

NON BINDING TRANSLATION !!

**Federal Law to enact a Telecommunications Law that amends the Telegraph Route Law (Telegraphenwegegesetz), the Telecommunications Charges Law (Fernmeldegebührengesetz) and the Cable and Satellite Broadcast Radio Law (Kabel- und Satelliten-Rundfunkgesetz), and makes supplementary provisions to the Broadcast Radio Law (Rundfunkgesetz) and Broadcast Radio Ordinance (Rundfunkverordnung)
BGBl. I Nr. 100/1997**

The Lower House of the Austrian Parliament has adopted the following:

Article I

Federal Law Relating To Telecommunications (Telecommunications Law - TKG)

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PART 1

GENERAL

Scope

§ 1. (1) The scope of this Federal Law is to promote competition in the field of telecommunications in order that the population and the economy can be provided with reliable, low-cost, high-quality and innovative telecommunications services.

(2) Regulatory measures are to be introduced to achieve the following objectives:

1. To create a modern telecommunications infrastructure to promote high-quality services
2. To create a framework for healthy competition and equality of opportunity on the telecommunication markets
3. To provide universal service with full geographical coverage
4. To protect users against the abuse of a dominant position on the market
5. To ensure the efficient and interference-free use of available frequencies.

Exemptions

§ 2. (1) This Federal Law does not apply to telecommunication equipment (notably radio systems and terminal equipment) that are set up and operated exclusively for the purposes of national defence. However, the frequencies used by such equipment must be agreed with the Federal Ministry of Science and Transport.

(2) This Federal Law does not apply to telecommunication equipment (notably radio systems and terminal equipment) that are set up and operated exclusively for the purposes of the telecommunications authorities.

Definitions

§ 3. The following definitions shall apply within the meaning of this Federal Law:

1. “Operating” is defined as exercising legal and actual control over the totality of functions that are needed to provide the relevant telecommunications services;
2. “Terminal equipment” is defined as an item of equipment which is to be connected directly to a network termination point of a public telecommunications network or which is to interoperate with a public telecommunications network and which is therefore to be connected directly or indirectly to that of a public telecommunications network;
3. “Radio system” is defined as electrical transmission or reception equipment between which the intentional transfer of information can take place by means of electromagnetic waves and with no connection cables;

4. “Leased lines” are defined as telecommunications facilities offered in connection with the installation, development and operation of a public telecommunications network that provide transparent transmission capacity between network termination points but without switching functions that users themselves can control as part of the leased line package (on-demand switching);
5. “Mobile communications service” is defined as a telecommunications service intended for mobile use;
6. “Network termination point” is defined as all the physical connections and technical access specifications which are part of the public telecommunications network and which are necessary for access to this network and for efficient communication via this network;
7. “Network access” is defined as the physical and logical connection of one telecommunications network with another telecommunications network or parts thereof for the purposes of accessing the functions of this telecommunications network or the telecommunications services offered via this network;
8. “Users” are defined as users of telecommunications services, including end users (consumers) and service providers as users of services offered by other service providers;
9. “Public telecommunications network” is defined as the telecommunications infrastructure with which signals between defined network termination points are transmitted over wires, over radio relays or over optical or other electromagnetic links and which is used, among other things, for the provision of public telecommunications services.
10. “Satellite radio systems” are defined as transmission systems, transmission and reception systems, or reception systems for radio signals that are routed via satellites or other space systems;
11. “Satellite radio service” is defined as a telecommunications service which is provided with the aid of satellite radio systems;
12. “Voice telephony service” is defined as the commercial provision for the public of facilities for the direct transmission and switching of speech in real time to and from the network termination points of public switched networks, with each user being able to use any terminal equipment connected to such a network termination point to communicate with terminal equipment connected to another network termination point;
13. “Telecommunication” is defined as the technical process of transmitting, transferring and receiving messages of any nature in the form of text, speech, images or tones by means of appropriate technical equipment;
14. “Telecommunications service” is defined as a commercial service that comprises the transmission and/or forwarding of signals via telecommunications networks, including the provision of leased lines; it does not include, in particular, the simple resale of (trade in) telecommunications services or the transmission of radio and television by owners of community antenna systems (cable network operators);

15. “Telecommunication line” is defined as permanent buried or surface transmission paths (telecommunication cable systems) including their accessories such as switching, amplification and branching equipment, masts and supports, cable shafts and ducts;

16. “Interconnection” is defined as that form of network access that establishes a physical and logical connection between telecommunications networks to allow users connected to different telecommunications networks to engage in direct or indirect communication.

Test licence

§ 4. (1) The Federal Minister of Science and Transport can, on application, grant a licence for the installation and operation of radio systems and terminal equipment and for the provision of a telecommunications service for the purposes of technical or commercial testing, provided there are no objections from the technical point of view, particularly if interference with other telecommunication equipment is not expected. A suitable time-limit must be placed on any such licence.

(2) In the case of telecommunications services that are the subject of licences, the test licence replaces the licence. The provisions relating to licences shall apply accordingly. On expiry of the test licence the service may continue to be operated only on the basis of a licence, otherwise it must be terminated.

PART 2

INFRASTRUCTURE, PROPERTY RIGHTS

Installation and operation

§ 5. (1) The installation and operation of infrastructural facilities and networks for the purposes of telecommunications are exempt from the licensing procedure. The provisions relating to licences for public telecommunications services, to the use of frequencies and the need for approval for radio systems and terminal equipment remain unaffected.

(2) Infrastructural facilities and networks that are intended for interconnecting with public telecommunications networks or for providing a public telecommunications service must comply with the recognised state of the art in terms of their design and operation with regard to

1. the safety of network operation,
2. network integrity,
3. interoperability of services and
4. connection conditions for terminal equipment.

(3) The Federal Minister of Science and Transport can, in accordance with the current state of the art, issue directives to define more detailed provisions relating to the safety of network operation, network integrity, interoperability of services and the connection conditions for terminal equipment.

Use of public property

§ 6.(1) Licencees to provide a public telecommunications service are authorised to make use, free of charge and without special approval under the terms of this Law, of public property such as roads, footpaths, public areas and the air space above them, but not including public water facilities, for the installation of telecommunication lines and associated equipment. This also includes the right to install and maintain line support points, switching equipment and other line objects, and the right to operate this equipment. “Free of charge” within the meaning of this provision does not extend to any statutory obligations to pay duties at the time this Federal Law comes into force.

(2) Authorised parties as defined in Section 1 must agree their procedures in exercising these rights with the owners or authorised users of the properties involved.

Facility sharing (Right of joint use)

§ 7. (1) Whosoever exercises a right of way under any other Federal Law or whosoever exercises a right of use in accordance with § 6, § 8 Section 2 or § 11 of this Federal Law must grant joint use of telecommunication lines or parts thereof installed on the basis of these rights provided that the utilisation of public property is not made impossible or impractical by such

installations and provided that joint use is economically reasonable and technically feasible for the owner of the telecommunication line.

(2) Appropriate monetary compensation for joint use shall be made to the party obliged to offer joint use.

Obligation to tolerate

§ 8. (1) If the licensee uses a line or system secured by right on a property for the installation, operation, expansion or replacement of telecommunication lines, this must be tolerated by the owner of the property provided the installation, operation, expansion or replacement of the telecommunication line does not permanently place any additional restrictions on the dedicated use of the property. The owner or authorised user shall be paid compensation commensurate with the additional services or usage capacity. Within six months the regulatory authority shall define uniform national rates for one-off payments in accordance with representatives of the parties involved; these rates shall be publicised in an appropriate form and shall be paid on request. As soon as an offer of compensation is made in accordance with the uniform rates, there shall be no restrictions on the use of the property for the purposes of installing, operating, expanding or replacing telecommunication lines.

(2) If there is no line or system secured by a right on a property that is not public property, the owner or authorised user of this property shall tolerate the installation, operation, expansion or replacement of telecommunication lines by the licensee to provide a public telecommunications service or other supplier of public telecommunications services if usage places no or only minor permanent restrictions on the dedicated use of the property. In this case, the owner or authorised user of the property shall be compensated by a one-off payment.

(3) Notwithstanding other necessary licences and approvals, the owner of a telecommunications network is authorised to transfer the rights arising from this obligation to tolerate, in whole or in part, to third parties for the purposes of operating this telecommunications network.

Conditions relating to the exercising of rights in accordance with §§ 6 to 8

§ 9. (1) In exercising their rights in accordance with §§ 6 to 8, the authorised parties shall take into consideration the purpose and the use of the properties concerned. They shall take utmost care not to damage the properties used or infringe the rights of third parties. Further obligations arising from other regulations shall remain unaffected.

(2) With the exception of the case defined in § 8 Section 1, the authorised parties are obliged, within the bounds of technical feasibility and with due consideration for economic factors, to lay their telecommunication lines in the ground if the property owner (or authorised user) objects to telecommunication lines being routed above ground.

Transfer of usage rights

§ 10. (1) Usage rights (obligations to tolerate) together with the associated obligations by act of law pass to the legal successor in the ownership of the telecommunications network or the telecommunication line.

(2) They are effective against each owner (authorised user) of the property on which there is a claim.

Right of expropriation

§ 11. (1) If the installation of a telecommunication line or a public pay telephone is in the public interest and if the exercising of the rights in accordance with §§ 6 to 8 does not achieve the desired objective or achieves the objective only with the use of disproportionate resources, expropriation is permissible. The procedure is based on the Telecommunication Route Law (Telekommunikationswegegesetz).

(2) The concept of public interest also applies to the installation of a telecommunication line or a public pay telephone by a licensee.

(3) Expropriation shall be achieved using the mildest means appropriate. If expropriation makes the dedicated use of the property impossible or unreasonable, the charged area shall be transferred at the request of the property owner to the ownership of the authorised expropriator on payment of adequate compensation.

PART 3

TELECOMMUNICATIONS SERVICES

Provision of telecommunications services

§ 12. (1) Anyone is authorised to provide telecommunications services in compliance with the statutory provisions.

(2) Industrial Code 1994, BGBl. (Federal Law Gazette) No. 194/1994 does not apply to the offer of licensed telecommunications services or the operation of telecommunications networks. The provisions of §§ 74 to 84 and the associated provisions of Industrial Code 1994, BGBl. No. 194/1994 do not apply to the offer of notifiable telecommunications services.

Obligation to notify

§ 13. (1) The service provider shall notify to the regulatory authority of the intended provision of a telecommunications service, changes in its operation and cessation of the service prior to the start of operation, changes or cessation. Notification shall be given in writing together with details of the type of service and the technical and operational features. Public services shall be indicated as such.

(2) Telecommunications services that comprise the simple resale of telecommunications services are exempt from the obligation to notify in accordance with Section 1.

(3) The regulatory authority shall publish the list of notifiable telecommunications services together with an indication of the operators at least once a year.

Licensed services

§ 14. (1) A licence is required for the provision of a mobile voice telephony service and other public mobile communications services by means of mobile communications networks that the provider operates himself, subject to § 20.

(2) A licence is also required for the provision of the following telecommunications services:

1. Public voice telephony service by means of a fixed telecommunications network that the provider operates himself and
2. Public offer of leased lines by means of fixed telecommunications networks that the provider operates himself.

Granting of a licence

§ 15. (1) The licence is granted by the regulatory authority in response to a written application. The authority shall decide on the application within six weeks, unless special circumstances, such as incompleteness of the documentation provided by the applicant or advantage investigations, dictate that a longer period is needed in which to reach a decision. The application for the granting of a licence shall contain details of the type of service, the area supplied and the organisational, financial and technical requirements relating to operation by the applicant.

(2) The licence shall be granted if the applicant

1. has the necessary technical competence and
2. there is no reason to assume that he will not provide the relevant service in accordance with the licence, in particular as far as the quality and supply obligation are concerned. The financial strength of the applicant, his experience in the telecommunication sector and related sectors, and his expertise shall all be taken into consideration.

(3) The granting of a licence to provide public mobile communications services is based on §§ 20 ff.

(4) The regulatory authority can place a time-limit on the licence for services in accordance with § 14 Section 1 insofar as this may be necessary in view of the scarcity or allocation of the available frequencies. Licences shall generally be granted without a time-limit unless an application is made for such a time-limit. The time-limit shall be defined according to the type and significance of the licence. The licensee has a legal claim to have the licence renewed if he has exercised the licence in accordance with the law and the frequencies used can be allocated once more.

(5) The licence may be restricted to certain supply areas and to certain telecommunications services if an appropriate application is made or if the scarcity or allocation of the available frequencies makes this necessary.

(6) The licence may involve ancillary provisions, in particular conditions, commencement and termination dates and obligations, which serve to ensure that the objectives and provisions of this Law and the relevant regulations of the European Communities are fulfilled in the best possible way. These include regulations governing the start of operations, the range of telecommunications services offered, the quality of the telecommunications services and co-operation with other service providers. The ancillary provisions shall be based on the relevant regulations of the European Communities.

Transfer and modification of the licence

§ 16. (1) The licence may be transferred in whole or in part only with the agreement of the regulatory authority. Agreement may be denied only if the criteria specified in § 15 Section 2 are not met.

(2) The regulatory authority can modify individual provisions of the licence prior to expiry of the licence if the modification is necessary to protect important public interest. In addition, the licence may be subsequently modified

1. on application if the due fulfilment of the arrangements of the licence decree, in particular the ancillary provisions, is no longer reasonable owing to changes in circumstances, provided the interests to be safeguarded by the authority and fair competition are not impaired;
2. on application or on the part of the authority if modifications are necessary to the frequencies allocated for use in the licence decree in view of changes in the technical or legal requirements in the interest of efficient frequency management and fair competition, and the changes relating to the frequencies allocated for use are not of a fundamental nature;
3. on the part of the authority with regard to those frequencies that are allocated to a licensee but which he does not use even after expiry of all notified deadlines.

(3) Modifications to the licence shall be made with due regard for the economic and operational interests of the licensee. This arrangement does not justify any claims for damages. Claims based on official liability remain unaffected.

Licence fee

§ 17. (1) A fee shall be made to cover administration costs arising from the granting of the licence. The level of this fee shall be determined by ordinance by the Federal Minister of Science and Transport in consultation with the Federal Minister of Finance.

(2) Licensees and service providers who provide a public telecommunications service on the basis of a different authorisation in accordance with this Law are obliged, on the basis of their turnover from the provision of this service and their share of the internal Austrian telecommunications market, to pay a proportionate annual contribution to cover the cost of the regulatory authority, in particular for the administration, supervision and implementation of the licence. The contributions shall be prescribed by the regulatory authority.

