

# **Telecommunications Act (TKG)\***

of 22 June 2004

The German Bundestag, with the consent of the German Bundesrat, has adopted the following Act—

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This Act serves to transpose the following Directives—

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33);  
Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L 108 page 21);  
Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108 page 7);

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 page 51);  
and

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 108 page 37).

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**PART 1**  
**GENERAL PROVISIONS**

Section 1

**Legislative Purpose**

The purpose of this Act is, through technology-neutral regulation, to promote competition and efficient infrastructures in telecommunications and to guarantee appropriate and adequate services throughout the Federal Republic of Germany.

Section 2

**Regulation and Aims**

(1) Telecommunications regulation shall be under federal authority.

(2) The aims of regulation shall be–

1. to safeguard user, most notably consumer, interests in telecommunications and to safeguard telecommunications privacy;
2. to secure fair competition and to promote telecommunications markets with sustainable competition in services and networks and in associated facilities and services, in rural areas as well;
3. to encourage efficient investment in infrastructure and to promote innovation;
4. to promote development of the internal market of the European Union;
5. to ensure provision throughout the Federal Republic of Germany of basic telecommunications services (universal services) at affordable prices;
6. to promote telecommunications services in public institutions;
7. to secure efficient and interference-free use of frequencies, account also being taken of broadcasting interests;
8. to secure efficient use of numbering resources;
9. to protect public safety interests.

(3) Unless this Act expressly makes definitive arrangements, the provisions of the Competition Act remain applicable. The duties and responsibilities of the cartel authorities remain unaffected.

(4) The sovereign rights of the Federal Minister of Defence remain unaffected.

(5) Broadcasting and comparable telemedia interests shall be taken into account. The provisions of the media legislation of the federal states remain unaffected.

Section 3  
**Definitions**

For the purposes of this Act

1. "call" means a connection established by means of a publicly available telephone service, supporting two-way communication in real time;
2. "application programming interface" means the software interface between applications and the operating functions of digital television receivers;
3. "customer data" means the data of a subscriber collected for the purpose of establishing, framing the contents of, modifying or terminating a contract for telecommunications services;
4. "significant market power" ("SMP") of one or more undertakings is deemed present where the criteria laid down in section 11(1) sentences 3 to 5 apply;
5. "value added service" means a service which requires the collection and use of traffic data or location data beyond that which is necessary for the transmission or billing of a communication;
6. "service provider" means a person who, on a wholly or partly commercial basis,
  - a) provides a telecommunications service, or
  - b) contributes to the provision of such service;
7. "digital television receiver" means a television set with an integrated digital decoder or a digital decoder designed for connection to the television set for the use of digitally transmitted television signals which can be enriched with additional signals, including conditional access;
8. "end-user" means a legal entity or a natural person not operating a public telecommunications network or providing a publicly available telecommunications service;
9. "frequency usage" means any wanted emission or radiation of electromagnetic waves between 9 kHz and 3000 GHz for use by radio services or other applications of electromagnetic waves. Frequency usage for the purposes of this Act also means the routing of electromagnetic waves in and along conductors in respect of which free use as provided for by section 53(2) sentence 3 is not given;
10. "commercial provision of telecommunications services" means telecommunications offered to third parties on a sustained basis, with or without profit-making intent;
11. "customer cards" means cards through the agency of which telecommunications connections can be established and personal data collected;
12. "sustainable competitive market" means a market in which competition has been secured such that it continues even after sector-specific regulation has been withdrawn;
13. "numbers" means character sequences which in telecommunications networks serve the purpose of addressing;



14. "user" means a natural person using a telecommunications service for private or business purposes, without necessarily having subscribed to that service;
15. "public pay telephone" means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or prepayment cards, including cards for use with dialling codes;
16. "public telephone network" means a telecommunications network used to provide publicly available telephone services and which, in addition, supports other services such as facsimile and data communications, and functional Internet access;
17. "publicly available telephone service" means a service available to the public for originating and receiving national and international calls, including a facility for making emergency calls; publicly available telephone service also includes the following services: provision of operator assistance, directory enquiry services, directories, provision of public pay telephones, provision of service under special terms and provision of non-geographic services;
18. "telephone number" means a number, the dialling of which in the public telephone service allows a connection to a specific destination to be set up;
19. "location data" means any data collected or used in a telecommunications network, indicating the geographic position of the terminal equipment of an end-user of a publicly available telecommunications service;
20. "subscriber" means a natural person or a legal entity who or which is party to a contract with a provider of telecommunications services for the supply of such services;
21. "local loop" means the physical circuit connecting the network termination point at the subscriber's to the main distribution frame or equivalent facility in public fixed telephone networks;
22. "telecommunications" means the technical process of sending, transmitting and receiving signals by means of telecommunications systems;
23. "telecommunications systems" means technical facilities or equipment capable of sending, transmitting, switching, receiving, steering or controlling electromagnetic or optical signals identifiable as messages;
24. "telecommunications services" means services normally provided for remuneration consisting in, or having as their principal feature, the conveyance of signals by means of telecommunications networks, and includes transmission services in networks used for broadcasting;
25. "telecommunications-based services" means services which do not invoke a service delivered in a different place or at a different time but whose content service is delivered in the course of the telecommunications connection;
26. "telecommunications lines" means underground or overhead telecommunications cable plant, including the associated switching and distribution equipment, poles and supports, cable chambers and ducts;

27. "telecommunications network" means transmission systems and, where applicable, switching and routing equipment and other resources in their entirety which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
28. "transmission path" means telecommunications systems in the form of cable or wireless links with the associated transmission equipment, as point-to-point or point-to-multipoint links with a given information throughput (bandwidth or bit rate), including their network terminations;
29. "undertaking" means the undertaking itself or affiliated undertakings within the meaning of section 36(2) and section 37(1) and (2) of the Competition Act;
30. "traffic data" means data collected, processed or used in the provision of a telecommunications service;
31. "effective competition" means the absence of significant market power within the meaning of section 11(1) sentences 3 to 5;
32. "access" means the provision of services and/or the making available of facilities to another undertaking, under defined conditions, for the purpose of providing telecommunications services;
33. "conditional access systems" means technical procedures and/or arrangements making the legitimate use of protected broadcasting programmes conditional upon subscription or individual authorisation;
34. "interconnection" means the access providing the physical and logical linking of public telecommunications networks for the purpose of enabling the users of one undertaking to communicate with users of the same or another undertaking or to make use of services provided by another undertaking; services may be provided by the parties concerned or by other parties that have access to the network. Interconnection is a special type of access implemented between public telecommunications network operators.

#### Section 4

### **International Reporting Requirements**

Public telecommunications network operators and providers of publicly available telecommunications services shall provide the Regulatory Authority, upon request, with all such information as it requires to fulfil its reporting requirements in relation to the European Commission and other international bodies.

## Section 5

### **Means of Publication**

Publications and notifications which the Regulatory Authority is required to effect under this Act shall be placed in its Official Gazette and on its website, unless otherwise provided for. Technical directives are also to be published in the Regulatory Authority Official Gazette.

## Section 6

### **Notification Requirement**

(1) Any person operating a public telecommunications network on a profit-oriented basis or providing a publicly available telecommunications service on a profit-oriented basis shall notify the Regulatory Authority without undue delay of beginning to provide, of providing with differences or of ceasing to provide his activity and of any changes in his undertaking. Such notification requires written form.

(2) The notification shall include the information required to identify the operator or provider according to subsection (1), in particular the company register number, the address, a short description of the network or service being provided and the date on which provision of the activity is due to begin. The notification is to be made on a form prescribed and published by the Regulatory Authority.

(3) Upon request, the Regulatory Authority shall within a period of one week confirm that the notification according to subsection (2) is complete and certify that the undertaking has the rights granted by or under this Act.

(4) The Regulatory Authority shall at regular intervals publish a list of notified undertakings.

(5) Where it is clear that the activity has ceased and the Regulatory Authority has not been notified in writing of such cessation within a period of six months, the Regulatory Authority may establish ex officio that the activity has ceased to be provided.

## Section 7

### **Structural Separation**

Undertakings operating public telecommunications networks or providing publicly available telecommunications services and having special or exclusive rights within the European Union for the provision of services in other sectors shall be required

1. structurally to separate the activities associated with the making available of public telecommunications networks and the provision of publicly available telecommunications services; or
2. to keep separate accounts for the activities associated with the making available of public telecommunications networks or the provision of publicly available telecommunications services to the extent that would be required if these activities were carried out by legally independent undertakings, so as to identify all elements of cost and revenue of these activities, with the basis for their calculation and the detailed allocation methods used, including an itemised breakdown of fixed assets and structural costs.

## Section 8

### **International Status**

(1) Undertakings providing international telecommunications services or, under their service offer, operating radio equipment which may cause harmful interference to the radio services of other countries, are deemed recognised operating agencies within the meaning of the Constitution and the Convention of the International Telecommunication Union. These undertakings are subject to the obligations arising from the Constitution of the International Telecommunication Union.

(2) Under the provisions of the Constitution of the International Telecommunication Union undertakings providing international telecommunications services shall

1. give absolute priority to all telecommunications concerning safety of life at sea, on land, in the air or in space, as well as to epidemiological telecommunications of exceptional urgency of the World Health Organisation;
2. accord priority to government telecommunications over other telecommunications to the extent practicable upon specific request by the originator.

## **PART 2**

### **MARKET REGULATION**

#### Chapter 1

#### Market Regulation Procedures

#### Section 9

#### **Principles**

(1) Markets meeting the conditions of section 10 and shown by a market analysis according to section 11 not to be effectively competitive are subject to regulation in accordance with the provisions of this Part.

(2) Undertakings having significant market power ("SMP undertakings") in markets within the meaning of section 11 are subject to measures imposed by the Regulatory Authority in accordance with this Part.

(3) Section 18 remains unaffected.

#### Section 10

#### **Market Definition**

(1) The Regulatory Authority shall identify, for the first time without undue delay after the entry into force of this Act, the relevant product and geographic telecommunications markets warranting regulation in accordance with the provisions of this Part.

(2) Warranting regulation in accordance with the provisions of this Part are markets with high, non-transitory entry barriers of a structural or legal nature, markets which do not tend towards effective competition within the relevant time horizon and markets in respect of which the application of competition law alone would not adequately address the market failure(s) concerned. Such markets shall be identified by the Regulatory Authority within the limits of its power of interpretation. In doing so, it shall take the utmost account of the recommendation on relevant product and service markets which the Commission publishes under Article 15(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33), as amended.

(3) The Regulatory Authority shall, following the procedure set out in section 12, submit to the Commission its proposals for market definitions in all cases in which such definitions would affect trade between Member States.

## Section 11

### **Market Analysis**

(1) After identifying markets which, under section 10, warrant regulation in accordance with this Part, the Regulatory Authority shall determine whether there is effective competition in the market being analysed. Effective competition is deemed absent if one or more undertakings have significant market power in this market. An undertaking is deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, ie a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and end-users. In determining whether there is effective competition, the Regulatory Authority shall take the utmost account of the criteria established by the Commission, published in the Commission guidelines on market analysis and the assessment of significant market power referred to in Article 15(2) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33), as amended. Where an undertaking has significant market power in a relevant market, it may also be deemed an SMP undertaking in a closely related relevant market identified in accordance with section 10(2) where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other, thereby strengthening the overall market power of the undertaking.

(2) In the case of transnational markets within the area of application of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33), the Regulatory Authority shall determine whether significant market power within the meaning of subsection (1) is present together with the national regulatory authorities of the Member States comprised in these markets.

(3) The proposals for determinations according to subsections (1) and (2), including designations of SMP undertakings, shall be submitted to the Commission following the procedure set out in section 12 inasmuch as trade between Member States would be affected.

## Section 12

### Consultation and Consolidation Procedure

(1) The Regulatory Authority shall give interested parties the opportunity to make representations, within a fixed period, on the proposals referred to in sections 10 and 11. The consultation procedures and their outcomes shall be published by the Regulatory Authority. This does not affect protection of the trade and operating secrets of the parties concerned. For this purpose the Regulatory Authority shall establish a single information point through which all current consultations can be accessed.

(2) Where sections 10(3) and 11(3) provide for a submission, the following procedure applies–

1. After carrying out the consultation procedure according to subsection (1) the Regulatory Authority shall make the proposals referred to in sections 10 and 11 and the underlying reasoning available to the Commission and to the regulatory authorities of every other Member State at the same time, informing the Commission and the regulatory authorities of every other Member State accordingly. The Regulatory Authority may not give effect to the proposals referred to in sections 10 and 11 prior to the expiry of a period of one month or longer as determined under subsection (1).
2. The Regulatory Authority shall take the utmost account of the representations of the Commission and the other national regulatory authorities according to para 1. It shall communicate the resulting draft to the Commission.
3. Where a draft according to sections 10 and 11 identifies a relevant market which differs from those defined in the prevailing version of the recommendation on relevant product and service markets published by the Commission under Article 15(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33) or where such draft determines the extent to which one or more undertakings have significant market power in this market and where the Commission indicates within the representations period according to para 1 sentence 2 that the draft would create a barrier to the single market or has serious doubts as to its compatibility with Community law and, in particular, the objectives of Article 8 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33), the Regulatory Authority shall not give effect to the proposals before the end of a further two months. Where the Commission takes a decision within this period requiring the Regulatory Authority to withdraw the draft, the Regulatory Authority is bound by such decision. It may again consult the parties concerned on the Commission's decision following the procedure set out in subsection (1). Where the Regulatory Authority wishes to accept the amendments proposed by the Commission, it shall amend the draft in accordance with the Commission's decision and submit the amended draft to the Commission. Otherwise it shall inform the Federal Ministry of Economics and Labour of the Commission's decision.
4. In exceptional circumstances where the Regulatory Authority considers there is an urgent need to act – in derogation of the procedure according to subsection (1) and paras 1 to 3 – in order to safeguard competition and protect user interests, it may adopt proportionate and provisional measures immediately. It shall without undue delay communicate such measures, with full reasons, to the Commission and the regulatory authorities of every other Member State. A decision by the Regulatory Authority to make such measures permanent or

to extend the time for which they are applicable is subject to the provisions of subsection (1) and paras 1 to 3.

## Section 13

### **Remedies**

(1) As far as the Regulatory Authority (by order) imposes, amends, maintains or withdraws obligations as referred to in sections 19, 20, 21, 24, 30, 39, 40 or 41(1) as a result of market analysis according to section 11, the procedure set out in section 12(1) and (2) paras 1, 2 and 4 applies accordingly inasmuch as the measure would affect trade between Member States. Undertakings affected are to be given an appropriate period of notice of the withdrawal of any such obligations. The procedure according to sentence 1 may be carried out by the Regulatory Authority together with or subsequent to the procedure set out in section 12. Sentences 1 and 2 likewise apply to obligations as referred to in section 18.

(2) In the case of section 11(2) the Regulatory Authority shall, in agreement with the national regulatory authorities concerned, determine those obligations which are to be fulfilled by the SMP undertaking(s). The procedure set out in section 12(1) and (2) paras 1, 2 and 4 applies accordingly.

(3) Decisions as referred to in sections 18, 19, 20, 21, 24, 30, 39, 40 and 41(1) are issued together with the outcomes of the procedures set out in sections 10 and 11 as a single administrative act.

## Section 14

### **Review of Market Definitions and Analyses**

(1) Where the Regulatory Authority becomes aware of facts warranting the assumption that the outcomes reached under sections 10 to 12 no longer reflect the market as it currently is or where the recommendation referred to in Article 15(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33) has been amended, the arrangements of sections 10 to 13 apply accordingly.

(2) Apart from the cases referred to in subsection (1) the Regulatory Authority shall submit every two years the findings of its review of market definitions according to section 10 and of market analyses according to section 11.

## Section 15

### **Procedure For Other Relevant Measures**

Apart from the cases referred to in sections 10, 11 and 13 the Regulatory Authority shall, in respect of all measures having a significant impact on the relevant market, follow the procedure set out in section 12(1) prior to taking a decision, unless this is otherwise regulated by law.

## Chapter 2 Access Regulation

### Section 16

#### **Interconnection Agreements**

Every public telecommunications network operator shall, upon request, undertake to make an interconnection offer to other public telecommunications network operators in order to secure user communication, the provision of telecommunications services and service interoperability throughout the Community.

