

THE TELECOMMUNICATIONS ACT 1998

Act No.25 of 1998

I assent

31st December 1998

C.UTEEM
President of the Republic

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An Act

**To provide for the establishment and management of a
Mauritius Telecommunications Authority and the setting up of a
Telecommunications Advisory Council, and for the better regulation
of the telecommunications sector in the interest of consumers,
and providers, of telecommunication services**

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Telecommunications Act 1998.

PART I PRELIMINARY

2. Interpretation

In this Act -

“authorised officer” means an officer designated by the Authority for the purpose of section 9 or 13;

“Authority” means the Mauritius Telecommunications Authority established by section 4;

“broadcasting” means the emission or transmission of sounds or images, by means of Hertzian waves, satellite or wired electromagnetic system for reception by the public, and “broadcast” shall be construed accordingly;

“charging principles” means the principles that may be prescribed for use in determining the prices to be charged from or by a licensee under an interconnection agreement;

"Council" means the Telecommunications Advisory Council set up in accordance with section 11;

"dominant operator" means a licensee who, by the terms of his licence or by reason of his share in the market or the availability to him of technological ability, infrastructure or capital, has a substantial degree of power in the market for the supply of a telecommunication service;

"Executive Director" means the person appointed as such under section 5 (1);

"facility" means -

- (a) any part of the infrastructure of a telecommunication network; or
- (b) any line, cable, radio, equipment, antenna, tower, mast, tunnel, pit, pole or other structure or thing used, or intended for use, in connection with a telecommunication network;

"intercept" means intercept by listening to or recording, by any means, a message passing over a telecommunication network without the knowledge of the person originating, sending or transmitting the message;

"interconnection" means the linking up of 2 telecommunication networks so that users of either network may communicate with users of, or utilise services provided by means of, the other network or any other telecommunication network;

"interconnection agreement" means an agreement made in accordance with section 15 between 2 or more licensees which sets out the terms and conditions -

- (a) for interconnection between the facilities in the telecommunication networks of 2 or more licensees; or
- (b) upon which a licensee obtains interconnection to telecommunication services supplied by another licensee;

"licence" means a licence issued or held pursuant to this Act;

"licensee" means the holder of a licence;

"member" means a member of the Authority and includes the Chairman;

"message" includes any communication whether in the form of speech, or other sound, data, text, visual image, signal or code, or in any other form or combination of forms;

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

“network licensee” means a person who holds a licence to operate a telecommunication network;

“officer” means a person appointed as such pursuant to section 5;

“Part A licence” means a licence referred to in Part A of the First Schedule;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for the subject of telecommunications;

“public operator” means a licensee who operates a public telecommunication network, including a public mobile telecommunication network;

“public telecommunication network” means a network over or through which a telecommunication service is offered to the public;

“public mobile telecommunication network” means a public telecommunication network -

- (a) in which the service can be used by a person while moving continuously between places; and
- (b) in which the customer equipment used for the service is not in physical contact with any part of the telecommunication network through which the service is supplied;

“radio apparatus” means any apparatus or installation intended for the purpose of effecting radiocommunication, whether by transmission or reception, or both, but excludes any ordinary broadcast television and radio receiver;

“radiocommunication” means any transmission, emission, or reception of signs, signals, writings, sounds or intelligence of any nature, of a frequency less than 3000 gigahertz, propagated in space without artificial guide;

“tariff” means a document indicating the rate of any fee or charge which a public operator intends to claim for a telecommunication service which it supplies;

“telecommunication” means the transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems;

“telecommunication installation” or “installation” means a line or any equipment, apparatus, structure, tower, antenna, tunnel, manhole, pit or hole used, or intended to for use, in connection with a telecommunication service;

“telecommunication message” means -

- (a) a material record of a communication or information sent or delivered to a licensee for transmission or transmitted through telecommunication installations established by the licensee to provide telecommunication services; or
- (b) a material record issued by a licensee as a record of a communication or information transmitted over such telecommunication installations;

“telecommunication network” means a system, or a series of systems, operating within such boundaries as may be prescribed, for the transmission or reception of messages by means of guided or unguided electromagnetic energy or both, to supply telecommunication services between places within Mauritius or between places within Mauritius and places outside Mauritius;

“telecommunication service” -

- (a) means a service for carrying a message by means of guided or unguided electromagnetic energy or both or a value-added service using similar means;
- (b) subject to paragraph (c), includes radiocommunication;
- (c) does not include public broadcasting by the Mauritius Broadcasting Corporation or such other body as may be prescribed by the Minister.

“universal service” means a telecommunication service determined by the Authority as being a service to be provided by the licensee to an area, to areas, or sectors not served or adequately served by the telecommunication service;

“universal service obligation” means any contribution payable by a licensee in respect of a universal service;

“value-added services” means -

- (a) the manipulation of the format, content, code, protocol, or other aspect of information transmitted via telecommunications by a subscriber;

- (b) the provision of information to a subscriber, including the restructuring of information transmitted by a subscriber; or
- (c) the offering of stored information for interaction by a subscriber.

3. Application of the Act

- (1) Subject to subsection (2), this Act shall bind the State.
- (2) The Minister may, on the recommendation of the Authority and on such terms and conditions as he thinks fit, exempt any Government Department or statutory corporation from compliance with this Act in the interests of public order or national security.

PART II THE MAURITIUS TELECOMMUNICATIONS AUTHORITY

4. Establishment and management of the Authority

- (1) There is established, for the purposes of this Act, a Mauritius Telecommunications Authority which shall be a body corporate.
- (2) (a) The Authority shall be managed by a Board which shall consist of -
 - (i) a Chairman to be appointed by the Prime Minister, after consultation with the Leader of the Opposition, on such terms and conditions as he thinks fit;
 - (ii) 4 other members appointed by the Minister, after consultation with the Council, being persons who are -
 - (A) qualified for appointment by reason of their knowledge and experience in telecommunication, technology, economics, commerce, law or industry;
 - (B) neither directors nor officers of a public operator.
- (b) (i) Every member shall hold office for 3 years but shall be eligible for re-appointment.
- (ii) A member shall not be removed from office except for one of the reasons set out in section 37 (3) (b)

of the Interpretation and General Clauses Act.

