

AUTHENTIC ENGLISH TEXT
OF
THE BANGLADESH TELECOMMUNICATION ACT, 2001

[The Act (in Bangla) was assented to by the President on 16 April, 2001 (3 Baishakh, 1408) and published by the Bangladesh Parliament in the Bangladesh Gazette, Extraordinary issue of 16 April, 2001.]

Act No. 18 of 2001

CHAPTER I
PRELIMINARY MATTERS

An Act to provide for the establishment of an independent Commission for the purpose of development and efficient regulation of telecommunication system and telecommunication services in Bangladesh and matters ancillary thereto ;

Whereas it is expedient to provide ^{purpose:} for the establishment of an independent Commission for the purpose of development and efficient regulation of telecommunication system and telecommunication services in Bangladesh and for the transfer of the powers and functions of the Ministry of Post and telecommunication to the Commission and matters ancillary thereto;

Now, therefore, it is hereby enacted as follows:-

1. Short title and commencement.— (1) This Act may be cited as the Bangladesh Telecommunication Act, 2001.

(2) It shall come into force on such date as the Government may, by notification in the official Gazette, specify.

2. Definitions.— In this Act, except where the subject or context otherwise requires,—

"**broadcasting**" means transmission of any message, information, signal, sound, image or intellectual expression by radio wave, satellite, cable or optical fibre connection for the purpose of receipt by the public, but transmission of

anything by Internet connection shall not be deemed to be a broadcasting [ref. clause (30)];

[**N.B.- The definitions are arranged in English alphabetical order and the reference to the relevant clause of this section is mentioned at the end of each definition within brackets.]

"Chairman" means the Chairman of the Commission [ref. clause (9)];

"Charge" means a charge to be paid for the service provided by the Commission or an operator [ref. clause (10)];

"Commission" means the Bangladesh Telecommunication Regulatory Commission established under section 6 [ref. clause (3)];

"Commissioner" means the Chairman or any other Commissioner of the Commission [ref. clause (4)];

"Consumer" means a person who takes telecommunication service from an operator [ref. clause (8)];

"Criminal Procedure Code" means the Code of Criminal Procedure, 1898 (Act V of 1898) [ref. clause (23)];

"Employee" includes an officer [ref. clause (5)];

"harmful interference" means an adverse effect of electromagnetic energy created from an emission, radiation or induction that-

- (a) endangers the use or workability of radio communication system; or
- (b) significantly reduces or obstructs the use or workability of radio apparatus, or interrupts such use or workability [ref. clause (6)];

"interference causing apparatus" means an apparatus or device, other than radio apparatus, that interferes or is of capable of causing interference in radio communication [ref. clause (17)];

✓ **"Inspector"** means a person appointed as an Inspector under section 60 [ref. clause (18)];

"interconnection" means the visible or invisible or logical linking of more than one telecommunication network in order

to enable the users of one network to communicate among themselves or to communicate with the users of another network or to avail themselves of the service of the other network [ref. clause (2)];

"interested party" means a person who is interested in the development of telecommunication or who has applied for a licence for establishing or operating telecommunication system or for providing telecommunication service, or who is interested in the activities that may be undertaken under a licence [ref. clause (1)];

"licence" means a licence issued or deemed to have been issued by the Commission under this Act for establishing or operating a telecommunication system or for providing telecommunication service or for operating or maintaining such system or service or for using a radio apparatus [ref. clause (29)];

"Minister" means the Minister in charge of the Ministry or Division dealing with post and telecommunication [ref. clause (27)];

"Ministry" means the Ministry or Division dealing with post and telecommunication [ref. clause (28)];

"Operator" means a person licensed for establishing or operating a telecommunication system or providing telecommunication service or operating a system which is the combination of more than one of those facilities [ref. clause (19)];

"permit" means a permit issued or deemed to have been issued under section 40(2) or CHAPTER-XIII [ref. clause (21)];

"person" includes an individual having natural personality, a partnership, society, company, corporation, co-operative society and statutory body [ref. clause (24)];

"radio apparatus" means a device or combination of more than one device suitable for use in radio communication [ref. clause (25)];

"radio communication or radio" means emission, transmission or reception of any sign, signal, picture, image, symbol or sound by means of radio wave of a frequency lower than 3000 Ghz and propagated in the space without any artificial guide [ref. clause (26)];

"regulation" means regulations made under this Act [ref. clause (20)];

"Spectrum Management Committee" means the Spectrum Management Committee constituted under section 56 of this Act [ref. clause (31)];

"tariff" means a tariff approved by the Commission under CHAPTER-VI of this Act or a tariff mentioned in section 92 [ref. clause (16)];

"technical acceptance certificate" means a technical acceptance certificate issued by the Commission under section 57 [ref. clause (7)];

"telecommunication" means transmission and reception of any speech, sound, sign, signal, writing, visual image or any other intellectual expression by way of using electricity or electro-magnetic or electro-chemical or electro-mechanical energy through cable, pipe, radio, optical fibre or other electro-magnetic or electro-chemical or electro-mechanical or satellite communication system [ref. clause (11)];

"telecommunication apparatus" means an apparatus used for transmission or reception of anything that falls within the purview of the definition of telecommunication [ref. clause (12)];

"telecommunication network" means a combination of a set of nodes and links that establish telecommunication between two or more points [ref. clause (14)];

"telecommunication service" means any of the following services:-

- (a) transmission or reception, with the help of a telecommunication system, of anything that falls within the purview of the definition of telecommunication;

- (b) any value added telecommunication service (e.g. fax, voice mail, paging service);
- (c) internet service;
- (d) supply of information or directory relating to a telecommunication system for the convenience of using a service mentioned in (a), (b) and (c) above;
- (e) a service for installation, or maintenance of telecommunication apparatus, or a service relating to the adjustment, alteration, repair, moving or replacement of such apparatus [ref. clause (15)];

"telecommunication system" means a combination of the telecommunication apparatus (e.g. switching system, transmission apparatus, terminal apparatus, satellite etc.) whether or not these equipments are visibly connected with one another, or whether or not they are combinedly used in the transmission or reception of any information or message [ref. clause (13)];

"terminal apparatus" means a telecommunication apparatus which is used by a consumer of telecommunication service for sending or receiving an information or message through a telecommunication system [ref. clause (22)];

"universal service" means providing telecommunication service to any citizen of Bangladesh or to other persons irrespective of their place of stay or occupation in Bangladesh [ref. clause (32)].

3. Application.- (1) This Act shall extend to the whole of Bangladesh and also to the following :-

- (a) any vehicle, vessel, aircraft or satellite;
- (b) any platform, rig or other structure that is fixed in the sea or attached to the submarine land :

Provided that if Bangladesh is a party to an international treaty, or an arrangement of similar nature in relation to a foreign vehicles, vessels, aircrafts or satellites, this Act shall apply subject to such treaty or arrangement.

- (2) This Act shall not apply to the following:-

- (a) any broadcasting;
- (b) a radio broadcasting station or a television broadcasting station or licensing of such station;
- (c) broadcasting apparatus or an apparatus for receiving any message or other information or a programme transmitted by way of broadcast, or the business of such apparatus;

Provided that this Act shall apply to the following :

- (i) allocation of frequency for such radio station or television station or broadcasting apparatus, or control of the allocated frequency;
- (ii) use of a telecommunication apparatus in combination with broadcasting apparatus or use of telecommunication apparatus for the purpose of broadcasting.

(3) The Government may, by an order notified in the official Gazette, exempt any person or class of persons, or any particular telecommunication apparatus or radio apparatus or any particular service from the operation of any or all the provisions of this Act or of the regulations made thereunder.

4. Application of other laws etc. relating to telecommunication.- (1) The Telegraph Act, 1885 (XIII of 1885) and The Wireless Telegraphy Act, 1933 (XVII of 1933) shall, subject to the provisions of this Act, apply and where, in relation to any matter, this Act conflicts with any of those two Acts, the provisions of this Act shall prevail.

(2) For the purposes of performing the functions under this Act, the provisions of the rules or regulations made or other similar instruments, order, instructions or directions issued, under the aforesaid two Acts shall apply, so far as they are consistent with the provisions of this Act, until such rules, regulations, other similar instruments, order, instruction or directions are repealed by the Commission.

5. Act to override other laws.- Notwithstanding any contrary provisions of any other law, the provisions of this Act shall have effect.

CHAPTER II
ESTABLISHMENT AND CONSTITUTION OF
COMMISSION

✓ **6. Establishment etc. of Commission.-** On the commencement of this Act, a Commission to be known as the Bangladesh Telecommunication Regulatory Commission shall be established.

(2) The Commission shall be a body corporate having perpetual succession and a common seal, and shall have rights to acquire and hold movable and immovable property, to transfer such property, to enter into contract, to undertake any other activity and to take any action under this Act; and it can sue and be sued in its own name.

(3) The common seal of the Commission shall be of such size and shall contain such particulars as the Commission may determine; it shall be kept in the custody of the Chairman and shall be used in such cases as the Commission may determine :

Provided that the common seal shall not be used on any document unless the Chairman and another Commissioner are present; and they shall, to mark their presence, sign the document on which the seal is so used.

7. Constitution of Commission.- (1) The Commission shall consist of 5 (five) Commissioners, and the Government shall appoint one of them to be the Chairman and another to be the Vice-Chairman.

(2) At least two of the Commissioners shall be engineers as specified in clause (a) of sub-section 10(1), and at least one shall be a person as specified in clause (b) of that sub-section, and another shall be a person as specified in clause (c) of that sub-section.

(3) No act or proceedings of the Commission shall be illegal nor shall it be called in question in any court only on the ground of a vacancy in the office of a Commissioner or a defect in the constitution of the Commission.

8. Office of Commission.- The principal office of the Commission shall be situated in Dhaka, however the Commission may, with prior approval of the Government, establish branch office at any place of the country.

9. Appointment and tenure of Commissioners.- (1) The Commissioners shall be appointed by the Government and they shall perform their functions on full-time basis.

(2) A Commissioner shall, subject to the provisions of this Act, remain in office for a period of three years from the date of his appointment and he may be re-appointed for only one more tenure of that duration :

Provided that no person shall be eligible for appointment to, or holding the office of, Commissioner if he attains the age of 65 (sixty five) years.

10. Qualifications and disqualifications of Commissioners.- (1) A Commissioner shall be a person who-

- (a) is an engineer having at least 15 years' practical experience in the field of telecommunication;
- (b) is an advocate or a judge having 15 years' practical experience in law including the qualification for appointment of a judge of the High Court Division;
- (c) has 15 (fifteen) years' practical experience in business or industry or finance or economics or protection of consumer interest or management or administration.

(2) No person shall be qualified for appointment to, or for holding, the office of Commissioner, who-

- (a) is not a citizen of Bangladesh;
- (b) has been elected a member of the Parliament or of any local government or has been nominated as a candidate for such election;
- (c) has been declared or identified by the Bangladesh Bank or by a bank or financial institution or by the court as a defaulter loanee of that bank or institution;
- (d) has been declared by the court as a bankrupt and has not been discharged from that liability;

- (e) has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of two years or more, and a period of five years has not elapsed since his release from such imprisonment;
- (f) is, after being appointed Commissioner, directly engaged in any income generating activity outside the responsibilities of his office; ~~///~~
- (g) is, in the capacity of an owner, shareholder, director, officer, partner or consultant, directly or indirectly interested in the following :-

- (i) a firm or company or other organization which requires a licence or technical acceptance certificate or permit under this Act for establishing or operating a telecommunication system or for providing telecommunication service:

Provided that a member or officer of the board of directors, by whatever name called, of a statutory body may be appointed as a Commissioner if he discontinues his service in that body; or

- (ii) any firm or company or corporation or other organization which is a telecommunication operator in a foreign country, or which manufactures or distributes telecommunication apparatus or radio apparatus in a foreign country, or which carries on business or provides telecommunication services in Bangladesh;
- (h) is unable to perform the functions of his office due to physical or mental incapacity; or
- (i) fails to comply with the provisions of sub-section (3) in time.

(3) If, by virtue of a will, gift or inheritance or otherwise, the interests prohibited by sub-section (2)(g) is vested in, or acquired or held by, a Commissioner-

- (a) he shall, within 3 (three) months of his appointment as Commissioner or of his knowledge about such interest,

inform by issuing a written notice to all other Commissioners of the fact of holding or acquiring such interest and the nature and value thereof; and

- (b) the Chairman shall, within 15 (fifteen) days, issue a notice calling a meeting of the Commissioners, but where the Chairman himself has given such notice, the Vice- Chairman shall call this meeting; and where both the Chairman and Vice-Chairman have given such notice, any other Commissioner may call this meeting; and
- (c) the Commission may, after consideration of the nature and value of the interest, direct the Commissioner to dispose of the interest and he shall be bound to dispose it of accordingly; and
- (d) the Commission shall immediately send a copy of such direction to the Ministry :

Provided that the Commissioner acquiring or holding such interest shall not have right to vote on the matter, although he shall be allowed to remain present in the meeting so that he may explain his position.

11. Duty of Commissioner regarding certain interest of family-members.- (1) If a member of any Commissioner's family acquires or holds any interest specified in section 10(2)(g), he shall, within three months of his appointment as Commissioner or of his knowledge about such interest, inform the Commission in writing of the nature and value thereof.

Explanation:- In this sub-section "family" means the father, mother, husband or wife, son, daughter, step-son and step-daughter of the Commissioner.

(2) If a member of a Commissioner's family acquires or holds such interest in a firm, company, corporation or other organization, the Commissioner shall not have a right to vote in the meeting where the Commission takes any decision in respect of that firm, company, corporation or other

organization, although the Commissioner may remain present in the meeting.

