

CAYMAN ISLANDS



**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (AMENDMENT) LAW, 2003**

(LAW 19 OF 2003)

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (AMENDMENT) LAW, 2003**

ARRANGEMENT OF SECTIONS

1. Short title.
2. Amendment of the Information and Communications Technology Authority Law, 2002.
3. Amendment of section 2- definitions.
4. Amendment of section 4- board of directors.
5. Amendment of section 6- managing director of the Authority.
6. Amendment of section 9- powers and functions of the Authority.
7. Amendment of section 14- financial procedure.
8. Amendment of section 17- repayment of advances.
9. Amendment of section 18- reserve fund.
10. Amendment of section 25- shares of licensee not to be issued or transferred without approval of the Authority.
11. Amendment of section 26-procedure for the grant of a licence.
12. Amendment of section 30- licence fees.
13. Amendment of section 31- modification of licence.
14. Amendment of section 32- suspension of licence
15. Insertion of Part IIIA- anti-competitive practices.
16. Insertion of new Part IVA-administrative fines.
17. Amendment of section 38- universal service fund.

18. Amendment of section 45- interconnection agreements.
19. Amendment of section 46- pre-contract disputes.
20. Amendment of section 48- infrastructure sharing.
21. Insertion of section 48A- licensee confidential information.
22. Amendment of section 49- numbering.
23. Amendment of section 50- quality of service.
24. Amendment of section 55- review of administrative decisions by the Authority.
25. Insertion of section 55A- third party appeals under Part IIIA.
26. Amendment of section 56-appeals to the court.
27. Insertion of sections 68A to 68C.
28. Amendment of the First Schedule- procedure of the Board.

CAYMAN ISLANDS

Law 19 of 2003.

I Assent

Governor.

Date:

**A LAW TO AMEND THE INFORMATION AND COMMUNICATIONS
TECHNOLOGY AUTHORITY LAW, 2002; AND FOR INCIDENTAL
AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

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| 1. This Law may be cited as the Information and Communications Technology Authority (Amendment) Law, 2003. | Short title |
| 2. The Information and Communications Technology Authority Law, 2002, in this Law referred to as “the principal Law”, is amended by repealing the words “Governor in Council” wherever they appear in the principal Law and substituting the words “Governor in Cabinet”. | Amendment of the Information and Communications Technology Authority Law, 2002 |
| 3. The principal Law is amended in section 2 by repealing the definition of “reference interconnection offer”. | Amendment of section 2- definitions |
| 4. The principal Law is amended in section 4 (2) as follows-
(a) by repealing “5” and substituting “9”; and
(b) by repealing the word “Governor” and substituting the words “Governor in Cabinet”. | Amendment of section 4- board of directors |
| 5. The principal Law is amended in section 6 (2) by repealing the word “Governor” and substituting the words “Governor in Cabinet”. | Amendment of section 6- managing director of the Authority |

Amendment of section 9- powers and functions of the Authority	6. The principal Law is amended in section 9 (3) (h) by inserting after the word “harmonised” the words “utilisation of”.
Amendment of section 14- financial procedure	7. The principal Law is amended in section 14 by repealing subsection (5) and substituting the following subsection- “(5) Where there is balance of account in favour of the Authority after the Authority has paid all of the expenses specified in subsection (2) such balance shall be paid into the general revenue of the Islands.”.
Amendment of section 17- repayment of advances	8. The principal Law is amended in section 17 by repealing the word “Governor” and substituting the words “Governor in Cabinet”.
Amendment of section 18- reserve fund	9. The principal Law is amended in section 18 (4) by repealing the word “revenue” and substituting the word “reserve”.
Amendment of section 25- shares of licensee not to be issued or transferred without approval of the Authority	10. The principal Law is amended in section 25 (6) by inserting after the word “secretary” the words “or registrar”.
Amendment of section 26- procedure for the grant of a licence	11. The principal Law is amended in section 26 (2) as follows- <ul style="list-style-type: none"> (a) by repealing the word “shall” and substituting the word “may”; (b) by inserting after paragraph (a) and substituting the following paragraph- “(aa) whether, during the term of any current or prior licence if any, the applicant has complied with all terms, conditions, specifications and requirements of any licence, order, directive, rule or regulation pertaining to such licence;”; and (c) by inserting after paragraph (e) and substituting the following paragraph- “(ee) whether the applicant has at the date of application for a licence or proposes to have within a specified time after a licence has been issued, participation by Caymanians and if so, the nature and extent of any such participation, including without limitation, the level of beneficial ownership by Caymanians, if any, and any participation by Caymanians as directors, management or otherwise;”.
Amendment of section 30- licence fees	12. The principal Law is amended in section 30 by repealing subsection (2) and substituting the following subsection-