(3) The licence fee and the contribution shall accrue to the regulatory authority.

Business conditions and tariffs

§ 18. (1) The licensee shall draw up business conditions, describe the services offered and specify the relevant tariffs.

The business conditions, service description and tariffs shall be presented to the regulatory authority and published in a suitable form. If approval is required in accordance with Sections 4 and 6, the telecommunications service may not be provided until this approval is received.

(2) Changes to the business conditions and to the tariffs shall be published in a suitable form at least two months in advance of the date on which they are to come into effect. Any change to the content of a contract shall entitle the contract partners of the licensee to cancel the contract within four weeks of the publication of the change.

(3) Anyone is authorised to make use of public telecommunications services, in particular universal service and special supply arrangements on compliance with the business conditions.

(4) The business conditions require approval by the regulatory authority for the following public telecommunications services if the supplier of the service has significant market power:

1. voice telephony service via a fixed network and a mobile network and
2. provision of leased lines.

If the supplier does not have significant market power, the business conditions and any major changes to these conditions shall be presented to the regulatory authority in good time prior to commencement of the service or the date on which the change comes into force. In the case of the services specified in Point 1, the regulatory authority may oppose the business conditions within eight weeks if they are inconsistent with this Law or the regulations adopted under this Law or the relevant regulations of the European Communities.

(5) If, in order to resolve a dispute, it is necessary to amend the business conditions, these amendments may be prescribed in an official communication by the regulatory authority.

(6) The tariffs require approval by the regulatory authority for the following public telecommunications services if the supplier of the service has significant market power:

1. voice telephony service via a fixed network and
2. provision of leased lines.

If the supplier does not have significant market power, the tariffs shall be presented to the regulatory authority in good time prior to commencement of the service. The tariffs for a voice telephony service via a mobile network shall also be presented to the regulatory authority. Tariffs that are subject to approval shall be specified with due consideration of the relevant costs, the requirements to be fulfilled and the rate of return to be made. The tariffs must be uniform within a tariff zone. Rebate arrangements remain unaffected. Cross-subsidising between tariff zones is not permitted.

(7) Once approval has been granted, further approvals for tariffs are necessary only if there is a permanent change in the tariff structure. The intended changes shall be made known to the regulatory authority at least eight weeks before the changes come into effect. The regulatory authority can grant approval in the form of a price capping procedure; it can also specify special tariffs.

(8) For the publication of the business conditions and the definition of the tariffs of suppliers with significant market power the Federal Minister of Science and Transport shall determine the framework conditions including the principles for structuring the tariffs in an ordinance. In particular the type and scope of the obligation to render services, the basis on which the tariffs are calculated, the interface conditions, the quality of the range of transmission paths, the conditions for use and interconnection and the time-limits on the lifting of the ban on cross-subsidising to allow new services or technologies to be introduced shall be specified. Individual regions must not be disadvantaged by the tariff structure. The regulation shall take

into consideration the obligations arising for the Republic of Austria from international legislation.

Obligations of the providers of a public voice telephony service

§ 19. Providers of a public voice telephony service shall

1. maintain an up-to-date subscriber directory,
2. maintain a directory enquiry service for subscriber lines,
3. provide access free of charge to emergency services and
4. make their subscriber directory available on request to the regulatory authority free of charge and to other providers for an appropriate payment at least once a week in electronic form or on-line for the purposes of providing information or publishing directories.

Licence obligation for public mobile communications services

§ 20. (1) The provision of the public voice telephony service by means of mobile radio and other public mobile communications services by means of self-operated telecommunications networks is subject to a licence (§ 14 Section 1).

(2) Notwithstanding Section 1, a licence is not required for a public mobile communications service if the service is to be provided by means of satellite radio or if there are enough frequencies available for all interested parties both now and in the foreseeable future. This shall be determined by the Federal Minister of Science and Transport in an ordinance with due consideration of the frequency situation on the one hand and the future development of the services in question on the other.

(3) A licence is not required in accordance with this Law for the use of the radio frequency spectrum to provide broadcast radio and television and for the provision of telecommunications services using supplementary broadcast radio signals; the relevant broadcast radio regulations shall apply.

(4) The allocation of further frequencies to a licensee for the same service represents an extension of the existing licence and is implemented according to the provisions of the licence. If there are no provisions covering this situation in the licence, the procedure adopted shall be in accordance with § 22.

(5) Frequencies will be allocated in accordance with the provisions of § 51 by way of application under the operating authorisation for the provision of services other than the licensed radio services.

Frequency usage fee

§ 21. (1) To ensure the efficient use of the frequency spectrum, licensees of mobile radio shall make a one-off or annual frequency usage fee in addition to the frequency usage fee.

(2) The application for the granting of a mobile radio licence shall indicate the level of the frequency usage fee that the applicant is willing to make, on a one-off or regular basis, for using the frequencies intended for the provision of the telecommunications service in the event of being allocated these frequencies. The regulatory authority shall prescribe the frequency usage fee in the licence decree; the applicant must accept the fee specified in his application.

Procedure for allocating licensed mobile communications services

§ 22. (1) The regulatory authority shall grant the licence for licensed mobile communications services to the applicant who

1. meets the requirements in accordance with § 15 Section 2 and
2. guarantees the most efficient use of the frequencies; this will be determined in accordance with § 21 by the level of the frequency usage fee offered.

(2) The regulatory authority shall grant the mobile radio licences on the basis of an open, fair and non-discriminatory procedure. It shall put the award of a mobile radio licence out to public tender as soon as an application for a licence for the relevant service is received or, if necessary, through official channels. The invitation to tender may relate to licences for certain services and for certain supply areas, once the Federal Minister of Science and Transport has looked into the matter and given approval.

(3) The invitation to tender shall be published in the “Amtsblatt zur Wiener Zeitung” (Official Gazette of the Wiener Zeitung). The period within which applications for licences can be made shall be at least two months.

(4) The tender documents shall describe the telecommunications service for which the frequencies are to be allocated in sufficient detail with particular regard to the essential technical and economic data and shall define the required form and content of the application documents in such a way that the applications can be easily compared. The regulatory authority can demand payment to cover the cost of making the tender documents available.

(5) Major changes to the tender conditions are permissible only if there are changes in relevant statutory regulations or international regulations by which the Republic of Austria must abide. In addition, the authority is authorised to cancel the invitation to tender or terminate the procedure for good reason. None of this justifies any claim to damages; claims based on official liability remain unaffected.

(6) Changes to the applications after the end of the tendering period are not permitted. This does not apply to an option in the invitation to tender of modifying the offered frequency usage fee within a period of time defined in the invitation to tender. In this case, the frequency usage fee offered by the applicant may only be increased.

(7) The regulatory authority shall exclude any licence applicant from the licence award procedure who does not fulfil the basic conditions for the award of a licence in accordance with § 15 Section 2. This shall be by official notification.

(8) The licence shall be granted to the applicant who guarantees the most efficient use of the frequencies associated with the licence (Section 1 Point 2).

(9) The applicants for the licence constitute a procedural community. The award of the licence and rejections of other applications constitute a uniform official notification.

(10) On application or officially the regulatory authority can modify the frequencies allocated for use in the licence decree if this is essential in view of changes in the technical or legal requirements in the interest of efficient frequency usage and fair competition and the changes relating to the frequencies allocated for use are not of a fundamental nature.

Expiry of the licence

§ 23. (1) The licence expires as a result of

1. waiver,
2. revocation,
3. expiry of the period for which it was granted,
4. death or termination of the legal personality of the licensee, though not in the case of universal succession under company law, or
5. withholding of the frequency usage fee.

(2) In the event of the death of the licensee, the estate can make use of this right until it is revoked, but the representative of the estate must indicate this immediately to the regulatory authority.

(3) The licence shall be revoked by the regulatory authority if the requirements for its award are no longer met. It can be revoked if the licensee is in gross or repeated violation of his obligations or has not exercised the licence for more than a year. The licensee shall be given adequate opportunity to present his case before the licence is revoked.

(4) The licence shall be revoked if bankruptcy proceedings are started against the assets of the licensee or the bankruptcy petition has been rejected for lack of funds to cover the cost of the bankruptcy proceedings; the regulatory authority can refrain from revoking the licence if continuation is predominantly in the interests of the creditors.

(5) Procedures in accordance with Section 3 do not justify any claim to damages. Claims based on official liability remain unaffected.

PART 4

UNIVERSAL SERVICE

Definition and scope

§ 24. (1) Universal service is a minimum range of public telecommunications services to which all users must have access at an affordable price irrespective of their place of residence or work. An affordable price is defined as the price in force on January 1, 1998. The regulatory authority can use a price capping procedure to fix future tariffs, with the provisions of § 18 Section 7 being applied analogously.

(2) Universal service comprises the following services:

1. access to the public voice telephony service via a fixed network connection, via which a fax machine and modem can also be operated, including the transfer of data at rates compatible with transmission paths for voice communication,
2. unrestricted access free of charge to emergency services, including the correct processing of emergency calls and the necessary identification of the caller's location
3. access to directory enquiry services,
4. access to directories of subscribers to public voice telephony services and
5. full area coverage with public pay telephones at generally accessible locations.

(3) The Federal Minister of Science and Transport can issue an ordinance to include other services in universal service if these services are already wide-spread and contribute significantly to social and economic life.

Quality

§ 25. Universal service must cover the entire country, must be available at a uniform and affordable price and must meet certain standards in terms of quality. The quality criteria shall be defined by ordinance by the Federal Minister of Science and Transport in accordance with the relevant provisions of the European Communities and in consideration of the state of the art economic circumstances. The following must be regulated:

1. the transmission requirements,
2. the supply time for (initial) network access,
3. availability,
4. fault frequency,
5. successful call attempts as a proportion of all call attempts,
6. the reaction time to faults and the time needed to eliminate faults, and
7. the maximum response time for enquiry services.

Subscriber directory for the public voice telephony service

§ 26. (1) The regulatory authority shall ensure that a uniform directory of all subscribers to public voice telephony services is available in printed or electronic form. If such a directory is not offered on the market in line with demand, the authority shall publish one or make arrangements for its publication. This applies to a directory of subscribers arranged by branches of industry (professional groups) according to the available data. The regulatory authority shall ensure that a directory enquiry service is also available.

(2) Licencees who offer a public voice telephony service via a fixed network or a mobile network are obliged to provide the regulatory authority, free of charge, with subscriber data in a form to be specified by the authority so that the authority can fulfil its obligations in accordance with Section 1.

Special service obligations

§ 27. (1) The Federal Minister of Science and Transport can, by ordinance, impose special service obligations on operators of public telecommunications services for reasons of regional or social policy, provided their financing is guaranteed by the contract awarder and the operators can reasonably be assumed to accept them. Special service obligations may in particular comprise reduced tariffs for certain user groups.

(2) If special service obligations are imposed in accordance with § 28 Section 3, the settlement procedure is as follows:

1. Settlement of the deficits resulting from the reduced tariffs shall be conducted under the supervision and mediation of the regulatory authority directly between the contract awarder and the service operator. The settlement amount is based on the difference between the published tariff and the reduced tariff.

2. For services for which there is no published tariff available as a basis for settlement, the costs based on full-cost absorption together with an appropriate profit margin shall be invoiced.

3. The regulatory authority shall supervise compliance with the special service obligations by the service operators.

4. Any fees to be collected by the regulatory authority to cover its costs in connection with this provision shall be prescribed to the contract awarder.

Providers

§ 28. (1) The provision of universal service and compliance with the special service obligations shall be put out to public tender by the Federal Minister of Science and Transport and awarded according to the regulations governing the award of services. It can make use of the regulatory authority. The provision of universal service and compliance with the special service obligations shall be based separately on objective or regional factors. The provision of universal service shall be put out to public tender periodically, at least every ten years. The

prime consideration in awarding the contract is who will need the smallest contribution to the cost of providing the service.

(2) The invitation to tender shall be published in the “Amtsblatt zur Wiener Zeitung” (Official Gazette of the Wiener Zeitung) with an appropriate deadline for applications and an indication of the area to be supplied and the type of service to be provided.

(3) If a tender to provide the specified service is not received within the deadline for applications, the regulatory authority can compel the provider of a public voice telephony service who has the largest share of the relevant technical or geographic market to provide this service in accordance with the conditions defined in this Law.

Financial compensation

§ 29. (1) The demonstrable costs of universal service that cannot be recovered despite good economic management shall be compensated to the provider of the service at his request at the end of the calendar year. Cost accounting shall be based on Annex 3 of the Connection Guidelines.

(2) If the provider of universal service has a share of the relevant market (public voice telephony service) that exceeds 80% by turnover, he cannot claim compensation.

(3) The regulatory authority shall be presented with appropriate documents by the provider of universal service to enable it to check the information relating to the demonstrable costs. For this purpose, the authority itself or an auditor appointed by the authority can inspect the books and records, make comparisons with other suppliers and take any other measures that will achieve the desired objective or serve the interests of comparability. In justifiable cases the regulatory authority can define a lower amount than the amount requested.

(4) In the event of an invitation to tender in accordance with § 28, the regulatory authority shall grant compensation at most in line with the results of the invitation.

Universal service fund

§ 30. (1) The regulatory authority shall, if necessary, set up and manage a universal service fund. The fund is used to finance universal service (§ 29 Section 1). The fund shall publish an annual report on its activities and achievements.

(2) Licencees who offer a public voice telephony service via a fixed network or a mobile network and have an annual turnover of more than ATS 250 million shall contribute to financing the universal service fund and financing the management of the fund according to their relative market share (universal service contribution). The proportion is calculated according to the relationship between turnover and the total turnover of the contributing licensee on the relevant market within the scope of this Federal Law.

(3) At the end of the calendar year for which compensation according to § 29 is granted, the regulatory authority shall set the shares of the service providers contributing to this compensation and shall inform the parties involved.

(4) Suppliers contributing to the compensation according to § 29 are obliged to pay the regulatory authority the shares defined for them by the regulatory authority within four weeks. This period commences on the day the message defined in Section 3 is received.

(5) If a supplier is more than three months in arrears with paying the fees, the regulatory authority shall issue an official notification relating to the arrears and shall enforce such fee.

Turnover reports

§ 31. If a service operator is obliged in accordance with § 28 to provide universal service, suppliers who are active on the market of the relevant telecommunications service shall inform the regulatory authority annually of their turnover on this market on request. Otherwise the regulatory authority itself or an auditor appointed by the authority can inspect the books and records and make an estimate.