### Section 17

#### **Confidentiality of Information**

Information obtained from public network operators in the process of negotiating access or interconnection may be used solely for the purposes for which it was provided. Such information shall not be passed on to any other party, in particular other departments, subsidiaries or partners of the negotiating parties, for whom such information could provide a competitive advantage.

### Section 18

#### **Control of End-User Access**

(1) The Regulatory Authority may, in justified cases, impose obligations on public telecommunications network operators controlling access to end-users and not having significant market power to interconnect, upon request, their networks with those of other public telecommunications network operators, as far as may be necessary to secure user communication, the provision of services and service interoperability. Additionally, the Regulatory Authority may impose further access obligations on public telecommunications network operators controlling access to end-users and not having significant market power as far as may be necessary to secure end-to-end connectivity.

(2) With a view to developing sustainable competition in the retail market the Regulatory Authority may require public telecommunications network operators controlling access to end-users not to treat particular requesting public telecommunications network operators differently, directly or indirectly, without objectively justifiable reason, from other requesting public telecommunications network operators with regard to the availability and billing of telecommunications services, of services according to section 78(2) paras 3 and 4 and of telecommunications-based services. Where the Regulatory Authority imposes obligations under sentence 1, section 42(4) applies accordingly.

(3) The measures set out in subsection (1) shall be objective, transparent and non-discriminatory. Section 21(1) sentence 2 and (4) apply accordingly.



## Section 19

### **Prohibition on Discrimination**

(1) The Regulatory Authority may impose obligations on a public telecommunications network operator with significant market power requiring access agreements to be based on objective criteria, to be transparent, to grant equally good access and to meet the requirements of fairness and reasonableness.

(2) Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in the same circumstances to other undertakings providing like services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services or those of its subsidiaries or partners.

## Section 20

### **Transparency Obligation**

(1) The Regulatory Authority may impose an obligation on an SMP public telecommunications network operator to publish, for undertakings with access entitlements, all such information as is required for use of the relevant access services and/or facilities, in particular accounting information, information on technical specifications, network characteristics, terms and conditions of supply and use, and the charges payable.

(2) The Regulatory Authority is authorised to specify the information an SMP operator is to make available and in which form the information is to be made available, as far as this is proportionate.

## Section 21

### **Access Obligations**

(1) The Regulatory Authority may, upon request or on its own initiative, impose obligations on SMP public telecommunications network operators to grant other undertakings access, including unbundled access that properly reflects their requirements, in particular if otherwise, the development of a sustainable competitive downstream retail market would be hindered or this development would run counter to the interests of the end-users. In considering whether an access obligation is justified and proportionate to the regulatory aims according to section 2(2), the Regulatory Authority has to take into account, in particular, the following factors–

1. the technical and economic viability, having regard to the pace of market development, of using or installing alternative facilities, bearing in mind the nature and type of interconnection or access proposed;
2. the feasibility of providing the access proposed, in relation to the capacity available;
3. the initial investment by the facility owner, bearing in mind the risks involved in making the investment;
4. the need to secure competition in public telecommunications networks and publicly available telecommunications services in the long term, most notably by creating incentives for efficient investment in facilities which will secure more competition in the long term;

5. industrial property rights and intellectual property rights;
6. the provision of services that are available throughout Europe; and
7. whether already imposed obligations as referred to in this Part or non-mandated services available in and taken up by a large part of the market are sufficient to ensure the regulatory aims according to section 2(2).

(2) The Regulatory Authority may, having regard to subsection (1), require SMP public telecommunications network operators, amongst other things,

1. to grant access to specified network elements and/or facilities, including unbundled broadband access;
2. not to withdraw access to facilities;
3. to grant access on a wholesale basis to particular services offered by the operator as offered to end-users, for the purpose of resale by third parties in their own name and for their own account. In doing so, past and future investment in innovative services is to be taken into consideration;
4. to create the necessary prerequisites for the interoperability of end-to-end communication, including the provision of facilities for intelligent network services and roaming (enabling the use of other operators' mobile networks outside the coverage area of the requesting mobile operator, for the requesting operator's end-users);
5. to grant access to operational support systems or similar software systems required to secure fair competition in the provision of services, while ensuring the efficient use of existing facilities;
6. to allow, in meeting the access obligations imposed under this subsection or under subsection (3), the use of access services and facilities and cooperation between undertakings with access entitlements, unless an SMP operator shows in the given instance that, for technical reasons, such use or cooperation is not possible or is possible to a limited extent only;
7. to grant access to single billing services and to the acceptance or first-time collection of receivables in accordance with the following, as far as the bill-issuers have not entered into an agreement with the predominant part of the hence relevant market of the providers of publicly available telecommunications services to whom their access customers are able to connect, and to grant other providers who have not entered into such agreement non-discriminatory access to these services under the terms and conditions laid down in the agreement—
  - a) End-users who have not agreed anything else with other providers of publicly available telecommunications services are to be issued a bill by the bill-issuer which, independently of the tariff structures, presents the charges for telecommunications services, for services according to section 78(2) para 3 and for telecommunications-based services from other providers taken via the network termination point of the end-user. This also applies to charges for authorisation codes transmitted during the telephone connection when these are concerned solely with services. Payment to the

bill-issuer of these charges is effected by means of a single bill for the whole of the service taken and for the charges payable to him.

- b) A billing obligation cannot be imposed in respect of unmetered services within the meaning of subpara a) sentences 1 and 2 whose charges exceed 30 euros (10 euros from 1 January 2008), metered telecommunications-based services and services according to subpara a) sentence 2 with charges exceeding 2 euros per minute in each case or for any services for which authorisation is required. Nor can an obligation to handle complaints relating to services billed for third parties, to send reminders or to collect charges payable to third parties be imposed.
- c) Customer data required for the purpose of handling complaints, sending reminders or collecting charges for services within the meaning of subpara a) sentences 1 and 2 are to be transmitted by the bill-issuer to providers of publicly available telecommunications services. Providers billing customers themselves for services within the meaning of subpara a) sentence 2 are, from 1 April 2005, to be provided by the bill-issuer with the customer data required.
- d) Providers of publicly available telecommunications services have to ensure in relation to the bill-issuer that no data records for services for which billing is to be effected which are not in compliance with the legal provisions or with consumer protection legislation are transmitted to him. The bill-issuer is not responsible or liable for services billed on behalf of third parties.
- e) In his reminders the bill-issuer has to include an insert, given prominence by the way it is printed, stating that the customer may pay not only the amount of the reminder, but also the original, possibly higher, amount to the bill-issuer with discharging effect.

(3) The Regulatory Authority should impose the following obligations under subsection (1) on SMP public telecommunications network operators—

1. the granting of fully unbundled access to the local loop and shared access to the local loop (provision of access to the local loop or to the local sub-loop in such manner as to enable use of the entire frequency spectrum of the twisted metallic pair);
2. the interconnection of telecommunications networks;
3. the granting of open access to technical interfaces, protocols and other key technologies essential for service interoperability and virtual network services;
4. the provision of colocation and other forms of facility sharing, including building, duct and mast sharing, and the granting, to the users or their agents, of access to these facilities at any time.

(4) Where an operator shows that use of the facility would endanger the maintenance of network integrity or the safety of network operations, the Regulatory Authority shall not impose the access obligation relating to the facility or shall impose the obligation in different form. The maintenance of network integrity and the safety of network operations are to be judged on the basis of objective standards.

## Section 22

### **Access Agreements**

(1) An SMP public telecommunications network operator in relation to whom an access obligation according to section 21 has been imposed is to submit to other undertakings requesting these services and facilities in order to provide telecommunications services themselves, without undue delay but in any case not later than three months after the access obligation has been imposed, an offer for such access.

(2) Access agreements concluded by an SMP public telecommunications network operator require written form.

(3) An SMP public telecommunications network operator shall submit to the Regulatory Authority agreements on access services and facilities to which he is party as a provider without undue delay after their conclusion. The Regulatory Authority shall publish the place in which and the hours during which an agreement according to sentence 1 is available for inspection to persons requesting access services and facilities.

## Section 23

### **Reference Offer**

(1) The Regulatory Authority should require an SMP public telecommunications network operator who is subject to an access obligation according to section 21 to publish, normally within three months, a reference offer for the access service and/or facility for which there is general demand. This decision may be issued together with a decision on the imposition of an access obligation according to section 21.

(2) Where an SMP public telecommunications network operator does not submit a reference offer, the Regulatory Authority shall identify the access services and/or facilities for which there is general demand. For this purpose the Regulatory Authority shall give actual and potential users of such services and facilities the opportunity to comment. It shall subsequently give the SMP operator the opportunity to comment on which of the services and facilities thus identified should, in his view, constitute part of a reference offer.

(3) The Regulatory Authority shall, having regard to the comments referred to in subsection (2), determine the access services the SMP operator has to provide and the access facilities the SMP operator has to make available in a reference offer. The Regulatory Authority shall request the operator to submit, within a specified period, a corresponding reference offer with terms and conditions of supply and use, including the rates. It may attach to this request requirements relating to particular conditions, most notably with regard to fairness, reasonableness and timeliness. The reference offer shall be sufficiently comprehensive to enable acceptance by all users without further negotiations. The above sentences also apply in the event of the SMP operator having submitted an inadequate reference offer.

(4) The Regulatory Authority shall check and, in the event of failure to comply with the requirements relating to particular conditions, most notably with regard to fairness, reasonableness and timeliness, amend the reference offers submitted. The Regulatory Authority generally determines a minimum duration for reference offers. The SMP operator shall notify the Regulatory Authority three months prior to the expiry of this minimum duration of any intended modifications to or cessation of the reference offer. The decisions referred to in subsections (3)

and (4) sentences 1 and 2 may be challenged in their entirety only. Sections 27 to 37 apply in respect of rates regulation.

(5) Where an access service or facility is already the subject matter of an access agreement according to section 22, the Regulatory Authority may oblige the SMP public telecommunications network operator to offer, on a non-discriminatory basis, this service or facility to other users as well, if general demand for such service or facility is likely to develop. This also applies to access services and facilities an SMP public telecommunications network operator has been obliged to provide or make available under an order according to section 25.

(6) The Regulatory Authority may oblige an SMP public telecommunications network operator to modify his reference offer if general demand has changed significantly. This may refer both to the services and facilities themselves and to the main conditions for their supply. Subsections (2) to (5) apply with regard to modifications to the reference offer.

(7) The operator is obliged to include the reference offer in his general terms and conditions.

## Section 24

### **Accounting Separation**

(1) The Regulatory Authority may require an SMP public telecommunications network operator to keep separate accounts for certain activities related to access services and facilities. In particular, the Regulatory Authority as a rule requires a vertically integrated undertaking to make its wholesale prices and its internal transfer prices transparent. This is to prevent, amongst other things, a breach of the prohibition on discrimination and unlawful cross-subsidies. The Regulatory Authority may specify the format to be used and the accounting method to be applied.

(2) The Regulatory Authority may require submission, in prescribed form, of the cost accounting and bookkeeping records referred to in subsection (1), including all related information and documents, upon request. The Regulatory Authority may publish such information in suitable form insofar as this would contribute to achieving the aims set out in section 2(2). In doing so it shall have regard to the provisions on the maintenance of trade and operating secrets.

## Section 25

### **Regulatory Authority Orders**

(1) Where an access agreement according to section 22 or an agreement on access services and facilities according to section 18 has not been brought about either wholly or in part and the conditions specified in this Act for imposing an obligation to grant access are given, the Regulatory Authority shall, after hearing the parties concerned, order access within a period of ten weeks from referral by one of the parties to the intended agreement. In cases which have to be specially justified the Regulatory Authority may, within the period referred to in sentence 1, extend the procedure to a maximum of four months.

(2) An order is permissible only insofar as and for as long as the parties concerned fail to reach an access or interconnection agreement.

(3) The referral according to subsection (1) shall be in written form; it shall be substantiated. In particular, the following is to be set out–

1. the precise content of the Regulatory Authority order;
2. when access was requested and for which concrete services and/or facilities;
3. that serious negotiations have been held or that the other party has declined to enter into any such negotiations;
4. the points on which agreement has not been reached; and
5. explanatory remarks on the technical feasibility of any specific technical measures requested.

The referral may be withdrawn until such time as the order is issued.

(4) For the purpose of achieving the aims set out in section 2(2) the Regulatory Authority may also open a case on its own initiative.

(5) The subject matter of such order may be any of the terms and conditions of an access agreement, or the rates. The Regulatory Authority may attach to such order conditions with regard to fairness, reasonableness and timeliness. Sections 27 to 38 apply in respect of determining the rates.

(6) Where both the terms and conditions of an access agreement and the rates payable for the services and/or facilities requested are disputed, the Regulatory Authority should take partial decisions with regard to the terms and conditions and to the rates. The periods referred to in subsection (1) apply to any partial decisions taken by the Regulatory Authority. The Regulatory Authority order may be challenged in its entirety only.

(7) Documents submitted in the course of proceedings are considered only if this does not compromise observance of the period specified in subsection (1).

(8) Operators affected shall follow a Regulatory Authority order without undue delay unless the Regulatory Authority has specified a period in the order for giving effect to the order. To enforce such order the Regulatory Authority may set a penalty not exceeding one million euros in accordance with the Administrative Enforcement Act.

## Section 26

### **Publication**

The Regulatory Authority shall, having regard to the maintenance of the trade and operating secrets of the undertakings concerned, publish measures taken under this Chapter.

Chapter 3  
Rates Regulation

Subchapter 1  
General Provisions

Section 27

**Aim of Rates Regulation**

(1) The aim of rates regulation is to prevent the anti-competitive exploitation of, hindrance to and discrimination of end-users and competitors as a result of the pricing measures of SMP undertakings.

(2) The Regulatory Authority shall take care that rates regulation measures in their entirety are coordinated (consistency requirement). In particular, the Regulatory Authority shall coordinate the timeframes and the content of its measures and consider whether each measure is proportionate to the aims according to section 2(2).

(3) The Regulatory Authority shall, insofar as broadcasting and comparable telemedia interests according to section 2(5) sentence 1 are concerned, inform the state media authority with competence accordingly and include it in proceedings initiated. Upon application by the state media authority the Regulatory Authority shall, with reference to this Act, look into the matter of initiating proceedings and ordering measures in accordance with the following provisions.

Section 28

**Anti-Competitive Conduct  
by an SMP Undertaking in Levying and Agreeing Rates**

(1) No SMP telecommunications service provider and no SMP public telecommunications network operator may abuse his position when levying and agreeing rates. Abuse is constituted, in particular, by the undertaking levying rates which

1. prevail solely as a result of his having significant market power in the particular telecommunications market;
2. considerably prejudice the competitive opportunities of other undertakings in a telecommunications market; or
3. create advantages for particular users in relation to other users of the same or similar telecommunications services,

unless it has been shown that the conduct referred to in paras 2 and 3 is objectively justified.

(2) Abuse within the meaning of subsection (1) para 2 is presumed where

1. the price for the service in question does not cover its long run incremental costs, including a reasonable return on capital employed;

2. the margin between the price the SMP public telecommunications operator charges competitors for an access service or facility and the corresponding retail price is not enough to enable an efficient undertaking to achieve a reasonable return on capital employed in the retail market (margin squeeze); or
3. an undertaking bundles its products in objectively unreasonable manner. In determining whether or not this is the case, the Regulatory Authority has to consider in particular whether efficient competitors of the SMP undertaking could offer the bundled product on comparable terms.

## Section 29

### Rates Regulation Orders

(1) The Regulatory Authority may, as part of or in preparation for rates regulation procedures, order that

1. it be provided by an SMP undertaking with detailed information on its service offer, on its current and expected sales, on its current and expected sales volumes and costs, on the foreseeable effects on both end-users and competitors and with such other documents and information as it deems necessary for the proper exercise of its rates regulation rights under this Act; and
2. an SMP undertaking structure its cost statements in such a way as enables the Regulatory Authority to obtain the data required for rates regulation under this Act.

In addition, the Regulatory Authority may order that the documents referred to in paras 1 and 2 be transmitted on data carrier. The undertaking has to provide an assurance of conformity with the written documents.

