

## Telecommunications Business Act, B.E. 2544 (2001)

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**BHUMIBOL ADULYADEJ, REX;**

**Given on the 9th Day of November B.E.2544;**

**Being the 56th Year of the Present Reign.**

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on the telecommunications business;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 34, Section 37, Section 39, Section 48 and Section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows.

**Section 1** This Act is called the “Telecommunications Business Act, B.E. 2544 (2001)”.

**Section 2** This Act shall come into force as from the day following the date of its publication in the Government Gazette.<sup>1</sup>

**Section 3** The followings shall be repealed:

- (1) Telegraph and Telephone Act, B.E. 2477 (1934);
- (2) Telegraph and Telephone Act (No.2), B.E. 2517 (1974)

**Section 4** In this Act:

“telecommunications service” means the telecommunications service under the law on the organisations to assign radio-frequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services;

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<sup>1</sup> Published in Government Gazette, Vol. 118, Part 106a, dated 16th November 2001

“telecommunications business” means the operation in the nature of supplying telecommunications services to other persons;

“telecommunications number” means digits, letters, or any other symbols or a combination thereof which indicate destination in telecommunications network for telecommunications purpose;

“telecommunications network” means the set of telecommunications equipment which is directly connected or connected through switching equipment or any other equipment for telecommunications between defined termination points by means of any wire, radio-frequency spectrum, optical, or any other electromagnetic systems or a combination thereof;

“interconnection” means the connection of telecommunications networks under technical and commercial agreements in order to enable the users of a telecommunications operator to communicate with other users or to access the service of other telecommunications operators;

“Commission” means the National Telecommunications Commission under the law on the organisations to assign radio-frequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services;

“Office” means the Office of the National Telecommunications Commission; “Secretary-General” means the Secretary-General of the National Telecommunications Commission;

“competent official” means a person appointed by the National Telecommunications Commission to perform duties under this Act as of its publication in the Government Gazette.

**Section 5** The Prime Minister shall have charge and control of the execution of this Act.

**Section 6** The Commission shall have the power to appoint competent official and to issue notification prescribing other affairs for the execution of this Act.

Such notification shall come into force upon its publication in the Government Gazette.

## **CHAPTER I**

### **Telecommunications Business Licensing**

**Section 7** Any person who intends to operate a telecommunications business in accordance with the nature and categories prescribed in notification of the Commission under the law on the organisations to assign radio-frequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services shall obtain a licence from the Commission.

There shall be three types of licence as follows:

- (1) Type One Licence: being a licence granted to the telecommunications business operator who operates without his or her own network for telecommunications services which are deemed appropriate to be fully liberalized. The Commission shall grant a licence once notified by a person who intends to operate such business;
- (2) Type Two Licence: being a licence granted to the telecommunications business operator who operates with or without his or her own network for telecommunications services intended for a limited group of people, or services with no significant impacts on free and fair competition or on public interest and consumers. The Commission shall grant a licence once a person who intends to operate such business has completely fulfilled the standard criteria prescribed in advance in notification of the Commission;
- (3) Type Three Licence: being a licence granted to the telecommunications business operator who operates with his or her own network for telecommunications services intended for general public, or services which may cause a significant impact on free and fair competition or on public interest, or a service which requires special consumer protection. A person who intends to operate such business can commence the operation only after he or she is approved and granted a licence by the Commission.

The rights of Type One, Type Two or Type Three licensee to operate telecommunications business in which nature, categories and scope of service shall be in accordance with notification prescribed by the Commission, which shall be in conformity with the nature of telecommunications business for each type of licence under paragraph two. In issuing such notification, the Commission shall also have regard to the development of diverse telecommunications services and fairness among the operators.

In applying for a licence, the applicant shall specify type of the licence he or she requires as well as the nature or categories of telecommunications service he or she intends to operate. Should the operator intend to provide additional service of different nature or categories after the licence is granted, he or she shall inform the Commission prior to the commencement of the operation. In such case, the Commission may prescribe certain conditions the operator has to fulfill.

**Section 8** The Commission shall prescribe in notification and disclose to general public the licensing criteria so that the person who intends to operate the business will be informed in advance of the applicant qualification, the application procedure, and the licence-granting criteria. Those licensing criteria shall be differently prescribed in accordance with types of licence under Section 7, the nature and categories of telecommunications service as well as being in accordance with the spectrum licensing guideline and telecommunications service licensing guideline as stated in the Master Plan for Telecommunications Services and Frequency Plan under the law on the organisations to assign radio-frequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services.

In notification under paragraph one, the Commission shall prescribe details in relation to the applicant qualification, the application procedure, the document or information necessary for the licensing procedure, the licensing consideration procedure, the consideration period of the Commission, scope of licence, maximum and minimum term of licence as well as other conditions necessary for business operation.

The criteria in setting up the qualifications of the applicant shall be as follows:

- (1) the applicant for Type Two and Type Three licences shall not be a foreigner under the law on foreign business. In case of juristic person, the share holding proportion of Thai national shall not be less than seventy-five percent of its total capital, and not less than three fourth of the total amount of the director as well as its authorized person shall be of Thai nationality . In this regard, the Commission may prescribe the prohibition that the applicant for certain nature or categories of telecommunications business who is a juristic person, shall not commit any other act which has the nature of business takeover by a person who is not of Thai nationality;
- (2) the applicant shall not be a bankrupt;
- (3) the applicant shall never have a telecommunications business licence revoked;
- (4) the directors, managers or persons in authority of the applicant shall not be a person

sentenced by a final judgement for an offence committed under this Act, or under the law on telegraph and telephone, the law on radiocommunication or the law on consumer protection during two years period prior to the date of submitting the application;

(5) the applicant for Type Three licence shall have an investment plan and efficient telecommunications service plan;

(6) the applicant shall possess the qualifications and shall not be under any prohibition prescribed by the Commission for each type of licence under Section 7.

