

ARRANGEMENT OF SECTIONS

Section

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II - LICENCES

3. Broadcasting service or telecommunication service licence
4. Broadcasting transmission facility or telecommunication facility licence
5. Radio communication licence
6. Experimental licence
7. Form and conditions etc. of a licence
8. Revocation or suspension of a licence
9. Variation of conditions etc. and inclusion of new conditions etc. in a licence
10. Transferability of licence
11. Restriction of number of licences

PART III - ADMINISTRATION OF THE ACT

12. Functions of the Minister
13. Numbering system
14. Powers of entry and inspection for ensuring compliance with the Act
15. Non-transmission of messages in the national interest
16. Matters of objectionable nature
17. Breach of copyright and agreements
18. Licensee's power of entry, etc.
19. Compensation for actual damage
20. Growing trees

PART IV - OFFENCES

21. Operation of service or system without a licence
22. Dishonest obtaining of telecommunication services
23. Obstruction
24. Failure to carry out orders
25. Wilful destruction of apparatus
26. Wilful interference with services, etc.
27. Presumptions relating to masters and captains

PART V - MISCELLANEOUS

28. Establishment of the Telecommunication Universal Service Fund
29. Licensee's duty to ensure safety of consumers, etc.
30. Network interconnection
31. Collocation of equipment
32. Resolution of disputes
33. Unfair competition
34. Directory information
35. Other duties of telecommunication service licensees
36. Emergency messages, etc.
37. Radio frequency management
38. Regulations
39. Avoidance of doubt
40. Repeal of Cap 19

on the commencement of this Act shall continue in force unless revoked or amended under this Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 29th February, 2000.



Mrs. Sheila Banks
Clerk to the National Assembly



BROADCASTING AND TELECOMMUNICATION
ACT, 2000

(Act 2 of 2000)

I assent



F.A. René
President

9th March, 2000

AN ACT to repeal and replace the Broadcasting and Telecommunication Act (Cap 19) and to provide for matters connected therewith.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Broadcasting and Telecommunication Act, 2000 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Short title and commencement

Interpretation

2. In this Act -

“aircraft” means every description of aircraft other than the military aircraft of the Republic;

“broadcasting” means the transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for direct general reception with the aid of any equipment or apparatus, but does not include any such transmission of programmes made solely for performance or display in a public place;

“broadcasting apparatus” means an apparatus used for broadcasting, but does not include a private radio receiving set or a private television receiver;

“broadcasting service” means a service which provides regular broadcasting;

“customer premises equipment” means equipment on the premises of a person not being a telecommunication service licensee, used to originate, route or terminate telecommunications;

“dialling parity” means the ability of one licensee to provide telecommunication services in such manner that his customers can route their telecommunications, automatically without using an access code, to any other licensee’s telecommunication service;

“encrypted” means treated electronically or otherwise so as to prevent intelligible reception in the absence of the means of decryption;

“inner islands” means the islands described in Part II of Schedule I of the Constitution;

“licence” means a licence issued under section 6 of the Licences Act;

Cap. 113

for indemnifying the Government against all claims which may be made in respect of injury arising from any act permitted by the licence;

- (xiii) determination of full compensation payable by licensees under this Act;
- (xiv) prevention of sale by the licensee of any prescribed equipment without the consent of the Minister;
- (xv) any other purposes connected with the proper working of broadcasting services or telecommunication services or installation or use of broadcasting apparatus, beacons or lights and the protection of the public or other property affected thereby;
- (xvi) proper management of the Fund established by section 28;
- (xvii) ensuring that the international law obligations of the Republic in respect of broadcasting and telecommunication are carried out;
- (xviii) offences and penalties not exceeding R2000 by way of fine and 1 year by way of imprisonment in respect of those offences.

39. For avoidance of doubt it is hereby declared that this Act shall apply to and in relation to every ship or aircraft registered in Seychelles and to and in relation to every other ship or aircraft registered elsewhere whilst it is within the jurisdiction of Seychelles.

Avoidance of doubt

40. (1) The Broadcasting and Telecommunication Act (Cap 19) is hereby repealed.

