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Second Session Eighth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 17 of 2004

[L.S.]

AN ACT to amend the Telecommunications Act, 2001

[Assented to 14th June, 2004]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. This Act may be cited as the Telecommunications Short title
(Amendment) Act, 2004.

2. In this Act, “the Act” means the Telecommunications Interpretation
Act, 2001.

- Section 1 amended **3.** Section 1 of the Act is amended in subsection (2) by inserting immediately after the word “Parts” occurring in the fourth line, the words “and sections referred to above”.
- Section 2 amended **4.** Section 2 of the Act is amended—
- (a) in the definition of “public telephone service” by deleting the words “the direct transport and switching of voice” and substituting the words “interactive voice communication”;
 - (b) in the definition of “telecommunications” by deleting the words “radio, terrestrial or submarine cables” and inserting the word “wireless”;
 - (c) by deleting the definition of “telecommunications service” and substituting as follows:
 - “means a service using telecommunications whereby one user can communicate with any other user in real time, regardless of the technology used to provide such a service and includes a public telecommunications service, a private telecommunications service, a closed user group service and a radio communication service;”;
 - (d) in the definition of “terminal equipment” by inserting after the word “wire,” the word “wireless”;
 - (e) by adding the following terms and definitions:
 - “testing of traffic” means the examination of the codes and protocols used in order to verify the type of telecommunications signal being transmitted and received;

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

(f) by deleting the definition of “universal service” and substituting as follows:

“means the provision of telecommunications services throughout Trinidad and Tobago, taking into account the needs of the public, affordability of the service and advances in technologies;”;

(g) by deleting the definition of “value added service” and substituting as follows:

“means a service, other than a public telecommunications service that, using a telecommunications service, provides or modifies content and applications not associated with the telecommunications service;”.

5. Section 4 of the Act is repealed and replaced as follows: Section 4 amended

“ 4. There is hereby established a body corporate to be known as the Telecommunications Authority of Trinidad and Tobago (hereinafter referred to as “The Authority”).”.

6. Section 6 of the Act is amended by deleting— Section 6 amended

(a) the word “and” occurring at the end of subsection (1)(a); and

(b) subsection (1)(b).

7. Section 13 of the Act is repealed and replaced as follows: Section 13 amended

“ 13. (1) At any meeting of the Board, half of the members plus one additional member, shall constitute a quorum.

(2) Decisions of the Board shall be by a majority of votes of the members present and voting.

(3) The Chairman, or other member duly presiding, shall have an original, and if the vote is equal, a casting vote.”.

Section 17 amended **8.** Section 17 of the Act is amended in subsection (2) by deleting the words “or any member of the Board”.

Section 18 amended **9.** Section 18 of the Act is amended—

- (a) in subsection (3)(a) by deleting the words “to reliability of service” and substituting the words “to the quality and reliability of the service”; and
- (b) in subsection (5) by inserting the word “transparent” after the word “objective”.

Section 21 amended **10.** Section 21 of the Act is amended in subsection (8) by deleting all the words occurring after the word “scrutiny” and substituting the words “in the manner prescribed by the Authority”.

Section 24 amended **11.** Section 24 of the Act is amended—

- (a) in subsection (1)(c) by deleting the words “in respect of which the concessionaire is dominant,”;
- (b) by deleting subsection (1)(i) and substituting as follows:
 - (i) refrain from impairing or terminating the telecommunications service to a user or other provider of a telecommunication service during a dispute, without first having undertaken to resolve the dispute in accordance with established procedures approved by the

Authority and where such dispute cannot be resolved, to seek written approval from the Authority; but in respect of a billing dispute the concessionaire shall collect such amounts that are not in dispute from such user or other provider; and;

(c) by repealing subsection (2).

12. Section 25 of the Act is amended—

Section 25 amended

(a) in subsection (2)(l) by inserting the words “at a cost efficient rate” before the words “without unreasonable delay”; and

(b) by deleting subsection (2)(m) and substituting as follows:

“(m) disaggregate the network and on a cost basis, in such manner as the Authority may prescribe, establish prices for its individual elements and offer the elements at the established prices to other concessionaires of public telecommunications networks and public telecommunications services.”;

(c) by deleting subsections (3), (4) and (5).

13. Section 26 of the Act is amended in subsection (2) Section 26 amended
by deleting the word “as” before the word “between” and by deleting the words “both parties” and substituting the words “either party”.

14. Section 28 of the Act is amended—

Section 28 amended

(a) in subsection (1) by deleting all the words occurring after the word “apply”; and

(b) in subsection (3), by inserting immediately after the words “public telecommunications service” the words “or value added service”;

Section 29 amended

15. Section 29 of the Act is amended—

- (a) in subsection (2)(b) by deleting the words “sole or dominant”;
- (b) in subsection (5) by inserting after the word “investment” the words “or shall prescribe the use of any other measures for determining the concessionaires profitability, as it deems appropriate;
- (c) in subsection (6) by deleting the words “in which there is competition” and substituting the words “provided on a non-exclusive basis” and by inserting after the word “caps” the words “and floors”; and
- (d) by inserting the following subsections:
 - “ (8) For the purposes of this Part and wherever the issue of dominance otherwise arises in the Act, the Authority may determine that an operator or provider is dominant where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers and, for such determination, the Authority shall take into account the following factors:
 - (a) the relevant market;
 - (b) technology and market trends;
 - (c) the market share of the provider;
 - (d) the power of the provider to set prices;
 - (e) the degree of differentiation among services in the market;

(f) any other matters that the Authority deems relevant.

