minister may make regulations providing for any matter incidental to the operation of this section, and in particular—

- (a) prescribing the offences to which this section applies;
- (b) prescribing the form for notice under subsection (2), and the place at which a pecuniary penalty is payable; and
- (c) prescribing the duties of the Office and Authority and the information, with regard to any payment made pursuant to a notice under this section, to be supplied to the Office or Authority, as the case may require.”.

Repeal and
replacement of
section 65 of
principal Act.

38. Section 65 of the principal Act is repealed and the following substituted therefor—

“ Application
for enforce-
ment.

65. The Court may exercise any of the powers specified in section 66, if the Court is satisfied—

(a) on an application by the Office, that a licensee has engaged in any of the following conduct—

- (i) breaches any order, directive, determination or memorandum of the office;
- (ii) behaves in a manner which is inconsistent with or contravenes provisions of—

- this Act or any regulations made under this Act or the *Office of Utilities Regulation Act* or any regulations made thereunder;
- any licence; or
- any order, directive, determination or memorandum of the Office;

(iii) breaches any quality of service standards established or approved by the Office; or

(iv) undertakes or embarks upon any course of action which could reasonably be expected

to result in the disruption or interruption of the telecommunication industry.

(b) on an application by the Authority that a spectrum licensee—

(i) has engaged in any of the conduct specified in section 63A(1);

(ii) has contravened any provision of this Act or any regulations made under this Act.”

39. Subsection (1) of section 66 of the principal Act is amended— Amendment of section 66 of principal Act.

(a) by deleting paragraph (a) and inserting therefor the following as paragraph (a)—

“ (a) order the offending licensee to pay to the Crown pecuniary penalty not exceeding two hundred million dollars or the offending spectrum licensee to pay to the Crown pecuniary penalty not exceeding three million dollars”; and

(b) in paragraph (b) by—

(i) inserting immediately after the word “licensee” the words “or spectrum licensee”; and

(ii) deleting the words “subsection (1) (a) or (b) of”.

40. Section 71 of the principal Act is amended—

(a) in subsection (1), by deleting the words “The Office” and substituting therefor the words “Unless otherwise specified in this Act, the Office”; and

(b) in subsection (2), by deleting the words “five hundred thousand” and substituting therefor the words “two million”.

Insertion of
new section
71A in
principal Act.

41. The principal Act is amended by inserting next after section 71 the following as section 71A—

“ Office may
forbear
enforce-
ment.

71A. Notwithstanding the powers of the Office under this Act, the Office may forbear from enforcing any provision of this Act or any regulations made under this Act if the Office determines that—

- (a) enforcement of the provision or regulations is not necessary to ensure that the achievement of the objects of the Act;
- (b) enforcement of the provision or regulations is not necessary for the protection of consumers;
- (c) forbearance from applying the provision or regulations will not impede the administration of this Act; or
- (d) forbearance from enforcing the provision or regulations is consistent with the public interest.”.

Amendment of
section 72 of
principal Act.

42.—Subsection (2) of section 72 of the principal Act is amended by deleting the words “five hundred thousand” and substituting therefor the words “three million”

Insertion of
new section
72A in
principal Act.

43. The principal Act is amended by inserting next after section 72 the following as section 72A—

“ Power of
Minister to
amend
monetary
penalties.

72A.—The Minister may, by order subject to affirmative resolution, amend the monetary penalties imposed by this Act.

44. The principal Act is amended by inserting next after the Second Schedule the following as the Third Schedule—

Insertion of
new Third
Schedule in
principal Act.

“ THIRD SCHEDULE (Section 38A and 38C)

The Universal Service Fund

Seal and
execution of
documents.

1.—(1) The seal of the Fund shall be kept in the custody of the chairman or of any officer of the Fund authorized by the Board in that behalf, and shall be affixed to instruments pursuant to a motion of the Board in the presence of the chairman or any other member duly authorized to act in that behalf, and the secretary.

(2) The seal of the Fund shall be authenticated by the signature of the secretary or any other member of the Board duly authorized to act in that behalf.

Appointment
and
employment
of officers.

2.—(1) Subject to sub-paragraph (2), the Fund shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit a chief executive officer and such other officers and employees as it thinks necessary for the proper carrying out of the provisions of this Act.

(2) The Fund shall act in accordance with such guidelines in relation to emoluments payable to the staff of public bodies, as are issued from time to time by the Minister responsible for the public service.

Document to
be signified.

3. All documents, other than those required by law to be under seal, documents made by, and all decisions of, the Fund may be signified under the hand of the chairman or any member of the Board authorized to act in that behalf or an officer of the Fund so authorized.

The Board of Management of the Fund

Constitution
of the Board.

4. The Board shall consist of such number of members being not less than nine nor more than thirteen as the Minister may from time to time appoint including—

(a) the following persons who shall be *ex-officio* members:

(i) the Financial Secretary or his nominee;

- (ii) the Director General of the Planning Institute of Jamaica or his nominee;
- (iii) the Chief Executive Officer of the Fund.