12. Resignation and removal of Commissioners.- (1) Any Commissioner may resign from his office by sending to the Government a written notice of three months, and a copy thereof to the Chairman or, where the Chairman himself resigns, to the Vice-Chairman :

Provided that despite such resignation the Government may, pending formal acceptance thereof, request the resigning Commissioner to continue to perform his functions.

(2) A Commissioner may be removed from office, if-

(a) any situation specified in clauses (a) to (g) of sub-section 10(2) occurs; or

(b) he is found guilty of corruption, misuse of power, gross misconduct or gross negligence of duty.

(3) If the Government is of opinion that a Commissioner is unfit to hold that office on any ground specified in sub-section (2), the Government shall constitute an Enquiry Committee consisting of one or more judges of the Supreme Court, and shall also specify in the order by which the committee is constituted the time limit for submission of the enquiry report.

(4) The Committee constituted under sub-section (3) shall, on the basis of specific information and reasons, submit a report as to whether or not the allegations brought against the Commissioner have been proved and whether or not he should be removed from his office, and the Government shall, as far as possible, take action in accordance with the recommendation contained in the report.

(5) The Government shall not remove any Commissioner under this section without giving him an opportunity of showing cause against the proposed removal.

(6) Where the Enquiry Committee is constituted under sub-section (3), the Government may, in consideration of the

relevant circumstances, direct the Commissioner to refrain from performing the functions of his office, and the Commissioner shall be bound to comply with such direction.

(7) The Enquiry Committee shall be deemed to be a Commission appointed under the Commission of Enquiry Act, 1956 (VI of 1956) and the provisions of that Act shall, subject to this Act, apply to the Committee.

13. Filling in casual vacancy in Commissioner's office.- Where the office of a Commissioner falls vacant due to his death, resignation or removal, the Government shall, within 30 days of such vacancy, appoint a competent person to the vacant office.

14. Chief executive.- The Chairman shall be the chief executive of the Commission; and where the Chairman is unable to perform the functions of his office due to resignation, removal, absence, illness or any other cause, the Vice-Chairman shall be competent to exercise all the powers and perform all the functions and duties of the Chairman till a new Chairman is appointed or, as the case may be, the existing Chairman is able to resume his office; and where both the Chairman and Vice-Chairman are unable to perform their functions and duties, the Government may direct a Commissioner to temporarily act as the Chairman.

15. Meetings of Commission.- (1) The Commission may, subject to the provisions of this Act, adopt general or specific resolutions in respect of the place, time and procedure of its meetings and all the meetings of the Commission shall be held in accordance with such resolutions :

Provided that until such resolutions are adopted or if no resolution has been adopted on a specific matter, the meetings of the Commission shall be held in accordance with the decision of the Chairman.

(2) The presence of three Commissioners including the Chairman or, as the case may be, the Vice-Chairman, shall constitute quorum for a meeting of the Commission.

(4) The Chairman and in his absence the Vice-Chairman shall preside over all meetings of the Commission.

(5) A decision of the Commission shall be taken in accordance with the majority votes of the Commissioners present in the meeting, and in case of equality of votes, the person presiding shall have a second or casting vote.

(6) Any two Commissioners may, in writing, request the Chairman to call a meeting of the Commissioners for the purpose of holding discussion or taking decision on a specific issue, and within 7 (seven) days of receipt of such request the Chairman shall call a meeting.

(7) The Chairman may, for the purpose of presenting opinion, deliberation, information or explanation on any issue, invite any relevant person and, subject to the decision of the meeting, the opinion, deliberation, information or explanation of the person so invited may be recorded in the proceedings of the meeting.

16. Committee.- The Commission may, for the purpose of assisting it in the performance of its functions, appoint necessary committees consisting of one or more Commissioners, or any officer or employee of the Commission or any other person.

17. Status, remuneration and privileges of Commissioners.- (1) The Government shall fix the status, remunerations, allowances, privileges and other conditions of service of the Chairman, Vice-Chairman and other Commissioners.

(2) After appointment of a person as Commissioner, his status, remuneration, privileges and other conditions of service shall not be so changed that the change is unfavourable to him.

18. Appointment of Secretary, officer-employees etc. of Commission.- (1) The Government shall appoint the Secretary to the Commission.

(2) The duties of the Secretary shall be to fix the agenda in accordance with the direction of the Chairman and to fix,

subject to any resolution taken by the Commission in this regard, the date and time of the meetings of the Commission, to prepare the minutes of such meetings, to preserve the records and other particulars of the actions taken by the Commission and to perform such other functions and duties as the Commission may assign to him.

(3) The Commission may, for efficient performance of its functions, appoint necessary officers and other employees and consultants, and to that end, it may take all necessary actions including the following:-

- (a) with the prior approval of the Government, fixation of the number of employees to be appointed by the Commission and their salaries, allowances and other facilities;
- (b) on the basis of the approved manpower, determination of the organizational structure of the Commission and division thereof into necessary working units, specifying the functions of such units, and appointment of employees to posts for which they are competent and effecting their transfer;
- (c) fixation of the fees of consultants with prior approval of the Government and in accordance with applicable Government rules, and payment of such fees;
- (d) taking disciplinary actions against employees including their dismissal from service, and fixation of other conditions of their service;
- (e) establishing provident fund and undertaking other schemes for the welfare of the employees and exercising control over, and making contribution to, such fund or scheme.

(4) The appointment and conditions of service of the employees shall be determined by regulations and until such regulations are made the Commission may, by administrative order, determine those matters.

19. Appointment of personnel on deputation from other organizations.- (1) The Commission may, with the consent of the respective controlling authority, appoint on deputation any employee of the Government or a statutory body, and such appointment shall be made in accordance with applicable laws and as agreed between the Commission and the said authority.

(2) A person appointed under sub-section (1) shall, while serving in the Commission, be subject to the same discipline and control as the other employees of the Commission are subjected to.

20. Employment outside Commission.- (1) A Commissioner shall not, without written approval of the Government, and a full-time officer or employee of the Commission shall not, without written approval of the Commission, engage himself in any work for any kind of remuneration or in any work outside the Commission, nor shall he continue to be engaged in such work.

(2) Any Commissioner, or any officer or other employee of the Commission, shall not engage himself, nor shall he continue to be engaged, in any work which, in the opinion of the Government or the Commission respectively, may adversely affect the proper discharge of his functions and duties.

CHAPTER III

FINANCIAL MATTERS OF COMMISSION

21. Bangladesh Telecommunication Regulatory Commission Fund.- (1) The Commission shall have a fund to be known as the Bangladesh Telecommunication Regulatory Commission Fund, and grants from the Government, a statutory body or other local or foreign organization, loans raised by the Commission, fees and charges paid under this Act and moneys received from other sources shall be credited to the Fund.

(2) All moneys of the Fund shall be deposited with a scheduled bank as specified by the Commission and the procedure for withdrawal of money from that bank shall be determined by the Commission.

Explanation:- "Scheduled bank" means a scheduled bank as defined in section 2(j) of the Bangladesh Bank Order, 1972 (P. O. No 127 of 1972).

(3) The Fund shall be utilized to meet the expenses relating to the salaries and allowances of the Commissioners and employees and other necessary expenses of the Commission.

(4) If any money remains surplus after meeting all the expenses of the Commission, it shall be credited to the Consolidated Fund of the Republic.

22. Annual budget statement.- Every year, the Commission shall, for the next financial year, submit to the Government a budget statement within the time specified by the Government, and in such statement the estimated amount required from the Government for that financial year shall be specified; and before commencement of that financial year, the Government shall, on the basis of that statement, approve the budget of the Commission with or without modification of the statement.

23. Power to raise loan.- The Commission shall have authority to raise loan for the purpose of performing its functions under this Act and also to repay such loan; however approval of the Government shall be necessary in case of taking a foreign loan.

24. Charge etc. for services provided by Commission.-
(1) The Commission may impose and realize charges or fees or both for the services provided or to be provided by it in connection with the exercise of its powers and performing its functions under this Act.

(2) The generality of the authority under sub-section (1) includes the following:-

- (a) framing of one or more schemes for the purpose of specifying charges or fees for any particular service or

all the services provided or to be provided by the Commission;

- (b) fixation of the rates of, or determination of the accounts procedure for, such charges and fees by making regulations or, in the absence of regulations by issuing executive orders.

(3) Any charge, fee, administrative fine and dues receivable by the Commission may be realized as public demand.

25. Exemption from tax.- Notwithstanding any contrary provision of any other law, the Commission shall not be liable to pay any income tax on any property held or received or any income earned by it and the Commission is hereby exempted from the payment of such tax.

26. Realisation of dues.- (1) All charges, fees, administrative fines and other dues receivable by the Commission may be realized by it as a public demand under the Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

(2) For the purposes of sub-section (1), the Commission may appoint any of its officers as a Certificate Officer as defined in sub-section 3(3) of that Act and that officer shall be competent to exercise the powers and perform the functions of a Certificate Officer under that Act.

27. Accounts and Audit.- (1) The Commission shall maintain accounts of all moneys received and spent by it; and subject to any general direction given by the Government, the Commission may determine the procedure for maintaining such accounts; however such account must accurately and properly reflect the financial position of the Commission.

(2) Within 60 (sixty) days of the expiry of every financial year, the Commission shall prepare the Accounts Statement and Financial Statement and shall, after getting them audited by a chartered accountant firm registered under the Bangladesh Chartered Accountants Order, 1973 (P.O. No 2 of 1973), make arrangements for sending such statements to the Ministry for the purpose of their presentation before the Parliament, and the Ministry shall, as soon as possible, cause

the Statements along with the report specified in section 28 to be presented before the Parliament.

(3) Apart from the audit specified in sub-section (2), the Commission, as a statutory public authority within the meaning of the Comptroller and Auditor General (Additional Functions) Act, 1974 (XXIV of 1974), shall be under the jurisdiction of the Comptroller and Auditor General.

28. Report.- The Commission shall, within 90 (ninety) days of the expiry of every financial year, send to the Minister a report on the functions of the Commission during that year, and the Minister shall, as soon as possible, make arrangements for presentation of the report before the Parliament.

CHAPTER IV

BROAD OBJECTIVES, POWERS AND FUNCTIONS

29. Broad objectives of Commission.- The broad objectives of the Commission are as follows:-

- (a) to encourage the orderly development of a telecommunication system that enhances and strengthens the social and economic welfare of Bangladesh;
- (b) to ensure, in keeping with the prevalent social and economic realities of Bangladesh, access to reliable, reasonably priced and modern telecommunication services and internet-services for the greatest number of people, as far as practicable;
- (c) to ensure the efficiency of the national telecommunication system and its capability to compete in both the national and international spheres;
- (d) to prevent and abolish discrimination in providing telecommunication services, to progressively effect reliance on competitive and market oriented system,

and in keeping with these objectives, to ensure effective control of the Commission;

- (e) to encourage the introduction of new services and to create a favourable atmosphere for the local and foreign investors who intend to invest in the telecommunication sector in Bangladesh.

30. Functions and duties of Commission.- (1) The functions and duties of the Commission shall be as follows:-

- (a) to regulate the establishment, operation and maintenance of telecommunication services in Bangladesh;
- (b) to protect the interests of the local consumers in respect of the charges imposed on them, and their access to telecommunication services, and the quality and variety of such services;
- (c) to encourage research and development activities in telecommunication, and innovative activities and investment in providing telecommunication services;
- (d) to protect the social and economic interests of the consumers, to respond to their needs, and to control and abolish the existing and probable oppressive or discriminatory conduct or activities of the telecommunication service providers;
- (e) to maintain and promote competition among the service providers in order to ensure high-quality telecommunication services;
- (f) to ensure protection of the privacy of telecommunication;
- (g) to collect, from within and outside Bangladesh, information on telecommunication and internet and to analyse and assess their impact on Bangladesh and to take necessary action or, as the case may be, to make necessary recommendations to the Government;
- (h) to frame a national scheme of numbering plan to be followed in telecommunication and to modify it whenever necessary.

(2) The generality of the functions and duties under subsection (1) includes the following specific functions and duties:-

- (a) to frame a code of practice to be followed by the local operators and another code of practice to be followed by them in their relationship with foreign operators;
- (b) to inform the Minister, of the licences, permits and technical acceptance certificates issued under this Act;
- (c) to adopt policies with regard to subsidy given by the same operator from the earning of one service to another service provided by him, and to take legal actions ;
- (d) to carry out the responsibilities assigned and the directions issued by the Government under section 34;
- (e) to discharge the international responsibilities of the Government in the field of telecommunication in accordance with the direction of the Government or to ensure the discharge of such responsibilities through operators ;
- (f) to assist the concerned Ministries in matters of the International Telecommunication Union and other international and regional organizations relating to the standards and procedure to be followed in telecommunication ; to collect the notices of the International Telecommunication Union and information on all relevant matters and to inform the relevant organizations of Bangladesh of those matters ;
- (g) unless the Government otherwise directs, to represent the Government in international conferences on telecommunication matters and in meetings with foreign organizations ;
- (h) to collect information relating to international and regional conferences on telecommunication and to deliver such information to the concerned Ministries or organizations; and to advise those Ministries and

- organizations including broadcasting organizations in sending competent delegates for participating in those conferences; and to play proper role with regard to selection of delegates and their duties ;
- (i) to advise the Government or regional organizations in arranging conferences on international, regional and sub-regional basis as considered necessary;
 - (j) to set the technical standards and criteria of telecommunication services, to monitor the standards of telecommunication services provided by operators and to ensure that such services conform to the standards set by the Commission;
 - (k) to make arrangements for monitoring the standards set by the Commission and their compliance;
 - (l) to ensure the compliance of the provisions of this Act keeping in view of public interest in general, and to protect the interest of the consumers from the unfair practices of the operators and other persons engaged in providing telecommunication services in particular;
 - (m) to improve the competition scenario including the discharge of the following responsibilities:-
 - (i) to protect an operator of a telecommunication system or a service provider from such activities of another operator or provider as are damaging to competition;
 - (ii) to facilitate the access of a person intending to participate as an operator in the market of telecommunication system or service;
 - (n) to ensure that necessary decisions on all matters are taken quickly, openly, fairly and transparently;
 - (o) to perform such other functions as the Government may from time to time assign, provided they are consistent with the functions and duties of the Commission and necessary finance and other resources are available;

- (p) to introduce a mechanism for the purpose of receiving the objection and suggestion of consumers at regular intervals and to ensure proper action on these objections and suggestions;
- (q) to arrange publicity of, and public hearings on, matters of public interest.