“(2) The licence fees referred to in subsection (1) shall be payable directly by the applicant to the Authority at such time or times as may be prescribed by the Authority.”.

13. The principal Law is amended in section 31 (5) (b) by repealing “56 (1)” and substituting “55”. Amendment of section 31- modification of licence

14. The principal Law is amended in section 32 by renumbering the second subsection (3) as subsection (4). Amendment of section 32- suspension of licence

15. The principal Law is amended by inserting after Part III the following Part- Insertion of Part IIIA- anti-competitive practices

“Part IIIA- Anti-Competitive Practices

Interpretation for the purposes of this Part

34A. (1) This Part deals with-

- (a) agreements, decisions and practices; and
- (b) intent or attempts to enter into agreements or practices,

relating to the making available, provision, marketing, sale, trade and distribution of ICT networks and ICT services and such other related agreements, decisions , practices intent and attempts.

(2) In this Part-

“the section 34B prohibition” means the prohibition specified in section 34B; and

“the section 34F prohibition” means the prohibition specified in section 34E.

(3) The offences to which sections 34H and 34I relate are the offences set out in sections 68A to 68C.

Agreements etc. preventing, restricting or distorting competition

34B. (1) Agreements by or between licensees or between one or more licensees and any other person, decisions by licensees or concerted practices which-

- (a) may affect trade in the Islands; and

- (b) have as their object or effect the prevention, restriction or distortion of competition relating to any ICT service or ICT network subject to this Law,

are prohibited.

(2) Subsection (1) applies, in particular, to agreements, decisions or practices which-

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the Islands or is or is intended to be implemented in such other manner as will effect the operation of any ICT network or ICT service in the Islands.

(4) Any agreement or decision which is prohibited by subsection (1) is void.

(5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by a licensee or a concerted practice, but with any necessary modifications unless the context otherwise requires.

(6) In this section "the Islands" means, in relation to an agreement which operates or is intended to operate only in a part of the Islands, that part.

Exemptions

Individual exemptions

34C. (1) The Authority may grant an exemption from section 34B with respect to a particular agreement if-

- (a) a request for an exemption has been made to the Authority by a party to the agreement; and
- (b) the agreement is one to which section 34D applies.

(2) The exemption referred to in subsection (1) may be granted-

- (a) subject to such conditions or obligations; and
- (b) shall have effect for such period,

as the Authority considers appropriate.

(3) The period referred to in subsection (2) shall be specified in the grant of the exemption.

(4) The Authority may grant an exemption which has effect from a date earlier than the date on which it is granted.

(5) The Authority, on an application made in accordance with rules made by the Authority, may extend the period for which an exemption has effect; and the extension shall be made subject to such terms and conditions set out in such rules.

Exemption

34D. The Authority may declare provisions of section 34B inapplicable in the case of any agreement which-

- (a) contributes to-
 - (i) improving production or distribution, or
 - (ii) promoting technical or economic progress,

while allowing subscribers a fair share of the resulting benefit; but

- (b) does not-
 - (i) impose on the parties to the agreement restrictions which are not indispensable to the attainment of those objectives; or

- (ii) afford the parties concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

Cancellation etc. of individual exemptions.