PART 5

REGULATION OF COMPETITION

Objectives of regulation

§ 32. (1) The regulatory authority shall take the following regulatory measures

1. to ensure equality of opportunity and fair competition on the telecommunication market,
2. to encourage new suppliers to enter the market,
3. to prevent the abuse of significant market power and other abuses,
4. to ensure compliance with the principles of open network access based on ONP,
5. to implement the sector-specific competition regulations of the European Communities and
6. to resolve disputes between market subscribers and between market subscribers and users.

(2) The responsibilities of the Austrian Restrictive Practices Court remain unaffected.

Entrepreneurs with significant market power

§ 33. (1) An entrepreneur has significant market power within the meaning of this Law if as a provider or user of telecommunications services on the relevant technical or geographical market

1. he is exposed to little or no competition or
2. he has an overwhelming position on the market by comparison with his competitors because of his ability to influence market conditions, his turnover in proportion to the size of the market, his control over access to end users, his access to financial resources or his experience in providing products and services.

(2) It is assumed that an entrepreneur has significant market power if he has a share of more than 25 % of the relevant technical or geographical market. However the regulatory authority can stipulate that an entrepreneur with less than 25 % of the relevant market has significant market power. It can also stipulate that an entrepreneur with a share of more than 25 % of the relevant market does not have significant market power. In both cases, such decisions shall be based on the criteria specified in Section 1.

(3) The regulatory authority shall publish once a year in the “Amtsblatt zur Wiener Zeitung” (Official Gazette of the Wiener Zeitung) the technical and geographical markets on which suppliers have significant market power. The entrepreneurs in question shall be given the opportunity to comment prior to publication in accordance with Section 3. The publication has no legal effects.

(4) The regulatory authority shall, at the request of an entrepreneur, stipulate by official notification whether he has a significant market power within the meaning of this Federal Law. It can also do this officially.

Open network provision (ONP)

§ 34. (1) A supplier who has significant market power for telecommunications services for the public shall, in compliance with the principle of non-discrimination, provide competitors on this market with services under comparable circumstances, under equivalent conditions and at the same level of quality that he offers on the market or that he provides for his own services or for services of associated companies.

(2) In particular, he may restrict access only insofar as this is compatible with the basic requirements laid down in Article 3 Section 2 of Council Directive 90/387/EEC dated June 28, 1990 to realise the internal market for telecommunications services by introducing open network access (Open Network Provision - ONP) (OJ No. L 192 dated 24.07.90, p.1). Competitors must be informed which of the basic requirements is used as the basis for the restriction.

(3) The regulatory authority can impose a code of conduct on or forbid certain behaviour by a supplier who violates Section 1 or declare contracts null and void in whole or in part if this supplier abuses his significant market power. Before such action is taken, the regulatory authority shall request the party concerned to stop the abuse to which an objection has been made.

(4) Abuse is presumed if a supplier who has significant market power on a particular market provides himself or associated companies with access to his internal services and to the services he offers on the market at more favourable conditions than he grants to competitors for using these services for their own ranges of services. This can be disproved if the supplier presents facts that justify these less favourable conditions, in particular the imposition of restrictions.

Interfaces for open network access

§ 35. (1) Companies with significant market power and companies obliged to provide universal service are obliged to offer interfaces harmonised in accordance with ONP principles. They are free to offer other interfaces in addition.

(2) If, in offering telecommunications services, a supplier who has significant market power on the relevant market does not comply with the standards that the European Commission or the Council has declared as binding in accordance with Article 10 of Council Directive 90/387/EEC dated June 28, 1990 for realising the internal market for telecommunications services by introducing open network access (Open Network Provision - ONP) (OJ No. L 192 dated 24.07.90, p. 1), the regulatory authority may exercise the powers defined in § 34 Section 3.

(3) If a supplier or a user complies with the relevant European standards relating to the interfaces and service features for open network access published in the Official Journal of the European Communities, it will be assumed that he meets the basic requirements for open network access.

(4) If there are no European standards relating to the interfaces and service features for open network access published in the Official Journal of the European Communities that apply to the provision of telecommunications services, the regulatory authority can require the supplier to provide evidence of compliance with the basic requirements for open network access.

Minimum provision of leased lines

§ 36. Suppliers of leased lines who have significant market power are obliged to offer, publicly on the market they dominate, a minimum number of leased lines with uniform technical features in accordance with Article 7 in connection with Annex II of Council Directive 92/44/EEC dated June 5, 1992 for introducing open network access for leased lines (OJ No. L 165 dated 19.06.92, p. 27). They shall define general business conditions and cost-oriented tariffs in this respect. These shall be subject to the regulations governing general business conditions and tariffs in accordance with § 18.

Granting of network access and interconnection

§ 37. (1) The operator of a telecommunications network who offers telecommunications services for the public and who has significant market power, shall enable other users to access his telecommunications network or unbundled parts of the same. The obligation to unbundle shall not apply if the operator presents facts that indicate that this obligation is not justified in this particular case. The regulatory authority shall decide on this justification within six weeks and on whether additional technical or economic outlay for part services is reasonable from the point of view of the competition law. In particular, such an operator shall enable his telecommunications network to be interconnected with public telecommunications networks of other operators.

(2) Access shall be granted via connections that are generally available on the market (general network access). It can also be granted via special connections (special network access) if the user so wishes.

(3) Agreements on network access and interconnection must be based on objective criteria, must be comprehensible and must provide non-discriminatory unbundled access with equality of opportunity to the telecommunications networks of an operator in accordance with Section 1 Sentence 1.

Scope of interconnection

§ 38. (1) Interconnection shall comprise at least the following services:

1. safeguarding of access by users of a supplier with significant market power to the network of a new supplier through pre-programmed network selection or dialling of selection codes according to a numbering plan,
2. provision of the necessary traffic data of the relevant connection to the interconnecting supplier,
3. switching of calls to users of other interconnecting operators,
4. provision of accounting data in a suitable form for the interconnecting supplier.

(2) More detailed provisions relating to interconnection shall be defined by ordinance by the Federal Minister of Science and Transport. In doing so he must take into consideration the safeguarding of effective competition, maintenance of consistent service quality and compliance with binding international regulations.

In addition, he must define by ordinance a minimum range of unbundled network elements. Consideration must be given in particular to information practice.

(3) If the use of cable paths is necessary for interconnection and if this is not necessary for the same or similar competitive service from the supplier with significant market power, the costs of using these cable paths must be divided equally between both suppliers (fictitious costs).

(4) In the event of disputes, the Telekom Control Commission shall decide on the appropriateness of the costs and the technical feasibility of an interconnection in accordance with Section 3.

Restrictions

§ 39. (1) The operator may restrict network access and interconnection only for reasons based on the fundamental requirements according to Article 3 Section 2 of Council Directive 90/387/EEC dated June 28, 1990 for realising the internal market for telecommunications services by introducing open network access (Open Network Provision - ONP) (OJ No. L 192 dated 24.07.90, p.1) and only insofar as the restriction complies with other legislation of the European Communities.

(2) The operator according to Section 1 shall provide evidence to the regulatory authority that rejection or restriction is authorised.

Special network access

§ 40. (1) If a user requires special network access, this must be provided if it is technically feasible and the user bears the costs.

(2) The regulatory authority shall specify the way in which special network access, in particular for interconnection, is to be provided. The Directives of the European Communities, published by the European Parliament and by the Council in accordance with Article 6 of Council Directive 90/387/EEC dated June 28, 1990 for realising the internal market for telecommunications services by introducing open network access (Open Network Provision - ONP) (OJ No. L 192 dated 24.07.90, p.1), must be observed.

Obligation to negotiate

§ 41. (1) Each operator of a public telecommunications network is obliged to make an interconnection offer to other operators of such networks on demand. All parties concerned shall aim to enable and improve communication among users of different public telecommunications networks.

(2) If an agreement on interconnection cannot be reached between an operator of a telecommunications network who offers telecommunications services for the public and another operator of a public telecommunications network within a period of six weeks from the receipt of the request, either party involved in the interconnection may call in the regulatory authority.

(3) After the parties have been heard, the regulatory authority shall decide on the interconnection arrangements within a period of six weeks from the day it was called in. The regulatory authority can prolong the procedure by no more than four weeks. The arrangement replaces any agreement. The regulatory authority must observe the Directives of the European Communities, published by the European Parliament and by the Council in accordance with Article 6 of Council Directive 90/387/EEC dated June 28, 1990 for realising the internal market for telecommunications services by introducing open network access (Open Network Provision - ONP) (OJ No. L 192 dated 24.07.90, p.1). In accordance with the Directive, the principle of cost basis shall apply in defining the amount of the tariffs only of companies with significant market power.

(4) Companies with significant market power are obliged to produce a list of the standard interconnection offers for their networks for which there is a demand on the market, or which are used by services that the company itself provides in competition with others.

(5) Standard interconnection offers in accordance with Section 4 and interconnection agreements in accordance with Section 2 shall be submitted in writing to the regulatory authority; they will be published by the authority.

Tariffs for granting network access

§ 42. Companies with significant market power shall include the tariffs and conditions for standard interconnection offers in the business conditions and publish them (§ 18).

Structural separation and separate accounting

§ 43. (1) Companies that have significant market power on markets other than the telecommunication market or that exercise special or exclusive rights in other areas must not cross-subsidise the tariffs for their telecommunications services from the areas with special or exclusive rights. In accordance with the Directive, the principle of cost basis shall apply in defining the amount of the tariffs of companies with significant market power.

(2) Companies that have significant market power on a telecommunication market must not cross-subsidise licensed telecommunications services among one another or cross-subsidise between these and other telecommunications services.

(3) Providers of public telecommunications services who have significant market power on markets other than the telecommunication market or who exercise special or exclusive rights in other areas must have adequate separation, at the organisational or accounting level, between their business activities in the telecommunication sector and their other business

activities to ensure transparency in the flow of payments and benefits between these areas of activity.

(4) Providers of public telecommunications services who have significant market power on a telecommunication market must have adequate separation, at the organisational or accounting level, between their activities on the different telecommunication markets to ensure transparency in the flow of payments and benefits between these areas of activity.

(5) The regulatory authority shall, officially or on application by a party on the market, initiate an investigation into compliance with the obligations arising from §§ 43 and 45 if there is reasonable suspicion that these obligations have been violated. It may inspect the books and records of the companies concerned and require the companies concerned to give details of their allocation of costs.

Relinquishment of infrastructure

§ 44. (1) If a company relinquishes its infrastructure or free capacity of its infrastructure to another in accordance with § 43 Section 1 and if this latter thereby provides a licensed telecommunications service, the costs on which relinquishment is based must not be cross-subsidised from areas with special or exclusive rights.

(2) Relinquishment in accordance with Section 1 shall be notified to the regulatory authority by the relinquishing company prior to commencement of the service. Evidence is required that the obligation arising from Section 1 is being observed. The regulatory authority may object to relinquishment within eight weeks if it is of the opinion that cross-subsidising is taking place.

(3) In the event of such an objection, the relinquished infrastructure for telecommunications services may be used provisionally if cross-subsidising is terminated.

(4) The objection shall contain those conditions and requirements that have to be met in order for the company to comply with the ban on cross-subsidising, and an indication of an appropriate time scale within which these conditions and requirements have to be demonstrably met.

Cost accounting

§ 45. Suppliers of public telecommunications services who have significant market power on the telecommunication market are obliged to operate a cost accounting system in compliance with ONP Directives that assigns costs and cost elements to all the services and service elements and permits subsequent auditing.

Supervision by the regulatory authority

§ 46. The organs of the regulatory authority and their appointed auditors shall be given the opportunity to inspect books and records on demand in order to verify compliance with the obligations arising from this Part and the relevant regulations of the European Communities.

PART 6

FREQUENCIES

Frequency management

§ 47. (1) The Federal Minister of Science and Transport shall manage the frequency spectrum and the Austrian usage rights and orbital positions of satellites in compliance with international agreements. He shall take appropriate measures to ensure efficient and fault-free use.

(2) The Federal Minister of Science and Transport shall define the frequency ranges allocated to the individual radio services and other applications of electromagnetic waves in a frequency range allocation plan. This shall be published in a suitable form. If necessary in order to ensure fault-free and efficient use of the frequencies, further specifications relating to frequency usage may be included in this plan; in particular, geographic, temporal and technical specifications may be made for certain frequency ranges, compliance with which allows for freedom of use.

(3) The Federal Minister of Science and Transport shall allocate to the regulatory authority at their request or officially parts of the frequency spectrum for economic use. The purpose of use and the technical conditions of use shall be made known.

Frequency usage plan

§ 48. (1) The Federal Minister of Science and Transport shall prepare a frequency usage plan on the basis of the frequency range allocation plan. In particular, he shall take into consideration international harmonisation, technical developments and compatibility of frequency usage in the transmission media.

(2) The frequency usage plan shall contain the division of the frequency ranges into frequency usages and specifications for these frequency usages. It may comprise partial plans. It shall be published in a suitable form.

Frequency allocation

§ 49. (1) Each frequency may only be put into operation on the basis of an authorisation from the telecommunication authority (operating authorisation). Frequency allocation shall be non-discriminatory according to the frequency usage plans and on the basis of comprehensible and objective procedures. The authority shall decide on the application within six weeks, unless special circumstances, such incompleteness of the documentation provided by the applicant or advantage investigations, dictate that a longer period is needed in which to reach a decision.

(2) Frequencies shall be allocated for use if they
1. are specified for use in the frequency usage plan,

2. are available and
3. are compatible with other frequency usages.

(3) The Federal Minister of Science and Transport shall define by ordinance the detailed provisions relating to frequency usage and frequency allocation, in particular the requirements relating to allocation.

(4) If the frequency usage plan and market circumstances indicate that there is a lack of frequencies for individual public usages, the provisions of §§ 20 ff shall be applied analogously to the allocation of frequencies.

(5) The frequency allocation specifications shall indicate the type and scope of frequency usage insofar as this is necessary to ensure the most efficient and fault-free use of the frequencies and compatibility with other frequency usages. This information shall include the location, the channel bandwidth, the modulation procedure, the output power, the field strength limit values, the geographic and temporal distribution and restrictions on use.

(6) Frequency allocation does not affect existing obligations relating to compliance with statutory, technical or operational requirements based on other legal provisions.