**Section 9** Telecommunications business for Type Three licence shall be of a term stated in the licence which shall be within the maximum and minimum term of licence prescribed in notification of the Commission.

For the renewal of Type Three licence, the licensee shall submit an application prior to the licence's expiration date, after which the applicant shall be deemed as a licensee until he or she is notified of the order declining the licence renewal, and in this regard, the Commission shall consider and notify applicant of the order within thirty days as from the date of receiving the application.

The procedure for licence renewal application and licence renewal approval shall be in accordance with the criteria, procedures and conditions prescribed in notification of the Commission, which shall also be in conformity with the criteria under Section 8.

The Commission shall prescribe the term of licence and its renewal, having due regard to timeframe according to the investment plan, scope of service, service development guideline of the licensee, protection of consumer in receiving uninterrupted service and business performance evaluation.

Telecommunications business for Type One or Type Two licence can continue to operate throughout its service period. In the case where the licensee intends to terminate the service, he or she shall inform the Commission in advance at least one month.

In this regard, the Commission may prescribe a condition to be complied by the licensee prior to the termination of service.

**Section 10** In applying for telecommunications business licence, if that telecommunications business requires the use of radio-frequency spectrum, the applicant shall also require an

authorization to use the radio-frequency spectrum under the law on the organisations to assign radio-frequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services.

In the case where the authorization to use the radio-frequency spectrum of the licensee is revoked, it shall be deemed that the telecommunications business licence for the part that uses such radio-frequency spectrum is also revoked.

**Section 11** The licensee shall pay the spectrum fee, telecommunications numbering fee and business licence fee according to the rates, criteria and procedures prescribed by the Commission. However, such fees shall not pose undue burden to the operators or the users.

In setting the rates and criteria for spectrum fee and numbering fee, the Commission shall have due regard to public interest, optimization, scarcity and allocation procedure of such resources.

In setting the rate and criteria for telecommunications business fee, the Commission shall have due regard to the type of licence and the cost of regulating such telecommunications business under this Act.

**Section 12** In issuing a telecommunications business licence which requires the use of telecommunications numbers according to the telecommunications numbering plan, the Commission shall also allocate the telecommunications numbers used for the supply of service or service area of such telecommunications business.

In supplying service to general public, the licensee shall provide only the telecommunications numbers allocated by the Commission.

In the case where it appears to the Commission that the licensee does not provide allocated numbers to users for use in connection with the supply of service without reasonable ground, or provides the telecommunications numbers which are not allocated to him or her, the Commission shall have the power to order the licensee to perform as authorized or suspend the use of such telecommunications numbers. In this regard, the licensee shall have no right to claim for any damages.

When technically feasible, in order to protect the user interest, the Commission shall prescribe the guideline and criteria for users to have the right to retain their existing telecommunications number when they intend to switch to new service provider, change location or category of service. In this regard, the Commission shall also hold a hearing from the licensees concerned.

Subject to the measure prescribed by the Commission under Section 50 paragraph one, the licensee shall have the duty to provide information on telecommunications numbers of the users to the persons requesting it for the purpose of making user directory. In such case, the licensee can charge only for the cost of providing that information

**Section 13** For the benefit of allocating telecommunications numbers to the licensees for the supply of services, the preparation of the telecommunications numbering plan of the Commission under the law on the organisations to assign radiofrequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services shall consist of the following criteria:

- (1) there shall be sufficient telecommunications numbers for the supply of services;
- (2) there shall be efficient and fair use of telecommunications numbers.
- (3) the telecommunications numbering plan shall facilitate simple and clear identification to the nature and categories of services and equipment used in the telecommunications business;
- (4) there shall be the revision to the telecommunications numbering plan only in the case of necessity;

In the case where the Commission sets up or revises, in whole or in part, the telecommunications numbering plan, the licensee shall have the duty to comply with the criteria prescribed by the Commission.

**Section 14** In the case where the licensee intends to expand the business by adding the telecommunications numbers for the supply of service or by expanding the service area, he or she shall submit the application to the Commission.

In the case where the Commission deems that the addition of the numbers and the expansion of the service area will be of public interest and does not pose the restrictions to fair competition on the telecommunications business, the Commission may authorize the licensee to proceed in accordance with the criteria and conditions prescribed by the Commission. In this regard, the Commission shall consider the application and inform the licensee within

thirty days as from the date of receiving the application. The Commission shall charge the telecommunications business fee for the additional authorization in accordance with the criteria prescribed by the Commission.

**Section 15** In operating the telecommunications business, the licensee shall comply with the criteria prescribed under the law on the organisations to assign radiofrequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services and the conditions prescribed by the Commission.

In prescribing the licensing conditions, the Commission shall clearly state certain rights, duties and responsibilities of the licensee as well as a telecommunications operation plan to include at least the step and timeframe of service commencement, details on the nature and categories of the service, tariff, directory information service and other matters necessary for the supply of service for public interest.

In the case where there is a vital ground to protect public interest or there is a change in laws or circumstances, the Commission shall have the power to revise the licensing conditions as and when necessary.

**Section 16** In the case where a licensee is authorized to operate the business with the allocated telecommunications numbers or specified service area, if it appears to the Commission that the licensee does not supply a service in accordance with a telecommunications operation plan prescribed as licensing conditions under Section 15 without reasonable ground, and the Commission deems that such circumstance may affect public interest, the Commission shall have the power to withdraw the certain amount of allocated telecommunications numbers or to down the size of authorized service area. In this regard, the licensee shall have no right to claim for any damages.

