

PROCLAMATION NO 102/1998

COMMUNICATIONS PROCLAMATION

Part One

General Provisions

1. Short Title

This Proclamation may be cited as «the Communication Proclamation No. 102/1998».

2. Definitions

In this Proclamation, unless the context otherwise requires:

(a) «broadcasting» or «broadcast» means the transmission of voice, music, visual images and the like by radio waves by cable, intended to be received directly by the general public;

(b) «broadcasting receiver equipment» shall mean apparat which receive radio broadcasting and television programmes;

(c) «communications» means telecommunications, broadcasting and post;

(d) «Department» means the Communications Department of the Ministry of Transport and Communications;

(e) «exclusive rights activity» means an activity for which permit may be issued to one person only granting him for a stipulated term of years the exclusive privilege engaging in the activity specified in his permit;

(f) «installer» means a person to whom a permit has been issued pursuant to Article 23 hereof;

(g) «limited competition activity» means an activity for which permits may be issued to a limited number of persons in accordance with criteria and conditions stipulated by the Department granting the persons for a stipulated term of years the right to engage in the activity specified in the permit;

(h) «open Competition activity» means an activity for which permits shall be issued to an unlimited number of persons, in accordance with criteria and conditions stipulated by the Department, granting the persons for a stipulated term of years the right to engage in the activity specified in the permit;

(i) «operator» means a person to whom a permit has been issued pursuant to Articles 12, 28 or 36 hereof;

(j) «permit» means a permit issued by the Department under this Proclamation, enabling a person to engage in a business activity as an operator, supplier or an installer provided he has obtained a business licence under the Business Licensing Office Establishment Proclamation No. 72 of 1995;

(k) «person» means any natural or juridical person engaged in communications and shall include any business organization or association engaged in communications, whether national or foreign or private or public;

(l) «post» means any system for the collection, dispatch, conveyance, handling and delivery of postal articles by or through an operator of postal services;

(m) «postal article» means any article or thing transmissible by post but does not include such article or thing as the Department may prescribe to be not transmissible by post;

(n) «postal service» means a commercial offering of any service by post;

(o) «public telecommunications networks», «public telecommunications service» and «public postal service» means a network or a service accessible to the general public or intended to be used by the general public;

(p) «radio activity» means any establishment and use of radio equipment for radiation, dispatching, transmission or reception of radio signals, including broadcasting, navigation, remote measuring and remote control and for medical, industrial or scientific use or other intentional or unintentional effects of use of radio equipment in a way that the functions of other equipment or apparatus are influenced Light beam connections in free space used for telecommunications purposes may be regarded as radio activity;

(q) «regulatory documents» means permits, equipment approvals, certificates, assignments of frequency and other approvals and documents, issued by the Department;

(r) «supplier» means a person to whom a permit has been issued pursuant to Articles 23 and 30 hereof;

(s) «telecommunications» means emission, transmission or reception of voice, text, visual images or other data or signals of any nature by means of wire, radio, light, optical or other electromagnetic signals in a communications system for transmission of signals;

(t) «telecommunications network» means a network for the conveyance and distribution of signals between defined termination points by wire, radio, optical or other electromagnetic means;

(u) «telecommunications service» means a commercial offering of telecommunications wholly or partly by means of transmission in a telecommunications network, with the exception of radio broadcasting television;

(v) «telecommunications equipment» means apparatus, terminals, radio equipment, satellite earth stations or other technical devices, including software, which can be used for telecommunications purposes or are intended for such use. Radio equipment is a device that conveys or by other means emits signals (radio transmitter) as well as devices which receive signals (radio receiver). Broadcasting receiver equipment is not telecommunications equipment or radio equipment;

(w) «user» means a person entering into an agreement on access to telecommunications networks or services for own use or loan purposes (end user), or in order to direct offerings at others;

(x) a word importing the masculine gender shall include the feminine as well.

3. Scope

(1) This Proclamation regulates communications (telecommunications, broadcasting and post) in the State of Eritrea. This Proclamation does not apply to programme activities of broadcasting (radio broadcasting and television).