(7) The allocation of frequencies for the operation of radio systems for public purposes shall take precedence if this is necessary to attend to the needs of the applicant.

(8) In allocating frequencies for radio relay links, provided not all applications can be met because of a lack of frequencies, preference shall be given to the applicant who does not have significant market power on the relevant telecommunication market as defined in § 33, unless the radio relay link in question is needed in this case to provide universal service.

(9) Allocation of frequencies is no guarantee of the quality of the radio link.

(10) For frequencies intended for free use in the frequency usage plan, there is no need for an application for separate frequency allocation if the radio transmission systems used for operation have appropriate approval or have general approval.

(11) Frequency allocation can be revoked if the allocated frequency is not used within six months of allocation for the purpose for which it was allocated or if it has been used and then is not used for six months.

(12) The frequencies intended for the provision of public mobile communications services shall be allocated by means of a licence in accordance with the procedure in §§ 20 ff.

(13) All frequencies may be allocated only for a restricted period. The restriction shall be appropriate for practical and economical considerations.

Changes in frequency usage

§ 50. (1) The type and scope of frequency usage can be subsequently changed if

1. after allocation there is interference in frequency usage because of the increased use of the frequency spectrum or
2. considerable improvements in efficiency are possible on the basis of further developments in technology.

In making such changes the reasonableness of the changes and the economic impact on the parties concerned shall be taken into consideration. In particular, measures must be taken to ensure that radio relay links for which operational use is in the public interest can continue to be operated undisturbed.

(2) If as a result of increased communication requirement on the part of a user the usage level of the allocated frequencies changes so much that other users of the same frequency can no longer use the frequency as intended, the authority can allocate another frequency to the party whose radio operation has caused the restriction, unless a different remedy is possible. The same applies if in connection with applications to expand existing radio networks other users are restricted in their intended use of frequencies.

Frequency usage fees

§ 51. (1) Fees shall be paid by the user for the allocation and use of frequencies and for other work by the authority in connection with frequency allocation and frequency management. These fees are intended to offset the costs of administering the frequencies, planning, co-ordinating and managing the use of frequencies, including the necessary measurements, tests and compatibility investigations to ensure efficient and fault-free frequency usage.

(2) The fees consist of a one-off allocation fee and an annual usage fee. The allocation fee does not apply in cases in which the licencees of mobile radio make a frequency usage fee (§ 21). The fees shall be defined by ordinance by the Federal Minister of Science and Transport in agreement with the Federal Minister of Finance. Consideration shall be given in particular to personnel and material costs to achieve the objectives specified in Section 1. Consideration shall also be given to the question of whether frequencies are to be used commercially.

PART 7

ADDRESSING AND NUMBERING

Definitions

§ 52. The following terms are used in this Part:

1. “Addressing elements” are defined as characters, letters, digits and signals used for selecting communication links;
2. “Address” is defined as the totality of all addressing elements used to specify the destination of a communication link;
3. “Numbers” are defined as sequences of digits that are used for the purposes of addressing in telecommunications networks;
4. “Addressing plan” is defined as the totality of all possible combinations of addressing elements that are used for the unique identification of persons, computer processes, machines, devices or telecommunication equipment and that are involved in a telecommunication process;
5. “Numbering plan” is defined as the totality of all possible combinations of addressing elements that use sequences of digits for the unique identification of persons, computer processes, machines, devices or telecommunication equipment and that are involved in a telecommunication process;
6. “Providers” are defined as network operators or service providers to whom addressing elements are allocated for use;
7. “Number portability” is defined as the ability of a subscriber to change his service provider and location while retaining his address.

Scope

§ 53. (1) The objective of addressing is the efficient structuring and management of the address space in order to meet the requirements of providers in a fair and non-discriminatory manner.

(2) To achieve this objective, the Federal Minister of Science and Transport shall create addressing plans by ordinance and define the conditions that have to be met to acquire the right to use addresses and that justify the right to be allocated these addresses.

Numbering plans

§ 54. (1) In creating the numbering plans, the Federal Minister of Science and Transport shall take into consideration the relevant international regulations, particularly with regard to its structure. He shall take appropriate measures to ensure the availability of an adequate number of addresses. Allowance must be made in the numbering plans, as far as is technically feasible, for new national and international services and for number portability.

(2) The structure of the numbering plan and the regulations governing the allocation of numbers shall guarantee equality of opportunity and equality of treatment for all suppliers of public telecommunications services.

(3) The Federal Minister of Science and Transport shall ensure that the necessary preparatory work and measures to introduce number portability for telephone numbers in the form of network operator portability are initiated without delay and expedited so that number portability is available at the earliest possible opportunity in Austria, but in line with the schedule prescribed by the European Union, in order not to present a substantial obstacle to competition on individual markets or the interests of consumers.

Changes to the numbering plans

§ 55. (1) The Federal Minister of Science and Transport can make changes to implement international obligations or recommendations and to safeguard the adequate availability of addressing elements according to the latest state of the art. Consideration shall be given to the effects on the parties concerned, in particular the direct and indirect adjustment costs.

(2) The operators of telecommunications networks and suppliers of telecommunications services affected by these changes are obliged to implement the necessary measures at their own cost.

(3) The changes to the numbering plans, in whole or in part, or the regulations governing the allocation of numbers do not in any way justify claims for damages.

Carrier selection

§ 56. In designing the numbering plans, care shall be taken to ensure that the users of public telecommunications networks can freely select connections network operators.

Number management and number allocation

§ 57. (1) The regulatory authority is responsible for the efficient management of the numbering plans, in particular for recording their use and for the allocation of addressing elements to providers. Providers can be granted the right to manage subordinate elements independently.

(2) The regulatory authority shall, in response to applications, allocate addressing elements to suppliers of telecommunications services for their use. Allocation shall be by objective, non-discriminatory and comprehensible principles; in particular, the principle of equality of opportunity shall be observed. Providers of addressing elements may be granted the right to allocate subordinate addressing element independently.

Obligation to provide information

§ 58. The providers of addressing elements are obliged to submit information to the regulatory authority necessary for the management of the allocated addressing elements.

Use

§ 59. No right of possession can arise from the allocation of addressing elements to a provider. The provider of addressing elements exclusively has the right to use certain elements.

Usage fee

§ 60. (1) A usage fee must be made for each possible address - within the addressing elements allocated to a provider. The amount of the usage fee for each possible address shall be defined by ordinance by the Federal Minister of Science and Transport in agreement with the Federal Minister of Finance. Consideration shall be given in particular to the economical benefits from the allocation and to the personnel and material costs necessary for management and allocation.

(2) If an addressing element allocated via an application prevents the use of further addressing elements based on that initial addressing element, the provider shall make a fee to compensate for the loss of the possible use of the further addressing elements. The amount of this fee shall also be defined in a ordinance in accordance with Section 1.

(3) Paragraphs 1 and 2 shall also apply to cases in which at the time the numbering plan comes into force addressing elements are being used without allocation or are being held in stock.

Addressing plans

§ 61. The Federal Minister of Science and Transport can create addressing plans by ordinance if this is necessary in view of free and ordered access to the networks and services or for the purposes of meeting international obligations.

PART 8

USER PROTECTION

Rights of users

§ 62. Anyone is authorised to make use of public telecommunications services including universal service and special service obligations under the published general business conditions and tariffs.

Non-payment of bills

§ 63. If a subscriber is in default, the operator of a public telecommunications service may interrupt or disconnect service only if he has given the subscriber advance notice that the service will be interrupted or disconnected and a period of at least an additional two weeks has elapsed without payment. Interruption or disconnection of universal service as defined in § 24 Section 2 Points 1 to 3 must not take place if the subscriber is exclusively in default with regard to obligations from other contractual relationships.

Review of bills

§ 64. (1) If a subscriber doubts the correctness of the amount invoiced, the provider of the telecommunications service shall, in response to a written application, check all the factors on which the amount is based and, on the basis of the results of this check, either confirm the correctness of the invoice or adjust the invoice accordingly.

(2) If the regulatory authority is called on to resolve a dispute (§ 66), the settlement date for the amount invoiced is postponed until the dispute is resolved. Irrespective of this arrangement, an amount equivalent to the average of the last three invoice amounts may be invoiced as due for immediate payment. Excessive amounts collected shall be repaid together with statutory interest from the date of collection.

(3) If an error is discovered which may have been to the disadvantage of the subscriber and the correct bill cannot be ascertained, a lump sum payment shall be defined in the general business conditions which is based on the average level of use of this telecommunications service by the subscriber.

Disconnection for other reasons

§ 65. (1) Irrespective of the institution of criminal proceedings, the operator of a public telecommunications network or service can request a subscriber to disconnect interfering or non-approved terminal equipment immediately from the network termination point.

(2) If the subscriber fails to meet this request and if other users of the network or service are disadvantaged or endangered, the operator can disconnect the line from the network or service.

(3) If, however, the subscriber lodges an objection in response to the request (Section 1) and if there is no disadvantage or endangerment according to Section 2, the operator may not disconnect the line from the service or network but must call on the regulatory authority to adjudicate.

Settlement of disputes

§ 66. Each party, including users, service providers, consumers and other organisations, has the right to call on the regulatory authority in the event of disputes with an operator of a public telecommunications network or a public telecommunications service over an alleged violation of this Law, in particular relating to the provisions of the directive for the introduction of open network access ONP (ONP dispute settlement procedure) and the associated guidelines. The regulatory authority shall produce an acceptable solution within six weeks or inform the parties of its view of the case. The network operators and service providers are obliged to cooperate in such a procedure and submit all the information and documentation required to assess the situation. The option of going to law remains unaffected.

PART 9

RADIO SYSTEMS AND TERMINAL EQUIPMENT

Technical requirements

§ 67. (1) The design and operation of radio systems and terminal equipment must comply with the rules of the art and requirements arising from international regulations.

(2) Personal safety and health are of paramount importance in the installation and operation of radio systems and terminal equipment, as is the interference-free operation of other radio systems and terminal equipment. In designing radio systems and terminal equipment, consideration must be given to the needs of environment protection, within the bounds of what is economically reasonable, with regard in particular to correct disposal.

(3) By ordinance, the Federal Minister of Science and Transport can define more detailed provisions and technical requirements for radio systems and terminal equipment according to the latest state of the art, in particular for

1. the type approval of radio systems,
2. the approval of terminal equipment and
3. the operation of radio systems on foreign ships, aircraft and other means of transport that stay in Austrian territory.

(4) Instead of the provisions specified in Section 3, relevant ÖNORMEN or ÖVE provisions can be declared by ordinance as binding.

(5) The provisions of Section 3 may include references to documents with a technical content, in particular measurement and testing methods, which are available for supervision at the Federal Ministry of Science and Transport, at the regulatory authority and at the Approvals Office during office hours.

Requirement of authorisation for radio systems

§ 68. (1) The installation and operation of a radio system is permitted only with an authorisation. The authorisation shall be granted unless there is reason for not doing so.

(2) Provided it is compatible with the interests of proper fault-free telecommunications, the Federal Minister of Science and Transport can determine in an ordinance the installation and the operation of radio systems and the import, sales and possession of radio transmission systems to be generally authorised for certain equipment types and models.

Radio systems

§ 69. (1) Satellite radio systems as defined in Council Directive 93/97/EEC shall be considered as radio systems within the meaning of this Law. If they are designated as terminal equipment they are subject to the regulations governing terminal equipment.

(2) Telecommunication equipment for which individual frequency allocation is required shall be considered as radio systems within the meaning of this Law.

Import, sale and possession

§ 70. (1) The import, sale and possession of radio transmission systems are permitted only with an authorisation. A sales authorisation also entitles to import and possess radio transmission systems; an import authorisation entitles to possess radio transmission systems. Custody is considered as possession. Radio transmission systems approved and appropriately identified as terminal equipment do not require such an authorisation.

(2) An authorisation as defined in Section 1 shall be granted if there is reason to assume that the technical requirements in accordance with § 67 are met, in particular if interference with other radio systems is not expected and there are no other reasons for refusal in accordance with § 80.

(3) For radio systems that do not meet the technical requirements in accordance with § 67 in whole or in part, an import authorisation shall be granted only if the equipment is being imported only temporarily for the purposes of subsequent export. The authorisation shall be limited to three months; proof of export must be submitted to the authority.

(4) The import, sale and possession of radio reception systems do not require authorisations.

(5) The Federal Minister of Science and Transport can, by ordinance, prohibit the import, sale and possession of radio reception systems or make them subject to authorisation if their use constitutes a threat to public security or in any other way conflicts with the performance of official duties.

Type approval for radio systems

§ 71. (1) On application, the Approvals Office shall ascertain whether a radio system complies with technical requirements in accordance with § 67 (type approval). Type approval shall be granted if the radio system meets the technical requirements.

(2) Approval is not necessary if, on the basis of a procedure defined in international regulations binding on the Republic of Austria

1. internationally recognised approval has been granted by a foreign agency and
2. the radio system is identified in accordance with regulations.

Such equipment is considered to be approved in accordance with Section 1.

(3) By ordinance, the Federal Minister of Science and Transport shall publish detailed provisions relating to the marking of radio systems, taking into consideration any binding international regulations.

Approval and type approval for terminal equipment

§ 72. (1) On application, the Approvals Office shall ascertain whether terminal equipment complies with technical requirements in accordance with § 67 and is suitable for connection to a public telecommunications network (individual approval or type approval). Approval shall be granted if the terminal equipment meets the technical requirements such that connection of this terminal equipment and its intended operation is unlikely to impair normal telecommunication traffic, in particular as a result of interference from telecommunications networks, radio systems and other terminal equipment, or vice versa.

(2) Approval is not necessary if, on the basis of a conformity assessment procedure defined in international regulations binding on the Republic of Austria or in accordance with Austrian regulations governing a conformity declaration by the manufacturer

1. internationally recognised approval (conformity certificate) has been granted by a foreign agency or
2. a conformity declaration by the manufacturer is available and the equipment is identified in accordance with regulations.

Such equipment is considered to be approved in accordance with Section 1.

(3) By ordinance, the Federal Minister of Science and Transport shall publish detailed provisions relating to the internationally recognised conformity assessment procedure (certification, prototype test and the like), the national conformity declaration of the manufacturer, the marking of the equipment, the product controls and the supervisory requirements, taking into consideration any binding international regulations. If internationally binding regulations are involved, the Federal Minister shall issue such an ordinance.