- (c) The remuneration or allowance payable to any member shall be determined by the Minister.
- (d) The Authority shall meet -
 - (i) at least once every month; and
 - (ii) as often as requested by the Chairman or any 3 other members.
- (e) Three members shall constitute a quorum.
- (f) Every member shall, in relation to any matter before the Authority in which he, or any person related by blood or marriage to the member, has a pecuniary or other material interest -
 - (i) disclose the nature of that interest in writing at or before the meeting convened to discuss that matter; and
 - (ii) refrain from taking part in any deliberations of the Authority relating to that matter.

5. Officers and other staff

- (1)
 - (a) There shall be an Executive Director appointed by the Authority, with the approval of the Minister, on such terms and conditions as it thinks fit, who shall be the Chief Executive Officer of the Authority.
 - (b) The Executive Director shall be responsible for the execution of the policy of the Authority and for the control and management of its day-to-day business.
 - (c) In the exercise of his functions the Executive Director shall act in accordance with such directions as he may receive from the Authority.
- (2)
 - (a) The Authority may, on such terms and conditions as it thinks fit, employ such other officers, and such other persons, as may be necessary for the proper discharge by the Authority of its functions.
 - (b) Every person employed pursuant to paragraph (a) shall be under the administrative control of the Executive Director.

- (c) It shall be a term of the contract of employment of every officer that -
 - (i) he shall not attempt to acquire an interest of any kind in any entity which is a licensee or has entered into a contract with the Authority in return for payment of an amount which exceeds such sum as may be prescribed;
 - (ii) where he holds an interest referred to in subparagraph (i) or he acquires such an interest, by succession or otherwise, he shall, unless the Authority otherwise determines, forthwith dispose of that interest.
- (3) The Authority may delegate to its Chairman or to the Executive Director such of its powers as may be necessary for the effective management of the Authority other than the power to -
 - (a) borrow money; or
 - (b) grant a licence.

6. Functions of the Authority

- (1) The Authority shall -
 - (a) implement the policy of Government relating to the telecommunication industry;
 - (b) provide economic and technical monitoring of the telecommunication industry in accordance with recognised international standard practices, including the promotion of fair competition and efficient market conduct within that industry, and ensure appropriate control, inspection and regulation of the industry;
 - (c) assist in the formulation of national policies with respect to the promotion, development and regulation of telecommunication and the telecommunication industry;
 - (d) ensure that this Act is implemented with due regard to the public interest and so as to prevent any unfair or anti-competitive practices by licensees such as cross-subsidising;
 - (e) establish, for public operators, performance standards and linkage standards in relation to the provision

of international and local telephone services, and monitor compliance with both of those standards;

- (f) report, in such manner as it thinks fit, to the Minister or to any other person on any matter that lies within its purview, such as the performance of public operators, the quality of consumer service and consumer satisfaction, measured against the best available international standards of practice;
- (g) oversee the fulfillment by public operators of their obligations under any enactment, or their compliance with any direction issued pursuant to section 13 (e);
- (h) develop and, where appropriate, revise, accounting requirements and a cost allocation manual for use by public operators;
- (i) ensure the safety and quality of every telecommunication service and, for that purpose, determine technical standards for telecommunication network matters, the connection of customer equipment to telecommunication networks;
- (j) develop an appropriate system for receiving, and enquiring into, complaints by consumers in relation to every telecommunication service;
- (k) authorise any person to conduct such technical tests or evaluations relating to telecommunication as it thinks fit;
- (l) allocate the frequencies and determine the telephone numbering system to be used for every telecommunication service, and manage, review, and, where appropriate, reorganise the frequency spectrum or numbering system;
- (m) set up a radio frequency management unit for the allocation, monitoring, control and regulation of radio frequencies and, with the approval of the Minister, participate in any regional monitoring system;
- (n) monitor every access agreement and assist in the resolution of any dispute relating thereto;
- (o) monitor the use of telecommunication services on any ship or aircraft;

- (p) control the importation of any equipment capable of being used to intercept a telecommunication message;
 - (q) regulate the conduct of examinations for, and the issue of, certificates of competency to persons wishing to operate any apparatus used for purposes of telecommunication;
 - (r) manage the Universal Service Fund set up under section 7 (2);
 - (s) determine, whether as conditions of licences or otherwise, the universal service obligations and requirements.
- (2) Notwithstanding paragraphs (l) and (m) of subsection (1), the Authority shall allot, and regulate the use of, any frequency to the Mauritius Broadcasting Corporation or to any body prescribed pursuant to section 26 (1) (b), and the Corporation and any such other body shall pay to the Authority such fee as may be prescribed.

7. Financial provisions

- (1) The Authority shall establish a General Fund -
 - (a) into which any money received by the Authority shall be paid;
 - (b) out of which all payments required to be made by the Authority shall be effected.
- (2) The Authority shall establish a Universal Service Fund -
 - (a) into which shall be paid any contribution received from licensees in pursuance of section 10;
 - (b) out of which payments may be made to any licensee required by the terms of his licence, or otherwise directed by the Authority, to provide a universal service.
- (3) The Authority shall derive its income from -
 - (a) any charge or fee that may be prescribed;
 - (b) any sum appropriated from the Consolidated Fund; and

- (c) such other source as may be approved by the Minister.
- (4) The Authority may, in the discharge of its functions, charge to the General Fund all remunerations, allowances, salaries, fees, working expenses and other charges properly arising.
- (5) The Authority shall, not later than 3 months before the commencement of every financial year, submit to the Minister an estimate of its income and expenditure for that year.