**Section 17** The Commission shall have the duty to administer the universal service obligation for basic telecommunications service and shall have the power to prescribe that the licensee shall provide the following telecommunications services:

- (1) telecommunications services in rural areas, or low rate of return areas, or any area where there is no or insufficient service providers or where there is insufficient supply of service to meet the user demand;
- (2) telecommunications services for educational institutions, religious institutions, medical



institutions and other social assistance agencies;

(3) certain nature or types of public telecommunications services for low-income person as prescribed by the Commission;

(4) services facilitating the use of public telecommunications service for disabled, children, senior citizen and under-privileged.

The criteria, procedures and conditions prescribed for the supply of telecommunications service of the licensee under paragraph one shall be in accordance with notification prescribed by the Commission.

The Commission shall issue notification under paragraph two in advance so that a person who intends to apply for a licence will be informed of the scope of providing telecommunications services under paragraph one prior to the submission of the application.

The obligation to provide the telecommunications services under this Section shall not pose undue burden on the investment of the licensee, and shall not cause discrimination among the licensees of the same nature and type of telecommunications service.

**Section 18** In the case where the licensee is unable to provide the telecommunications services as prescribed by the Commission under Section 17, or in the case where it deems appropriate for the licensee to take part in the universal service obligation for basic telecommunications services, the Commission shall have the power to prescribe that such licensee shall allocate certain portion of his or her income from the supply of telecommunications service to the Telecommunications Development for Public Benefit Fund under the law on organizations to assign radio frequency spectrum and to regulate the broadcasting and telecommunications services for the provision of telecommunications services under Section 17.

**Section 19** The Commission shall have the power to prescribe any measure to support and promote the opportunity of new entrants to provide service in a certain area competing with other licensees in an efficient, equal and fair manner.

**Section 20** The licensee shall not suspend or terminate the service, in whole or in part, unless permitted by the Commission under the criteria and procedures prescribed by the Commission.

The licensee shall not decline the supply of service to a certain person without reasonable ground.

**Section 21** In operating the telecommunications business, the Commission shall, in addition to the law on business competition, prescribe specific measure according to the nature of telecommunications business, to prevent the licensee from committing any act that leads to monopoly, reduction or restriction of competition in supplying the telecommunications service in the following matters:

- (1) cross-subsidization;
- (2) cross-holding in the same category of service;
- (3) abuse of dominant power;
- (4) anti-competitive behavior;
- (5) protection of small-sized operators.

**Section 22** The licensee shall, without delay, inform the Secretary General of the following events:

- (1) the licensee suffers serious damage which may cause problems in the supply of telecommunications service;
- (2) the licensee intends to operate telecommunications business other than that authorized;
- (3) the licensee intends to make a contract that authorizes other persons, in whole or in part, to manage his or her business;
- (4) the licensee commits an act, or is committed an act, having the nature of business takeover or business taken over under the law on securities and security exchanges;
- (5) any case that affects, or may affect, the business operation or the supply of service of the licensee as prescribed in notification of the Commission.

In case of (2) and (3), the licensee shall inform the Secretary General before committing an act. In case of (1) (4) and (5), the licensee shall inform the Secretary-

General immediately when the events occur.

The Secretary-General shall, without delay, submit the matter to the Commission after having been informed under paragraph two. In this regard, the Commission shall have the power to

prescribe certain conditions for the licensee to perform for the prevention of damages to public interest.

Section 23 The Commission may prescribe that the licensee shall arrange for the data recording system to record the use of telecommunications service that enable the user to make a verification.

Section 24 In the case where a telecommunications business of certain nature or categories has involved specific technologies so that the provisions under this Chapter cannot apply, the Commission shall have the power to prescribe conditions for the operation of telecommunications business of such nature and categories.

The prescription of conditions under paragraph one shall be in accordance with notification prescribed by the Commission.

## **CHAPTER II**

### **The Access and Interconnection of Telecommunications network**

**Section 25** The licensee who owns telecommunications network shall have the duty to allow other licensees to interconnect with his or her telecommunications network in accordance with the criteria and procedures prescribed by the Commission.

The licensee who owns telecommunications network shall allow other licensees to access his or her network in accordance with the criteria and procedures prescribed by the Commission.

Refusal of the access to telecommunications network can be made only in the following cases:

- (1) the existing network is insufficient for the access by other licensees;
- (2) the access to telecommunications network results in technical problem that may cause interference or obstruction to telecommunications business;
- (3) other cases as prescribed in notification of the Commission.

The licensee who owns telecommunications network and refuses the access to his or her own network under paragraph three shall have the duty to prove his or her ground for such refusal.

Charges for network access or interconnection shall be reasonable and fair for the licensee who owns the network and for the person who request for the network access or interconnection. There shall also be non-discrimination among those who request for the network access or interconnection.

In prescribing the criteria and procedures under paragraph one and paragraph two, the Commission shall hold a hearing from the licensees concerned.

**Section 26** In the case where there is a refusal of the access to telecommunications network, or there is unsettled disputes in contract negotiation for the access or interconnection of telecommunications network, parties shall have the right to request for the decision of the Commission in accordance with the criteria and procedures prescribed in notification of the Commission. The decision of the Commission shall be final.

During the consideration of the Commission under paragraph one, the Commission, in case of necessity, may order the temporary network access or interconnection in accordance with the criteria and procedures prescribed by the Commission.