31. Powers of Commission.- (1) The Commission may, subject to the provisions of this Act and regulations, exercise all powers that are necessary to perform its functions and duties under section 30.

(2) The generality of the powers under sub-section (1) includes the following specific powers:-

- (a) subject to payment of fees specified by the Commission in proper cases-
 - (i) to issue licence for establishing or operating telecommunication system, or providing telecommunication services or using of radio apparatus, and in proper cases to issue permits and technical acceptance certificates;
 - (ii) to allocate radio frequency and to authorize the use thereof, to monitor the use of radio frequency and spectrum management;
 - (iii) to renew, suspend and cancel the licences, permits and certificates issued; to control their transfer;
- (b) to hold enquiry and to take decision and necessary action on accusations and other demands raised against holders of licence, permit and technical acceptance certificate for violation of the conditions contained therein and the provisions of this Act and regulations;
- (c) to specify the procedure to be followed and other steps to be taken by operators in respect of maintaining their accounts ;

- (d) to approve, keeping in view of the general policy of the Government, the various telecommunication services for which licences are necessary ;
- (e) to determine, in respect of telecommunication services, the tariff, call charges and other charges and to specify the procedure for fixation thereof by the operators;
- (f) to wholly or partly suspend or disallow the tariff, contract or arrangement, submitted to the Commission under this Act, if the Commission considers it to be inconsistent with this Act; and to give necessary directions;
- (g) to issue guidelines on matters not sufficiently provided in this Act or regulations and, in appropriate cases, to give decisions as the Commission may deem proper and to issue orders accordingly;
- (h) to issue guidelines on matters of interconnection among operators, to determine, in appropriate cases, the conditions applicable thereto, and to resolve disputes among them ;
- (i) to direct the operators to submit report along with necessary information on any of their activities;
- (j) to get the operator's procedure and systems audited so as to be satisfied about the compliance of the directions issued by the Commission, and to examine the propriety of the reporting system of the operators, and to give directions on these matters;
- (k) to give necessary directions to the operators to ensure that the Commission gets sufficient opportunity to inspect the books and records of the operators and to monitor their activities;
- (l) to direct an operator to submit to the Commission his annual plan of capital expenditure so that the Commission can analyse and assess and thus get sufficient idea about the monopoly business, if any, of

that operator in providing telecommunication services in a particular area;

- (m) to appoint consultants to assist the Commission in exercising its powers, in performing its functions and duties under this Act and matters relating thereto;
- (n) to issue enforcement orders to ensure compliance with the provisions of this Act and, in appropriate cases, to impose and realize administrative fines;
- (o) to approve each site on which radio apparatus including antenna system may be installed and to approve erection of each mast, tower, support-structure and construction of other related structure;
- (p) to direct an applicant for or a holder of a licence to furnish any information which the Commission considers necessary with regard to the proposed or existing use of a radio apparatus, its installation and maintenance, and also any major change in the apparatus;
- (q) to take any other action that is necessary for the development of telecommunication and its orderly and efficient operation;
- (r) to issue and publish instructions to be followed in relation to activities of the Commission under this Act, instructions to be followed by licensees and service providers and also instructions on matters relating to terminal apparatus, telecommunication apparatus, interference causing apparatus, radio frequency and radio apparatus;
- (s) to specify, by making regulations, the modes of exercising powers and related matters on which powers are given by this sub-section but no specific provision is made in this Act.

32. Delegation of power by Commission.- The Commission may, by regulation or by general or special order,

whether absolutely or conditionally, delegate any of its powers, but not the powers under this section and section 99, to the Chairman or any other Commissioner, or to any of its officers or employees or other person.

33. Functions of the Ministry.- (1) The functions of the Ministry shall be to determine the general policy of the Government in the telecommunication sector and to encourage the development of that sector in Bangladesh.

(2) The generality of the functions under sub-section (1) includes the following specific functions and duties :-

- (a) to take appropriate actions to facilitate exchange of information on telecommunication within and outside Bangladesh;
- (b) to identify the area where telecommunication technology can be applied for the purpose of developing and flourishing the local culture and social bondage; and to encourage the use of such technology in those areas;
- (c) to identify the fields of public and private sector investment for the purpose of developing an effective and modern telecommunication infrastructure and to encourage such investment on the basis of co-operation between the public and private sectors;
- (d) to undertake, on its own, research and development initiatives in telecommunication in Bangladesh and also to undertake such initiatives jointly with regional and other organizations interested in this regard;
- (e) to undertake educational and training programs for human resources development of enterprises which establish telecommunication system, provide telecommunication services and manufacture related products;
- (f) to assist, where possible, the Commission and other organizations for the purpose of enhancing the local telecommunication manufacturing capability and developing the innovative telecommunication services;

- (g) to assist the Commission, on its request, to control or abolish discrimination or discriminatory conduct in providing telecommunication services or in extension of such services;
- (h) to arrange a forum where the Ministry, Government, Commission, operators, consumers and other interested persons may meet to discuss matters of common interest;
- (i) to co-ordinate participation of Bangladesh in the activities of the International Telecommunication Union and other international organizations regarding policies, standards and procedure to be followed in telecommunication and training on such matters;
- (j) to dispose of all applications and other correspondence made to it under this Act, and to expeditiously execute its decisions.

34. Powers of Government.- The Government may, under this Act-

- (a) take all necessary actions in order to establish its rights and discharge its obligations under international laws and regulations or any international agreement relating to telecommunication;
- (b) from time to time, refer to the Commission any matter relating to telecommunication for its consideration and recommendations thereon;
- (c) consult the Commission on any matter that the Government considers proper;
- (d) undertake research on telecommunication, radio communication and such technical matters of broadcasting as are related to the said communications, or may finance or otherwise assist those research activities;
- (e) direct the Commission to represent Bangladesh in meetings of international and regional telecommunication organizations.

CHAPTER V
LICENCES FOR TELECOMMUNICATION ETC.

35. Requirement for licence for telecommunication, internet etc.- (1) Subject to sub-section (3), no person shall, without a licence-

- (a) establish or operate a telecommunication system in Bangladesh or undertake any construction work of such system;
- (b) provide in Bangladesh or to any place outside Bangladesh any telecommunication service;
- (c) undertake any construction work for providing internet service or install or operate any apparatus for such service.

~~(2)~~ A person commits an offence if he contravenes sub-section (1), and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 10 (ten) years, or to a fine not exceeding 10 (ten) lac taka or to both.

(3) No licence shall be required for the following:-

- (a) to operate a telecommunication system which is not connected to another telecommunication system and all its apparatus are-
 - (i) situated in the same premises and meant only for the use of the owner, tenant or occupant of that premises; or
 - (ii) installed in only one vehicle, vessel or aircraft, or installed in more than one vehicle, vessel or aircraft which are mechanically connected with one another;
- (b) a telecommunication system which is operated by a single person or by a single organization, and which is not connected in any way to another telecommunication system, and
 - (i) that person or organization alone controls all the apparatus of that system;

- (ii) all the message and information transmitted by that system are used only by the that person or organization; and
- (iii) no radio apparatus is used in that system;
- (c) installation of a terminal apparatus in the telecommunication network of an operator;
- (d) establishment of a telecommunication system or providing telecommunication service by the Police, Bangladesh Rifles, Coast Guard, any of the defence forces or any other security force specified by the Government for its own requirement ;
- (e) telecommunication system established, used, or telecommunication services provided, by the Ministry of Foreign Affairs or any intelligence agency of the Government for its own requirement ;
- (f) telecommunication system established in, or used by, a battle-ship or defence-aircraft engaged in state affairs.

36. Exclusive authority of Commission to issue licence and its procedure.- (1) The Commission shall have exclusive authority to issue licence for activities specified in clauses (a) to c) of section 35(1), and to obtain such a licence, an application is to be submitted to the Commission.

(2) The Commission may, in accordance with the provisions of this Act, allow or disallow an application submitted to it under sub-section (1); while considering such application, the Commission shall, among others, consider the following aspects:-

- (a) whether the applicant is disqualified under sub-section (3);
- (b) whether he has sufficient financial capacity to operate the activities for which the application has been submitted, and whether he is likely to acquire the space for necessary installations and whether efficient manpower will be available;

- (c) how far the issuance of the licensee applied for will be consistent with the broad objectives of the Commission specified in section 29;
 - (d) whether issuance of the licence applied for, the activities authorized by the licence and the terms and conditions of the licence, will be discriminatory compared to those of the existing licence holders, and whether the competition scenario will be affected;
 - (e) how far the issuance of the licence applied for will serve the public interest.
- (3) A person shall be disqualified for obtaining a licence, if-
- (a) in the case of an individual-
 - (i) he is an insane person;
 - (ii) he has been sentenced by a court under any law, other than this Act, to imprisonment for a term of 2 (two) years or more, and a period of 5 (five) years has not elapsed since his release from such imprisonment;
 - (iii) he has been sentenced by a court for commission of any offence under this Act and a period of 5 (five) years has not elapsed since his release from such imprisonment;
 - (iv) he has been declared bankrupt by the court and has not been discharged from the liability of bankruptcy;
 - (v) he has been identified or declared by the Bangladesh Bank or by the court or by a bank or financial institution as a defaulter loanee of that bank or institution; or
 - (vi) his licence has been cancelled by the Commission at any time during the last 5 (five) years;
 - (b) the applicant being a company or corporation or partnership or society or other organization,-
 - (i) any provision of sub-clauses (i) to (v) of clause (a) is applicable to its owner or to any of its directors or partners; or

(ii) sub-clause (vi) of that clause is applicable to it.

(4) Where under this section-

- (a) a person applies for issuance or renewal of a licence, he shall pay the fees determined by the Commission;
- (b) a licence is issued, the validity period thereof, the requirement for its renewal and the conditions applicable thereto, shall be mentioned in the licence;
- (c) a licence is issued for providing service, the service to be provided by the operator shall be specifically mentioned in the licence ;
- (d) a licence is issued for the establishment of a telecommunication system and for providing a service, the service shall be provided through that system as mentioned in the licence;
- (e) a licence is issued and the use of radio apparatus, interference causing apparatus and radio frequency are necessary to carry on the activities thereunder, a condition shall be mentioned in the licence that, under CHAPTER-VIII, another licence and allotment of radio frequency and technical acceptance certificate shall be obtained.

(5) Every application for licence shall be submitted to the Commission in such form and in such manner as may be specified by it.

(6) The Commission may consider the issuance of a new licence for which an application is submitted pursuant to a tender notice :

Provided that the Commission may identify certain services for which licence may be issued by it without a tender notice.

(7) The Commission may, for the purpose of considering an application for licence, require the applicant to furnish necessary information and documents, and if necessary, may also inspect the location, installations and apparatus proposed by the applicant.

(8) If -

- (a) such application is submitted to the Commission, it shall, within 180 (one hundred and eighty) days from submission thereof, take a decision to allow or reject it; and where it so allows, it shall inform the applicant of its decision within 7 (seven) days thereafter;
- (b) The Commission decides within that period to reject the application, it shall, within 7 (seven) days of the decision, inform the applicant of such decision along with the reasons therefor ;
- (c) The Commission finds that it is not possible to take any decision within the said 180 (one hundred and eighty) days, it shall, within that period or within 7 (seven) days thereafter, inform the applicant of the reasons for the delay and the probable time-limit within which decision may be taken and shall take a decision within the said probable time-limit.

(9) The Commission shall preserve a printed copy of each licence issued by it and any person may, on payment of the fees specified by the Commission, inspect such copy or collect a copy thereof.

37. Conditions of licence.- (1) A licence or any right acquired thereunder, whether wholly or partly, shall not be transferable, and such transfer, if any, shall be void.

(2) The Commission may specify in the licence any condition consistent with this Act and regulations and, to suit the requirements of a particular situation, it may also specify additional conditions.

