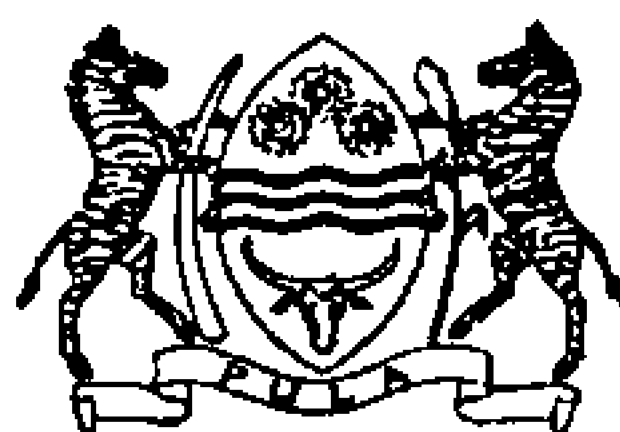


TELECOMMUNICATIONS ACT, 1996

No. 15



of 1996

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An Act to regulate the provision of telecommunication services to, from and within Botswana; to provide for the licensing of providers of telecommunication services in Botswana, and for matters connected or incidental thereto.

Date of Assent: 16.08.96.

Date of Commencement: On Notice.

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Telecommunications Act, 1996, and shall come into operation on such date as the Minister may, by Notice in the Gazette, appoint.

Short title and
Commence-
ment

2. In this Act, unless the context otherwise requires —

Interpretation

“Authority” means the Telecommunications Authority established by section 3;

“Board” means the Board of the Authority established by section 4;

“Minister” means the Minister responsible for communications;

“network interconnection” means the linking of a telecommunication system or any telecommunication equipment which can be used to connect to a telecommunication network, (except for terminal equipment) to another telecommunication system;

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

“radio equipment” means telecommunication equipment which is designed or used for receiving or transmitting messages by means of radio waves;

“service licence” means a licence to provide telecommunication services issued under section 27;

“service provider” means any person who provides a telecommunication service;

“telecommunication equipment” means any equipment which is used for conveying, transmitting or receiving, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, or through the agency of radio waves, of —

(a) speech, music or other sounds;

(b) visual images;

(c) signals capable of being interpreted as, or capable of being converted to, sounds, images or other data; and

(d) signals serving for the actuation or control of machinery or apparatus;

“telecommunication service” means a service, delivered by means of a telecommunication system whereby any person using the service is able to convey, receive or transmit speech, music, sound, signals or images or anything referred to in paragraphs (a) to (d) above, and includes any service ancillary thereto, such as -

(a) the installation, maintenance, adjustment, repair, alteration, removal, relocation or replacement of telecommunication equipment related to a telecommunication system; and

(b) any directory information service;

“telecommunication system” means a network of telecommunication equipment which is used or capable of being used to provide a telecommunication service; and for the purposes of this Act, a communication system shall include a radio communication system;

“telecommunication system operator” means the person responsible for the technical operation and maintenance of a telecommunication system;

“telecommunication service provider” means any person who provides a telecommunication service under this Act;

“terminal equipment” means telecommunication equipment which is intended to be used or operated by a telecommunication service subscriber.

PART II — *Establishment, Constitution and Membership of Telecommunications Authority*

Establishment
of Tele-
communi-
cations
Authority

3. There is hereby established a regulatory authority to be known as the Telecommunications Authority (hereinafter referred to as “the Authority”), which shall be a body corporate with a common seal, capable of suing and being sued and, subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform.

Board of
Directors

4. (1) The powers and functions of the Authority shall be exercised and performed by a Board consisting of the following five members appointed by the Minister —

- (a) one person nominated by the Minister, who shall be the Chief Executive of the Authority, which person shall also be chairman of the Board;
- (b) one person nominated by the Minister responsible for finance;
- (c) one person nominated by the Minister responsible for commerce;
- (d) one person who, in the opinion of the Minister, would adequately represent the business community; and
- (e) one person who, in the opinion of the Minister, would adequately represent the domestic users of telecommunication services.

(2) The members of the Board shall appoint, from among their number, a vice-chairman.

(3) Subject to the provisions of section 16, a member of the Board shall hold office for a term not exceeding four years and shall be eligible for re-appointment upon the expiry of his term of office.