**Section 27** The contract concerning the access or interconnection of telecommunications network shall contain the provisions with the following characteristics:

- (1) it shall not cause the loss of user's benefit;
- (2) it shall not cause a discrimination, preference or obstacle to other licensees;
- (3) the technical specifications at the access point or point of interconnection shall be clearly state, technically feasible and shall not cause undue burden to the person who requests for the access or interconnection of the network;
- (4) the duties and responsibilities of the person requesting and the person providing network access or interconnection shall be clearly stated;
- (5) charges for the access or interconnection of telecommunications network shall be set in accordance with the criteria under Section 25 paragraph five;
- (6) other characteristics as prescribed in notification of the Commission. The licensee who is the owner of the telecommunications network shall submit a copy of the contract to the Commission within ten days as from the date of signature. If the Commission deems that the provisions in the said contract do not comply with the characteristics in paragraph one, the Commission shall have the power to order for the amendment within the specified period. If

the licensee who is the owner of the telecommunications network refuses to amend the contract as ordered by the Commission, the provisions of Section 65 shall apply, mutatis mutandis. If the person who requests the access or interconnection of the telecommunications network refuses to amend the contract, it shall be deemed that the contract is void.

**Section 28** The licensee shall provide the correct information necessary for the access or interconnection of the telecommunications network to other licensees who request the access or interconnection of the network, and shall not commit any act that obstruct normal access or interconnection of the network of other licensees.

Whenever there is a change to the telecommunications network which affects the access or interconnection, the licensee who owns network shall give the notice of changes in advance within a reasonable period, but not less than six months.

**Section 29** The licensee who is the owner of the telecommunications network shall publicly disclose the contract for the access or interconnection of the telecommunications network in accordance with the procedures prescribed by the Commission.

**Section 30** In the case where there is a change in economic or social situation or there is any matter which causes the charges for the access or interconnection of the network as stated in the contract no longer appropriate, leading to advantages or disadvantages among licensees which pose undue burden to either party, the parties to such contract may submit a request for the revision of charges to the Commission. In giving an approval, the Commission shall also have due regard to the impact on users.

**Section 31** For the benefit of national security, or for the prevention of disaster that may cause public harm, or for public interest, the Commission shall, if requested by the Government, take certain actions to provide the access or interconnection of the telecommunications network between licensees and relevant State agencies. In such case, the licensees shall have the duty to comply with the order of the Commission.

### **CHAPTER III**

#### **Standard of Telecommunications Network and Equipment**

**Section 32** The Commission shall have the power to prescribe in notification that certain categories of telecommunications network, telecommunications equipment or device used in

telecommunications service which affect the supply of service shall conform to the specified technical standards.

The Commission may prescribe in notification that certain categories of device used in the telecommunications network, telecommunications equipment or device used in telecommunications service shall be tested and certified the conformity to standard before putting into service.

**Section 33** The licensee shall maintain, repair and modify telecommunications network, telecommunications equipment and device used in telecommunications service which the licensee uses for the supply of service in order to enable the efficient use and conform to the technical standard as prescribed in notification issued under Section 32.

**Section 34** Type Three licensee shall have engineers with qualifications and being of numbers as prescribed by the Commission to supervise the operation of telecommunications service, the installation, the inspection as well as the maintenance of telecommunications network, telecommunications equipment and device used in telecommunications service to ensure the conformity to technical standard.

**Section 35** The Office shall have the power to conduct the test and certification of the device used in telecommunications network, telecommunications equipment and device used in telecommunications service, according to notification of the Commission issued under Section 32 paragraph two, or according to the request from any person who intends to have the test and certification.

The test and certification under paragraph one shall be in accordance with the regulations prescribed in notification of the Commission.

**Section 36** Any person who intends to conduct the test and certification of the device used in telecommunications network, telecommunications equipment and device used in telecommunications services shall establish a conformity assessment body who is a juristic person and operates under a licence obtained from the Commission.

The applicant qualifications, the application procedure, the issuance of licence, the term of licence, the licence renewal, and the fees for licence issuance and licence renewal shall be in

accordance with the criteria, procedures and conditions prescribed in notification of the Commission.

The conformity assessment body shall have test and certification staff with qualifications and being of numbers as prescribed by the Commission.

In authorizing the establishment of the conformity assessment body, the Commission may prescribe any condition as it deems appropriate.

Charges for conducting the test and certification by the licensee under paragraph one shall be at the rates prescribed by the Commission.

**Section 37** The Commission shall have the power to revoke the licence to establish the conformity assessment body in the following cases:

- (1) the licensee authorized to establish the conformity assessment body lacks of the qualifications as prescribed in notification issued under Section 36 paragraph two;
- (2) the conformity assessment body conducts the test, reports the test or conduct the certification in bad faith;
- (3) the test, report of the test or certification is delayed without reasonable ground, causing serious damage to the applicant;
- (4) the conformity assessment body lacks of test and certification staffs with qualifications or being of numbers as prescribed by the Commission.

The revocation of licence under paragraph one shall not affect the certification of standard conformity which was conducted prior to the revocation of licence, except for the certification of standard conformity which was conducted in bad faith, or was not conducted in conformity with the standard prescribed by the Commission. In such case, the Commission may order the revocation of that certification.

In the case where any person suffers from damages from the revocation of certification under paragraph two, if that person did not participate in the certification conducted in bad faith, the conformity assessment body whose licence is revoked shall have the duty to compensate for the damages suffered by that person.

**Section 38** In the case where the telecommunications network, telecommunications equipment or any other device of the licensee is not functioning, is not functioning as usual,

is causing interference to telecommunications service or is not in conformity with the standard prescribed in notification issued under Section 32, the competent official shall have the power to order the licensee for the correction, the modification or the suspension of that telecommunications network, equipment or device.

The provisions of paragraph one shall also apply to telecommunications equipment of the users, *mutatis mutandis*.