34E. (1) Where the Authority has reasonable grounds for believing that there has been a material change of circumstance since it granted an individual exemption, it may by notice in writing-

- (a) cancel the exemption;
- (b) vary or remove any condition or obligation; or
- (c) impose one or more additional conditions or obligations.

(2) Where the Authority has a reasonable suspicion that the information on which it based its decision to grant an individual exemption was incomplete, false or misleading in a material particular, it may by notice in writing take any of the steps mentioned in subsection (1).

(3) Breach of a condition has the effect of cancelling the exemption.

(4) Failure to comply with an obligation allows the Authority, by notice in writing, to take any of the steps mentioned in subsection (1).

(5) Any step taken by the Authority under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.

(6) Where an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.

(7) The Authority may act under subsection (1), (2) or (4) on its own initiative or on a complaint made by any person.

Abuse of dominant position

34F. (1) Any conduct on the part of one or more licensees which amounts to the abuse of a dominant position in a market is prohibited if it may affect the trade in ICT networks and ICT services within the Islands.

(2) The conduct referred to in subsection (1) may, in particular, constitute such an abuse if it consists in-

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of subscribers;
- (c) applying dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; and
- (e) using revenues attributed to a particular ICT service or ICT network to cross subsidize unfairly or affect competition for another ICT service or ICT network, unless otherwise approved or directed by the Authority.

(3) In this section "dominant position" means a dominant position within the Islands.

Investigations relating to anti-competitive practices

Authority's power to investigate

34G. Without limiting the generality of section 9 (3) (c), the Authority may conduct an investigation under this Part, on application by any party or on its own initiative, if there are reasonable grounds for suspecting-

- (a) that the section 34B prohibition has been infringed; or
- (b) that the section 34F prohibition has been infringed.

Powers when conducting investigations

34H.(1) For the purposes of an investigation under section 34G, the Authority may, by notice in writing, require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.

- (2) A notice under subsection (1) shall indicate-
 - (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the alleged offence to which the investigation relates.
- (3) In subsection (1) "specified" means-
 - (a) specified, or described, in the notice; or

- (b) falling within a category which is specified, or described, in the notice.
- (4) The Authority may also specify in the notice-
 - (a) the time and place at which any document is to be produced or any information is to be provided; and
 - (b) the manner and form in which the document is to be produced or the information is to be provided.
- (5) The power under this section to require a person to produce a document includes a power-
 - (a) if the document is produced-
 - (i) to take copies of it or extracts from it;
 - (ii) to require that person or any person who is a present or past officer or employee of his, to provide an explanation of the document;
 - (b) if the document is not produced, to require the person to state, to the best of his knowledge and belief, where it is.

Power to enter premises under a warrant.

34L (1) On an application made by the Authority to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that-

- (a) there are reasonable grounds for suspecting that there are on any premises documents-
 - (i) the production of which has been required under section 34G; and
 - (ii) which have not been produced as required;
- (b) there are reasonable grounds for suspecting that-
 - (i) there are on any premises documents which the Authority has power under section 34G to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the Authority, and any other officers of the Authority whose assistance the investigating officer considers necessary in the circumstances-

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which

the application under subsection (1) was granted ("the relevant kind");

- (c) to take possession of any documents appearing to be of the relevant kind if-
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
- (f) to require any information which is held in a computer and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form in which it can be taken away, and in which it is visible and legible.

(3) Where, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(4) Any person entering premises by virtue of a warrant under this section may take with him such equipment and materials as appears to him to be necessary.

(5) The named officer, on leaving any premises which he has entered by virtue of a warrant under this section, shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured as he found them.

(6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months; and where no action is taken by the Authority in respect of an offence relating to the document within three months after seizure under this Law, or, if action is taken but no decision relating to forfeiture is made, the document shall be returned by the Authority to the person from whom it is seized.