Disqualification
for appointment
as a Board
Member

5. No person shall be appointed as a Board member, nor shall any person be qualified to hold office as a Board member, who —

- (a) has in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged,
 - (ii) made an assignment to, or arrangement or composition with, his creditors, which has not been rescinded or set aside;
- (b) has within a period of ten years immediately preceding the date of his proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence, or
 - (ii) outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he has not received a free pardon; or

- (c) has any interest in a licence or in the holder of a licence, or is the holder of a licence issued under this Act; and
- (d) is a Member of Parliament.

6. A Board member shall vacate his office and his office shall become vacant —

- (a) if he becomes disqualified in terms of section 5 to hold office as a Board member;
- (b) if he is adjudged bankrupt or insolvent;
- (c) if he is absent from three consecutive meetings of the Board without reasonable excuse;
- (d) upon his death;
- (e) upon the expiry of one month's notice, given in writing to the Minister, of his intention to resign his office;
- (f) upon the expiry of such time as the Minister may specify in writing, notifying him of his removal from office by the Minister;
- (g) if he becomes the holder of a licence or acquires any interest in a licence or in the holder of licence issued under this Act;
- (h) if he becomes mentally or physically incapable of performing his duties as a member of the Board; or
- (i) if he is convicted of an offence under this Act, or under any other Act for which he is sentenced to imprisonment for a term of six months or more without the option of a fine.

Vacation of
office of
member of the
Board

7. (1) The Minister may, if he is satisfied that a Board member has acted improperly as such member, or is mentally or physically incapable of performing his duties efficiently, require that member, in writing, to vacate his office within such time as he may specify.

Removal and
suspension
from office
by Minister

(2) The Minister shall, in writing, suspend from office a Board member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended he shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Board.

8. On the death of, or the vacating of office by, a Board member, the Minister shall appoint a person to take the place of the member who died or vacated his office until the expiry of the period during which such member would have otherwise continued in office.

Filling of
vacancies of
Board

9. A Board member shall be paid such remuneration, such allowances, and such travelling expenses, incurred in connection with his service on the Board, as the Minister may determine.

Payment of
members

10. (1) The Authority's funds shall consist of —

- (a) such fees as the Authority may impose for services provided under this Act;
- (b) such fees as the Authority may impose for licences issued under this Act;
- (c) such moneys as may be appropriated by the National Assembly;
- (d) contributions or endowments from any other source; and
- (e) such other fees or moneys as the Authority may by virtue of this Act, raise or impose.

Authority's
funds

(2) The Authority shall use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus accrued for such purposes as, with the approval of the Minister, it may determine.

PART III — *Meetings and Proceedings of the Board*

Meetings of Board

11. (1) Subject to the provisions of this Act, the Board shall regulate its own procedure.

(2) The Board shall meet as often as it is necessary or expedient for the discharge of its functions, and such meetings shall be held at such places, times and days as the Chairman may determine.

(3) Meetings of the Board shall be called by the Chairman; and the Chairman may also call a special meeting of the Board within seven days of receipt of a request in writing of at least three members of the Board for such special meeting to be held.

(4) Three members of the Board shall form a quorum.

(5) At any meeting of the Board, the Chairman shall preside, and in his absence the Vice-Chairman; in the absence of both the Chairman and the Vice-Chairman, the members of the Board present shall elect from among their number, a chairman for purposes of that meeting.

(6) The decisions of the Board shall be by a majority of votes and, in the event of an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

(7) Minutes of each meeting of the Board shall be kept and shall be confirmed at a subsequent meeting of the Board.

Declaration of interest by Board members

12. (1) If at any meeting of the Board a Board member is aware or becomes aware that a matter which affects him beneficially directly or indirectly is to be discussed, he shall forthwith declare, to the Board, his interest in the matter and the Board may, if it considers it appropriate, require him to recuse himself from the discussion on that matter.

(2) Any Board member who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P30 000.00.

Signification of documents

13. All documents made by, and all decisions of, the Board may be signified under the hand of the Chairman of the Board, or any member or senior officer of the Authority generally or specially authorized in that behalf.

Accounts and Audit

14. (1) The Authority shall keep proper accounts and records in relation thereto, and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real and contingent) and income and expenditure of the Authority, in a form which shall conform with the best commercial accounting standards applicable to the provision of telecommunications services.