8. Licences

- (1) Any person who wishes to obtain, transfer, renew or vary the terms of, a licence for the operation of a telecommunication network or service specified in the First Schedule shall make a written application to the Authority in the prescribed form.
- (2) Upon receipt of an application referred to in subsection (1), the Authority -
 - (a) shall, in the case of a Part A licence, give public notice of the application in 2 daily newspapers and invite any interested person who wishes to object to the application to do so in writing within 14 days;
 - (b) may -
 - (i) require the applicant to furnish any additional information that it considers relevant;
 - (ii) inspect any installation, apparatus or premises relating to the application.
- (3) The Authority shall, after hearing any representations that may be made pursuant to subsection (2) (a), determine whether to issue, transfer, renew or vary the terms of the licence.
- (4) The Authority shall, in the exercise of its powers under subsection (3), have regard in particular to -
 - (a) the public interest and any likelihood of unfair practice;
 - (b) any element of national security;
 - (c) the technical and electromagnetic compatibility of the application with any other licensed service;

- (d) any agreement between Mauritius or the Authority with any other State, or any national or international organisation relating to telecommunication; and
 - (e) any direction of the Minister.
- (5) (a) Where the Authority agrees to issue, transfer, renew or vary the terms of a licence -
- (i) it may do so by imposing any term or condition that it thinks fit;
 - (ii) it shall give written notice of its decision, and the reasons therefore, to any person who has made representations pursuant to subsection (2) (a).
- (b) Where the Authority refuses to issue, transfer, renew or vary the terms of, a licence, it shall give written notice of its decision, and the reasons therefore, to the applicant and to any person who has made representations pursuant to subsection (2) (a).
- (c) No licence shall be issued or renewed under this section unless the prospective licensee pays such fee as may be prescribed.
- (6) Every licence shall specify -
- (a) the name and business address of the licensee;
 - (b) the installation, apparatus and premises to which it relates;
 - (c) the telecommunication network or service to be provided by the licensee; and
 - (d) any term or condition imposed pursuant to subsection (5) (a).
- (7) The Authority may, where it thinks fit but subject to subsection (8), *proprio motu* vary the terms of, or revoke, a licence on the ground that the licensee has -
- (a) contravened this Act; or
 - (b) acted in breach of any term or condition imposed pursuant to subsection (5) (a).

- (8) (a) Where the Authority proposes to vary the terms of, or revoke, a licence pursuant to subsection (7), it shall give written notice of its intention to the licensee, stating -
 - (i) the reasons for which it proposes to do so; and
 - (ii) the time, being not less than 14 days, within which the licensee may make written representations to object to the proposal.
- (b) The Authority shall, after considering any representations made pursuant to paragraph (a) (ii), communicate its decision in writing, and the reasons therefore, to the licensee.
- (9) (a) Where, in its opinion, the urgency of the matter so requires, the Authority may forthwith suspend a licence on any ground specified in subsection (7).
- (b) A suspension effected pursuant to paragraph (a) shall, unless sooner revoked, lapse after 21 days.

9. Special powers

- (1) An authorised officer may -
 - (a) require a licensee to produce his licence;
 - (b) at all reasonable times inspect any installation, apparatus or premises relating to a licence.
- (2) Where a Magistrate is satisfied, by information upon oath, that there is reasonable ground to suspect that a person is contravening this Act or any regulations made thereunder, he may grant a warrant to an authorised officer enabling him to -
 - (a) enter any premises named in the warrant and search those premises or any person found therein;
 - (b) inspect, remove and take copies of any document found therein which he considers relevant;
 - (c) inspect and remove any installation or apparatus found therein which he has reason to suspect is operating in contravention of this Act or any regulations made thereunder.

10. Universal service obligation of licensees

- (1) Every licensee shall, in addition to the licence fees payable, pay into the Universal Service Fund, such annual contributions as shall be prescribed by the Authority.
- (2) The Authority shall prescribe -
 - (a) the basis and manner of determination of such contributions;
 - (b) the dates when such contributions shall become payable and the manner and, if it deems it appropriate, the period over which the contributions shall be paid.

PART III

THE TELECOMMUNICATIONS ADVISORY COUNCIL

11. Establishment of the Council

- (1) There shall be a Telecommunications Advisory Council which shall consist of -
 - (a) a Chairman, to be appointed by the Minister;
 - (b) 4 representatives from the public sector, appointed by the Minister;
 - (c) a representative of the Joint Economic Council;
 - (d) a representative of the Mauritius Chamber of Commerce and Industry;
 - (e) 2 other persons representing the interests of consumers, purchasers and other users of telecommunication services, appointed by the Minister.
- (2) The Council may co-opt persons with specialised qualifications and experience to assist the Council at any of its meetings.
- (3) Every member of the Council shall hold office on such terms and conditions as the Minister thinks fit.
- (4) The Council shall meet once every 3 months or at such other time as the Chairman or 3 other members of the Council may require.
- (5) Five members of the Council shall constitute a quorum.

- (6) Every member of the Council shall, in relation to any matter before the Council in which he, or any person related by blood or marriage to the member, has a pecuniary or other material interest -
 - (a) disclose the nature of his interest in writing at or before the meeting convened to discuss the matter; and
 - (b) refrain from taking part in any deliberation of the Council relating to that matter.