Entry of premises under warrant: supplementary.

34J. (1) A warrant issued under section 34I shall indicate-

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offence to which the warrant relates.

(2) The powers conferred by section 34I shall only be exercised on production of a warrant issued under that section.

(3) Where there is no one at the premises when the named officer proposes to execute such a warrant he shall, before executing the warrant-

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
- (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(4) Where the named officer is unable to inform the occupier of the intended entry he shall, when executing the warrant, leave a copy of it in a prominent place on the premises as well as a written notice showing the date and time of the execution of the warrant and the address of the Authority to which enquiries may be made.

(5) In this section-

"named officer" means the officer named in the warrant; and

"occupier", in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

Privileged communications.

34K. (1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.

(2) "Privileged communication" means a communication-

- (a) between a professional legal adviser and his client, or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which in proceedings in the court would be protected from disclosure on grounds of legal professional privilege.

Decisions following an investigation.

34L. (1) Subsection (2) applies where, as the result of an investigation conducted under section 34G, the Authority proposes to make-

- (a) a decision that the section 34B prohibition has been infringed, or
- (b) a decision that the section 34F prohibition has been infringed.

(2) Before making the decision, the Authority shall-

- (a) give written notice to any person likely to be affected by the proposed decision; and
- (b) give that person an opportunity to make written representations.

Enforcement

Directions in relation to agreements.

34M. (1) Where the Authority has made a decision that an agreement infringes the section 34B prohibition, it may give to such person as it considers appropriate such written directions as it considers necessary to bring the infringement to an end.

(2) A direction under this section may, in particular, include provision requiring the parties to the agreement to modify the agreement or requiring them to terminate the agreement.

Directions in relation to conduct.

34N. (1) Where the Authority has made a decision that conduct infringes the section 34F prohibition, it may give to such person or persons as it considers necessary such written directions as it considers necessary to bring the infringement to an end.

(2) A direction under this section may, in particular, include provisions requiring the person concerned to modify the conduct in question; or requiring him to cease that conduct.

Enforcement of directions.

34O. (1) Where a person fails, without reasonable excuse, to comply with a direction under section 34M or 34N, the Authority may apply to the court for an order-

- (a) requiring the person in default to comply with the direction within a time specified in the order; or
- (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.

(2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by the person in default or any officer of an undertaking who is responsible for the default.

Interim measures

34P. (1) This section applies where the Authority-

- (a) has a reasonable suspicion that the section 34B prohibition has been infringed, or
- (b) has a reasonable suspicion that the section 34F prohibition has been infringed,

but has not completed its investigation into the matter.

(2) Where the Authority considers that it is necessary for it to act under this section as a matter of urgency for the purpose-

- (a) of preventing serious, irreparable damage to a particular person or category of person, or
- (b) of protecting the public interest,

it may give such directions as it considers necessary for that purpose.

- (3) The Authority shall before giving a direction under this section-
- (a) give written notice to any person to whom it proposes to give the direction; and
 - (b) give that person an opportunity to make oral or written representations.

(4) A notice under subsection (3) shall indicate the nature of the direction which the Authority is proposing to give and its reasons for wishing to give it.

(5) A direction given under this section has effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 34M or, as appropriate, section 34N.

(6) In the case of a suspected infringement of the section 34B prohibition, sections 34M (1) and 34O also apply to directions given under this section.

(7) In the case of a suspected infringement of the section 34F prohibition, sections 34N (1) and 34O shall also apply to directions given under this section.

Penalties for infringing sections 34B or 34F prohibitions

34Q.(1) Where the Authority has decided that an agreement has infringed the section 34B or 34F prohibition, the Authority shall give to the licensee or the undertaking involved notice in writing of the decision and the Authority's reasons for the decision and shall invite the licensee or the undertaking to show cause why the Authority should not proceed to act on its decision.