(3) Within the purview of the generality of sub-section (2), proper conditions with regard to all or any of the following specific matters may be included in a licence:-

- (a) compliance with this Act and regulations by the licensee ;
- (b) for the purpose of ensuring access to the service specified in the licence to people of the rural and

sparsely populated areas, compulsory obligation of the licensee to provide the service but not exceeding 10% of his capacity ;

- (c) payment of the fees or other dues specified by the Commission to meet the expenses that the Commission may incur in connection with issuance or renewal of the licence or with both ;
- (d) delivery, at such time and in such manner as may be specified by the Commission, of all such documents, accounts, estimates, return or other information as the Commission may require in connection with the performance of its functions and duties under this Act and regulations;
- (e) taking of the following steps by the licensee:-
 - (i) to design and to maintain his telecommunication network in accordance with the directions of the Commission in relation to the establishment of the telecommunication system under the licence or in relation to the transmission plan, signaling plan, switching plan and numbering plan for providing service under the licence; and in case of deviation from such plan, to obtain approval and directions of the Commission, and implementation of such direction;
 - (ii) inform the Commission of the routes used and the system followed in transmitting and receiving message, signal or any other information in the national and international spheres;
- (f) specifying the matters relating to the telecommunication system to be used by the licensee, the services provided or to be provided by him, the coverage area of such system and services, and the period thereof;
- (g) prohibition on showing any preference to, or making any discrimination against, a particular person or class

of persons, in case of providing service, giving connection or permission by the licensee;

- (h) ensuring an information system so that all information relating to bills, prices, directories, inquiries and complains are easily available to the consumers;
- (i) where the licensee is a company, society or partnership, the compulsory obligation of such licensee to take prior approval of the Commission in the following cases:-
 - (i) any change in the ownership or share capital of the company, society or partnership, which has the effect of transferring the control over the activities under the licence; or
 - (ii) merger of the company, society or partnership with any other company or enterprise:

Provided that, while giving such prior approval, the Commission shall consider whether or not the person, company or enterprise, who or which will acquire control over the licensed activities due to the proposed merger or change, **is eligible for obtaining a licence, and whether or not the change will affect the continuity of those activities;**

- (j) **publication of notification by the licensee, at such intervals and in such manner, as the Commission may specify, relating to the charges for, and the conditions applicable to the availing of, the services provided;**
- (k) **ensuring the payment of compensation to persons affected by the under ground cable, overhead cable and accessories;**
- (l) **making of plans showing how the licensee intends to ensure the continuity or, as the case may be, restoration of telecommunication system established or the services provided, and submission of such plan;**
- (m) **keeping, transferring or disposing of telecommunication apparatus and other property;**

- (n) real performance of the standardised service, maintenance of technical standards and compliance with other technical conditions;
- (o) obligations of the licensee with regard to conservation of environment in accordance with prevalent laws;
- (p) other matters as the Commission may consider appropriate and expedient.

38. Renewal of licence.- A licence issued under this Chapter may be renewed in such manner and subject to payment of such fees or other payment as may be prescribed by regulations, and in the absence of regulations as may be specified in the administrative orders issued by the Commission.

39. Amendment of conditions of licence.- (1) The Commission may, for the purposes of this Act, amend any condition of any licence issued under this Act by way of alteration, substitution, addition, omission or other modification.

(2) Where the Commission, on its own initiative, directs any amendment in the conditions of a licence, it shall serve a notice on the licensee informing him of the reasons for the proposed change and also directing him to submit his reply, within 15 (fifteen) days; and if any reply is submitted, the Commission shall, consider it and take its decision within a period not exceeding 30 (thirty) days thereafter.

(3) The Commission may also, upon application, amend any condition of a licence which it considers proper.

40. Restrictions on according commercial permission for use of telecommunication system.- (1) An operator shall not, without a permit issued by the Commission, accord permission to any other person or allow him, on commercial basis or in lieu of fees, price or other consideration, to use his telecommunication system or any installation or apparatus or facility by which telecommunication services can be provided.

(2) Where an operator applies for a permit mentioned in sub-section (1), the Commission may allow the application and issue a permit if, after necessary inquiry, it is satisfied that the permit applied for will not adversely affect the telecommunication system or the providing of its services, and may also impose such conditions as it considers appropriate in any particular circumstances; the permit so issued shall remain valid for a period specified therein.

(3) Where a condition mentioned in the permit issued under sub-section (2) is violated, the Commission may at any time cancel the permit.

(4) An operator commits an offence if he contravenes the provision of sub-section (1), and for such offence he shall be liable to be sentenced-

- (a) in the case of a first offence, to imprisonment for a term not exceeding 3 (three) years, or to a fine not exceeding 3 (three) lac taka, or to both;
- (b) in the case of each subsequent offence, to imprisonment for a term not exceeding 5 (five) years or to a fine not exceeding 5 (five) lac taka or to both.

41. Commission's jurisdiction in case of limiting operator's liability.- If a licensee, for the purpose of limiting his own liability, imposes any condition in relation to a service provided by him and if the Commission considers such condition to be unreasonable, it may direct the licensee to cancel the condition and accordingly he shall be bound to comply with the direction.

42. Right of way.- (1) Subject to the other provisions of this section, an operator shall have right to install any apparatus, thing or facility on, above or over any land for the purpose of establishing a telecommunication system or for providing telecommunication service; such right is referred to in this Chapter as the right of way.

(2) Within the purview of the right of way, an employee or representative of the operator authorized in writing in this behalf may-

- (a) by giving reasonable notice, enter any land at any time, and put up any post or pillar for the purpose of holding or supporting any telecommunication apparatus;
- (b) fasten or attach a bracket or other device to a tree standing on the land ;
- (c) cut down any tree or branch of a tree which is causing or is likely to cause injury to, or which impedes or is likely to impede the workability of, such apparatus, thing, facility or device; and
- (d) take any other necessary step or action under this Act for the purpose of installing, constructing, examining, repairing, changing, removing or increasing the workability of such apparatus, thing, facility or device.

(3) An operator shall ordinarily exercise his right of way on the land owned or possessed by the Government or a local authority or statutory body, but may, if necessary, exercise this right on any other land also; the Government agency or the local authority or the statutory body shall not ordinarily obstruct the exercise of the right of way.

(4) In exercising the right under sub-section (1), the operator-

- (a) shall not enter, or do anything under that sub-section in a graveyard or crematorium or a place which contains something that is regarded by the local people as sacred, unless such entry is necessary for the purpose of removal or repair of a thing which is dangerous to life or property or which impedes its security ;
- (b) may, in case of necessity for such removal or repair, enter the graveyard, crematorium or sacred place with the consent of the person in charge thereof, or if there is no such person at all or if he is not readily available or if he refuses to give consent, the operator may so enter or may take steps or other actions under sub-section (1) after obtaining written permission of the Commission.

(5) The said operator-

(a) shall not, without the consent of the owner or occupier of the land, exercise his right under sub-section (1);

(b) shall not acquire any other right only because of his right of way;

(c) shall not exercise any right under this section on the land owned or controlled by any Government or local authority or a statutory body without its consent;

(d) shall exercise the rights under this section in such a manner that the damage caused to the land and environment remains at the minimum level, and shall be bound to pay compensation to the affected person, authority or body for the damage caused as a result of such exercise.

(6) The notice under sub-section (2)(a) shall contain a full and proper description of the intended work and shall be served on its receiver personally or his representative or his relevant employee, or it shall be sent to his residence or place of work.

(7) Where a telecommunication apparatus or radio apparatus becomes a cause of threat to anyone's life or property, the operator may enter a land without permission of the its owner or occupier of the land, and take necessary steps for the purpose of protecting such life and property.

(8) In exercising the powers under this section, the operator shall take all reasonable care and shall in all cases-

(a) restore, as far as practicable, the damaged structure, service or facility, by way of repair or otherwise, to its pre-damaged condition;

(b) remove all dirt or debris from the work-site;

(c) pay compensation to the owner or occupier or person-in-charge of the damaged property.

(9) The owner or occupier or person-in-charge may, within 5 (five) days of receipt of the notice under sub-section (6), submit to the Commission a written objection, and where

such objection is submitted, the Commission shall, within 15 (fifteen) days, enquire into the objection and give its decision thereon; such decision shall be binding on both the operator and the objector; and the decision shall not be called in question before any court or other authority.

43. Refusal of consent of owner etc. to the exercise of right of way.- (1) If an owner, occupier or person-in-charge does not give or refuses to give the consent or permission specified in section 42(5), or obstructs the exercise of the right of way, the operator may submit to the Commission a report on the matter.

(2) Where a report under sub-section (1) is submitted and the Commission, after such inquiry as it considers appropriate, is satisfied about the operator's necessity to enter the land, the Commission may-

- (a) take such steps as it considers appropriate for obtaining the consent or permission or for the exercise of the right of way;
- (b) where necessary, authorize the operator to enter the land and also request the law enforcing agencies to assist the operator so that the authorization is executed; and the law enforcing agencies shall, in order to ensure the exercise of the right of way in relation to the concerned land, take necessary steps including application of force.

(3) Where the Commission, under sub-section (2), requests a ~~Government~~ or local authority or a statutory body for ensuring an operator's right of entry, such authority or body shall, unless there is a special reason, comply with the request; in case of disagreement, the Commission shall immediately inform the Minister of the matter, and he shall, within a period not exceeding 15 days, consult the relevant Minister-in-charge and give his decision on the matter; such decision shall be final and all parties concerned shall be bound to comply with the decision, and the ~~legality~~ or

propriety of the decision can not be called in question before any court or other authority.

44. Compensation.- (1) The operator shall pay compensation to the affected person or authority for any damage resulting from the exercise of the right of way under section 42 or anything done under section 43; such compensation shall be paid within 90 (ninety) days after completion of the work.

(2) Where a dispute arises as to the amount of compensation mentioned in sub-section (1), the affected person, authority or body shall refer the dispute to the Commission and the decision of the Commission on the matter shall be final, and the decision shall not be called in question before any court or other authority.

(3) Any claim for, or dispute over, the compensation may be submitted to the Commission within three years after completion of the work of the operator which has resulted in damage, and the Commission shall reject any claim for compensation that is raised after the expiry of that period; the legality or propriety of the decision of the Commission on the matter shall not be called in question before any court or other authority.

45. Compulsory acquisition of private land for licensee's necessity.- (1) Where, in carrying out the activities under a licence, the licensee faces obstruction to use a land, or the consent of the owner or occupier of the land is not available, the Government may, on the recommendation of the Commission, decide under the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982) that the land is necessary for carrying out such activities of the licensee, and thereafter necessary proceedings for acquisition of the land may be initiated.

Explanation.- For the purposes of this sub-section, "land" does not include a land owned or occupied by a Government authority or a local authority or a statutory body.

(2) Where a decision in relation to a land is given under sub-section (1), the land shall be deemed to be necessary in public interest within the meaning of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982).

(3) The compensation and other costs incidental to the acquisition under this section shall be paid by the operator.

46. Cancellation and suspension of licence.- (1) The Commission may, at any time, suspend or cancel a licence, if the Commission has reasons to believe that the licensee-

- (a) is at present such a person that if he were an applicant for a licence, his application would have been disallowed on any of the grounds specified in sub-section 36(3);
- (b) had obtained the licence by suppressing his disqualification specified in that sub-section ;
- (c) has failed to start providing the service within the time-limit specified in the licence; or
- (d) has contravened any provision of this Act or regulations made thereunder or any condition of the licence.

(2) The Commission shall serve on the licensee a notice specifying the reasons for the proposed suspension or cancellation, alongwith a direction to present, within 30 (thirty) days, his reply to the proposed action.

(3) Where a reply is furnished by the licensee pursuant to the notice under sub-section (2), the Commission, upon consideration of such reply, may, with or without condition-

- (a) direct necessary corrective measures;
- (b) cancel the licence;
- (c) suspend the licence for a specified period and direct necessary corrective measures;
- (d) direct the payment of an administrative fine not exceeding 3 (three) lac taka and, in an appropriate case, also direct necessary corrective measures; or

(e) take both the actions specified in clauses (c) and (d).

(4) The licensee shall not be entitled to any compensation for damage caused by any action under sub-section (3), nor shall he be entitled to raise such claim before any court or other authority, and even if such claim is raised, the court or other authority shall summarily reject it.

47. Interconnection.- (1) Subject to the provisions of this Act and regulations, an operator may establish interconnection between his telecommunication network with that of another operator.

(2) If, in an area specified by the Commission, 25% of the consumers take service from more than one operator, such operators shall have the following obligation in respect of interconnection and providing access to the interconnection :

- (a) interconnection agreements shall be executed within 3 (three) months from the first day on which the new operator starts providing telecommunication service;
- (b) the operators shall execute such agreements among themselves; however, on the application of any operator, the Commission may, in consideration of the existing circumstances, extend the time-limit but not exceeding 3 (three) years; and the Commission shall notify, in at least two widely circulated national dailies published from Dhaka, the fact of such decision alongwith a full explanation of the circumstances;
- (c) the real cost in relation to universal service provided by operators of ordinary or cellular mobile telephone service, shall be fixed and paid at a rate as mutually agreed among the operators; and the Commission may, keeping in view of the particular circumstances, also specify that the operators providing other services shall comply with the cost so fixed in relation to the universal service; and if they fail to agree on such rate, the Commission may fix the rate which shall be

followed in making payment of the cost, provided such cost is part of the total cost of interconnection;

- (d) in determining the terms and conditions of interconnection, the operators shall act in a non-discriminatory and transparent manner;
- (e) copies of interconnection agreements shall be delivered to the Commission and interested parties;
- (f) charges realizable for the use of interconnection shall be fixed by way of adjusting the actual cost and a reasonable rate of profit from the investment in interconnection; and the manner of fixation of such charge shall be transparent;
- (g) the operators shall keep a separate account for each interconnection so that all the heads of expenditure for the interconnection and the income therefrom may be specifically identified.

(3) The Commission-

- (a) may direct any operator to present his cost of interconnection and the justification for charges for the interconnection services;
- (b) shall ensure adequate number of interconnections for the purpose of protecting the interests of consumers;
- (c) shall publish a directory containing model interconnection agreements and guidelines.

(4) Where the interested parties, or the persons, who under sub-section (2) are bound to execute interconnection agreement, cannot agree on the terms of such agreement, any of them may present the matter to the Commission, or on its own motion, the Commission may take up the matter, and determine the terms of the agreement as it considers appropriate.

(5) In appropriate cases, the Commission may, on its own motion-

- (a) interfere with any matter relating to interconnection of any operator, for the purpose of ensuring public interest;

- (b) direct the concerned parties to an existing interconnection agreement to amend the terms thereof;
- (c) specify the time-limit for holding discussion and finalising a proposed interconnection agreement;
- (d) take action against establishing or maintaining a monopoly created by way of interconnection.

CHAPTER VI

TARIFF, CHARGES ETC.

48. Approval of tariff.- (1) An operator shall, before providing service, submit to the Commission a tariff containing the maximum and minimum charges that may be realized for such service, and until the tariff is approved by the Commission, the operator shall not start providing the service or realizing charges for the service.