(9) Where a concessionaire, deemed dominant by the Authority pursuant to subsection (8), considers that it has lost its dominance, it may apply to the Authority to be classified as non-dominant and should the Authority so classify, the relevant concession shall be amended to reflect such classification.”.

16. Section 31 of the Act is amended—

Section 31 amended

- (a) in subsection (1) by deleting the words “for a period equivalent to the period for which the first concession was granted”;
- (b) in subsection (2) by deleting the words “for any renewal after the renewal of the first concession, the” and substituting the word “The”.

17. Section 33 of the Act is amended—

Section 33 amended

- (a) in subsection (2)(d) by deleting all the words after the word “works”;
- (b) by deleting sections (4), (5), (6) and (7); and
- (c) in subsection (9) by inserting the words “at least two weeks” before the word “prior”.

18. Section 34 of the Act is amended by deleting the word “authority” wherever occurring and substituting the words “utility installation owner”.

Section 34 amended

19. Section 36 of the Act is amended—

Section 36 amended

- (a) in subsection (1)—
 - (i) by inserting before the words “No person shall” the words, “Subject to subsection (2)”;

- (ii) by deleting the word “Minister” and substituting the word “Authority”;
- (b) by deleting subsection (2) and substituting as follows:
 - “ (2) Where spectrum is required in respect of a concession that has been applied for under Part III, the licence application shall be processed as part of the concession application pursuant to section 21.”;
- (c) by deleting subsection (3) and substituting as follows:
 - “ (3) The Authority shall notify the applicant of its determination within ninety days of receipt of the application.”;
- (d) by deleting subsections (4) and (5) and renumbering accordingly;
- (e) in subsection (6) as renumbered—
 - (i) by deleting the words “on the granting of a licence by the Minister”; and
 - (ii) by deleting the words “to that effect” and substituting the words “of licences issued”;
- (f) in subsection (7) as renumbered by deleting all the words occurring after the word “scrutiny” and substituting the words “in the manner prescribed by the Authority”.

21. Section 39 of the Act is amended—

Section 39 amended

- (a) in subsection (1) by deleting all the words from “Subject” to “where” and substituting as follows:
- “Subject to this section, the Authority or the Minister, on the recommendation of the Authority, in respect of frequencies assigned for the operation of services to which Part III refers, may suspend or terminate a licence where—”;
- (b) in subsections (2) and (4) by adding after the word “Minister” the words “or Authority as the case may be”;
- (c) in subsection (5) by—
- (i) deleting the words “during the period that the Minister is considering exercising his power to suspend or terminate the licence,”;
 - (ii) inserting after the word “Minister” in both places where it occurs, the words “or Authority as the case may be,”;
- (d) in subsection (6) by deleting all the words from “Before” to “licensee” and substituting the words “Before a licence is amended the licensee shall be served with”;
- (e) in subsection (7) by inserting after the word “Minister” the words “or the Authority”;

- (f) in subsection (8) by deleting from the word “Upon” to the word “Authority” and substituting the following:

“ (8) Upon application by a licensee for the renewal of the first licence issued to him under this Act, the Authority or the Minister, on the recommendation of the Authority, in respect of frequencies assigned for the operation of services to which Part III refers, shall renew that licence for a period equivalent to the period for which the first licence was granted unless—”;

- (g) by deleting subsection (9) and substituting as follows:

“ (9) The period of renewal shall be as agreed between the licensee and the Minister acting upon the recommendation of the Authority or the licensee and the Authority, as the case may be.”.

Section 41 amended

22. Section 41 of the Act is amended—

- (a) by deleting subsection (3) and substituting as follows:

“ (3) The National Spectrum Plan shall be made available to the public in the manner prescribed by the Authority.”; and

- (b) in subsection (4) by deleting the words “spectrum plan” and substituting the words “National Spectrum Plan”.

23. Section 44 of the Act is amended in subsection (4) Section 44 amended by deleting all the words occurring after the word “public” and substituting the words “in the manner prescribed by the Authority”.

24. Section 50 is amended in paragraph (a) by Section 50 amended inserting the word “, traffic” after the word “equipment”.

25. Section 65 of the Act is amended by deleting the Section 65 amended word “knowingly”.

26. Section 73 of the Act is amended by deleting the Section 73 amended words “Minister of National Security and the Minister” and substituting the words “Minister of National Security, the Minister and the Board”.

27. Section 78 of the Act is amended by renumbering Section 78 amended paragraphs (i) and (j) as paragraphs (j) and (k) respectively and inserting a new paragraph (i) as follows:

“(i) quality of service standards;”.

28. Section 85 of the Act is amended by adding after Section 85 amended subsection (4) the following:

“(4A) Persons other than those to whom subsection (4) relates and who commenced operations of a public telecommunications service prior to the coming into force of the Act may remain in operation thereafter pending an application to the Authority for a concession pursuant to section 21.

(4B) An application shall be made within six months of the coming into effect of the Act and shall be considered in accordance with section 21.”.

Passed in the House of Representatives this 16th day of April, 2004.

J. SAMPSON-JACENT

Clerk of the House

Passed in the Senate this 18th day of May, 2004.

N. JAGGASSAR

Acting Clerk of the Senate

Senate Amendments agreed to by the House of Representatives this 26th day of May, 2004.

J. SAMPSON-JACENT

Clerk of the House