Marking

§ 73. (1) The prescribed marking of radio systems and terminal equipment may only be applied by the authorised party. Marking may only be applied to equipment that corresponds to the approved type. The marking is classified as public documentation.

(2) By ordinance, the Federal Minister of Science and Transport shall define the appearance of such marking.

(3) If radio systems or terminal equipment are identified in accordance with an ordinance issued on the basis of §§ 71 Section 3, 72 Section 3 or 73 Section 2, without the requirements in accordance with Section 1 being met, the regulatory authority shall prohibit the distribution and free movement of this equipment in accordance with the provisions of the relevant Council Directives and shall cancel or remove their marking at the cost of the manufacturer or supplier. This also applies if radio systems or terminal equipment are identified with symbols that may be confused for markings prescribed in one of the above-mentioned regulations.

(4) By ordinance, the Federal Minister of Science and Transport shall define more detailed provisions relating to the procedure for prohibition in accordance with Section 3. He shall take into consideration any binding international regulations.

Equipment and satellite radio systems not intended for
connection to a public network

§ 74. Equipment and satellite radio systems which are suitable for connection to a public telecommunications network but which are not provided for this purpose may not be connected to a public telecommunications network. They may only be marketed if they are identified in accordance with binding international standards and if an express declaration has been made by the manufacturer concerning the intended purpose and the manufacturer has issued instructions for use.

Use

§ 75. (1) Radio systems and terminal equipment must not be misused. The following are classified as misuse:

1. any communication that threatens public order, jeopardises public security, offends decent standards of morality or contravenes the law;
2. any gross harassment or intimidation of other users;
3. any violation of obligations of confidentiality existing under this law or international contracts and
4. and communication that is not in accordance with the authorised purpose of a radio system.

(2) As far as can be reasonably expected, owners of radio systems and terminal equipment shall take suitable measures to prevent misuse. Service providers who merely offer access to telecommunications services are not classified as owners.

(3) Radio systems may only be operated for the licensed purpose and at the locations specified in the licence; mobile systems may only be operated in the area specified in the authorisation.

(4) Radio transmission systems may only be operated using the frequencies and call signals allocated under the authorisation.

(5) Terminal equipment may only be operated in such a way that there is no interference with a public telecommunications network.

(6) Terminal equipment that are not approved or not appropriately identified must not be connected to a public telecommunications network or operated in conjunction with such.

PART 10

PROCEDURES, FEES

Procedures for approval and type approval

§ 76. (1) Only a manufacturer or his representative may submit an application for the approval of a type of radio system or terminal equipment. An applicant with registered company headquarters outside the European economic area may submit an application only through a person with main residence within the European economic area; this also applies to applications for the approval of an individual terminal.

(2) Applications in accordance with Section 1 shall be submitted in writing. An application for the approval of a type is permissible only if the radio system or the terminal equipment carries a typeplate with the name of the manufacturer or his representative and the device designation (type designation) selected by the manufacturer or his representative.

(3) Applications in accordance with Section 1 must be accompanied by a report from a recognised domestic or accredited foreign testing authority that confirms compliance with technical requirements in accordance with § 67. If foreign approval has already been granted, the application need only be accompanied by a supplementary report that confirms compliance with technical requirements not covered by this approval. In addition, the Approvals Office may call for further documents to be submitted, such as descriptions and circuit diagrams, and for a prototype to be submitted at the cost of the applicant if it deems such submissions necessary in order to reach a decision on the application.

(4) A radio system or a terminal is considered to belong to the approved type if it is constructed in accordance with the descriptions and circuit diagrams submitted for supervision and if its designation on the typeplate corresponds to the designation of the inspected type.

(5) § 78 Sections 6 and 7 also apply for approvals and type approvals.

Revocation of an approval or type approval

§ 77. Approval shall be revoked if a prohibition procedure in accordance with § 73 Section 3 has been completed with final and binding effect and prohibition has been declared. The results of this procedure will determine whether approval is to be revoked for a single device or for the entire type.

Authorisation procedure

§ 78. (1) Applications in accordance with §§ 68 and 70 shall be submitted in writing. An application must contain the following:

1. name and address of the applicant,

2. the purpose for which the radio system is to be used and
3. a description of how the radio system operates.

The application shall be accompanied by documents confirming compliance with technical regulations.

(2) The Telecommunications Office in whose local sphere of influence the radio system is to be operated shall decide on applications in accordance with § 78.

(3) If a radio system is set up or operated in the local sphere of influence of two or more Telecommunications Offices, the Telecommunications Office in whose local sphere of influence the applicant has his main residence shall assume responsibility.

(4) Frequencies shall be allocated in accordance with § 49.

(5) Official notifications in accordance with § 68 shall be issued for a maximum period of 10 years.

(6) Official notifications in accordance with §§ 68, 69, 70 and 71 may contain ancillary provisions. Obligations may be imposed with conditions and requirements if the circumstances of the particular case dictate that such are appropriate to protect human life, safeguard health, avoid material damage, comply with international agreements, guarantee the interference-free operation of other telecommunication equipment or to meet any other technical or operational requirements.

(7) On application by the holder of an authorisation, the authorisation shall be transferred in its existing scope by the authority to another person or institution if there are no reasons for refusal or revocation.

Fees

§ 79. (1) Fees shall be paid for authorisations and approvals granted in accordance with this Federal Law.

(2) The fees for the administration procedure under this Federal Law and for the authorisations and approvals granted in accordance with this Federal Law shall be determined by ordinance by the Federal Minister of Science and Transport in consultation with the Federal Minister of Finance. Consideration shall be given in particular to personnel and material costs to achieve the specified objectives.

(3) If anyone has evaded fees through unlawful action, the Telecommunications Office shall require the party at fault to pay the evaded fee within the period of limitation at the rates in force at the time the unlawful action is detected, regardless of the fine imposed for the unlawful action.

(4) Fees in arrears shall be recovered by means of arrears orders.

Refusal

§ 80. An application for an authorisation to install and operate a radio system shall be granted except where

1. the system does not meet the technical requirements as defined in § 67, in particular if interference with other radio systems is expected;
2. the frequencies requested are not available in the proposed area of use or cannot be allocated for operational reasons, such as the use of the frequency spectrum;
3. the necessary frequencies cannot be allocated in the interests of the economical expansion and interference-free operation of radio systems serving public purposes;
4. at least six months have not passed since a revocation in accordance with § 82 Section 3;
5. operation may jeopardise public security;
6. operation may hamper the performance of official duties or
7. the efficient use of the radio frequency spectrum is not guaranteed.

Subsequent amendments to authorisations

§ 81. (1) If provisions of the authorisation are affected,

1. any change of location,
2. any use outside the area specified in the licence in the case of mobile systems and
3. any technical modification to the system

requires prior approval by the relevant Telecommunications Office.

(2) The Telecommunications Office can amend authorisations in the public interest if it considers such amendments necessary

1. to safeguard public telecommunication traffic,
2. to meet technical or operational requirements,
3. to comply with international requirements, in particular resulting from developments in the international telecommunication contract laws or
4. to adapt to changes in frequency usage as a result of changes in international circumstances.

Amendments shall be made with due regard for the economic and operational interests of the holder of the authorisation.

(3) The holder of the authorisation shall make any changes stipulated in accordance with Section 2 within an appropriate period of time and at his own cost. This arrangement does not justify any claims for damages. Claims based on the Official Liability Law (Amtshaftungsgesetz) remain unaffected.

Expiry of the authorisation

§ 82. (1) The authorisation expires as a result of

1. expiry of the period for which it was granted;
2. waiver on the part of the holder of the authorisation;
3. revocation;
4. death or termination of the legal personality of the holder of the authorisation.

(2) In addition, a authorisation for installing and operating a radio system shall expire after twelve months from the day the authorisation was granted if at this point essential parts of the system are not operational. In the case of systems that call for extensive manufacturing work, the period can be extended to up to three years.

(3) The authorisation shall be revoked by the Telecommunications Office that granted the authorisation if

1. major changes have been made in the technical requirements according to § 67 and the holder of the authorisation has not implemented the changes despite a request to do so;
2. this is necessary to safeguard the interference-free operation of a public telecommunications network;
3. the holder of the authorisation has grossly or repeatedly contravened the provisions of this Law or the requirements or conditions of the authorisation;
4. the requirements for granting the authorisation no longer apply;
5. the systems are not operated at all or are not operated in accordance with the approved purpose or
6. the systems are not operated with the approved technical features and the holder of the authorisation has not implemented changes despite a request to do so.

(4) Frequency allocation can be revoked for reasons specified in § 49 Section 10.

(5) Revocation does do not justify any claim to damages.

(6) Revocation and waiver are not tied to any time period. The waiver declaration shall be made in writing to the Telecommunications Office that granted the authorisation.

(7) In the event of the death of the holder of the authorisation for commercial purposes, the estate can make use of this right until it is revoked, but the representative of the estate must indicate this without any unnecessary delay to the relevant local Telecommunications Office.

(8) If the authorisation expires, the system must be taken out of operation and dismantled within an appropriate period of time. The Telecommunications Office shall be notified of the whereabouts of radio transmission systems.

PART 11

SUPERVISION RIGHTS

Scope

§ 83. (1) Telecommunications services are subject to supervision by the regulatory authority. The regulatory authority can call on the organs of the telecommunication authorities to assist in this task.

(2) Licencees and other operators of telecommunications services are obliged, on demand, to provide the Federal Minister of Science and Transport and the regulatory authority with the information needed to meet the requirements of this Law and those of the relevant international regulations.

(3) The regulatory authority can make arrangements to perform their rights and obligations arising from international regulations and this Law. These arrangements must be followed.

(4) The organs of the Telecommunications Office and the Approvals Office shall assist the regulatory authority on request in the performance of their duties, in particular in resolving technical problems in connection with telecommunications.

(5) Telecommunication systems are subject to supervision by the telecommunication authorities. Telecommunication systems within the meaning of this Part are all those systems and devices that are used for the purposes of telecommunications, notably telecommunications networks, cable TV networks, radio systems and terminal equipment.

(6) The telecommunication authorities are authorised to inspect telecommunication systems, in particular radio systems and terminal equipment or their components, for compliance with the provisions of this Law and the ordinances and official notifications issued on the basis of this Law. Representatives of the organs of the Telecommunications Office who provide appropriate marking shall be allowed access for this purpose to sites or rooms in which such equipment is located or is assumed to be located. They shall be given all the information they require on the systems and their operation. Authorisation and licence documents shall be produced on request.

(7) If required for the supervision of radio systems, these systems shall be made available by the holder of the authorisation at his own cost on request by the Telecommunications Office at the appointed location and at the appointed time. Radio systems can also be inspected at the cost of the holder of the authorisation on site if appropriate in view of the size or technical design of the system or the financial costs involved.

Searches

§ 84. (1) If there are urgent grounds for suspicion that personal injury or material damage may arise from a radio transmission system that has been installed or is being operated without

approval or if the performance of duties arising from international contracts so dictate, the telecommunication authorities may arrange for searches to be made of property, accommodation, persons or vehicles, or in the case of imminent danger may conduct such searches itself through its organs.

(2) Searches must be conducted with the greatest possible respect for persons present and property. In particular, care must be taken to ensure that encroachment on the rights of the party or parties concerned does not violate the principle of reasonableness as embodied in § 29 of the Austrian Security Police Law (Sicherheitspolizeigesetz). The provisions of §§ 141 Section 3 and 142 Sections 1, 2 and 4 of the Code of Criminal Procedure (StPO) shall apply analogously unless this would thwart the purpose.

(3) A summary of the way the search was conducted and the results of the search shall be prepared by the organ on site. One copy shall be given to the person searched or left at the place of the search.

Supervision measures

§ 85. (1) In the event of interference in a telecommunication system (§ 83 Section 2) caused by another telecommunication system, the Telecommunications Offices can arrange for and implement such measures that may be necessary to protect the system and that are most appropriate for the systems in question given the particular circumstances and the need to avoid excessive costs.

(2) Telecommunication systems installed and operated without approval may be shut down without prior warning. For telecommunication systems that have otherwise been installed or operated contrary to the provisions of this Law this applies only if shutdown is necessary to preserve or restore undisturbed telecommunication traffic.

Shutdown

§ 86. (1) To preserve public peace, security and order, the Federal Minister of Science and Transport may terminate the operation of telecommunication systems (§ 83 Section 2) in whole or in part or for certain types of system for a limited or unlimited period of time and place the user of certain systems under temporary restrictions.

(2) Any arrangement under Section 1 shall be made with due regard for the economic and operational interests of the operator; it does not justify any claims for damages.

PART 12

CONFIDENTIALITY OF TELECOMMUNICATIONS, DATA PROTECTION

General

§ 87. (1) Unless otherwise specified by this Federal Law, the provisions of the Data Protection Law (Datenschutzgesetz), BGBl. No. 565/1978, shall be applied to the material regulated in this Federal Law.

(2) The provisions of the Code of Criminal Procedure (StPO) are unaffected by the provisions of this Part.

(3) In this Part

1. “operator” is defined as the supplier of public telecommunications services within the meaning of Part 3;
2. “subscriber” is defined as a natural or legal person who has taken out a contract with a supplier of a public telecommunications service for the use of this service;
3. “user” is defined as a natural person who uses a public telecommunications service for private or business purposes without necessarily having subscribed to this service;
4. “master data” is defined as all personal data needed for the establishment, processing, modification or termination of legal relationships between the user and the supplier of telecommunications services or for the creation and publication of subscriber directories; namely:
 - family name and first name,
 - academic title,
 - address,
 - subscriber number,
 - credit standing
5. “traffic data” is defined as all personal data relating to subscribers and users that is needed for setting up connections or for billing; namely:
 - active and passive subscriber numbers,
 - address of the subscriber,
 - type of terminal,
 - charge code,
 - total number of charge units used in the billing period,
 - type, date, time and duration of the calls,
 - amount of data transferred,
 - other payment information, such as payment in advance, payment by instalments, line barring or payment demands;
6. “content data” is defined as the contents of the messages transferred.

Confidentiality of telecommunications

§ 88. (1) Confidentiality of telecommunications applies to the content data and the precise circumstances of the communication, in particular whether someone is or was involved in a telecommunication process. Confidentiality of telecommunications also extends to the precise circumstances of unsuccessful call attempts.

(2) Each operator and everyone involved in the activities of the operators is obliged to preserve the confidentiality of telecommunications. The obligation to confidentiality shall continue to apply after the end of the activity on which it was originally based.