- (b) such other persons who appear to the Minister to have ability and experience in matters relating to the activities of the Fund (hereinafter referred to as "selected members").

Chairman and
deputy
chairman.

5.—(1) The Minister shall appoint—

- (a) one of the members to be chairman of the Board; and
- (b) a deputy chairman from among the other members.

(2) In the case of the absence or inability to act of the chairman, the deputy chairman shall exercise the functions of the chairman.

(3) In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman, the remaining members shall elect one of their number to act as chairman of that meeting.

Term of office.

6. Subject to the provisions of this Schedule, a selected member of the Board shall hold office for a period not exceeding three years and each such member shall be eligible for re-appointment.

Acting
appoint-
ments.

7. The Minister may appoint any person to act in the place of any member of the Board in the case of the absence or inability to act of such member.

Resignation.

8. A selected member of the Board may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

Revocation of
appointments.

9. The Minister may at any time revoke the appointment of a selected member if he considers it expedient so to do.

Gazetting of
appointments.

10. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*.

**Leave of
absence.**

11.—(1) The Minister may, on the application of any selected member of the Board, grant leave of absence to such member.

(2) The appointment of a selected member shall be regarded as terminated if, without the grant of leave of absence, that member is absent from three consecutive meetings of the Board.

**Procedure and
meetings.**

12.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business (but at least six meetings shall be held within each financial year) and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The chairman may at any time call a special meeting of the Board to be held within [seven] days of a written request for the purpose addressed to him by any two members of the Board.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the deputy chairman or the person elected to act as chairman in accordance with paragraph 5(3) shall preside at the meetings of the Board, and when so presiding the chairman, deputy chairman or the person elected to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Board shall be the number rounded up that approximates to one-half the number of the membership.

(5) The decisions of the Board shall be by a majority of votes and, in addition to an original vote, the chairman or other member presiding at the meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes in proper form of each meeting of the Board shall be kept.

(7) Subject to the provisions of this Schedule the Board may regulate its own proceedings.

- Disclosure of interest.** 13. A member of the Board who is directly or indirectly interested in any matter which is being dealt with by the Board shall of interest (a) disclose the nature of his interest at a meeting of the Board; and (b) not take part in any deliberation or decision of the Board with respect to that matter.
- Appointment of committees.** 14.—(1) The Board may appoint such committees as it thinks fit, consisting wholly or partly of members of the Board and may delegate to such committees such of the Board's functions as it thinks fit.
- (2) A delegation under subparagraph (1) shall not prevent the exercise by the Board of any function so delegated.
- Remuneration of members of Board.** 15. There shall be paid to the chairman and each member of the Board such remuneration, if any (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.
- Protection of office.** 16. No act done or proceeding taken under this Act by the Board shall be questioned on the ground of—
- (a) the existence of any vacancy in the chairmanship of, or any defect in the constitution of, the Board; or
 - (b) any omission, defect or irregularity not affecting the merits of the case.
- Protection of members of Board.** 17.—(1) No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operation of the Board.
- (2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Fund shall be liable to the extent that it would be if that member were an employee or agent of the Fund.
- Office of member not public office.** 18. The office of a selected member of the Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.”

45.—(1) Any instrument which was issued, served or granted Savings.
under any provision of the principal Act which is repealed, amended
or which ceases to have effect by virtue of this Act shall, without
prejudice to any power to amend such instrument, and subject to
such modification as may be necessary to bring it in conformity
with the principal Act as amended by this Act, continue in force
until superseded, evoked or otherwise terminated, and shall be
deemed to have been issued, served or granted under the principal
Act as amended by this Act.

(2) In this section “instrument” means any licence, notice,
determination, order, declaration or other authority or any instru-
ment or other requirement, as the circumstances may require that
was issued, served or granted pursuant to the principal Act and
was in operation prior to the coming into operation of this Act.

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.

In the interim, a decision has been taken to amend the Telecommunications Act to address *inter alia* 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. Therefore, this Bill seeks to amend the *Telecommunications Act* to address—

- (a) the sharing of telecommunications facilities and infrastructure, where feasible;
- (b) allowing 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 granting to the O.U.R. of an express power 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 rules, regulations or directives of the O.U.R. and S.M.A, orders to terminate, modify or nullify agreements, activities or decisions of licensees, found to be in contravention of the Act, rules, regulations or directives of the O.U.R. and S.M.A;

- (ii) 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;
- (iii) impose fixed pecuniary penalties giving offenders the opportunity to discharge liability and avoid court proceedings upon payment of the fixed penalties.

Additionally, the Bill seeks to expand the principles of universal service (beyond physical access) to encompass resource access and basic access. Further, the Bill also seeks to make the quantum of the universal service levy subject to affirmative resolution of the Houses of Parliament.

PHILLIP PAULWELL
Minister of Science, Technology, Energy and Mining

A BILL

ENTITLED

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

**As introduced by the Honourable Minister of Science,
Technology, Energy and Mining.**

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