(2) This Proclamation also applies to seagoing vessels and aircrafts registered in Eritrea, and to works, plants and devices of any kind in connection with off-shore activities.

4. The Regulatory Authority

(1) The Ministry of Transport and Communications shall be the only government agency vested with the regulatory authority of the communications sector pursuant to this Proclamation, including:

(a) supervision and promotion of the provision of communications services in Eritrea; and

(b) the authority to issue, renew, revoke or transfer permits, equipment approvals, certificates,

assignments of frequency and other regulatory documents in the communications sector on behalf of the Government of Eritrea.

(2) The Department shall be the body empowered to exercise the regulatory authority of the Ministry of Transport and Communications.

5. Objectives of the Department

The objectives of the Department shall be to:

(1) create a regulatory environment for the supply of communications networks and services;

(2) promote fair competition and efficient market practice in the communications sector;

(3) facilitate the entry into markets for communications services of persons wishing to supply such networks and services;

(4) ensure that operators, suppliers and installers meet their commercial obligations and such other obligations specified under this Proclamation in a manner which promotes co-operation and fairness;

(5) protect operators, suppliers and installers and the public from the unfair conduct of other operators, suppliers and installers, regarding quality of services and payment of tariffs;

(6) ensure that operators, suppliers and installers achieve the highest possible level of accountability and responsiveness to customer and community needs;

(7) ensure that standard telecommunications, broadcasting and postal services are supplied as efficiently and economically as possible and at such performance standards which reasonably meet the social, industrial, and commercial needs of the community;

(8) promote the development of the other sectors of the Eritrean economy through the commercial supply of modern communications services within the framework of this Proclamation;

(9) establish technical standards and promote the development of Eritrea's communications capabilities, industries and skills;

(10) ensure that the Eritrean public have growing access to communications; and

(11) optimise the use of communications networks and services in Eritrea with due consideration for the rights of the operators, suppliers and installers and the public interest.

6. Functions of the Department

The Department shall have the following functions:

(1) the responsibility for economic and technical regulation of communications industry;

(2) to ensure the safety and quality of communications services by determining technical standards and regulating technical execution and performance;

(3) the responsibility for giving advice and assistance to the communications industry;

(4) the promotion of competition in those areas of the communications industry where competition has been introduced;

(5) to facilitate the entry into the market for communications services by persons wishing to supply such services;

(6) to establish and manage the Rural Telecommunications Fund;

(7) to arbitrate disputes between operators, suppliers and installers and other participants in the communications industry;

(8) to receive and investigate complaints from operators, suppliers and installers, consumers and other persons in the

communications industry;

(9) the responsibility for the protection of the public interest by ensuring that the provisions of this Proclamation are carried out with due regard to public interest;

(10) the protection of consumers from unfair practice of operators, suppliers and installers and other persons in the supply of communications services;

(11) to develop performance standards and indices relating to the quality of communications services;

(12) the issuance of regulatory documents in accordance with the provisions of this Proclamation; and

(13) to monitor the conduct of the operators, suppliers and installers and to enforce the conditions included in the permits.

7. Powers of the Department

(1) The Department shall exercise the powers necessary and proper for the attainment of its objectives.

(2) Without limiting the generality of the foregoing, the Department shall have the following specific powers to:

(a) give written directions to operators, suppliers and installers;

(b) consult where appropriate with the necessary government authorities;

(c) require any person to appear before it:

(i) to discuss any matter which the Department deems necessary for the purpose of effectively discharging the Department's duties, and

(ii) to give evidence or produce any document which it considers likely to assist the Department in the discharge of its duties; and

(d) enter into contract or partnership with any person which in the opinion of the Department is intended to further the implementation of the duties specified in this Proclamation.

8. Power to Issue Regulations and Directives

(1) The Minister of Transport and Communications shall have the power to issue regulations and directives regarding any matter which it deems necessary or expedient in order to achieve the objectives of this Proclamation.

(2) Without limiting the generality of the foregoing, the Minister of Transport and Communications may issue such specific regulations and directives as stipulated in this Proclamation.