(3) All forms of monitoring, interception and recording of communication conducted through the use of a public telecommunications service and the forwarding of information relating to such communication by persons other than a user without the approval of all users concerned are prohibited. This does not apply to the recording and tracing of telephone calls by emergency organisations in the course of accepting emergency calls or identifying malicious callers.

(4) If a radio system, a terminal or any other technical equipment receives messages that are not intended for this radio system, terminal or user of any other equipment, the contents of such messages must not be recorded or used for any purposes nor must the fact that they have been received be divulged to unauthorised parties. Recorded messages shall be erased or otherwise destroyed.

Technical equipment

§ 89. (1) The operator is obliged, on the basis of an ordinance issued in accordance with Section 3, to provide all the equipment required to supervise telecommunications traffic in accordance with the provisions of the Code of Criminal Procedure (StPO). This obligation does not justify any claim for compensation.

(2) The operator is obliged to co-operate to the required extent on supervising telecommunications traffic in accordance with the provisions of the Code of Criminal Procedure (StPO), for which appropriate costs will be reimbursed.

(3) By ordinance, the Federal Minister of Science and Transport, with the agreement of the Federal Ministers of the Interior and Justice and according to the latest state of the art, can define the detailed provisions for the design of the technical equipment for monitoring telecommunications traffic in accordance with the provisions of the Code of Criminal Procedure (StPO). The Executive Committee of the National Council shall be notified immediately if such an ordinance is issued.

Security of network operation

§ 90. (1) The obligation to take data security measures as defined in § 21 of the Data Protection Law (Datenschutzgesetz) in connection with the provision of a telecommunications service applies to each operator for each service offered.

(2) Notwithstanding Section 1, the operator shall, in cases in which there is a particular risk that confidentiality will be violated, inform the subscribers of this risk, the possible remedies and the cost of these remedies.

Data protection - general

§ 91. (1) Master data, traffic data and content data may only be generated or processed for the purposes of providing a telecommunications service.

(2) Transfer of the data specified in Section 1 may only take place if this is necessary for the provision by the operator of the telecommunications service for which this data has been generated and processed. Other transfers may only take place on the basis of prior written authorisation by the party or parties concerned. Authorisation is considered to have been given only if it was given expressly in response to a request by the operator. Operators must not make the provision of their services dependent on such authorisation.

(3) The operator is obliged to inform the subscriber about which person-related data he intends generating and processing, the legal basis and the purposes for such actions and the length of time the data is to be stored. This information shall be made available in suitable form, in particular as part of the general business conditions and no later than commencement of legal relationships. The right to information embodied in the Data Protection Law (Datenschutzgesetz) remains unaffected.

Master data

§ 92. (1) Master data may be generated and processed by operators only for the following purposes:

1. conclusion, performance, modification or termination of the contract with the subscriber;
2. billing and
3. creation of subscriber directories, also in accordance with § 26.

(2) Master data shall be deleted by the operator no later than at the end of legal relationships with the subscriber. Exceptions are permissible only if such data is needed for billing, for collecting payments, for handling complaints or for meeting any other statutory obligations.

Traffic data

§ 93. (1) Traffic data must not be stored. At the end of the call it must be immediately deleted by the operator or made anonymous.

(2) If required for billing purposes, the operator shall store traffic data until the end of the period in which the bill may be legally contested or a claim for payment can be enforced. In the event of a dispute, this data shall be made available in unabridged form to the decision-making body and to the arbitrators. If a procedure is initiated relating to the amount to be paid, the data must not be deleted until a final decision on the payment has been reached. The volume of traffic data stored shall be kept to the absolute minimum necessary.

(3) Traffic data may only be processed by persons who are familiar with the purposes for which the data may be generated and processed.

(4) Except in cases subject to special statutory conditions, the operator is not allowed to evaluate the subscriber numbers called from a subscriber line other than for the purposes of billing. With the agreement of the subscriber the operator may use the data for marketing his own telecommunications services.

Itemised billing

§ 94. (1) The subscriber payments shall be shown in the form of itemised billing containing a summary of the payments according to type. If the subscriber so requests, the payments shall be shown as itemised billing records or in some other level of detail to be offered in the business conditions. The business conditions may specify that a charge will be made for itemised bills that show a greater level of detail than the standard record. This charge shall be based on the cost of providing such extra detail.

(2) The operator shall base the scope of the itemised bill on the network development and market demand and shall define this scope in the business conditions.

(3) In creating an itemised billing record only traffic data that is absolutely essential to this activity may be processed. The passive subscriber numbers may be shown in the itemised billing record only in abbreviated form, unless the tariff for a particular connection can only be determined from the unabbreviated subscriber number. Calls for which no payment need be made and calls to emergency service must not be shown.

(4) The same periods apply to the deletion of the data in an itemised bill as to the deletion of traffic data.

Content data

§ 95. (1) Content data must not be stored unless storage of such data constitutes an essential part of the telecommunications service. If temporary storage is required for technical reasons, the operator shall immediately delete this data when the reason for storing it no longer applies.

(2) The operator shall take technical and organisational measures to ensure that content data is not stored or is stored only for the minimum period necessary to meet the technical requirements. If storage of content data is a service feature the data shall be deleted immediately after the service has been provided.

Subscriber directory

§ 96. (1) The operator shall produce a subscriber directory to help people use a public telecommunications service. The subscriber directory may be in printed (book) form, a

directory enquiry service, videotext, electronic data medium or some other form of technical communication.

(2) The following shall be included in this subscriber directory: family name and first name, academic title, address, subscriber number and, if the subscriber so desires, the profession of the subscriber. No charges may be levied for this.

(3) With the agreement of the subscriber, additional data may be included in the subscriber directory. If other persons are affected, their agreement must also be obtained.

(4) A subscriber may choose not to have an entry in the subscriber directory or may choose to have certain elements of the entry omitted (ex-directory). No charges may be levied for this.

(5) The data contained in the subscriber directory may be used and evaluated by the operator only for the purposes of using the service. Any other use is not allowed. In particular, the data must not be used to create electronic profiles of subscribers or to categorise these subscribers except for the purpose of creating and publishing subscriber directories. The operator shall take appropriate technical measures to ensure that electronic subscriber directories cannot be copied.

(6) Transfer of the data contained in a subscriber directory to the regulatory authority in accordance with § 26 and to the publisher of a directory of subscribers across a number of operators in accordance with Section 1 is permissible. The following must comply with such requests:

1. operators with significant market power,
2. licencees who offer a public voice telephony service if the request is made by another licencee.

A payment specified in advance in the business conditions may be requested for the transfer of such data; the payment shall be based on the costs arising in the cases mentioned in Point 1 and Point 2.

(7) The provisions of the above paragraphs in connection with the permissible use, evaluation and transfer of data relating to a subscriber shall not apply in respect of requests by courts of law seeking to clarify and prosecute a particular criminal offence. The operator shall take appropriate technical and organisational measures to ensure that such requests can also be met in connection with data withheld from entry in directories in accordance to Section 4.

Calling line identification

§ 97. (1) If the operator of a public voice telephony service offers calling line identification, the caller must be offered the opportunity, except in calls to emergency services, to suppress the display of his number for any call, individually, autonomously and free of charge. This function must be offered as a permanent feature for each subscriber line.

(2) If the operator offers calling line identification, the called party must be offered the opportunity to suppress the display of incoming calls autonomously and free of charge. If the call number is displayed before the connection is made, the called subscriber must be offered

the opportunity to reject, autonomously and free of charge, any incoming calls for which calling line identification has been suppressed.

(3) If the operator offers called number display, the called subscriber must be offered the opportunity to suppress, autonomously and free of charge, the display of his call number at the caller's terminal.

(4) The operator is obliged to provide information in his business conditions on the possibilities of call number display and the various possibilities of suppressing this display.

Automatic call forwarding

§ 98. For the services they offer in which call forwarding is possible, operators shall give subscribers the opportunity, autonomously and free of charge, to disable automatic call forwarding initiated by a third party to the subscriber's terminal.

Automatic call forwarding in the public voice telephony service

§ 99. For the services they offer in which call forwarding is possible, operators of a public voice telephony service shall give each subscriber the opportunity, autonomously and free of charge, to disable automatic call forwarding initiated by a third party to the subscriber's terminal both generally and in individual cases.

Call tracing, malicious calls

§ 100. (1) Call tracing is the process whereby the identity of a calling party is ascertained irrespective of the wishes of the calling party.

(2) If a subscriber requires this service to trace malicious calls the operator shall set up a call trace or cancel suppression of call number display for future calls. He may levy a charge for this service.

(3) The results of the call trace shall be made known to the subscriber if he presents prima facie evidence of malicious calls.

Unsolicited calls

§ 101. Calls - including fax transmissions - for advertising purposes that do not have the prior consent of the subscribers are not permitted. Consent of the subscriber is the same as the consent of a person authorised by the subscriber to use his line. Consent may be withdrawn at any time; withdrawal of consent has no influence on a contractual relationship with the addressee of the consent.

PART 13

PENALTY CLAUSES

Disclosure of secrets

§ 102. (1) Anyone who, contrary to § 88 Section 4, records or monitors messages with the intention of learning their contents or disclosing their contents to a third party not involved in the call, shall be punished by the courts with a prison sentence of up to three months or a fine of up to 180 times the daily rate, unless the offence threatens to attract a more serious penalty under some other law.

(2) The offender shall be prosecuted only if the aggrieved party wishes to press charges.

Violation of the rights of users

§ 103. (1) A person as defined in § 88 Section 2 who

1. without authorisation discloses the fact or content of the telecommunications activities of a certain person or persons to a party not involved in the calls or gives such a person or persons the opportunity to learn facts covered by the obligation to confidentiality,
2. without authorisation falsifies, incorrectly forwards, modifies, suppresses, incorrectly transfers or withholds a message from the intended recipient,

shall be punished by the courts with a prison sentence of up to three months or a fine of up to 180 times the daily rate, unless the offence threatens to attract a more serious penalty under some other law.

(2) The offender shall be prosecuted only if the aggrieved party wishes to press charges.

Administrative penalty clauses

§ 104. (1) Anyone who

1. contrary to § 68 Section 1 installs or operates a radio system without an authorisation;
2. contrary to § 70 Section 1 imports, sells or possesses a radio transmission system without an authorisation;
3. contrary to an ordinance in accordance with § 70 Section 5 imports, sells or possesses a radio reception system;
4. contrary to § 74 connects equipment or satellite radio systems to a public telecommunications network;
5. contrary to § 75 Section 1 misuses a radio system or terminal equipment;
6. contrary to § 75 Section 2 does not take appropriate measures to prevent the misuse of radio systems or terminal equipment;
7. contrary to § 75 Section 3 operates a radio system for purposes other than the intended purpose, at an unauthorised location or in an unauthorised area;
8. contrary to § 75 Section 4 operates radio transmission systems with unauthorised frequencies or call signals;

9. contrary to § 75 Section 5 operates terminal equipment in such a way that a public telecommunications network suffers interference;
 10. contrary to § 75 Section 6 connects unapproved or inadequately identified terminal equipment to a public telecommunications network or operates such terminal equipment in connection with such a network;
 11. contrary to § 81 Section 1 does not advertise modifications or does not implement modifications as instructed;
 12. contrary to § 83 Section 3 does not provide the necessary information or does not submit the documents required;
 13. contrary to § 83 Section 4 does not provide radio systems for supervision at the assigned location or at the assigned time;
 14. contrary to § 85 Section 1 does not implement measures as instructed
- is considered to have violated administrative regulations and shall be punished by a fine of up to ATS 50,000.

(2) Anyone who

1. contrary to § 73 Section 1 identifies radio systems or terminal equipment without the relevant authorisation;
2. contrary to § 73 Section 1 identifies radio systems or terminal equipment that do not match the approved type;
3. contrary to § 74 markets equipment or satellite radio systems;
4. contrary to § 78 Section 6 does not comply with ancillary provisions;
5. contrary to § 83 Section 3 does not grant the organs of the Telecommunications Offices access to property or rooms;
6. contrary to § 84 Section 1 obstructs the performance of a search;
7. contravenes an ordinance issued on the basis of this Federal Law or an official notification issued on the basis of this Federal Law

is considered to have violated administrative regulations and shall be punished by a fine of up to ATS 100,000.

(3) Anyone who

1. contrary to § 13 Section 1 does not notify the provision of a telecommunications service;
2. contrary to § 14 provides a licensed service without a licence;
3. contrary to § 18 Section 1 provides a telecommunications service without authorisation for the business conditions or tariffs;
4. contrary to § 18 Section 4 does not present business conditions or major changes to the same to the regulatory authority in good time prior to commencement of the service or the date on which the change comes into force;
5. contrary to § 19 does not fulfil the obligations of a provider of a public voice telephony service;
6. contrary to § 20 Section 1 provides a public mobile communications service without a licence;
7. contrary to § 26 Section 2 does not provide the information needed to publish a subscriber directory;
8. contrary to § 31 does not disclose his turnover;
9. contrary to § 36 does not provide a minimum number of leased lines;
10. contrary to § 37 Section 1 does not provide network access and interconnection;
11. contrary to § 41 Section 5 does not submit the required documents;
12. contrary to § 44 Section 2 does not notify the relinquishment of infrastructure;

13. contrary to § 44 Section 2 makes use of infrastructure;
 14. contrary to § 46 does not allow records and books to be inspected;
 15. contrary to § 58 does not provide the necessary information;
 16. contrary to § 83 Section 2 does not provide the required information;
 17. contrary to § 83 Section 3 does not comply with arrangements;
 18. contrary to § 89 Section 1 does not provide facilities for supervising telecommunication traffic;
 19. contrary to § 90 Section 2 does not inform subscribers;
 20. contrary to § 91 Section 3 does not inform subscribers;
 21. contrary to § 96 Section 5 does not take appropriate technical measures to ensure that electronic subscriber directories cannot be copied;
 22. contrary to § 101 makes unsolicited calls for advertising purposes;
- is considered to have violated administrative regulations and shall be punished by a fine of up to ATS 500,000.

(4) Violation of administrative regulations is not considered to have taken place in accordance with Section 1 to 3 if the act is part of a criminal offence that falls within the jurisdiction of the courts or is threatened with a more serious penalty under other administrative regulations.

(5) In the court sentence the objects used to perpetrate the crime can be declared forfeit in favour of the federal Government.

(6) Fines imposed by the Telecommunications Offices in accordance with this Federal Law shall be paid to the Federal Government.