(2) A notice to show cause shall state that within 14 days of service, the licensee or the undertaking on whom it is served may make representations in writing or otherwise show cause to the Authority concerning the matter and the Authority shall not determine the matter without considering any submissions or representations received within that period of 14 days.

(3) Where after hearing representations under subsection (2) the Authority is of the opinion that its decision is correct it shall so notify the licensee or the undertaking as soon as possible and in the case of an infringement of a section 34B prohibition the Authority-

- (a) may require the licensee or undertaking to pay a penalty in respect of the infringement; and
- (b) in addition, may suspend or revoke any licence issued to any licensee which has infringed section 34B.

(4) The Authority, on making a decision that conduct has infringed the section 34F prohibition-

- (a) may require the licensee or undertaking to pay a penalty in respect of the infringement; and
- (b) in addition, may suspend or revoke any licence issued to any licensee which has infringed section 34F.

(5) The Authority may impose a penalty on a licensee or an undertaking under subsections (3) or (4) only if it is satisfied that the infringement has been committed intentionally or negligently by the undertaking.

(6) Notice of a penalty under this section shall be in writing and shall specify the date before which the penalty is required to be paid.

(7) The date specified under subsection (6) shall not be earlier than the end of the period within which an appeal against the notice may be brought.

(8) A penalty fixed by the Authority under this section in respect of any single infraction of section 34B or section 34F shall not exceed 10% of the turnover of the undertaking and such turnover shall be determined in accordance with such provisions as may be specified in an order made by the Governor in Cabinet.

(9) Any sums received by the Authority under this section shall be paid into the reserve fund.

Recovery of penalties

34R. (1) Where the specified date in a penalty notice has passed and-

- (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
- (b) such an appeal has been made and determined,

the Authority may recover from the undertaking, as a civil debt due to it, any amount payable under the penalty notice which remains outstanding.

(2) In this section-

"penalty notice" means a notice given under section 34Q; and

"specified date" means the date specified in the penalty notice.

The appropriate level of a penalty

34S. (1) The Authority, with the approval of the Governor in Cabinet, shall prepare and publish rules providing for the appropriate amount of any penalty under this Part and the Authority, with the approval of the Governor in Cabinet, may amend such rules from time to time.

(2) The Authority shall also consult with such persons as it considers appropriate when making or amending rules under this section.

(3) The Authority, when setting the amount of a penalty under this Part, shall have regard to the rules for the time being in force under this section.

Agreements notified to the Authority.

34T. (1) This section applies to any period of time prior to any person entering into an agreement where that person is of the opinion that the agreement may infringe the section 34B prohibition and he has notified the Authority of the intended agreement and has requested a decision as to whether an exemption can be granted with respect to the intended agreement.

(2) The Authority may not impose a penalty under this Part in respect of any infringement of the section 34B prohibition after notification but before the Authority determines the matter.

(3) Where the Authority withdraws the benefit of provisional immunity from penalties with respect to the intended agreement or completed agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.

(4) The fact that an intended agreement has been notified to the Authority does not prevent the investigation of it under this Part.

(5) In this section "provisional immunity from penalties" has such meaning as may be prescribed."

Insertion of new Part
IVA-administrative fines

16. The principal Law is amended by inserting after Part IV the following Part-

“Part IVA

Administrative Fines

37A. (1) Where the Authority is satisfied that there are reasonable grounds for believing that a licensee may have failed to comply with or contravened one or more terms, conditions, specifications or requirements of any licence, order, directive, rule or regulation, the Authority shall –

- (a) notify the licensee in writing, stating the nature of such suspected failure to comply or contravention and of the Authority’s intention to make a determination in respect of any such suspected failure to comply or contravention; and
- (b) provide to the licensee documents, if any, in support of the suspected failure or contravention.

(2) A notice under subsection (1) shall be sent by post and shall be deemed to have been communicated to the licensee at the time it would have been received in the ordinary course of post.