9. Management of the Department's Regulatory Functions

(1) The Department shall be responsible for the proper operation and administration of the communications regulatory functions.

(2) Without limiting the generality of the foregoing, the Department shall:

(a) develop policies and determine the best management practices in order to fulfil the Department's regulatory responsibilities;

(b) ensure an efficient and transparent issuance of the regulatory documents;

(c) develop systems in such a manner as to carry out efficiently and effectively the issuance and renewal of the regulatory documents and other functions that are incidental thereto;

(d) maintain a register of operators, suppliers and installers;

(e) provide guidelines on tariffs chargeable for provision of communications services; and

(f) enter into agreement(s) consistent with the powers conferred upon it or the functions entrusted to it by this Proclamation.

(3) whenever the Department deems it necessary for the efficient management of its regulatory functions, it may delegate part of its powers and functions to its committees.

10. Funding of the Department's Regulatory Functions

The Department's regulatory functions shall be funded by:

(a) such government budgetary appropriations as may be determined;

(b) such sums as may be paid to the Department for regulatory tasks performed;

(c) such sums as may be paid to the Department by way of fees or levies for the regulatory documents;

(d) such sums or such other assets as may accrue to or vest in the Department from time to time in connection with the Department's regulatory functions; and

(e) financial assistance it receives from any funding source.

11. Transfer of Personnel and Property

(1) The Department may select such number of personnel as it needs for its regulatory functions from among civil servants.

(2) The Department may also opt to take over buildings, equipment, tools and other facilities currently used or operated by bodies currently involved in regulating the communications sector.

Part Two

Telecommunications Networks and Services

12. Operator's Permit

(1) A person desiring:

(a) to establish and/or operate a telecommunications network, and/or

(b) to provide a telecommunications service, must obtain an operator's permit.

(2) The Department shall determine whether any of the activities referred to in sub-article (1) of this Article shall be defined as:

(a) Exclusive rights activities (Article 2(e)), or

(b) Limited competition activities (Article 2(g)).

(3) Open competition activities (Article 2(h)), encompass:

(a) value added services, i.e. services other than basic services and data transmission services as defined by the Department; and

(b) all activities which are not defined as exclusive rights activities or limited competition activities.

13. Interconnection

(1) An operator engaged in exclusive rights activities or limited competition activities shall be obliged to interconnect his telecommunications network and/or service with the network and/or service of another operator.

(2) If the operators referred to in this Article fail to achieve agreement on the terms of interconnection within six months after the negotiations started, the Department shall, at the

request of either operator or both, set up an arbitration panel to settle the dispute. The Minister of Transport and Communications may, by regulation determine the procedures of an arbitration panel.

14. Permit Conditions

(1) A permit issued under Article 12 hereof shall be subject to such conditions as the Department may specify in the permit, or as may be specified in regulations referred to in the permit.

(2) Without limiting the generality of Article 13 and sub-article (1) of this Article a permit issued under Article 12 hereof may include conditions requiring:

(a) geographical coverage of the telecommunications network or service, including coverage in rural areas;

(b) interconnection and co-ordination between telecommunications networks or services;

(c) use of numbers or number series, including names and addresses, in accordance with numbering plans designed by the Department;

(d) use of standards;

(e) use of specified accounting systems;

(f) use of specified methods of calculation of tariffs and prices imposed for services provided;

(g) achievement of stipulated performance standards or targets;

(h) use of subscription contracts;

(i) payment of charges for access to a telecommunications network or service which is operated by another operator; or

(j) compliance with other conditions determined by the Department.

15. Open Telecommunications Networks and Services

Access to a public telecommunications network or public telecommunications service shall be open and non-discriminatory. The contract conditions shall be based on objective criteria and shall be transparent and readily accessible to the general public.

16. Permitted Restrictions on Use

(1) An operator may implement restrictions on use consisting in complete denial of access to the network or the services, interruption or disconnection from the network or the service, or limitation of service functions, when this is required for reasons related to telecommunications security or maintaining the integrity of the network or because the telecommunications equipment or the use of the equipment lacks the necessary approval pursuant to the provisions in or under this Proclamation.

