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COMMUNICATIONS AND MULTIMEDIA ACT 1998

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SCHEDULE

LIST OF AMENDMENTS

Long Title & Preamble

An Act to provide for and to regulate the converging communications and multimedia industries, and for incidental matters.

[1 April 1999, P.U. (B) 128/1999—except ss. 157, 159-162, 164-171, 176, 178, 197 & 198; 1 April 2000, P.U. (B) 106/2000—ss. 157, 159-162, 164-171, 176 & 178]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same as follows:

PART I PRELIMINARY

1. Short title.

This Act may be cited as the Communications and Multimedia Act 1998.

2. Commencement.

This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for different provisions of this Act.

3. Objects.

(1) The objects of this Act are—

- (a) to promote national policy objectives for the communications and multimedia industry;
- (b) to establish a licensing and regulatory framework in support of national policy objectives for the communications and multimedia industry;
- (c) to establish the powers and functions for the Malaysian Communications and Multimedia Commission; and
- (d) to establish the powers and procedures for the administration of this Act.

(2) The national policy objectives for the communications and multimedia industry are—

- (a) to establish Malaysia as a major global centre and hub for communications and multimedia information and content services;
- (b) to promote a civil society where information-based services will provide the basis of continuing enhancements to quality of work and life;
- (c) to grow and nurture local information resources and cultural representation that facilitate the national identity and global diversity;
- (d) to regulate for the long-term benefit of the end user;
- (e) to promote a high level of consumer confidence in service delivery from the industry;

(f) to ensure an equitable provision of affordable services over ubiquitous national infrastructure;

(g) to create a robust applications environment for end users;

(h) to facilitate the efficient allocation of resources such as skilled labour, capital, knowledge and national assets;

(i) to promote the development of capabilities and skills within Malaysia's convergence industries; and

(j) to ensure information security and network reliability and integrity.

(3) Nothing in this Act shall be construed as permitting the censorship of the Internet.

4. Territorial and extra-territorial application.

(1) This Act and its subsidiary legislation apply both within and outside Malaysia.

(2) Notwithstanding subsection (1), this Act and its subsidiary legislation shall apply to any person beyond the geographical limits of Malaysia and her territorial waters if such person-

(a) is a licensee under this Act; or

(b) provides relevant facilities or services under this Act in a place within Malaysia.

(3) For the purposes of this section, "a place" means a point of any nature or description whether on land, in the atmosphere, in outer space, underground, underwater, at sea or anywhere else.

(4) For the purposes of this section, a place that is-

(a) in or below the stratosphere; and

(b) above the geographical limits of Malaysia and her territorial waters,

is taken to be a place within the geographical limits of Malaysia and her territorial waters.

5. Power of the Minister to exclude certain persons, geographical areas, etc.

Notwithstanding section 4, the Minister may, by order published in the *Gazette*, exclude or exempt any person or place, premises or geographical area of any description from the provisions of this Act.

6. Interpretation.

In this Act, unless the context otherwise requires—

"access" means access to a network facility or network service listed under Chapter 3 of Part VI ;

"access code" means a voluntary industry code prepared under section 153;

"access device" means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other network service, applications service or

content applications service, equipment, or facility identifier, or other means of access that can be used, alone or in conjunction with another access device, for the purposes of any communications;

“access forum” means a forum designated under section 152;

“access list” means the list of facilities or services established under Chapter 3 of Part VI ;

“agreement” means an agreement, whether formal or informal, oral or written, express or implied;

“apparatus assignment” means an assignment issued under section 164;

“Appeal Tribunal” means the Appeal Tribunal established under Part II ;

“applications service” means a service provided by means of, but not solely by means of, one or more network services;

“applications service provider” means a person who provides an applications service;

“appointed date” means the date on which this Act comes into operation;

“arrangement” means an arrangement, whether formal or informal, oral or written, express or implied;

“assignment” means the assignment by the Commission of rights to use the spectrum, numbers or electronic addresses and may include conditions to which the exercise of those rights shall be subject;

“authorized interception” means interception by the licensee of any network facilities, network service or applications service permitted under section 265;

“authorized officer” means any public officer or officer appointed by the Commission and authorized in writing by the Minister for the purposes of this Act;

“certifying agency” means a certifying agency registered under section 186;

“class assignment” means an assignment issued under section 169;

“class licence” means a licence for any or all persons to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject;

“communications” means any communication, whether between persons and persons, things and things, or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms;

“communications market” means an economic market for a network service, or an applications service, or for goods or services used in conjunction with a network service or an applications service, or for access to facilities used in conjunction with either a network service or an applications service;

“Commission” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998 [Act 589];

“conduit” means—

(a) any conduit which, whether or not it is itself an electric line, is maintained by an electricity company for the purpose of enclosing, surrounding or supporting such line, including, where such conduit is connected to any box, chamber or other structure (including a building) maintained by an electricity supply company for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure;

(b) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another;

(c) a public sewer;

(d) a culvert or water course; or

(e) any other underground facility for carrying, enclosing, surrounding or supporting any network facilities;

“consumer code” means a voluntary industry code prepared under Chapter 1 of Part VIII ;

“consumer forum” means a forum designated under section 189;

“content” means any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically;

“content applications service” means an applications service which provides content;

“content code” means a voluntary industry code prepared under Chapter 2 of Part IX;

“content forum” means a forum designated under section 212;

“court” means a court of law of competent jurisdiction;

“customer equipment” means any equipment, whether hardware or software, or device, used on the customer side of the network boundary;

“data processing device” means any article or device from which information is capable of being reproduced, with or without the aid of any other article or device;

“declaration” means a declaration made by the Minister under section 13;

“determination” means a determination made by the Minister under section 10, or by the Commission under section 55;

“direction” means a direction issued by the Minister under section 7, or by the Commission under section 51;

“director” has the meaning given to it in the Companies Act 1965 [*Act 125*];

“disaster plan” means a disaster plan which may be developed in accordance with section 267;

“frequency band” means a continuous frequency range of spectrum;

“incidental content” means a content which is incidental to the supply of an applications service because of—

(a) it being related solely to the interface between an applications service and an end user; or

(b) the reasons set out in a Ministerial determination made under section 10;

“individual licence” means a licence for a specified person to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject;

“industry forum” means a forum designated under section 94;

“instrument” includes a direction, determination or declaration;

“intercept” means the aural or other acquisition of the contents of any communications through the use of any electronic, mechanical, or other equipment, device or apparatus;

“interception capability” means the capability of any network facilities or network service or applications service to intercept communications under section 265;

“licensee” means a person who either holds an individual licence, or undertakes activities which are subject to a class licence, granted under this Act;

“limited content applications service” means a content applications service the appeal of which is limited because of—

- (a) it being targeted to a special interest group;
- (b) it being available in a restricted geographical area;
- (c) it being available for a short time;
- (d) it being based on content of limited appeal; or
- (e) the reasons set out in a Ministerial determination made under section 10;

“mail” includes the postal service;

“mandatory standard” means a mandatory standard established under Chapter 10 of Part V;

“Minister” means the Minister for the time being charged with the responsibility for communications and multimedia;

“multimedia information and content” means digitized content;

“network boundary” means the network boundary provided under section 12 8;

“network facilities” means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer equipment;

“network facilities provider” means a person who owns or provides any network facilities;

“network service provider” means a person who provides network services;

“nominated facilities provider” means a person, other than the owner of the network facilities, declared by the Minister to be a nominated facilities provider;

“number” means a number, letter or symbol;

“numbering and electronic addressing plan” means the numbering and electronic addressing plan developed under section 180;

“owner” means the legal or beneficial owner;

“post” means a post, pole, tower, standard, stay, strut or other above-ground facility for carrying, suspending or supporting any network facilities;

“public utility” means a body that provides to the public—

- (a) reticulated products or services, such as electricity, gas, water, sewerage or drainage;
- (b) telecommunications services;
- (c) transport services; or

(d) a product or service of a kind that is similar to a product or service covered by paragraph (a), (b) or (c);

“register” means any one of the registers established or maintained by the Commission for the purposes of this Act;

“register of opinions” means the register of opinions maintained under section 97 or 210, or any other relevant section;

“required applications service” means an applications service which is in a list determined by the Minister under section 192;

“spectrum” means the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz;

“spectrum assignment” means the assignment issued under section 159;

“spectrum plan” means the spectrum plan developed under section 172;

“technical code” means a voluntary industry code prepared under Chapter 3 of Part VII ;

“technical standards forum” means a forum designated under section 184;

“transmit” or “transmission” means to cause any emission of unguided electromagnetic energy in any part of the spectrum;

“voluntary industry code” means a voluntary industry code prepared under Chapter 9 of Part V.

PART II MINISTERIAL POWERS AND PROCEDURES

Chapter 1 - Ministerial Direction

7. Direction by the Minister.

(1) The Minister may, from time to time, issue directions to the Commission on the exercise of the Commission’s powers and the performance of the Commission’s functions and duties under this Act, whether of a general character or otherwise.

(2) Any Ministerial direction shall be consistent with the objects and provisions of this Act which are relevant to the particular matter or activity.

(3) The Commission shall exercise its powers conferred under this Act in a manner which is consistent with a Ministerial direction.

(4) Every Ministerial direction shall be registered by the Commission as soon as practicable.

(5) A direction shall come into operation on the date of registration or such later date as the Minister may specify in the written instrument.

(6) A direction shall expire on such date as the Minister may specify in the written instrument or, if no date is specified, the direction shall be in operation until the direction is revoked.

8. Variation of a direction.

- (1) The Minister may at any time modify, vary or revoke a direction.
- (2) The procedure set out in section 7 shall apply *mutatis mutandis* in respect of any modification, variation or revocation of a direction.

9. Register of directions.

The Commission shall maintain a register of all directions issued by the Minister in accordance with Chapter 6 of Part V.

Chapter 2 - Ministerial Determination

10. Determination by the Minister.

- (1) The Minister may, from time to time, determine any matter specified in this Act as being subject to Ministerial determination, without consultation with any licensees or persons.
- (2) Any determination shall be consistent with the objects and provisions of this Act which are relevant to the particular matter or activity.
- (3) The Commission shall exercise its powers conferred under this Act in a manner which is consistent with the determination.
- (4) The Minister shall provide a copy of the determination under this Chapter to the Commission as soon as practicable.
- (5) Every determination shall be registered by the Commission as soon as practicable.
- (6) A determination shall come into operation on the date of registration or such later date as the Minister may specify in the written instrument.
- (7) A determination shall expire on such date as the Minister may specify in the written instrument or, if no date is specified, the determination shall be in operation until the determination is revoked.

11. Variation of a determination.

- (1) The Minister may at any time modify, vary or revoke a determination.
- (2) The procedure set out in section 10 shall apply *mutatis mutandis* in respect of any modification, variation or revocation of a determination.

12. Register of determinations.

The Commission shall maintain a register of all determinations made by the Minister in accordance with Chapter 6 of Part V.

Chapter 3 - Ministerial Declaration

13. Declaration by the Minister.

(1) The Minister may, from time to time, make a written declaration that an individual licence, or a class of individual licences, or a class licence —

(a) is subject to such conditions; or

(b) enjoys such benefits, as the Minister deems fit.

(2) Any declaration on the conditions of licence shall relate to the matters set out in the Schedule.

(3) The Minister may also make a written declaration to exempt a licensee from complying with any conditions of a licence.

(4) Before making a declaration under subsection (2), the Minister shall give the affected licensees written notice of his intention to do so together with a draft copy of the declaration, and the licensees may make submissions to the Minister by submitting them to the Commission within the time period specified by the Minister but the time period shall not be less than thirty days.

(5) After expiry of the notice specified in subsection (4), the Minister shall, on the recommendation of the Commission, decide on the next course of action, taking into consideration any submission made by the affected licensees.

(6) The Minister shall give the affected licensees a written notice of the declaration made under subsection (2) as soon as practicable.

(7) Any declaration shall be consistent with the objects and provisions of this Act which are relevant to the particular matter or activity.

(8) The Commission shall exercise its powers conferred under this Act in a manner which is consistent with the declaration.

(9) The Minister shall provide a copy of the declaration under this Chapter to the Commission as soon as practicable.

(10) Every declaration shall be registered by the Commission as soon as practicable.

(11) A declaration other than a declaration under subsection (2) shall come into operation on the date of registration or such later date as the Minister may specify in the instrument.

(12) A declaration shall expire on such date as the Minister may specify in the written notice or, if no date is specified, the declaration shall be in operation until the declaration is revoked.

14. Modification, variation or revocation of a declaration.

(1) The Minister may at any time modify, vary or revoke a declaration regarding a licence.

(2) The procedure set out in section 13 shall apply *mutatis mutandis* in respect of any modification, variation or revocation of a declaration.

15. Register of declarations.

The Commission shall maintain a register of all declarations made by the Minister in accordance with Chapter 6 of Part V.

Chapter 4 - Ministerial Regulations

16. Minister's power to make regulations.

(1) The Minister may, on the recommendation of the Commission or otherwise, make regulations, to be published in the *Gazette*, for all or any of the following purposes:

(a) the procedures for the Commission and the Appeal Tribunal in the exercise of their powers and functions under this Act;

(b) the form of, and requirements for, written authorisations, assignments and licences granted or issued under this Act;

(c) the procedures for the assignment of rights to the spectrum or numbers under Part VII, including mechanisms for rate-based assignment;

(d) any fees, charges or rates to be imposed;

(e) the procedures for the implementation of a system of universal service provision under Part VIII, including but not limited to the quality of service standards;

(f) the procedures for the use of network facilities, network services, applications services and content applications services in emergency or distress situations;

(g) the compounding of offences;

(h) any redress, including compensation or penalties in respect of a breach of or offence against any subsidiary legislation;

(i) any matter for which this Act makes express provision; and

(j) such other matters as are necessary for giving full effect to the provisions of this Act and for their due administration.

(2) The regulations made under subsection (1), or any other subsidiary legislation made under this Act, may prescribe any act in contravention of the regulations, or other subsidiary legislation, to be an offence and may prescribe penalties of a fine not exceeding three hundred thousand ringgit or a term of imprisonment not exceeding three years or both for such offence and, in the case of a continuing offence, may prescribe, in addition to such penalties, a fine of one thousand ringgit for every day or part of a day during which the offence continues after conviction.

PART III
APPEAL TRIBUNAL

17. Establishment of the Appeal Tribunal.

(1) The Minister may establish an Appeal Tribunal, which shall convene on an ad hoc basis, as the Minister considers necessary or expedient for good cause and in the interest of justice, or to assist in the performance of the Commission's functions, or in the public interest.

(2) The Minister shall appoint, by order to be published in the *Gazette*—

(a) a Chairman of the Appeal Tribunal; and

(b) at least two other members, or such greater number of members, of the Appeal Tribunal,

to review a particular matter under a licence, this Act or its subsidiary legislation.

(3) The Minister shall appoint a person who is currently a Judge of the High Court to be the Chairman of the Appeal Tribunal.

(4) The appointment of any member of the Appeal Tribunal may be renewed upon the expiry of his term as a member.

(5) No member of the Appeal Tribunal shall be appointed for a term exceeding three years.

(6) Notwithstanding subsection (5), a member of the Appeal Tribunal may be reappointed for a further term.

18. Matters which the Appeal Tribunal may review.

(1) The Appeal Tribunal may review any matter on appeal, from a decision or direction of the Commission but not from a determination by the Commission.

(2) Any decision by the Appeal Tribunal is final and binding on the parties to the appeal and is not subject to further appeal.

19. Qualifications of members.

A person is qualified to be a member of the Appeal Tribunal if he has knowledge of or experience in—

(a) the communications and multimedia industry;

(b) engineering;

(c) law;

(d) economics or commerce; or

(e) public administration.

20. Resignation and termination of an appointment.

(1) The Minister may at any time terminate the appointment of the Chairman or any other member of the Appeal Tribunal if—

- (a) he resigns his office;
- (b) he becomes of unsound mind or otherwise incapable of performing his duties or managing his affairs;
- (c) he becomes bankrupt or insolvent;
- (d) he is prohibited from being a director of a company under any written law relating to companies;
- (e) he has been convicted of an offence, under any law, by a court in Malaysia;
- (f) he is guilty of serious misconduct in relation to his duties;
- (g) he fails to comply with his obligations under section 26; or
- (h) his performance has been unsatisfactory for a significant period of time.

(2) The Chairman or any member may, at any time, resign his office by giving a written notice to the Minister.