12. Functions of the Council

The Council shall advise the Minister on any matter relating to -

- (a) the promotion of the interests of consumers, purchasers and other users in respect of -
 - (i) the quality and variety of telecommunication services provided;
 - (ii) the telecommunication equipment and facilities supplied;
 - (iii) the effect of the tariff policy adopted by the Authority;
- (b) the promotion of research into, and the development and use of, new telecommunication techniques;
- (c) the improvement of telecommunication services;
- (d) telecommunications which, in its opinion, should be referred to the Minister;
- (e) telecommunications which may be referred to it by the Minister or by the Authority.

PART IV TELECOMMUNICATION OPERATIONS

13. Licensees

Every licensee shall -

- (a) maintain any installation, apparatus or premises relating to his licence in such condition as to enable him to provide a safe, adequate and efficient service;
- (b) provide access thereto to an authorised officer;

- (c) furnish to the Authority such reports, accounts and other information relating to his operations as the Authority may require;
- (d) comply with every term or condition attached to his licence;
- (e) comply with any written direction given to him by the Authority in relation to the exercise of his rights and obligations under a licence;
- (f) pay to the Authority such fee or charge as may be prescribed by the Minister.

14. Public Operators

- (1) A public operator may, subject to subsections (2) and (3) -
 - (a) enter any property for the purpose of exercising any of his powers under his licence;
 - (b) establish any installation or apparatus on, over, under or across any land or road.
- (2)
 - (a) Before taking any steps under subsection (1), a public operator shall give not less than 4 days' written notice of his intention to the owner and, where applicable, the occupier, stating the reasons for which he proposes to take such steps.
 - (b) Any person who receives a notice issued pursuant to paragraph (a) may, within 5 days of the receipt of the notice, lodge with the Authority an objection to the notice, specifying the grounds of his objection and his claim, if any, for such compensation for depreciation in the value of his property and interest in the property which may arise from the execution of such steps, as he considers himself entitled to.
 - (c) The Authority shall, within 30 days after the receipt of the objection and claim, if any, under paragraph (b), and after hearing the parties, make such order, including the payment of compensation, as it thinks fit and, within 7 days after making the order, communicate a copy of its determination to each of the parties.
- (3)
 - (a) A party to the hearing under subsection (2) may, if dissatisfied with the order of the Authority,

appeal to the Supreme Court within 8 days after receiving a copy of the determination under subsection (2) (c), by filing, in the Registry of the Supreme Court, a notice of appeal in writing setting out the grounds of his appeal and giving an address where service of any process upon him may be effected.

- (b) The appellant shall, within the period of 8 days specified in paragraph (a), cause the Chairman of the Authority to be served by an Usher with a copy of the notice of appeal.
 - (c) Within 10 days after receiving a copy of the notice of appeal under paragraph (b), the Chairman of the Authority shall forward to the Registry of the Supreme Court a certified copy of the record of the proceedings before the Authority under subsection (2), together with any document and exhibit produced in the course of such proceedings.
 - (d) The appellant shall not, at the hearing of the appeal, raise any ground of appeal other than a ground of appeal set out in his notice of appeal except where the Supreme Court grants him leave to do so.
- (4) Nothing in this section shall prevent a public operator from entering on any property to do whatever may be required to remove any tree, branch, hedge or any other object that is likely to cause danger to any installation or apparatus relating to telecommunication service provided by him.
 - (5) For the purpose of this section, an installation or apparatus relating to telecommunication shall include poles, wires, stays or struts or other similar structure set up, or any work performed, either above or under the ground, in connection with the establishment, alteration, disconnection, modification or repair of the installation or apparatus.
 - (6) Where a public operator has, pursuant to this section, established a telecommunication installation over or under private property, the owner or occupier of the property may request the public operator to alter, modify or divert the installation and the expenses of doing so shall be borne by the person making the request.

15. Interconnection agreements

- (1) Every network licensee or public operator shall grant access to his network in accordance with this section.
- (2) A licensee may make a written application to a network licensee or public operator requesting the latter to give to the licensee access to its telecommunication network and shall, where it does so, forward a copy of the application to the Authority.
- (3)
 - (a) Where a network licensee or public operator receives an application pursuant to subsection (2), he shall, unless the Authority otherwise determines, negotiate the terms of an interconnection agreement with the applicant, and shall do so in good faith;
 - (b) Either party to the proposed agreement may require the Authority to depute a representative to attend, and assist in, the negotiations, and the Authority shall comply with the request.
- (4)
 - (a) Subject to paragraph (b), the rates for interconnection and interconnection charged by the network licensee or public operator shall be determined in accordance with any charging principles in force.
 - (b) Where an interconnection agreement is negotiated before any charging principles have been prescribed, the agreement shall, where appropriate, be amended by the parties to comply with any charging principles that may subsequently be prescribed.
- (5) Where the parties to a proposed interconnection agreement are unable to agree on the terms thereof within 90 days from the date of an application under subsection (2), either party may require the Authority to act as an arbitrator in the matter.
- (6) An arbitration made by the Authority pursuant to subsection (5) shall, subject to subsection (7), be deemed to be made under, and be regulated by, articles 1015-2, 1018, 1019, 1025, 1026-2, 1026-3, 1026-5, 1026-7, 1027-3, 1027-4, 1027-5 and 1027-8 of the Code de Procedure Civile.
- (7) The award of the Authority on the dispute shall -
 - (a) be made within 90 days from the date of a request under subsection (5); and
 - (b) specify -
 - (i) the facilities and the telecommunication network covered by the award;

- (ii) the extent of any telecommunication network over which one party is required to carry telecommunication messages to enable another party to supply telecommunication services;
 - (iii) the points of, and the technical standards for, interconnection and access.
- (8) Each party to an interconnection agreement shall supply to the Authority -
- (a) a copy of the agreement, and of any amendment to it, within 14 days of the execution of the agreement, or amendment, as the case may be;
 - (b) such information relating to the interconnection agreement as the Authority may require.