(2) The accounts of the Authority in respect of each financial year shall, within four months or such extended time after the end thereof as the Minister may direct, be audited by such auditor as may be appointed by the Authority.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which he deems it pertinent to comment, whether or not —

- (a) he has received all the information and explanations which, to the best of his knowledge and belief, were necessary for the performance of his duties as auditor;
- (b) the accounts and related records of the Authority have been properly kept;
- (c) the Authority has complied with all the financial provisions of this Act with which it is the duty of the Authority to comply; and
- (d) the statement of accounts prepared by the Authority was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Authority.

(4) The report of the auditor and a copy of the audited accounts shall, within fourteen days of the completion thereof, be forwarded to the Minister and to the Authority.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

15. (1) The Authority shall, within a period of six months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on its operations during such year together with the auditors' report and the audited accounts as provided for in section 14, and the Authority shall publish them in such manner as the Minister may specify.

Annual report

(2) The Minister shall, within 30 days of his receiving the Authority's report, lay such report before the National Assembly.

PART IV — *Officers, Employees and Agents of the Authority*

16. (1) The Authority shall have a Chief Executive who shall be appointed by the Minister on the recommendation of the Board, and upon such terms and conditions as it may determine.

Appointment
of officers and
employees

(2) No person shall be appointed as the Chief Executive of the Authority unless he possesses such experience and training as the Minister may prescribe or approve, and he has demonstrated that he is competent to carry out the functions of the Authority.

(3) The Chief Executive shall, subject to such directions on matters of policy as may be given by the Board, be charged with the administration and organization of the Authority, and the control of the employees of the Authority.

(4) The Chief Executive may delegate, to any senior officer of the Authority, the exercise of any powers which he is authorized to exercise under this Act.

(5) The Chief Executive may resign from office by giving three months' notice thereof in writing to the Minister.

(6) The Chief Executive may be removed from office by the Minister giving him three months notice thereof in writing, or by paying him three months' salary in lieu of notice.

(7) Notwithstanding the provisions of subsection (6), the Minister may remove the Chief Executive from office at any time without giving notice for —

(a) misconduct or incompetence; or

(b) such conflict of interest as, in the opinion of the Minister, warrants his removal from office.

(8) The Board shall appoint the senior officers of the Authority, and the Chief Executive shall appoint such other officers and staff as may be necessary for the proper discharge of the functions of the Authority.

(9) The dismissal of senior officers of the Authority shall be made by the Board, and the dismissal of all other officers shall be made by the Chief Executive or such other senior officer as he may delegate to perform that function.

(10) The terms and conditions of employment of the staff of the Authority shall be as may be determined by the Board in their respective contracts of employment; and the said terms and conditions of employment may make provision for the payment, to such staff and their dependants, of such benefits, gratuities or other allowances as the Board may determine.

PART V — *Functions, Powers and Duties of Authority*

General
functions and
powers of
Authority

17. (1) The Authority shall supervise and promote the provision of efficient telecommunication services in Botswana.

(2) Without derogating from the generality of the provision of subsection (1), the Authority shall —

(a) take all reasonable steps to promote the provision, throughout Botswana, of such telecommunication services as will satisfy all reasonable demands for them including emergency services, public call box services, and directory information services;

(b) promote the interests of consumers, purchasers and other users of telecommunication services in respect of the prices charged for, and the quality and variety of, such services and equipment or terminal equipment supplied for the purposes of such services; and

(c) promote and maintain competition among persons engaged in commercial activities for or in connection with the provision of telecommunication services, and promote efficiency and economy on the part of persons so engaged.

(3) The Authority shall have, and may exercise and perform, such other powers and functions as may be conferred on it by or under this or any other Act.

(4) The Board may, in writing, delegate any of the powers and functions of the Authority to the Chief Executive or any other officer of the Authority.

(5) The Minister may, after consultation with the Board, give the Board directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other legal obligations of the Authority, and the Authority shall give effect to any such directions.

(6) Subject to the provisions of subsection (5), the Authority shall not be subject to the direction of any other person or authority in the exercise of its functions under Parts V, VI, VII and VIII of this Act.

18. (1) The Authority shall publish, in the Gazette, the principles established by it and to be applied in the setting of tariffs by telecommunication systems operators and telecommunication service providers.

Tariffs

(2) A licensed service provider of a telecommunication system for local, national or cellular telephony shall submit a proposal in writing, to the Authority, in respect of the tariff which he intends to apply for the use of his system.