21. Vacation of office and acting appointments.

(1) The office of the Chairman or any member of the Appeal Tribunal shall be vacated if—

- (a) he dies;
- (b) he resigns or otherwise vacates his office before the expiry of the term for which he is appointed; or
- (c) his appointment is terminated.

(2) The Minister shall appoint a person in accordance with section 17 to replace the Chairman or any other member during the vacancy in the office of the Chairman or any other member.

(3) The Minister shall appoint a person in accordance with section 17 to act as the Chairman, or any other member —

- (a) during any period when the Chairman or any other member is absent from any duty or from Malaysia; or
- (b) if the Chairman or any other member is, for any reason, unable to perform the duties of the office.

(4) The exercise of the powers, or the performance of the functions, of the Appeal Tribunal is not affected only because of there being a vacancy in the membership of the Tribunal.

22. Quorum for the Appeal Tribunal.

The quorum for the Appeal Tribunal shall be formed by—

(a) a Judge; and

(b) at least two other members, or any greater even number of members not exceeding four, none of whom are Judges,

for the purposes of the functions of the Appeal Tribunal under this Act.

23. Decision.

The decision of the Appeal Tribunal, on any matter, shall be decided on a majority of votes of the members.

23A. Enforcement of decision of Appeal Tribunal.

Any decision given by the Appeal Tribunal may be enforced in the same manner as a judgement or an order of the High Court.

24. Appeal Tribunal procedures.

The Minister may make regulations regarding the operating procedures of the Appeal Tribunal, including but not limited to—

(a) the funding of the Appeal Tribunal;

(b) members' remuneration;

(c) the appointment of members to form the quorum of the Appeal Tribunal;

(d) the appointment of an acting member;

(e) the conduct of the hearings;

(f) any other matter incidental to the hearings; and

(g) the employment of staff, if any.

24A. Powers of Appeal Tribunal.

The Appeal Tribunal shall have the power—

(a) to summon parties to the proceedings or any other person to attend before it to give evidence in respect of an appeal;

(b) to procure and receive evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses as the Appeal Tribunal thinks necessary to procure, receive or examine;

(c) where a person is so summoned, to require the production of any book, paper, document, record or other thing in his possession or under his control and which the Appeal Tribunal may consider necessary for the purposes of the appeal;

- (d) to administer any oath, affirmation or statutory declaration, as the case may require;
- (e) where a person is so summoned, to allow the payment for any reasonable expenses incurred in connection with his attendance;
- (f) of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath or affirmation and punishment for contempt;
- (g) to admit evidence or reject evidence adduced, whether oral or documentary, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (h) to adjourn the hearing of an appeal from time to time, including the power to adjourn to consider its decision; and
- (i) to generally direct and do all such things as may be necessary or expedient for the expeditious decision of the appeal.

25. Suspension of member.

The Minister may, at his discretion, suspend any member of the Appeal Tribunal on the ground of misbehaviour or incapacity.

26. Disclosure of interest.

(1) A member of the Appeal Tribunal shall disclose, as soon as practicable, to the Chairman any interest, whether substantial or not, which may conflict with the member's duties as a member of the Tribunal, in a particular matter.

(2) If the Chairman is of the opinion that the member's interest is in conflict with the member's duties, the Chairman shall inform all the parties, including the appellants and the respondents, to the matter of the conflict.

(3) If none of the parties to the matter objects to the conflict, the member may continue to execute his duties as a member of the Tribunal in relation to that matter.

(4) If a party to the matter objects to the conflict, the member shall not continue to execute his duties as a member of the Tribunal in relation to that matter.

(5) The failure by a member to disclose his interest in the matter shall subject him to the relevant disciplinary measures under section 20 or 25.

26A. Secretary of Appeal Tribunal and other officers.

(1) The Minister shall designate a public officer as a Secretary of the Appeal Tribunal to assist the Appeal Tribunal in carrying out its function under this Act.

(2) The Minister may designate such number of other public officers as the Minister thinks fit to assist the Secretary in carrying out his function under subsection (1).

(3) For the purpose of this Act, the Secretary and the officers designated under subsection (2) shall be deemed to be officers of the Appeal Tribunal.

26B. Obligation of secrecy.

(1) Except for this Part or for the purposes of any civil or criminal proceedings under any written law, or where authorized by the Minister—

(a) the Chairman, members of the Appeal Tribunal or any officer of the Appeal Tribunal shall not, during the time he serves as such Chairman, member or officer, disclose any information obtained by him in the course of his duties; and

(b) no other person who has, by any means, access to any information or document relating to the affairs of the Appeal Tribunal shall disclose such information or document.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three months or to both.

26C. Public servants and public officers.

The Chairman and all members and officers of the Appeal Tribunal, while discharging their duties as the Chairman and such members and officers, shall be deemed to be public servants within the meaning of the Penal Code [Act 574], and to be public officers for the purposes of the Criminal Procedure Code [Act 593].

26D. Application of Public Authorities Protection Act 1948.

The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against the Appeal Tribunal, Chairman or any member or officer of the Appeal Tribunal in respect of any act, neglect or default done or committed by him in such capacity.

26E. Act or omission done in good faith.

No action or suit shall be instituted or maintained in any court against—

(a) the Appeal Tribunal;

(b) the Chairman or any member of the Appeal Tribunal;

(c) the Secretary or any other officer of the Appeal Tribunal; or

(d) a person authorized to act for and on behalf of the Appeal Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act and any subsidiary legislation made under this Act.

PART IV LICENCES

Chapter 1 - Individual Licence

27. Application for an individual licence.

(1) Subject to subsection (2), a person may apply, in writing, to the Commission for an individual licence in respect of any matter requiring an individual licence under this Act.

(2) For the purposes of subsection (1), the Minister may set out in the regulations made under section 16 the persons or classes of persons who are not eligible to apply for an individual licence.

(3) An application under this section may be withdrawn at any time before it is granted or refused.

28. Further information.

(1) The Commission may at any time after the application for an individual licence is made, request the applicant to give the Commission, within the period specified in the request, further information on the application.

(2) If any additional information or document required under subsection (1) is not provided by the applicant within the time specified in the request or any extension of time granted by the Commission, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

29. Recommendation by the Commission.

The Commission shall, within sixty days of receiving an application for an individual licence under this Part or such other period as may be specified by the Minister, provide a written recommendation to the Minister specifying—

(a) whether the individual licence should be granted to the applicant;

(b) any special or additional conditions which the individual licence should be subject to, if the Commission recommends the granting of the individual licence; and

(c) the reasons for its recommendation.

30. Grant of an individual licence.

(1) The Minister shall have due regard to the recommendation of the Commission given under section 29 before making a decision.

(2) The Minister may, acting on the recommendation of the Commission, by written notice—

(a) grant an individual licence in accordance with the provisions of this Part; and

(b) declare that an individual licence granted under this Part be subject to special or additional conditions.

(3) If the Minister grants an individual licence under subsection (2), the Commission shall inform the applicant by written notice—

(a) that the individual licence has been granted; and

(b) of any special or additional conditions, which are declared by the Minister under section 13.

(4) Notwithstanding subsection (2), all individual licences shall be deemed to include the relevant standard licence conditions specified in the Schedule.

(5) The individual licence granted under subsection (2) is subject to any other approvals of the relevant authorities, including the State Authority, for the placing, laying or maintenance of any network facilities on, through, under, or across any land.

(6) If the Minister refuses to grant an individual licence to an applicant, the Minister shall give the applicant a written notice informing him—

(a) that the application has been refused; and

(b) the reasons for the refusal.

(7) For the purposes of this section, the Minister shall inform the applicant by written notice of his decision, as soon as practicable, after making the decision to approve or refuse the application.

(8) If the Minister neither grants, nor refuses to grant, an individual licence within thirty days from the receipt of there commendation by the Commission, the Minister is deemed, at the end of the period, to have refused to grant the individual licence unless the applicant receives a written notice approving the application for an individual licence after the period.

(9) An approval fee, to be decided upon by the Minister, shall be payable upon the approval of the application.

31. Restriction on the grant of an individual licence.

The Minister may not grant an individual licence to a person if that person is operating under an existing class licence in respect of the same service or activity.

32. Compliance with the conditions of an individual licence.

An individual licensee shall comply with—

(a) the relevant standard conditions of the individual licence as set out in the Schedule; and

(b) any special or additional conditions of the individual licence as declared by the Minister and included in the individual licence.

33. Modification, variation or revocation of individual licence conditions.

(1) The Minister may, at any time, by declaration in accordance with section 13—

(a) modify or vary the special or additional conditions of an existing individual licence;

(b) revoke the special or additional conditions of an existing individual licence; or

(c) impose further special or additional conditions to an existing individual licence.

(2) The procedures set out in section 13 shall apply *mutatis mutandis* to the modification, variation, or revocation of a licence condition under this section.

34. Renewal of an individual licence.

(1) The licensee may apply for the renewal of an individual licence not later than sixty days before its expiry.

(2) The renewal fee, to be decided upon by the Minister, shall be payable upon approval of the application.

(3) The application for the renewal of an individual licence shall be granted by the Minister unless the Minister, on the recommendation of the Commission, determines that the licensee—

(a) has failed to comply with the terms and conditions of the individual licence;

(b) has failed to comply with the provisions of this Act; or

(c) has failed to comply with any instrument issued, made or given by the Minister or the Commission.

(4) If the Minister has no intention of renewing the individual licence, the Commission shall—

(a) inform the licensee by written notice, as soon as practicable, of his refusal to renew the individual licence; and

(b) notify and publish, at least thirty days before the expiry of the individual licence, such intention in at least one national language and one English language national daily newspapers for at least three consecutive days.

(5) The affected licensee shall be given a reasonable opportunity to make written submissions to the Minister within a time period specified in the notice and such time period shall not be less than fourteen days.

(6) The affected licensee may, within the time period specified in the notice, submit a written submission and the Minister shall consider the submission.

35. Surrender of an individual licence.

(1) A licensee may, by written notice, surrender his individual licence to the Minister—

(a) at any time; or

(b) in accordance with the requirements set out in the individual licence.

(2) The surrender shall take effect on the date the Commission receives the individual licence and the notice under subsection (1), or where a later date is specified in the notice, on that date.

(3) The surrender of an individual licence shall be irrevocable unless it is expressed to take effect on a later date and before that date the Commission, by notice in writing to the licensee, allows the surrender to be withdrawn.

36. Transfer of an individual licence or change of ownership.

(1) The grant of an individual licence shall be personal to the licensee and the individual licence shall not be assigned or transferred to any other party unless the prior written approval of the Minister has been granted.

(2) The Minister may seek the advice of the Commission before granting an approval under subsection (1).

37. Recommendation for the suspension or cancellation of an individual licence.

The Minister may, on the recommendation of the Commission, by declaration in accordance with section 13, suspend or cancel an individual licence granted under this Act in any of the following circumstances:

(a) the licensee has failed to pay any amount required by this Act or the individual licence;

(b) the licensee has failed to comply with the provisions of this Act or the terms and conditions of the individual licence;

(c) the licensee has contravened the provisions of any other written law relevant to the communications and multimedia industry;

(d) the licensee has failed to comply with any instrument issued, made or given by the Minister or the Commission; or

(e) the suspension or cancellation is in the public interest.

38. Suspension or cancellation of an individual licence by the Minister.

(1) The Minister may, by declaration in accordance with section 13, suspend or cancel an individual licence granted under this Part in any one of the circumstances set out in section 37.

(2) The procedures set out in section 13 shall apply *mutatis mutandis* to the suspension or cancellation of an individual licence under this section.

39. Effective date of suspension or cancellation of an individual licence.

The suspension or cancellation of an individual licence shall take effect on the expiration of fourteen days from the date on which the notice of suspension or cancellation is served on the licensee.

40. Publication on suspension or cancellation of an individual licence.

(1) Where the suspension or cancellation of an individual licence has taken effect, the Commission shall, as soon as practicable, cause the suspension or cancellation to be published in at least one national language and one English language national daily newspapers for at least three consecutive days.

(2) Any delay or failure to publish the notice of suspension or cancellation shall not in any manner affect the validity of the suspension or cancellation.

41. Effect of suspension, cancellation, surrender or expiry of an individual licence.

(1) Where the suspension or cancellation of an individual licence under section 37, or the surrender of an individual licence under section 35, has taken effect, or where the individual licence has expired, the licensee shall immediately cease to provide any facility or service in respect of which the individual licence was granted.

(2) Notwithstanding subsection (1), the Minister may, on the recommendation of the Commission, authorize the licensee in writing to carry on providing any facility or service for such duration as the Minister may specify in the authorization for the purpose of winding up the licensee's affairs.

(3) Notwithstanding subsection (1), the licensee whose individual licence has expired shall be entitled to carry on providing a facility or service as if his individual licence had not expired upon proof being submitted to the Commission that the licensee has applied for the renewal of the individual licence in accordance with section 34 and that such application is pending determination by the Minister.

(4) Subject to subsections (2) and (3), a person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

42. Register of individual licences.

(1) The Minister shall provide a copy to the Commission of—

(a) any individual licence granted under this Part;

(b) any special or additional conditions specified in the individual licence;

(c) any written notice varying, revoking or imposing any special or additional conditions specified in the individual licence;

(d) any written notice by the licensee surrendering his individual licence;

(e) any written notice by the Minister suspending or cancelling the individual licence; and

(f) any written notice approving the transfer of an individual licence or a change in beneficial ownership of the individual licence.

(2) The Commission shall maintain a register, which shall be made available to the public, of all individual licences which have been granted under this Part.

(3) The Commission shall maintain a separate register, which shall be made available to the public, of all the matters listed in paragraphs (1)(b) to (f).

(4) The Commission shall maintain the registers in accordance with Chapter 6 of Part V.

43. Rights and obligations attached to an individual licence.

(1) The grant of certain individual licences may be conditional on the registration of undertakings by a prospective licensee.

(2) In granting individual licences, the Minister may declare specified benefits only for licensees who have current registered undertakings under this section.

(3) The Minister may make regulations on the types of matters which may be included in an undertaking by a prospective licensee and the commensurate benefits for which the licensee shall be eligible in respect of such matters.

(4) The regulations made by the Minister under section 16 and this section may provide for any or all specified benefits to have effect when a licensee meets any one or more of the terms of his undertakings under subsection (1), as the Minister deems fit.

(5) A licence fee shall be payable by a licensee to the Commission under this section, subject to such terms as may be provided in the regulations made, and as required in the individual licence granted, under this Part.

Chapter 2 - Class Licence

44. Minister may grant class licence.

(1) The Minister may grant a class licence in respect of any matter requiring a licence under this Act.

(2) A class licence granted under subsection (1) may include the relevant standard conditions as set out in the Schedule and/or such other standard conditions as may be declared by the Minister from time to time.

(3) The Minister shall give a copy of all class licences to the Commission as soon as practicable and the Commission shall register them.

45. Application for registration.

(1) A person who intends to operate under a class licence shall register with the Commission by submitting a registration notice to the Commission.

(2) A registration fee, to be prescribed by the Minister by notification in the *Gazette*, shall be payable by the person to the Commission upon the registration of that person.

46. Requirement for registration.

Subject to the exceptions provided in this Act, no person shall operate under any class licence unless the person is duly registered by the Commission.

47. Recommendation by the Commission.

The Commission may make a written recommendation to the Minister that the person subject to a class licence under this Part be de-registered in any of the following circumstances:

(a) the person has failed to pay any amount required by this Act or the licence;

(b) the person has failed to comply with the provisions of this Act or the terms and conditions of the licence;

(c) the person has contravened the provisions of any written law relevant to the communications and multimedia industry;

(d) the person has failed to comply with any instrument issued, made or given by the Minister or the Commission; or

(e) the de-registration is in the public interest.

48. Cancellation of registration by the Minister.

(1) The Minister may, by declaration in accordance with section 13, cancel the registration of a person under this Part according to the recommendation of the Commission made under section 47.

(2) The person whose registration has been cancelled shall cease the activity to which the registration applied until such time as the Commission, with the prior express direction of the Minister, has agreed to re-register the person.

49. Register of class licences.

The Commission shall maintain a separate register, which shall be made available to the public, of—

(a) all class licences;

(b) all declarations by the Minister varying or revoking conditions, or imposing other standard conditions as specified in the licence; and

(c) all written notices by the Minister cancelling any registration.

50. Register of registration notices.

The Commission shall maintain a register of all registration notices approved and registered under this Act, in accordance with Chapter 6 of Part V.