16. Competition

- (1) A dominant operator shall not take advantage of his power in a market for the supply of a telecommunication service with a view to -
- (a) eliminating or substantially damaging another licensee in the market in which he operates or in any other market;
 - (b) preventing the entry of any other person into that market or any other market;
 - (c) deterring any other licensee from engaging in competitive conduct in that or in any other market.
- (2) (a) A dominant operator shall not discriminate between persons who acquire or make use of a telecommunication service in the market in which he operates in relation to -
- (i) any fee or charge for the service provided;
 - (ii) the performance characteristics of the service provided;
 - (iii) any other term or condition on which the service is provided.
- (b) Nothing in paragraph (a) shall prevent a dominant operator from making a reasonable allowance, subject to the approval by the Authority, for the cost of

providing a telecommunication service where the difference results from -

- (i) different quantities in which the service is supplied;
 - (ii) different transmission capacities needed for the supply of the service;
 - (iii) different places from or to which the service is provided;
 - (iv) different periods for which the service is provided;
 - (v) different performance characteristics of the service provided; or
 - (vi) doing an act in good faith to meet a price or benefit offered by a competitor.
- (3) A licensee shall not enter into or give effect to any agreement, arrangement or understanding which has the purpose or has, or is likely to have, the effect of significantly lessening competition in any market for the supply of telecommunication services or of any product used in connection with telecommunication services.
- (4) A licensee shall not enter into or give effect to any agreement, arrangement or understanding with another licensee which has the purpose or has, or is likely to have, the effect of fixing, controlling or maintaining the prices for, or any discount, allowance, credit or rebate for, any telecommunication service or any product used in connection with telecommunication services.

17. Tariffs

- (1) Every public operator shall provide the Authority with a tariff of its charges for every telecommunication service which he proposes to supply and of every intended alteration of those charges, in a form approved by the Authority and in compliance with the requirements of this section.
- (2) Every tariff shall include information relating to -
- (a) the period during which the tariff is to apply;
 - (b) the description of the telecommunication service;

- (c) the amount of the charges payable for each telecommunication service including the amount of any surcharge that may be imposed as a result of non-payment of fees or charges and the cost-related computation thereof;
 - (d) the quantity in which the service is supplied;
 - (e) the transmission capacity needed to supply the service;
 - (f) the performance characteristics for the service supplied; and
 - (g) the terms and conditions on which the service is supplied.
- (3) (a) On receipt of a tariff in accordance with subsection (1), the Authority shall determine whether to allow, or to disallow, or to amend the tariff and shall, in so doing, have regard, *inter alia*, to the just and reasonable nature of the charges set out therein.
- (b) The Authority shall forthwith give public notification in 2 daily newspapers of every determination made pursuant to paragraph (a).
- (4) Every public operator shall supply to the Authority such information relating to the proposed tariff as the Authority considers necessary or desirable to enable the Authority to monitor compliance with this Act.
- (5) Every public operator shall, at each of his business offices, make available for inspection or purchase a copy of every tariff.
- (6) The Authority may, by notice in writing to a public operator, disallow any tariff which does not comply with this Act or with any regulations made thereunder or with any condition of his licence.
- (7) (a) Where the Authority is of opinion that the operation of a tariff by a dominant operator would have an anti-competitive effect in any market for any telecommunication service, it shall, by notice in writing, inform the dominant operator that it is disallowing the tariff, and of the reasons for which it does so.
- (b) For the purposes of paragraph (a), the operation of a tariff shall be deemed to have an anti-

competitive effect in a market if, and only if, the operation or continued operation of the tariff, whether or not in conjunction with other tariffs or commercial arrangements, has, or is likely to have, the effect of materially and adversely affecting the development or maintenance of commercially sustainable competition in that market.

- (8) No public operator shall demand or receive from any person payment of any fee or charge, for the supply of a telecommunication service, which -
- (a) exceeds the fee or charge payable under the appropriate tariff;
 - (b) is not worked out or computed in accordance with the appropriate tariff; or
 - (c) is worked out or computed in accordance with a tariff which has been disallowed pursuant to subsection (6).

18. Confidentiality

- (1) Every member or officer shall -
- (a) before he begins to perform his duties under this Act, take the oath set out in the Second Schedule;
 - (b) maintain, and aid in maintaining, the confidentiality of any matter which comes to his knowledge in the performance or as a result of his duties under this Act;
 - (c) not reveal to an unauthorised person any matter referred to in paragraph (b).
- (2) Any person who contravenes subsection (1) (a), or without legal cause or reasonable excuse contravenes subsection (1) (b) or (c), shall commit an offence.
- (3) Every licensee and his employees and agents shall treat as confidential any telecommunication message or any information relating to a telecommunication message which comes to his or their knowledge in the course of his or their duties.
- (4) Any person who, otherwise than in the course of his duties, makes use of, or records, the contents or substance of a telecommunication message that comes to his knowledge or to which he has access, by reason of his position as an

employee or agent of a licensee, shall commit an offence.

- (5) (a) Nothing in this Act shall prevent a public operator or any of his employees or agents from intercepting, withholding or otherwise dealing with a telecommunication message which he has reason to believe is -
 - (i) indecent or abusive;
 - (ii) in contravention of this Act;
 - (iii) of a nature likely to endanger or compromise public order or national security.
- (b) Where a message is withheld pursuant to paragraph (a), the operator shall forthwith refer it to the Authority for such written directions as the latter may think fit to give.
- (6) (a) Nothing in this Act shall prevent a Judge in Chambers, upon an application, whether *ex parte* or otherwise, being made to him by the police, from making an order authorising a public operator, or any of its employees or agent, to intercept, withhold or disclose to the police, a telecommunication message.
- (b) An order under paragraph (a) shall -
 - (i) not be made unless the Judge is satisfied that information relating to the telecommunication message is material to any criminal proceedings, whether pending or contemplated, in Mauritius;
 - (ii) remain valid for such period, not exceeding 60 days, as the Judge may determine;
 - (iii) specify the place where the interception or withholding shall take place.