(2) In emergency situations that involve serious threats to health, security or public order, or the risk of sabotage to networks or services, the operator shall implement necessary restrictions on use.

(3) The Department may order an operator to implement restrictions on use when necessary in the interest of national security, enforcing permit obligations or other important social interests.

(4) Restrictions on use shall be notified to the Department and to whom they may concern.

(5) Restrictions on use for reasons other than those stated in this Article, shall require the prior approval of the Department.

17. Subscription Contracts

An operator shall prepare subscription contract conditions for telecommunications services providing information about the time-limit for delivery and fault repair service quality and conditions for access to and use of the services. Subscription contract conditions shall be published.

18. Internal Telecommunications Network

A person desiring to establish an internal telecommunications network which is located within a building or a limited geographical area (business or residential network) and which is intended to be or may be connected to the public telecommunications network shall comply with general requirements laid down by the Department.

19. Private Telecommunications Networks

(1) A person desiring to establish a telecommunications network:

(a) which is intended solely for the person's own use, and

(b) which will not be connected to the public telecommunications network,

shall comply with general requirements laid down by the Department.

(2) If no other reliable telecommunications service is available, the Department may for a term of years allow the owner of a telecommunications network described in this Article (private telecommunications network), to provide telecommunications services to other users.

(3) An approval issued under sub-article (2) hereof may be given on such conditions and in consideration of such payments to the Rural Telecommunications Fund as the Department thinks fit.

20. Rural Telecommunications

(1) Operators providing basic services as defined by the Department shall contribute towards the development of rural telecommunications by accepting permit obligations with regard to:

(a) provision of rural telecommunications networks and services (applicable to the Telecommunications Services of Eritrea, TSE, or its legal successor), or

(b) financial contributions to the Rural Telecommunications Fund (applicable to operators other than TSE or its legal successor).

(2) The Rural Telecommunications Fund shall be established and managed by the Department. The purpose of the fund is to finance establishment and operations of telecommunications networks and services in rural areas where such services may not initially be provided on a commercial basis, in addition to the networks and services provided under sub-article (1) (a) hereof.

(3) The Rural Telecommunications Fund shall consist of such sums as may be provided by way of:

(a) payments from operators pursuant to sub-article (1) (b) of this Article;

(b) payments of fines pursuant to Articles 48 and 49 hereof; and

(c) other payments, grants or donations.

21. Rights to Use Real Property

(1) A public telecommunications operator is, if approved by the Department, and upon prior notice to the owners, entitled to effect and carry on installation and maintenance of telecommunications network, equipment, or other telecommunications devices to be located in, on, below or above public or private real property, building or facility.

(2) The Department may authorise other telecommunications operators than public telecommunications operators to exercise the rights indicated under sub-article (1) of this Article.

(3) The owner is entitled to compensation commensurate with the scope of limitation under sub-article (1) of this Article. The Minister of Transport and Communications may, by regulation, determine the procedures in connection with the determination of the compensation.

The owner is not entitled to compensation:

(a) if the purpose is solely to connect the property in question to the telecommunications network or to maintain such connection, or

(b) if the land in question is restored to its condition prior to the installation or entry described under sub-article (1) and (2) of this Article.

(4) Sea shores, rivers, canals and lakes, together with their beds, as well as the airspace of` Eritrea may be used by telecommunications operators for telecommunications purposes.

Part Three

Telecommunications Equipment

22. Scope

The provisions of Part Three shall apply to all categories of telecommunications equipment (Article 2(v)), unless exceptions have been made by the Department.

23. Permits for Suppliers and Installers

(1) A person desiring to import, manufacture, sell or otherwise transfer telecommunications equipment, or to install and service such equipment, must obtain a permit as a main supplier, a retail supplier or an installer in accordance with regulations issued by the Minister of Transport and Communications.

(2) The activities referred to in sub-article (1) of this Article are open competition activities (Article 2 (h)).