(2) The Regulatory Authority may impose obligations on an SMP undertaking with regard to cost accounting systems. In such case it may oblige the SMP undertaking to make a description of the compliant cost accounting system publicly available, showing at least the main categories under which costs are grouped and the rules used to allocate costs, provided it does not effect such publication itself. Compliance of the cost accounting system is verified by the Regulatory Authority; the Regulatory Authority may also charge an independent body with verification. A statement concerning compliance is published annually.

(3) The Regulatory Authority may, by separate decision, oblige an SMP undertaking to offer access on the basis of particular tariff systems and to apply particular cost recovery mechanisms as far as may be necessary to achieve the regulatory aims according to section 2(2). In imposing such obligations the Regulatory Authority has to ensure the promotion of economic efficiency and sustainable competition and maximum benefit to the end-user from such obligations. Where the Regulatory Authority takes a decision as referred to in sentence 1, the SMP provider has to submit a rates proposal within a period of two weeks. The Regulatory Authority shall take a decision within a period of four weeks of submission of the proposal or of expiry of the time limit.

(4) To enforce orders according to subsections (1) and (2) a penalty not exceeding one million euros may be set in accordance with the Administrative Enforcement Act.

(5) The Regulatory Authority may prescribe the form in which rates and changes in rates, including service specifications and other rates-related components, are to be published.



(6) The Regulatory Authority may also require undertakings not having significant market power to provide information as referred to in subsection (1) para 1 and proceed in accordance with subsection (4) where necessary for the proper exercise of rates regulation under this Part.

## Subchapter 2

### Regulation of Rates for Access Services and Facilities

#### Section 30

#### **Rates Regulation**

(1) Save as provided in the subsections below, the rates charged by an SMP public telecommunications network operator for access services and/or facilities mandated under section 21 are subject to approval by the Regulatory Authority in accordance with section 31. In derogation of sentence 1 the Regulatory Authority should subject such rates to ex post regulation in accordance with section 38(2) to (4) when

1. the operator does not also, at the same time, have significant market power in the retail market in which he is active;
2. significant market power has been determined after the entry into force of this Act without the operator having been designated by the Regulatory Authority as having dominance prior to the entry into force of this Act;
3. this measure is sufficient to achieve the regulatory aims according to section 2(2).

(2) In derogation of subsection (1) rates for access services according to section 21(2) para 7 are subject to ex post regulation in accordance with section 38(2) to (4). Regulation of these rates under this Act is ruled out where an agreement according to section 21(2) para 7 has come about or where services which the bill-issuer cannot be obliged to provide are concerned.

(3) Rates charged by an SMP public telecommunications network operator for access services or facilities not mandated under section 21 are subject to ex post regulation in accordance with section 38.

(4) Rates charged under obligations according to section 18 by an operator who controls access to end-users and who does not have significant market power are subject to ex post regulation. Section 38(2) to (4) apply accordingly.

(5) Charges levied by an SMP public telecommunications network operator for access on a wholesale basis to particular services offered by him for the purpose of resale by third parties in their own name and for their own account shall, in derogation of section 31(1), be calculated on a retail minus basis to allow an efficient provider of telecommunications services to achieve a reasonable return on capital employed in the retail market. The charges shall be equivalent to the costs of efficient service provision at least.

## Section 31

### Approval

(1) Rates which require approval under section 30(1) sentence 1 are eligible for approval when they do not exceed the costs of efficient service provision. In justified cases the Regulatory Authority may review eligibility in accordance with the comparable markets principle as set out in section 35(1) sentence 1 para 1.

(2) The costs of efficient service provision are derived from the long run incremental costs of providing the service and an appropriate mark-up for volume-neutral common costs, inclusive of a reasonable return on capital employed, as far as these costs are required to provide the service. Section 79 remains unaffected.

(3) Expenditure exceeding that referred to in subsection (2) is taken into account only insofar as and for as long as such expenditure derives from a legal obligation or the undertaking seeking approval demonstrates other proper justification for it. Where the Regulatory Authority, in examining the cost statements, deems essential components of the stated costs inefficient, it shall request the operator, without undue delay, to explain whether and to what extent these cost components constitute expenditure within the meaning of sentence 1.

(4) In determining a reasonable return on capital employed the Regulatory Authority takes into account, in particular, the following factors—

1. the capital structure of the regulated undertaking;
2. the situation in the national and international capital markets and the rating of the regulated undertaking in these markets;
3. the requirements concerning the return on equity capital employed, whereby the service-specific risks of equity capital employed may also be acknowledged; and
4. the long term stability of the economic environment, also with a view to the situation as regards competition in the telecommunications markets.

(5) Rates subject to approval charged by an SMP public telecommunications network operator for access services and facilities are to be submitted to the Regulatory Authority prior to their intended effective date, together with all such documents as are required for approval to be granted. Where approval has been granted for a limited period only, the submission has to be effected not later than ten weeks before such limited period expires.

(6) The Regulatory Authority may require the submission of rates proposals. Where such request is not met within one month of its having been received, the Regulatory Authority shall commence proceedings on its own initiative. The Regulatory Authority shall decide on rates proposals within a period of ten weeks of receiving the submission or of commencing own-initiative proceedings. In derogation of sentence 3 the Regulatory Authority should decide on rates proposals submitted under the procedure set out in section 34 within a period of two weeks.

## Section 32

### **Forms of Approval**

The Regulatory Authority shall approve rates

1. on the basis of the costs of efficient service provision for individual services; or
2. on the basis of the benchmarks prescribed by it for the average rate of change in the prices of a basket of combined services (price cap) in accordance with section 34.

## Section 33

### **Cost Statements**

(1) Together with any rates proposal according to section 31(5) or (6) the undertaking has to submit all such documents as are required to consider the submission, in particular–

1. current cost statements, to be made available on data carrier also;
2. detailed service specifications, including details of quality of service and the draft general terms and conditions; and
3. details of sales, sales volumes, the level of the different costs referred to in subsection (2) and the contribution margins, and the development of user structures for the service concerned for the two years prior to submission, for the year of submission and for the following two years.

(2) Cost statements according to subsection (1) para 1 comprise costs that can be directly allocated (direct costs) and costs that cannot be directly allocated (common costs). To be included, in particular, in the cost statements according to sentence 1 is an account of–

1. the input volumes on which cost accounting is based, the relevant prices, in each instance both separately and averaged, target and actual capacity utilisation in the documentation period; and
2. the method used to determine costs and investment values, and information on plausible keys for allocating costs to each of the undertaking's services individually.

(3) In addition, the undertaking has to submit, regularly at the beginning of every financial year, information on its total costs and on their allocation to cost centres and to the individual services (cost units), broken down into direct costs and common costs. Information relating to non-regulated services may be summarised.

(4) In the transparency and presentation of their data, the cost statements shall be such as to enable an examination by the Regulatory Authority, quantification of the costs of efficient service provision and a decision to be taken within the period referred to in section 31(6).

(5) Documents not submitted together with the proposal are taken into account only if observance of the time limits is not compromised by later submission. Any additional documents or information requested by the Regulatory Authority during proceedings need be taken into account only if submitted by the undertaking within a time limit set by the Regulatory Authority.

(6) The same cost accounting methods are to be applied by the undertaking for each rates proposal submitted.

(7) The powers referred to in section 29 remain unaffected.

## Section 34

### **Price Cap**

(1) The Regulatory Authority shall determine the content of the baskets. Access services may be combined in one and the same basket only when the level of competition for these services is not expected to differ significantly.

(2) The Regulatory Authority shall establish the initial rate level for the access services grouped in a basket. It shall proceed from any rates that have already been approved.

(3) The benchmarks for approval under section 32 para 2 encompass

1. the rate of price increases in the economy overall;
2. the expected rate of growth in productivity of the SMP operator; and
3. suitable secondary conditions for preventing abuse as set out in section 28.

(4) To be taken into account in the specification of benchmarks, in determination of the rate of growth in productivity in particular, is the relationship between the initial rate level and the cost of efficient service provision as set out in section 31(2).

(5) To be taken into account in the specification of benchmarks are the rates of growth in productivity of undertakings in comparable competitive markets.

(6) The Regulatory Authority shall stipulate the period for which benchmarks will remain unchanged, the historic reference periods against which compliance with benchmarks will be examined and the conditions under which the content of baskets may be changed or price differentiation within a basket made.

## Section 35

### **Procedures for Approval**

(1) Besides the cost information submitted to it, the Regulatory Authority may, in addition,

1. refer, for the purpose of comparison, to the prices of such undertakings as offer like services in comparable competitive markets; any special features of the reference markets are to be taken into account in doing so; and
2. apply, for the purpose of costing efficient service provision, cost accounting methods independent of those used by the undertaking, and refer to cost models in doing so.

Where the cost information submitted to the Regulatory Authority is not sufficient for an examination of the rates requiring approval as referred to in section 32 para 1 in conjunction with

section 33, the Regulatory Authority's decision may be based on an examination according to sentence 1 paras 1 or 2.

(2) In the case of approval as referred to in section 32 para 1 the Regulatory Authority shall examine compliance with the requirements of sections 28 and 31 for each rate separately. In the case of approval as referred to in section 32 para 2 the requirements of section 28 and, for the particular basket, of section 31 are deemed satisfied given compliance with the prescribed benchmarks.

(3) Approval is to be granted wholly or in part when the rates meet the requirements of sections 28 and 31 in accordance with subsection (2) and there are no grounds for denial as set out in sentences 2 and 3. Approval is to be denied when the rates are inconsistent with this Act, in particular with section 28, or with other legal provisions. The Regulatory Authority may also deny approval when the undertaking has failed to submit in full the documentation specified in section 33.

(4) The Regulatory Authority should approve rates for a limited period.

(5) Any approvals wholly or partially approving rates already contractually agreed shall have retroactive effect from the time the SMP undertaking first provided service. In proceedings under section 123 of the Code of Administrative Court Procedure, the court may order payment for the time being of higher rates in respect of which rate proposals have been submitted when it is probable, for the most part, that there is a right to the higher rates being approved; the grounds for such order need not be stated. Where the court requires the Regulatory Authority to approve higher rates, such approval has the retroactive effect referred to in sentence 1 only when an order as referred to in sentence 2 has been issued.

(6) The Regulatory Authority shall publish all approved rates.

## Section 36

### **Publication**

(1) The Regulatory Authority shall publish decisions it intends to take on the grouping of services and on specification of the benchmarks according to section 32 para 2 and section 34. Prior to publication it shall give the undertaking to whom the decision is addressed the opportunity to make representations.

(2) In respect of submissions for approval as provided for by section 32 para 1 and in the event of proceeding as provided for by section 31(6) sentences 1 and 2 the Regulatory Authority shall publish all rates measures submitted and planned.

## Section 37

### **Divergence from Approved Rates**

(1) An SMP public telecommunications network operator may not charge any rates other than those approved by the Regulatory Authority.

(2) Contracts for services containing rates other than those approved shall become effective subject to the proviso that the approved rates apply in place of the agreed rates.

(3) A contractual or legal obligation to provide service shall continue to apply irrespective of whether or not the rates have been approved. The Regulatory Authority may prohibit advertising for, the conclusion, the preparation or the development of a legal transaction applying rates other than those approved or applying rates not approved but subject to approval.

## Section 38

### **Ex Post Rates Regulation**

(1) Rates subject to ex post regulation shall be submitted to the Regulatory Authority two months prior to their planned effective date. Where planned rates would clearly not be compatible with section 28 the Regulatory Authority shall, within a period of two weeks of receiving notice of the measure, prohibit introduction of the rates until such time as it has completed its examination. The Regulatory Authority is to be informed, immediately after conclusion of the contract, of any rates measures for individually agreed services not easily applicable to a number of other users.

(2) Where the Regulatory Authority becomes aware of facts warranting the assumption that rates for access services provided or facilities made available by SMP undertakings are not in compliance with the requirements of section 28, the Regulatory Authority shall open an investigation of the rates without undue delay. It shall inform the undertaking concerned, in writing, that an investigation has been opened. Should the Regulatory Authority not be able to investigate on the basis of the comparable markets principle set out in section 35(1) para 1, it may also proceed as set out in section 33.

(3) The Regulatory Authority shall take a decision within a period of two months of the investigation being opened.

(4) Where the Regulatory Authority establishes that rates do not meet the requirements of section 28, it shall forbid such conduct as is prohibited under this Act and declare the rates objected to invalid as from such time non-compliance was established. At the same time, the Regulatory Authority may order the application of rates which meet the requirements of section 28. Where the SMP provider subsequently submits his own rates proposals the Regulatory Authority shall examine, within a period of one month, whether these rates rectify the breaches of the requirements of section 28 which have been established. Section 37 applies accordingly. Where the Regulatory Authority has established abuse of an SMP position within the meaning of section 28(2) para 3 it shall also issue an order stating how the SMP undertaking has to effect unbundling.

## Subchapter 3

### Regulation of Rates for Retail Services

## Section 39

### **Rates Regulation for Retail Services**

(1) Where facts warrant the assumption that obligations imposed in connection with access issues or with carrier selection and carrier preselection according to section 40 would not result in achievement of the regulatory aims according to section 2(2), the Regulatory Authority may make the rates SMP undertakings charge for retail telecommunications services subject to

approval. The Regulatory Authority should limit the approval requirement to those markets in which sustainable competition is not expected to develop in the foreseeable future. In the event of an approval requirement, sections 31 to 37 apply accordingly. Rates for retail services may not under section 32 para 2 be placed in a basket with rates for access services.

(2) Services according to section 78(2) paras 3 and 4 are subject to ex post regulation; section 38(2) to (4) apply accordingly.

(3) Rates for retail services supplied by SMP telecommunications service providers which are not subject to approval shall be subject to ex post regulation; section 38(2) to (4) apply accordingly. In addition, the Regulatory Authority may, having regard to subsection (1) sentence 1, require SMP undertakings to inform it of rates measures two months prior to their planned effective date. Where planned rates would clearly not be compatible with section 28 the Regulatory Authority shall, within a period of two weeks of notice of the measure, prohibit introduction of the rates until such time as it has completed its examination. The Regulatory Authority is to be informed, immediately after conclusion of the contract, of any rates measures for individually agreed services not easily applicable to a number of other users.

(4) Any undertaking having significant market power in a retail market and obliged to grant access to a service and/or facility according to section 21 which includes components that are likewise essential to a service offer in the retail market shall be obliged to submit at the same time as its planned rates measure for the retail service an offer for the wholesale product which meets, in particular, the requirements of section 28. Where the SMP undertaking fails to submit any such wholesale offer, the Regulatory Authority may, without further examination, forbid it from asking the retail price.

## Chapter 4 Other Obligations

### Section 40

#### **Carrier Selection and Carrier Preselection**

(1) The Regulatory Authority shall require undertakings designated as having significant market power in the provision of connection to and use of the public telephone network at fixed locations, in accordance with sentence 4, to enable their subscribers to access the services of all directly interconnected providers of publicly available telecommunications services. This may be done on a call-by-call basis by dialling a carrier selection code, or by means of preselection, with a facility to override any preselected choice on a call-by-call basis by dialling a carrier selection code. It should also be possible for the subscriber to preselect different carriers for local and national calls. In providing the interconnection required to fulfil this obligation it shall be ensured that, in decisions taken under Part 2, incentives for efficient investment in facilities which will secure more competition in the long term are maintained and that efficient use of the existing network is made by handing over calls at a point in the network close to the subscriber. Any charges to end-users for use of the above-mentioned services and facilities are subject to ex post regulation in accordance with section 38(2) to (4).

(2) Obligations according to subsection (1) should be imposed on other SMP undertakings only when the regulatory aims set out in section 2(2) would not otherwise be achieved. Provided there is sustainable services competition in the retail mobile market, the obligations according to subsection (1) should not be imposed for the mobile market. Sustainable services competition in

the retail mobile market is fair competition between services supplied by public mobile network operators and publicly available services supplied by mobile service providers at the retail level; such fair competition presupposes that providers of publicly available mobile services who are independent of public mobile network operators contribute to a sustainable competitive retail mobile market by means of services based also on wholesale products from the public mobile network operators.

#### Section 41

#### **Set of Leased Lines**

(1) The Regulatory Authority shall require undertakings having significant market power in the provision of part or all of the set of leased lines to provide the minimum set of leased lines as identified in the applicable list of standards drawn up by the Commission on the basis of Article 17 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108 page 33).