19. Transparency

- (1) The Authority shall not, except with the Minister's approval, enter into any contract, other than a contract governed by any enactment relating to public tendering, by virtue of which the Authority is required to pay, or receive, any sum in excess of such amount as may be prescribed.
- (2) The Authority shall ensure that adequate publicity is given to -

- (a) the contents of every contract referred to in subsection (1);
- (b) any report referred to in section 6 (1) (f);
- (c) the terms of every Part A licence.

PART V MISCELLANEOUS

20. Appeals

- (1) Any person who is aggrieved by a decision of the Authority under section 8 or 17 may, within 21 days of the notification of the decision, appeal to the Minister.
- (2) An appeal under subsection (1) shall -
 - (a) be lodged with the Permanent Secretary;
 - (b) specify the reasons in support of the appeal; and
 - (c) be determined by the Minister after consultation with the Council.
- (3) The Permanent Secretary shall give to the appellant written notification of the Minister's decision within 3 months after the lodging of the appeal.

21. Evidence

- (1) A telegram, telex or facsimile purporting to have been stamped and initialed by the employee of a licensee shall be admissible in all legal proceedings as *prima facie* evidence that the matter contained therein is the same as that stated in the telegram, telex or facsimile as received for transmission by or on behalf of the person by whom the telegram, telex or facsimile purports to have been sent.
- (2)
 - (a) In this subsection, "computer record" includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.
 - (b) A document, certified by the employee of a licensee to be a computer record of a telecommunication call and to have been produced in the usual and ordinary course of producing such computer records, shall -

- (i) be admissible in all legal proceedings; and
- (ii) constitute *prima facie* evidence of the making of the call, the originating number, the number called, the date and time of the call, and the duration and cost of the call, to the extent that those items are recorded therein.

22. Extent of liability

- (1) No liability, civil or criminal, shall attach to the Authority or to any member or officer, in respect of any loss or damage arising from the exercise in good faith by the Authority, or by a member or officer, of its or his functions under this Act.
- (2) (a) A public operator shall not be liable for or in respect of -
 - (i) any loss or damage caused by any electric current emanating from a source other than his premises or any installation or apparatus operated by him;
 - (ii) any loss or damage which may be incurred or sustained by reason or on account of any interruption or failure in communication of any telecommunication installation or exchange or radio system or by reason of, or in connection with, the taking or giving of messages by any of his employees or agents, except where such loss or damage arises through the fault or negligence of such employee or agent.
- (b) A subscriber to a telecommunication service shall not, by reason of the occurrence of any event referred to in paragraph (a), be entitled to any abatement of any payment due to a public operator.

23. Exemptions

- (1) Article 910 of the Code Napoleon shall not apply to the Authority.
- (2) The Authority shall not be liable to the payment of income tax.
- (3) No registration duty shall be payable in respect of any document signed or executed by the Authority or under which it is the sole beneficiary.

24. Offences

Any person who -

- (a) by any form of emission, radiation, induction or other electromagnetic effect, harms the functioning of a telecommunication service;
- (b) with intent to defraud or to prevent the sending or delivery of a telecommunication message, takes a telecommunication message from the employee or agent of a licensee;
- (c) with intent to defraud, takes a telecommunication message from a place or vehicle used by a licensee in the performance of his functions;
- (d) steals, secretes or destroys a telecommunication message;
- (e) wilfully or negligently omits or delays the transmission or delivery of a telecommunication message;
- (f) forges a telecommunication message or transmits or otherwise makes use of a telecommunication message knowing that it has been forged;
- (g) knowingly sends, transmits or causes to be transmitted a false or fraudulent telecommunication message;
- (h) uses a telecommunication service -
 - (i) for the transmission or reception of a telecommunication message which is grossly offensive or of an indecent, obscene or menacing character; or
 - (ii) for the purpose of causing annoyance, inconvenience or needless anxiety to any person;
 - (iii) for the transmission of a message which is of a nature likely to endanger or compromise public order or national security;
- (i) dishonestly obtains or makes use of a telecommunication service with intent to avoid payment of any applicable fee or charge;

- (j) by means of an apparatus or device connected to a telecommunication installation maintained or operated by a licensee -
 - (i) defrauds the licensee of any fee or charge properly payable for the use of a telecommunication service;
 - (ii) causes the licensee to provide a telecommunication service to some other person without payment by such other person of the appropriate fee or charge; or
 - (iii) fraudulently installs or causes to be installed an access to a telecommunication line;
- (k) wilfully damages, interferes with, removes or destroys a telecommunication installation maintained or operated by a licensee;
- (l) establishes, maintains or operates a telecommunication network or service without a licence or in breach of the terms or conditions of a licence;
- (m) without the prior approval of the Authority, imports any equipment capable of intercepting a telecommunication message;
- (n) discloses a telecommunication message or information relating to such a message to any other person otherwise than -
 - (i) in accordance with this Act;
 - (ii) with the consent of each of the sender of the message and each intended recipient of the message;
 - (iii) for the purpose of the administration of justice; or
 - (iv) as authorised by a Judge;
- (o) except as expressly permitted by this Act or as authorised by a Judge, intercepts, authorises or permits another person to intercept, or does any act or thing that will enable him or another person to intercept, a message passing over a telecommunication network;
- (p) in any other manner contravenes this Act, shall commit an offence.