(3) A permit issued under this Article shall be subject to such conditions as the Department may specify in the permit, or as may be specified in regulations referred to in the permit.

24. Approval of Telecommunications Equipment

(1) The following equipment shall be approved (type approval) by the Department:

(a) all radio equipment unless exceptions have been made; and

(b) other telecommunications equipment that may be connected to or operated together with public telecommunications networks, or is intended for such use.

(2) Approval of telecommunications equipment is, however, not required if the equipment according to its labelling is solely intended for connection to non-public telecommunications networks.

(3) All equipment with the same type description as the approved item of` equipment shall be labelled as determined by the Department.

25. Refusal of Approval. Revocation

(1) The Department may refuse type approval of telecommunications equipment which does not satisfy the following essential requirements:

(a) user safety;

(b) safety of the operator's employees;

(c) electromagnetic compatibility requirements;

(d) protection of the telecommunications networks from harm;

(e) effective use of the radio frequency spectrum;

(f) interworking of terminal equipment with telecommunications network equipment;

(g) interworking of terminal equipment via the telecommunications network in justified cases, and

(o) other considerations which the Minister of Transport and Communications may, by regulation, add to this list.

(2) The Department may revoke a type approval if the telecommunications equipment or the labelling is altered after the approval is given, if the equipment no longer complies with the essential requirements pursuant to this Article, or if other major pre-conditions for approval no longer apply.

(3) Revocation of type approval includes a telecommunications equipment with the same type description, unless the reason for the revocation is that the equipment or the labelling is altered after the date when approval was given.

26. Prohibition of Import, Sale and Use of Telecommunications Equipment

(1) It shall be prohibited:

(a) to import telecommunications equipment for private use, to offer, to sell, or in any other way transfer telecommunications equipment to others; or

(b) to connect telecommunications equipment to public telecommunications networks, and to possess, establish or use such equipment;

unless the equipment is type approved.

(2) It shall be prohibited to connect telecommunications equipment to public networks when the equipment is not intended for such use.

(3) It shall be prohibited to transfer radio equipment which requires approval to others than those who can document possession of the necessary permits.

(4) The prohibition under this Article also includes equipment which does not comply with the essential requirements pursuant to Article 25 (1) hereof.

27. Prohibition of Marketing of Telecommunications Equipment. Withdrawal

If use of telecommunications equipment may involve threats to essential requirements pursuant to Article 25 (1) hereof, the Department may order the manufacturer or supplier to cease the offering and marketing of such equipment at once as well as to take measures to withdraw the equipment from the market.

Part Four

Broadcasting

28. Operator's Permit

(1) A person desiring to:

(a) establish and/or operate installations for broadcasting or the retransmission of broadcasting and/or

(b) broadcast nationally and/or

(c) broadcast locally, i.e. within a geographically delimited area,

must obtain an operator's permit.

(2) The Department shall determine which of the activities referred to in this Article shall be defined as exclusive rights activities (Article 2(e)) or as limited competition activities (Article 2(g)).

(3) A permit issued under this Article shall be subject to such conditions as the Department may specify in the permit or in regulations referred to in the permit.

29. Right to Retransmission

Simultaneous and unaltered retransmission by way of cable networks limited to 10 buildings and/or 40 households does not require a permit.

30. Supplier's Permit

(1) A person desiring to import, manufacture, sell or otherwise transfer broadcasting receiver equipment must obtain a supplier's permit in accordance with regulations issued by the Minister of Transport and Communications.

(2) The activities referred to in this Article are open competition activities (Article 2(h)).

(3) A permit issued under this Article shall be subject to such conditions as the Department may specify in the permit, or as may be specified in regulations referred to in the permit.

31. Approval of Broadcasting Receiver Equipment

(1) Broadcasting receiver equipment shall be approved (type approval) by the Department unless exceptions have been made.

(2) All equipment with the same type description as the approved item of equipment shall be labelled as determined by the Department.

(3) It shall be prohibited to import broadcasting receiver equipment, to offer, to sell, or in any other way transfer broadcasting receiver equipment to others unless the equipment is type approved.