PART V POWERS AND PROCEDURES OF THE MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION

Chapter 1 - Directions

51. Directions by the Commission.

(1) The Commission may, from time to time, issue directions in writing to any person regarding the compliance or non-compliance of any licence conditions, and including but not limited to the remedy of a breach of a licence condition, and the provisions of this Act or its subsidiary legislation.

(2) Before issuing a direction under subsection (1), the Commission shall issue a notice in writing to the person specifying the nature of required compliance.

(3) The person shall be granted an opportunity to be heard or may submit a written submission within a reasonable time period specified in the notice on the reasons for his conduct or activity.

(4) After the expiry of the notice specified in subsection (3), the Commission shall take into consideration any reasons provided by the person before making a decision in relation to the relevant conduct or activity of the person.

(5) After due consideration of any reasons provided by the person, the Commission may issue a direction under subsection (1) requiring the person to take specified action directed towards ensuring that the person does not contravene or continue to contravene any of the conditions of his licence and/or any of the provisions of this Act or its subsidiary legislation.

(6) The Commission shall give the person written notice of its direction as soon as practicable.

(7) The person shall comply with the direction issued by the Commission under subsection (6).

(8) A direction issued by the Commission under this Chapter shall be registered as soon as practicable.

(9) The direction shall be effective from the date of registration or such later date as the Commission may specify.

(10) The direction shall expire on such date as the Commission may specify in the written instrument or, if no date is specified, the direction shall be in operation until it is revoked.

52. Modification, variation or revocation of a direction by the Commission.

(1) The Commission may modify, vary or revoke a direction.

(2) The procedure set out in section 51 shall apply *mutatis mutandis* in respect of any modification, variation or revocation of a direction.

53. Offence for non-compliance with a direction of the Commission.

A person who fails to comply with a direction of the Commission commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

54. Register of directions.

The Commission shall maintain a register of all directions issued by the Commission, including any written instruments modifying, varying or revoking a direction, in accordance with Chapter 6 of this Part.

Chapter 2 - Determination

55. Determination by the Commission.

(1) The Commission may, from time to time, determine any matter specified in this Act as being subject to the Commission's determination.

(2) The Commission may conduct an inquiry to decide whether a determination should be made, either—

(a) in response to a written request from a person; or

(b) on its own initiative.

(3) Notwithstanding subsection (1), the Commission shall not conduct an inquiry unless it is satisfied that the matter is of significant interest to either the public or to current or prospective licensees under this Act.

(4) An inquiry shall be carried out in accordance with Chapter 3 of this Part, and at a standard and in a manner consistent with the provisions of this Act and its subsidiary legislation and any instrument issued, made or given under this Act.

(5) Within forty-five days from the conclusion of the inquiry, the Commission shall determine the matter.

(6) Any determination by the Commission shall be consistent with the objects of, and any requirements provided in, this Act which are relevant to the particular matter or activity.

(7) A determination made by the Commission under this Chapter shall be registered as soon as practicable.

(8) A determination shall come into force on the date of registration or such later date as the Commission may specify.

(9) A determination shall expire on such date as the Commission may specify or, if no date is specified, the determination shall be in force until the determination is revoked.

56. Modification, variation or revocation of a determination by the Commission.

(1) Subject to the provisions of this Act, the Commission may modify, vary or revoke a determination, in response to a written request or on its own initiative.

(2) The procedures set out in section 55 shall apply *mutatis mutandis* in respect of any modification, variation or revocation of the determination.

57. Register of determinations.

The Commission shall maintain a register of all determinations made by the Commission, including any written instrument modifying, varying or revoking a determination, in accordance with Chapter 6 of this Part.

Chapter 3 - Inquiry

58. Inquiry by the Commission.

(1) The Commission shall, in response to a Ministerial direction, hold a public inquiry on any matter of a general nature which relates to the administration of this Act or its subsidiary legislation which will serve the objects of this Act.

(2) The Commission may hold a public inquiry under subsection (1)—

(a) in response to a written request from a person; or

(b) on its own initiative,

only if it is satisfied that the matter is of significant interest to either the public or to current or prospective licensees under this Act.

59. Combining two or more inquiries.

The Commission may combine two or more inquiries into a single inquiry.

60. Conduct of an inquiry.

(1) An inquiry under this Part is to be conducted as and when the Commission thinks fit.

(2) The Commission may, for the purposes of an inquiry, exercise any or all of its investigation and information-gathering powers under Chapters 4 and 5 of this Part.

61. Inquiry shall be public.

(1) Subject to section 62, if the Commission decides to hold a public inquiry or is directed to hold a public inquiry, the Commission shall publish, in the manner that it deems appropriate, notice of—

(a) the fact that it is holding the inquiry;

(b) the period during which the inquiry is to be held;

(c) the nature of the matter to which the inquiry relates;

(d) the period, of at least forty-five days, within which, and the form in which, members of the public are invited to make submissions to the Commission about that matter;

(e) the matters that the Commission would like the submissions to deal with; and

(f) the address or addresses to which the submissions may be sent.

(2) The Commission does not need to publish at the same time or in the same manner the notice of all matters referred to in subsection (1).

(3) The Commission shall consider any submissions received within the time limit as specified in the notice.

(4) The submissions made by the members of the public shall be in the form and of the nature as specified in the notice.

62. Exceptions to a public inquiry.

Notwithstanding section 61, an inquiry or a part of an inquiry may be conducted in private if the Commission is satisfied that—

(a) the documents or information that may be given, or a matter that may arise during the inquiry or a part of the inquiry, is of a confidential nature; or

(b) an inquiry or part of an inquiry of a matter, or part of a matter, in public would not be conducive to the due administration of this Act.

63. Confidential material not to be disclosed.

(1) If an inquiry takes place in public and the Commission is of the opinion that—

- (a) the evidence or other material presented to the inquiry; or
- (b) the material in written submissions lodged with the Commission,

is of a confidential nature, the Commission may direct that—

- (aa) the evidence or material should not be published; or
- (bb) its disclosure be restricted.

(2) A person shall not without reasonable excuse fail to comply with a direction under subsection (1).

64. Directions about an inquiry.

(1) If an inquiry or part of an inquiry takes place in private, the Commission—

- (a) shall give a direction as to the persons who may be present at the inquiry or part of the inquiry; and
- (b) may give a direction restricting the disclosure of evidence or other material presented at the inquiry or part of the inquiry.

(2) Notwithstanding section 53, a person who without reasonable excuse fails to comply with a direction given under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

65. Report on an inquiry.

(1) The Commission shall publish a report, setting out its findings as a result of any inquiry it conducts.

(2) The Commission shall publish the report within thirty days of the conclusion of the inquiry.

(3) The Commission shall not include in the report any material—

- (a) that is of a confidential nature;
- (b) the disclosure of which is likely to prejudice the fair trial of a person;
- (c) which would involve the unreasonable disclosure of personal information about any individual (including a deceased individual); or
- (d) that is the subject of a direction under section 63 or 64.

66. Protection from civil action.

Civil proceedings shall not lie against a person in respect of any loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

(a) the making of a request under section 58; or

(b) the making of a statement, or giving of a document or information, to the Commission in relation to an inquiry under this Chapter.

67. Register of reports.

The Commission shall maintain a register of all reports made pursuant to an inquiry under this Chapter, in accordance with the provisions in Chapter 6 of this Part.

Chapter 4 - Investigation For Purposes Of Administration, Inquiry, Etc.

68. Investigation by the Commission.

Notwithstanding the provisions of any other written law, the Commission shall investigate any matter pertaining to the administration of this Act or its subsidiary legislation if—

(a) the Minister directs the Commission to conduct an investigation into any civil or criminal offence under this Act or its subsidiary legislation which may have been or may be committed; or

(b) the Commission has grounds to believe that a civil or criminal offence under this Act or its subsidiary legislation was, is or will be committed.

69. Complaints to the Commission.

(1) The Commission may conduct an investigation on a matter referred to in section 68 upon a written complaint by a person.

(2) The complaint shall specify the person against whom the complaint is made ("the respondent").

(3) If it appears to the Commission that—

(a) a person wishes to make a complaint; and

(b) the person requires assistance to formulate the complaint or to reduce it into writing, it is the duty of the Commission to take reasonable steps to provide appropriate assistance to the person.

(4) If a complaint has been made to the Commission under this section, the Commission may make inquiries of the respondent for the purpose of deciding—

(a) whether the Commission has power to investigate the matter to which the complaint relates; or

(b) whether the Commission should, in its discretion, investigate the matter.

(5) If the Commission decides not to investigate, or not to investigate further, a matter to which a complaint relates, it shall as soon as practicable and in such manner as it thinks fit, inform the complainant and the respondent of the decision and the reasons for the decision.

70. Conduct of investigation.

(1) Before beginning an investigation of a matter to which the complaint relates, the Commission shall inform the respondent that the matter is to be investigated.

(2) An investigation under this Part is to be conducted as the Commission thinks fit.

(3) The Commission may, for the purposes of an investigation, obtain information from such persons as it thinks fit.

(4) Subject to subsection (5), it is not necessary for a complainant or a respondent to be given an opportunity to appear before the Commission in connection with an investigation.

(5) The Commission shall not, as a result of the investigation, make a finding that is adverse to a complainant or a respondent unless it has given the complainant or respondent an opportunity to make submissions about a matter to which the investigation relates within a time period of not less than thirty days.

(6) The Commission shall consider the submissions made by the complainant or the respondent under subsection (5) before making its decision.

71. Report on investigation.

(1) After concluding an investigation, the Commission may prepare and give to the Minister a report.

(2) The report under subsection (1) shall cover—

(a) the conduct of the investigation concerned;

(b) any findings that the Commission has made as a result of the investigation;

(c) the evidence and other material on which those findings were based; and

(d) such other matters relating to, or arising out of, the investigation as the Commission thinks fit or as the Minister directs.

72. Publication of reports.

The Minister may direct the Commission to publish a report of an investigation if the Minister is satisfied that the publication would be in the national interest.

Chapter 5 - Information-Gathering Powers

73. Provision of information.

(1) This section applies to any person if the Commission has reason to believe that the person—

(a) has any information (including but not limited to accounts and records) or any document that is relevant to the performance of the Commission's powers and functions under this Act or its subsidiary legislation; or

(b) is capable of giving any evidence which the Commission has reason to believe is relevant to the performance of the Commission's powers and functions under this Act or its subsidiary legislation.

(2) Notwithstanding the provisions of any other written law, the Commission may, by a written notice, direct any person—

(a) to give the Commission, within the period and in the manner and form specified in the notice, any such information;

(b) to produce to the Commission, within the period and in the manner specified in the notice, any such documents, whether in a physical form or in an electronic media;

(c) to make copies of any such documents and to produce those copies to the Commission within the period and in the manner specified in the notice;

(d) if the person is an individual, to appear, at a private hearing, before the Commission at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in an electronic media;

(e) if the person is a body corporate or a public body, to cause a competent officer of the body to appear, at a private hearing, before the Commission at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in an electronic media; or

(f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear, at a private hearing, before the Commission at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in an electronic media.

(3) The Commission shall allow the person so directed under subsection (2) a reasonable time to give and to produce any information and/or documents specified in the notice.

(4) Any person required to provide information under subsection (2) shall ensure that the information provided is true, accurate and complete and such person shall provide a representation to that effect, including a representation that he is not aware of any other information which would make the information provided untrue or misleading.

74. Offence for non-compliance.

Notwithstanding section 53, a person who fails to comply with a direction of the Commission under this Chapter commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

75. Offence for giving false or misleading information, evidence or document, etc.

Notwithstanding section 53, a person who fails to disclose or omits to give any relevant information or evidence or document, or provides information or evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

76. Proof of compliance.

(1) A person shall, if at any time called upon in writing by the Commission to do so, produce to the Commission all such evidence and provide all such information as the person may have relating to his compliance with any of the provisions of this Act or its subsidiary legislation, as the Commission may generally, or in relation to any particular case, require.

(2) Subsection (1) shall not affect any other power conferred on the Commission under this Act.

77. Commission may retain documents.

(1) The Commission may take, and retain for as long as is necessary, possession of a document produced under this Chapter.

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy.

(3) Notwithstanding the provisions of any other written law, the certified copy shall be received by all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Commission shall, at such times and places as the Commission thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

78. Incorrect record.

A person shall not, in purported compliance with a requirement imposed by the record-keeping rules made under section 268, make a record of any matter or thing in such manner that it does not correctly record the matter or thing.

79. Record of information.

(1) The Commission shall maintain a record of all information, evidence or documents received pursuant to the directions given under subsection 73(2).

(2) The record shall be made available to the public.

80. Publication of information.

(1) The Commission may publish information received in the course of exercising its powers and functions under this Chapter if it is satisfied that the publication is consistent with the objects of this Act.

(2) The Commission shall consider the commercial interest of the parties to whom the information relates before publishing the information.

(3) The Commission shall not publish any information or any part of any information disclosed to it if the publication would—

(a) disclose a matter of a confidential character;

(b) be likely to prejudice the fair trial of a person; or

(c) involve the unreasonable disclosure of personal information about any individual (including a deceased person),

but the Commission may publish an abstract relating to such information provided that the particulars in the abstract shall not be arranged in any way which would compromise or prejudice the person providing such information.

Chapter 6 - Register

81. Register of all matters.

(1) The Commission shall maintain a register, in both physical form and electronic media, of all matters which are required to be registered under this Act and its subsidiary legislation.

(2) A person may, on payment of the charge (if any) to be decided by the Commission—

(a) inspect the register; and

(b) make a copy of, or take extracts from, the register.

(3) If a person requests that a copy be provided in an electronic media, the Commission may provide the relevant information—

(a) on a data processing device; or

(b) by way of electronic transmission.

Chapter 7 - Notification And Resolution Of Disputes

82. Disputes.

(1) A dispute between two or more persons ("the parties") regarding any matter under this Act or its subsidiary legislation shall first be attempted to be resolved by negotiation between the parties.

(2) If one of the parties to the dispute has provided an undertaking which is relevant to the subject-matter of the dispute and the undertaking has been registered by the Commission in accordance with Chapter 11 of this Part, the parties may adopt the conditions of the undertaking for the purposes of resolving the dispute.

(3) If the parties to the dispute cannot or otherwise fail to reach an agreement, and no relevant undertaking has been registered, or if one of the parties to the dispute does not wish to adopt the conditions of the undertaking, the parties may seek resolution of the dispute by the Commission, if this Act or its subsidiary legislation expressly provides for such resolution.

83. Notification of a dispute.

A party to a dispute may, in writing, notify the Commission of the dispute.

84. Commission to act only upon notification.

Subject to section 83, the Commission may only resolve a dispute under this Chapter if it is notified in writing of the dispute.

85. Commission may publish guidelines.

The Commission may publish guidelines setting out the principles and procedures which it may take into account in resolving disputes or a class of disputes under this Chapter.

86. Commission to decide notified dispute.

(1) Upon receipt of the notification of the dispute referred to in section 83, the Commission shall, as soon as practicable, convene to decide the dispute.

(2) The Commission shall be bound under subsection (1) to convene to decide a dispute if it is satisfied that—

(a) an agreement will not be reached, or will not be reached within a reasonable time;

(b) the notification of the dispute is not trivial, frivolous or vexatious; and

(c) the resolution of the dispute would promote the objects of this Act.

(3) Subject to the objects of this Act and any guidelines issued by the Commission under this Chapter, the Commission may resolve the dispute upon such terms and conditions as it may deem fit.

87. Decision to be in writing.

(1) The terms and conditions of any resolution of a dispute by the Commission under this Chapter shall be accompanied with reasons and be in writing.

(2) The Commission shall provide the parties to the dispute with a copy of its decision as soon as practicable.

(3) The decision of the Commission shall be binding on the parties.

88. Register of decisions.

(1) The Commission shall register all decisions it makes under this Chapter, in accordance with Chapter 6 of this Part.

(2) The register shall contain—

(a) the names of the parties to the dispute;

(b) a general description of the matter pertaining to the decision; and

(c) the date of the decision,

but not the terms and conditions of the decision.

89. Enforcement.

(1) The Commission may direct a party to a dispute to abide by the decision of the Commission in that dispute.

(2) A decision made by the Commission under this Chapter may be enforced by the High Court as if the decision is a judgement of such Court provided that a certificate has been issued by the Commission to the complainant for leave to proceed to the Court for the enforcement of the decision except in the case of an injunction.

(3) No certificate is required if an action is taken by the Commission under this section.