25. Penalties

- (1) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.
- (2) The Court before which a person is convicted of an offence under this Act may, in addition to any penalty imposed pursuant to subsection (1), order -
 - (a) the forfeiture of any telecommunication installation or apparatus in connection with which the offence was committed;
 - (b) the cancellation of the licence held by the person convicted;
 - (c) that the person convicted shall not be issued with a licence for such period as the Court thinks fit;
 - (d) that a telecommunication service provided to a person convicted of an offence under this Act shall be suspended for such period as the Court thinks fit.
- (3) An offence under this Act shall –
 - (a) be triable by the Intermediate Court;
 - (b) not be triable by a District Court.

26. Regulations

- (1) The Minister may, by regulations, prescribe -
 - (a) charging principles, on the recommendation of the Authority;
 - (b) a corporate body for the purposes of paragraph (c) in the definition of “telecommunication service” in section 2;
 - (c) the amount referred to in section 19 (1);
 - (d) the date referred to in section 28 (2) (b);
 - (e) anything that may be prescribed under this Act other than a matter referred to in subsection (2).
- (2)
 - (a) The Authority may make such regulations as it thinks fit for the purposes of this Act.
 - (b) Any regulations made under paragraph (a) may -

- (i) amend the Schedules;
- (ii) prescribe anything that may be prescribed under this Act other than a matter referred to in subsection (1);
- (iii) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees.

27. Repeal

The Telecommunication Act 1988 is repealed.

28. Consequential amendments

- (1) The Statutory Bodies (Finance and Audit) Act is amended in Part II of the Schedule by adding the following item -

"The Mauritius Telecommunications Authority"

- (2) (a) Subject to paragraph (b), the Post Office Act is amended -
- (i) by deleting, in section 2, the definition of "telegram";
 - (ii) by deleting in sections 35, 46, 47 and 66 (1) (b) the words "or telegram", "or telegrams", "or the telegram", "and telegrams" wherever they occur;
 - (iii) by deleting, in section 66, subsection (1) (f);
- (b) The amendments effected by paragraph (a) shall come into operation on such date as may be prescribed.

29. Transitional provisions

- (1) Every act done by, or in relation to, the Telecommunication Authority established under section 4 of the Telecommunication Act 1988 shall be deemed to have been done, or commenced, as the case may be, by or in relation to the Authority.
- (2) (a) Notwithstanding subsection (1), every person who has, before the commencement of this Act, been authorised pursuant to the Telecommunication Act 1988, by licence issued under that Act or otherwise, to make use of a frequency for purposes of radiocommunication,

or to operate any telecommunication service shall -

- (i) not later than 3 months after the commencement of this Act, inform the Authority in writing of that fact and surrender any licence or authority granted to it; and
 - (ii) furnish to the Authority such further information as it may require concerning his operation under that licence or authorisation.
- (b) Notwithstanding section 8 (7), where a person referred to in paragraph (a) fails to comply with a requirement of that paragraph, the Authority shall be entitled to exercise its powers under sections 6 (1) (l) and 8 (7) in relation to that person, without giving him any notice of its intention to do so.
- (3) Notwithstanding section 4 (2) (b), the Minister shall, when exercising his power under section 4 (2) (a) (ii) for the first time, appoint the 4 members of the Authority referred to in that section for a term of 5 years.
- (4) Section 7 (4) shall not apply to the first financial year of the Authority.
- (5) The auditor to be appointed for the Authority under section 5 (1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.
- (6) Notwithstanding section 8, Mauritius Telecom Ltd shall be deemed to have been issued by the Authority with a licence as a public operator, in relation to the telecommunication services provided by it at the coming into force of this Act, for the period commencing on the date of coming into force of this Act and ending on 31 December 1999 and shall pay to the Authority such fee as may be prescribed in respect of that period.
- (7) Notwithstanding sections 8 and 14, but subject to subsection (9)(a), no network licensee, public operator or any other person shall, in respect of the period commencing on the date of coming into force of this Act and not extending beyond 31 December 2004, supply or offer to supply telecommunication services between places within Mauritius and places outside Mauritius otherwise than in accordance with an interconnection agreement concluded with Mauritius Telecom Ltd.
- (8) (a) Any person who uses, or provides, in return for payment by means of credit card or otherwise, a

- telecommunication service between places within Mauritius and places outside Mauritius and in relation to which there is no such interconnection agreement as is referred to in subsection (7) (a) shall commit an offence.
- (b) Any person who commits an offence under paragraph (a) shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.
- (c) Without prejudice to the penalty provided for in paragraph (b) for the offence under paragraph (a), Mauritius Telecom Ltd may -
- (i) disconnect, and refuse to reconnect permanently, any telephone or rented payphone used in the commission of that offence; and
- (ii) refuse to provide a new telephone line to the subscriber at the premises where the telephone or rented payphone is situated or at any other premises.
- (d) It shall not be a defence to any prosecution under paragraph (a) that the person prosecuted did not know of the non-existence of the interconnection agreement referred to in that paragraph.
- (e) For the purposes of paragraph (a) -
- (i) "a telecommunication service between places within Mauritius and places outside Mauritius" includes a "call back service";
- (ii) a "call back service" includes a service permitting an international call to be made by a caller or subscriber in Mauritius whereby a foreign telecommunication service provider, or a reseller in a foreign country, initiates a return call or provides a dialling tone which enables the caller or subscriber to make an international call through the foreign telecommunication service provider or the reseller resulting in Mauritius Telecom Ltd being deprived of international call charges.
- (9) (a) Notwithstanding any other provision of this Act and, in particular, sections 8 and 13, the Authority shall, where so directed by the Minister, grant to Mauritius Telecom Ltd, for a period not extending beyond 31 December 2004, the exclusive right to supply, or to enter

into an interconnection agreement or other appropriate agreement for the supply of telecommunication services between places within Mauritius and places outside Mauritius.

- (b) No direction shall be issued under paragraph (a) unless the Minister deems it to be in the national interest to do so.