(3) A licensee notified in accordance with subsection (1) may, within 21 days of the date of the notice, provide to the Authority a written response in respect of any such suspected failure to comply or such contravention and shall also provide any other documentation which the licensee wishes the Authority to consider in making any determination in relation to any suspected failure to comply or contravention.

(4) A licensee in any response submitted to the Authority as specified in subsection (3), may request that the Authority hear the licensee in person or through a representative and, if so requested, the Authority may in its discretion allow such request.

(5) Any document which the licensee wishes the Authority to consider at a hearing shall be submitted within the time permitted in subsection (3).

(6) Where a licensee, notified as specified in subsection (1), makes no submission as specified in subsection (3) in respect of a suspected failure to comply or contravention, then the licensee shall be considered by the Authority to have no evidence to refute the allegation of failure to comply or the contravention.

(7) Where the Authority has decided to hold a hearing it shall hold such hearing within 21 days next following the 21 day period set out in subsection (3) and, subject to subsection (7), in accordance with such procedure as it may determine.

(8) At every hearing under this section where the licensee or his representative is present, the licensee or his representative shall be given an opportunity to address the Authority.

(9) After any hearing under this section the Authority shall set out its findings in writing and shall make a determination in regard to any suspected failure to comply or contravention as specified in subsection (1); and where the Authority determines that a licensee has failed to comply with or contravened any term, condition, specification or requirement of any licence, order, directive, rule or regulation, the Authority, may consider the nature, circumstances and any actual or potential consequences of each and any such failure to comply or contravention by the licensee as well as any prior determinations in respect of that licensee by the Authority, and may issue a warning or impose a fine not exceeding \$25,000 in respect of each such failure to comply or contravention

(10) The Authority shall notify the licensee of its findings and determinations and any fine or warning within 21 days of its determination and following the period provided for an appeal as specified in subsection (11), may cause its findings and any warning and the quantum of any fine imposed to be published in any manner and in its discretion.

(11) An appeal against a determination of the Authority made under subsection (9) shall be made to the court within 21 days next following the date of the notification made under subsection (10).

(12) Any notification of a fine under subsection (10) shall be deemed to also be notice of an intention to suspend any and all licenses of the licensee at the expiration of the 21 days next following notification as specified in subsection (10) and any fine imposed by the Authority shall be paid in full by the licensee within that same 21 days of notification and the reasonable time to rectify specified in section 32 (4) shall similarly be deemed to be that same 21 days.

(13) Any failure to pay any fine imposed by the Authority within the period specified in subsection (12) shall be deemed to be a contravention of this Law and shall be deemed to be sufficient grounds for the suspension of

any and all licenses of the licensee by the Authority under subsection 32 (1) (b).

(14) Representatives appearing on behalf of a licensee need not be persons having legal qualifications.

(15) The power to impose fines under this Part is in addition to or an alternative to any other penalty or remedy provided under this Law.”.

Amendment of section
38- universal service
fund

17. The principal Law is amended in section 38 by repealing subsection (1) and substituting the following subsection -

“(1) The Authority, for the purposes set out in section 39, may establish a fund to be known as the Universal Service Fund and such fund, if established, shall be managed by the Authority in accordance with regulations made by the Governor in Cabinet after consultation with the Authority.”.

Amendment of section
45- interconnection
agreements

18. The principal Law is amended in section 45 by repealing subsection (5) and substituting the following subsection -

“(5) Where parties cannot agree upon interconnection rates, the Authority may impose such rates.”.

Amendment of section
46- pre-contract dispute

19. The principal Law is amended in section 46 (3) by repealing paragraph (b).

Amendment of section
48- infrastructure
sharing

20. The principal Law is amended in section 48 as follows-

- (a) by re-numbering the section as subsection (1) of section 48; and
- (b) by inserting after subsection (1) the following subsections -

“(2) The Authority, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may-

- (a) coordinate with, and issue guidelines to, any or all government entities having general authority over matters affecting infrastructure; and
- (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and a another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.