Chapter 8 - Registration Of Agreements

90. Application for the registration of agreements.

The parties to a written agreement shall apply to the Commission for the registration of the agreement, if this Act requires such registration.

91. When the Commission shall register the agreement.

The Commission shall register the written agreement if the Commission is satisfied that the agreement is consistent with—

- (a) the objects of this Act;
- (b) any relevant instrument under this Act; and
- (c) any relevant provisions of this Act or its subsidiary legislation.

92. Effect of registration.

(1) An agreement, which is required to be registered under this Act, shall only be valid and enforceable upon its registration.

(2) The Commission may direct any party to a registered agreement to comply with the registered agreement.

(3) A direction made by the Commission in respect of a registered agreement may be enforced by the High Court as if the direction is a judgement of such Court provided that a certificate has been issued by the Commission to the complainant for leave to proceed to the Court for the enforcement of the direction except in the case of an injunction.

(4) No certificate is required if an action is taken by the Commission under this section.

93. Content of the register of agreements.

(1) The Commission shall maintain a register of all agreements required to be registered under this Act, in accordance with Chapter 6 of this Part.

(2) The register shall contain—

- (a) the names of the parties to the agreement;
- (b) a general description of the matter pertaining to the agreement; and
- (c) the date of the agreement, but not the terms and conditions of the agreement.

(3) Notwithstanding subsections (1) and (2), a copy of the agreement shall be deposited with the Commission.

Chapter 9 - Voluntary Industry Codes

94. Industry forum.

(1) The Commission may designate an industry body to be an industry forum for the purposes of this Act by notifying that body in writing, if the Commission is satisfied that—

- (a) the membership of the body is open to all relevant parties;
- (b) the body is capable of performing as required under the relevant provisions of this Act; and
- (c) the body has a written constitution.

(2) The body shall agree in writing to be an industry forum before the designation may be registered.

(3) The Commission may decide that an existing industry body that was previously designated under subsection (1) to be an industry forum is no longer an industry forum for the purposes of this Act, if the Commission is satisfied that the body no longer meets the requirements set out in subsection (1).

(4) A designation or withdrawal of designation under this section shall take effect from the date of registration, or a later date specified.

95. Code by the industry forum.

(1) An industry forum may prepare a voluntary industry code dealing with any matter provided for in this Act—

- (a) on its own initiative; or
- (b) upon request by the Commission.

(2) The voluntary industry code shall not be effective until it is registered by the Commission.

(3) The Commission may refuse registration of the voluntary industry code, under subsection (1), if the Commission is not satisfied that sufficient opportunity for public consultation has occurred in the development of the voluntary industry code by the industry forum.

(4) The Commission shall register a voluntary industry code if it is consistent with—

- (a) the objects of this Act;
- (b) any relevant instrument under this Act; and

(c) any provisions of this Act which are relevant to the particular matter or activity.

(5) The Commission shall either register or refuse registration of a voluntary industry code.

(6) If registration of a voluntary industry code is refused, then the Commission shall notify the relevant industry forum of its decision in writing and provide the reasons for it.

(7) If the Commission neither registers nor refuses to register a voluntary industry code within a period of thirty days from the date that the voluntary industry code was submitted for registration, the Commission is deemed to have refused the registration of the voluntary industry code unless the industry forum receives a written notice of registration of the voluntary industry code after that period.

96. Commission may determine a voluntary industry code.

(1) The Commission may determine a voluntary industry code, in accordance with section 55, if—

(a) a voluntary industry code is not developed under an applicable section of this Act; and

(b) the Commission is satisfied that a voluntary industry code is unlikely to be developed by the relevant industry forum within a reasonable time.

(2) The voluntary industry code formulated by the Commission under subsection (1) shall be registered.

(3) The voluntary industry code shall only take effect upon registration.

97. Applicable voluntary industry code.

(1) The Commission shall ensure that there is only one voluntary industry code in operation that is applicable to a particular matter for a particular person or class of persons at a given time.

(2) If there is any uncertainty or ambiguity, a person may apply to the Commission for its opinion on which voluntary industry code is the applicable code in relation to the circumstances of the applicant.

(3) The Commission shall provide its opinion within thirty days from the date of receipt of the application.

(4) The Commission shall take into account any relevant Ministerial guidelines and any relevant previous opinions.

(5) The opinion shall be binding on the Commission and the applicant for a period of three years from the date that the opinion is provided under subsection (3).

(6) The Commission shall maintain a register of opinions provided under this section, in accordance with Chapter 6 of this Part.

(7) Notwithstanding subsection (5), the Commission may withdraw an opinion under this section if the Commission is satisfied that the nature of the activity engaged in by the applicant has changed materially.

98. Compliance with a registered voluntary industry code a legal defence.

(1) Subject to section 99, compliance with a registered voluntary industry code shall not be mandatory.

(2) Compliance with a registered voluntary industry code shall be a defence against any prosecution, action or proceeding of any nature, whether in a court or otherwise, taken against a person (who is subject to the voluntary industry code) regarding a matter dealt with in that code.

99. Directions to comply with a registered voluntary industry code.

The Commission may direct a person or a class of persons, in accordance with section 51, to comply with a registered voluntary industry code.

100. Civil penalty for non-compliance.

(1) Notwithstanding section 53, a person who fails to comply with a direction of the Commission that the person complies with any provision of a voluntary industry code shall be liable to pay to the Commission a fine not exceeding two hundred thousand ringgit.

(2) Notwithstanding the provisions of any other written law, the fine payable under this section may, without prejudice to any other remedy or sanction, be recoverable as a civil debt.

101. Revocation of a code.

The Commission may determine the revocation of a voluntary industry code, in accordance with section 55, if it is satisfied that the voluntary industry code is no longer consistent with all the matters listed in paragraphs 95(4)(a), (b) and (c).

102. Submission of new voluntary industry code by an industry forum.

(1) An industry forum may submit a new voluntary industry code to replace an existing voluntary industry code for that industry.

(2) The submission of the new code shall be subject to the provisions of this Chapter.

(3) If an industry forum submits a new voluntary industry code to the Commission which deals with the same matter as an existing registered code, the existing registered code is taken to be invalid to the extent of any conflict with the new code at the time that the new code is registered under section 95.

103. Register of current voluntary industry code.

The Commission shall maintain a register of all current voluntary industry codes, in accordance with Chapter 6 of this Part.

104. Determination of a mandatory standard.

(1) The Commission may determine a mandatory standard for any matter which may be the subject matter of a voluntary industry code if the Commission is satisfied that the voluntary industry code has failed, and will continue to fail, to promote industry conduct which is consistent with—

- (a) the objects of this Act;
- (b) any relevant instrument under this Act; or
- (c) any relevant provisions of this Act or its subsidiary legislation.

(2) The Commission shall determine a mandatory standard if it is subject to a direction from the Minister to determine a mandatory standard in place of a voluntary industry code.

(3) A Ministerial direction, to determine a mandatory standard, may include reference to—

- (a) matters which shall be dealt with in the mandatory standard; and
- (b) the manner in which those matters are to be dealt with.

(4) The determination of the Commission under this section shall be in accordance with section 55.

105. Mandatory standard to be consistent.

(1) A mandatory standard determined by the Commission under this Chapter shall be consistent with—

- (a) the objects of this Act;
- (b) any relevant instrument under this Act; or
- (c) any relevant provisions of this Act or its subsidiary legislation.

(2) A mandatory standard determined by the Commission under subsection (1) shall specify the class of licensees who are subject to the mandatory standard.

(3) A person subject to a mandatory standard shall comply with the mandatory standard.

106. Modification, variation or revocation of a mandatory standard.

(1) The Commission may determine the modification, variation or revocation of a mandatory standard, in accordance with section 55, if it is satisfied that the mandatory standard is no longer consistent with all the matters listed in paragraphs 105(1)(a), (b) and (c).

(2) Any modification or variation of a mandatory standard under subsection (1) shall be deemed to be a new standard for the purposes of this Chapter and shall be subject to the provisions of this Chapter.

(3) If a new mandatory standard deals with the same standard as an existing mandatory standard, then the existing standard is taken to be invalid to the extent of any conflict with the new mandatory standard.

107. Mandatory standard to take precedence.

A voluntary industry code, or an undertaking referred to in Chapter 11 of this Part, is invalid to the extent of any conflict with a mandatory standard.

108. Compliance with a mandatory standard a legal defence.

Compliance with a mandatory standard shall be a defence against any prosecution, action or proceeding of any nature, whether in a court or otherwise, taken against a person (who is subject to the mandatory standard) regarding a matter dealt with in that mandatory standard.

109. Civil penalty for non-compliance.

(1) Notwithstanding section 53, a person who fails to comply with a direction of the Commission that the person complies with any provision of a mandatory standard shall be liable to pay to the Commission a fine not exceeding two hundred thousand ringgit.

(2) Notwithstanding the provisions of any other written law, the fine payable under this section may, without prejudice to any other remedy or sanction, be recoverable as civil debt.

Chapter 11 - Undertakings

110. Undertaking by a person.

(1) A person may provide an undertaking to the Commission regarding any matter which may be the subject of a voluntary industry code under this Act or for which this Act makes express provision.

(2) An undertaking provided by a person under subsection (1) may—

(a) set out the terms and conditions for the undertaking; or

(b) adopt the model terms and conditions from a registered voluntary industry code,

and the undertaking may include the effective date of the undertaking and/or the date of its expiry.

111. Registration of an undertaking.

(1) An undertaking provided under this Chapter shall only be valid and enforceable upon its registration.

(2) A person may submit a written application to the Commission to have an undertaking registered by the Commission.

(3) The Commission shall register an undertaking if it is satisfied that the undertaking—

(a) is consistent with the objects of this Act;

(b) is consistent with any instrument made under this Act;

(c) is consistent with any relevant provisions in this Act; and

(d) will expire within three years from the date of the application to register the undertaking.

(4) Notwithstanding subsection (3), the Commission shall register an undertaking if the undertaking—

(a) solely adopts model terms and conditions from a registered voluntary industry code; and

(b) will expire within three years from the date of the application to register the undertaking.

(5) The Commission shall either register or refuse to register any other undertaking and shall notify the person providing the undertaking of its decision in writing within thirty days from the date of receipt of the undertaking.

(6) The Commission shall provide reasons for refusing to register an undertaking.

(7) If the Commission neither registers nor refuses to register an undertaking within a period of thirty days from the date of receipt of the application, the Commission is deemed to have refused the registration of the undertaking unless the person providing the undertaking is notified of the registration after that period.

(8) An undertaking provided under this Chapter shall only take effect on the date of registration or on such later date as the undertaking may specify.

112. Rules regarding undertakings.

(1) The Minister may make rules, to be published in the *Gazette*, in respect of undertakings and the rules shall bind the party making the undertakings and all other persons relying on such undertakings as if they were respectively signed by each person and contained agreements on the part of each person for himself and for his successors to observe all the provisions of the rules.

(2) The Commission may direct a person referred to in subsection (1) to comply with the rules made under subsection (1) and any registered undertakings issued under this Chapter.

113. Withdrawal of an undertaking.

A person providing an undertaking may withdraw the undertaking at any time by notifying the Commission in writing.

114. Replacement of an undertaking.

If a person submits to the Commission a new undertaking which deals with the same matter as an existing registered undertaking provided by that person, the existing registered undertaking is taken to be invalid to the extent of any conflict with the new undertaking at the time that the new undertaking is registered under section 111.

115. Register of undertakings.

The Commission shall maintain a register of all existing undertakings, in accordance with Chapter 6.

116. Enforcement of an undertaking.

(1) Subject to subsection (2), the Commission or a person may apply to a court for the enforcement of a registered undertaking against the person providing the undertaking if an undertaking has not been complied with.

(2) If a sum of money is payable by any person, or where anything, other than the payment of money, is required to be done or not to be done by any person because of any direction given by the Commission under section 112, and the direction has not been complied with by the person to whom it is addressed, then the direction shall, for all purposes, be enforceable as if the direction is a judgement of the High Court, in accordance with such rules of court as may be applicable or in such manner as the Court may deem just or expedient provided that a certificate has been issued by the Commission to the complainant for leave to proceed to the Court for the enforcement of a registered undertaking except in the case of an injunction.

(3) No certificate is required if an action is taken by the Commission under this section.

Chapter 12 - Regulatory Forbearance

117. Regulatory forbearance.

(1) Notwithstanding anything contained in this Act, the Minister may, on the recommendation of the Commission, direct the Commission to forbear from applying any provision of this Act or its subsidiary legislation to a licensee or class of licensees, or to a person or class of persons, if the Minister determines that—

(a) the enforcement of such provision is not necessary to ensure the achievement of the objects of this Act;

(b) the enforcement of such provision is not necessary for the protection of consumers;

(c) the forbearance from applying such provision is consistent with the national interest; and

(d) the forbearance from applying such provision will not impede the administration of this Act.

(2) The direction by the Minister shall be made in accordance with section 7.

118. Determination by the Minister.

(1) The Minister shall consider the written recommendation of the Commission before making a determination, in accordance with section 10, to forbear from applying the relevant provisions of this Act or its subsidiary legislation.

(2) The Minister shall provide a written notice as soon as practicable of his determination on whether to forbear from applying such provision and the reasons for his determination.

(3) If the Minister determines to forbear from applying a provision of this Act or its subsidiary legislation, the Minister shall publish the notice of forbearance in the form of an exemption order in the *Gazette*.

(4) An exemption determined under subsection (3) may or may not be subject to any conditions.

Chapter 13 - Review Of Decisions

119. Review by the Commission.

(1) A person who is aggrieved or whose interest is adversely affected by any decision of the Commission made pursuant to the performance of its powers and functions under this Act or its subsidiary legislation may request in writing to the Commission for a statement of the reasons for the decision.

(2) The Commission shall, upon such written request, provide a copy of a statement of reasons for the decision and any relevant information taken into account in making the decision within a period of not more than thirty days from the date of receipt of the request by the Commission.

(3) The Commission is not required to publish, or to disclose to a person to whose affairs it relates, a statement of reasons or a part of a statement of reasons if the publication or disclosure would—

(a) disclose a matter of a confidential character;

(b) be likely to prejudice the fair trial of a person; or

(c) involve the unreasonable disclosure of personal information about any individual (including a deceased person).

(4) In this Chapter, "decision" includes any action, order, report or delegated authority.

120. Review by the Appeal Tribunal.

(1) Subject to subsection (2), a person who is aggrieved or whose interest is adversely affected by a decision or direction (but not a determination) of the Commission made pursuant to the performance of its powers and functions under this Act or its subsidiary legislation, may appeal to the Appeal Tribunal for a review of the merits and the process of certain decisions or directions of the Commission, unless the matter is not subject to an appeal to the Appeal Tribunal.

(2) Subject to subsection 17(1), the Minister may determine the decisions or directions of the Commission which are not subject to appeal to the Appeal Tribunal under subsection (1).

121. Judicial review.

(1) A person affected by a decision or other action of the Minister or Commission may apply to the court for a judicial review of such decision or other action.

(2) A person shall not apply to the court for a judicial review unless that person has first exhausted all other remedies provided under this Act.

Chapter 14 - Regulatory Review

122. Review of subsidiary legislation by the Commission.

(1) The Commission shall review all rules and regulations made under this Act that are in effect at the time of the review.

(2) A review of the rules and regulations shall be conducted by the Commission—

- (a) every three years; or
- (b) as and when the Minister so directs under section 7.

(3) The Commission shall provide a written recommendation to the Minister to modify or vary, or to repeal, any rules or regulations made under this Act—

- (a) which are no longer necessary in the national interest;
- (b) which are no longer necessary to ensure the objects of this Act; or
- (c) for any other reason that the Commission thinks is relevant.

Chapter 15 - Monitoring And Reporting

123. Report to the Minister on industry performance.

(1) The Commission shall monitor all significant matters relating to the performance of network facilities providers, network service providers, applications service providers and content applications service providers and report to the Minister at the end of each financial year.

(2) In performing its functions under subsection (1), the Commission shall have regard to such industry performance indicators as the Commission considers appropriate.

124. Matters to monitor and report.

Matters upon which the Commission shall monitor and report include, but are not limited to, the following:

- (a) the operation and administration of this Act and its subsidiary legislation;
- (b) the efficiency in which licensees provide facilities and services;
- (c) the quality of services;
- (d) the rates paid by consumers for services;
- (e) the development of industry self-regulation;
- (f) the level of compliance with voluntary industry codes, mandatory standards and undertakings;
- (g) the adequacy of services and availability of services in all parts of Malaysia;
- (h) any deficiencies in the scope or operation of this Act and its subsidiary legislation; and
- (i) other matters that the Commission is satisfied are relevant.