PART 14

AUTHORITIES

Telecommunication authorities

§ 105. The telecommunication authorities are the Federal Minister of Science and Transport (highest telecommunication authority) and the Telecommunications Offices and the Approvals Office, which are subordinate to the highest telecommunication authority.

Responsibilities

§ 106. (1) The area of influence of the most senior telecommunication authority and the Approvals Offices comprises the entire federal territory.

(2) The Telecommunications Offices are located:

1. in Graz for the Steiermark and Kärnten provinces,
2. in Innsbruck for the Tirol and Vorarlberg provinces,
3. in Linz for the Upper Austria and Salzburg provinces and
4. in Vienna for the Vienna, Lower Austria and Burgenland provinces.

(3) Unless otherwise indicated, the relevant local Telecommunications Office is responsible for the official duties arising from this Federal Law. If a particular measure affects the area of influence of two or more Telecommunications Offices, an agreement shall be reached on the further procedure.

(4) The Approvals Office is responsible for

1. deciding on applications for type approval for radio systems,
2. deciding on applications for approval or type approval for terminal equipment and
3. revoking approvals and type approvals.

(5) The Federal Minister of Science and Transport (highest telecommunication authority) is responsible for

1. issuing basic instructions regarding the activities of the regulatory authority,
2. issuing and processing the regulations necessary for performing international contracts, with regard in particular to the use of the frequency spectrum,
3. deciding on appeals against official notifications of the Telecommunications Offices and the Approvals Office, unless an independent administration senate assumes responsibility.

Co-operation by organs of the public
security service, enforcement

§ 107. (1) The organs of the public security service shall assist the Telecommunications Offices and their organs at their request in exercising their powers of supervision within their statutory area of influence.

(2) The official notifications issued by the telecommunication authorities shall be enforced by the telecommunication authorities themselves using the regulations of the administration enforcement law (Verwaltungsvollstreckungsgesetz), provided there is no fee involved.

Telekom Control GmbH

Establishment

§ 108.(1) A company with limited liability and share capital of ATS 50 million will be established to ensure that regulatory requirements in the field of telecommunications are met. The company will have its headquarters in Vienna. The company will be non-profit-making.

(2) The company will manage a company by the name of “Telekom-Control Österreichische Gesellschaft für Telekommunikationsregulierung mit beschränkter Haftung” (Telekom-Control GmbH). Its shares are 100 % reserved by the Federal Government. Administration of the share rights for the Federal Government is the responsibility of the Federal Minister of Science and Transport.

(3) The Federal Minister of Science and Transport is authorised, with the agreement of the Federal Minister of Finance, to sanction increases in the share capital.

(4) The Federal Minister of Science and Transport shall ensure that the supervisory board of Telekom-Control GmbH includes a representative of the Federal Minister of Finance.

(5) Unless otherwise indicated, the law governing companies with limited liability (RGBI. No. 58/1906) shall apply.

Functions

§ 109. Telekom-Control GmbH shall perform all the functions assigned to the regulatory authority in the Telecommunications Law (Telekommunikationsgesetz) and in the ordinances issued on the basis of this Law, unless the Telekom Control Commission (§ 111) bears responsibility for such functions. Telekom-Control GmbH shall take all the organisational measures to enable it to perform its functions and to enable the Telekom Control Commission to meet its obligations.

Telekom Control Commission

§ 110.(1) A Telekom Control Commission shall be set up to perform the functions specified in § 111.

(2) The Telekom Control Commission resides at Telekom-Control GmbH. Management of the Telekom Control Commission is the responsibility of Telekom-Control GmbH. In performing their activities for the Telekom Control Commission, the staff of Telekom-Control GmbH shall be bound by the instructions of the Chair or other member designated in the rules of procedure.

Functions

§ 111. The Telekom Control Commission is assigned the following functions:

1. Issuing, withdrawing and revoking licences and sanctioning the transfer and amendment of licences in accordance with §§ 15, 16 and 23,
2. Approving business conditions and tariffs and exercising the right to object in accordance with § 18,
3. Defining the financial compensation to be paid from the universal service fund in accordance with § 29,
4. Defining the amount to be paid to the universal service fund in accordance with § 30,
5. Deciding which supplier is to be classed as having significant market power in accordance with § 33,
6. Defining the conditions for interconnection in the event of a dispute in accordance with §§ 37 and 38 and
7. Deciding on failure to comply with the ban on cross-subsidising in accordance with § 44.

Composition of the Telekom Control Commission

§ 112.(1) The Telekom Control Commission shall consist of 3 members appointed by the Federal Government. One member shall belong to the judiciary. In appointing this member, the Federal Government shall take into consideration a tripartite proposal from the President of the Supreme Court. The appointment of the other two members shall be based on proposals by the Federal Minister of Science and Transport. It is important in this respect that one member should have relevant technical knowledge and that the other two should have relevant legal and economic expertise. Members shall serve on the Telekom Control Commission for a period of 5 years. Members may be re-appointed.

(2) The Federal Minister of Science and Transport shall appoint a substitute for each member. The substitute shall take the place of a member if the member is prevented from fulfilling his obligations.

(3) The following may not be members of the Telekom Control Commission:

1. members of the Federal Government or a regional government, or state secretaries;
2. persons who are in a close legal or actual relationship with anyone who makes use of the Telekom Control Commission;
3. persons who cannot be elected to the National Council.

(4) If a member of the Telekom Control Commission has failed to comply with invitations to three successive sessions without good cause or if a reason for excluding a member in accordance with Section 4 subsequently comes to light, the Telekom Control Commission shall conduct a hearing and adjudicate accordingly. If the Commission finds against the member, the member shall lose his membership.

(5) Sections 1, 3 and 4 shall apply analogously to substitute members.

(6) If a member dies, resigns voluntarily or leaves prematurely in accordance with Section 4, so the relevant substitute shall become a member of the Telekom Control Commission, and a new substitute shall be appointed on the basis of Sections 1 and 2 for the period of time the original member had left to serve.

(7) Members of the Telekom Control Commission may claim appropriate travel and cash expenses and a session fee to be determined by an ordinance by the Federal Minister of Science and Transport in consultation with the Federal Minister of Finance in view of the significance and scope of the functions performed by the Telekom Control Commission.

Chair and rules of procedure

§ 113. (1) The judiciary member shall chair the Telekom Control Commission.

(2) The Telekom Control Commission shall define its rules of procedure; one of its members shall be entrusted with managing its day-to-day business.

(3) The Telekom Control Commission must be unanimous in its agreements. Abstention is not permitted.

Freedom from instruction

§ 114. In accordance with Article 20 Section 2 B-VG, members of the Telekom Control Commission are not bound by any instructions in the performance of their duties.

Procedural regulations, appeal

§ 115.(1) Unless otherwise specified in this Federal Law, the Telekom Control Commission shall apply the regulations of AVG 1991.

(2) The Telekom Control Commission is the highest court of appeal. Its decisions are not subject to revocation or amendment by administrative action.

Settlement of disputes

§ 116.(1) Notwithstanding the jurisdiction of the courts of law, customers or interested parties can refer disputes or complaints, in particular complaints about the quality of service or payment disputes that have not been satisfactorily resolved with the supplier of a telecommunications service, notably universal service, to Telekom-Control GmbH, unless the Telekom Control Commission is responsible for taking a decision (§ 111). Telekom-Control GmbH shall endeavour to bring about an agreement within a reasonable period of time. Suppliers of telecommunications services are obliged to co-operate in such a procedure and submit any information that will assist Telekom-Control GmbH in assessing the situation.

(2) Telekom-Control GmbH shall issue directives for carrying out the procedures stipulated in Section 1 and in particular shall define time-limits for completing the procedure that are appropriate to the situation. The directives shall be published in a suitable form.

(3) The regulatory authority shall call on experts who have no affiliation with the operator to assist in the settlement procedure. It can appoint these experts from its own staff.

Right of supervision

§ 117. (1) Notwithstanding the rights of the General Assembly in accordance with the Law on Companies with Limited Liability (Gesetz über die Gesellschaften mit beschränkter Haftung), RGBI. No. 58/1906, the activities of Telekom-Control GmbH are subject to supervision by the Federal Minister of Science and Transport.

(2) In exercising his right of supervision, the Federal Minister of Science and Transport may issue reasonable instructions in writing to Telekom-Control GmbH.

(3) The Managing Board shall submit to the Federal Minister of Science and Transport all the information and documents he requires to perform his duties.

(4) The Federal Minister of Science and Transport may revoke the appointment of a Managing Director if a Managing Director does not obey an instruction in accordance with Section 2 or does not submit information in accordance with Section 3. § 16 of the Law on Companies with Limited Liability (Gesetz über die Gesellschaften mit beschränkter Haftung) is unaffected by this.

Transparency

§ 118. Decisions of fundamental significance by Telekom-Control GmbH and the Telekom Control Commission and instructions in accordance with § 117 Section 2 shall be published in suitable form with due regard to the provisions of data protection regulations. Detailed publication arrangements shall be defined by ordinance by the Federal Minister of Science and Transport.

Collective contracts

§ 119. Telekom-Control-GmbH is authorised to enter collective contracts as an employer.

Management objectives

§ 120. The Management Board shall prepare a concept covering their activities and shall review this concept on an annual basis. It shall pay particular attention to the development of telecommunications in Austria. It shall report to the Federal Minister of Science and Transport and the Supervisory Board at least once a year. The Management Board shall take suitable measures to ensure that the company is managed efficiently, appropriately and frugally and shall immediately appraise the Federal Minister of Science and Transport of any proposals to change the framework conditions of their activities.

Activity report

§ 121. The Management Board shall prepare an annual activity report. This report shall deal in particular with the duties performed, staff developments and financial resources used. The report shall be submitted by the Federal Minister of Science and Transport to the National Council and published in a suitable form.

Procedural regulations

§ 122. AVG 1991 shall be applied in the administrative procedure in accordance with the responsibilities defined in § 109.

Telecommunications Advisory Board

§ 123. (1) A Telecommunications Advisory Board shall be set up at the Federal Ministry of Science and Transport to advise the Federal Minister of Science and Transport and the regulatory authority with particular reference to the principles of telecommunications, to effects on the development of competition, on the economy of Austria and on the needs of consumers and to the further development of universal service.

(2) The Telecommunications Advisory Board shall comprise a maximum of ten members appointed for a period of 6 years by the Federal Minister of Science and Transport. Only persons who have adequate experience in political economics, business management, social politics, technology, law or consumer protection may be considered as potential members. In appointing members, the Federal Minister of Science and Transport must ensure that each of the above-mentioned disciplines is covered by at least one member.

(3) Members of the Telecommunications Advisory Board qualify for travel expenses and a session fee.

(4) The Telecommunications Advisory Board shall elect a Chair and Deputy Chair from among its members, each to serve for a period of 2 years. The Chair and Deputy Chair may be re-elected at the end of their tenure.

(5) The Telecommunications Advisory Board shall define its rules of procedure. The regulatory authority is responsible for business management. Sessions are closed to the public.

(6) The Telecommunications Advisory Board can commission scientific studies of topics of interest.

(7) The financial requirements of the Telecommunications Advisory Board shall be met by the regulatory authority. The maximum amount shall be defined each year by the Federal Minister of Science and Transport.

PART 15

TRANSITIONAL AND FINAL PROVISIONS

Expiry of legal regulations

§ 124. Telecommunications Law (Fernmeldegesetz) 1993 BGBl. No. 908, last amended by Federal Law BGBl. I No. 44/1997, expires when this Federal Law comes into force.

Transitional provisions

§ 125. (1) The duties and powers assigned to the telecommunication authorities in the following ordinances applicable as Federal Law in accordance with Federal Law dated July 5, 1972, BGBl. No. 267 shall pass to the Telecommunications Offices, with the Federal Minister of Science and Transport acting as the highest telecommunication authority and the relevant local Telecommunications Office acting as the telecommunication authority in the first instance:

1. ordinance of the Federal Minister of Transport and Nationalised Industries dated December 21, 1953 regarding the installation and operation of amateur radio equipment (Amateur Radio Ordinance), BGBl. No. 30/1954, as amended in ordinance BGBl. No. 326/1962,
2. ordinance of the Federal Minister of Transport and Nationalised Enterprises dated April 6, 1967 regarding radio products (Radio Product Ordinance), BGBl. No. 139/1967,
3. ordinance of the Federal Minister of Transport and Power Supply dated November 23, 1965 regarding the installation and operation of broadcast radio and television receiving equipment (Broadcast Radio Ordinance), BGBl. No. 333/1965, as amended in this Federal Law.

(2) Administrative procedures pending at the time this Federal Law comes into force, in particular the procedures for granting a third licence for the provision of the reserved voice telephony service by means of mobile radio, shall be concluded in accordance with the law as it stood before this Federal Law came into force.

(3) The authority may, on demand, allocate additional frequencies in packages of 5 MHz from the frequency range reserved for DCS-1800 to existing licencees to provide the reserved telecommunications service by means of mobile radio in the digital cellular mobile radio range if at least three years have elapsed since the licence decree of the licence applicant for the DCS-1800 licence to be granted in 1997 came into force. Before this time, additional frequencies from the frequency range reserved for DCS-1800 may only be allocated to existing licencees if their subscriber capacity is demonstrably exhausted and they have taken all reasonable economic and technical measures.

(4) Authorisations, licences and approvals valid at the time this Federal Law comes into force shall remain valid; licences for telecommunications networks and cable TV networks (telecommunication systems) that are now no longer subject to authorising (§ 5) shall expire when this Federal Law comes into force.

(5) If, at the time this Federal Law comes into force, telecommunications services are provided which were previously only notifiable but which in future will be licensed, these services may continue to be provided without a licence until June 30, 1998.

(6) The use of telecommunications networks to provide a public voice telephony service via a fixed network is permitted from January 1, 1998; this does not apply to the network of the PTA.

(7) The provision of a public voice telephony service via a fixed network is reserved for the PTA without licence until December 31, 1997. Licences for provision from January 1, 1998 can be issued once this Federal Law comes into force.

(8) Until the necessary requirements for an invitation to tender are met in accordance with § 28, the PTA shall provide universal service. An initial review shall be undertaken no later than five years after this Federal Law comes into force to determine whether the requirements for an invitation to tender are met.

(9) For a period of three years after this Federal Law comes into force the PTA shall fulfil special national service obligations.