(3) A licensee shall not deny another licensee access to its infrastructure or infrastructure arrangements except—

- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
- (b) there are reasons of safety or security; or
- (c) there are technical and engineering matters which would make such access difficult or impossible.”.

21. The principal law is amended by inserting after section 48 the following section –

Insertion of section 48A-
licensee confidential
information

“Licensee
confidential
information

48A (1) Where a licensee receives information from another licensee for the purpose of interconnection, infrastructure sharing or the provision of ICT networks or ICT services generally and such information is of a competitive nature in that the information relates to matters including the following-

- (a) customer orders;
- (b) market forecasts;
- (c) plans for the development of new services;
- (d) network plans;
- (e) new customers; and
- (f) current or proposed business plans,

the licensee shall treat such information in confidence and-

- (i) may only share it amongst such of its employees who need the information in order to provide services to the licensee providing the information; and
- (ii) shall not provide such information to its employees or other persons who are involved in providing ICT networks or ICT services offered in competition to the licensee providing the information.

(2) The Authority may establish such rules and procedures as it considers necessary to prevent the misuse of licensees’ confidential information.”.

22. The principal Law is amended in section 49 (1) by repealing the words “Governor in Council” and substituting the word “Authority”.

Amendment of section
49- numbering

Amendment of section 50- quality of service 23. The principal Law is amended in section 50 (3) by repealing the words “the Governor in Council, after consultation with”.

Amendment of section 55- review of administrative decisions by the Authority 24. The principal Law is amended in section 55 as follows-

- (a) in subsection (1) as follows-
 - (i) by inserting after paragraph (d) the following paragraphs-
 - “(da) a decision that a section 34B prohibition has been infringed;
 - (db) a decision that a section 34F prohibition has been infringed;
 - (dc) with regard to an individual exemption under Part IIIA-
 - (i) a decision to grant or refuse an individual exemption;
 - (ii) a decision to impose any condition or obligation and a decision on the type of condition or obligation where such a condition or obligation has been imposed;
 - (iii) a decision of the date and duration of the individual exemption and as to the period fixed for such exemption;
 - (iv) a decision to extend or not to extend the period for which an individual exemption has effect; or
 - (v) a decision on the duration of the extension referred to in subparagraph (iv);
 - (dd) a decision to cancel an exemption;
 - (de) a decision to impose a penalty in accordance with Part IIIA and a decision as to the amount of such penalty;
 - (df) a decision to give a direction under sections 34M, 34N or 34P; and
 - (ii) by inserting after paragraph (e) the following paragraph-
 - “(f) such other decision as may be prescribed.”;
- (b) by inserting after subsection (1) the following subsection-
 - “(1a) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an application does not suspend the effect of any decision under paragraphs (da), (db), (dc)(dd) or (df) to which the appeal relates.”;
- (c) by repealing subsection (2) and substituting the following-
 - “(2) Where-
 - (a) a licensee;
 - (b) an applicant for a licence;

- (c) a party to an agreement in respect of which the Authority has made a decision under Part IIIA;
 - (d) a person in respect of whose conduct the Authority has made a decision under Part IIIA,
- is, aggrieved by a decision specified in subsection (1) (“the original decision”) he may, within 14 days of the receipt of the decision and written reasons therefore, apply in the prescribed manner to the Authority for a reconsideration of that decision.”;
- (d) in subsection (4) by inserting before the word “decision” wherever it appears the word “original”; and
 - (e) in subsection 5 (b), by repealing “57” and substituting “56”.

25. The principal Law is amended by inserting after section 55 the following section-

Insertion of section 55A-
third party appeals under
Part IIIA

“Third party appeals under Part IIIA

55A. (1) A person who-

- (a) is not a party to an agreement in respect of which the Authority has made a decision (as specified in paragraphs (da) to (df) of section 55 (1) (“the relevant decision”);
- (b) is not a person in respect of whose conduct the Authority has made the relevant decision; and
- (c) has no right of a appeal under section 55,

may apply to the Authority asking it to withdraw or vary the relevant decision.