(2) Such undertakings have to publish conditions 3.1. to 3.3. as set out in Annex VII to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 page 51). If necessary, the Regulatory Authority may set targets in respect of the supply conditions referred to in condition 3.3.

(3) Sections 27 to 39 apply with regard to rates regulation. The provisions on access regulation laid down in sections 16 to 26 remain unaffected.

### Chapter 5

#### Special Control of Anti-Competitive Practices

#### Section 42

#### **Anti-Competitive Conduct by an SMP Undertaking**

(1) No SMP provider of telecommunications services, of services according to section 78(2) paras 3 and 4 or of telecommunications-based services and no SMP public telecommunications network operator may abuse his position. Abuse is constituted, in particular, by conduct consisting in, directly or indirectly, unreasonably obstructing other undertakings or materially affecting their competitive opportunities without objectively justifiable reason.

(2) Abuse within the meaning of subsection (1) is presumed where an SMP undertaking gives itself, its subsidiaries or partners access to services or facilities it uses internally or offers in the marketplace on more favourable conditions or of a better quality than it applies to other undertakings using the service or facility to provide their own telecommunications or related services, unless the undertaking provides evidence of facts objectively justifying the grant of less favourable conditions.

(3) Abuse within the meaning of subsection (1) is also presumed where an SMP public telecommunications network operator fails to comply with an obligation imposed on him under section 22(1) by delaying the processing of access applications without objective reason.



(4) The Regulatory Authority shall take a decision to end the abuse of significant market power upon application or on its own initiative. For this purpose it may, in relation to an undertaking abusing its position of significant market power, impose or prohibit certain practices and declare agreements wholly or partially invalid. Such decision shall generally be taken within a time limit of four months from the commencement of proceedings. Where an application as referred to in sentence 1 is made, the time limit begins running when the application is received. An application as referred to in sentence 1 may be made by any telecommunications service provider who can assert that his rights have been prejudiced.

#### Section 43

### **Surrender of Gain to the Regulatory Authority**

(1) Where an undertaking has infringed a Regulatory Authority order according to section 42(4) or intentionally or negligently infringed a provision of this Act and thereby obtained economic gain, the Regulatory Authority should order surrender of the economic gain and impose on the undertaking payment of a corresponding sum of money.

(2) Subsection (1) does not apply where such economic gain has been cancelled out by payment of damages or by the imposition or order of forfeiture. Any undertaking paying damages as referred to in sentence 1 only after the surrender of gain is to be reimbursed with the sum of money up to the level of payments proven.

(3) Where enforcing surrender of gain would result in undue hardship, the order should be limited to a reasonable sum of money or be waived entirely. It should also be waived if the economic gain is insignificant.

(4) The level of economic gain may be estimated. The sum of money to be transferred is to be stated in figures.

(5) Surrender of gain may be ordered only within a period of five years of cessation of the infringement and for a maximum period of five years.

## **PART 3**

### **CUSTOMER PROTECTION**

#### Section 44

### **Right to Damages and Injunctive Relief**

(1) Any undertaking infringing this Act, an ordinance having the force of law issued under this Act, an obligation imposed under this Act in an assignment, or an administrative order of the Regulatory Authority shall be obliged, in relation to the person affected, to eliminate the harmful practice and, where there is danger of further harmful practices, to cease and desist. Such right exists as soon as there is danger of an offence. A person affected is any consumer or competitor harmed by the infringement. Any undertaking to which intent or negligence can be imputed shall also be liable, in relation to a consumer or competitor, to reparation of any damage caused by the infringement. The undertaking has to pay interest on financial debts according to sentence 4 from such time as the damage occurred. Sections 288 and 289 sentence 1 of the Civil Code apply accordingly.

(2) Any person infringing, in a manner other than by using or recommending general terms and conditions, provisions of this Act or provisions of an ordinance having the force of law issued under this Act whose purpose is to protect the consumer, may, in the interest of consumer protection, be required to cease and desist by the bodies named in section 3 of the Injunctions Act. Where offences in a business are committed by an employee or an agent, the right to injunctive relief also applies in relation to the owner of the business. The Injunctions Act remains unaffected in all other respects.

## Section 45

### **Customer Protection Ordinance**

(1) The Federal Government shall be empowered, for the special protection of end-users (customers), consumers in particular, to issue, by ordinance having the force of law and requiring the consent of the German Bundestag and the German Bundesrat, framework provisions for using telecommunications services and for ensuring metering and billing accuracy. Particular account is to be taken in doing so of the interests of persons with disabilities. The ordinance shall detail the powers of the Regulatory Authority. Account is to be taken most notably of Articles 21 and 22 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 page 51).

(2) The ordinance may, in particular, make arrangements about the conclusion, the subject matter and the termination of contracts and the rights and obligations of the contracting parties and of the other parties engaged in telecommunications traffic, including the information requirements according to Annex II to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 page 51). The ordinance may also stipulate that particular measurement methods be applied in relation to quality of service and that undertakings' general terms and conditions include details of delivery periods and quality of service.

(3) Detailed arrangements, in particular, are to be made in the ordinance with regard to

1. the liability of undertakings;
2. the way in which reference is made to general terms and conditions and to rates and the possibility of their inclusion;
3. information requirements and regulations applicable in the event of non-compliance with these requirements;
4. requirements deriving from Annex I Part A to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 page 51) to be met by undertakings in order that their customers can monitor and control their expenditure;
5. entries in directories and directory enquiry service databases;
6. out-of-court dispute resolution procedures for customers; and

7. declarations from property owners.

#### Section 46

### **Number Portability, European Telephone Numbering Space**

(1) Public telephone network operators shall make provision in their networks to enable subscribers to retain their telephone number, independently of the undertaking providing the telephone service, as follows—

1. in the case of geographic numbers, at a specific location; and
2. in the case of non-geographic numbers, at any location.

The arrangement in sentence 1 applies only within the numbering ranges and subranges designated for a telephone service. In particular, the porting of telephone numbers for telephone services provided at a fixed location to those not provided at a fixed location and vice versa is not permitted.

(2) Providers of publicly available telecommunications services shall ensure that their end-users can retain in conformity with subsection (1) telephone numbers allocated to them when changing to another provider of publicly available telecommunications services.

(3) Subscribers may be charged solely the one-time costs incurred for changing provider. The same applies to costs charged by a network operator to a provider of publicly available telecommunications services. All such rates are subject to ex post regulation as provided for by section 38(2) to (4).

(4) Public telephone network operators have to make provision in their networks for handling all calls to the European telephone numbering space.

#### Section 47

### **Provision of Subscriber Data**

(1) Every undertaking providing publicly available telecommunications services and assigning telephone numbers to end-users shall be obliged, in observance of the requirements of the relevant data protection legislation, to provide, upon request, any other undertaking with subscriber data as referred to in subsection (2) sentence 4 for the purpose of providing publicly available directory enquiry services and directories. Such data has to be provided without undue delay and in non-discriminatory manner.

(2) Subscriber data are such data as are published in directories of subscribers in accordance with section 104. Besides the number this includes the actual data for publication, ie the subscriber's name and address and any additional information known to the undertaking such as occupation, branch, type of line and co-users. It also includes such information, links, assignments and classifications, processed and presented in line with the state of the art, in observance of the requirements of the relevant data protection legislation and in appropriate form for the customer's use, as are required for the publication of such data in publicly available directory enquiry services and directories according to sentence 1. The data shall be complete and their content and technical form processed and presented in such manner as to allow, under

the state of the art, easy inclusion in a customer-friendly directory or corresponding directory enquiry service database.

(3) In the event of disputes arising between undertakings concerning rights and obligations under subsections (1) and (2), section 133 applies accordingly.

(4) For the provision of subscriber data charges may be levied; such charges will typically be subject to ex post regulation as provided for by section 38(2) to (4). Such charges should be subject to approval under section 31 only when the undertaking has significant market power in the market for retail services.

## **PART 4 BROADCASTING**

### Section 48

#### **Interoperability of Television Sets**

(1) Every analogue television set with an integral viewing screen of visible diagonal greater than 42 centimetres offered for sale, rent or otherwise made available shall be fitted with at least one interface socket standardised by a recognised European standardisation body, permitting the connection of digital television receivers.

(2) Every digital television receiver offered for sale, rent or otherwise made available shall,

1. if it has an integral viewing screen of visible diagonal greater than 30 centimetres, be fitted with at least one interface socket, standardised by a recognised European standardisation body or conforming to a common, industry-wide, open specification, permitting the connection of digital television receivers and the possibility of conditional access;
2. if it is fitted with an application programming interface, fulfil the minimum requirements of such interface as adopted by a recognised European standardisation body or conforming to a common, industry-wide, open interface specification, enabling third parties to produce and operate their own applications irrespective of the transmission mode.

(3) Every digital television receiver offered for sale, rent or otherwise made available and intended for conditional access shall be capable of displaying signals

1. conforming to the common European scrambling algorithm as administered by a recognised European standardisation body;
2. that do not require conditional access. With regard to rented equipment this applies only insofar as the rentee is in compliance with the relevant rental agreement.

### Section 49

#### **Interoperability of Digital Television Signal Transmissions**

(1) Public telecommunications network operators transmitting digital television signals shall retransmit all such signals as are transmitted for representation wholly or partially in the 16:9 screen format, in this format.

(2) Rights holders of application programming interfaces are obliged to provide, on fair, reasonable and non-discriminatory terms and against appropriate remuneration, manufacturers of digital television receivers and third parties claiming a legitimate interest with all such information as is necessary to provide all the services supported by the application programming interface in fully functional form. The criteria referred to in sections 28 and 42 apply.

(3) In the event of a dispute arising between the parties concerned with regard to compliance with the provisions of subsections (1) to (2), either of the parties concerned may refer the matter to the Regulatory Authority. The Regulatory Authority shall take a decision, after hearing the parties concerned, within a period of two months. In proceeding, the Regulatory Authority shall give the authority responsible under state law the opportunity to comment. Where the authority responsible under state law raises objections to do with media legislation, it shall take a decision on the matter within the specified period. The two decisions may be taken in combined proceedings.

(4) Parties concerned shall comply with an order issued by the Regulatory Authority under subsection (3) without undue delay, except where the Regulatory Authority has stipulated a different period. To enforce such order, the Regulatory Authority may set a penalty not exceeding 500,000 euros in accordance with the Administrative Enforcement Act.

## Section 50

### **Conditional Access Systems**

(1) Providers of conditional access systems shall ensure that these have the necessary technical capability for the cost-effective transfer of control functions, allowing the possibility for full control by public telecommunications network operators at local or regional level of the services using such conditional access systems.

(2) Holders of industrial property rights to conditional access systems deciding to grant licences to manufacturers of digital television receivers or to third parties demonstrating a legitimate interest shall do so on fair, reasonable and non-discriminatory terms. The criteria referred to in sections 28 and 42 apply. Holders of such rights may take reasonable account of technical and commercial factors. However, licence grant may not be made subject to conditions hindering the installation of

1. a common interface allowing connection with other conditional access systems; or
2. components specific to another conditional access system, for reasons of transaction security with regard to the content to be protected.

(3) Providers and users of conditional access systems shall

1. enable all broadcasters to use the technical services they need to use their systems and to obtain the information they require on fair, reasonable and non-discriminatory terms;
2. where they are also responsible for billing end-users, give the end-user a tariff schedule prior to concluding with him a contract under which charges will be incurred;
3. keep separate accounts for their business as conditional access system providers;

4. prior to beginning to provide service and to providing service with differences, notify the Regulatory Authority of the details referred to in paras 1 to 3, the individual services offered to end-users and the rates charged.

(4) The Regulatory Authority shall inform, without undue delay, the authority responsible under state law of notifications according to subsection (3) para 4. Where the Regulatory Authority or the authority responsible under state law, each for its own area of responsibility, concludes on the basis of the notification within a period of two months that the service offer fails to comply with the requirements specified in subsection (3) paras 1 to 4, they shall require the service offer to be modified. Where the requirements cannot be satisfied despite the modifications or where the modifications have not been made despite the request, they shall prohibit the service offer.

(5) Where one or more providers or users of conditional access systems do not have significant market power, the Regulatory Authority may amend or withdraw conditions according to subsections (1) to (3) with respect to the party or parties concerned, provided that

1. the prospects for effective competition in the retail markets for the transmission of broadcasting signals and for conditional access systems and other associated facilities would not be adversely affected by such amendment or withdrawal; and
2. the authority responsible under state law has established that capacity determinations and must-carry obligations set out in state law would not be adversely affected by such amendment or withdrawal.

Sections 11 to 14(1) apply accordingly to the procedure referred to in sentence 1. Decisions as referred to in sentence 1 shall be reviewed by the Regulatory Authority every two years.

## Section 51

### **Dispute Resolution**

(1) Persons with entitlements or obligations under the provisions of this Part may jointly refer to the Dispute Resolution Panel for resolution any contentious issues concerning the application of these provisions. Such referral shall be in written form. The Regulatory Authority shall take a decision within a period of two months.

(2) The Dispute Resolution Panel shall be established at the Regulatory Authority. It shall comprise a Chairman and two Assessors. The Regulatory Authority shall be responsible for establishing the Dispute Resolution Panel, appointing its members and adopting its rules of procedure. The establishment and composition of the Dispute Resolution Panel and its rules of procedure are to be published by the Regulatory Authority.

(3) In proceeding, the Dispute Resolution Panel shall give the authority responsible under state law the opportunity to comment. Where the authority responsible under state law raises objections to do with media legislation, it shall take a decision on the matter within the specified period. The two decisions may be taken in combined proceedings.

**PART 5**  
**GRANT OF FREQUENCIES, NUMBERS AND RIGHTS OF WAY**

Chapter 1  
Frequency Regulation

Section 52

**Functions**

(1) In order to secure efficient and interference-free use of frequencies and in consideration of the further aims set out in section 2(2), a National Table of Frequency Allocations and a Frequency Usage Plan shall be drawn up, frequencies assigned and frequency usages supervised.

(2) The Regulatory Authority shall issue orders with regard to the use of frequencies for the operation of radio equipment in foreign vehicles, watercraft and aircraft operating within the area of application of this Act.

(3) With regard to the use of frequencies within the area of responsibility of the Federal Ministry of Defence, the Federal Ministry of Economics and Labour shall reach agreement with the Federal Ministry of Defence.

Section 53

**Frequency Band Allocation**

(1) The Federal Government is empowered, by ordinance having the force of law but not requiring the consent of the German Bundesrat, to stipulate frequency band allocation for the Federal Republic of Germany in a National Table of Frequency Allocations and to amend such Table. Ordinances in which frequencies are allocated to broadcasting require the consent of the German Bundesrat. To be included in their preparation shall be all persons likely to be affected by the allocations.

(2) The National Table of Frequency Allocations allocates frequency bands to radio services and other applications of electromagnetic waves. Insofar as is necessary to secure efficient and interference-free use of frequencies, the Table also includes provisions on the use of frequencies and associated detailed determinations. Sentence 2 also applies to the use of frequencies in and along conductors; for the frequency bands concerned, geographic, time-related and technical determinations are to be made, compliance with which allows free use.

Section 54

**Frequency Usage Plan**

(1) The Regulatory Authority shall draw up the Frequency Usage Plan on the basis of the National Table of Frequency Allocations in consideration of the aims set out in section 2(2), European harmonisation, technological advance and the compatibility of frequency usages in the transmission media.

(2) The Frequency Usage Plan shall include further allocation of the frequency bands to frequency usages, and determinations on such usages. The Frequency Usage Plan may consist of subplans.

(3) The Frequency Usage Plan shall be drawn up with the participation of the public. The Federal Government is empowered to lay down, by ordinance having the force of law and requiring the consent of the German Bundesrat, the procedure for drawing up the Frequency Usage Plan.

## Section 55

### **Frequency Assignment**

(1) Each frequency usage requires prior frequency assignment, unless otherwise provided for by this Act. Frequency assignment means authorisation given by a public authority or by legal provisions to use particular frequencies under specified conditions. Frequencies are assigned for a particular purpose in accordance with the Frequency Usage Plan and in non-discriminatory manner on the basis of transparent and objective procedures. Assignment is not required where usage rights may be exercised by virtue of another statutory regulation. Where it is necessary for public authorities, in order to exercise legal powers, to use frequencies already assigned to other persons and significant interference to these usages is not anticipated as a result of doing so, this usage shall be permitted, subject to the framework conditions established in consultation with the law enforcement agencies, without an assignment being required.