125. Report to be published.

The Commission shall publish the report, in the manner it deems appropriate, as soon as practicable following the date on which the Commission conveys the report to the Minister.

PART VI ECONOMIC REGULATION

Chapter 1 - Licensing

126. Licensing of network facilities, network services and applications services.

(1) Subject to such exemptions as may be determined by the Minister by order published in the Gazette, no person shall—

(a) own or provide any network facilities;

(b) provide any network services; or

(c) provide any applications services,

except under and in accordance with the terms and conditions of—

(aa) a valid individual licence granted under this Act; or

(bb) a class licence granted under this Act, expressly authorising the ownership or provision of the facilities or services.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction.

127. Compliance with licence conditions.

(1) The relevant standard conditions of a licence under this Part shall be in accordance with the Schedule.

(2) Any special or additional conditions of a licence may be declared by the Minister and included in the licence.

(3) A licensee under this Part shall not provide any facility or service except in accordance with the conditions of the licence granted to that licensee under this Part or the conditions of a class licence to which the licensee is subject.

128. Definition of network boundary.

(1) The Minister may determine the network boundary for the purposes of this Act.

(2) In the absence of such determination, the network boundary shall be—

(a) the first equipment socket in a private residence;

(b) the main distribution frame in a building; or

(c) a point agreed to by the customer and the network facilities provider.

(3) The ownership of any network facilities and the provision of any network services or applications services, solely on the customer side of the network boundary, are exempted from the provisions of this Part.

129. Exemption for applications service provider not subject to a class licence.

An applications service provider who is not subject to a class licence under section 126 shall be deemed to be exempted from the provisions of this Chapter, but not from the provisions of Part VII regarding technical regulation.

130. Nominated facilities provider.

(1) The Minister may, on the recommendation of the Commission, determine that a licensed network facilities provider, other than the owner of any network facilities, be a nominated facilities provider for the network facilities for the purposes of this Act, if the Minister is satisfied that the nomination will not impede—

(a) the achievement of the objects of this Act; and

(b) the administration of this Act.

(2) Upon the determination of the nominated facilities provider under subsection (1), the owner shall then be deemed to be exempted from the provisions of this Chapter.

131. Providers under a class licence shall register.

A person shall not operate under a class licence in respect of any network facilities or network service or applications service unless that person is registered by the Commission.

132. Separate licence.

A licence obtained under this Chapter does not exempt any person from the obligation to obtain a licence under any other relevant section of this Act.

Chapter 2 - General Competition Practices

133. Prohibition on anticompetitive conduct.

A licensee shall not engage in any conduct which has the purpose of substantially lessening competition in a communications market.

134. Commission may publish guidelines.

(1) The Commission may publish guidelines which clarify the meaning of "substantial lessening of competition".

(2) The guidelines may include reference to—

- (a) the relevant economic market;
- (b) global trends in the relevant market;
- (c) the impact of the conduct on the number of competitors in a market and their market shares;
- (d) the impact of the conduct on barriers to entry into the market;
- (e) the impact of the conduct on the range of services in the market;
- (f) the impact of the conduct on the cost and profit structures in the market; and
- (g) any other matters which the Commission is satisfied are relevant.

135. Prohibition on entering into collusive agreements.

A licensee shall not enter into any understanding, agreement or arrangement, whether legally enforceable or not, which provides for—

- (a) rate fixing;
- (b) market sharing;
- (c) boycott of a supplier of apparatus; or
- (d) boycott of another competitor.

136. Prohibition on tying or linking arrangements.

A licensee shall not, at any time or in any circumstances, make it a condition for the provision or supply of a product or service in a communications market that the person acquiring such product or service in the communications market is also required to acquire or not to acquire any other product or service either from himself or from another person.

137. Determination of dominant licensee.

The Commission may determine that a licensee is in a dominant position in a communications market.

138. Guidelines as to the meaning of "dominant position".

(1) The Commission may publish guidelines which clarify how it will apply the test of "dominant position" to a licensee.

(2) The guidelines may specify the matters which the Commission may take into account, including—

- (a) the relevant economic market;
- (b) global technology and commercial trends affecting market power;
- (c) the market share of the licensee;
- (d) the licensee's power to make independent rate setting decisions;
- (e) the degree of product or service differentiation and sales promotion in the market; and
- (f) any other matters which the Commission is satisfied are relevant.

139. Commission may direct a licensee in a dominant position.

(1) The Commission may direct a licensee in a dominant position in a communications market to cease a conduct in that communications market which has, or may have, the effect of substantially lessening competition in any communications market, and to implement appropriate remedies.

(2) The Commission may only issue a direction under subsection (1) if the Commission is satisfied that the direction is consistent with—

- (a) the objects of this Act; and
- (b) any relevant instrument under this Act.

140. Authorization of a conduct.

(1) A licensee may apply to the Commission, prior to engaging into any conduct which may be construed to have the purpose or the effect of substantially lessening competition in a communications market, for authorisation of the conduct.

(2) Notwithstanding the provisions of this Chapter, the Commission shall authorise the conduct if the Commission is satisfied that the authorisation is in the national interest.

(3) Before authorising the conduct, the Commission may require the licensee to submit an undertaking regarding his conduct in any matter relevant to the authorisation.

(4) If the licensee subsequently withdraws the undertaking, the authorisation shall be deemed never to have been given for the purposes of this Chapter.

(5) A licensee may withdraw an application made under subsection (1) at any time.

141. Register of authorizations.

The Commission shall maintain a register of current authorisations of a conduct under this Chapter in accordance with Chapter 6 of Part V.

142. Remedies for non-compliance

(1) The Commission or a person may seek an interim or interlocutory injunction against any conduct prohibited in this Chapter.

(2) A person shall obtain a certificate from the Commission for leave to proceed to the court for enforcement of the provisions of this Chapter except in the case of an injunction.

143. Penalty for offence.

A person who contravenes any prohibition under this Chapter commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction.

144. Minister may make rules.

(1) Subject to subsection (2), the Minister may make rules, to be published in the *Gazette*, in respect of agreements between licensees, under this Act, and foreign network facilities providers and/or network service providers.

(2) The Minister shall only make the rules, under subsection (1), which are intended to prevent or mitigate—

(a) any conduct by foreign network facilities providers and/or network service providers which will, or is likely to lead to, a substantial lessening of competition in a communications market; or

(b) the misuse of market power in a communications market.

Chapter 3 - Access To Services

145. Facilities and services which may be included in the access list.

(1) The list of facilities and services which may be included in the access list, as determined by the Commission under this Chapter, are—

(a) network facilities;

(b) network services; and

(c) other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.

(2) The facilities or services listed in paragraph (1)(c) do not have to be owned or provided by the licensees under this Act.

146. Determination of facilities and services by the Commission.

Subject to subsection 147(2), the Commission may determine that—

(a) a network facility;

(b) a network service; or

(c) any other facilities and/or services which facilitate the provision of network services or applications services, including content applications services,

shall be included in or removed from the access list.

147. Recommendation by access forum.

(1) The access forum may recommend to the Commission that—

(a) a network facility;

(b) a network service; or

(c) any other facilities and/or services which facilitate the provision of network services or applications services, including content applications services,

shall be included in or removed from the access list.

(2) The Commission shall determine that the recommended network facilities or class of network facilities or network service or class of network services be included in the access list, if it is satisfied that the access forum has consulted with persons who have an interest in the recommendation, and that not less than nine-tenths of the members of the access forum support the recommendation.

(3) Notwithstanding Chapter 3 of Part V, the Commission is not required to conduct an inquiry before making a determination under section 55, if the determination relates to a recommendation made by the access forum under this section but nothing in this section shall prevent the Commission from conducting an inquiry if it deems it necessary.

148. Register of access list.

The Commission shall maintain a register of—

(a) network facilities;

(b) network services; and

(c) other facilities and/or services which facilitate the supply of network services or applications services, including content applications services,

included in the access list.

149. Standard access obligations for facilities and services.

(1) Subject to such exemptions as may be determined by the Minister by order published in the Gazette, a network facilities provider and a network service provider shall provide access to their network facilities or network services listed in the access list to any other—

(a) network facilities provider;

- (b) network service provider;
- (c) applications service provider; or
- (d) content applications service provider,

who makes a written request for access to such network facilities provider or network service provider on reasonable terms and conditions.

(2) The access provided by one provider ("the first provider") to another provider under subsection (1), shall be—

(a) of at least the same or more favourable technical standard and quality as the technical standard and quality provided on the first provider's network facilities or network services; and

(b) on an equitable and a non-discriminatory basis.

(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

150. Registration of access agreements.

(1) A written access agreement for the provision of listed network facilities or network services shall be registered with the Commission in accordance with section 91.

(2) No written access agreement for the provision of listed network facilities or network services shall be enforceable unless it has been registered.

151. Notification of access disputes.

(1) A party to a dispute over the compliance with the standard access obligation under section 149 may notify the Commission of the dispute under Chapter 7 of Part V.

(2) A party who is seeking to exercise his rights under the standard access obligations, or a party who has notified the Commission of the dispute under subsection (1), may, at any time, withdraw, in writing, the notification.

152. Access forum.

The Commission may designate a single industry body to be the access forum for the purposes of this Part.

153. Access code.

(1) The Commission shall make a written request to the access forum to prepare an access code.

(2) An access code shall provide model terms and conditions for compliance with the standard access obligations.

(3) Matters which the access code may address include but are not limited to —

- (a) the time frame and procedures for negotiations and the concluding of access agreements;
- (b) rate methodologies;
- (c) protection of intellectual property;
- (d) protection of commercial information;
- (e) provisioning of facilities; and
- (f) sharing of technical information.

(4) The access code may provide for different terms and conditions for the different network facilities and network services listed in the access list.

154. Registration of the access code.

The Commission shall not register an access code unless it is satisfied that the access code is consistent with the standard access obligations.

155. Industry access undertakings.

(1) A licensee may provide an access undertaking, in accordance with section 110.

(2) An access undertaking may specify more than one set of terms and conditions for access to a particular network facility or network service listed in the access list.

156. Registration of an undertaking.

The Commission shall not register an undertaking, in accordance with its general powers in section 111, unless it is satisfied that the undertaking is consistent with the standard access obligations.

PART VII TECHNICAL REGULATION

Chapter 1 - Spectrum Assignment

157. Prohibition on using spectrum without assignment.

(1) Subject to such exemptions as may be determined by the Minister by order published in the *Gazette*, no person shall intentionally use any part of the spectrum to provide a network service unless —

- (a) the person holds a spectrum assignment issued under this Part;
- (b) the person holds an apparatus assignment issued under this Part; or
- (c) the use of the spectrum is subject to a class assignment issued by the Commission under this Part.

(2) A person who contravenes any prohibition under this Chapter commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

158. Power of the Minister to make regulations.

The Minister may make regulations in relation to any matter under this Part.

159. Issue of spectrum assignment.

(1) The Commission may issue a spectrum assignment which confers rights on a person to use one or more specified frequency bands for any purpose consistent with the assignment conditions.

(2) A spectrum assignment may be issued under this section only when the relevant frequency bands for spectrum assignment have been determined by the Minister.

160. Spectrum assignment to comply with spectrum plan.

A spectrum assignment shall not be issued unless it is consistent with the spectrum plan.

161. Reissue of spectrum assignment.

Except if the Commission decides that it is in the national interest that a spectrum assignment be issued to the existing assignment holder, the procedure for the reissue of a spectrum assignment shall be in accordance with sections 159 and 160.

162. Third party transfers.

A holder of a spectrum assignment may transfer to or otherwise deal with any or all of the rights assigned under section 159 with a third party only if it is in accordance with the provisions of section 163.

163. Transfer rules.

(1) The Minister may make rules, to be published in the Gazette, for the transfer of the rights of the holder of the spectrum assignment conferred by the spectrum assignment.

(2) The Commission may direct a holder of a spectrum assignment to comply with any rules made under this section.

164. Issue of apparatus assignment.

(1) The Commission may issue an apparatus assignment which confers rights on a person to use the spectrum to operate a network facility of a specified kind at a specified frequency or in any specified frequency band or bands.

(2) An apparatus assignment issued under this section may be subject to such conditions as the Commission may impose.

165. Apparatus assignment to comply with spectrum plan.

An apparatus assignment shall not be issued unless it is consistent with the spectrum plan developed under this Part.

166. Situation where apparatus assignment shall not be issued.

The Commission shall not issue an apparatus assignment for the use of a spectrum that has been determined for spectrum assignments.

167. Third party authorization.

(1) A holder of an apparatus assignment may authorise a third party to operate a network facility which is the subject of an apparatus assignment.

(2) The regulations made by the Minister under section 158 may provide for the third party operation of a network facility which is the subject of an apparatus assignment by persons authorised by the holder of the apparatus assignment.

168. Maximum term for an apparatus assignment.

An apparatus assignment shall not be valid for a period of more than five years from its date of issue.

169. Class assignment.

(1) The Commission may issue a class assignment which confers rights on any person to use any frequency band or bands for a specified purpose.

(2) A class assignment issued under this section may be subject to such conditions as the Commission may impose.

170. Class assignment to comply with spectrum plan.

A class assignment shall not be issued unless it is consistent with the spectrum plan developed under this Part.

171. Situation where class assignment shall not be issued.

The Commission shall not issue a class assignment that authorises the use of the spectrum that is determined for spectrum assignments.

172. Spectrum plan.

- (1) The Commission may develop a spectrum plan in respect of any part or all of the spectrum.
- (2) The spectrum plan shall be made available to the public (including in an electronic media) for a fee to be decided by the Commission.

173. Contents of spectrum plan.

- (1) A spectrum plan shall define how the spectrum shall be used and define the methodology for assignment and reassignment of the spectrum.
- (2) The Commission, in exercising the functions under subsection (1), shall take into account —
 - (a) the objects of the Act;
 - (b) the impact of the spectrum plan on existing users; and
 - (c) any applicable international standards, conventions and agreements including, but not limited to, the International Telecommunication Union and its radio regulations as agreed to and adopted by Malaysia.

174. Preferential rights.

The Minister may determine that specified spectrum assignment and/or apparatus assignment may only be issued to particular persons or classes of persons who satisfy such conditions as are specified in the determination published in the *Gazette* .

175. Dispute about interference.

- (1) The Commission may resolve disputes about interference.
- (2) The resolution of disputes under subsection (1) shall comply with Chapter 7 of Part V.

176. Minister may determine spectrum for spectrum assignment.

- (1) The Minister may, after taking into account the recommendation of the Commission, determine that a certain spectrum is to be reallocated for spectrum assignments.
- (2) The determination made under subsection (1) may include limits on the amount of spectrum available, either generally or to particular persons or classes of persons.
- (3) The determination made under subsection (1) shall be deemed to include the term that the spectrum assignment shall not exceed twenty years.

177. Spectrum plan to include procedures for spectrum assignment and apparatus assignment.

The spectrum plan may include procedures for the assignment of spectrum assignments and apparatus assignments such as, but is not limited to, the following:

- (a) procedures for the assignment of spectrum assignments and apparatus assignments by auction;
- (b) procedures for the assignment of spectrum assignments and apparatus assignments by tender;
- (c) procedures for the assignment of spectrum assignments at a fixed price to be determined by the Minister;
- (d) procedures for the assignment of apparatus assignments at a fixed price to be determined by the Commission; and/or
- (e) a conversion plan for the conversion of designated apparatus assignments into spectrum assignments.

178. Compulsory acquisition of assignments in determined spectrum.

(1) The Minister may direct the Commission to develop procedures for the compulsory acquisition by the Commission of assignments in a determined spectrum.

(2) The Commission may recommend to the Minister that assignments in a determined spectrum be compulsorily acquired by the Commission in accordance with a reassignment of spectrum consistent with the spectrum plan.

(3) The Minister may, after taking into account the recommendation of the Commission under subsection (2), direct that assignments in a determined spectrum be compulsorily acquired by the Commission.

(4) The Commission may pay a reasonable amount of compensation to the holder of an assignment whose assignment has been acquired prior to its expiry, by a direction made under this section.

(5) No compensation may be payable if an assignment is not renewed.

Chapter 2 - Numbering And Electronic Addressing

179. Control, planning and administration of numbering and electronic addressing.

(1) The Commission shall be vested with the control, planning, administration, management and assignment of the numbering and electronic addressing of network services and applications services.