(10) If charges, contributions and the like are to be paid on the basis of this Federal Law that were not previously prescribed, these shall be prescribed for the first time in January 1998 for the period between the date on which this Federal Law came into force and December 31, 1997. Similar payments already made, such as licence fees shall be taken into consideration.

(11) The functions of the regulatory authority, with the exception of those specified in § 111 Point 6, shall be performed by the Federal Minister of Science and Transport for a period of three months after this Federal Law comes into force. They are then transferred to the regulatory authority.

(12) Fees in accordance with the provisions of the Telecommunication Charges Law (Fernmeldegebührengesetz) shall be paid by December 31, 1997 for authorisations, licences and approvals granted under this Federal Law.

References

§ 126. References in this Federal Law to other Federal Laws relate in each case to the latest version.

Enforcement

§ 127. (1) The Federal Minister of Science and Transport is entrusted with the enforcement of this Federal Law, unless there are contrary indications in Sections 2 to 5.

(2) The Federal Minister of Science and Transport, in consultation with the Federal Minister of Finance, is entrusted with the enforcement of §§ 17 Section 1, 51 Section 2, 60 Section 1 and 2, 79 Section 2 and 112 Section 8.

(3) The Federal Minister of Science and Transport, in consultation with the Federal Minister of the Interior and the Federal Minister of Justice is entrusted with the enforcement of § 89 Section 3.

(4) The Federal Minister of Justice is entrusted with the enforcement of §§ 102 and 103.

(5) The Federal Minister of the Interior is entrusted with the enforcement of § 107 Section 1.

Entry into force

§ 128. (1) This Federal Law comes into force on August 1, 1997, unless Section 2 indicates otherwise.

(2) Ordinances based on this Federal Law can be issued on the day following its announcement; however, the earliest they may come into force is the date on which this Federal Law comes into force.

Article II

Amendment of the Broadcast Radio Ordinance (Rundfunkverordnung)

The ordinance of the Federal Minister for Transport and Power Supply dated November 23, 1965 governing the installation and operation of broadcast radio and television receiving equipment (Broadcast Radio Ordinance), BGBl. No. 333/1965, as amended in BGBl.I No. 43/1997, is amended as follows:

§ 2 Section 4 and §§ 20, 21, 22, 23, 24 and 25 Section 2 are no longer applicable.

Article III

Amendment of the Cable and Satellite Broadcast Radio Law (Kabel- und Satelliten-Rundfunkgesetz)

The Federal Law, under which provisions relating to cable and satellite broadcast radio are issued, BGBl.I No.42/1997, is amended as follows:

1. § 2 Section 1 Point 1 reads:

“1. Cable network: cable infrastructure used for distribution and propagation;”

2. § 11 Section 4 reads:

“(4) The cable network operator shall propagate the signals of the broadcast radio and television transmitters operated by Österreichischer Rundfunk (Austrian Radio), provided this is possible at reasonable cost.”

3. § 47 Section 1 reads:

“(1) Anyone who fails to meet the

1. obligation to disclose in accordance with § 4 Section 2,

2. obligation to disclose in accordance with § 5 Section 6,

3. obligation to disclose in accordance with § 10 or

4. obligation in accordance with § 11 Section 4

is considered to have violated administrative regulations and shall be punished by a fine of up to ATS 30,000.”

Article IV

Amendment of the Telecommunication Charges Law (Fernmeldegebührengesetz)

The Federal Law governing telecommunication charges, BGBl. No. 170/1970, last amended by Federal Law BGBl. No. 637/1996, is amended as follows:

1. The following Article Ia is inserted after Article I:

“Article Ia

(1) The Federal Minister of Science and Transport shall decide on applications in accordance with Part XI of the Annex (exemptions from charges) and on the withdrawal of exemptions from charges.

(2) For reasons of economy, appropriateness or simplicity, the Federal Minister of Science and Transport can, by ordinance, entrust and empower the agency obliged to meet special service obligations to take decisions in his name on applications in accordance with Part XI of the Annex (exemptions from charges) and decisions on the withdrawal of exemptions from charges.

(3) If the agency obliged to provide universal service acts in accordance with the ordinance issued under Section 2, it shall apply AVG 1991.”

2. Sections I to VII of the Annex (Telecommunication Charges Regulations) are no longer applicable with the exception of §§ 1, 1a and 40 Section 1 Points 10 to 16.

Article V

Amendment of the Telegraph Route Law (Telegraphenwegegesetz)

The Telegraph Route Law, BGBl. No. 435/1929, last amended by the Federal Law BGBl. No. 20/1970, is amended as follows:

1. The title of the Federal Law reads:

“Federal Law on Telecommunication Routes (Telecommunication Route Law - TWG)”

2. The heading of Part I reads:

“ I Usage rights”

3. § 1 reads:

“Object and scope of line rights

§ 1. (1) Notwithstanding the obligations to be met under other statutory regulations, line rights comprise the right

1. to install, expand and maintain buried or overhead telecommunication lines,
2. to install and maintain line support points, switching equipment and other line objects and accessories,
3. to introduce cable lines in buildings and other structures,
4. to operate the systems specified under Points 1, 2 and 3 and
5. to clear branches and other such obstructions, to fell individual trees and to clear paths through woods.

(2) Except in emergencies, public employees entrusted with the installation and maintenance of the systems specified under Section 1 Points 1, 2 or 3 are permitted to enter buildings only during the day and with prior notice to the owner of the property or his representative and only insofar as this does not contravene any other statutory regulations.

(3) Licencees to provide a public telecommunications service and other suppliers of public telecommunications services shall have line rights over privately owned property if

1. the dedicated use of this property suffers no or only slight permanent impairment from the use of these services,
2. there is no system specified under § 1 Section 1 Points 1, 2 or 3 and protected by right on the property and
3. there are no overriding public interests to the contrary.

(4) Licencees to provide a public telecommunications service shall have line rights free of charge over public property such as roads, footpaths, public areas and the air space above them, but not including public water facilities, unless there are overriding public interests to

the contrary. “Free of charge” within the meaning of this provision does not extend to any statutory obligations to pay duties at the time this Federal Law comes into force.

(5) Owners of lines or systems installed and operated on the basis of a right secured by another law have line rights unless the use of the lines or systems permanently places an additional restriction on the dedicated use of the property.”

4. The following § 1a is inserted after § 1:

“Rights of joint use

§ 1a. Whosoever exercises a right of way under any other Federal Law or a line right in accordance with § 1 Section 3 or 4 or § 12, must grant joint use of the system or parts thereof installed on the basis of these rights, provided that the utilisation of public property is not made impossible or impractical and provided that joint use is economically reasonable and technically feasible.”

5. In § 2 Section 1 the phrase “for telegraphs of the Federal Government and public telegraph authorities” is no longer applicable.

6. In § 3 Section 1 the words “telegraphs and to neglect” are replaced by the words “systems specified in § 1 Section 1 Points 1, 2 or 3 and to avoid”.

7. In §§ 3, 4 and 5 Sections 1, 2 and 4 the expression “authorised line user” is replaced by “authorised party” in the appropriate grammatical form.

8. The heading of § 4 reads:

“Exercising usage rights”

9. The first sentence of § 4 reads:

“In exercising usage rights they shall take utmost care not to damage the properties or systems used or infringe the rights of third parties.”

10. In §§ 5 Section 1 the expression “line rights” is replaced by “usage rights”.

11. The second sentence of § 5 Section 1 reads:

“If such an order calls for the removal or modification of a third-party system specified under § 1 Section 1 Points 1, 2 or 3 or if such a system may be damaged, the encumbered shall notify the authorised line user no later than four weeks prior to commencement of the work.”

12. In § 5 Section 1 last sentence, 3 and 4, § 6, § 11 Section 4 and § 17 Section 3 the expression “telegraph” is replaced by “system specified under § 1 Section 1 Points 1, 2 or 3” in the appropriate grammatical form.

13. The following § 6a is inserted after § 6:

“Payment, settlement and compensation

§ 6a. (1) The owner or authorised user of a property encumbered in accordance with § 1 Section 3 shall be compensated with a one-off payment.

(2) The encumbered in accordance with § 1a shall be compensated by an appropriate financial settlement.

(3) The owner or authorised user of a property encumbered in accordance with § 1 Section 5 shall be compensated with a payment appropriate to the additional services or usage capacities.”

14. § 7 reads:

“Buried lines

§7. With the exception of the case defined in § 1 Section 5, the authorised parties are obliged, as far as is technically feasible and with due consideration for economic circumstances, to lay their telecommunication lines under ground if the landowner or authorised user objects to lines being routed over his property.”

15. § 8 reads:

“Effectiveness of usage rights

§ 8. (1) The usage rights, together with the associated obligations, shall pass by act of law to the owner of the system specified under § 1 Section 1 Points 1, 2 or 3 for which they have been enforced.

(2) they are effective against any owner of the property or telecommunication line used.

(3) Line rights do not constitute the object of an entry in the land registry ; exercising of these rights does not justify acquisition by prescription or limitation.”

16. The heading of § 9 reads:

“Agreement”

17. The following Section 2a is inserted after § 9 Section 2:

“(2a) If rights of joint use are enforced, the authorised party shall inform the owners of the intended utilisation. If there are other rights of joint use relating to the telecommunication line in question, the same procedure shall be used vis à vis the authorised parties.”

18. § 10 reads:

“Objections

§ 10. (1) Within a period of two weeks after the agreement has been delivered, objections to the enforcement of the usage right can be raised with the agency that enforced the usage right. If objections are not raised within this period, the usage right is considered to have come into existence and the encumbered is obliged to approve the construction of the intended system or permit joint use.

(2) The objections can only be based on the fact that the enforced usage right contravenes this Federal Law or exceeds the scope permitted under this Federal Law. The points in which contravention or transgression is alleged shall be labelled separately.

(3) Until decisions have been reached regarding the objections, construction of the intended system may not be started nor may joint use of the telecommunication line in question commence.

(4) If the authorised party considers the objections to be well-founded, he shall immediately arrange for appropriate changes to be made to the planned construction or use and inform the party that raised the objections.

(5) If the authorised party considers the objections not to be well-founded, he shall call on the authority to decide, giving his point of view.

(6) Oral proceedings involving both parties shall take place before a decision is reached if this is considered essential to the decision-making process or at any rate if the objections are based on the structural unsuitability of a building or other structure to accommodate the line object.”

19. In § 11 Section 1 the words “of a telegraph of the Federal Government or public telegraph institution” are replaced by “a system specified under § 1 Section 1 Point 1, 2 or 3”.

20. § 12 reads:

“Permissibility of expropriation

§ 12. (1) If the installation of a telecommunication line or a public pay telephone is in the public interest and if the exercising of usage rights does not achieve the desired objective or

achieves the objective only with the use of disproportionate resources, expropriation is permissible.

(2) The concept of public interest applies to the installation of a telecommunication line or a public pay telephone by a licensee.”

21. The first sentence of § 14 reads:

“The provisions of the Federal Highways Law (Bundesstraßengesetz) 1971, BGBl. No. 286/1971, shall apply analogously to the process of expropriation and the assessment of the compensation to be paid by the authorised expropriating party.”

22. The heading of Part III reads:

“III Assessment of payments and compensation”

23. § 15 reads:

“Assessment of payments and compensation

§ 15. (1) If agreement cannot be reached by the parties concerned on the amount of a payment or compensation to be paid on the basis of the provisions of § 6a, the authority shall decide.

(2) The amount of the payment or compensation shall be determined on the basis of the assessment of a sworn expert in the official notification in accordance with § 10 Section 5 or in a separate official notification.

(3) Either party, within three months of the publication of the official notification specifying the payment or compensation, can request an assessment of the amount at any regional court in the district of which the object of the usage right is located. The official notification from the authority ceases to have effect regarding the payment or compensation as soon as recourse is made to court. The application to the court for assessment of the payment or compensation can only be withdrawn with the agreement of the other parties.”

24. § 16 is no longer applicable.

25. The heading of § 17 reads:

“Liability for damages relating to usage rights and servitudes”

26. The first sentence of § 17 Section 1 reads:

“(1) The authorised parties shall be liable for all pecuniary disadvantages that arise to the encumbered from the claiming and exercising of usage rights, in particular from the installation, maintenance, modification, removal or operation of the systems specified under § 1 Section 1 Points 1, 2 or 3, unless the damage was culpably caused by the encumbered.”

27. § 18 reads:

“Authorities

§ 18. (1) The authorities are the Federal Minister of Science and Transport and the Telecommunications Offices subordinate to him.

(2) Unless otherwise indicated, the relevant local Telecommunications Office is responsible for the official duties arising from this Federal Law.

(3) The Federal Minister of Science and Transport is responsible for deciding on appeals against official notifications of the Telecommunications Offices.”

28. § 19 reads:

“References

§ 19. References in this Federal Law to other Federal Laws relate in each case to the latest version.”

29. In § 20 the expression “ Federal Minister for Trade and Transport” is replaced by “Federal Minister of Science and Transport”.

Article VI

(1) The Federal Minister of Science and Transport is the telecommunication authority within the meaning of § 20 Section 5 of the Broadcast Radio Law (Rundfunkgesetz) and the ordinance enacted as a Federal Law in accordance with the Federal Law dated July 5, 1972, BGBl. No. 267 and issued by the Federal Ministers of Transport and Power Supply dated November 23, 1965 regarding the installation and operation of broadcast radio and television receiving equipment (Broadcast Radio Ordinance), BGBl. No. 333/1965, last amended by Federal Law BGBl. I No. 43/1997, with the exception of its § 2 Section 4 and its Part VI.

(2) For reasons of economy, appropriateness or simplicity, the Federal Minister of Science and Transport can, by ordinance, entrust and empower the PTA to take decisions in his name on applications for broadcast radio and television authorisations, to take decisions on the revocation of broadcast radio and television authorisations and to collect broadcast radio and television charges. Payments for this activity shall also be defined in such a ordinance.

(3) If the PTA acts in accordance with the ordinance issued under Section 2, it shall apply AVG 1991.

Article VII

(1) Unless otherwise indicated in Section 2, Articles II to VI shall come into force on August 1, 1997.

(2) Article IV shall come into force on January 1, 1998.”

Resolution

The Federal Minister of Finance is requested, at the earliest possible opportunity, to present to the National Council a Budget Overspend Law to secure the financial position of Telekom Control Ges. m. b. H. in the sum of ATS 50 million. This will be covered by additional revenue in the appropriate budget estimates of the Federal Ministry of Science and Transport.