(2) While submitting a tariff under sub-section (1), the operator shall also furnish the justification therefor .

(3) Where the Commission approves the tariff, it shall publish the approved tariff in such form and in such manner as it may specify in this behalf, and may also include additional information if considered necessary.

(4) Within 60 (sixty) days after a tariff is submitted, the Commission shall-

- (a) approve the tariff with or without modification, or substitute an alternative tariff, or direct the operator to submit an alternative tariff;
- (b) reject the tariff within the said 60 (sixty) days and shall, within 15 (fifteen) days of the rejection, inform the operator of such decision and the reasons therefor ; or
- (c) if it does not take a decision under clause (a) or (b), publish, within the said 60 (sixty) days or within the next 15 (fifteen) days, the fact of no-decision for public

information, and shall also specify the time-limit within which it intends to take decision; and such delay shall not exceed 60 (sixty) days.

49. Principles of determination of tariff by Commission.- (1) The Commission shall, in determining or approving a tariff, follow the general principles as specified below:-

- (a) the tariff shall be fair and reasonable;
- (b) the charges shall be equally applicable to the various persons providing a particular service or to the persons taking that service;
- (c) if an operator provides more than one service, but there exists competition in the market in providing one of such services and no competition in case of another service provided by him, then-
 - (i) subsidy from the earnings of the service which is subject to competition shall not be allowed for the other service which is not subject to competition;
 - (ii) the arrangement, if any, existing at the commencement of this Act, for providing subsidy from the earning of the service which is not subject to competition shall be progressively abolished within the time-limit specified by the Commission;
- (d) no person or group or class shall, in respect of tariff or charges for a service, be given undue preference or be subjected to discrimination or disadvantage.

(2) The Commission may, in determining whether a tariff is fair and reasonable, adopt any clear and reasonable method, and such method may be based on the return of an operator or other information.

(3) Where, in relation to a service provided by an operator, the Commission is of opinion that-

- (a) an activity of an affiliate under the operator is integral part of that service ; and

(b) the provisions of this Act or regulations are not sufficient for ensuring that the rate of charges fixed by the operator for the services are fair and reasonable, the Commission may consider the income or part thereof earned by the affiliate from the said activity is the income of the operator.

50. Discriminatory charges prohibited.- (1) An operator shall not, in relation to a service provided by him or the charges for such service, make any discrimination or create any inconvenience to any person or group or class, nor shall he give any unfair or unreasonable preference to himself or any other person.

(2) Where allegations of making discrimination, creating inconvenience or giving preference are brought against an operator-

(a) the Commission shall, within 15 (fifteen) days of the receipt of the allegations, serve a 15 days' notice on the operator directing him to submit his reply to the allegations, if the Commission considers that the said allegations are prima facie justified;

(b) the burden of proof that his conduct was not discriminatory against, or preferential or did not create any inconvenience to any person shall lie on the operator;

(c) the Commission shall, in accordance with sub-section (3), take necessary action after consideration of the allegations brought against, and the reply submitted by, the operator.

(3) Where an operator contravenes sub-section (1), the Commission may impose on him an administrative fine not exceeding 50 (fifty) thousand taka or, in an appropriate case, direct the operator to pay to the affected person a compensation not exceeding 50 (fifty) thousand taka, or direct the operator to refrain from the discriminatory conduct, or the Commission may take all or more than one of such actions.

CHAPTER VII
STANDARD OF TELECOMMUNICATION
APPARATUS AND SERVICE

51. Standards of telecommunication apparatus.- (1) Subject to sub-section (4), the Commission may specify the national standards and technical aspects of the apparatus that are used in a telecommunication system and in providing telecommunication services.

(2) For the purposes of sub-section (1), the Commission-

- (a) may, for different class of apparatus, determine different standards, criteria and method for verifying their compliance;
- (b) shall publish a notice in the official Gazette and two national dailies that it intends to determine such standard, criteria and method and, invite comment or suggestion on the standards, criteria and method proposed in such notice and shall also specify the date since when such standards, criteria and method shall be effective;
- (c) shall, upon consideration of the comment or suggestion, if any, received under clause (b), finalise the standards, criteria and method, and also publish them in the same manner;
- (d) may determine the standards of radio method and interference causing apparatus and technical conditions applicable thereto.

(3) In determining the standards, criteria and the method for verifying their compliance, the Commission shall be guided by the needs for a safe, modern and efficient telecommunication service and interconnection.

(4) The Commission shall not, before determining under this section the standards, criteria and related conditions of licence, impose any restriction as to whether or not any

apparatus manufactured by a company or other enterprise may be used in providing a service for which licence is necessary.

52. Technical standards etc. of terminal apparatus.- (1) The Commission shall, from time to time, make and publish, a directory wherein the names and specifications, technical standards and related matters of terminal apparatus shall be specified.

(2) Every person shall follow the directory in manufacturing, importing and marketing terminal apparatus and installing them in a telecommunication system.

53. Search etc. for harmful interference.- (1) It shall be lawful for the Commission to search out harmful interference, and where the Commission finds that a person has in his possession or control interference-causing radio apparatus or other apparatus, it may order the person to stop the operation of that apparatus or to repair or substitute the apparatus within a time specified in the order, so that the interference may not be caused any more.

(2) A person commits an offence if he contravenes an order under sub-section (1) or fails to comply with such order, and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 3 (three) years or to a fine not exceeding 3 (three) lac taka or to both.

(3) Where an information is obtained with the help of electronic or other device used in the monitoring or surveillance activities for finding out harmful interference and such information is printed on a document under the signature of an authorized officer of the Commission or is attested by that officer, the information shall be admissible as evidence in any proceedings of the Commission or a Court.

54. Determination of the standards of telecommunication.- (1) The Commission may, by making regulations or by publishing notice at least in two widely

circulated national dailies, determine the standards of various telecommunication services, and in providing those services, the operators shall be bound to follow those standards.

(2) Where a standard is determined under sub-section (1), the Commission shall, from time to time, take steps for publicity of the standard so that the people get opportunity to know about it.

CHAPTRE VIII RADIO COMMUNICATION AND SPECTRUM MANAGEMENT

55. Necessity for licence for radio apparatus, authority, procedure etc.- (1) No person shall, without a licence, establish, operate or use a radio apparatus for the purpose of radio communication in the land or territorial waters of Bangladesh or in the space above them, nor shall he use any radio frequency other than the frequency allocated by the Commission.

(2) The Commission shall have the exclusive authority to **issue licence and to** allocate the radio frequency under sub-section (1).

(3) The manner of **issuance of licence, allocation of frequency, and their renewal, suspension and cancellation, the qualifications and disqualifications of a licensee, the licence-fees and other related matters** shall be determined by regulations, and until regulations are made, **general** or special resolutions of the Commission shall be **applicable** to those matters.

(4) A licence issued or a frequency allocated under this section or the right to use such licence or frequency shall not be transferable, and if any such transfer takes place it shall be void.

(5) Clause (i) of section 37(3) shall be applicable to such licence.

(6) No licence under sub-section (1) shall be required in the following cases:-

- (a) installation, operation or use of a radio apparatus by the Police, Bangladesh Rifles, Coast Guard, any of the Defence Forces or any other Security Force to meet its own requirement;
- (b) installation, operation or use of a radio apparatus by the Ministry of Foreign Affairs or an intelligence agency of the Government to meet its own requirement;
- (c) installation, operation or use of a radio apparatus in a battle-ship or defence air-craft or in other vehicles used for the affairs of the State :

Provided that no radio frequency other than the frequency allocated by the Commission shall be used in such radio apparatus.

(7) A person commits an offence if he, in violation of sub-section (1), installs, operates or uses any radio apparatus without a licence issued by the Commission or if he uses a radio frequency without getting allocation from the Commission; and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 10 (ten) years or to a fine not exceeding 10 (ten) lac taka or to both, and if the offence continues, he shall be liable to an additional fine not exceeding 20 (twenty) thousand taka for each day of the continuous period after the first day.

56. Spectrum Management Committee.- (1) For the purpose of management of radio frequency, the Commission shall, as soon as may be after commencement of this Act, form a committee to be known as the Spectrum Management Committee, hereinafter referred to in this Chapter as the Committee.

(2) The Committee shall consist of one Commissioner and such number of other members as the Commission may

specify, and the Commissioner shall be the President of the Committee.

(3) As soon as the Committee is formed, the Commission shall inform the Ministry of such formation; and the Ministry shall take all necessary steps for transferring to the Committee the overall functions and responsibilities of the Frequency and Wireless Board including the documents related to allocation of radio frequencies made prior to the commencement of this Act, the pending applications for allocation of radio frequency and all related matters; after such transfer the said Board shall stand dissolved.

(4) Subject to any general or special instruction of the Commission, the Committee may determine the manner and other matters of holding of meetings, carrying on its activities and making of recommendation and decisions.

(5) Subject to the other provisions of this Chapter, the functions of the Committee shall be as follows :

- (a) to make recommendation to the Commission on the principles of allocation of radio frequency and fixation of fees for such frequency;
- (b) to make recommendation to the Commission for specifying the radio frequencies to be used for operating radio apparatus or for providing services by various licensees, broadcasting enterprises and other organizations ;
- (c) to make recommendation to the Commission on the methods and time-limits of allocation of radio frequencies and the revocation or modification thereof;
- (d) to co-ordinate the international and multipurpose use of radio frequency and to frame policies thereon, to present such policy for approval of the Commission and to revise from time to time the policies approved by the Commission;
- (e) to revise matters relating to radio frequency band in order to ensure their proper use and receipt of better information by using such band;

- (f) to determine the technical standards applicable to radio apparatus or interference-causing apparatus; and to make recommendation on the issuance of technical acceptance certificates;
- (g) to make recommendation on the issuance of licence for radio apparatus;
- (h) to monitor the compliance of the provisions of this Act and regulations in respect of the use of the allocated radio frequency spectrum, and to make suggestions on the actions to be taken, if any.

(6) The Commission may direct the Committee to perform functions other than those mentioned in sub-section (5).

(7) In exercising powers, performing functions and duties under sub-section (5), the Committee shall follow the applicable criteria specified or recommended by the International Telecommunication Union or by its concerned Standing Committee or by other organization.

(8) For getting a radio apparatus licence, allocation of a radio frequency or technical acceptance certificate, an application shall be submitted to the Commission; and within 7 (seven) days of the receipt of such application, the Commission shall send it, with comments, if any, to the Committee which shall, within the next 30 days, make such inquiry on the matter as it considers necessary and present the application with its comments and recommendations to the Commission.

(9) The Commission shall, after consideration of the comments and recommendations of the Committee on the concerned application, take decision on the issuance of a licence for radio apparatus or, as the case may be, a technical acceptance certificate or allocation of radio frequency; and shall in all cases determine the conditions applicable thereto after consideration of the Committee's recommendation.

57. Technical Acceptance Certificate.- (1) The Commission may, by issuing notice in at least two widely circulated national dailies published from Dhaka, or by making regulations, specify the radio apparatus or

interference causing apparatus for which technical acceptance certificate is necessary.

(2) When a technical acceptance certificate in relation to an apparatus is required by a notice published, or by regulations made, under sub-section (1), no person shall, except in accordance with such certificate, use, distribute, sell or offer for sale, lease out or demonstrate that apparatus.

(3) A person commits an offence if he violates sub-section (2), and for such offence he shall be liable to imprisonment for a term not exceeding 5 (five) years or to a fine not exceeding 5 (five) lac taka or to both.

(4) The Commission shall, in relation to an apparatus mentioned in sub-section (1),-

- (a) make regulations on the standards determined by the Spectrum Management Committee under section 56(5)(f) or publish such standards in at least two widely circulated national dailies; or
- (b) make regulations specifying the procedure and other matters relating to the issuance of a technical acceptance certificate, and renewal, suspension and cancellation thereof, and until such regulations are made, those matters shall be determined by administrative orders.

(5) A technical acceptance certificate issued under this section shall remain valid for the period specified therein and may be renewed after the expiry of that period.

(6) The procedure for issuance of a technical acceptance certificate and the renewal, cancellation and suspension thereof and the fees therefor shall be determined by regulations, or until regulations are made, by administrative orders of the Commission.

58. Monitoring and control of emission of electro-magnetic energy.- The operator shall monitor the emission of all kinds of electro-magnetic energy in the lands and territorial waters of Bangladesh and the space above them, and shall control the harmful effect of such emission, and for that purpose it may issue necessary direction to any person or body.

CHAPTER IX
RECEIPT AND DISPOSAL OF
CONSUMER-COMPLAINS

59. Provisions relating to receipt and disposal of consumer-complains.- (1) Every operator providing telecommunication service shall establish sufficient number of complain-centres so that he can collect information on the inconvenience or complain of the consumers in respect of that service or related matters, and shall, from time to time, publish notice about the location of, and communication with, such centres.

(2) Any consumer may, by telephone message or written complaint, present his inconvenience or complain.

(3) All information relating to the complains received from consumers and disposal of such complains shall be recorded in a register.

(4) On receipt of an information or complain about the inconvenience of a consumer, the service provider shall immediately take necessary action and shall follow the code of practice framed in this behalf by the Commission.

(5) Where the service provider, after being informed of an inconvenience or complain of a consumer, fails to timely and properly resolve the inconvenience or the complain, that consumer may in writing apply to the Commission for taking necessary action on the matter.

(6) Within 7 (seven) days of receipt of such application, the Commission may, after necessary inquiry, give proper directions to the service provider to take necessary steps for resolving the said inconvenience or complain.

(7) If the direction under sub-section (6) is not complied with, the Commission may, under section 63, issue a compulsory enforcement order.

CHAPTER X
INSPECTION AND COMPULSORY ENFORCEMENT

60. Appointment of Inspector.- The Commission may, for the purposes of this Act, appoint any of its officers as an Inspector.