(3) The Authority shall, within sixty days of its receipt of any proposal made under subsection (2), either approve the tariff proposed, or make a counter - proposal; and any failure of the Authority to respond to a proposal shall entitle the person so making the proposal to impose the tariff proposed.

(4) Where the service provider does not accept the counter proposal made to it by the Authority, and it is unable to reach any agreement with the Authority on the matter, it may appeal to the Minister.

(5) A licensed service provider shall make its tariffs available to the public.

(6) Any person who contravenes the provisions of subsection (5) shall be guilty of an offence and shall be liable to a fine not exceeding P5 000.00.

(7) Where the Authority has approved any tariff, any service provider who exceeds such tariff shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P2 000 000.00

19. The Authority shall settle any dispute that may arise between licensees, between licensees and other service providers, and between licensees and members of the general public.

Settlement of
disputes

20. (1) The Authority shall be responsible for monitoring competition in the telecommunications sector.

Monitoring of
competition
in telecom-
munications
sector

(2) The Authority shall report any contravention of the rules of competition as specified under section 48 of this Act to the Attorney General who shall deal with any such contravention as he considers appropriate.

21. (1) The Authority may make regulations specifying the types of telecommunication equipment which may be used for providing a telecommunication service, for operating or connecting to, a telecommunication system, or for terminal equipment (referred to in this Act as "type approval").

Type approval
of equipment

(2) No person who provides a telecommunication service or supplies telecommunication equipment shall use any telecommunication equipment which has not been type approved by the Authority; and no person shall connect, to any telecommunication system, any telecommunication equipment which has not been type approved.

(3) The Authority may type approve any telecommunication equipment by reference to a type approval used in another country.

(4) Save where the Authority otherwise directs, every telecommunication equipment used in or connected to a telecommunication system or network in Botswana shall be marked as being of a type approved for use in Botswana.

(5) The Authority shall maintain a register of type approvals which shall be open to inspection by the public.

(6) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P2 000 000.00

22. (1) The Authority shall have the power to require, from any person, such information including accounts, returns or estimates, as the Authority deems necessary to enable it to carry out its functions under this Act.

(2) If so requested by the Authority, a person shall give the Authority access to, or provide it with, such information as the Authority may require; and the Authority shall be entitled to make copies or take extracts from any such information.

(3) A person who gives any information or access information pursuant to this section shall not give information or access to information which he knows to be false or misleading.

(4) Notwithstanding the provisions of subsection (1) and (2) the Chief Executive or employee or officer of the Authority shall not disclose to any other person, any information so acquired if that disclosure would be detrimental to the person or business of the person providing that information except in the following circumstances —

- (a) the person is declared bankrupt in Botswana, or, if a company, is being wound up, and the information is required in connection with bankruptcy or winding-up proceedings;
- (b) civil or criminal proceedings arise involving that person and the Authority;
- (c) the Chief Executive, employee or officer of the Authority is summoned to appear before a court of competent jurisdiction in Botswana and the court orders the disclosure of the information;
- (d) the information is required by an employee or officer in the employment of the Authority, or by an auditor or legal representative of the Authority, who requires it or is entitled to know the information in the course of his professional duties;
- (e) the information is required by the Directorate on Corruption and Economic Crime in connection with an investigation being carried out by that Directorate or under its authority in accordance with the provisions of the Corruption and Economic Crime Act.

(5) Any person who contravenes subsection (2) or (3) of this section shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P50 000.00.

23. (1) The holder of a licence granted under this Act shall, on demand by an officer of the Authority authorized to inspect licences, or on demand of a police officer, produce his licence for inspection.

Powers of
inspection

(2) An authorized officer or police officer may, without warrant, enter premises —

(a) on which any telecommunication operator or supplier carries on business; or

(b) which are owned or occupied by a person who he has reasonable cause to believe is using, without the requisite licence, the premises for the carrying on of a business or activity for which a licence is required under this Act;

and shall have the power to carry out such examination, inspection or enquiry, and do such things as may appear to him necessary, to ascertain whether or not the provisions of this Act or the regulations thereto are being complied with.

(3) An authorized officer or police officer may seize —

(a) any telecommunication equipment which he has reasonable cause to believe is being used by, or is in the possession or under the control of a person in contravention of this Act; and

(b) any book, record or document which he has reasonable cause to believe will afford evidence of the communication of an offence under this Act.