Part Five

Radio Activities and Frequency Management

32. Scope

The provisions of Part Five shall apply to all radio activities (Article 2(p)), unless exemptions have been made by the Department.

33. Assignment of Frequency

The Department shall assign radio frequencies for radio activities within the framework of actual or planned use of frequencies. Consideration may be made regarding future frequency needs.

34. Certificate to Use Radio Equipment and Radio Systems

Radio equipment or a system with interworking radio equipment may only be possessed, established or used provided a certificate has been issued by the Department. The certificate may be issued subject to conditions, including transmission effect, location of equipment, band width, area of coverage, connection to the public telecommunications networks and the requirement to implement security measures to prevent illegal use.

35. Refusal of Assignments or Certificates. Revocation

(1) The Department may refuse to issue a frequency assignment or certificate pursuant to Articles 33 or 34 hereof respectively, when this is justified by general telecommunications policy objectives (Article 5) or by essential requirements pursuant to article 25 (1) hereof, or because a permit to establish or operate a telecommunications network or service has not been obtained. A certificate may also be refused if the radio equipment fails to comply with the requirements stipulated in or under this Proclamation.

(2) An assignment or a certificate may be revoked due to conditions as stated in sub-article (1) of this Article or if other major conditions for the assignment or the certificate are no longer satisfied. Frequency assignment may also be revoked pursuant to international agreements which Eritrea has ratified.

Part Six

Postal Services

36. Operator's Permit

(1) The Department shall issue a permit to Eritrean Postal Services (EPS) allowing EPS to be the public postal service operator and to perform all or any functions relating to the operation and provision of postal services in the State of Eritrea.

(2) Courier services and other specific postal services as determined by the Department are limited competition activities (Article 2(g)). A person other than EPS desiring to provide such services must obtain an operator's permit.

(3) All postal services other than the services referred under Article 36 (2) hereof are exclusive rights activities (Article 2(e)).

(4) A permit issued under this Article shall be subject to such conditions as the Department may specify in the permit or as may be specified in regulations referred to in the permit.

37. Transmission of Postal Articles

(1) The Minister of Transport and Communications shall issue regulations and directives as to the transmission by post of postal articles.

(2) Without limiting the generality of the foregoing, such regulations may:

(a) prescribe the charges or fees to be charged for postal services provided;

(b) provide for the performance of supplementary services in respect of transmission by post of postal articles; and

(c) prohibit the transmission by post of postal articles which are likely to injure any person or any postal article in the course of transmission by post.

38. Postage Stamps

(1) EPS may, subject to such directions as the Department may give, cause postage stamps to be provided of such kinds and denoting such values as EPS may determine for the purposes of this Proclamation.

(2) Any postage stamp provided under this Article shall be used for prepayment of any postage or other sums chargeable in respect of any postal article, except where the EPS determines that prepayment may be made in some other manner.

39. Postal Financial Services

(1) The Department may allow EPS to carry out postal financial services on its own account or on behalf of government and non-government agencies and may make directives as to such services with the concurrence of the Bank of Eritrea.

(2) For the purposes of this Article, «postal financial services» shall include money orders, postal orders, postal drafts, postal cheques, postal travellers' cheques, giro, cash-on-delivery, collection of bills, subscription to newspapers and periodicals, post office savings bank services and any other form of financial service.

(3) Interest on deposits in the post office savings bank services shall be paid at a rate determined from time to time by the Department with the concurrence of the Bank of Eritrea.

Part Seven

Miscellaneous Provisions

40. Regulatory Documents

(1) No regulatory document with the exception of equipment approval, may be transferred and assigned to another person without the approval of the Department.

(2) A regulatory document shall be valid for such period as may be specified therein and may be renewed.

(3) Permits issued under this Proclamation shall consist of two documents:

(a) one document (permit certificate) which includes a certificate of qualification and/or a certificate of grade; and

(b) another document (permit conditions) which contains the conditions attached to the permit.