Repeal of Cap. 19

(2) Notwithstanding the repeal of the Broadcasting and Telecommunication Act (Cap 19) by subsection (1), all statutory instruments made and all licences issued under that Act and in force

- (iii) control or regulation of broadcasting services or telecommunication services and other licensed activities where it is necessary in the interest of public security;
- (iv) specification, manner of installing and use of broadcasting apparatus and telecommunication apparatus;
- (v) erection and placement of broadcasting apparatus and telecommunication apparatus and construction of works under this Act in so far as they affect land, buildings and other property, including their maintenance, alteration and removal;
- (vi) purchase and taking over by the Government of any broadcasting service or telecommunication service where it is considered necessary in the national interest;
- (vii) taking over or requisitioning of any telecommunication installation where it is considered necessary for the preservation of public security or in the national interest;
- (viii) control and orderly use of radio frequency bands, in accordance with international regulations;
- (ix) conditions and tariffs relating to allocation of radio frequencies to licensees;
- (x) prevention of misuse of broadcasting services or telecommunication services;
- (xi) reduction of transmitting power so as to prevent interference or interruption of other transmission;
- (xii) limiting the liability of licensees for wilful failure to render services under the licence and

"licensee" means the holder of a licence;

"Licensing Authority" means the Licensing Authority established by section 3 of the Licences Act;

Cap. 113

"message" means any communication sent, received or made by telecommunication, or given to any person to be sent by telecommunication or to be delivered;

"Minister" means the Minister responsible for Broadcasting and Telecommunication;

"number portability" means the ability of users of a telecommunication service to retain at the same location existing telecommunication numbers without any impairment of quality, reliability or convenience when changing from one telecommunication service licensee to another;

"numbering system" means a system consisting of distinguishing numbers or letters by which connection between different terminal equipment points can be established through the use of a telecommunication facility;

"programme" means sounds or visual images or a combination of sounds and visual images that are intended to inform or entertain but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;

"radio communication service" means a service involving the transmission, emission or reception of radio waves for specific telecommunication purposes;

"radio waves" means electromagnetic waves of frequencies arbitrarily lower than 3000 GHz propagated in space without artificial wave guide;

"ship" includes every description of vessel used in navigation, or propelled by oars, and includes hovercraft but does not include military ships of the Republic;

(3) Where the Minister is satisfied that a person is engaged in a practice in contravention of subsection (1), he may in writing, order such person to do, or refrain from doing, any act within such time as may be specified in the order.

Directory
information

34. Every person who operates a telecommunication service shall furnish directory information in respect of its subscribers to the Minister, or to such other person, and in such manner as the Minister may direct.

Other duties of
telecommunica-
tion service
licensees

35. Every person providing a telecommunication service has the duty -

- (a) to refrain from installing network features, functions or capabilities that are not in accordance with international standards applied in Seychelles;
- (b) to provide on rates, terms and conditions that are reasonable and non-discriminatory, and to the extent that is technically feasible, number portability as required by the Minister;
- (c) to provide dialling parity to others providing telecommunication services on rates, terms and conditions that are reasonable and non-discriminatory;
- (d) to permit others providing telecommunication services to have access to telephone numbers, operators' services, directory assistance and directory listing without being subjected to unreasonable dialling delays and on rates, terms and conditions that are reasonable and non-discriminatory;
- (e) to afford access to towers, poles, ducts, conduits and such person's right-of-way to his competitors on rates, terms and conditions that are reasonable and non-discriminatory.

Emergency
messages

36. (1) The Minister may, at a time of emergency, order any person providing a broadcasting service or a telecommunication

PART II - LICENCES

3. (1) No person shall provide a broadcasting service, or a telecommunication service, except under, and in accordance with, a licence granted under the Licences Act.

Broadcasting
service or tele-
communication
service licence
Cap. 113

(2) A licence referred to in subsection (1) may authorise the licensee to operate a telecommunication facility for the purpose of providing the service for which the licence is granted.

4. No person shall operate a transmission facility or telecommunication facility except under, and in accordance with, a licence granted under the Licences Act.

Transmission
facility or tele-
communication
facility licence
Cap. 113

5. (1) No person shall -

- (a) possess, set up or operate a radio communication network; or
- (b) possess, set up or operate radio communication equipment whether assembled or otherwise,

Radio
communication
licence

except under, and in accordance with, a licence granted under the Licences Act.

Cap. 113

(2) A licence referred to in subsection (1) shall specify -

- (a) the radio frequency or frequencies allocated to the licensee;
- (b) the description of the antenna and transmitter to be used;
- (c) the geographical area in which a mobile transmitter, where applicable, may be used;
- (d) the location of the antenna and fixed transmitter;
- (e) the obligation, if any, to share the frequency allocated with any other person; and
- (f) such other particulars as the Minister may deem necessary.