(2) The Commission may delegate any or all of its functions under this Chapter.

180. Numbering and electronic addressing plan.

(1) The Commission shall develop a numbering and electronic addressing plan for the numbering and electronic addressing of network services and applications services.

(2) The numbering and electronic addressing plan may set out rules which include, but are not limited to —

- (a) the use of different numbers and electronic addresses for different kinds of services;
- (b) the assignment of numbers and electronic addresses;
- (c) the transfer of assigned numbers and addresses;
- (d) the use of assigned numbers and electronic addresses;
- (e) the portability of assigned numbers and electronic addresses;
- (f) the requirements for network service providers and applications service providers to maintain a plan for assigning and reassigning numbers and electronic addresses; and
- (g) the rates for the assignment and transfer of numbers and electronic addresses which may be imposed by the Commission.

(3) The Commission shall make the numbering and electronic addressing plan available to the public for a fee to be decided by the Commission.

181. Management or maintenance of an integrated public number or electronic address database.

(1) The Commission may appoint a specified person to manage or maintain an integrated public number database or an integrated electronic address database.

(2) A person specified under subsection (1) shall provide non-discriminatory commercial access to the database on the same terms and conditions which it offers to itself.

(3) The Commission may direct a person specified under subsection (1) regarding the manner in which he will discharge his obligation under subsection (2).

Chapter 3 - Technical Standards

182. Hindering interoperability an offence.

A person who uses any technical equipment or systems which hinder network interoperability commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

183. Compromising public safety an offence.

A person who uses any technical equipment or systems which compromise public safety commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

184. Technical standards forum.

The Commission may designate an industry body to be a forum for technical standards ("technical standards forum") for the purposes of this Part.

185. Matters for technical code.

(1) A technical code prepared by the technical standards forum or the Commission under this section shall include, but is not limited to, the following:

- (a) requirements for network interoperability, including, but not limited to, the provision of certain network capabilities such as calling line identification capability and pre-selection capability; and
- (b) the promotion of safety of network facilities.

(2) A technical code prepared by the technical standards forum or the Commission under this section may include, but is not limited to, the following:

- (a) the provision of network facilities, including requirements for qualified providers and installers;
- (b) the provision of network services, including requirements for qualified providers;
- (c) the provision of applications services, including requirements for qualified providers;
- (d) the provisions of customer equipment and cabling, including requirements for qualified installers;
- (e) the approval of customer equipment and other access devices;
- (f) the adoption of technical standards promulgated by international bodies; and
- (g) the promotion of electromagnetic immunity and compatibility.

186. Certifying agencies.

(1) The Commission may register certifying agencies or classes of certifying agencies, including agencies outside Malaysia, for the purposes of certifying compliance with codes or standards under this Part.

(2) An approval by a registered certifying agency shall be deemed to be an approval by the Commission for the purposes of this Chapter.

**PART VIII
CONSUMER PROTECTION**

Chapter 1 - Quality Of Service

187. Exemption from offence provision.

A network facilities provider, network service provider, applications service provider or content applications service provider who is not required to have an individual licence, and is not subject to class licence, under Part VI and IX, is deemed to have been exempted from the offence provisions of section 188.

188. Provision of network service or applications service.

(1) Any network facilities provider, network service provider, applications service provider or content applications service provider shall —

- (a) deal reasonably with consumers; and
- (b) adequately address consumer complaints.

(2) A network facilities provider, network service provider, applications service provider or content applications service provider who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

189. Consumer forum.

The Commission may designate an industry body to be a consumer forum for the purposes of this Chapter.

190. Matters for consumer code.

(1) A consumer code prepared by a consumer forum or the Commission shall include model procedures for —

- (a) reasonably meeting consumer requirements;
- (b) the handling of customer complaints and disputes including an inexpensive arbitration process other than a court, and procedures for the compensation of customers in case of a breach of a consumer code; and/or
- (c) the protection of consumer information.

(2) The matters which the consumer code may address may include, but are not limited to —

- (a) the provision of information to customers regarding services, rates and performance;
- (b) the provisioning and fault repair of services;
- (c) the advertising or representation of services;

- (d) customer charging, billing, collection and credit practices; and
- (e) any other matter of concern to consumers.

191. Publication of consumer code.

After the preparation of a consumer code, the consumer code shall be published and notice of it shall be advertised in at least one national language and one English language national daily newspapers for at least three consecutive days.

Chapter 2 - Required Applications Services

192. Required applications services.

- (1) For the purposes of this Part, the Minister may determine a list of required applications services.
- (2) The list referred to in subsection (1) may include, but is not limited to —
 - (a) emergency services (including access to controlled network facilities and network services for the purposes of providing emergency services);
 - (b) directory assistance services (including access to controlled network facilities, network services and relevant databases);
 - (c) operator assistance services; and
 - (d) services for disabled consumers.

193. Minister's direction to provide required application service.

- (1) The Minister may determine —
 - (a) the classes of applications service providers who shall undertake any or all of the applications services on the list of required applications services; or
 - (b) the classes of network service providers who shall enable the provision of any or all of the applications services on the list of required applications services.
- (2) The Commission shall direct —
 - (a) the class of applications service providers determined under paragraph (1)(a) to provide the required applications services; and
 - (b) the class of network service providers determined under paragraph (1)(b) to enable the provision of the required applications services.

194. Direction may specify operational details.

Notwithstanding any provision to the contrary in this Act or any instrument made, issued or given under this Act, a direction by the Commission issued under section 193 may provide for or specify operational details relating to a required applications service.

Chapter 3 - Resolution Of Consumer Disputes

195. Disputes between consumers and licensees.

The Commission may use any of its powers under this Act in the resolution of complaints received from consumers in relation to matters of customer service and consumer protection including, but not limited to, the failure by a licensee to comply with a consumer code prepared under this Part.

196. Procedures for consumer complaints.

The Commission shall establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees.

Chapter 4 - Rate Regulation

197. Rate setting by providers.

(1) Except as otherwise provided in this Chapter, any network facilities provider, network service provider, applications service provider or content applications service provider may set rates in accordance with the market rates.

(2) All of the providers mentioned in subsection (1) are required to publish the rates charged to customers for one or more services.

(3) For the purposes of this Chapter, "network facilities provider" includes a nominated facilities provider.

198. Principles on rate setting.

The rates established by a provider mentioned in subsection 197(1) shall be on the basis of the following principles:

- (a) rates must be fair and, for similarly situated persons, not unreasonably discriminatory;
- (b) rates should be oriented toward costs and, in general, cross-subsidies should be eliminated;
- (c) rates should not contain discounts that unreasonably prejudice the competitive opportunities of other providers;
- (d) rates should be structured and levels set to attract investment into the communications and multimedia industry; and

(e) rates should take account of the regulations and recommendations of the international organisations of which Malaysia is a member.

199. Rate setting by the Minister.

Notwithstanding section 197, the Minister may, on the recommendation of the Commission, intervene freely or frequently in determining and setting the rates for any competitive facilities or services provided by a provider mentioned in subsection 197(1) for good cause, or as the public interest may require.

200. Power of the Minister to determine persons or areas for special rates.

In the following cases, the Minister may, on the recommendation of the Commission, determine special rate regulation regimes, which may include setting, reviewing and approving rates, or forbearing from the regulation of rates —

- (a) where the rates are not set in accordance with the principles in section 198; or
- (b) in respect of the facilities or services provided by a provider mentioned in subsection 197(1), for a particular group of persons or in a particular area.

201. Rules regarding rates.

(1) The Minister may make rules, to be published in the *Gazette*, to prescribe the level of rates to be charged for specified or classes of network facilities, network services, applications services or content applications services.

(2) The rules which may be made by the Minister under subsection (1) may include, but are not limited to —

- (a) rules about the rates and variation of rates for specified or classes of network facilities, network services, applications services or content applications services;
- (b) rules about the publication or disclosure of rates for specified or classes of network facilities, network services, applications services or content applications services; or
- (c) rate control mechanisms applied to specified licensees or classes of licensees, or specified or classes of network facilities, network services, applications services or content applications services.

Chapter 5 - Universal Service Provision

202. System of universal service provision.

(1) The Minister may direct the Commission to determine a system to promote the widespread availability and usage of network services and/or applications services throughout Malaysia by encouraging the installation of network facilities and the provision for network services and/or applications services in underserved areas or for underserved groups within the community.

(2) The Minister may make regulations under section 16 for the implementation of subsection (1).

203. Definition of "underserved areas" and "underserved groups within the community", etc.

(1) A determination by the Commission under subsection 202(1) shall include definitions of "underserved areas" and "underserved groups within the community".

(2) In determining the definition of "underserved areas", the Commission may have regard to —

(a) the level of competition in particular areas or places;

(b) the availability of services in particular areas or places; and/or

(c) the commercial viability of installing network facilities or providing network services or applications services in particular areas or places.

(3) In determining the definition of "underserved groups within the community", the Commission may have regard to —

(a) the availability of services to such groups; and/or

(b) any barriers to the use of available services.

204. Universal Service Provision Fund.

(1) For the purposes of this Act, a fund to be known as the "Universal Service Provision Fund" ("USP Fund") is established and it shall be controlled and operated by the Commission.

(2) The Minister may make regulations regarding contributions by licensees, under this Act or by any other person, to the USP Fund and any other matters related to or incidental to the establishment and operation of the USP Fund.

PART IX SOCIAL REGULATION

Chapter 1 - Licensing

205. Prohibition on the provision of content applications service.

(1) Subject to such exemptions as may be determined by the Minister by order published in the *Gazette*, no person may provide a content applications service unless —

(a) the person holds a valid individual licence granted under this Part to provide the content applications service; or

(b) the content applications service is subject to a valid class licence under this Part.

(2) A licence obtained under this section does not exempt any person from the obligation to obtain a licence under any other relevant section of this Act.

(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction.

206. Compliance with licence conditions.

- (1) The relevant standard conditions of every licence, granted under this Part, shall be in accordance with the Schedule.
- (2) Any special or additional conditions of a licence may be declared by the Minister and included in the licence.
- (3) A content applications service provider shall not provide any service except in accordance with the conditions of the licence granted to that licensee under this Chapter or the conditions of a class licence to which such content applications service provider is subject.

207. Closed content applications service.

- (1) The Minister may determine the definition of a "closed content applications service" for the purposes of this Act.
- (2) In the absence of such determination, a closed content applications service shall be —
 - (a) a content applications service confined to a single dwelling; or
 - (b) a content applications service provided only to the employees or officers of a single body corporate.
- (3) The provision of any closed content applications service shall be exempt from the provisions of this Part.

208. Exemptions for incidental content.

- (1) An applications service provider is exempted from the provisions under section 205 to the extent that the content in question is content incidental to the service provided.
- (2) For the purposes of this section, the Minister may determine guidelines to clarify the meaning of "content incidental to the service provided" ("incidental content") and all matters related to it.
- (3) The guidelines determined by the Minister shall be published by the Commission, in the manner it deems appropriate, and shall be registered in the register as soon as practicable.

209. Limited content applications service.

- (1) A person providing a limited content applications service is not required to hold an individual licence but he may be subject to a class licence.
- (2) A limited content applications service provider to which no class licence applies shall be deemed to be exempted from all the provisions under this Part.
- (3) For the purposes of this section, the Minister may determine guidelines which clarify or add to the criteria used in defining the term "limited content applications service" and all matters related to it.
- (4) The guidelines determined by the Minister shall be published by the Commission, in the manner it deems appropriate, and shall be registered in the register as soon as practicable.

210. Opinion on category of service.

- (1) A person may apply to the Commission to decide whether a content applications service is considered a limited content applications service or whether the content is incidental content.
- (2) The Commission shall provide its opinion within thirty days from the date of receipt of the application.
- (3) The Commission shall take into account any relevant Ministerial guidelines and any previous opinions given under this Chapter before giving its opinion.
- (4) The opinion shall be binding on the Commission and all affected parties for a period of three years from the date that the opinion is provided under subsection (2).
- (5) Notwithstanding subsection (4), the Commission may withdraw an opinion if it is satisfied that the nature of the service has changed materially.
- (6) The Commission shall maintain a register of opinions in accordance with Chapter 6 of Part V.

Chapter 2 - Content Requirements

211. Prohibition on provision of offensive content.

- (1) No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.
- (2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction.

212. Content forum.

The Commission may designate an industry body to be a content forum for the purposes of this Part.

213. Content code.

- (1) A content code prepared by the content forum or the Commission shall include model procedures for dealing with offensive or indecent content.
- (2) The matters which the code may address may include, but are not limited to —
 - (a) the restrictions on the provision of unsuitable content;
 - (b) the methods of classifying content;
 - (c) the procedures for handling public complaints and for reporting information about complaints to the Commission;
 - (d) the representation of Malaysian culture and national identity;

(e) public information and education regarding content regulation and technologies for the end user control of content; and

(f) other matters of concern to the community.

PART X GENERAL

Chapter 1 - Installation Of Network Facilities, Access To Network Facilities, Etc.

214. Inspection of land.

A network facilities provider may, for the purposes of determining whether any land is suitable for his purpose of installing, or obtaining access to, network facilities —

(a) enter on, and inspect, the land; and

(b) do anything on the land that is necessary or desirable for that purpose, including making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil.

215. Installation of network facilities.

(1) A network facilities provider may, for purposes connected with the provision of network services, carry out the installation of network facilities if —

(a) the provider is authorised to do so by a network facilities installation permit issued by the Commission under section 226;

(b) the network facilities are low-impact network facilities;

(c) the network facilities are temporary network facilities for use by, or on behalf of, the Ministry of Defence for defence purposes; or

(d) the installation is carried out for the sole purpose of connecting a building or structure, or a line that forms part of a network facility.

(2) The installation of the network facilities authorised by this section may require the approval of the State Authority, local authority, or other relevant authority, if necessary.

(3) If subsection (1) authorises a network facilities provider to carry out a particular activity, the provider may, for purposes in connection with the carrying out of that activity —

(a) enter on, and occupy, any land; and

(b) on, over or under the land, do anything necessary or desirable for those purposes, including —

(i) constructing, erecting and placing any post or network facility;

(ii) felling and lopping trees and clearing and removing other vegetation and undergrowth;

(iii) making cuttings and excavations;

(iv) restoring the surface of the land and, for that purpose, removing and disposing of soil, vegetation and other material;

(v) erecting temporary workshops and sheds and other temporary buildings; and

(vi) levelling the surface of the land and making roads.

(4) For the purposes of subsection (1), the Minister may, on the recommendation of the Commission, determine that specified network facilities are low-impact network facilities.

216. Minimal damage.

In engaging in an activity under this Chapter, a network facilities provider shall take all reasonable steps to ensure that he causes as little detriment and inconvenience, and does as little damage, as is practicable.

217. Network facilities provider to restore land.

If a network facilities provider engages in an activity under this Chapter in relation to any land, the provider shall take all reasonable steps to restore the land to a condition that is similar to its condition before the activity began.

218. Management of activity.

A network facilities provider shall, in connection with carrying out an activity covered by this Chapter, take all reasonable steps —

(a) to act in accordance with good engineering practice;

(b) to protect the safety of persons and property;

(c) to ensure that the activity interferes as little as practicable with —

(i) the operations of a public utility;

(ii) public roads and paths;

(iii) the movement of traffic; and

(iv) the use of land; and

(d) to protect the environment.

219. Agreement with public utility.

(1) A network facilities provider shall take all reasonable efforts to enter into an agreement with a public utility that makes provision for the manner in which the provider will engage in an activity that is —

(a) covered by this Chapter; and

(b) likely to affect the operations of the utility.

(2) A network facilities provider shall comply with an agreement in force under subsection (1).

220. Conditions to which a network facilities installation permit is subject.

If —

(a) a network facilities provider engages, or proposes to engage, in an activity covered by this Chapter;

(b) that activity is or will be authorised by a network facilities installation permit; and

(c) the network facilities installation permit is subject to one or more conditions,

the network facilities provider shall comply with those conditions.

221. Notice to owner of land.

(1) Before engaging in an activity under this Chapter in relation to any land, a network facilities provider shall give written notice of his intention to do so —

(a) to the owner of the land; and

(b) if the land is occupied by a person other than the owner, to the occupier.

(2) The notice must specify the purpose for which the provider intends to engage in the activity.

(3) The notice under subsection (1) must contain a statement to the effect that if a person suffers financial loss or damage in relation to property because of anything done by the provider in engaging in the activity, compensation may be payable.