(2) The application made in accordance with subsection (1) shall-

- (a) be made in writing, within such period as the Authority may specify in rules; and
- (b) give the applicant's reasons for considering that the relevant decision should be withdrawn or, as the case may be, varied.

(3) Where the Authority decides-

- (a) that the applicant does not have a sufficient interest in the relevant decision,
- (b) that, in the case of an applicant claiming to represent persons who have such an interest, the applicant does not represent such persons, or
- (c) that the persons represented by the applicant do not have such an interest,

it shall notify the applicant of its decision.

(4) Where the Authority, having considered the application, decides that the application does not show sufficient reason why the Authority should withdraw or vary the relevant decision, it must notify the applicant of its decision; otherwise, the Authority shall deal with the application in accordance with such procedure as may be specified in rules made by the Authority.

(5) The applicant may appeal to the court against a decision of the Authority made under subsections (3) or (4).

(6) The making of an application does not suspend the effect of the relevant decision.”.

26. The principal Law is amended in section 56 (1) by inserting“, 37A” after “35”. Amendment of section 56-appeals to the Court

27. The principal Law is amended by inserting after section 68 the following sections- Insertion of sections 68A to 68C

“Offences under Part IIIA

68A.(1) A person who fails to comply with a requirement imposed on him under section 34H or 34I commits an offence.

(2) Where a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove-

- (a) that the document was not in his possession or under his control; and
- (b) that it was not reasonably practicable for him to comply with the requirement.

(3) Where a person is charged with an offence under subsection (1) in respect of a requirement-

- (a) to provide information,
- (b) to provide an explanation of a document, or
- (c) to state where a document is to be found,

it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 34H is not an offence if the person imposing the requirement has failed to act in accordance with that section.

(5) A person who intentionally obstructs an officer acting in the exercise of his powers under section 34I commits an offence.

(6) A person guilty of an offence under subsection (1) or (5) shall be liable on summary conviction, to a fine not exceeding \$4,000 and if he is convicted on indictment to a fine.

(7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 34I commits an offence and shall be liable on summary conviction to a fine not exceeding \$4,000 and if

he is convicted on indictment, to imprisonment for a period not exceeding 2 years, to a fine or both.

Destroying or falsifying documents

68B. (1) A person commits an offence where, having been required to produce a document under section 34H or 34I-

- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it; or
- (b) he causes or permits its destruction, disposal, falsification or concealment.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding \$4,000 and if he is convicted on indictment to imprisonment for a period not exceeding 2 years, to a fine or to both.

False or misleading information

68C. (1) Where information is provided by a person to the Authority in connection with any function of the Authority under Part IIIA, that person commits an offence if-

- (a) the information is false or misleading in a material particular; and
- (b) he knows that it is or is reckless as to whether it is.

(2) A person who-

- (a) provides any information to another person, knowing the information to be false or misleading in a material particular; or
- (b) recklessly provides any information to another person which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Authority in connection with any of its functions under Part IIIA, commits an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction, to a fine not exceeding \$4,000 and if he is convicted on indictment to imprisonment for a period not exceeding 2 years, to a fine or to both.”.

Amendment of First
Schedule- procedure of
the Board

28. The principal Law is amended in the First Schedule as follows-

- (a) by renumbering paragraph 6 as sub-paragraph (1) of paragraph 6;
and
- (b) by inserting after sub-paragraph (1) the following sub-paragraph-

“(2) Members of the Board or any sub-committee of the Board may participate in a meeting of the Board or of the sub-committee by means of a conference telephone or similar communications equipment where such equipment allows all persons participating in the meeting to hear each other at the same time and participation by such means shall constitute presence in person at the meeting of the Board or sub-committee.”.

Passed by the Legislative Assembly this 3rd day of October, 2003

Speaker.

Clerk of the Legislative Assembly.