(4) An authorized officer may order a person to cease using, pending an enquiry by the Authority, any telecommunication equipment which, in his opinion, is being operated in contravention of this Act, of the regulations thereto, or to the terms and conditions of a licence.

(5) Any person who obstructs or hinders an authorized officer or a police officer in the exercise of his powers under this section, or who fails or neglects to comply with an order under subsection (4) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P500 000.00.

24. (1) The Board may, for the purpose of performing the functions of the Authority, establish such committees as it considers appropriate, and may delegate, to any such committee, such of its functions as it considers necessary.

Committees

(2) The Board may appoint, to such committees, such number of persons, not being members of the Board as it considers appropriate, and such persons shall hold office for such period as the Board may determine.

(3) Subject to the specific or general directions of the Board, a committee may regulate its own procedure.

(4) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

(5) Each committee shall keep minutes of its meetings and shall keep the Board informed of its activities, and shall conduct its proceedings in such manner as the Board may direct.

(6) A member of a committee of the Board shall be paid such allowances, if any, as the Board, with the approval of the Minister, may determine.

Numbering
system

25. The Authority shall establish and maintain a non-discriminatory and efficient numbering system to be applied by all providers and operators of telecommunication services in order to ensure fair access to such services.

Regulations

26. The Authority may make Regulations providing for any matter which may be prescribed or provided under this Act, or which otherwise relates to the administration of the Authority.

PART VI — *Licences*

Service
licence

27. (1) No person shall provide a telecommunication service (including cellular telephony services, packet switched data services, and paging services), unless he has been granted a licence by the Authority to do so.

(2) Notwithstanding the provisions of subsection (1), no licence shall be required for the following —

- (a) the provision of telecommunication services on a private telecommunication system within a single area of a person's property, if such system is independent of the public system and does not cause damage, injury or interference to such public system;
- (b) the provision of fax services, provided that no separate network is established;
- (c) the operation of a public call box service;
- (d) the publication of telephone directories; and
- (e) the sale of terminal equipment other than radio equipment.

(3) The following entities shall be exempt from the provisions of subsection (1) —

- (a) the Botswana Defence Force;
- (b) the Botswana Police Force;
- (c) the Department of Civil Aviation;
- (d) the Botswana Railways Corporation; and
- (e) such other person as the Authority may by regulation exempt.

(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P2 000 000.00.

System licence

28. (1) No person shall operate a telecommunication system unless he has a valid licence issued by the Authority to do so.

(2) The Authority may, with the approval of the Minister, exempt, from the provision of subsection (1), such persons as it may prescribe.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P2 000 000.00.

29. An application for a licence under this Act, accompanied by such fee as may be prescribed, shall be made on such form as may be prescribed and shall be forwarded to the Authority.	Applications for licences
30. In assessing applications for any licence under this Part, and in making a decision as to whether it ought to grant a licence or renew a licence under this Act, the Authority shall be guided by the following general principles, namely, whether - (a) the grant or renewal of the licence will facilitate the performance of the general functions of the Authority as set out in section 17; (b) the grant or renewal of the licence will bring any benefits to the national economy and to the consumers of telecommunication services in Botswana; and (c) the applicant can provide the services in respect of which the licence application or renewal application is made, in a safe and sustainable manner.	Assessment of licence applications by Authority
31. An application for a licence under this Act may, if the Authority deems it appropriate, be invited through a tendering process in accordance with such procedures as the Authority may determine.	Applications through tendering process
32. A licence issued under this Act shall be valid for such period as may be stipulated therein, and shall be subject to renewal at the end of such period.	Validity of licences
33. An application for the renewal of a licence under this Part, accompanied by such fee as may be prescribed, shall be in such form as may be prescribed.	Renewal of licences
34. The Authority shall cause to be published, in the Gazette, the grant of a licence under this Act, save that the grant of a radio licence shall not be so published.	Publication of licences granted
35. (1) A licence granted under this Act may be granted subject to such conditions and restrictions, including geographical restrictions, as the Authority considers necessary, which conditions shall be endorsed on such licence.	Conditions of licences
(2) The Authority may, on the written application of any licensee, waive or vary any condition endorsed on its licence.	
36. (1) Where any person contravenes any provisions of this Act or fails to comply with any lawful direction or requirement of the Authority under any provisions of this Act, or where the Authority is satisfied that the conditions of any licence are not being adhered to, the Authority may revoke, suspend or impose further conditions upon such licence, and shall publish a notice of such revocation, suspension or imposition in two consecutive issues of the Gazette and two newspapers in circulation in Botswana.	Revocation, suspension and endorsement of licences
(2) No revocation, suspension or imposition of further conditions upon a licence shall be made by the Authority until the person concerned has, by notice in writing, been given the opportunity, by the Authority, to rectify that contravention or failure, or to show cause within such time as may be specified, not being less than 14 days from the date of such notice, why the licence should not be so revoked, suspended or have further conditions imposed thereon.	