## **CHAPTER IV**

### **Rights of Licensee**

**Section 39** In supplying the telecommunications service, if the licensee has to set up or erect poles, lay lines or place ducts or install any other associated equipment, and requires to exercise the rights under this Section, the licensee shall submit a diagram indicating details on direction and boundary profile of setting up or erecting poles, laying lines, placing ducts, and installing associated equipment to the Commission for the approval prior to the implementation.

When the Commission has given the approval under paragraph one, the licensee shall have the following rights:

- (1) to lay lines or to install any associated equipment for the supply of telecommunications service on or along the poles, ducts or facilities used for similar purpose of other licensees, or State agencies or public utility providers. In such case, those other licensees or State agencies shall not refuse such implementation. Nonetheless, they may charge a necessary compensation;
- (2) to set up or erect poles, lay lines or place ducts, or to install any associated equipment for the supply of telecommunications service on the land which is domaine public of State. In such case, the licensee shall inform the State official in charge of that land in advance and shall comply with the criteria and conditions set forth by that State official;
- (3) to set up or erect poles, lay lines or place ducts, or to install any associated equipment for the supply of telecommunications service on another person's land. In such case, the licensee shall make an agreement with the land owner or land tenant according to the guidelines prescribed in notification of the Commission.



In the case where the licensee cannot proceed according to paragraph two because of the lack of permission or the unreasonably excessive level of charge or compensation, the licensee may request the Commission for the consideration. If the Commission deems that the implementation of the licensee is necessary and inevitable, and will not cause excessive damages to the State agency, the land owner or land tenant, or the property owner or property possessor, the Commission shall have the power to notify the use of land or property for that purpose to the State official in charge of the land or property, the land owner or land tenant, or the property owner or property possessor not less than thirty days in advance together with the date, time and nature of implementation.

The person who has been notified under paragraph three may lodge a petition expressing that there is unreasonable ground for using land or property for such implementation or such implementation may cause serious damages to the utilization of land or property to the Commission for its decision within thirty days as from the date of receiving informing note. The decision of the Commission shall be final.

When the period notified by the Commission under paragraph three has lapsed and the licensee has paid the compensation for the use of land or property under Section 40, the licensee shall have the right to use land or property for the implementation under paragraph two and shall comply with the criteria prescribed in notification of the Commission which shall not cause annoyance or affect natural surroundings and shall not reduce, in excess of what is reasonable, the benefit from the utilization of that land.

**Section 40** The licensee shall pay the compensation for the use of land under Section 39 at the amount prescribed by the Commission.

In the case where the authorized official in charge of the land or property, the land owner or land tenant, or the property owner or property possessor does not accept the compensation under paragraph one, the licensee shall deposit that compensation with the Commission in accordance with the criteria prescribed by the Commission.

The licensee, the land owner or the official in charge of the land who is not satisfied with the compensation under paragraph one shall have the right to enter an action in the Administrative Court.

**Section 41** When the authorized State official in charge of the land or property, or the land owner or land tenant has been notified in advance under the criteria prescribed by the Commission, the licensee shall have the right to lay lines above or across the land which is domaine public of State or owned by another person without consent if such implementation does not affect the utilization of that land.

The authorized State official in charge of the land or property, the land owner or land tenant may inform the licensee to lay lines in the area where the utilization of land will not be affected. If any damage is caused from such implementation, they shall have the right to request for the compensation from the licensee. In this regard, the provisions of Section 39 and Section 40 shall apply, mutatis mutandis.

The provisions of this Section shall also apply to the implementation under Section 39 paragraph two (1), mutatis mutandis.

**Section 42** The licensee may enter the land on which the telecommunications network, poles, lines, ducts or other equipment are located for the purpose of inspection, maintenance, repair or prevention from possible harm or damage. In this regard, the licensee shall inform the land tenant, in writing, not less than thirty days in advance except for the case of emergency that requires immediate correction for which the licensee may promptly enter the land.

If there is any damage arising from the implementation under paragraph one, the injured person shall have the right to claim for the compensation from the licensee.

**Section 43** In the case where the telecommunications equipment of users causes interference or may cause damage to telecommunications network or device used for telecommunications business of the licensee, the licensee shall inform the user, in writing, to change or modify that equipment within a reasonable period.

In the case where the user does not take action as informed in writing under paragraph one and the use of such equipment still causes interference or may cause damage to the telecommunications network or device used for telecommunications business of the licensee, the licensee may suspend the service for that user until the action required has been taken.

In the case of necessity and compelling, the licensee may immediately suspend the supply of telecommunications service and inform the user later.

**Section 44** Any person is prohibited to cause damage, destruction, depreciation in value, or render useless to the telecommunications network, poles, lines, ducts, transmitters, receivers, or any other equipment used for the supply of telecommunications service, or telecommunications service station.

For the purpose of this Section, the Commission may prescribe in notification the measure for the protection of various objects under paragraph one, as it deems necessary.

## **CHAPTER V**

### **Rights of User**

**Section 45** Any person who suffers from the supply of telecommunications service of the licensee shall have the right to lodge a petition, in writing, to the Commission, through the Office.

The petition under paragraph one shall specify definitive facts and shall be submitted together with other related evidences, if any.

During the petition consideration, the Commission shall, if requested by the petitioner, have the power to direct the licensee to take temporary action in order to remedy the damage caused to that petitioner.

**Section 46** The Commission shall complete the petition consideration within thirty days as from the date of receiving the petition. In this regard, the parties concerned shall have opportunities to give a responded statement of facts and produce evidence. In the case where the Commission deems that the licensee has committed an act that violated the laws, licensing conditions, contract for the supply of service or did not comply with standard of service, the Commission shall have the power to order the licensee for the correction thereof within a specified period.