61. Powers of Inspector.- (1) For implementing the provisions of this Act, an Inspector may, subject to sub-section (3)-

- (a) enter any place at any reasonable time, if he has reason to believe that-
 - (i) a radio apparatus or an interference-causing apparatus not permitted under this Act has been kept or is being used in that place; or
 - (ii) a telecommunication system or a telecommunication apparatus not permitted under this Act has been kept in that place; or
 - (iii) a telecommunication service is being provided or a radio apparatus has been installed or is being operated in that place without necessary licence or permit or in violation of a condition thereof;
- (b) examine such apparatus, if found;
- (c) examine any log book, report, data, record, bill or any other document found in that place, if he, on reasonable grounds, believes that such examination is necessary for implementation of any provision of this Act or regulations or any direction or directive of the Commission, and he may take copies or photocopies of the whole or part of the document, or may also take necessary extract from it;
- (d) inquire the occupier or user of, or the person having control over, the said system or apparatus, and may arrest him and also seize the apparatus if the Inspector believes that the said occupier, user or person having

control may abscond or, as the case may be, the apparatus may be removed or destroyed;

- (e) recommend to the Commission for seizure of an apparatus which is not permitted for use in a particular telecommunication system or for providing a particular service.

(2) The Commission may, upon consideration of the recommendation made under sub-section (1)(e) seize the said apparatus, and if the apparatus so seized is not apparently owned by any person, it shall vest in the Commission, and if, within 60 (sixty) days of such seizure, any person claims ownership of the apparatus, the Commission may, after necessary inquiry, return it to the claimant or take such other action as it considers appropriate.

(3) If the place mentioned in sub-section (1) is a dwelling house of any person, the Inspector shall not enter that place without the consent of the person in charge thereof; however such consent shall not be necessary in the following cases:-

- (a) if an warrant has been issued by a Magistrate under sub-section (4); or
- (b) if special circumstances exist wherein procurement of warrant is not practicable.

Explanation : For the purposes of this sub-section, any circumstances shall be deemed to be special circumstances, if the act of procuring the warrant is likely to endanger the security of life, property or evidence of an offence or to allow the destruction or removal of any evidence of an offence.

(4) If, from the report of an Inspector, or from an information furnished by any other person alongwith a verified statement asto the truth thereof, it appears to the Magistrate that-

- (a) for the purpose of performing the functions and responsibilities of the Inspector under this Act, entry to a dwelling house is necessary; and

- (b) consent to the said entry has been refused or that there are reasonable grounds to believe that such consent will be refused,

then a Magistrate of the first class or a Metropolitan Magistrate for a metropolitan area may, on the application of the concerned Inspector, issue a warrant authorising the Inspector to enter into that house and, in a proper case, to apply force, and the Magistrate shall mention the name of the Inspector in such warrant and may, if he considers appropriate, specify any condition therein.

(5) In executing an entry to a dwelling house authorised under sub-section (4), the Inspector shall not apply force, unless he is accompanied by police force.

(6) Where an Inspector enters any place, the occupier or the person in charge thereof shall render all reasonable assistance to, and furnish all information required by, the Inspector so that he can perform his duties under this Act.

(7) No person shall, during the time an Inspector carries on his duties under this Act-

- (a) resist the Inspector or wilfully create any obstruction;
or
(b) knowingly present to the Inspector a false or misleading information, whether verbal or written;

(8) A person commits an offence if he violates the provisions of sub-section (7), and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 3 (three) years or to a fine not exceeding 3 (three) lac taka or to both.

62. Prima facie truth of Inspector's certificate or report.- (1) Where a certificate or report containing the results of an examination or inspection under this Act purports to be signed by an Inspector, that certificate or report shall be admissible as evidence in a proceedings under this Act, and, unless the contrary is proved, the contents of the certificate or report shall be considered as proof of such examination or report.

(2) The Commission shall, before initiating a proceedings in the court under this Act on the basis of the said certificate or report, send a copy thereof to the accused person personally or to his last known place of work or residence.

(3) In such proceedings, the accused person may apply to the court for a direction to the Inspector to appear before the court so that the accused person gets an opportunity to cross-examine him.

63. Issue of enforcement order and penalty for its violation.- (1) If a licensee or the holder of a certificate or permit-

- (a) violates any provision of this Act or regulations or any condition of the licence or permit in operating a system or in providing a service; or
- (b) has procured the licence or permit or technical acceptance certificate by furnishing a false information,

the Commission may direct the licensee or the holder of the permit or certificate to show cause within 30 (thirty) days as to why an enforcement order shall not be issued or why the licence or permit or certificate shall not be cancelled.

(2) A notice under sub-section (1) shall contain specific description of the nature of the violation and the corrective or remedial measures, if any.

(3) Where, in response to the notice under sub-section (1), any reply or any satisfactory explanation in respect of the allegations made in the notice, is not submitted to the Commission, or the corrective or remedial measures directed by the Commission are not taken within the time specified in such notice, the Commission may, after recording reasons, by an order-

- (a) impose upon the violator an administrative fine not exceeding 3 (three) lac taka and, if the violation continues after the issuance of the order, an additional administrative fine not exceeding 30 (thirty) thousand taka for each day; and

- (b) in a proper case, suspend or cancel the licence, permit or certificate or impose additional conditions.

64. Commission's power to issue injunction on current or probable violation.- (1) Where the Commission is of opinion that a person is acting or about to act in a manner that has or will have the effect of violating the provisions of this Act or regulations or any condition of a licence or permit or a direction or directive of the Commission, it may, by a written notice, direct that person to show cause within 7 (seven) days as to why he shall not be restrained from such act, and if any cause is shown by him, the Commission may, after considering it, direct him to refrain from such act or may give such other direction as it considers appropriate in the circumstances:

Provided that, if the Commission is satisfied that the violation or probable violation is of such a nature that the person should be immediately restrained from such act, the Commission may, at the time of issuing the notice, pass an interim order directing that person to refrain from the violation or the concerned act till the matter is decided by the Commission.

(2) The person to whom a direction is issued under sub-section (1) shall properly comply with the direction or, the as case may be, refrain from the concerned act.

(3) If a person violates sub-section (2), the Commission may impose upon him an administrative fine not exceeding 1 (one) lac taka, and the person commits offence if he fails to pay the fine, and for such offence he is liable to be sentenced to imprisonment for a term not exceeding 3 (three) years or to a fine not exceeding 3 (three) lac taka or to both.

65. Administrative fines.- (1) The Commission may, in addition to the administrative fines specified in this Act, make regulations for imposition of such fine for violation of the other provisions of this Act or regulations :

Provided that administrative fines shall not be so provided for violation of sections 35(1), 55(1) and 57(2).

(2) Where an administrative fine may be imposed for violation of any of the provisions of this Act or regulations, the Commission shall serve on the violator a notice to the effect that he may admit the violation, deposit the administrative fine specified in the notice and thus get himself discharged from the liability, and that he may also explain his position in this regard.

(3) In relation to the violation mentioned in sub-section (2)-

(a) an Inspector shall fill in the prescribed notice specifying therein the relevant facts and put his signature thereon and shall-

- (i) serve the notice personally to the accused person, or
- (ii) send the notice to the last known address of his residence or place of work ;

(b) the Inspector shall specify in the notice the various aspects to be considered in respect of the alleged violation and the procedure to be followed, and also the amount of administrative fine that may be imposed;

(c) the accused person may-

- (i) admit the violation and pay the administrative fine specified in the notice;
- (ii) admit the violation and request for reducing the said fine by explaining the circumstances in which the violation took place; or
- (iii) deny the violation and in support of such denial furnish the explanation and necessary information and request for discharge from the liability of the proposed fine.

(4) Where an application is submitted under sub-clause (ii) or (iii) of sub-section (3)(c), the concerned officer of the Commission authorized in this behalf shall consider the matter as a whole and record his decision along with reasons and shall, within 3 (three) days of the decision, deliver to the applicant a copy thereof.

(5) The accused person may, within 15 (fifteen) days of the decision under sub-section (4), apply in writing to the Commission for review of the decision and the Commission shall, within 30 (thirty) days of lodging the application, dispose of the matter after giving the applicant a reasonable opportunity of being heard.

(6) Where the violator admits the violation alleged in the notice issued under sub-section (3) and deposits the administrative fine, or a decision is given discharging him under sub-section (4) or (5), he shall be free from liability accordingly, and the violation, or the administrative fine, so deposited shall not be considered as an offence or a fine for an offence respectively.

(7) A violator commits an offence if he fails to pay the administrative fine imposed or to appear pursuant to a notice issued under this section and accordingly he shall be liable to be put on trial.

CHAPTER XI

OFFENCE, PENALTY, INVESTIGATION AND TRIAL

66. Penalty for sending false message etc. by using radio or telecommunication.- (1) No person shall, by using telecommunication apparatus or radio apparatus, intentionally send or cause to be sent any danger-signal, message or call which is false or fraudulent.

(2) A person commits an offence, if he-

(a) violates sub-section (1); or

(b) without lawful excuse, uses, installs, modifies, operates or possesses an apparatus, device or a component thereof under circumstances that give rise to a reasonable inference that the apparatus, device or component has been, or is being, or was intended to be, used in violation of that sub-section, and

for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 3 (three) years or to a fine not exceeding 3 (three) lac taka or to both.

67. Penalty for causing interference in radio communication and telecommunication.- (1) No person shall-

- (a) without lawful excuse, create obstruction to or cause interference in radio communication or telecommunication; or
- (b) intercept any radio communication or telecommunication nor shall utilize or divulge the intercepted communication, unless the originator of the communication or the person to whom the originator intends to send it has consented to or approved the interception or divulgence.

(2) A person commits an offence if he contravenes subsection (1) and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 3 (three) years or to a fine not exceeding 3 (three) lac taka or to both.

68. Penalty for misuse of radio or telecommunication apparatus by employee.- (1) An employee of an operator shall not-

- (a) intentionally transmit, by using a telecommunication apparatus or radio apparatus, a message which to his knowledge **is false, or misleading**, or is likely to affect the efficiency of a **telecommunication service** or the security of life or property of a person;
- (b) in course of his duty -
 - (i) use any telecommunication apparatus or radio apparatus with intent to obtain any information relating to the sender or addressee, or the content of, a message sent by telecommunication or radio communication, unless the Commission has authorized that employee or the operator to receive the message;

- (ii) except for the requirement of a legal proceedings of the Commission or a court or of a consequential proceeding, disclose any information about the sender or addressee or contents of a message which has come to his knowledge only by using or in connection with the use of a telecommunication apparatus or radio apparatus;
- (c) create obstruction in any part of a telecommunication network which is being used for sending or receiving an information or message or anything else, nor shall he obtain any information relating to the sender or addressee or content of the message, unless he is authorized in this behalf by the Commission or by the sender or addressee of such message.

(2) A person commits an offence if he contravenes subsection (1) and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 5 (five) years or to a fine not exceeding 5 (five) lac taka or to both.

69. Penalty for sending obscene, indecent message etc.-

If-

- (a) a person offers to another person engaged in the operation of a telecommunication apparatus or radio apparatus to send an obscene, threatening or grossly insulting message, or
- (b) the person secondly mentioned, pursuant to such offer, knowingly or intentionally sends that message,

then, in case of clause (a), the person offering to send, and in case of clause (b), both the person offering to send and the person sending, the message commits an offence, and for such offence the person so offering to send or, as the case may be, the person sending the message shall be liable to be sentenced to imprisonment for a term not exceeding 6 (six) months or to a fine not exceeding 50 (fifty) thousand taka or to both.

70. Penalty for causing annoyance by telephone calls.-

(1) A person commits an offence if he, without a reasonable excuse, repeatedly makes telephone calls to another person in such a manner that the calls cause annoyance or inconvenience to that other person, and for such offence the

firstly mentioned person shall be liable to be sentenced to a fine not exceeding 25 (twenty five) thousand taka and, in default of payment of fine, to an imprisonment for a term not exceeding 3 (three) months.

(2) It shall be lawful for the operator, upon a complaint and authorization in this behalf from the person to whom such calls are made or from another person on behalf of the firstly mentioned person, to trace the source of, to intercept, monitor or record the calls or to take steps to prevent the calls.

71. Penalty for eavesdropping telephone conversation.- A person commits an offence, if he intentionally listens to a telephone conversation between two other persons, and for such offence, he shall be liable to be sentenced to imprisonment for a term not exceeding 6 (six) months or to a fine not exceeding 50 (fifty) thousand taka or to both;

Provided that the provisions of this section shall not apply to the members of Intelligence Agency, National Security Agency, Investigating Agency or any officer engaged in maintaining law and order empowered by the Government under section 97A.

[Proviso to section 71 has been inserted by section 2 of the Bangladesh Telecommunications (Amendment) Act, 2006 (Act No. 7 of 2006) effective from 11 December, 2005.]*

72. Penalty for trespass, unlawful stay, causing damage to apparatus, obstruction to operation activity etc.- A person commits an offence, if he-

- (a) without permission of the person-in-charge, enters an office where telecommunication or radio communication is operated with the help of licensed telecommunication apparatus or radio apparatus;
- (b) after entry to that office in any way, fails to leave it even after the request of the person in-charge or of a person subordinate to the person in-charge;
- (c) ignoring a prohibitory notice, enters a place where such apparatus has been kept;
- (d) after entry to such office or place in any way, obstructs any person to perform his duty; or

- (e) intentionally causes damage to such apparatus, or removes it, or unlawfully impairs the efficiency of it or renders it unworkable ,

and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 7 (seven) years or to a fine not exceeding 7 (seven) lac taka or to both.