Transfer of
licences

37. (1) No licence granted under this Act shall be transferred, assigned or encumbered in any way without the prior approval of the Authority.

(2) An application for the transfer, assignment or encumbrance of a licence shall be made to the Authority in such form as the Authority may prescribe, and upon payment of such fee as may be prescribed.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P2 000 000.00.

Change of
ownership of
licence

38. (1) A licensee who is a body corporate shall, where a change in the ownership thereof occurs, notify that change in writing to the Authority.

(2) The Authority may, where in its opinion the change in ownership of a licence which is held by a body corporate would be detrimental to the development of the telecommunication sector or would not facilitate the exercise of the Authority's functions under this Act, revoke the licence thereof.

Limitation of
number of
licences

39. (1) The Authority may limit the number of licences which it will grant in respect of any particular type of telecommunication service and shall, where it does so, publish its reasons for so doing.

(2) The Authority shall, not less than three months before doing so, or not less than three months before the expiry of any licence granted in terms of this Act, publish, in the Gazette, its decision to limit the number of licences which it will grant in respect of any particular type of telecommunication service.

Exclusive
licences

40. The Authority shall not, without the prior written approval of the Minister, grant any exclusive licence under this Act.

Register of
licences

41. The Authority shall maintain a register of all licences granted under this Act; which register shall be open for inspection by the public.

PART VII — *Radio Communications*

Radio licence

42. (1) No person shall —

(a) possess or operate a radio communication network;

(b) possess or operate radio communication equipment, whether in assembled or unassembled form; or

(c) erect a radio communication network,

unless he has a valid radio licence issued by the Authority to do so.

(2) Notwithstanding the provisions of subsection (1), a person who possesses or operates equipment which can be used only for receiving radio messages shall not require a licence.

(3) Notwithstanding the provisions of subsection (1), the following shall be exempt from the provisions of subsection (1) —

(a) the Botswana Defence Force;

(b) the Botswana Police Force;

(c) the Department of Civil Aviation;

- (d) the Botswana Railways Corporation; and
 - (e) such other person as the Authority may by regulation exempt.
- (4) A radio licence issued in terms of this section shall specify —
- (a) the radio frequency allocated to the applicant;
 - (b) the type and characteristics of the antenna and radio transmitter to be used;
 - (c) the geographical area in which any mobile radio transmitter, where applicable, may be used;
 - (d) the place at which the antenna or fixed radio transmitter may be located;
 - (e) the obligation, if any, to share frequency space with any other person; and
 - (f) such other information as the Authority may prescribe.
- (5) The Authority shall grant a radio licence subject to the following conditions —
- (a) that the radio transmitter will be used in such a manner that the licensed use of radio telecommunication equipment in Botswana and in any other country is not detrimentally affected;
 - (b) that the licensee shall observe the requirements of any international telegraph or radio telegraph Convention to which Botswana is party;
 - (c) that the use of the radio transmitter will not infringe upon the frequency space used by the Botswana Defence Force or the Botswana Police Force; and
 - (d) such other conditions as the Authority deems appropriate or necessary.
- (6) The provisions of sections 30 to 41 of this Act shall apply *mutatis mutandis* to radio licences.
- (7) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P2 000 000.00.

43. The Authority shall —

- (a) ensure the rational use of the radio frequency spectrum in Botswana by establishing and maintaining a national radio frequency plan;
- (b) ensure that the needs of existing and new radio services are met;
- (c) monitor radio frequency occupancy;
- (d) make regulations and establish standards governing the use of frequency bands in accordance with international regulations;
- (e) prescribe the conditions and tariffs applicable in connection with the allocation of radio frequencies to the holders of telecommunication licence holders;
- (f) negotiate with other countries and with international organizations in connection with radio frequency spectrum management and matters related thereto;
- (g) establish the necessary technical standards in relation to the radio frequency spectrum;

Radio frequency
management

Prohibition on
sale, etc. of
radio trans-
mitter

(h) allocate radio frequencies in a manner which will avoid harmful interference, particularly in relation to safety and anergic services; and

(i) ensure that an appropriate amount of radio frequency spectrum is available for government as well as non-government use.