(2) Frequencies are typically assigned ex officio by the Regulatory Authority as general assignments for the use of particular frequencies by the general public or a group of persons defined or capable of being defined by general characteristics. Such assignments are published.

(3) Where general assignment is not possible, frequencies for particular usages are assigned by the Regulatory Authority to natural persons, legal entities and associations of persons, insofar as they may be eligible, upon written application, as individual assignments. This applies in particular when the risk of harmful interference cannot otherwise be ruled out or when this is necessary in order to secure efficient use of frequencies.

(4) The application referred to in subsection (3) has to specify the area in which the frequencies are to be used. The applicant has to show that the subjective requirements for frequency assignment with regard to efficient and interference-free use of frequencies and other conditions as specified in Part B of the Annex to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L 108 page 21) are satisfied. The Regulatory Authority shall take a decision on complete applications within a period of six weeks. This time limit shall not affect existing international agreements on the use of radio frequencies and orbit positions.

(5) Frequencies shall be assigned subject to

1. their designation for the planned usage in the Frequency Usage Plan;
2. their availability;
3. their compatibility with other frequency usages; and



4. their efficient and interference-free use by the applicant being secured.

Applicants are not entitled to any one particular frequency.

(6) The Regulatory Authority is to be notified without undue delay of the beginning and the cessation of usage. It shall also be notified of any change of name, change of address, change in ownership structure and any identity-preserving transformations.

(7) Applications for a change in the frequency assignment are to be submitted without undue delay to the Regulatory Authority, in writing, with supporting documents, when

1. frequency usage rights are to be transferred by singular or universal succession;
2. frequencies are to be transferred to an affiliated undertaking as defined in section 15 of the Stock Corporation Act;
3. frequencies are to be transferred from a natural person to a legal entity in which the natural person holds a share; or
4. an heir intends to continue using the frequencies.

In these cases, the frequencies may continue to be used until such time as a decision is taken on the application for a change in the assignment. The application shall be granted when the requirements for frequency assignment according to subsection (4) are satisfied, distortion of competition in the relevant product and geographic market is not to be feared and the efficient and interference-free use of frequencies is secured. Any frequencies no longer used are to be returned without undue delay by means of a written declaration. Where a legal entity that has been assigned frequencies is liquidated without there being a legal successor, the frequencies shall be returned by the liquidator. Where a natural person dies without an heir intending to continue using the frequencies, these shall be returned by the heir or by the estate administrator.

(8) Frequencies are typically assigned for a limited period, with the possibility of extension. The time limit shall be appropriate to the service concerned.

(9) Where frequencies are not available for assignment in sufficient numbers or where more than one application has been made for particular frequencies the Regulatory Authority may order, without prejudice to subsection (5), that assignment be preceded by award proceedings based on conditions according to section 61 as determined by the Regulatory Authority. Persons likely to be affected are to be heard prior to such decision. The Regulatory Authority's decision is to be published.

(10) A frequency assignment may be denied in full or in part where the use intended by the applicant is incompatible with the regulatory aims according to section 2(2). Where the interests of the federal states relating to broadcasting within their jurisdiction are concerned, consultation is to be held with the state authority with competence, based on the broadcasting regulations.

## Section 56

### **Orbit Positions and Frequency Usage by Satellites**

(1) All exercise of German rights to orbit and frequency usage shall require, in addition to frequency assignment according to section 55(1), assignment of such rights by the Regulatory Authority. The Regulatory Authority shall, upon application, perform the advance publication, coordination and notification of satellite systems with the International Telecommunication Union and assign to the applicant the resulting rights to orbit and frequency usage. The preconditions for this are as follows—

1. the availability of frequencies and orbit positions;
2. compatibility with other frequency usages and other satellite system notifications;
3. no detriment to public interest.

(2) With regard to existing German entries in the Plan and other unused rights to orbit and frequency usage with the International Telecommunication Union, award proceedings may be conducted based on conditions as determined by the Regulatory Authority.

(3) Assignment may be revoked where such rights have not been exercised for more than one year or where the preconditions of subsection (1) sentence 3 are no longer given.

## Section 57

### **Special Preconditions for Frequency Assignment**

(1) The assignment of frequencies for broadcasting within the jurisdiction of the federal states requires, in addition to the preconditions of section 55, consultation with the state authority with competence, based on the broadcasting regulations. The relevant state authority notifies the Regulatory Authority of the coverage requirements for broadcasting within the jurisdiction of the federal states. The Regulatory Authority shall satisfy these notified requirements in assigning frequencies under section 55. Details of the procedure shall be laid down by the Regulatory Authority on the basis of the broadcasting regulations of the state authorities with competence. Frequencies allocated to the broadcasting service in the National Table of Frequency Allocations and designated in the Frequency Usage Plan may be used for purposes other than broadcasting within the jurisdiction of the federal states where the capacity allocated to broadcasting on the basis of the broadcasting regulations is available. For this purpose the Regulatory Authority shall bring about consultation with the state authorities with competence.

(2) Frequency usages of the Federal Ministry of Defence in the bands designated in the Frequency Usage Plan exclusively for military purposes shall not require assignment.

(3) Frequencies designated in the Frequency Usage Plan for maritime shipping, inland waterways shipping and the aeronautical service and used for such purposes on foreign watercraft or aircraft operating within the area of application of this Act shall be deemed assigned.

(4) With regard to frequencies designated in the Frequency Usage Plan for public safety radiocommunications, the Federal Ministry of the Interior shall, in consultation with the supreme state authorities responsible, determine in a directive the following matters—

1. the responsibilities of the authorities concerned;
2. the procedure for being recognised as qualified to participate in public safety radiocommunications;
3. the procedure for processing applications for the assignment of frequencies for public safety radiocommunications purposes and the responsibilities in this regard;
4. the principles of frequency planning and the procedures for frequency coordination for public safety radiocommunications purposes; and
5. the arrangements for radio operations for and cooperation between and among the authorities and organisations using frequencies for public safety radiocommunications purposes.

The directive is to be drawn up in agreement with the Regulatory Authority, in particular as far as paras 4 and 5 are concerned. The Federal Ministry of the Interior shall confirm in each instance, after hearing the supreme federal or state authorities responsible for the matter, that an applicant is one of the group recognised as qualified according to sentence 1.

(5) Frequencies for use by aeronautical stations in the aeronautical mobile service and aeronautical radionavigation land stations shall be assigned only when consent to install and operate such stations as required by section 81(1) and (2) of the Air Traffic Licensing Ordinance has been given.

(6) Frequencies for use by coast stations in the port operations service shall be assigned only when the consent of the waterways and shipping administration is to hand.

#### Section 58

### **Variant Frequency Usages**

In justified particular cases, notably to test innovative technologies in telecommunications or to provide frequencies required at short notice, frequency assignments which are at variance with the determinations of the National Table of Frequency Allocations or the Frequency Usage Plan may be granted on a temporary basis, on condition that no degradation is caused to any frequency usage entered in the National Table of Frequency Allocations or the Frequency Usage Plan. No such variance may interfere with the further development of the Tables or Plans. Where the interests of the federal states relating to broadcasting within their jurisdiction are concerned, consultation is to be held with the state authority with competence, based on the broadcasting regulations.

#### Section 59

### **Shared Use**

Frequencies whose use by one party alone is not expected to be efficient may be assigned to more than one party for shared use. Such assignees shall tolerate any degradation arising from shared use of the frequency for the intended purpose.

## Section 60

### **Constituent Parts of Frequency Assignment**

(1) The frequency assignment is to specify, in particular, the type and extent of the frequency usage, insofar as is necessary to secure efficient and interference-free use of frequencies. Use of assigned frequencies may be made solely with radio equipment intended or marked for operation in the Federal Republic of Germany.

(2) In order to secure efficient and interference-free use of frequencies, secondary conditions may be attached to the frequency assignment. Where, after assignment, it is established that usage is being significantly restricted on account of increased use of the radio spectrum or that considerable efficiency gains are possible on account of technological advance, the type and extent of the frequency usage referred to in subsection (1) may be subsequently modified. Where the interests of the federal states relating to broadcasting within their jurisdiction are concerned, consultation is to be held with the state authority with competence, based on the broadcasting regulations.

(3) The frequency assignment should contain references to the parameters for the receiving equipment on which the Regulatory Authority has based its specifications on the type and extent of the frequency usage. The Regulatory Authority takes no measures of any kind to counteract detrimental effects resulting from non-compliance with the parameters notified.

(4) Frequencies for broadcasting within the jurisdiction of the federal states shall be assigned, in consultation with the state authority with competence, subject to conditions ensuring that the broadcasting interests of the federal states are taken into account.

## Section 61

### **Award Proceedings**

(1) Where an order has been issued under section 55(9) requiring frequency assignment to be preceded by award proceedings, the Regulatory Authority may, after hearing the parties concerned, conduct an auction in accordance with subsection (5) or invite tenders in accordance with subsection (6). Decisions on the choice of proceedings and the determinations and rules for the conduct of proceedings are to be published by the Regulatory Authority. Frequency assignment shall be effected in accordance with section 55 following completion of the award proceedings referred to in sentence 1.

(2) As a general rule, the proceedings laid down in subsection (5) are to be conducted, except where such proceedings are not likely to secure the regulatory aims according to section 2(2). This may be the case, in particular, when frequencies have already been assigned, without a prior auction, in the relevant product and geographic market for which the radio frequencies may be used in observance of the Frequency Usage Plan, or where an applicant can claim a legal right to preference for the frequencies to be assigned. The proceedings laid down in subsection (5) are not applicable in respect of frequencies intended for broadcasting services.

(3) An applicant may be excluded from participation in award proceedings where a successful bid according to subsection (5) by him or a successful tender according to subsection (6) from him is expected to prejudice fair competition in the relevant product and geographic market for which the radio frequencies to be assigned may be used in observance of

the Frequency Usage Plan. Any such decision shall take due account of the legitimate interests of the particular applicant in the deployment of new technologies.

(4) The aim of award proceedings is to determine which of the applicants is or are best placed to make efficient use of the frequencies to be assigned. Prior to carrying out award proceedings, the Regulatory Authority shall determine the following matters—

1. the minimum specialist and other requirements to be met by applicants in order to qualify for the award proceedings;
2. the relevant product and geographic market for which the frequencies to be assigned may be used in observance of the Frequency Usage Plan;
3. the basic spectrum package required for commencement of the telecommunications service, where necessary;
4. the frequency usage conditions, including the degree of coverage with the frequency usage and the time required to achieve such degree.

(5) In the case of an auction, the Regulatory Authority shall, prior to the award proceedings, detail the rules for conducting auctions; such rules shall be objective, transparent and non-discriminatory and have regard to the interests of small and medium-sized enterprises. The Regulatory Authority may stipulate a minimum bid for participation in the auction.

(6) In the case of tendering, the Regulatory Authority shall, prior to the award proceedings, determine the criteria against which tenderers' eligibility will be assessed. Such criteria are the tenderers' specialist knowledge and efficiency, the suitability of their plans for providing the telecommunications service for which the tender has been invited, and the promotion of sustainable competition in the market. Preference is to be given in the selection procedure to tenderers ensuring a higher degree of coverage with the particular telecommunications services. The Regulatory Authority shall also detail the rules for tendering; such rules shall be objective, transparent and non-discriminatory. Where the outcome of tendering shows several tenderers to be equally well placed, the decision shall be made by drawing lots.

(7) Any commitments entered into by bidders in the course of an auction or by tenderers in the course of tendering shall become constituent parts of the frequency assignment.

(8) In the case of an auction according to subsection (5) or tendering according to subsection (6), the maximum period of six weeks referred to in section 55(4) may be extended by as long as necessary, but by no more than eight months, however, in order to ensure a fair, reasonable, open, and transparent procedure for all concerned. Such time limits shall be without prejudice to existing international agreements on spectrum use and satellite coordination.

## Section 62

### **Spectrum Trading**

(1) The Regulatory Authority may, after hearing the parties concerned, release frequency bands for trading and stipulate the framework conditions of and the procedure for trading when there is interest in trading usage rights for the spectrum concerned. The procedure shall include termination of the frequency assignment and the issue of a new assignment.

(2) The framework conditions of and the procedure for trading shall ensure, in particular, that

1. spectrum efficiency is increased or maintained;
2. the original award proceedings do not preclude frequency assignment after spectrum trading;
3. no distortion of competition in the relevant product and geographic market is to be feared;
4. other legal framework conditions, in particular the conditions of use and international agreements on spectrum use, are complied with; and
5. the regulatory aims according to section 2(2) are secured.

Decisions on the framework conditions of and the procedure for spectrum trading are to be published. With regard to frequencies intended for the broadcasting services, decisions shall be taken in agreement with the authority responsible under state law.

(3) Proceeds from spectrum trading, less the administrative costs incurred, are due to the party selling the usage rights.

### Section 63

#### **Revocation of Frequency Assignment, Relinquishment**

(1) A frequency assignment may be revoked where use of the assigned frequency for the intended purpose has not commenced within one year of the assignment or where the frequency has not been used for the intended purpose for more than one year.

(2) The frequency assignment may also be revoked, apart from in the cases specified in section 49(2) of the Administrative Procedures Act, where

1. one of the preconditions according to section 55(5) and section 57(4) to (6) is no longer given;
2. an obligation arising from the assignment is repeatedly violated or has not been fulfilled despite repeated requests for fulfilment;
3. competition or the introduction of new spectrum-efficient technologies is prevented or unreasonably hindered as a result of a scarcity of frequencies which arises after the assignment; or
4. distortion of competition in the relevant product and geographic market is to be feared as a result of a change in ownership structure in the person of the assignee.

The period of time until revocation becomes effective shall be appropriate. Where frequencies for broadcasting within the jurisdiction of the federal states are concerned, the Regulatory Authority shall consult the state authority with competence, on the basis of the broadcasting regulations.

(3) The frequency assignment should be revoked where, in respect of a frequency assigned for broadcasting within the jurisdiction of the federal states, all the broadcasting regulations from

the state authority with competence concerning transmissions on the given frequency have ceased to apply. In place of the revocation according to sentence 1, the Regulatory Authority may, when, in respect of a frequency according to sentence 1, one or all of the broadcasting regulations according to sentence 1 has or have ceased to apply and no new broadcasting regulation has been issued within a period of six months, assign, in accordance with the Frequency Usage Plan, in consultation with the state authority with competence, such frequency to the previous assignee – possibly even in derogation of the previous award proceedings – with a limited obligation or with no obligation to use it for broadcasting within the jurisdiction of the federal states.

(4) Section 49(6) of the Administrative Procedures Act is not applicable to revocation according to subsections (2) and (3).

(5) The Regulatory Authority should revoke frequency assignments for analogue broadcast transmissions on the basis of the broadcasting regulations of the state authority with competence, in accordance with the Frequency Usage Plan, not later than 2010 for television broadcasting and not later than 2015 for VHF sound broadcasting. Sound broadcast transmissions in the low, medium and high frequency bands remain unaffected. The frequency assignment shall expire after an appropriate period of time as specified in the revocation but in no case of less than one year.

(6) The frequency assignment shall expire upon relinquishment. Relinquishment is to be declared to the Regulatory Authority in writing, with the exact designation of the frequency assignment being stated.

## Section 64

### **Monitoring, Orders to Take Equipment Out of Service**

(1) The Regulatory Authority shall monitor frequency usage in order to secure the aims of frequency regulation. Insofar as is necessary and reasonable for this purpose, most notably to identify a particular frequency user, Regulatory Authority staff are authorised to obtain information on the detailed circumstances of a telecommunications activity and also, in special cases, to listen in to emissions. Information obtained as a result of the measures referred to in sentence 2 may be used solely for the purpose of securing the aims of frequency regulation. In derogation of this, information may be transmitted to the authorities responsible where this is necessary to prosecute a criminal offence as set out in section 100a of the Code of Criminal Procedure. The basic right of privacy of telecommunications laid down in Article 10 of the Basic Law shall be restricted in accordance with sentences 2 to 4.

(2) The Regulatory Authority may, to secure the aims of frequency regulation, order that equipment be operated with restrictions or be taken out of service. To enforce such administrative orders, a penalty not exceeding 500,000 euros may be set in accordance with the Administrative Enforcement Act.