Experimental
licence

6. (1) Where the sole object of an applicant for a licence under this Act is to conduct experiments in any of the activities for which a licence is required under section 3, 4 or 5, and such experiments are likely to be of public benefit, a licence may be granted, in accordance with any one of those sections, for experimental purposes.

Cap 113

(2) A licence granted for experimental purposes shall be subject to such special terms, conditions and restrictions as may be specified in the licence and any fees payable under the Licences Act in respect of the licence may be waived or remitted under that Act.

Form and
conditions etc.
of a licence

7. A licence required under this Act shall be subject to such terms and conditions and restrictions as may be specified in the licence and shall be in such form as may be determined by the Licensing Authority and shall be valid, unless earlier revoked, for such period as may be specified in the licence.

Revocation or
suspension of a
licence.
Cap. 113

8. (1) The Licensing Authority may revoke or, subject to subsection (2), suspend a licence required under this Act, on any one or more of the following grounds -

Cap 113

(i) failure to pay any fee payable under the Licences Act;

Cap 113

(ii) failure to comply with any provision of this Act or the Licences Act in so far as that provision is applicable to the licence;

(iii) failure to comply with any term, condition or restriction of the licence;

(iv) where it is advisable in the national interest, for a specified reason, to do so.

(2) A licence shall not be suspended for any period exceeding 30 days but where, on any of the grounds specified in subsection (1), it becomes necessary to extend the period of suspension,

Resolution of
disputes

32. (1) Any question as to -

- (a) whether a person is entitled to withhold his consent under section 30(2);
- (b) whether a person is refusing to agree to fair and reasonable charges or rental under section 31(3) and whether such charges or rental should be imposed by the Minister,

shall be determined by the Minister upon the request of any person concerned or otherwise, and the Minister shall make an order accordingly.

(2) Any order made by the Minister under subsection (1) shall be communicated to the relevant persons and they shall comply with the order.

33. (1) Telecommunication services shall, as far as practicable, be provided in accordance with the principle of free and fair competition.

Unfair
competition

(2) Any of the following practices shall be a contravention of subsection (1) -

- (a) collusion between persons who are potential operators of telecommunication services in applying for, or exploiting, a licence for such service;
- (b) restraining access by any operator or user of a telecommunication service in applying for, or exploiting, a licence for such service;
- (c) charging tariffs which are not in accordance with the applicable tariff structure; or
- (d) the use of a dominant position in the market to restrict, prevent or deter the entry of another person into the market, or to oust a person from the market.

of that other person to so connect the first mentioned person's network, system or equipment.

(2) Subject to section 32, a person whose consent is sought under subsection (1) may withhold such consent if the proposed interconnection would materially restrict his ability to exploit the network capacity at his disposal in his own operations.

(3) A person who has obtained the consent referred to in subsection (1) may, thereafter seek the approval of the Minister for the proposed interconnection.

(4) An interconnection referred to in this section may be made only in accordance with the preceding provisions of this section.

(5) Subject to section 32, the charges in respect of the interconnection and the use of the connected network shall be agreed upon by the persons concerned and shall be fair and reasonable having regard to the service provided by one person and the additional cost accruing to the other person as a result of the interconnection.

Collocation of equipment

31. (1) Subject to subsection (2), a person who provides a telecommunication service shall, upon the written request of another such person permit the collocation of that other person's equipment within the first mentioned person's facilities.

(2) Notwithstanding the provisions of subsection (1), if a person satisfies the Minister that, due to technical reasons or limitations of space, he is unable to comply with the requirements of subsection (1), he may be exempted from those requirements by the Minister.

(3) Subject to section 32, the rental in respect of facilities for the collocation of equipment shall be fixed by agreement between the persons concerned.

the period may be extended by further periods not exceeding 30 days at any one time.

(3) A person shall not be entitled to a refund of the licence fee or to any compensation by reason of the revocation or suspension of a licence.

(4) A licensee aggrieved by a revocation or suspension of the licence may appeal against the revocation or suspension in accordance with section 15 of the Licences Act and the provisions of that section shall apply to the appeal.

Cap 113

9. Where it is advisable in the national interest to do so, any term, condition or restriction of a licence may be varied or revoked or any new term, condition or restriction be included in the licence.

Variation of conditions etc., and inclusion of new conditions

10. A licence shall not be transferred except with the consent of the Licensing Authority given after consultation with the Minister.