(4) The notice under subsection (1) must be given at least fourteen days before the provider begins to engage in the activity.

(5) A person may waive the person's right to be given a notice under subsection (1).

(6) Subsection (1) does not apply if —

(a) the network facilities provider has complied with any technical code and mandatory standards relevant to the activity; and

(b) the activity needs to be carried out without delay in order to protect —

(i) the integrity of network facilities;

(ii) the health or safety of persons;

(iii) the environment;

(iv) property; or

(v) the maintenance of an adequate level of service.

(7) Subsection (1) does not apply if —

(a) the provider intends to engage in activities under section 214;

(b) engaging in those activities does not involve any material disturbance to the land; and

(c) the land is a public place.

222. Notice to owner of land for lopping of trees, etc.

(1) At least fourteen days before —

(a) cutting down or lopping a tree on private land; or

(b) clearing or removing undergrowth or vegetation on private land, under section 215, a network facilities provider shall give —

(aa) the owner of the land; and

(bb) if the land is occupied by a person other than the owner, the occupier, a written notice requesting that the tree be cut down or lopped, or that the undergrowth or vegetation be cleared in the manner, and within the period, specified in the notice.

(2) The provider may only engage in those activities if the request is not complied with.

(3) A person may waive the person's right to be given a notice under subsection (1).

(4) Subsections (1) and (2) do not apply if —

(a) the network facilities provider has complied with any technical codes and/or mandatory standards relevant to the activities; and

(b) the activity needs to be carried out without delay in order to protect —

(i) the integrity of network facilities;

(ii) the health or safety of persons;

(iii) the environment;

(iv) property; or

(v) the maintenance of an adequate level of service.

223. Notice to road authority, public utility, etc.

(1) Subject to any other relevant written law, at least fourteen days before

(a) closing, diverting or narrowing a road or bridge;

(b) installing any network facilities on, over or under a road or bridge; or

(c) altering the position of a conduit, gas main or pipe, under section 215, a network facilities provider shall give written notice of his intention to do so to the person or authority responsible for the care and management of the road, bridge, conduit, gas main or pipe.

(2) A person or authority may waive the person's or authority's right to be given a notice under subsection (1).

(3) Subsection (1) does not apply if —

(a) the network facilities provider has complied with any technical codes and mandatory standards relevant to the activities; and

(b) those activities need to be carried out without delay in order to protect —

- (i) the integrity of a network facility;
- (ii) the health or safety of persons;
- (iii) the environment;
- (iv) property; or
- (v) the maintenance of an adequate level of service.

224. Road, etc. to remain open for passage.

If a network facilities provider engages in an activity covered by section 215, the provider shall ensure that the network facilities installed over a road, bridge, path or navigable water are installed in a way that will allow reasonable passage by persons, vehicles and vessels.

225. Network facilities installation permit.

A network facilities provider may apply to the Commission, in the manner as provided in the regulations, for a network facilities installation permit authorising the network facilities provider to carry out the installation of one or more network facilities.

226. Criteria for issue of network facilities installation permit.

The Commission shall issue a network facilities installation permit that authorises a network facilities provider to carry out the installation of one or more facilities if the network facilities provider has satisfied the Commission that —

(a) both of the following conditions are satisfied:

- (i) the provider has made reasonable efforts in good faith with each proprietor whose approval is required or would, apart from section 215, be required, for carrying out the installation; and
- (ii) at least one of those approvals has not been obtained within fourteen days after the beginning of the negotiations concerned;

(b) each State Authority, local authority or other authority, whose approval is required or would, apart from section 215, be required, for the installation of the network facilities, has given such approval;

(c) the network facilities are, or are likely to be, part of another network facility of national significance;

(d) the network facilities are, or are likely to be, an important part of another network facility;

(e) any of the following conditions is satisfied:

- (i) the network facilities are part of another network facility, the greater part of which has already been installed;

(ii) the network facilities are a part of another network facility, the greater part of which has not been installed, but each State Authority, local authority or other authority whose approval was required or would, apart from section 215, be required, for the installation of the greater part of the network has given, or is reasonably likely to give, such approval; or

(iii) the network facilities are part of another network facility, none of which has been installed, but each State Authority, local authority or other authority, whose approval was required or would, apart from section 215, be required, for the installation of the greater part of the infrastructure of the network facilities, has given, or is reasonably likely to give, such approval; and

(f) the advantages that are likely to be derived from the operation of the network facilities outweigh any form of degradation of the environment that is likely to result from the installation of the network facilities.

227. Network facilities installation permit has effect subject to this Act and other laws.

A network facilities installation permit has effect subject to this Act and any other relevant written law.

228. Access to post, network facilities or right-of-way.

(1) Notwithstanding the provisions of any other written law, a network facilities provider or a public utility shall provide a network facilities provider with non-discriminatory access to any post, network facilities or right-of-way owned or controlled by him.

(2) Notwithstanding subsection (1), a network facilities provider or a public utility may deny any network facilities provider access to his post, network facilities or right-of-way on a non-discriminatory basis where there is insufficient capacity, or for reasons of safety, security, reliability, or difficulty of a technical or engineering nature.

229. Commission to regulate matters on access to post, etc.

(1) The Commission may regulate the rates, terms and conditions for access to any post, network facilities or right-of-way and provide that such rates, terms and conditions are just and reasonable and may adopt procedures necessary and appropriate to hear and resolve disputes in accordance with Chapter 7 of Part V.

(2) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to access to any posts, network facilities or right-of-way where such matters are regulated by a State Authority, local authority or other authority.

230. Minister may make regulations.

The Minister may, on the recommendation of the Commission, make regulations regarding the manner for the carrying out of the provisions of this Chapter.

231. Offence if use apparatus or device without authority.

A person who uses any apparatus or device with intent to obtain information regarding the contents, sender or addressee of any communication without an approval by a registered certifying agency under Chapter 3 of Part VII commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

232. Fraudulent use of network facilities, network services, etc.

(1) A person who —

(a) dishonestly transmits or allows to be transmitted any communication or obtains a service provided by a licensed network facilities provider, network service provider, applications service provider or content applications service provider; or

(b) dishonestly receives a content applications service from a place within Malaysia not intended for general reception,

with intent to avoid payment of any rate or fee applicable to the provision of that facility or service commits an offence.

(2) A person who possesses, obtains or creates a system designed to fraudulently use or obtain any network facilities, network service, applications service or content applications service commits an offence.

(3) A person who commits an offence under subsection (1) or (2) shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

233. Improper use of network facilities or network service, etc.

(1) A person who —

(a) by means of any network facilities or network service or applications service knowingly —

(i) makes, creates or solicits; and

(ii) initiates the transmission of,

any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or

(b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address,

commits an offence.

(2) A person who knowingly —

(a) by means of a network service or applications service provides any obscene communication for commercial purposes to any person; or

(b) permits a network service or applications service under the person's control to be used for an activity described in paragraph (a),

commits an offence.

(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.

234. Interception and disclosure of communications prohibited.

(1) A person who, without lawful authority under this Act or any other written law —

(a) intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept, any communications;

(b) discloses, or attempts to disclose, to any other person the contents of any communications, knowing or having reason to believe that the information was obtained through the interception of any communications in contravention of this section; or

(c) uses, or attempts to use, the contents of any communications, knowing or having reason to believe that the information was obtained through the interception of any communications in contravention of this section,

commits an offence.

(2) A person authorised under this Act who intentionally discloses, or attempts to disclose, to any other person the contents of any communications, intercepted by means authorised by this Act —

(a) knowing or having reason to believe that the information was obtained through the interception of such communications in connection with a criminal investigation;

(b) having obtained or received the information in connection with a criminal investigation; or

(c) to improperly obstruct, impede, or interfere with a duly authorised criminal investigation,

commits an offence.

(3) A person who commits an offence under subsection (1) or (2) shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(4) It shall be lawful under this Chapter for an officer, employee or agent of any network facilities provider, network service provider, applications service provider or content applications service provider whose facilities or services are used in communications, to intercept, disclose, or use those communications in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his facilities or services or to the protection of the rights or property of the provider of the facilities or services, but the provider shall not utilise the facilities or services for observing or random monitoring unless it is for mechanical or service quality control checks.

235. Damage to network facilities, etc.

A person who, by any wilful, dishonest or negligent act or omission, extends, tampers with, adjusts, alters, removes, destroys or damages any network facilities or any part of them commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

236. Fraud and related activity in connection with access devices, etc.

(1) A person who knowingly or with intention to defraud —

(a) produces, assembles, uses, imports, sells, supplies or lets for hire any counterfeit access devices;

(b) possesses any counterfeit access device or unauthorised access device;

(c) produces, assembles, uses, imports, sells, supplies or lets for hire, or has control or custody of, or possesses any device-making equipment; or

(d) produces, assembles, uses, imports, sells, supplies or lets for hire, or has control or custody of, or possesses —

(i) any equipment, device or apparatus that has been modified or altered to obtain unauthorised use of any network service, applications service or content applications service; or

(ii) hardware or software used for altering or modifying any equipment, device or apparatus to obtain unauthorised access to any network service, applications services or content applications service,

commits an offence.

(2) A person who without the authorisation of the issuer of an access device, solicits a person for the purpose of —

(a) offering an access device; or

(b) selling information regarding, or an application to obtain, an access device,

commits an offence.

(3) A person who commits an offence under subsection (1) or (2) shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(4) For the purposes of this section —

"counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

"device-making equipment" means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device;

"unauthorised access device" means any access device that is lost, stolen, expired, revoked, cancelled, or obtained with intent to defraud.

237. Prohibition on call back service.

(1) No person shall operate, or provide, or use, a call back service under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) For the purposes of this section, "call back service" means a service using any network facilities, network service or applications service that, through uncompleted call signalling or polling from a foreign location, or as a result of such other signalling arrangements as the Commission may determine, enables a user in Malaysia to call a foreign point without paying the rate imposed by an authorised Malaysian network facilities provider, network service provider and/or applications service provider for a call from Malaysia to such point.

238. Emission from non-standard equipment or device.

(1) A person who, knowingly or without reasonable excuse, causes a radio emission from any non-standard equipment or device commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) For the purposes of this Chapter, "non-standard equipment or device" means any equipment or device that does not comply with the technical or procedural standards prepared or determined under this Act.

239. Unlawful use, possession or supply of non-standard equipment or device.

(1) A person who —

(a) uses any non-standard equipment or device;

(b) has in his possession any non-standard equipment or device that he knows or has reason to believe is a non-standard equipment or device for the purpose of installing, working, operating or using the equipment or device; or

(c) offers for supply, supplies or has in his possession with a view to supply any such non-standard equipment or device,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) For the purposes of paragraph (1) (b), a person is deemed to have a non-standard equipment or device in his possession for the purpose of installing, working, operating or using it if it is in his possession, otherwise than for the purpose of supply to another person, and can be operated by doing any of the following:

(a) connecting the equipment or device to an electric power supply by means of an electric plug or other electric connection;

(b) switching on the equipment or device;

(c) connecting a microphone to the equipment or device by inserting a microphone plug into the equipment or device;

(d) switching on any other thing relevant to the operation of the equipment or device;

(e) adjusting settings by manipulating the external switches, dials or other controls of the equipment or device; or

(f) connecting the equipment or device to an antenna.

(3) In any proceedings under this Act, any document purporting to be a certificate given by an authorised officer certifying that any particular equipment or device is a non-standard equipment or device shall be admissible as a *prima facie* evidence of the facts stated in it until the contrary is proved.

240. Offence for distributing or advertising any communications equipment or device for interception of communication.

A person who intentionally —

(a) sends through the mail, or sends or carries in national or international commerce, any electronic, mechanical, or other equipment or device, knowing or having reason to believe that the design of the equipment or device renders it primarily useful for the purpose of the surreptitious interception of any communication; or

(b) places in any newspaper, magazine, handbill, or other publication any advertisement of —

(i) any electronic, mechanical, or other equipment or device, knowing or having reason to believe that the design of the equipment or device renders it primarily useful for the purpose of the surreptitious interception of any communication; or

(ii) any other electronic, mechanical, or other equipment or device, where the advertisement promotes the use of the equipment or device for the purpose of the surreptitious interception of any communication,

knowing or having reason to believe that the advertisement will be sent through the mail or transported in national or international commerce,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

241. Offence for giving false and misleading statement.

A person who —

(a) subject to the provisions of subsection 256(2), refuses to give to an authorised officer any information relating to an offence under this Act or its subsidiary legislation; or

(b) knowingly gives false information,

commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

242. General offence and penalty.

Every omission or neglect to comply with, and every act done or attempted to be done contrary to, this Act or its subsidiary legislation or any written instrument made under this Act, or in breach of the conditions subject to which any licence has been granted, or assignment issued, shall be an offence

against this Act or its subsidiary legislation, and for every such offence, where the penalty is not otherwise specifically provided for, the offender shall, in addition to the forfeiture of any thing seized, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

243. Compounding of offences.

(1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act or its subsidiary legislation and determined by the Minister to be a compoundable offence by regulations made under this Act by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Chairman of an amount of money not exceeding fifty per cent of the amount of maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Chairman may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) If an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made and any thing seized in connection with the offence may be released or forfeited by the Chairman, subject to such terms and conditions as he thinks fit.

(4) All sums of money received by the Chairman under this section shall be paid into and form part of the Federal Consolidated Fund.

244. Offences by body corporate.

(1) If a body corporate commits an offence under this Act or its subsidiary legislation a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management —

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves —

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed —

(a) by that person's employee in the course of his employment;

(b) by the agent when acting on behalf of that person; or

(c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

Chapter 3 - Powers Of Entry, Investigation Into Offences And Prosecution

245. Authorized officer.

(1) The Minister may in writing authorise any public officer or officer of the Commission to exercise the powers of enforcement under this Act.

(2) Any such officer shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

(3) In exercising any of the powers of enforcement under this Act, an authorised officer shall on demand produce to the person against whom he is acting the authority issued to him by the Minister.

(4) For the purposes of subsection (1), the Commission may issue directions to a licensee or other person to secure compliance with this Act or its subsidiary legislation.

246. Power to investigate.

(1) The Commission may investigate the activities of a licensee or other person material to his compliance with this Act or its subsidiary legislation.

(2) In any case relating to the commission of an offence under this Act or its subsidiary legislation, any authorised officer carrying out an investigation may exercise all or any of the special powers in relation to police investigation in seizable cases given by the Criminal Procedure Code.

247. Search by warrant.

(1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act or its subsidiary legislation is being or has been committed on any premises, or that any evidence or thing which is necessary to the conduct of an investigation into an offence may be found in any premises, the Magistrate may issue a warrant authorising any police officer not below the rank of Inspector, or any authorised officer named in it, to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force, and there to search for and seize any such evidence or thing.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorise the search and seizure of —

(a) copies of any books, accounts or other documents, including computerised data, which contain or are reasonably suspected to contain information as to any offence so suspected to have been committed;

(b) any signboard, card, letter, pamphlet, leaflet or notice representing or implying that the person has a licence granted or assignment issued under this Act; or

(c) any other document, facility, apparatus, equipment, device or matter that is reasonably believed to furnish evidence of the commission of the offence.

(3) A police officer or an authorised officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(4) A police officer or an authorised officer making a search of a person under subsection (3) may seize, or take possession of, and place in safe custody all things, other than the necessary clothing, found upon the person, and any other things, for which there is reason to believe that they are the instruments or other evidence of the crime, and they may be detained until the discharge or acquittal of the person.

(5) Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(6) If, by reason of its nature, size or amount, it is not practicable to remove any book, accounts, document, computerised data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized under this section, the seizing officer shall, by any means, seal such book, accounts, document, computerised data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter in the premises or container in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any book, accounts, document, computerised data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter under seal or attempts to do so commits an offence.

(8) If a search under this section indicates that there is any interference-causing equipment, radio apparatus or radio-sensitive equipment, the authorised officer may direct that necessary steps be taken to ensure an interference-free environment.

248. Search and seizure without warrant.

If a police officer not below the rank of Inspector in any of the circumstances referred to in section 247 has reasonable cause to believe that by reason of delay in obtaining a search warrant under that section the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 247 in as full and ample a manner as if he were authorised to do so by a warrant issued under that section.

249. Access to computerized data.

(1) A police officer conducting a search under section 247 or 248 or an authorised officer conducting a search under section 247 shall be given access to computerised data whether stored in a computer or otherwise.