The Minister of Transport and Communications may issue regulations with regard to certificates of qualification and certificates of grade in connection with permits issued under this Proclamation.

41. Inspection and Control

(1) The Department monitors that the requirements laid down in or under this Proclamation are complied with, including monitoring of the operator's contract with the user.

(2) The Department may, in connection with the monitoring, carry out random tests and initiate measurements and other control measures. Control may be carried out without prior notice.

(3) Anyone submitted to control measures shall ensure that the Department has unimpeded access to the premises where communications equipment or other devices subject to this Proclamation are located.

(4) The Department may order the owner or the owner's representative to be present during the control. Necessary documentation shall be made available to the Department. Lack of co-operation during the control may result in closure of the applicable communications activities.

(5) The Department may order the establishment of internal control systems to ensure that the requirements laid down in or under this Proclamation are complied with Documentation showing the compliance of the requirements as regards internal control shall be prepared. This documentation shall be accessible to the Department.

42. Correction and Closure

(1) The Department may demand that operators, supplier and installers alter their contractual practices in accordance with the requirements laid down in or under this Proclamation.

(2) The Department may implement closure of communications network a communications service communications equipment, a radio activity, when no permit certificate, assignment or approval as prescribed by or under this Proclamation has been granted, or when the activity may cause serious threats to health on security. Closure may be carried out without prior notice.

(3) In connection with closure the Department may decide that radio equipment shall be dismantled and sealed.

(4) In connection with closure the Department may decide that communications equipment which appear to have been used in violation of provisions of this Proclamation shall be seized. If there is no prosecution with regard to any equipment seized under this sub-article, the equipment shall be taken and deemed forfeited to the Department, unless a claim is made within two months from the date of seizure and the Department finds that the claim is justified.

(5) When considered essential, the Department may demand assistance from the police to carry out closure, sealing and/or seizure.

43. Security Measures

The Department may order an operator, owner of radio systems and user of radio equipment, as well as an installer of communications networks and equipment, to implement security measures with respect to national security, protection of privacy, duty of confidence or other important social interests, including transmission of announcements from governmental authorities when this is of major importance. Costs and losses in connection with these measures shall ultimately be covered by the person or body who orders these measures. Orders regarding protection may be issued without prior notice.

44. Duty of Disclosure

(1) The Department may request information necessary for the implementation of this Proclamation or for tasks which are transferred to the Department in connection with international agreements ratified by Eritrea, i.e. to investigate possible violation of this Proclamation, or regulations or directives issued pursuant to this Proclamation.

(2) The information may be requested or delivered in writing or orally within a stipulated deadline from a person or body or groups of bodies or organizations. If the deadline is not complied with, the permit, the approval or other certificate, assignment pursuant to this Proclamation may be revoked.

(3) The duty of confidentiality pursuant to Article 46 hereof or pursuant to other provisions of Eritrean law shall not preclude the duty to provide information as stipulated in this Article.

(4) The Department shall preserve confidentiality in relation to the information provided under a duty of disclosure.

45. Publication of Information

(1) The Department may publish information concerning an operator's contractual practice to ensure that the requirements to provide open access to communication networks and services are complied with. Consideration shall be given as regards the justified interests on commercial firms in preserving business secrets. Information concerning technical devices or solution shall not be published.

(2) No one may request information from the Department obtained pursuant to Article 44 hereof in connection with the procedures laid down in Article 41 of this Proclamation.

46. Duty of Confidentiality

(1) An operator, a supplier and an installer are obliged to treat as confidential the contents of the communications and others' use of communications, including information about technical devices and procedures. They are obliged to implement measures to prevent others except those whom this information concerns, to obtain access to such information by themselves. Neither may they make use of the information in their own activities or in service for or employment by others, unless the information consists of statistical information on network traffic which is fully anonymized and which does not reveal information about devices or technical solutions.

(2) The duty of confidentiality pursuant to this Article also applies to everyone in the service or employment of an operator, a supplier, an installer or the Department. The duty of confidentiality also applies for 3 years as of the termination of the service or employment.