Transferability of licence

11. The Minister may, by a direction in writing issued to the Licensing Authority, limit the number of licences referred to in sections 3, 4, 5 and 6 and the Licensing Authority shall give effect to the direction.

Restriction of number of licences

PART III - ADMINISTRATION OF THE ACT

12. (1) The Minister shall be responsible for the general superintendence and supervision of all matters relating to broadcasting and telecommunication and shall carry the provisions of this Act into execution.

Functions of the Minister

(2) The Minister, in exercising the powers conferred by this Act, shall -

- (a) take all reasonable measures to provide throughout Seychelles, such broadcasting and telecommunication services as will satisfy all reasonable demands

for such services, including emergency services, public pay phone services and directory information services;

- (b) promote the interests of consumers, purchasers and other users of broadcasting and telecommunication services in respect of the prices charged for, and the quality and variety of, such services and equipment supplied in connection with such services;
- (c) promote and maintain competition among persons engaged in commercial activities for, or in connection with, the provision of broadcasting and telecommunication services and promote efficiency and economy on the part of such persons; and
- (d) promote the goals of universal service.

Numbering system

13. The Minister shall establish and maintain a non-discriminatory and efficient numbering system to be applied by all licensees of telecommunication services.

Powers of entry and inspection for ensuring compliance with the Act

14. (1) Any public officer authorised in writing by the Minister may, for the purpose of ensuring that the provisions of this Act are complied with, at any reasonable time -

- (i) enter any building or place or go on board any ship or aircraft;
- (ii) inspect any broadcasting apparatus or telecommunication apparatus installed or used in any building, place, ship or aircraft;
- (iii) call for and inspect any licence granted in accordance with this Act.

(2) Any person for the time being in charge of any building, place, ship or aircraft in respect of which any powers are exercised under subsection (1) shall afford all reasonable facilities for entry and inspection under that subsection.

PART V - MISCELLANEOUS

28. (1) There shall be a fund which shall be called the Telecommunication Universal Service Fund (in this Act referred to as "the Fund").

Establishment of Telecommunication Universal Service Fund

(2) The Minister shall be responsible for the administration of the Fund.

(3) Every holder of a telecommunication service licence shall pay a contribution to the Fund at such rate and at such times as may be prescribed.

(4) The Minister may, from time to time, pay out of the Fund to any holder of a telecommunication service licence such sum of money as the Minister may deem fit and necessary for the purpose of assisting such holder to extend the service or any part of it to areas and communities which are in need of the service.

(5) The accounts of the Fund shall be audited annually by the Auditor General.

29. Every person who -

- (a) provides a broadcasting service or a telecommunication service;
- (b) operates a transmission facility or a telecommunication facility;
- (c) supplies terminal equipment or radio equipment;
- (d) undertakes the maintenance or repair of broadcasting or telecommunication equipment.

Licensee's duty to ensure safety of consumers, etc.

shall, in doing so, ensure that consumers and users of the service, system or equipment do not suffer injury or damage.

30. (1) A person who desires to connect his telecommunication network, system or equipment to the network, system or equipment as the case may be, of another person, shall seek the consent

Network interconnection

(3) Any apparatus forfeited under subsection (2) shall be disposed of in such manner as the Minister may direct.

Dishonest
obtaining of
telecommunica-
tion services

22. Any person who dishonestly obtains or helps another person to so obtain telecommunication services with intent to avoid payment of any charge applicable for the provision of such service is guilty of an offence and shall be liable on conviction to a fine of R2000 and to imprisonment for 2 years.

Obstruction

23. Any person who prevents, hinders or obstructs any person in the exercise of his functions under this Act is guilty of an offence and shall be liable on conviction to a fine of R1000 and to imprisonment for 1 year.

Failure to carry
out orders

24. Any person who fails or refuses to comply with any order given under section 15, 16, 32, 33 or 36 is guilty of an offence and shall be liable on conviction to a fine of R1000 and to imprisonment for 1 year and to a further fine of R100 for each day he continues to commit the offence after conviction.

Wilful
destruction of
apparatus

25. Any person who wilfully destroys or damages any broadcasting apparatus or telecommunication apparatus is guilty of an offence and shall be liable on conviction to a fine of R2000 and to imprisonment for 2 years.

Wilful
interference
with services,
etc.

26. Any person who wilfully and unlawfully interferes with any broadcasting service, broadcasting transmission facility, telecommunication service, telecommunication facility or radio communication network is guilty of an offence and shall be liable on conviction to a fine of R2000 and to imprisonment for 2 years.