**Section 47** In the case where the user is of the opinion that the licensee has collected fee or tariff higher than the maximum rate prescribed by the Commission under Section 55 or higher than that collected from other users of similar nature or categories of service, or the user is of the opinion that the licensee has incorrectly collected fee or tariff, the user shall have the right to request information of his or her service usage from the licensee.

The licensee shall provide user the information under paragraph one within a reasonable period which shall not exceed thirty days as from the date of request. The licensee shall, if requested by the user, provide a document certifying the correctness of information. In this regard, the licensee may charge the user a fee which shall not be in excess of what is reasonable and shall be in accordance with the criteria prescribed by the Commission.

**Section 48** In the case where there is a reasonable doubt that the licensee has collected fee or service charge in any manner under Section 47 paragraph one, the user shall have the right to lodge a petition to the Commission, and the provisions of Section 45 and Section 46 shall apply, *mutatis mutandis*.

In the petition consideration under paragraph one, the licensee shall have the duty to verify the fact to confirm the correctness of the collection of fee or tariff.

**Section 49** The user shall have the right to use his or her own telecommunications equipment in obtaining the service from the licensee.

Collection of fee for using his or her own telecommunications equipment in obtaining the service from the licensee shall be in accordance with the rate and criteria prescribed by the Commission.

In supplying the telecommunications service, the licensee shall not specify the service conditions that force the user to use only the equipment supplied or specified by the licensee, except for certain telecommunications service which has a technical requirement to use only equipment specified by the licensee. The licensee may specify such conditions only after obtaining the approval from the Commission. Nonetheless, such specification of the type of telecommunications equipment shall not bar the rights of users who can acquire by themselves, the specified telecommunications equipment in obtaining the service. In this regard, the licensee shall not refuse the user the supply of or the access to his or her own service.

**Section 50** The Commission shall prescribe the measure for consumer protection on matters pertaining to personal data, right of privacy and freedom to communicate by means of telecommunications. The licensee shall have the duty to comply with the measure prescribed by the Commission under paragraph one.

When it is found that there is a person who violates the rights of users under paragraph one, the licensee or the Commission shall take action to terminate such violation and inform the user without delay.

## CHAPTER VI

### Contract for the Supply of Telecommunications Service

**Section 51** Any contract between the licensee and the user and any condition in relation to the supply of telecommunications service specified by the licensee including the amendment thereof shall be approved by the Commission before taking effect.

The contract and condition that are valid for approval by the Commission shall at least:

- (1) contain provision which clearly and fairly defines duties and responsibilities of the licensee and the user;
- (2) contain provision in relation to the standard of service supplied by the licensee;
- (3) contain provision in relation to the category and scope of the service expense which shall be complete and fair, and also contain provision guaranteeing that there shall be no charges apart from that specified;
- (4) contain no provision which limits the user's utilization without reasonable ground;
- (5) contain no provision in a manner that causes a discrimination, preference or obstacle to other licensees, or unfairness to any party.

When the licensee obtained the approval from the Commission for any contract or condition, the licensee shall have the right to apply such contract or condition to the user.

For the purpose of this Section, the Commission shall have the power to issue notification prescribing the standard criteria of contract and condition regarding the supply of telecommunications service, and may also prescribing the contract or condition in particular matter that does not require the approval from the Commission.

In the case where there is a law providing criteria in making the contract for the supply of telecommunications service for consumer protection, the licensee shall also have the duty to comply with such criteria.

**Section 52** The licensee shall disseminate to the public the contract format and the imposition of condition for the supply of service according to the procedure prescribed by the

Commission, and shall display it at a conspicuous place in his or her office for public verification.

**Section 53** In the case where the licensee has advertised to guarantee standard of quality in the supply of telecommunications service, he or she shall have the duty to act in conformity with that advertisement.

If the licensee fails to supply the telecommunications service as advertised, the Commission shall have the power to order the licensee for the correction thereof.

**Section 54** Any contract or agreement for the business operation and the supply of telecommunications service prescribed in notification of the Commission, to be made by the licensee with foreign governments, international organizations and natural person or juristic person residing in a foreign country, including the amendment thereto or cancellation thereof, shall be approved by the Commission before taking effect, except for the case of regular procurement.

Within thirty days as from the date of making contract or agreement, the licensee shall submit the copies of all contracts or agreements made with foreign governments, international organizations and natural person or juristic person residing in a foreign country to the Commission according to the criteria prescribed by the Commission, except the contract or agreement in relation to procurement, or a contract or agreement that the Commission prescribed in notification for the exemption of the submission.

In the case where the Commission deems that a contract or agreement is made without the approval under paragraph one, or its execution is different from that approved by the Commission, the Commission shall have the power to order the licensee for the correction thereof in accordance with the criteria and within the period prescribed by the Commission. If the licensee fails to take action within the specified period, it shall be deemed as a cause for license revocation.

## CHAPTER VII

### Fee and Tariff in Telecommunications Service

**Section 55** The Commission shall prescribe in notification the categories and maximum rate of fee and tariff that the licensee can charge the user according to the nature and categories of telecommunications service.

**Section 56** The setting of the maximum rate of fee and tariff under Section 55 shall:

- (1) be expressed by clear calculating method;
- (2) be fair to both the licensee and the user;
- (3) not cause a discrimination, preference or obstacle to the user or any person.

**Section 57** Each licensee shall not charge fee or tariff other than or in excess of the maximum rate prescribed by the Commission under Section 55, and shall not set the rate of fee or tariff in such a way that causes an anti-competitive behavior which restricts a fair competition. In this regard, the licensee shall charge the user the same rate for similar nature or categories of telecommunications service.

