



No. 5 of 2011

COMMUNICATION (AMENDMENT) ACT, 2011

AN ACT TO AMEND THE COMMUNICATIONS ACT, 2009

[Date of Assent - 1st April, 2011]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act which amends the Communications Act, 2009¹ may be cited as the Communications (Amendment) Act, 2011.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2. Amendment of section 17 of the principal Act.

Section 17 of the principal Act is amended in subsection (2) —

- (a) by the deletion of the word and symbols "section 16(2)(a)" and the substitution of the word and symbols "section 16(2)(c)";
- (b) in paragraph (b), by the insertion immediately after the word "assets" of the words "other than radio spectrum".

3. Amendment of section 30 of the principal Act.

Section 30 of the principal Act is amended —

- (a) by the deletion of subsection (1) and the substitution of the following —
 - "(1) The Minister shall be responsible for deciding the method of allocating frequencies in the premium spectrum band of the spectrum plan, including without limitation determining, or proposing to determine, by way of public consultation or otherwise —

¹(No. 10 of 2009)

- (a) pre-qualification and eligibility criteria for applicants seeking allocation of one or more frequencies in the premium spectrum band of the spectrum plan;
 - (b) procedures and time limits for making applications and for the award of premium spectrum licences; and
 - (c) criteria for evaluating applications and for the award of premium spectrum licences;
- (b) by the insertion immediately after subsection (2) of the following new subsection ---
- “(3) No premium spectrum licence shall be issued by URCA before the Minister has decided the method of allocating frequencies in the premium spectrum band of the spectrum plan.”.

4. Amendment of section 75 of the principal Act.

Section 75 of the principal Act is amended in paragraph (b) of subsection (2) by the deletion of the word and symbols “subsection (1)(a)” and the substitution of the word and symbols “paragraph (a)”.

5. Amendment of section 77 of the principal Act.

Section 77 of the principal Act is amended in subsection (2) by the deletion of the number “110” and the substitution of the number “109”.

6. Amendment of section 78 of the principal Act.

Section 78 of the principal Act is amended in subsection (3) by the insertion immediately after the word and symbols “subsections 75(1)(a),” of the word and symbols “subsection 75(1)(b)(i),”.

7. Insertion of section 112A into the principal Act.

The principal Act is amended by the insertion immediately after section 112 of the following new section ---

“112A. Minister may publish amendments to first sector policy.

- (1) The Minister may immediately upon commencement of this section or as soon as practicable thereafter, publish amendments to the first sector policy published under section 6(1) which shall take effect immediately upon publication in the Gazette.
- (2) The Minister may consult with URCA prior to publishing the amended sector policy.”.

8. Repeal and replacement of section 114 of the principal Act.

The principal Act is amended by the repeal and replacement of section 114 as follows ---

“114. Transitional provisions as to The Bahamas Telecommunications Company.

- (1) With respect to and as part of the electronic communications policy objectives and the objectives of spectrum management under section 32 ---
 - (a) the Minister shall not before the third anniversary of the relevant date ---
 - (i) determine the rules relating to the award of any second cellular licence; or
 - (ii) directly or indirectly carry out any external process including without limitation by way of public consultation to exercise his responsibilities described in section 30(1) with respect to granting the second cellular licence;
 - (b) a third cellular licence shall not be issued before the fifth anniversary of the relevant date;
 - (c) no person shall provide cellular services using frequencies in the standard spectrum band of the spectrum plan before the fifth anniversary of the relevant date;
 - (d) paragraph (c) shall not apply to any licences issued by URCA prior to the coming into force of this Act (an “existing URCA licence”) subject to the following ---
 - (i) where an existing URCA licence is varied to allow the use of additional spectrum then paragraph (c) shall apply to the use of that additional spectrum; and
 - (ii) where any term or condition of an existing URCA licence relating to the use of radio spectrum is varied then paragraph (c) shall thereafter apply to the whole of that existing URCA licence;
 - (e) paragraphs (a) and (b) shall not apply in respect of the allocation of spectrum to a licensee entitled to provide cellular services.
- (2) For the purposes of this section ---
 - (a) “cellular licence” means a licence which permits the licensee to provide cellular services;

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- (b) "cellular service" means any radiocommunications service the functionality of which enables continuous communication across boundaries between the different areas of radio coverage, with no perceptible interruption of such communication and which includes a handover process between elements of its network;
 - (c) "radiocommunications" means the transmission, emission or reception of messages, sound, visual images or signals using electromagnetic waves which are propagated in space and having frequencies of lower than 3,000 GHz; and
 - (d) "relevant date" means the date of completion of the sale and purchase of a majority of shares in BTC under the agreement for such sale and purchase.
- (3) The Minister shall publish the relevant date in the Gazette within one month after its occurrence.
 - (4) In the event of any conflict or inconsistency between this section or any part of this section and any other section of the principal Act or the sector policy ----
 - (a) the provisions of this section shall prevail; and
 - (b) the other section of the principal Act or the sector policy, as applicable, shall not apply to the extent of such conflict or inconsistency."

9. Amendment of section 116 of the principal Act.

Section 116 of the principal Act is amended in paragraph (c) of subsection (3) by the deletion in sub-paragraph (ii) of the word "shal" and the substitution of the word "shall".