## Section 65

### **Restrictions on Frequency Assignments**

Use of assigned frequencies may be restricted on a temporary basis where such frequencies are required by the authorities responsible to perform their duties in a state of tension or defence, in connection with alliance commitments, in connection with cooperation with the

United Nations, in connection with international emergency management or in the event of a natural disaster or a particularly serious accident.

## Chapter 2

### Numbering

#### Section 66

##### **Numbering**

(1) The Regulatory Authority shall discharge numbering functions. It shall be responsible, in particular, for structuring and configuring the numbering space with the aim of satisfying the requirements of end-users, telecommunications network operators and telecommunications service providers. The Regulatory Authority shall also allocate numbers to telecommunications network operators, telecommunications service providers and end-users. Not included in its responsibilities is the administration of the country code top level and lower level domains.

(2) In order to implement international obligations and recommendations and to ensure sufficient availability of numbers, the Regulatory Authority may modify the structure and configuration of the numbering space and the national numbering plan. In doing so, it shall take reasonable account of the interests of the parties concerned, most notably of the conversion costs incurred by operators, telecommunications service providers and users. Proposed modifications are to be made known in good time prior to becoming effective. Telecommunications network operators and telecommunications service providers affected by such modifications are required to take all implementation measures necessary.

(3) The Regulatory Authority may issue orders to enforce the obligations referred to in subsection (2). To enforce such orders, a penalty not exceeding 500,000 euros may be set in accordance with the Administrative Enforcement Act.

(4) The Federal Government shall be empowered to lay down, by ordinance having the force of law and requiring the consent of the German Bundestag and the German Bundesrat, the criteria and guidelines for the structuring, configuration and administration of numbering space, for the acquisition, the extent and the loss of rights to use numbers including the requirements for telecommunications-based services, and to transpose international recommendations and obligations into national legislation. In doing so it shall take account, in particular, of an efficient use of numbers, the interests of the market players including their interest in a sound basis for planning, the economic implications for the market participants, the requirements in respect of the use of numbers and of meeting demand in the long term, and the interests of the end-users. The powers of the Regulatory Authority and the rights and obligations of the market participants and of the end-users are to be detailed in the ordinance. Subsection (1) sentence 4 applies accordingly.

#### Section 67

##### **Powers of the Regulatory Authority**

(1) The Regulatory Authority may, under its responsibility for numbering administration, issue orders and take any other suitable measures to secure compliance with the legal provisions and with the conditions it has imposed in connection with the allocation of numbers. In particular, the Regulatory Authority may, where statutory obligations or obligations imposed by public



authorities have not been fulfilled, withdraw the unlawfully used number. Further, where it has reliable information on the unlawful use of a telephone number, it should issue an order in relation to the operator of the network in which the number is activated to deactivate the telephone number. The Regulatory Authority may, where it has reliable information on unlawful use, request the bill-issuer not to issue bills for the number concerned. In justified exceptional cases the Regulatory Authority may prohibit certain categories of dialler; the Regulatory Authority shall lay down details of the procedure governing such prohibition.

(2) The rights of the federal states and the powers of other public authorities are not affected.

(3) The Regulatory Authority shall notify the public prosecutor or the administrative authority of any facts giving reason to suspect a criminal or an administrative offence.

## Chapter 3 Rights of Way

### Section 68

#### **Principle of the Use of Public Ways**

(1) The Federation shall have the power to use trafficways free of charge for telecommunications lines serving public purposes, provided that their dedication as trafficways is not thereby restricted on a lasting basis (right of use). Trafficways shall include public ways, squares, bridges and public waters.

(2) Telecommunications lines are to be installed and maintained in such a way as to satisfy the requirements of public safety and order and to comply with the recognised rules of engineering.

(3) The installation of new and the modification of existing telecommunications lines shall require the written consent of the authorities responsible for the construction and maintenance of public ways. With regard to the installation of overhead lines the interests of the above authorities, of public telecommunications network operators and the requirements of town planning shall be weighed. Where installation can be coordinated under a comprehensive building project to be carried out close in time to the application for consent, lines should typically be installed underground. Consent may be given subject to secondary conditions which are to be framed in non-discriminatory manner; consent may also be made dependent on payment of a reasonable security. Such secondary conditions may make stipulations solely on the way in which a telecommunications line is to be installed, the rules of engineering to be observed in doing so, the safety and ease of traffic, the records, consistent with the local practices of the above authority, on the location of a telecommunications line by geographic coordinates, and traffic safety obligations.

(4) Where the authority responsible for the construction and maintenance of public ways is itself the operator of a telecommunications line or has merged within the meaning of section 37(1) or (2) of the Competition Act with an operator, consent according to subsection (3) is to be given by an administrative body which is independent of the administrative body responsible for operation of the telecommunications line or for the exercise of corporate rights, as the case may be.

## Section 69

### **Transfer of Rights of Way**

(1) The Federation shall, upon written application, transfer to public telecommunications network operators its rights of use according to section 68(1) through the Regulatory Authority.

(2) The area for which the right of use is to be transferred is to be named in the application referred to in subsection (1). The Regulatory Authority shall grant the right of use where the applicant has the proven specialist knowledge, reliability and efficiency to install telecommunications lines and the right of use is consistent with the regulatory aims set out in section 2(2). The Regulatory Authority shall grant the right of use for the duration of the public activity. The Regulatory Authority shall decide on complete applications within a period of six weeks.

(3) The beginning and cessation of use and any change of name, change of address or identity-preserving transformations of the undertaking are to be notified without undue delay to the Regulatory Authority. The Regulatory Authority shall provide the authority responsible for the construction and maintenance of public ways with this information. The party enjoying the right of use shall be liable for any damage arising from changes not being notified in time.

## Section 70

### **Shared Use**

Insofar as it is not possible, or is possible only at disproportionately high expense, to exercise the right according to section 68 for the installation of further telecommunications lines, acquiescence in the shared use of other installations intended for the accommodation of telecommunications cables can be required where shared use is economically reasonable and no major additional construction work is needed. In this case the party enjoying the right of shared use shall pay adequate compensation in money's worth to the party obliged to grant shared use.

## Section 71

### **Showing Consideration for Maintenance and Dedication**

(1) With regard to the use of trafficways, any hindrance to their maintenance and any temporary restriction of their dedication as trafficways is to be avoided as far as possible.

(2) Where maintenance is hindered, the party enjoying the right of use is to reimburse the party liable for maintenance with the costs arising from such hindrance.

(3) After completion of work on the telecommunications lines, the party enjoying the right of use is to restore the trafficway without undue delay, provided the party liable for maintenance has not declared itself willing to undertake restoration itself. The party enjoying the right of use is to reimburse the party liable for maintenance with the expenses incurred for any restoration thus undertaken and to pay compensation for any damage incurred as a result of work on the telecommunications lines.

## Section 72

### **Changes Required**

(1) Where, following the installation of a telecommunications line, it emerges that the telecommunications line is restricting a trafficway's dedication as a trafficway more than temporarily or is preventing performance of the work required for its maintenance or is impeding the execution of any modification to the trafficway intended by the party liable for maintenance, the telecommunications line, to the extent necessary, is to be modified or removed.

(2) Where a trafficway is withdrawn, the right of use of the party enjoying such right shall lapse.

(3) In all such cases the party enjoying the right of use is to bring about the required measures in respect of the telecommunications line at its own expense.

## Section 73

### **Protection of Trees**

(1) Trees planted on and around trafficways are to be protected where possible and their growth allowed for. Lopping may be required only to the extent necessary to install the telecommunications line or to prevent interruption of service; it is to be limited to the degree that is absolutely necessary.

(2) The party enjoying the right of use is to set the tree owner an appropriate period within which to carry out lopping himself. Where lopping has not been carried out or has not been carried out sufficiently within the specified period, the party enjoying the right of use shall bring about lopping. It shall also be entitled to do so when it is a matter of urgently preventing or eliminating interference.

(3) The party enjoying the right of use shall pay compensation for all damage to trees and repay the costs of all lopping carried out at its request.

## Section 74

### **Special Installations**

(1) Telecommunications lines are to be configured in such a way that they do not adversely affect existing special installations (installations serving to maintain public ways, drains, water and gas pipelines, tracks, electrical installations and the like). The party enjoying the right of use is to bear the costs incurred for the implementation of any necessary protective measures.

(2) The relocation or modification of existing special installations may be requested only against compensation and only where the trafficway, otherwise, could not be used for the telecommunications line and the special installation can be placed elsewhere in suitable manner for its intended purpose.

(3) Even if these prerequisites are met, the trafficway shall not be used for the telecommunications line where the damage arising from relocation or modification of the special installation would be disproportionately high in relation to the costs the party enjoying the right of use would incur for use of any other trafficway available to it.

(4) Subsections (1) to (3) apply accordingly with regard to special installations in the preparatory stage whose construction lies in the public interest. Compensation by reason of subsection (2) shall be granted only up to the level of the expenses incurred in the preparations. Installations shall be deemed in a preparatory stage as soon as they have been approved by the client by virtue of the detailed plan of the installation, and, insofar as is necessary, by the competent authorities and by the owner or any other party enjoying the right of use of the way.

## Section 75

### **Subsequent Special Installations**

(1) Subsequent special installations are, where possible, to be configured in such a way that they do not adversely affect existing telecommunications lines.

(2) A request to relocate or modify a telecommunications line shall be complied with at the expense of the party enjoying the right of use where a subsequent special installation, the construction of which, for reasons of public interest, in particular for economic or traffic considerations, is to be carried out by the party liable for the maintenance of public ways or with its majority participation, would otherwise not be able to be constructed or the construction of which would be significantly hindered. The relocation of a cable-based telecommunications line not used just for local, suburban or neighbouring area traffic may be required only when such cable-based telecommunications line can be placed elsewhere in suitable manner for its intended purpose without disproportionately high costs being incurred.

(3) Where, as a result of any such subsequent special installation, protective measures on an existing telecommunications line have to be carried out, the costs arising are to be borne by the party enjoying the right of use.

(4) Where a party liable for the maintenance of public ways transfers its share to a third party not liable for maintenance, the party enjoying the right of use is to be reimbursed with the costs incurred for the relocation or modification or for the implementation of protective measures, as far as these concern its share.

(5) Operators of special installations other than those referred to in subsection (2) shall bear the costs incurred for the relocation or modification of existing telecommunications lines or for the implementation of any protective measures required.

(6) With regard to any subsequent modification of existing special installations, subsections (1) to (5) apply accordingly.

## Section 76

### **Detriment to Property**

(1) The owner of a property that does not constitute a trafficway within the meaning of section 68(1) sentence 2 cannot prohibit the installation, operation or renewal of telecommunications lines on his property insofar as,

1. on his property, a line or installation that is secured by right is used also for the installation, operation or renewal of a telecommunications line and the usability of the property is not thereby additionally restricted on a lasting basis; or

2. the property is not, or is not significantly, affected by such use.

(2) A property owner having to acquiesce in actions according to subsection (1) may claim appropriate pecuniary compensation from the operator of the telecommunications line or the owner of the network if use of his property or the income from it is affected beyond reasonable measure by the installation, the renewal or by maintenance work, repair work or comparable measures directly connected with the operation of the telecommunications line. In addition, one-time pecuniary compensation for extended use for telecommunications purposes may be claimed, provided there were no lines hitherto that could be used for telecommunications purposes. In the event of damage to the property or its movables from exercise of the rights ensuing from this provision, the operator or the owner of the network shall remove the damage at his expense. Section 840(1) of the Civil Code applies.

#### Section 77

#### **Damage Claims**

The limitation period for claims arising from sections 70 to 76 follows the arrangements on the normal limitation periods set out in the Civil Code.

### **PART 6**

#### **UNIVERSAL SERVICE**

#### Section 78

#### **Universal Services**

(1) Universal services are a minimum set of publicly available services of specified quality to which every end-user, irrespective of his place of residence or work, shall have access at an affordable price and whose provision to the public as a basic service has become indispensable.

(2) The following have been determined as universal services–

1. connection at a fixed location to a public telephone network and access to publicly available telephone services at a fixed location including – subject to technical feasibility – the features call waiting, call forwarding and call hold/broker's call;
2. the availability of at least one printed public directory of subscribers (section 104) approved by the Regulatory Authority, which satisfies general requirements and is updated on a regular basis, once a year at least;
3. the availability, to users of public pay telephones as well, of at least one comprehensive public telephone directory enquiry service, including provision of the area codes of domestic subscribers and of subscribers in other countries, as far as the subscriber data are available and in observance of the requirements of the relevant data protection legislation;
4. provision throughout the Federal Republic of Germany, in accordance with general demand, of public pay telephones in general locations accessible to everyone at all times; public pay telephones are to be kept in working order; and

5. the possibility to make emergency calls from all public pay telephones free of charge and without the use of any means of payment by simple use of the number "112" and the national emergency call numbers determined in the ordinance as provided for under section 108(2) sentence 1 para 1.

(3) Undertakings providing the universal services referred to in subsection (2) paras 2 and 3 are to apply the principle of non-discrimination to the treatment of information provided to them by other undertakings.

(4) The Regulatory Authority may, after consulting the undertaking with universal service obligations (designated universal service provider), identify general demand for the universal services referred to in subsection (2) in terms of the needs of end-users with regard to, in particular, geographical coverage, number of telephones, accessibility and quality of service. The Regulatory Authority has the power to impose obligations on undertakings in order to secure provision of the service and of service features. The Regulatory Authority may choose not to impose such obligations for all or part of its territory if it is satisfied, after consulting the interested parties, that these service features or comparable services are deemed widely available.

#### Section 79

##### **Affordability**

(1) The price for the universal service referred to in section 78(2) para 1 is deemed affordable if it does not exceed the real price of the telephone services required on average by a household situated outside a town or city with a population of more than 100,000 on 1 January 1998. The assessment of affordability takes into account the quality of service levels, including supply times, at that time and the rate of growth in productivity up to 31 December of the year prior to the previous one.

(2) The universal services referred to in section 78(2) paras 2 to 4 are deemed affordable if the rates comply with the criteria set out in section 28.

#### Section 80

##### **Obligation to Provide Universal Service**

Where a universal service as referred to in section 78 is not being adequately or appropriately provided by the market or where there is reason to fear that such provision will not be secured, each provider operating in the relevant product market and achieving, within the area of application of this Act, at least four percent of total sales in this market or having significant market power in the relevant geographic market shall be obliged to contribute to making possible provision of the universal service. An obligation as referred to in sentence 1 is to be fulfilled in accordance with the provisions of this Chapter.

#### Section 81

##### **Imposition of Universal Service Obligations**

(1) The Regulatory Authority shall publish its findings of any relevant product and geographic market or of any place in which a universal service as referred to in section 78(2) is not being adequately or appropriately provided or in which there is reason to fear that such provision will

not be secured. It shall announce its intention to proceed as provided for by sections 81 to 87, unless an undertaking declares itself willing, within a period of one month of the publication of notice, to provide such universal service without compensation according to section 82.

(2) The Regulatory Authority may, after consulting the undertakings likely to be concerned, decide whether, and to what extent, to oblige one or more of these undertakings to provide the universal service. Any such obligation may not unduly prejudice the undertakings thus designated in relation to the other undertakings.

(3) Where an undertaking that is to be obliged under subsection (2) to provide a universal service substantiates by prima facie evidence that, in the case of such obligation, it will be able to claim compensation according to section 82, the Regulatory Authority shall, instead of designating one or more undertakings, invite tenders for the universal service and award it to the applicant proving himself well placed to provide, and requiring the least financial compensation for providing, the universal service in compliance with the terms laid down in the provisions of this Act. The Regulatory Authority may, taking into account the criteria of sentence 1, designate different undertakings or groups of undertakings to provide different elements of the universal service or to cover different parts of the federal territory.

(4) Prior to inviting tenders for the universal service, the Regulatory Authority is to determine the criteria against which the eligibility of the universal service provider will be assessed. It is also to detail the rules for inviting tenders; such rules shall be objective, transparent and non-discriminatory.

(5) Where a suitable applicant is not found by tendering, the Regulatory Authority shall oblige the undertaking identified under subsection (2) to provide the universal service in accordance with this Act.

