TELECOMMUNICATIONS AMENDMENT ACT 1999

[Date of Assent 18 June 1999]
[Operative Date 18 June 1999]

WHEREAS it is expedient to amend the Telecommunications Act 1986:

Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act which amends the Telecommunications Act 1986 (‘the principal Act’) and may be cited as the Telecommunications Amendment Act 1999.

Repeal and replacement of sections 21 and 22 of the principal Act

2 Sections 21 and 22 of the principal Act are repealed and the following substituted—

‘Duties of Carriers

21 (1) Subject to this section, it shall be the duty of every Carrier—

(a) to furnish telecommunication service upon any reasonable request therefor and on reasonable terms and conditions;
(b) to establish interconnection with other Carriers upon reasonable request and on reasonable terms and conditions;

(c) to establish through routes upon reasonable request and with reasonable rates and charges;

(d) to establish and provide facilities for operating such through routes upon reasonable request and in accordance with reasonable rules;

(e) to maintain the confidentiality of any customer or other Carrier information;

(f) to refrain from any act or practice intended to or likely to have the effect of lessening competition;

(g) to refrain from marketing practices or advertisements which are false or misleading in a material respect;

(h) to provide other Carriers access to support structures including telephone poles, underground conduits and communications towers upon reasonable terms and conditions;

(i) to maintain existing services unless permitted by the Commission to discontinue such service;

(j) to display in a conspicuous place in the licensee's principal place of business or in such other place as may be specified in writing by the Minister every licence granted under this Act or other authority deemed to constitute the grant of a licence to establish, maintain or operate a public telecommunication service in such a manner that all terms and conditions subject to which the licence is granted are visible and legible; and

(k) to furnish to the Commission, in such form as may be specified by the Commission, copies of all agreements between Carriers including any amendments to any existing agreement between Carriers either before execution of such agreement or not later than ten days after the execution of such agreement.
(2) A Carrier shall comply with a request under paragraph (1)(a), (b), (c) or (d) within thirty days of the request or such longer period as the Commission may allow.

(3) For the purpose of paragraph (1)(k) any Carrier that is party to an agreement may furnish a copy of the agreement to the Commission on behalf of all the Carriers that are party to the agreement.

(4) Upon receipt of a copy of an agreement under paragraph (1)(k) the Commission shall within ten days either indicate its approval of such agreement or its intention to enquire into the agreement.

(5) Where the Commission approves an agreement and informs the Carrier in writing of such approval, the agreement shall either be executed within seven business days by all parties or remain in force as the case may be.

(6) If the Commission decides to enquire into any aspect of an agreement the Commission shall conclude its enquiries as expeditiously as possible and in no case in more than thirty days or such longer period as the Minister may allow and give a direction—

(a) approving the agreement;

(b) approving the agreement on a provisional basis;

(c) changing the agreement in whole or in part; or

(d) suspending the agreement or postponing the date upon which the agreement is intended to be executed to such other date as may be specified,

and the Carriers shall comply therewith.

(7) Where a Carrier has established to the satisfaction of the Commission that an existing service is unprofitable or loss-making, the Commission shall not refuse permission to discontinue that service unless—

(a) the Commission considers that it is in the public interest to refuse permission, having regard to the utility of the service, the availability of suitable substitutes and the degree of reliance on the service by the public or segments of the public; and

(b) the Commission is satisfied that the Carrier will be adequately compensated for the loss involved.
in continuing the service by the rates and charges it charges for other services it provides.

(8) No Carrier may disconnect another Carrier without the consent in writing of that Carrier or the Minister.

(9) A Carrier may only seek the permission of the Minister to disconnect another Carrier if—

(a) that Carrier fails to settle its accounts due within a period of thirty days after receipt of a written warning notice and within a further period of thirty days after receipt of a written notice of intention to seek permission for disconnection;

(b) that Carrier fails to comply with any term of the contract or agreement for the provision of the service;

(c) that Carrier fails to conform to the agreed technical specification for the provision and operation of the service; or

(d) there is other just and reasonable cause for disconnection.

(10) A Carrier which seeks the Minister's permission to disconnect another Carrier shall give notice to the Minister in writing not less than thirty days before the date of the proposed disconnection, informing the Minister of the reasons for the proposed disconnection, and the Minister shall forthwith refer the matter to the Commission for enquiry and report.

(11) Upon referral of a matter to the Commission under subsection (10), the Commission shall conclude its enquiry as expeditiously as possible and report to the Minister with recommendations within twenty days of the date of referral by the Minister.

(12) The Minister shall render a decision on a proposed disconnection of one Carrier by another within thirty days of receipt by the Minister of the notice by the Carrier under subsection (10).

Enquiry into failure of a Carrier to discharge a duty

22 (1) A person other than a Carrier who is aggrieved by the failure of a Carrier to discharge a duty to which it is subject by virtue of this Act or any regulation or directive of the Minister
or the Commission may make a written complaint on that account to the Commission and shall provide a copy of the complaint to the Carrier concerned.

(2) As soon as possible after the receipt of a complaint under subsection (1) the Commission shall investigate the matter and if the Commission is satisfied on the evidence submitted that there are *prima facie* grounds for the holding of an enquiry, the Commission shall hold an enquiry and shall report thereon to the Minister.

(3) On receipt of a report under subsection (2) the Minister may, after giving due consideration to the report, give such directive to the Carrier as he thinks fit and the Carrier shall comply therewith.

(4) A Carrier aggrieved by the failure of another Carrier to discharge a duty to which it is subject by virtue of this Act or any regulation may make a written complaint on that account to the Commission and shall provide a copy of the complaint to the Carrier concerned.

(5) Upon receipt of a complaint under subsection (4) the Carrier against which the complaint is made shall immediately attempt to resolve the dispute, but any party to the dispute may request the assistance of the Department in resolving the dispute.

(6) If the dispute is unresolved within thirty days after the complaint is received by the Carrier against which the complaint is made, any party to the dispute may submit the dispute to the Commission for resolution, or the parties to the dispute may—

(a) jointly agree to further negotiation or mediation; or

(b) jointly agree to submit the dispute to binding arbitration in accordance with the provisions of the Arbitration Act, 1986.

(7) In the event the dispute is referred to the Commission pursuant to subsection (6), the Commission shall enquire into and render a decision on the dispute within forty-five days from the date of the referral.

(8) In its decision the Commission may direct one or more of the parties to take such action as is necessary to comply with the requirements of this Act and the regulations.
(9) The Commission may upon the recommendation of the Department or of its own initiative investigate any complaint made by a Carrier under subsection (4) and render a decision on the dispute and give such directive as the Commission thinks fit and the Carrier against which the complaint has been made shall comply therewith.”.

Insertion of new section 61C in principal Act
3 The principal Act is amended by inserting immediately after section 61B the following:

"Liability of Commission
61C No action, suit, prosecution or other proceedings shall lie against the Commission, the Chairman or any member thereof or any person acting on behalf of the Commission in respect of any act or omission done or made in good faith in execution or intended execution of any function under this Act.”.