44. (1) No person shall sell, or otherwise dispose of, to any person who has not been granted a licence under this Act, a radio transmitter, whether or not it is assembled.

(2) The onus shall lie on a person who deals in or sells radio communication equipment to ensure that any person who intends to buy or lease such equipment from him has been granted a licence under this Act.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P500 000.00.

Radio receiver
and transmitter
disturbances

45. (1) The holder of a licence under this Act shall ensure that any radio transmitter or receiver used or operated by him does not disturb or interfere with the use of another radio transmitter or receiver, and shall, where such disturbance or interference occurs and he is so requested by any person, ensure that the disturbance ceases or is reduced to the extent possible.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P5 000.00 but not more than P20 000.00.

PART VIII — *Miscellaneous Provisions*

Liability of
service
provider, etc.

46. (1) Every person who —

(a) operates a telecommunication or radio system;

(b) provides a telecommunication service;

(c) supplies terminal equipment or radio equipment; or

(d) undertakes the maintenance or repair of telecommunication or radio equipment

shall ensure that the system or equipment he so operates, provides, supplies, maintains or repairs is safe in order to ensure the protection of consumers and users of such service or equipment against injury.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P2 000 000.00.

Network
intercon-
nections

47. (1) Where a telecommunication system operator or telecommunication service provider believes that it is necessary, in order for him to be able to provide any service, to connect his system or equipment to the network, system, or equipment of another telecommunication network, system, or to other telecommunication equipment he shall seek the consent, in writing, of the operator or provider of that network, system or equipment to so connect his system or equipment.

(2) Where the consent referred to in subsection (1) is obtained by the telecommunication system operator or telecommunication service provider referred to in that subsection, the said telecommunication system operator or telecommunication service provider may, in applying for a licence under this Act, seek the authorization of the Authority to connect his system or equipment to the operator or provider referred to in subsection (1), and shall forward, to the Authority, a copy of the document giving such consent.

(3) Where the Authority is satisfied that the provisions of subsection (1) and (2) have been complied with, it may specify, on the licence it grants, that the licensee is authorized to connect his telecommunication system or equipment to such other telecommunication network, system or equipment as it may designate in the licence, being the system or equipment in respect of which consent has been obtained.

(4) No connection as is referred to in this section shall be made by any person unless he has complied with the provisions of this section.

(5) Notwithstanding the provisions of subsection (4), the person whose consent is sought under this section shall not withhold that consent unless such interconnection would materially restrict his ability to exploit the network capacity at his disposal in his own operations.

(6) The interconnection charge or cost of using such designated network, system, or equipment shall be as agreed between the licensee and the operator of the designated network, system, or equipment; and that charge or cost shall be fair and reasonable in relation to the service to be provided by the licensee, and to the additional costs that may accrue to the operator of the designated network, system, or equipment as a result of the connection.

(7) If a dispute arises relating to —

(a) the technical conditions, if any, stipulated by the operator of the designated network, system or equipment; or

(b) the reasonableness of the interconnection charge, the parties shall refer the dispute to the Authority which shall have the power to decide on the matter and set down such terms and conditions for the interconnection as seem fair and reasonable to the Authority.

48. (1) As far as practicable and within the framework of the licensing system established by this Act, telecommunication services shall be provided on a competitive and non-discriminatory basis.

Competition
rules

(2) The following practices shall constitute violations of the principle of free and fair competition and shall, if they are economically harmful to any person, the Botswana Government or the national economy, constitute offenses under this Act —

(a) collusion between potential operators or service providers in applying for or exploiting a licence granted under this Act;

(b) restraining the access, by any service provider or user, to a licensed service in violation of the conditions of a licence;

- (c) providing false or misleading information in dealings relating to the provision of telecommunication services or systems with the Ministry responsible for communications, the Authority or any other body of Government;
- (d) providing false or misleading information relating to approved tariffs;
- (e) charging tariffs which are not in accordance with the applicable tariff structure;
- (f) forming of cartels, e.g. for price-fixing of tariffs, market sharing or in connection with public procurement of telecommunication equipment;
- (g) use of a dominant position in a market for the purpose of restricting, preventing or deterring the entry of a person into the market or eliminating a person from the market;
- (h) charging of unreasonable prices for telecommunication equipment;
- (i) limiting technical development in the telecommunications sector;
- (j) offering, accepting, giving or receiving bribes in respect to any matter dealt with in this Act; and
- (k) advertising for or otherwise offering telecommunication equipment and services in a fraudulent or indecent manner.