Presumption
relating to
masters and
captains

27. For the purpose of proceedings under or in accordance with this Act for any offence committed on board a ship or aircraft, the master or captain or the person appearing to be in command or charge of the ship or aircraft is presumed to be responsible for the act or omission constituting the offence.

(3) A public officer authorised under subsection (1) shall, if so requested, produce his authority to exercise his powers under this section.

15. Where the national interest so requires, the Minister or any public officer authorised in writing by the Minister in that behalf, may order in writing that any message or any class of messages brought for transmission by telecommunication shall not be transmitted by any telecommunication service.

Non-transmis-
sion of messages
in the national
interest

16. Where any matter (including an advertisement) intended for broadcasting is, in the opinion of the Minister, of an objectionable nature, the Minister may by order in writing prohibit the broadcasting of the matter unless suitably amended in the manner specified by the Minister in the order, so as to remove the objectionable nature of the matter.

Matters of
objectionable
nature

17. A licensee shall not transmit by broadcasting -

- (i) any work or part of a work in which copyright subsists except with the written consent of the owner of the copyright;
- (ii) any news or information of any kind published in a newspaper or obtained, collected, collated or co-ordinated by a newspaper, association of newspapers, news agency or news service, except in accordance with an agreement between the licensee and the newspaper, association of newspapers, news agency or news service.

Breach of
copyright and
agreements

18. (1) A licensee or any person authorised by him in writing may, for the purposes of establishing a broadcasting service or telecommunication service, as the case may be -

- (i) enter upon any property at any reasonable time for the purposes of such service including any preliminary survey in relation to such service;

Licensee's
power of entry
etc.

Cap. 237

- (ii) subject to any permission required under the Town and Country Planning Act or to any other law regulating the control and development of land, erect or place any broadcasting apparatus or telecommunication apparatus or posts, or construct works upon, over, under, across or along any street, road, land, building or other property and maintain, alter or remove anything so erected, placed or constructed;

Cap. 18

- (iii) subject to any permission required under the Breadfruit and Other Trees (Protection) Act or any other law regulating the felling of trees, cut or remove any tree or branch thereof which is in contact with any apparatus, post or works erected, placed or constructed under paragraph (ii).

(2) A licensee shall not acquire under subsection (1) any right other than that of user only of the soil of any street, road, land, building or other property for the purposes of that subsection.

Compensation for actual damage

19. (1) In exercise of the powers under section 18, a licensee or the person authorised by him in writing shall do as little damage as may be reasonable in the circumstances.

(2) The licensee shall make full compensation to all persons for any actual damage sustained by them by reason, or in consequence, of the exercise of the powers under section 18.

(3) Any disputes concerning the amount and application of compensation under subsection (2) shall be determined by the Minister whose determination on the matter shall be final.

Growing trees

20. (1) Where in the opinion of a licensee any tree which has been planted or is growing is situate so close to any apparatus,

pole or works erected, placed or constructed under section 18 as is likely to touch, damage or fall upon such apparatus, pole or works, the licensee may, in writing, request the owner, lessee or occupier of the land on which the tree has been planted or is growing to cut or remove the tree or cut any of its branches to such height from the ground or at such distance from the apparatus, pole or works, within such time as may be specified in the request after receiving any permission required under the Breadfruit and Other Trees (Protection) Act or any other law regulating felling of trees.

Cap. 18

(2) Where a request made under subsection (1) is not complied with within the time specified in the request or where delay in making a request under subsection (1) may imperil the safety of any apparatus, pole or works, the licensee or the person authorised by him in writing may cut or remove the tree or cut the branches of the tree in respect of which the request is, or could have been, made after receiving any permission required under the Breadfruit and Other Trees (Protection) Act or any other Act regulating the felling of trees.

Cap. 18

(3) The provisions of section 18 shall apply to or in respect of any tree cut or removed or branch cut under this section as if it were a tree or branch cut or removed under section 18.

PART IV - OFFENCES

21. (1) Any person who contravenes section 3, 4, 5 or 6 shall be prosecuted under the Licences Act for a contravention of section 16(1) of that Act and shall be liable to the punishments provided for such contravention under that Act.

Operation of service or system without a licence. Cap. 113

(2) The court before which any person is convicted for a contravention of section 3, 4, 5 or 6 in accordance with subsection (1) of this section may order that any broadcasting, telecommunication or other apparatus with which or in respect of which the prosecution was instituted, shall be forfeited.