## Section 82

### **Compensation for Universal Service Provision**

(1) Where an undertaking is obliged under section 81(3) to provide a universal service, the Regulatory Authority shall grant the financial compensation as recognised in the tendering procedure for the provision of such service.

(2) Where an undertaking is obliged under section 81(5) to provide a universal service, the Regulatory Authority shall determine the compensation payable for such provision by calculating the difference between the cost for a designated undertaking of operating without the universal service obligation and the cost of operating in observance of the obligation. Benefits and proceeds accruing to the universal service provider, including intangible benefits, are also to be taken into account.

(3) The Regulatory Authority shall determine whether the costs identified constitute an unfair burden. In such case the Regulatory Authority shall grant the undertaking, upon application, the financial compensation calculated.

(4) To calculate the amount of compensation, the Regulatory Authority may ask the designated universal service provider for the necessary documentation. The Regulatory Authority is to examine the documentation submitted in particular with a view to the need for service provision. The results of the cost calculation and of the examination are to be published,

the protection of trade and operating secrets of the undertakings concerned being taken into account.

(5) Compensation shall be paid after expiry of the calendar year in which a deficit in providing the universal service was incurred.

### Section 83

#### **Universal Service Contributions**

(1) Where the Regulatory Authority grants compensation according to section 82 for provision of a universal service, each undertaking obliged under section 80 to provide the universal service shall share, by means of a universal service contribution, in funding the compensation. The sharing mechanism is assessed on the basis of the proportion of the sales of the particular undertaking to the total sales of all those with obligations according to sentence 1 in the relevant product market. Where it is not possible to recover such contribution from an undertaking with liability to pay, the shortfall is to be made up for by the others with obligations on the basis of the proportion of their shares in relation to each other.

(2) After expiry of a calendar year for which compensation according to section 82 subsections (1) or (3) has been granted, the Regulatory Authority shall determine the level of compensation and the shares due from the contributing undertakings and communicate this to the undertakings concerned. The level of compensation is derived from the amount of compensation calculated by the Regulatory Authority plus interest at market rates. Interest is paid as from the day following the date of expiry of the calendar year referred to in sentence 1.

(3) All undertakings contributing in accordance with subsection (1) to compensation are required to pay to the Regulatory Authority the share falling to them as assessed by the Regulatory Authority within a period of one month of receiving the notice of assessment.

(4) Where an undertaking liable to pay compensation is more than three months in arrears with payment of its contribution, the Regulatory Authority shall issue a notice of arrears and enforce collection.

### Section 84

#### **Availability, Unbundling and Quality of Universal Services**

(1) Where undertakings provide universal services, end-users shall, within the limits of the legislation and general terms and conditions, have a right to the provision of such services.

(2) Undertakings providing universal services are to offer universal services in such a way that the end-user is not obliged to pay for services or facilities which are not necessary or not required for the service requested.

(3) Undertakings providing universal services shall, upon request, supply the Regulatory Authority with and publish adequate and up-to-date information on their performance in the provision of universal service. Such information shall be based on the quality of service parameters, definitions and measurement methods set out in Annex III to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 page 51).



## Section 85

### **Suspension of Service**

(1) Any undertaking obliged under section 81 to provide universal services or providing services under section 150(9) may suspend or restrict such service only temporarily on account of essential requirements conforming with Community law. It shall have regard to the interests of end-users and limit, as far as technically feasible, such suspension or restriction to the service concerned.

(2) Essential requirements justifying limited universal service are

1. security of network operations;
2. maintenance of network integrity, in particular the prevention of serious interference to the network or damage to software or stored data;
3. interoperability of services; and
4. data protection.

## Section 86

### **Provision of Security**

(1) Providers of publicly available telecommunications services obliged under section 81 to provide universal services and the undertaking providing services under section 150(9) shall have the right to make provision of universal services to the end-user conditional upon a reasonable amount of security where there are grounds to believe that the end-user will fail, or will fail within the prescribed period, to honour his contractual obligations. Security may be provided in the form of a surety bond from a financial institution registered in the European Economic Area. The provider shall have the right to limit the provision of security to such surety bond and a money deposit. The security shall be returned or cleared without undue delay as soon as the conditions requiring its provision cease to apply.

(2) Reasonable within the meaning of subsection (1) sentence 1 shall typically be the installation price plus six times the rental price. Any requirement to pay a higher amount shall be justified in relation to the end-user with reference to the circumstances of his particular case.

## Section 87

### **Disclosure of Sales**

(1) Where an obligation to provide universal service has been imposed under section 81 subsections (3) or (5), all undertakings operating in the relevant market for the applicable telecommunications services are to inform the Regulatory Authority annually, upon request, of their sales in this market. Otherwise the Regulatory Authority may make an estimate.

(2) With regard to the assessment of sales according to subsection (1), sections 36(2) and 38 of the Competition Act apply accordingly.

(3) The Regulatory Authority shall, taking into account the protection of trade and operating secrets of the undertakings concerned, publish a report annually which sets out the costs, as calculated, of the universal service obligation and the contributions from all the undertakings and which identifies any market benefits that may have accrued to the designated undertaking.

## **PART 7**

### **PRIVACY OF TELECOMMUNICATIONS, DATA PROTECTION, PUBLIC SAFETY**

#### Chapter 1

#### Privacy of Telecommunications

#### Section 88

#### **Privacy of Telecommunications**

(1) The content and detailed circumstances of telecommunications, in particular the fact of whether or not a person is or was engaged in a telecommunications activity, shall be subject to telecommunications privacy. Privacy shall also cover the detailed circumstances surrounding unsuccessful call attempts.

(2) Every service provider shall be obliged to maintain telecommunications privacy. The obligation to maintain privacy also applies after the end of the activity through which such commitment arose.

(3) All persons with obligations according to subsection (2) shall be prohibited from procuring, for themselves or for other parties, any information regarding the content or detailed circumstances of telecommunications beyond that which is necessary for the commercial provision of their telecommunications services, including the protection of their technical systems. Knowledge of facts which are subject to telecommunications privacy may be used solely for the purpose referred to in sentence 1. Use of such knowledge for other purposes, in particular, passing it on to other parties, shall be permitted only insofar as provided for by this Act or any other legal provision and reference is made expressly to telecommunications activities. The reporting requirement according to section 138 of the Penal Code shall have priority.

(4) Where the telecommunications system is located on board a ship or an aircraft, the obligation to maintain privacy does not apply in relation to the captain or his second in command.

#### Section 89

#### **Prohibition to Intercept, Obligation on Receiving Equipment Operators to Maintain Privacy**

Interception by means of radio equipment shall be permitted only for communications intended for the radio equipment operator, radio amateurs within the meaning of the Amateur Radio Act of 23 June 1997 (Federal Law Gazette Part I page 1494), the general public or a non-defined group of persons. The content of communications other than those referred to in sentence 1 and the fact of their reception, even where reception has been unintentional, may not, even by persons not already committed to privacy under section 88, be imparted to others.

Section 88(4) applies accordingly. The interception and passing on of communications by special legal authorisation remain unaffected.

## Section 90

### **Misuse of Transmitting Equipment**

(1) It shall be prohibited to own, manufacture, market, import or otherwise introduce in the area of application of this Act transmitting equipment which, by its form, purports to be another object or is disguised under an object of daily use and, due to such circumstances, is particularly suitable for intercepting the non-publicly spoken words of another person without his detection or for taking pictures of another person without his detection. The prohibition on owning such transmitting equipment does not apply to any person obtaining or acquiring actual control of transmitting equipment

1. as an executive body, as a member of an executive body, as a legal representative or as a partner entitled to represent a person authorised under subsection (2);
2. from another or for another person authorised under subsection (2) if and for as long as he has to comply by virtue of service or employment relations with the directives given by the other party concerning exercise of the actual control of the transmitting equipment, or exercises actual control by virtue of a court order or an order from a public authority;
3. as a bailiff or an enforcement officer in enforcement proceedings;
4. temporarily, from a person authorised under subsection (2), for the purpose of safe custody or non-commercial conveyance to an authorised person;
5. for conveyance or storage for business purposes only;
6. by finding, provided that such person hands over the equipment without undue delay to the loser, the owner, any other party entitled to acquire the equipment or the office responsible for taking delivery of the lost property report;
7. *causa mortis*, provided that such person gives the transmitting equipment to an authorised person without undue delay or renders it permanently unusable; or
8. which has been rendered permanently unusable by the removal of a major component, provided that such person gives notice in writing to the Regulatory Authority of the acquisition without undue delay, stating his particulars, the type of equipment, its trademark and any manufacturing number given on the equipment, and presents *prima facie* evidence that the equipment has been acquired for collection purposes only.

(2) The supreme federal and state authorities with competence shall allow exceptions where these are required in the public interest, in particular for public safety reasons. Subsection (1) sentence 1 does not apply insofar as the Federal Office of Economics and Export Control (BAFA) has authorised export of the transmitting equipment.

(3) It shall be prohibited to advertise, in public or in communications intended for a relatively large group of persons, transmitting equipment by indicating that the equipment is suitable for intercepting the non-publicly spoken words of another person without his detection or for taking pictures of another person without his detection.

## Chapter 2 Data Protection

### Section 91

#### **Scope**

(1) This Chapter regulates the protection of the personal data of telecommunications subscribers and users in respect of the collection and use of such data by undertakings and persons providing telecommunications services on a commercial basis or contributing to such provision. Details, subject to telecommunications privacy, of the circumstances of an identified or identifiable legal person or partnership, to the extent that it is capable of acquiring rights and undertaking commitments, shall have the same status as personal data.

(2) In respect of closed user groups at public authorities of the federal states, this Chapter applies subject to the proviso that the relevant state data protection legislation applies in place of the Federal Data Protection Act.

### Section 92

#### **Transfer of Personal Data to Foreign Private Bodies**

Service providers shall transfer to foreign private bodies personal data as provided for by the Federal Data Protection Act solely to the extent required for the provision of telecommunications services, for the preparation or dispatch of bills and to combat fraud.

### Section 93

#### **Duty to Provide Information**

When concluding contracts, service providers shall inform their subscribers of the nature, extent, place and purpose of the collection and use of personal data in such a way that the subscribers are given notice, in readily comprehensible form, of the basic data processing facts. The attention of subscribers shall also be drawn to the choices and options permitted. Users shall be informed by the service provider by means of generally available information about the collection and use of personal data. The right to provision of information as set out in the Federal Data Protection Act remains unaffected.

### Section 94

#### **Consent by Electronic Means**

Consent may also be given electronically where the service provider ensures that

1. the subscriber or user has given his consent deliberately and unequivocally;
2. consent is recorded;
3. the subscriber or user can access his declaration of consent at any time; and

4. the subscriber or user can withdraw his consent at any time with effect for the future.

## Section 95

### **Contractual Relations**

(1) The service provider may collect and use customer data to the extent required to achieve the purpose referred to in section 3 para 3. Under a contractual relationship with another service provider, the service provider may collect and use the customer data of his subscribers and of the subscribers of the other service provider to the extent required for performance of the contract between the service providers. Transmission of the customer data to third parties, unless permitted by this Part or by another law, shall be carried out only with the subscriber's consent.

(2) The service provider may use the customer data of the subscribers referred to in subsection (1) sentence 2 for subscriber advisory purposes, for promoting his own offerings and for market research only to the extent required for such purposes and provided the subscriber has given his consent. A service provider who, under an existing customer relationship, has lawfully received notice of a subscriber's telephone number or postal address, including his electronic address, may use these for the transmission of text or picture messages to a telephone or postal address for the purposes referred to in sentence 1, unless the subscriber has objected to such use. Use of the telephone number or address according to sentence 2 shall be permitted only if the subscriber, when the telephone number or address is collected or first stored and on each occasion a message is sent to such telephone number or address for one of the purposes referred to in sentence 1, is given information in clearly visible and well readable form that he may object at any time, in writing or electronically, to the dispatch of further messages.

(3) When the contractual relationship ends, the customer data are to be erased by the service provider upon expiry of the calendar year following the year in which the contract terminated. Section 35(3) of the Federal Data Protection Act applies accordingly.

(4) In connection with the establishment of, or modification to, a contractual relationship or with the provision of telecommunications services, the service provider may require presentation of an official identity card where this is necessary to verify the subscriber's particulars. The service provider may make a copy of the identity card. The copy is to be destroyed by the service provider without undue delay once the particulars needed for the conclusion of the contract have been established. The service provider may not use data other than the data permitted under subsection (1).

(5) The provision of telecommunications services may not be made dependent upon the subscriber's consent to use of his data for other purposes where the subscriber is not able, or is not able in reasonable manner, to access such telecommunications services in another way.

## Section 96

### **Traffic Data**

(1) The service provider may collect and use the following traffic data to the extent required for the purposes set out in this Chapter—

1. the number or other identification of the lines in question or of the terminal, personal authorisation codes, additionally the card number when customer cards are used, additionally the location data when mobile handsets are used;
2. the beginning and end of the connection, indicated by date and time and, where relevant to the charges, the volume of data transmitted;
3. the telecommunications service used by the user;
4. the termination points of fixed connections, the beginning and end of their use, indicated by date and time and, where relevant to the charges, the volume of data transmitted;
5. any other traffic data required for setup and maintenance of the telecommunications connection and for billing purposes.

(2) Stored traffic data may be used after the termination of a connection only where required to set up a further connection or for the purposes referred to in sections 97, 99, 100 and 101. Otherwise, traffic data are to be erased by the service provider without undue delay following termination of the connection.

(3) The service provider may use subscriber-related traffic data used by the provider of a publicly available telecommunications service for the purpose of marketing telecommunications services, shaping telecommunications services to suit the needs of the market or for the provision of value added services for the duration necessary only where the data subject has given his consent to such use. The data of the called party are to be made anonymous without undue delay. Traffic data relating to the destination number may be used by the service provider for the purpose referred to in sentence 1 only with the consent of the called party. In such case, the called party data are to be made anonymous without undue delay.

(4) When obtaining consent, the service provider is to inform the subscriber of the data types which are to be processed for the purposes referred to in subsection (3) sentence 1 and of the storage duration. Additionally, the subscriber's attention is to be drawn to the possibility of withdrawing his consent at any time.

## Section 97

### **Charging and Billing**

(1) Service providers may use the traffic data set out in section 96(1) to the extent the data are required to charge and bill their subscribers. Where a service provider provides his services over the public telephone network of a third-party operator, such operator may transmit to the service provider the traffic data collected for the provision of his services. A service provider entering into a contract with a third party on the collection of charges may transmit to the third party the data referred to in subsection (2) to the extent required for collection of the charges and preparation of a detailed bill. The third party shall undertake contractually to maintain telecommunications privacy according to section 88 and data protection according to sections 93 and 95 to 97, 99 and 100. Section 11 of the Federal Data Protection Act remains unaffected.

(2) The service provider may, for proper telecommunications service charging and billing and verification of the accuracy of the same, collect and use the following personal data subject to the provisions of subsections (3) to (6)–

1. traffic data according to section 96(1);
2. the address of the subscriber or recipient of the bill, the type of line, the total number of units of use incurred during the accounting period for a regular bill, the volumes of data transmitted, the total amount payable;
3. other relevant billing information such as advance payments, payments with date of entry, payments in arrears, reminders, disconnections and restorations, complaints submitted and handled, extensions of time for payment applied for and granted, payment by instalment and provision of security.

(3) The service provider shall, after termination of the connection, establish from the traffic data according to section 96(1) paras 1 to 3 and 5 without undue delay the data required for charging. All data not required shall be erased without undue delay. Traffic data may – subject to subsection (4) sentence 1 para 2 – be stored for a period not exceeding six months after dispatch of the bill. Where, prior to expiry of the time limit referred to in sentence 3, the subscriber has raised objections to the amount billed, the traffic data may be stored until such time as the objections have been finally settled.

(4) Depending on how the subscriber chooses, the service provider issuing the bill shall, in respect of the destination number,

1. store it in full or with deletion of the last three digits; or
2. erase it completely upon dispatch of the bill to the subscriber.

The subscriber shall be informed of his right to choose; if he does not exercise this right, destination numbers shall be stored without deletion of the last three digits. Where a subscriber is liable to pay, in full or in part, the charges for incoming calls on his line, the numbers of the calling lines may be transmitted only with deletion of the last three digits. Sentences 1 and 2 do not apply to service providers offering their services solely to the members of closed user groups.