The Commission may prescribe that the licensee reduce or exempt fee or tariff charged for the service that is used to provide information and knowledge for the benefit of promoting the knowledge of people in accordance with the criteria prescribed by the Commission.

**Section 58** The licensee shall not collect deposit or any other advanced payments.

Violation of or failure to comply with the provisions of this Section by the licensee shall be deemed as a cause of serious damage to the public interest.

The provision of this Section shall apply to the contract for the supply of telecommunications service made under this Act.

**Section 59** The licensee shall provide for the dissemination to the public, and shall inform all users the rate of fee and tariff in accordance with the procedure prescribed by the Commission, and shall display it at a conspicuous place in his or her office for public verification.

As it deems appropriate, the Commission may prescribe that the licensee shall provide for a notification system on fee and tariff to inform the user, upon request, in advance prior to each usage. Such service shall be free of charge.

**Section 60** In the case where there is a change in economic or social situation, or there is any matter which causes the maximum rate for fee or tariff prescribed by the Commission under Section 55 no longer appropriate, leading to advantages and disadvantages among licensees or posing undue burden to the user, the Commission may revise the rate of fee or tariff to be appropriate.

## **CHAPTER VIII**

### **Regulatory Enforcement**

**Section 61** To perform duty under this Act, the competent official shall have the power and duties as follows:

- (1) to enter a building or operating site of the licensee between sunrise and sunset, or during the business hours of such place for the purpose of inspection of business operation, book of account, document or related information including any action that may violate this Act or fail to comply with the provision of the licence;
- (2) to address a writing to summon any person to give statements or to deliver any document or object for consideration;
- (3) to inspect and gather facts, and report to the Commission in the case where the licensee has committed an offence or caused damages as a result of failure to comply with this Act or with the prescribed licensing conditions.

Relevant person shall appropriately facilitate the performance of duties of the competent official under paragraph one.

After having entered and inspected under paragraph one, if the inspection has not been completed, the competent official may continue the inspection even after sunset or after business hours.

The performance of duties of the competent official under this Section shall be in accordance with the criteria prescribed in notification of the Commission. Such notification shall also indicate the position of competent official who will exercise power and duties under this



Section, and indicate the reason and necessity for his or her right to exercise the power and duties under this Section in each case.

In the performance of duties under this Act, the Commissioners and competent officials shall be officials under the Criminal Code.

**Section 62** In the performance of duties, the competent official shall present identification card to the person concerned.

The identification card shall be in accordance with the form prescribed by the Commission.

**Section 63** In case of emergency or necessity to maintain public order, national security or economic stability or to protect the public interest, the Commission may order the competent official to take possession of and use the devices and equipment of the licensee for the operation, or authorize a State agency to temporarily take charge of such operation, or order the licensee or his or her employees to take certain action until the end of such emergency or necessity.

In the performance of duties under paragraph one, if the competent official has caused damages to the licensee, that licensee shall, on justifiable ground, have the right to claim for compensation for such damages from the Office.

## **CHAPTER IX**

### **Administrative Enforcement**

**Section 64** In the case where it appears to the Secretary-General that the licensee violates or fails to comply with Section 9 paragraph five, Section 11, Section 12 paragraph two or paragraph three, Section 13 paragraph two, Section 15, Section 17, Section 18, Section 20, Section 22, Section 23, Section 24, Section 25, Section 26 paragraph two, Section 27, Section 28, Section 29, Section 33, Section 34, Section 38, Section 45 paragraph three, Section 46, Section 49, Section 50, Section 51, Section 52, Section 53, Section 54, Section 56, Section 57, Section 58 or Section 59, the Secretary-General shall have the power to order the licensee to terminate such violation, or to correct, or to act in appropriate manner within a specified period.

**Section 65** In the case where the licensee is not satisfied with the order of the Secretary-General under Section 64, he or she shall have the right to appeal to the Commission within fifteen days as from the date of receiving such order. The decision of the Commission shall be final.

**Section 66** In the case where the licensee does not comply with the order of the Secretary-General under Section 64 and the period for an appeal under Section 65 has lapsed, or the Commission decides to uphold such order of the Secretary-General, and the Secretary-General has addressed a warning writing to the licensee but there is no action taken in compliance with the order, the Secretary-General shall stipulate administrative fine under the law on administrative procedure which shall not be less than twenty thousand Baht per day.

In the case where the licensee neglects to act in appropriate manner or violates the licence suspension order, or in the case of serious damage to the public interest, the Commission shall have the power to suspend or revoke the licence.

Any offence that is subjected to the licence suspension or licence revocation shall be in accordance with notification prescribed by the Commission.

## **CHAPTER X**

### **Penalties**

**Section 67** Any person who operates telecommunications business or uses the radio-frequency spectrum for telecommunications business without obtaining permission shall be liable to the following penalties:

- (1) if an offence is a business operation that requires Type One licence, that person shall be liable to a fine not exceeding one hundred thousand Baht;
- (2) if an offence is a business operation that requires Type Two licence, that person shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one million Baht or to both;
- (3) if an offence is a business operation that requires Type Three licence, that person shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million Baht or to both.

In the case where the Court gives a judgement declaring that the offender is guilty under this Act, the Court shall order to forfeit all equipment, devices and any object used in committing the offence.

**Section 68** Any licensee who expands the supply of service without permission under Section 14 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six hundred thousand Baht or to both.

**Section 69** Any licensee who violates Section 21 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six hundred thousand Baht or to both, and in the case of a repeated violation, the penalty shall be twice.

**Section 70** Any licensee who fails to comply with the order of the Commission under Section 31 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six hundred thousand Baht or to both.

**Section 71** Any person who conducts the test or certification of telecommunications equipment without permission under Section 36 shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding fifty thousand Baht or to both.