30. Commencement

- (1) This Act shall come into operation on a day to be fixed by Proclamation.
- (2) Different dates may be fixed for the coming into operation of different provisions of this Act.

Passed by the National Assembly on the fifteenth day of December one thousand nine hundred and ninety-eight.

ANDRE POMPOM
Clerk of the National Assembly

FIRST SCHEDULE *(Section 8)*

PART A **Telecommunication Operators' Licences**

1. Alarm Monitoring Services (Operator) Licence

To establish and operate alarm-monitoring services based on a fixed or mobile public telecommunication network or private radio network, or a combination of these networks.

2. Audiotex Services Provider Licence

To operate a kiosk for the hosting of audiotex services whereby these services are accessed via a public fixed or mobile telecommunication network.

3. Data Services Licence

To establish and operate data services.

4. Facsimile Services Licence

To establish and operate facsimile services.

5. GMPCS Services (Operator) Licence

To establish and operate Global Mobile Personal Communication by Satellite (GMPCS) whereby the network is satellite based and the satellite coverage extends over the territory of Mauritius.

6. Internet Services Provider Licence

To provide internet services to the public whereby the subscriber network is operated by a public fixed or mobile telecommunication network operator.

7. Payphone Services Licence

To establish and operate payphone services.

8. Private Access Mobile Radio Services Licence

To establish and operate private access mobile radio services.

9. Public Fixed Telecommunication Network Licence

To establish and operate a public fixed telecommunication network and service.

10. Public Mobile Telecommunication Services Provider Licence

To provide mobile telecommunication services to the public whereby the telecommunication network is operated by a mobile terrestrial telecommunication network operator or a Global Mobile Personal Communications by Satellite (GMPCS) services operator.

11. Public Mobile Terrestrial Telecommunication Network Licence

To establish and operate a public mobile terrestrial telecommunication network and service.

12. Subscription Television Rebroadcasting Services Licence

To establish and operate subscription television re-broadcasting services whereby television signals received from satellites via large receive-only dish antennas are retransmitted, for direct reception by the general public upon payment of a monthly subscription fee.

13. Subscription Television Direct To Home Satellite Broadcasting Services Provider Licence

To provide television services to the public whereby television signals are transmitted by satellites for direct reception by the general public, via receive-only dish antennas and decoders managed by the services provider, upon payment of a monthly subscription fee.

14. Value-Added Network Licence

To establish and operate value-added network and services.

15. Wide Area Radio Paging Network Licence

To establish and operate a wide area radio paging network and service.

**PART B
OTHER TELECOMMUNICATION LICENCES**

1. Aircraft Radio Station Licence

To establish and operate an aircraft radio station.

2. Assembler's Licence

To assemble any telecommunication apparatus at a specific place.

3. Dealer's Licence

To import or deal in radio apparatus or PABX equipment, facsimile machine, telephone set, cordless telephone set, modem, answering machine, or any other telecommunication apparatus.

4. Experimenter's Licence

To establish and operate an experimental radio station.

5. Local Area Private Radio Paging Licence

To establish and operate a local area private radio paging service at a specific place.

6. Marine Radio Base Station Licence

To establish and operate a VHF radio coast station for communication with pleasure boats.

7. Mobile (Cellular) Telephone Licence

To possess and use a mobile (cellular) telephone.

8. Mobile Paging Receiver Licence

To possess and use a mobile paging receiver on a wide area radio paging network.

9. Model Radio Control Licence

To possess, or use in radio apparatus to control the movement of model vehicles for recreation purposes, unless exempted under any regulations made in that behalf.

10. Private Mobile Radio Licence

To possess or use radio apparatus at a specific place or in a specific vehicle.

11. Radio Amateur Licence

To establish and operate an amateur radio station at a specific place.

12. Radio Alarm Transmitting (Subscriber) Station Licence

To possess and use a radio transmitter for the transmission of alarms onto any alarm monitoring services network.

13. Radio Broadcaster's Base Station Licence

To establish and operate radio apparatus at a base station, for the purpose of radio broadcasting or rebroadcasting.

14. Radio Broadcaster's Repeater Station Licence

To establish and operate radio apparatus at a repeater site for the purpose of radio broadcasting or rebroadcasting.

15. Radio (Relay) Fixed Link Licence

To establish and operate a radio (relay) fixed link between 2 fixed locations.

16. Radio Repeater (Relay) Licence

To establish and operate a radio repeater (relay) station for private

mobile radio services.

17. Ship Station Licence (private)

To establish and operate a VHF ship radio station for private purposes.

18. Ship Station Licence (public)

To establish and operate a ship radio station on board oceangoing vessels.

19. Telemetry, Command and Ranging (TCR) Satellite Earth Station Licence

To establish and operate a satellite earth station for the transmission to or reception from satellite space stations or both, of telemetry, command and ranging data for the control and maintenance of satellites.

20. Television Broadcaster's Base Station Licence

To establish and operate radio apparatus at a base station, for the purpose of television broadcasting or rebroadcasting.

21. Television Broadcaster's Repeater Station Licence

To establish and operate radio apparatus at a repeater site, for the purpose of television broadcasting and rebroadcasting.

22. VSAT Licence

To possess and use a VSAT (very small aperture terminal) for the transmission or reception, or both, of data, voice, images only, on a satellite approved by the Authority.

SECOND SCHEDULE
(Section 18)

Oath of Secrecy

I, residing at, *make oath/solemn affirmation that in the discharge of my duties under the Telecommunications Act 1998, I will deal with and regard all documents and information relating to the operations of the Authority, and to which I have access, as secret and confidential, and refrain from disclosing any such document or information to any unauthorised person.

*Sworn/solemnly affirmed by the deponent, in Chambers on the 19

Before

(s)

*Judge/Master and Registrar/Magistrate

*Delete as appropriate