(3) Any person who commits an offence under this section shall be liable to a fine of not less than P10 000.00 but not more than P5 000 000.00.

Provision of
directory
information

49. A licensee shall provide directory information regarding its subscribers and clients to the Authority or such other person as the Authority may designate, and in such manner as the Authority may prescribe.

Compensation
for loss or
damage

50. In the execution of works or interference with property, a telecommunication operator or service provider shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained loss or damage for all loss or damage sustained by them by reason or in consequence of the performance of such works.

Emergency
conditions

51. (1) The Authority may, during any emergency, require a telecommunication service provider to give priority to the transmission of the messages of Government or of any person, and to intercept messages transmitted under such circumstances.

(2) Any telecommunication system operator or telecommunication service provider who does not comply with the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P50 000.00.

Confidentiality
of transmitted
messages

52. (1) A person who is engaged in the operation of a public telecommunication system or the provision of a telecommunication service who, otherwise than in the course of his duty, intentionally or negligently —

- (a) intercepts a message sent by means of that system or through that service;

- (b) discloses, to any person the contents of such message;
- (c) discloses, to any person, information about a customer obtained in the course of performing his duty; or
- (d) uses any information obtained in the course of his duties about a customer for his own benefit,

shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P50 000.00 or to imprisonment for a term not exceeding 12 months, or to both.

(2) Subsection (1) shall not apply to the disclosure of information made in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings.

(3) A person engaged in the operation of a public telecommunication system or the provision of a telecommunication service who, otherwise than in the course of his duty, intentionally or negligently modifies or otherwise interferes with the contents of a message sent by means of that system or through that service shall be guilty of an offence and shall be liable to a fine of not less than P10 000.00 but not more than P50 000.00 or to imprisonment for a term not exceeding 12 months, or to both.

53. (1) A person who —

- (a) sends, by means of a public telecommunication system, a message or other matter which is offensive or of an indecent, obscene or menacing character; or
- (b) sends, by those means, for the purpose of causing annoyance, inconvenience or anxiety to another person, a message which he knows to be false, or persistently makes use, for that purpose, of a public telecommunication system,

shall be guilty of an offence and shall be liable, to a fine of not less than P10 000.00 but not more than P50 000.00

54. Any person who —

- (a) wilfully interferes with, hinders or impedes in any way the erection, alteration, maintenance or inspection of any telecommunication equipment;
- (b) without lawful excuse, by any means interferes with or obstructs the provision or operation of a telecommunication service;
- (c) steals any telecommunication equipment;
- (d) wilfully and unlawfully damages or destroys any telecommunication equipment, or does any act with intent to, or knowing that it is likely that such act will, impair the usefulness or efficiency or prevent or impede the working of, any such equipment

shall be guilty of an offence and shall be liable to a fine of not less than P50 000.00 but not more than P1 000 000.00, or to imprisonment for a term of not less than five years but not more than 15 years.

55. (1) It shall be the duty of the Authority to consider any complaint which —

- (a) relates to telecommunication services provided or telecommunication equipment supplied in Botswana; or

Improper use
of public
telecommuni-
cation system

Miscellaneous
offences

Investigation
of complaints

(b) is the subject of a representation (other than one appearing to the Authority to be frivolous) made to the Authority by or on behalf of a person appearing, to the Authority, to have an interest in the matter.

(2) Subsection (1) shall not apply to any matter which relates to a telecommunication service not requiring a licence under this Act.

Appeal

56. (1) Any person who is aggrieved by a decision of the Authority given under this Act may appeal, against that decision, to the High Court.

(2) The procedures laid down in the High Court Rules shall apply in respect of any appeal made under this section.

Savings

57. Any equipment which, immediately before the coming into operation of this Act, has been approved for use in Botswana by the Botswana Telecommunications Corporation shall be deemed to have been type approved under this Act.

PASSED by the National Assembly this 1st day of August, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.