(2) For the purposes of this section, "access" includes —

(a) being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerised data; and

(b) the meaning assigned to it by subsections 2(2) and (5) of the Computer Crimes Act 1997 [Act 563].

250. List of things seized.

(1) Except as provided in subsection (2), where any book, accounts, document, computerised data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter is seized under section 247 or 248, the seizing officer shall prepare a list of the things seized and immediately deliver a copy of the list signed by him to the occupier of the premises which have been searched, or to his agent or servant, at those premises.

(2) If the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

251. Release of things seized.

(1) If anything has been seized under this Act, a designated police officer other than the police officer who effected the seizure, may at any time after that before it is forfeited under this Act release the thing to the person as he determines to be lawfully entitled to the thing if he is satisfied that the thing is not liable to forfeiture under this Act and is not otherwise required for the purpose of any proceedings under this Act, or for the purpose of any prosecution under any other law, and in such event neither the officer effecting the seizure, nor the Government or any person acting on behalf of the Government, shall be liable to any proceedings by any person if the seizure and the release of the thing had been effected in good faith.

(2) A record in writing shall be made by the officer effecting the release of anything under subsection (1) specifying in detail the circumstances of, and the reason for, the release, and he shall send a copy of the record to the Public Prosecutor and to the Inspector-General of Police within seven days of the release.

252. Power to intercept communications.

(1) Notwithstanding the provisions of any other written law, the Public Prosecutor, if he considers that any communications is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Act or its subsidiary legislation, may, on the application of an authorised officer or a police officer of or above the rank of Superintendent, authorise the officer to intercept or to listen to any communication transmitted or received by any communications.

(2) When any person is charged with an offence under this Act or its subsidiary legislation, any information obtained by an authorised officer or a police officer under subsection (1), whether before or after the person is charged, shall be admissible at his trial in evidence.

(3) An authorisation by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorisation is given, the Public Prosecutor shall, as soon as practicable, reduce the authorisation into writing.

(4) A certificate by the Public Prosecutor stating that the action taken by an authorised officer or a police officer under subsection (1) had been authorised by him under that subsection shall be conclusive evidence that it had been so authorised, and the certificate shall be admissible in evidence without proof of his signature there.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related to it, of anything done under subsection (1).

253. Obstruction to search.

A person who assaults, impedes, obstructs or interferes with, or refuses access to any premises to, an authorised officer in the performance of his duties under this Act or its subsidiary legislation commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

254. Additional powers.

An authorised officer shall, for the purposes of the execution of this Act or its subsidiary legislation, have power to do all or any of the following:

- (a) to require the production of records, accounts, computerised data and documents kept by a licensee or other person and to inspect, examine and to download from them, make copies of them or take extracts from them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Act or its subsidiary legislation; and
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act or its subsidiary legislation have been complied with.

255. Power to require attendance of person acquainted with case.

(1) An authorised officer making an investigation under this Act may by order in writing require the attendance before himself of a person who appears to the authorised officer to be acquainted with the circumstances of the case, and the person shall attend as so required.

(2) If the person fails to attend as required, the authorised officer may report the failure to a Magistrate who shall issue a warrant to secure the attendance of the person.

256. Examination of person acquainted with case.

(1) An authorised officer making an investigation under this Act may examine orally a person supposed to be acquainted with the facts and circumstances of the case.

(2) The person shall be legally bound to answer all questions relating to the case put to him by the authorised officer, but the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

(4) The authorised officer obtaining information from a person shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

257. Admissibility of statements in evidence.

(1) If any person is charged with an offence under this Act, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of an authorised officer and whether or not interpreted to him by another officer or other person, shall be admissible in evidence at his trial and, if the person charged tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement under subsection (1) shall be admissible or used —

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

(b) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

"It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence".

(3) A statement made by a person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible after that.

258. Authorized officer to complete investigation and hand over to police.

Upon completion of his investigation into an offence under this Act or its subsidiary legislation, the authorised officer shall immediately give all information relating to the commission of the offence to an officer in charge of a police station and a police officer may, by warrant, arrest a person who may have committed an offence under this Act or its subsidiary legislation.

259. Prosecution.

No prosecution shall be instituted for an offence under this Act without the consent in writing of the Public Prosecutor.

260. Forfeiture.

(1) Any facility, apparatus, equipment, device, thing or matter seized under this Act may be liable to forfeiture.

(2) An order for the forfeiture or for the release of any facility, apparatus, equipment, device, thing or matter liable to forfeiture under this section shall be made by the court before which the prosecution with regard to it has been held and an order for the forfeiture of the facility, apparatus, equipment, device, thing or matter shall be made if it is proved to the satisfaction of the court that an offence under this Act or its subsidiary legislation, or any breach of the conditions subject to which a licence has been granted or an assignment has been issued, has been committed and that the facility,

apparatus, equipment, device, thing or matter was used in the commission of the offence despite the fact that no person may have been convicted of the offence or breach.

(3) If there is no prosecution with regard to any facility, apparatus, equipment, device, thing or matter seized in the exercise of any power conferred under this Act, the facility, apparatus, equipment, device, thing or matter shall be taken or deemed to be forfeited at the expiration of one calendar month from the date it was seized unless a claim to it is made before that date in the manner provided in this section.

(4) A person asserting that he is the owner of any facility, apparatus, equipment, device, thing or matter seized under this Act and that the facility, apparatus, equipment, device, thing or matter is not liable to forfeiture may personally or by his agent authorised in writing by him give written notice to the Commission or any authorised officer of his claim.

(5) On receipt of a notice under subsection (4), the Commission or any authorised officer shall, after such enquiry as may be necessary, direct that the facility, apparatus, equipment, device, thing or matter be released or forfeited or refer the case to a Sessions Court Judge for decision.

(6) The Sessions Court Judge to whom the case is referred shall issue a summons requiring the person asserting that he is the owner of the facility, apparatus, equipment, device, thing or matter and the person from whom they were seized to appear before him and upon his appearance or default to appear, due service of the summons being proved, the Sessions Court Judge shall proceed to the examination of the case and on proof that an offence under this Act has been committed and that the facility, apparatus, equipment, device, thing or matter was the subject-matter or was used in the commission of the offence, shall order the facility, apparatus, equipment, device, thing or matter to be forfeited or may, in the absence of such proof, order the release of the facility, apparatus, equipment, device, thing or matter to the person entitled to it.

(7) Any facility, apparatus, equipment, device, thing or matter forfeited or deemed to be forfeited shall be delivered to the Commission or an authorised officer who shall dispose of it in the manner as the Commission deems fit.

261. Jurisdiction to try offences.

Notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act.

262. Rewards.

The Commission may order such rewards as it may deem fit to be paid to any police officer or other public officer or other person for services rendered in connection with the detection of any offence under this Act or its subsidiary legislation, or in relation to any forfeiture proceeding, or any seizure made, under this Act.

Chapter 4 - National Interest Matters

263. General duty of licensees.

(1) A licensee shall use his best endeavour to prevent the network facilities that he owns or provides or the network service, applications service or content applications service that he provides from being used in, or in relation to, the commission of any offence under any law of Malaysia.

(2) A licensee shall, upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law of Malaysia or otherwise in enforcing the laws of Malaysia, including, but not limited to, the protection of the public revenue and preservation of national security.

264. Persons not liable for act done in good faith.

Any network facilities provider, network service provider, applications service provider or content applications service provider or any of his employees, shall not be liable in any criminal proceedings of any nature for any damage (including punitive damages), loss, cost, or expenditure suffered or to be suffered (whether directly or indirectly) for any act or omission done in good faith in the performance of the duty imposed under section 263.

265. Network interception capability.

(1) The Minister may determine that a licensee or class of licensees shall implement the capability to allow authorised interception of communications.

(2) A determination, under subsection (1), may specify the technical requirements for authorised interception capability.

266. Special powers in emergency.

(1) On the occurrence of any public emergency or in the interest of public safety, the Yang di-Pertuan Agong or the Minister authorised by him in that behalf may —

(a) suspend the licence of any licensee, take temporary control of any network facilities, network service, applications service and/or content applications service owned or provided by a licensee in any manner as he deems fit;

(b) withdraw either totally or partially the use of any network facilities, network service, applications service and/or content applications service from any licensee, person or the general public;

(c) order that any communication or class of communications to or from any licensee, person or the general public relating to any specified subject shall not be communicated or shall be intercepted or detained, or that any such communication or its records shall be disclosed to an authorised officer mentioned in the order; or

(d) order the taking of possession of any customer equipment.

(2) If any doubt arises as to the existence of a public emergency or whether any act done under subsection (1) was in the interest of public safety, a certificate signed by the Yang di-Pertuan Agong and exhibited at such places as the Minister deems fit shall be conclusive proof on the point.

(3) If the Minister takes possession of any network facilities, network service, applications service, content applications service or customer equipment under subsection (1), the person licensed under this Act with regard to the facilities, service or equipment shall be paid adequate compensation which shall be determined by the Minister after giving an opportunity to the licensee to be heard on the matter.

(4) Nothing in this section shall prevent the use of any network facilities, network service, applications service, content applications service or customer equipment for the purpose of making a distress call.

267. Disaster plan.

The Commission may direct a licensee or class of licensees to develop, in consultation with the authorities specified by the Commission, a disaster plan for the survivability and recovery of any network facilities, network service, applications service or content applications service in case of a disaster, crisis or civil emergency.

Chapter 5 - Miscellaneous

268. Minister may make rules on record-keeping.

The Minister may make rules, to be published in the *Gazette*, to provide for record-keeping and to require one or more licensees or persons to keep and retain records.

269. Interworking with other authorities.

(1) The Minister may direct the Commission regarding the interworking arrangements between the Commission and any other authority in Malaysia or in a foreign jurisdiction, or any international organisation.

(2) The Minister may make rules, to be published in the *Gazette*, and/or determine arrangements for interworking with, or membership of, international organisations regarding the interworking arrangements between licensees under this Act and international organisations.

(3) The Commission may direct a licensee to comply with the rules made and/or arrangements determined under subsection (2).

270. Instruments granted under this Act.

An instrument issued, made or given under this Act may make provisions in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any other written law that is in operation at the particular time.

271. This Act prevails over other Acts.

If there is any inconsistency or conflict between this Act and any other relevant written law, the provisions of this Act shall prevail to the extent of the inconsistency or conflict.

272. Protection of officers and other persons.

No action or prosecution shall be brought, instituted or maintained in any court against —

(a) the Commission or an authorised officer or any other person in respect of any act ordered or done for the purpose of carrying into effect this Act; and

(b) any other person in respect of any act done or purported to be done by him under the order, direction or instruction of the Commission or an authorised officer if the act was done in

good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

PART XI TRANSITIONAL PROVISIONS

Chapter 1 - Repeal And Savings

273. Repeal.

(1) The Telecommunications Act 1950 [Act 20] and the Broadcasting Act 1988 [Act 338] are repealed ("the repealed Acts").

(2) Any subsidiary legislation made under the repealed Acts shall, in so far as it is not inconsistent with this Act, remain in operation until revoked or replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

(3) The Minister may, whenever it appears to him necessary or expedient so to do whether for the purpose of removing difficulties or in consequence of the passing of this Act, by order to be published in the *Gazette*, make such modifications to any subsidiary legislation as he deems fit.

274. Dissolution of the Telecommunications Fund.

(1) The Telecommunications Fund is dissolved.

(2) All moneys standing in the Telecommunications Fund shall, on the date of coming into operation of this Act, be transferred to and vested in the Fund established under the Malaysian Communications and Multimedia Commission Act 1998.

275. Savings.

Any registration, act, order, direction, approval or decision done, made or given before the date of coming into operation of this Act shall be deemed to have been done, made or given under this Act and shall continue in full force and effect in relation to whom they apply until amended or revoked under this Act or new rules, regulations or other subsidiary legislation are made under it or until the date of its expiry.

Chapter 2 - Transitional Provisions For Licences

276. Old licences to have effect.

Subject to section 278, licences issued under the repealed Acts ("old licences") shall continue to have effect under this Act.

277. New class licences to supersede old licences.

Notwithstanding section 276, an old licence shall not have effect to the extent of any conflict with a class licence granted under this Act.

278. Old licences shall be registered.

Notwithstanding section 276, a valid licence granted under the repealed Acts shall only be effective for a period of twelve months after the appointed date, unless it has been registered ("registered licence") by the Commission within twelve months from the appointed date.

279. A registered licence shall confer no new benefit.

This Act does not confer any new benefit or right on a registered licensee registered under section 278 except where that benefit or right was conferred under the old licence.

280. Old licensees shall indicate intention.

A holder of a licence granted under the repealed Acts shall indicate to the Minister in writing whether he intends to seek a licence under this Act within twelve months from the appointed date.

281. Registered licensee may apply for an individual licence under this Act.

(1) A holder of a registered licence, granted under the repealed Acts, may apply for an individual licence under this Act in substitution of his old licence.

(2) The Minister may declare, in accordance with section 13, that an individual licence, granted under subsection (1), shall be subject to such general or standard conditions as the Minister may determine for each type of licence and such other special or additional conditions as the Minister is satisfied are in the national interest.

282. Determination of listed facilities and services.

(1) The Commission shall make a determination, in accordance with section 55, regarding the listing of all facilities and services available to licensees under the licences granted under the Telecommunications Act 1950, for the purposes of ensuring any-to-any connectivity between end users.

(2) Notwithstanding Part V, the Commission shall not be required to conduct an inquiry before making a determination under this section.

	RM.....%
	RM.....%
	RM.....%
	Licensed area.
	Location of control centre.
	The percentage of the total services in operation in areas that are determined by the Commission to be "underserved areas" or provided to persons who are determined by the Commission to be "underserved groups within the community" under section 202 of this Act.
	Provision of broadband network services.
	Specific undertakings with respect to levels of investment, specific activities and operations.
	Specific rights and privileges agreed between the licensee and the Government which are conditional upon the undertakings entered into by the licensee.
	Other special conditions and matters as declared by the Minister, or provided in any subsidiary legislation, under this Act.
4. Network Service Provider Class Licence	
Standard licence conditions	
	A class licence replaces any other licence granted by the Minister and shall be the sole licence held by the licensee in respect of the network services authorised under this licence.
	The licensee shall comply with the provisions of the Communications and Multimedia Act 1998 ("this Act").
	The licensee shall comply with the provisions of any subsidiary legislation made, or other instruments, guidelines or regulatory policies issued, under this Act.
	The licensee shall comply with the numbering and electronic addressing plan issued under this Act.
	The licensee shall comply with the spectrum plan issued under this Act.
	The licensee shall comply with any consumer codes registered under this Act which are relevant to the activities of the licensee.
	The licensee shall indemnify the Minister and the Commission against any claims or proceedings arising from any breaches or failings on the part of the licensee.
	Other standard conditions and matters as declared by the Minister, or provided in any subsidiary legislation, under this Act.
5. Applications Service Provider Individual Licence	
Standard licence conditions	
	The licensee shall be a company that is incorporated in Malaysia.
	The shareholding of the company shall comply with relevant Malaysian foreign investment restrictions.
	The licensee shall notify the Minister of any changes on shareholdings which are required to be notified to the relevant authority.
	The licensee shall notify the Minister of any joint ventures with other licensees which the licensee enters into.
	The licence replaces any other licence issued by the Minister and shall be the sole licence held by the licensee in respect of the applications services authorised under this licence.
	The licensee shall comply with the provisions of the Communications and Multimedia Act 1998 ("this Act").
	The licensee shall comply with the provisions of any subsidiary legislation made, or other instruments, guidelines and regulatory policies issued, under this Act.
	The licensee shall comply with the numbering and electronic addressing plan issued under this Act.
	The licensee shall comply with any consumer codes registered under this Act which are relevant

	The licensee shall comply with the provisions of any subsidiary legislation made, or other instruments, guidelines or regulatory policies issued, under this Act.
	The licensee shall comply with the numbering and electronic addressing plan issued under this Act.
	The licensee shall comply with any consumer codes registered under this Act which are relevant to the activities of the licensee.
	The licensee shall indemnify the Minister and the Commission against any claims or proceedings arising from any breaches or failings on the part of the licensee.
	Other standard conditions and matters as declared by the Minister, or provided in any subsidiary legislation, under this Act.

LIST OF AMENDMENTS

<i>Amending law</i>	<i>Short title</i>	<i>In force from</i>
Act A1220	Communications and Multimedia (Amendment) Act 2004	01-04-2005 [P.U. (B) 112/2005]