73. Other offences and penalties.- (1) Any of the following acts of a person shall be an offence, namely:-

- (a) the act of operating a telecommunication system or providing service in violation of any condition of a licence or permit, or any abetment of such violation;
- (b) the act of sending or receiving any information or providing any service by using a telecommunication system or radio apparatus which that person knows or has reason to believe that such system or apparatus has been, in violation of this Act, established or being operated under his direct or indirect control, or the act of using such system or apparatus for any purpose incidental to the aforesaid sending or receiving of information or providing service;
- (c) the act of using any mechanical, electrical or other device in order to avoid charges payable for a service taken or to be taken;
- (d) while performing duties in a licensed telecommunication network, the act of intentionally causing any change in, or distortion of, or unlawful interference to, the contents of a message sent through that network;
- (e) failure or refusal to supply to the Commission an information or document which the Commission is entitled to obtain under this Act or regulations and for the supply of which the Commission has given 10 days' notice.

(2) Where a person is found guilty of an offence under subsection (1), he shall be liable to be sentenced to imprisonment

for a term not exceeding 5 (five) years or to a fine not exceeding 5 (five) lac taka or to both; and if such offence is a continuous one, he shall be liable to an additional fine not exceeding 25 (twenty five) thousand taka for each day of the continuous period after the first day.

(3) Where a person contravenes a provision of this Act or the regulations made thereunder for which no penalty is prescribed in this Act or the regulations he shall, on being found guilty of that violation, be liable to be sentenced to the following penalties :-

(a) for the first-time violation, imprisonment for a term not exceeding 2 (two) years or to a fine not exceeding 2 (two) lac taka or to both;

(b) for each subsequent violation to a fine not exceeding 3 (three) lac taka or an imprisonment for a term not exceeding 3 (three) years or to both.

(4) The imposition of a penalty under sub-section (2) shall not affect any other right or remedy of a person aggrieved by the concerned offence.

74. Penalty for abetment of offence etc.- If a person aids the commission of any offence under this Act, or if he instigates or conspires to commit such offence and the offence is committed as a result of that instigation or conspiracy, he shall be liable to be sentenced to the same penalty prescribed for the commission of that offence.

75. Provision in regulations relating to offence, penalty, compensation.- The Commission may make regulations on the following:-

(a) identifying the conditions of a licence or permit issued by the Commission or certain provisions of regulations the violations of which will constitute offence and imposition of a **penalty of imprisonment** for a term not exceeding 2 (two) years or **fine not exceeding 2 (two) lac taka** or both for such offence ;

- (b) specifying the compensation, which may extend to 2 (two) lac taka, to be paid to a person affected by the violation of regulations or the conditions of a licence or permit issued by the Commission, and the procedure for realization of such compensation.

76. Offence by company.- (1) If the person contravening a provision contained in or made under this Act is a company, every owner, director, manager, secretary or other officer or employee or representative of the company shall be deemed to have violated that provision, unless he proves that the violation took place beyond his knowledge or that he took all possible steps within his capacity to prevent the violation.

Explanation.- In this section -

- (a) "company" means any company, statutory body, partnership, society or association of persons;
- (b) "director" includes a partner, or a member of a board of directors, by whatever name called.

(2) Notwithstanding the provisions of the Criminal Procedure Code, where an offence under this Act or regulations is committed by a company, the Court of Sessions, having jurisdiction over the place at which the registered office, or the head office of the company is situated or, if the company does not have such an office, the place from which its activities are generally regulated, or the place at which the offence has been committed or the concerned offender of the company is available shall be the court of competent jurisdiction.

77 Jurisdiction of courts relating to cognizance and trial of offences.- (1) Notwithstanding the provisions of the Criminal Procedure Code, no court inferior to a Court of Sessions shall be competent to hold the trial of an offence under this Act or regulations.

(2) Only a Magistrate of the first class or a Metropolitan Magistrate or a court superior to such Magistrate shall be

competent to take cognizance of an offence under this Act on the basis of a report of an Inspector or a person authorized by the Commission.

Explanation.- Despite the fact that a person has not been sent by such Magistrate, the Court of Sessions may on the basis of that report or related information, take cognizance of an offence which appears to have been committed by that person.

(3) Where the said court takes cognizance of an offence, it may take all actions in accordance with the Criminal Procedure Code for making the case ready for trial including issuance of summons or warrant of arrest for appearance of the accused person in the court.

78. Lodgement of complaint and procedure of investigation.- (1) The Commission may authorize an Inspector or any other officer to investigate an offence specified in this Act or regulations.

(2) The Inspector or the other officer, hereinafter referred to as the investigating officer, may, in view of a complaint of any person or other information, initiate proceedings under this section.

(3) Before starting formal investigation of an offence, the investigating officer shall submit to the officer specified in this behalf by the Commission a preliminary report and the secondly mentioned officer shall, upon consideration of the relevant facts and circumstances, decide, within 7 days of the submission of the report, as to whether or not formal investigation or other action under this Act or regulations or no such action in relation to the matter will be expedient, and accordingly subsequent actions shall be taken.

(4) Where a decision to initiate formal investigation is taken under sub-section (3), the investigating officer shall present to the concerned police station a copy of the said preliminary report which shall be recorded in the police station as an information relating to the offence.

(5) The investigating officer shall, in relation to the investigation of an offence, be competent to exercise the same powers as the officer-in-charge of a police station can exercise.

(6) After completion of the investigation, the investigating officer shall submit to a Magistrate of the first class or to a Metropolitan Magistrate having jurisdiction the original copy of the investigation report and also the supporting documents or copies thereof; and shall keep a copy of the report at his office and send another copy to the police station.

(7) Despite the provision of sub-section (3), the investigating officer may, if the relevant offence and the circumstances thereof so require, seize any relevant document, thing or apparatus before receipt of a decision infavour of holding formal investigation under that sub-section, if he is satisfied that any delay may result in the destruction or removal of the document, thing or apparatus, and he may also arrest any person involved in the offence, if he is satisfied that such person is likely to abscond.

79. Application of Criminal Procedure Code.- (1) Subject to the provisions of this Act, and the rules and regulations made thereunder, the Criminal Procedure Code shall apply to the investigation of an offence under this Act, trial, appeal and all incidental matters.

(2) A case initiated in a court on the basis of a report of an Inspector under this Act shall be deemed to be a case so initiated on the basis of a police report.

80. Assistance to Public Prosecutor etc. by officer of Commission.- An officer of the Commission specified in this behalf may assist the Public Prosecutor or the concerned Additional or Assistant Public Prosecutor in conducting a case under this Act in the Court of Sessions, and that officer may himself make submission before the Court

81. Confiscation of apparatus etc.- (1) Where an offence under this Act is committed, the Court may, in consideration of the nature and the circumstances of the offence, pass in favour of the Commission an order of confiscation of the telecommunication apparatus or radio apparatus or the vehicle or other thing or document, in this section referred to as the materials, in relation to or with the help of which the offence has been committed :

Provided that the materials of a Government organization or a statutory body shall not be so confiscated in connection with commission of any such offence.

(2) Where any material is confiscated under sub-section (1), the Commission shall publish in two widely circulated national dailies published from Dhaka a notice about such confiscation; and after 30 (thirty) days of publication of the notice, the Commission may dispose of the confiscated material.

(3) If any person, not being the person found guilty of the offence, claims any interest in the confiscated materials as an owner, mortgagee, lien holder or in any other capacity, he may, within 30 days after publication of the notice of confiscation, submit to the trial court an application, hereinafter referred to as the said application, for obtaining an order under sub-section (5); and the court shall fix a date for hearing on the said application.

(4) The applicant shall, at the time of or before submission of the said application, send a notice alongwith a copy of the said application to the Commission and other persons who, to the knowledge of the applicant, claim any interest in the confiscated material under sub-section (3).

(5) If, after giving to the Commission, the applicant and other claimants a reasonable opportunity of being heard, the court is satisfied that-

(a) the offence, in connection with which the materials have been confiscated, was committed beyond the

knowledge or permission or consent of the applicant or the other claimant; and

- (b) the applicant or the other claimant took such precautionary measures that he had reason to remain satisfied that the offence would not be committed by the permitted possessors or users of the materials,

then the court may, declare that the interest of the applicant or other claimant in respect of whom the court is so satisfied will have preference to those of other interested persons; and in addition, the court may direct that the materials be returned to such interested person or persons or, where the materials have been sold or otherwise disposed of, direct the payment of such money out of the sale proceeds to each of such interested persons in proportion to their interest, as the court may consider appropriate.

(6) The said owner or interested person shall not be entitled to claim any compensation in a proceeding of confiscation or disposal of the material under this section or in any other related proceedings, nor shall he raise any claim for compensation or other claim in any other court.

82. Disposal of realized administrative fine and the fine for commission of offences.- All administrative fines and the fines for commission of offences realized under this Act and regulations shall be credited to the public accounts of the Republic.

83. Right to civil suits and other remedies for unlawful disclosure of message.- (1) If a person, on reasonable grounds, believes that a message sent or received by him has been or will be unlawfully disclosed, or that it has been or will be used in violation of the provisions of section 67(1) or 68(1), he may, for prohibiting such disclosure or use or for realizing compensation from the person liable for such disclosure or use, file a civil suit in the court of Sub-Judge against the person so disclosing or using; and in such a suit the court may pass an order of injunction or award compensation or other relief as it considers appropriate.

(2) If a person has been found guilty of an offence under section 67(1) or 68(1) and if, on the basis of the same occurrence, a civil suit is filed under sub-section (1) of this section, the certified copies of the evidence admitted in the criminal proceedings may be presented for admission in the civil suit to prove the alleged unlawful disclosure or use of a message; and the decision by which that person was found guilty shall, in relation to the relief prayed for, be deemed to be sufficient proof.

(3) A civil suit under sub-section (1) shall be filed within 3 (three) years from the date on which the cause of action for the suit arose.

(4) Filing of a civil suit by a person under this section shall not affect the exercise of his other rights including his right to seek other remedies.

CHAPTER XII FLOW OF INFORMATION

84. Supply of accounts and information to Commission.- (1) The Commission may issue directions to any operator or class of operators on any of the following subjects:-

- (a) for the purpose of ensuring compliance with the provisions of this Act or proper exercise of Commission's power, adoption of any method of identifying the cost of providing telecommunication services and adoption of any internationally recognised accounting method ;

Provided that such accounting method shall be consistent with the methods prescribed in the Companies Act, 1994; and

- (b) for the purpose of implementation of the provisions of this Act, furnishing to the Commission information on such matter, and in such periodic reports or other form or manner as the Commission may specify.

(2) Where the Commission has reasons to believe that, for the purposes of implementation of this Act, it is necessary to collect an information or a document from an operator or other licensee, or from the holder of a permit or certificate or any other person, the Commission may direct him to deliver the information to the Commission and he shall be bound to comply with such direction :

Provided that such person shall not be compelled to deliver a document or contents thereof which the person is not bound to deliver to a court in connection with a civil suit; and the burden of proof that he is not so bound shall lie on him.

85. Access to information and confidentiality.- (1) Subject to sub-section (2), the Commission shall ensure that people get opportunity to inspect and to collect copies of all information that the Commission receives in course of performance of its functions under this Act :

Provided that the Commission may make exception in case of an information that it considers confidential.

(2) No Commissioner, or consultant, officer or employee or any other person employed by the Commission shall knowingly disclose or allow to be disclosed any confidential information to any other person in a manner so that the information may be used to the benefit of that other person or to the detriment of a related person; disclosure of a confidential information shall be deemed to be a misconduct.

Explanation.- This sub-section shall apply to any person who was a Commissioner, consultant, officer or employee of the Commission.

(3) If the Commission, in the course of a proceedings, receives a confidential information and it is of the opinion that the information should be published in the public interest, the Commission may, after giving reasonable opportunity of being heard to a person who purports to be

interested in the information, decide to publish or not to publish the information; and in an appropriate case the Commission may itself publish the information or direct the concerned person to publish it.

86. General inquiry and decision thereon.- The Commission may, on its own initiative or on the application of any person, inquire into and take a decision on a matter or activity which is prohibited or permitted or required to be done by this Act.

87. Public hearing and its procedure.- (1) If the Commission, on the basis of an application or other information, is of the opinion that in the public interest a public hearing on a matter relating to the exercise or proposed exercise of its power or on any other matter is necessary, it may hold public hearing.

(2) For the purpose of holding public hearing under subsection (1), the Commission may form a Public Hearing Committee consisting of three members, hereinafter referred to in this Chapter as the Committee; the Chairman or Vice-Chairman of the of the Commission shall be the president of the Committee, and the two other members shall be appointed by the Commission from amongst the other Commissioners or officers of the Commission.

(3) If the regulations do not specify the procedure to be followed in public hearing, such hearing shall be conducted in the procedure as the Committee may, subject to this Act, consider appropriate.

(4) The Committee shall take decision on any matter on the basis of majority of votes of its members.

(5) The Committee may, for the purpose of obtaining proper evidence or information, require written evidence or arguments on a matter under inquiry and it may also decide on what matter evidence or arguments may be presented.

(6) Where the Committee considers appropriate, it may allow the concerned person to take the assistance of his

engaged advocate or expert of the concerned matter or representative in presenting the evidence or information.

(7) The proceedings of a public hearing shall be open to the public, and the President of the Committee shall make arrangements for recording the evidence and other information and the matters considered by the Committee and the minutes of the hearing.

(8) Any person who has been summoned or, although not summoned, any person whose interest is likely to be affected or prejudiced, or any person who has knowledge about the matter under inquiry, may in person or through his authorized representative appear and make submission before the Committee.

(9) The Committee may, during or after completion of the inquiry-

- (a) take decision, after recording reasons therefor, on matters under inquiry or any part thereof;
- (b) exclude any matter or part thereof from hearing or stop the hearing on it, if it appears to the Committee that such matter or part thereof is trivial or vexatious or unfounded or that further hearing is not necessary or desirable;
- (c) generally give all such directions and do all such things as are necessary for ensuring an expeditious and fair hearing on the matter under its consideration and for taking decisions thereon.