Any licensee who is authorized to establish a conformity assessment body fails to comply with the conditions prescribed by the Commission under Section 36 paragraph four, that licensee shall be liable to a fine not exceeding ten thousand Baht.

**Section 72** Any person who violates Section 44 paragraph one but does not cause malfunction to telecommunications system shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred thousand Baht or to both.

**Section 73** Any person who causes damage, destruction, depreciation in value or renders useless to the sign, buoy or any other object setting up to protect telecommunications system according to the measures prescribed in notification of the Commission under Section 44 paragraph two shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding four hundred thousand Baht or to both.

**Section 74** Any person who commits an act of illegal interception, utilization or disclosure of message, information or any other data by means of telecommunications shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding four hundred thousand Baht or to both.

**Section 75** Any person who fails to facilitate the performance of duties of the competent official under Section 61 paragraph one (1), or fails to give statements or fails to deliver any document or object as summoned in writing by the competent official under Section 61 paragraph one (2), shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding ten thousand Baht or to both.

**Section 76** Any person who obstructs the performance of duties of the competent official under Section 63 paragraph one shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred thousand Baht or to both.

**Section 77** The Commission shall have the power to settle all offences under this Act for which the penalty is the imprisonment for a term not exceeding six months. In this regard, the Commission may appoint a sub-committee to settle the offence on its behalf, and may prescribe the settlement criteria or any condition for the performance of duties of the sub-committee.

In the case where the commission of the offence is appeared to an inquiry official and the offender consents to be settled, the inquiry official shall, without delay, deliver the matter to the Commission for the settlement of such offence.

When the offender has paid the fine under the settlement, the case shall be deemed as settled under the Criminal Procedure Code.

**Section 78** In the case where the offender who is subjected to the punishment under this Act is a juristic person, managing director, manager or any person responsible for the operation of that juristic person shall also be liable to the penalty as provided for such offence unless such action is proved to be committed without his or her acknowledgement or consent is proved.

Transitory Provisions

**Section 79** The Commission shall issue the telecommunications business licences under this Act to the Communications Authority of Thailand and the Telephone Organization of Thailand according to the nature and categories of business operation, scope of service as well as the right to supply the telecommunications services which are under the responsibilities of the Communications Authority of Thailand and the Telephone Organization of Thailand on the date this Act comes into force. In this regard, the issuance of such licences shall be performed no later than one hundred and eighty days as from the date the Commission has prescribed in notification the licensing criteria under Section 8.

In issuing the licences under paragraph one, the Commission shall prescribe conditions in relation to the business operations of the Communications Authority of Thailand and the Telephone Organization of Thailand as appropriate, having due regard to the benefits of people who are currently using the services and to the development toward quality and efficient service or any other matter in order to achieve the objectives of this Act.

The Communications Authority of Thailand and the Telephone Organization of Thailand shall furnish information in relation to their telecommunications businesses to the Commission within thirty days as from the date this Act comes into force.

During the absence of licences under paragraph one, the Communications Authority of Thailand and the Telephone Organization of Thailand shall be able to continue their telecommunications businesses.

**Section 80** In operating the telecommunications business of the Communications Authority of Thailand or the Telephone Organization of Thailand under the licence issued under Section 79, if those agencies have granted authorization, concession or contract to any person as a telecommunications business operator prior to the date this Act comes into force, that person shall have the right to continue the telecommunications business under the existing scope and right associated with such authorization, concession or contract until their termination.

The telecommunications business of the person who has been granted authorization, concession or contract under paragraph one shall be under the criteria prescribed under this Act, and in accordance with the conditions prescribed by the Commission on the basis of free and fair competition. In this regard, it shall be deemed that the person who operates such

business shall have the same rights, duties and liabilities as the licensee under this Act. For any commission of the offence which is deemed as a cause of licence revocation by the Commission, if such offence is committed by the person who has been granted authorization, concession or contract, the Commission shall have the power to order the revocation of that authorization, concession or contract.

Any agreement to amend the conditions of authorization, concession or contract which does not reduce or restrict the right to operate the telecommunications business in the remaining period of validity of that authorization, concession or contract shall not be deemed as an act that has effect on the validity of such authorization, concession or contract.

In the case where the person who has been granted authorization, concession or contract make an agreement with the Communications Authority of Thailand or the Telephone Organization of Thailand to convert such authorization, concession or contract into a licence under this Act, the Commission shall issue a licence to that person specifying the right to operate telecommunications business under the existing scope of service which is earlier agreed by the parties, and within the remaining period of validity of that authorization, concession or contract insofar as it is not contrary to or inconsistent with the provisions of this Act. Section 79 shall apply for the issuance of such licence, mutatis mutandis.

The provisions of this Section shall apply, mutatis mutandis, to the person who has been granted authorization, concession or contract by other State agencies as existing on the date this Act comes into force.

**Section 81** When the Commission has prescribed in notification the licensing criteria under Section 8, if the person who is legally supplying the telecommunications service for the period of not less than one hundred and twenty days prior to the date the Commission has prescribed the licensing criteria and who is not under the provisions of Section 79 and Section 80 intends to continue the supply of service, he or she shall submit an application for a licence under this Act within ninety days as from the date the Commission prescribed such notification. During the consideration period, that person shall be able to continue the supply of telecommunications service. The Commission shall complete the consideration of licence application within ninety days as from the date of receiving the application.

The provisions of paragraph one shall apply, mutatis mutandis, to the case where the Commission has prescribed in notification the additional nature and categories of telecommunications service after the notification under paragraph one.

Countersigned by:

Police Lieutenant Colonel Thaksin Shinawatra

Prime Minister

Thailand Law Forum