(3) Other statutory duty of confidentiality based on law applies in addition to this Article.

47. Fees and Levies

(1) Fees for the regulatory documents or other administrative services which are rendered pursuant to or under this Proclamation, shall be paid in the amount as stipulated in regulations issued by the Minister of Transport and Communications.

(2) The Department may order an operator to pay charges to another operator for connection to a network or a communications service.

48. Sanctions

(1) If a person fails to comply with the requirements laid down in or under this Proclamation or in regulatory documents, the Department may impose one or more of the following sanctions:

(a) rectification within a stipulated deadline. If the order is not carried out, coercive fines pursuant to Article 49 may be imposed; or

(b) obligation of public apology by the person who has failed to comply, at such person's cost, for his breach in a newspaper of general circulation, to run for two consecutive days; or

(c) payment of a fine determined by the Department, to the Department; or

(d) payment of a fine determined by the Department to the applicable customers of the person who has failed to comply, or to injured parties for injury caused by such person as a result of the non-compliance; or

(e) reduction of the period of exclusive rights with regard to one, several or all services; or

(f) reduction of the period of validity of the regulatory document; or

(g) suspension of the regulatory document; or

(h) revocation of the regulatory document.

(2) In addition to the circumstances described in sub-article (1) of this Article the regulatory document may be revoked if the person to whom the document is issued:

(a) agrees in writing with the Department that the document should be revoked;

(b) is unable to pay his debts;

(c) enters into receivership or liquidation; or

(d) ceases to carry on his business.

49. Coercive Fines

To ensure that decisions pursuant to or under this Proclamation are complied with, the Department may decide that anyone subject to such decision shall pay a daily coercive fine to the Department for each day until the conditions are rectified. An order to pay a fine is regarded as grounds for enforcement of distraint.

50. Penalties

Any person who violates the provisions of this Proclamation or regulations issued thereunder shall be punished in accordance with the Penal Code of Eritrea.

51. Disputes

(1) Any dispute between (a) a user and (b) an operator, a supplier or an installer, in which it is alleged that the latter has:

(a) acted in contravention of the conditions of his permit to the detriment of the user; or

(b) without due reason restricted use owing to payment default; or

(c) without due reason implemented alteration or closure of services,

may be referred to the Department for decision. Others with a legal interest in the case may also request a decision.

(2) The Department shall determine whether the allegation is well founded, and if it is, make such direction as is appropriate together with a statement of reasons for reaching the decision

made. The Department may also impose sanctions pursuant to Article 48 hereof.

(3) The Department may decide that all disputes, or specified categories of disputes, shall be referred to an arbitration panel for decision. The Minister of Transport and Communications may, by regulation, determine the procedures of the arbitration panel.

52. Judicial review

(1) A person aggrieved by an adverse decision under Articles 12, 14, 23, 28, 36, 48.1(c-h), 49 hereof and such other provisions of this Proclamation as the Department may determine, may, within 30 days after such decision has been rendered, seek a review by the High Court of Eritrea, upon paying the required court fee. The High Court shall have exclusive jurisdiction.

(2) The High Court shall set aside a decision which it finds:

(a) arbitrary, an abuse of discretion, or otherwise not consistent with law; or

(b) not made consistent with required procedures; or

(c) unsupported by substantial evidence.

The decision of the High Court shall be final.

(3) Instead of seeking a review pursuant to sub-article (1) of this Article an operator may refer the Department's decision to arbitration if he has the right to use that venue according to his permit.

53. Reregistration

Persons who when this Proclamation enters into force, hold a permit, licence, certificate, approval, assignment or other similar document concerning matters provided for in this Proclamation, shall apply for reregistration in accordance with procedures determined by the Department.

54. Repeal

Any provisions of any proclamation, decree, order, legal notice or directive concerning matters provided for in this Proclamation are hereby repealed and replaced by this Proclamation.

55. Effective Date

This Proclamation shall enter into force on the day of its publication in the Gazette of Eritrean Laws.

Done at Asmara, this 2nd day of March, 1998

Government of Eritrea

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