(10) The substantial decisions taken under sub-section (9) (a) or summary of such decisions shall be published in at least two widely circulated national dailies, and the copy of each direction issued and decision taken during the public hearing shall, subject to payment of the fees specified in this behalf by the Commission, be supplied to parties who participated in the hearing.

88. Summoning witnesses and producing evidence in public hearing.- (1) The Committee shall have the same

powers to summon a witness or any other person presenting evidence in a public hearing as a civil court may exercise under the Code of Civil Procedure, 1908 (Act V of 1908) in relation to the summoning of a witness or production of evidence in that court; and the Committee shall follow that Code in those matters.

(2) Where the Committee is of opinion that a person is able to give evidence on any matter under inquiry under section 87, the Committee may, by issuing a notice, summon that person to appear before it and take his evidence; any person so summoned may be given reasonable expense for appearing in the public hearing.

(3) If a person summoned to appear in the public hearing-

(a) fails, without reasonable excuse, to appear at the time and place mentioned in the notice;

(b) refuses, without a reasonable excuse, to reply any question put to him by the Committee, or intentionally gives a false or distorted information or statement in reply to such question, or intentionally suppresses an information relating to the matter under inquiry; or

(c) refuses or, without reasonable excuse, fails to produce the document or information which is in his possession and has been required by the Committee,

he shall be liable for the offence of contempt of court for disregarding the decision of the Committee.

(4) Where the Committee is of the opinion that a person has committed an offence mentioned in sub-section (3), the President of the Committee shall send a report to the High Court Division accordingly.

(5) In a proceeding for trial of the offence of contempt of court initiated on the basis of a report under sub-section (4), the report purported to have been signed by the President of the Committee shall-

(a) be admissible as evidence and, unless the contrary is proved, it shall not be required to be formally proved; and

(b) be a prime facie evidence of the facts stated therein and the decision of the Committee on such facts and the truth of such decision.

(6) The contempt of court specified in sub-section (3) shall be tried by the High Court Division in the same procedure as is followed in the case of a contempt of court under the Contempt of Courts Act, 1926 (XII of 1926), and the penalty specified in that Act may be imposed on the accused person mentioned in that report.

CHAPTER XIII TRANSITIONAL PROVISIONS, TRANSFER OF RIGHTS AND LIABILITIES

89. Certain matters under Act XIII of 1885 and XVII of 1933 to be vested in the Commission.- If, before the commencement of this Act, the Government had executed a licence-agreement, or had issued a licence, certificate or permit under the Telegraph Act, 1885 (XIII of 1885) or the Wireless Telegraphy Act, 1933 (XVII of 1933), and the Commission is authorized by this Act to issue such licence, certificate or permit-

- (a) **the licence, certificate or permit so issued shall, subject to the provisions of section 90, remain valid as if it were issued by the Commission;**
- (b) **the licence-agreement so executed shall, subject to the provisions of section 90, remain valid as if it were executed by the Commission;**
- (c) **an order, direction or directive, issued or a permission or consent given in relation to such licence, certificate or permit shall remain valid as if the order, direction, directive, were issued or the permission or consent were given by the Commission under this Act;**
- (d) **the name of the Commission shall be substituted for the Government in any civil suit instituted by or**

against the Government in relation to such licence or licence-agreement or certificate or permit.

90. Existing licences and other authorizations to continue for limited period.- (1) Any person who, on the commencement of this Act, has a right to establish a telecommunication system or to operate or maintain it or to provide telecommunication service by virtue of a licence, licence-agreement, technical acceptance certificate or permit, hereinafter referred to as the said document, may continue the activity specified in the said document for a period not exceeding 12 months from the date of commencement of this Act, and he shall be deemed to be a holder of the said document under this Act.

(2) If the holder of the said document intends to continue the activities allowed by it, he shall, within three months after the commencement of this Act or before the expiry of the validity period of the said document, whichever is earlier, apply to the Commission alongwith the original of that document and relevant information for the purpose of obtaining an order under sub-section (3).

(3) If the Commission, after examining the said document and the relevant information, is satisfied that the said document was properly executed or issued in accordance with the laws, rules or regulations in force at that time, and the content or any condition thereof is not inconsistent with this Act, the Commission-

- (a) shall issue an order to the effect that the holder of the said document is a holder of a licence or, as the case may be, **the holder of a certificate** or permit that may be issued under this Act; and for this purpose a licence-agreement shall be deemed to be a licence;
- (b) may amend the said document, if it considers that any condition or content thereof is inconsistent with this Act or any new condition or content is to be inserted

therein; and the said document shall, subject to such amendment, remain valid; and in such a case the Commission shall specify the amendment in that order or any subsequent order.

(4) Until the disposal of an application submitted under sub-section (3), the activities under the said document may be continued.

(5) Where an application under this section is not submitted in relation to the said document or where the Commission is not satisfied about its legality, the Commission shall issue an order to the effect that the said document shall not remain valid since the date specified in the order.

(6) The legality or propriety of an order issued, or any amendment with regard to a condition or content of the said document made, under this section cannot be called in question in any court.

91. Radio frequency allocated before commencement of Act to continue for limited period.- (1) If a person has acquired, before the commencement of this Act, a right to use a radio frequency, he shall within 6 (six) months of such commencement, apply to the Commission for allocation of that frequency; and the Commission shall send to the Spectrum Management Committee for examination of the application and recommendation thereon.

(2) After consideration of all the applications received under sub-section (1) and the relevant information, that Committee shall make such recommendations as it considers appropriate as to whether the same radio-frequency earlier allocated or any other proper radio-frequency or a radio-frequency of a lower or higher range should be allocated to him or any other action should be taken, and the Commission shall take action accordingly.

(3) The Commission shall, within 12 (twelve) months of the commencement of this Act, dispose of all the applications

received under this section; and until his application is disposed of, the applicant shall be entitled to use the radio-frequency earlier allocated to him, unless the Commission otherwise cancels or alters the allocation.

92. Approval of pre-commencement tariff.- All tariff, call-charges and other charges that were existing immediately before the commencement of this Act shall, until changed under this Act, remain valid after such commencement as if they were fixed under this Act.

93. Bangladesh Telegraph and Telephone Board deemed to be licensee.- Notwithstanding the other provisions of this Act or any contrary provision of the Telegraph and Telephone Board Ordinance, 1979 (XII of 1979), the Bangladesh Telegraph and Telephone Board (BTTB) established under the said Ordinance shall, on the commencement of this Act, acquire the status of a licensee, and the same conditions, so far as may be, shall apply to that Board as are applicable to an operator under this Act :

Provided that within 1 (one) year from the commencement of this Act, BTTB shall apply to the Commission for a licence:

Provided further that until reorganization of the affairs of BTTB is completed, but not later than 3 (three) years, BTTB may continue to apply the tariff, call-charges and other charges for the services provided by it.

CHAPTER XIV MISCELLANEOUS

94. Public Servant.- The Chairman and other Commissioners, officers and employees, consultants and any other person authorized by the Commission in writing to exercise its power or to perform its functions shall be deemed to be a public servant within the meaning of section 21 of the Penal Code (Act XLV of 1860).

95. Indemnity.- A person, who is affected by any order or direction issued under the provisions of this Act or regulations, or by anything done or purported to have been done in good faith under those provisions or order or direction, shall not be entitled to bring a suit for compensation against the Minister or an employee of the Government or the Chairman or other Commissioner or any officer or employee or consultant of the Commission.

96. Acquisition of radio apparatus, telecommunication system etc (1) The Government may in public interest take over possession of a radio apparatus or the place where it is used, any telecommunication system, and all arrangements that are necessary for operating them, continue such possession for any period and keep the operator and his employees engaged on full-time basis or for a particular time for the purpose of operating such apparatus or system.

(2) The owner or the person having control of the radio-apparatus or telecommunication system taken over by the Government shall vacate possession, and the operator or the employees mentioned in that sub-section shall, with faithfulness and due diligence, comply, perform their duties according to the direction of the officer authorized by the Government, and shall transmit and receive the signals, calls, and message as directed by that officer.

(3) The Government shall pay proper compensation to the owner or the person having control of the radio apparatus or the telecommunication system taken over by the Government, and if both sides fail to agree on the amount of such compensation, the Government shall refer the matter to the court for disposal, and the District Judge himself or an Additional District Judge subordinate to him may dispose of the matter in the manner prescribed by rules or in the absence of rules, as he considers appropriate, and his decision on the matter shall be final.

97. Preferential right of Government in emergency.- (1) During war declared, or a situation of war created, by a foreign power against Bangladesh, or during internal rebellion or disorder, or in a situation where the defence or other security of Bangladesh or any other urgent state-affair needs to be ensured, the Government shall have preference compared to the operator or any other user in using a radio apparatus or telecommunication system.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, when the President declares emergency or the Government considers necessary in the interest of the security of the state or public order the Government may suspend or amend any certificate, order or licence issued or granted under this Act or suspend particular services provided by an operator for a specified period.

97A. Special provision for the security of state or public order.— (1) Notwithstanding anything contrary contained in this Act or in other law in the interest of the security of the state or public order the Government may from time to time for specified period, empower the Intelligence Agency, National Security Intelligence Agency, Investigating Agency or any officer of the law enforcing agency to intercept any message sent by any user of any telecom service operator or conversation between the telephone users or record the same or collect information thereof and may direct the telecom service provider to extend all out co-operations in this regard and the operators shall be bound to comply with such direction.

(2) For the purpose of this section the term Government shall mean the Ministry of Home Affairs and the provisions of this section shall be enforceable with the approval of the Minister or Minister of State in charge of the Ministry of Home Affairs.

97B. Evidentiary value.— Notwithstanding anything contrary contained in the Evidence Act, 1872 (Act No 1 of 1872) or in any other law the materials or information collected under section 97A shall be admissible in evidence in judicial proceedings.

97C. Penalty for violation of the provision of section 97A.— If a person violates any order or direction given by any Intelligence Agency, National Security Intelligence Agency or any officer engaged in maintaining law and order empowered by the Government under section 97A, he—

- (a) for the first offence shall be punishable with imprisonment for a term not exceeding three months or a fine of any amount from taka 5 lacs to 10 lacs or with both and in default of payment of fine shall be punishable with imprisonment for a further term of one month;

- (b) for the second offence he shall be punishable with imprisonment for a term not exceeding one year or a fine of any amount from taka 10 lacs to 20 lacs or with both and in default of payment of fine he shall be punishable with imprisonment for a further term of six months.
- (c) for the third or subsequent offence he shall be punishable in each case with imprisonment for a term of three years or a fine of any amount from taka 25 lacs to 50 lacs or with both and in default of payment of fine he shall be punishable with a further term of imprisonment for one year and if the court considers proper it may advise the Commission to cancel the licence in the name of such person.

5. Repeal and savings.— (1) The Bangladesh Telecommunications (Amendment) Ordinance, 2005 (Ordinance No. 1 of 2005) is hereby repealed.

(2) Notwithstanding the repeal of the Ordinance under sub-section (1) all acts done or steps taken under the said provisions shall be deemed to have been done or taken under the Bangladesh Telecommunication Act, 2001 amended by this Act.

[By the Bangladesh Telecommunication (Amendment) Act, 2006 (Act No. 7 of 2006) published in the Bangladesh Gazette dated 16 February, 2006 sub-section (2) of section 97 has been substituted and new sections 97A, 97B and 97C have been inserted. Provisions for repeal and savings are contained in section 5 of the amendment Act. As provided under section 1 of Act No. 7 of 2006 section 97A as mentioned in section 1, 2, 3, and section 5 shall be deemed to have taken effect from 11 December, 2006 and section 97B and 97C as mentioned in section 4 shall come into force immediately i.e. from 16 February 2006.]*

98. Power to make rules.— For carrying out the purposes of this Act, the Government may, by notification in the official Gazette, make rules consistent with the provisions of this Act.

99. Power to make regulations.— (1) For carrying out the purposes of this Act, the Commission may, by notification in the Gazette, make regulations consistent with this Act and the rules made by the Government.

(2) Within 7 (seven) days of publication of the regulations in the official Gazette, the Commission shall send to the Ministry, a copy of such regulations and the Ministry may, upon examination of the consistency of the regulations with this Act

and the rules, direct necessary amendments to the regulation, and the Commission shall take necessary steps accordingly.

100. Abolition etc. of Project.- Notwithstanding anything contained in any other law for the time being in force or any contract or other document, the technical assistance project named Establishment of Bangladesh Telecommunication Regulatory Commission project or any other project undertaken by the Government before the commencement of this Act for the purpose of establishing the Commission, hereinafter referred to as the Project.-

- (a) shall stand abolished on the date specified by the Government; and
- (b) upon such abolition all assets, rights, powers and privileges of the Project shall vest in the Commission; and
- (c) all officers and employees of the Project shall be deemed to be the officers and employees of the Commission, and they shall remain in the service of the Commission and their salaries, allowances and other conditions of service shall be determined by the Commission :

Provided that any such officer or employee may, within 3 (three) months of the abolition of the Project, express his intention not to remain in the service of the Commission and thereupon he shall cease to be in the service of the Commission.

101. Government's power to remove difficulty.- If there is any difficulty arising from any vagueness in any provision of this Act relating to the power and functions of the Commission, the Government may, by notification in the official Gazette and in keeping with the other provision of this Act, clarify or explain that vague provision and give directives on the course of action of the Commission.

102. Publication of Translated English text of the Act.- As soon as may be after the commencement of this Act, the Government shall, by notification in the official Gazette, publish a translation of this Act in English and such translation shall be known as the Authentic English Text of this Act; however in case of conflict between this Act and the said text, this Act shall prevail.

Kazi Raquib Uddin Ahmed
Secretary.