(5) The service provider may use traffic data to the extent required for his billing with other service providers or with their subscribers, and for other service providers' billing with their subscribers.

(6) Where the bill from the service provider includes payment for third-party services supplied in connection with the provision of telecommunications services, the service provider may transmit to the third party customer data and traffic data to the extent that these are required in a given instance to enforce third-party claims in relation to the subscriber.

## Section 98

### **Location Data**

(1) Location data relating to users of public telecommunications networks or publicly available telecommunications services may be processed only when they have been made anonymous or with the consent of the subscriber to the extent and for the duration necessary for the provision of value added services. The subscriber shall inform his co-users of all such consent given. Consent may be withdrawn at any time.

(2) Where the consent of the subscriber to the processing of location data has been obtained, the subscriber shall continue to have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each connection to the network or for each transmission of a communication.

(3) In respect of calls to the emergency call number "112", to telephone numbers determined in the ordinance as provided for under section 108(2) and to the telephone number "124124", the service provider shall ensure that the transmission of location data is not ruled out on a per-call or a per-line basis.

## Section 99

### **Itemised Billing**

(1) The subscriber shall be informed of data stored under section 97(3) sentences 3 and 4 and subsection (4) until dispatch of the bill and relating to calls for which he is liable to pay only if he has made a request, in text form, for an itemised bill prior to the relevant accounting period. In respect of residential lines, the disclosure of such information is permitted only if the subscriber has declared, in text form, that he has informed all co-users of the line, and will inform future co-users without undue delay, of the disclosure to him of the traffic data underpinning the bill. In respect of lines in businesses and public authorities, the disclosure of such information is permitted only if the subscriber has declared, in text form, that the employees have been informed, and new employees will be informed without undue delay, and that the works council or the staff representation has been involved in accordance with the statutory requirements, or that such involvement is not necessary. Where public-law religious societies have issued their own employee representation regulations for their domain, sentence 3 applies, it being understood that the respective employee representation acts in place of the works council or the staff representation. Furthermore, the subscriber may be informed of data stored under section 97(3) sentences 3 and 4 and subsection (4) after dispatch of the bill if he has raised objections to the amount billed. Where a subscriber is liable to pay, in full or in part, the charges for incoming calls on his line, the numbers of the calling lines may appear on the itemised bill issued to him only with deletion of the last three digits. Sentence 6 does not apply to service providers who, as providers for closed user groups, offer their services solely to the members of these.

(2) The itemised bill according to subsection (1) sentence 1 may not allow calls to persons, public authorities or organisations in the social or the church domain who or which offer anonymous counselling wholly or predominantly by telephone to callers in emotional or social distress and who or which themselves or whose employees therefore have a special duty not to disclose confidential information, to be identified. This applies only to the extent that the Regulatory Authority has entered such called lines on its register. Serving to provide counselling as defined in sentence 1, besides the groups referred to in section 203(1) paras 4 and 4a of the Penal Code, are, notably, telephone crisis counselling services and healthcare organisations. The Regulatory Authority enters the holders of these lines on its register, upon application, when they have evidenced their remit as set out in sentence 1 by certification from a public authority or corporation, a public-law agency or foundation. The register is kept available for retrieval in an automated procedure. The service provider shall access the register every quarter and incorporate in his billing procedures any changes without undue delay. Sentences 1 to 6 do not apply to service providers who, as providers for closed user groups, offer their services solely to the members of these.



(3) Customer cards, where used, shall carry clear indication of the possible disclosure of stored traffic data. Where such indication is not possible for technical reasons or could not reasonably be expected of the card issuer, the subscriber must have made a declaration according to subsection (1) sentence 2 or 3.

## Section 100

### **Faults in Telecommunications Systems and Telecommunications Service Fraud**

(1) Where required, the service provider may collect and use the customer data and traffic data of subscribers and users in order to detect, locate and eliminate faults and malfunctions in telecommunications systems.

(2) For purposes of changed implementations and the identification and location of faults in the network, the operator of the telecommunications system and his authorised representative shall be allowed to break in on existing connections, as far as this is operationally required. Break in shall be indicated by means of an acoustic signal and explicitly notified to the parties concerned.

(3) Where required, the service provider may collect and use the customer data and traffic data needed to detect and put a stop to the surreptitious use of services and other unlawful use of telecommunications networks and services when there are grounds, to be recorded in writing, to suppose such use. For the purpose referred to in sentence 1 the service provider may use collected traffic data in such a way as to identify, from the total traffic data not more than six months old, the data relating to those network connections in respect of which there are grounds to suppose that unlawful use of telecommunications networks and services has been made. In particular, the service provider may set up a pseudonymised data file from the customer data and the traffic data collected under sentence 1 which provides information on the revenues generated by the individual subscribers and which, suitable fraud criteria being applied, allows network connections in respect of which there are grounds to suppose that surreptitious use of services has been made, to be found. Data relating to all other communications are to be erased without undue delay. The Regulatory Authority and the Federal Data Protection Commissioner are to be notified without undue delay of the introduction of, and any modification to, the procedure according to sentence 1.

(4) Subject to the conditions referred to in subsection (3) sentence 1 the service provider may, in a given instance, collect and use control signals to the extent that this is indispensable to clarify and put a stop to the acts specified there. Collection and use of any other communications content is not permitted. The Regulatory Authority is to be notified of measures according to sentence 1 taken in a given instance. The parties concerned are to be advised as soon as it is possible to do so without the purpose of the measures being compromised.

## Section 101

### **Information on Incoming Calls**

(1) The service provider shall, upon written application, give any subscriber arguing conclusively in a procedure for documentation that he is the object of malicious or nuisance calls, information, for more than one network also, on the lines on which the calls originated. The information may relate solely to calls made after submission of the application. The service provider may collect, use and disclose to his subscriber data relating to the telephone numbers, names and addresses of the line holders and the date and time of the beginning of the calls and

call attempts. Sentences 1 and 2 do not apply to service providers offering their services solely to the members of closed user groups.

(2) Disclosure according to subsection (1) sentence 3 may be made only when the subscriber has narrowed down the calls beforehand in respect of date, time or any other suitable criteria if misuse of this procedure cannot be ruled out in any other way.

(3) In the case of information for more than one network, the other service providers contributing to the connection are obliged to give the service provider of the subscriber receiving malicious or nuisance calls the information required, provided they have such data.

(4) The holder of the line on which the identified calls originated is to be advised that information on these has been disclosed. An exception may be made if the applicant has argued conclusively in writing that any such disclosure could bring him significant disadvantages, and these disadvantages, when compared with the legitimate interests of the calling parties, appear considerably more serious. Subscribers on whose line the alleged malicious or nuisance calls originated receiving notice in another way of the disclosure of information are to be informed, upon request, of such disclosure.

(5) The Regulatory Authority and the Federal Data Protection Commissioner are to be notified without undue delay of the introduction of, and any modification to, the procedure to enforce subsections (1) to (4).

## Section 102

### **Line Identification Presentation and Restriction**

(1) Where the service provider offers calling line identification presentation, the calling and the called parties shall have the possibility, using a simple means and free of charge, of preventing presentation of the telephone number on a per-line or a per-call basis. Called parties shall have the possibility, using a simple means and free of charge, of rejecting incoming calls from a calling party that has prevented presentation of its telephone number. Sentences 1 and 2 do not apply to service providers offering their services solely to the members of closed user groups.

(2) Upon application by the subscriber, the service provider shall provide lines on which presentation on the connected line of the telephone number of the calling line is ruled out, free of charge. At the subscriber's request, these lines are to be indicated as such in the public directory of subscribers (section 104) issued by his provider. Where an indication according to sentence 2 has been made, presentation of the telephone number of the calling line on a line thus indicated shall be possible only when the indication has been taken out of the latest edition of the public directory.

(3) Where the subscriber has chosen not to apply for entry as provided for by section 104 in the directory of subscribers, presentation of the telephone number of his line shall not be made on the connected line unless the subscriber explicitly wishes such presentation.

(4) Where connected line identification presentation is offered, called parties shall have the possibility, using a simple means and free of charge, of preventing presentation of the connected line identification to the calling party. Subsection (1) sentence 3 applies accordingly.

(5) Subsections (1) and (4) also apply to calls to and from other countries, to the extent that they concern calling or called parties in the Federal Republic of Germany.

(6) In respect of calls to the emergency call number "112", to telephone numbers determined in the ordinance as provided for under section 108(2) and to the telephone number "124124", the service provider shall ensure that calling line identification presentation is not ruled out on a per-call or on a per-line basis.

### Section 103

#### **Automatic Call Forwarding**

The service provider shall undertake to give his subscribers the possibility, using a simple means and free of charge, of stopping calls being automatically forwarded to their terminal as a result of action taken by a third party, to the extent that this is technically feasible. Sentence 1 does not apply to service providers who, as providers for closed user groups, offer their services solely to the members of these.

### Section 104

#### **Directories of Subscribers**

Subscribers may have their name, address and additional information such as occupation, branch and type of line entered in public printed or electronic directories, where requested. Subscribers may specify what information is to be published in the directories. At the subscriber's request, co-users may be entered, provided they agree.

### Section 105

#### **Directory Information**

(1) Information on telephone numbers included in directories may be provided subject to the restrictions set out in section 104 and in subsections (2) and (3).

(2) Information provided by means of a telephone system on the telephone numbers of subscribers may be given only if subscribers have been suitably informed that they may withhold consent to their telephone number being passed on and have not exercised their right to withhold consent. Information on data published under section 104 other than telephone numbers may be provided only if the subscriber has given his consent to such additional data being passed on.

(3) Providing information by means of a telephone system on the names or names and addresses of subscribers in relation to whom solely the telephone number is known is permitted if the subscriber whose data have been included in a directory of subscribers has not withheld consent after having been informed by his service provider of the possibility of doing so.

(4) All withholding of consent as provided for by subsection (2) sentence 1 and subsection (3) or giving of consent as provided for by subsection (2) sentence 2 shall be noted without undue delay in the customer files of the service provider or of the information provider according to subsection (1) on which the directories are based. Withholding or giving of consent shall also be heeded by the other service providers as soon as they could reasonably be

expected to know that the withholding or giving of consent has been noted in the directories of the service provider and of the information provider according to subsection (1).

## Section 106

### **Telegram Service**

(1) Data and documents relating to the operational handling and the delivery of telegrams may be stored to the extent necessary to demonstrate proper provision of the telegram service under the contract concluded with the subscriber. The data and documents shall be erased by the service provider after a period of six months at the latest.

(2) Data and documents relating to the content of telegrams may be stored beyond the date of delivery only if the service provider is answerable for transmission faults under the contract concluded with the subscriber. Data and documents relating to inland telegrams shall be erased by the service provider after a period of three months at the latest, and data and documents relating to international telegrams shall be erased by the service provider after a period of six months at the latest.

(3) The time limits for erasure shall begin running on the first day of the month following that in which the telegram was tendered. Erasure may be suspended where the prosecution of claims or international agreements necessitate a longer storage period.

## Section 107

### **Store and Forward Systems**

(1) In respect of services the carrying out of which requires intermediate storage, the service provider may process the content of communications, notably the voice, sound, text and graphics messages of subscribers, as part of a service offer based on these, subject to the following conditions—

1. processing takes place solely in telecommunications systems of the service provider carrying out intermediate storage, unless the content of the communication is re-routed to the telecommunications systems of other providers at the request of the subscriber or by subscriber input;
2. solely the subscriber determines, by his input, the content, scope and type of processing;
3. solely the subscriber determines who may input and access the content of communications (party having the right of access);
4. the service provider may inform the subscriber that the recipient has accessed the message;
5. the service provider may erase the content of communications only as provided for in the contract concluded with the subscriber.

(2) The service provider is to take the necessary technical and organisational measures to rule out transmission errors and the unauthorised disclosure, within his undertaking or to third parties, of the content of communications. Measures are required only if the time and effort expended is proportionate to the purpose of protection sought. Measures are to be adjusted to the state of the art if this is necessary to achieve the purpose of protection sought.

Chapter 3  
Public Safety

Section 108

**Emergency Calls**

(1) Any person offering publicly available telephone services shall undertake to provide all users with access to emergency services by using, free of charge, the single European emergency call number "112" and the additional national emergency call numbers determined in the ordinance as provided for under subsection (2) sentence 1 para 1. Any person operating telecommunications networks used for publicly available telephone services shall be required to transmit to the local emergency service centre, without undue delay, emergency calls, including

1. the calling line identity or, where the calling line identity is not available, the data required to prosecute any misuse of emergency calls as provided for by the ordinance under subsection (2); and
2. the information required to identify the location from which the emergency call originated.

(2) The Federal Ministry of Economics and Labour shall be empowered to make arrangements by ordinance having the force of law and requiring the consent of the German Bundesrat, in agreement with the Federal Ministry of the Interior and the Federal Ministry of Health and Social Security, concerning

1. determination of the additional national emergency call numbers;
2. the setting up of emergency connections either as calls or telefaxes to the local emergency service centre;
3. the extent of the emergency call features to be provided by network operators for the single European emergency call number "112" and for the national emergency call numbers, including the provision and transmission of the information required to locate the emergency caller;
4. the provision and transmission of suitable data to enable emergency service centres to prosecute any misuse of emergency calls;
5. the setting up of emergency calls by means of automatic calling equipment; and
6. the responsibilities of the Regulatory Authority in the fields referred to in paras 2 to 5.

Federal state regulations on emergency service centres remain unaffected by the provisions of this subsection insofar as they do not relate to obligations for network operators within the meaning of subsection (1).

(3) The Regulatory Authority shall stipulate the technical details of the subject matter referred to in subsection (2) sentence 1 paras 2 to 5 in a technical directive to be drawn up with the participation of industry associations, the representatives of the emergency service centre operators nominated by the Federal Ministry of the Interior, and manufacturers. International

standards are to be taken into consideration; reasons for deviations from the standards are to be stated. The technical directive is to be published by the Regulatory Authority in its Official Gazette. All persons with obligations under subsection (1) sentence 2 are to meet the requirements of the technical directive not later than one year following its publication, unless a longer transitional period has been specified there for particular obligations. In the event of an amendment to the directive, defective-free technical facilities configured to the directive shall meet the modified requirements not later than three years following its taking effect.

## Section 109

### **Technical Safeguards**

(1) Every service provider shall make appropriate technical arrangements or take other measures in order to protect

1. the privacy of telecommunications and personal data; and
2. telecommunications and data processing systems against unauthorised access.

(2) Any person operating telecommunications systems serving to provide publicly available telecommunications services shall, additionally, make appropriate technical arrangements or take other measures in order to protect telecommunications and data processing systems operated for such purpose against any faults which would result in considerable harm to telecommunications networks, and against external attacks and the effects of natural disasters. In doing so, regard shall be had to the state of the art and to the physical location of own and shared network elements. Where a site or technical facilities are shared, each operator of the telecommunications system shall meet the obligations according to subsection (1) and sentence 1 unless particular obligations can be assigned to a particular operator. Technical arrangements and other safeguards are deemed reasonable if the technical and economic effort required is proportionate to the importance of the rights to be protected and to the importance of the facilities to be protected for the general public.

(3) Any person operating telecommunications systems serving to provide publicly available telecommunications services shall nominate a security commissioner and draw up a security concept setting out

1. which telecommunications systems are to be used and which publicly available telecommunications services provided;
2. any potential hazards, and
3. which technical arrangements or other safeguards have been made or put in place or are planned in order to meet the obligations according to subsections (1) and (2).

The security concept is to be submitted to the Regulatory Authority by the operator without undue delay after the beginning of provision of the telecommunications services, along with a declaration that the technical arrangements and other safeguards specified there have been, or will be, implemented without undue delay. Where the Regulatory Authority establishes shortcomings in the security concept itself or in the course of its implementation, it may require the operator to eliminate them without undue delay. If the configuration of the system on which the security concept is based changes, the operator shall adapt and resubmit his concept to the Regulatory Authority with reference to the changes made. Sentences 1 to 4 do not apply to

operators of telecommunications systems intended exclusively for the reception and distribution of broadcasting signals. The obligation according to sentence 2 is deemed met in respect of security concepts submitted to the Regulatory Authority under section 87 of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120).

## Section 110

### Technical Implementation of Intercepts

(1) Any person operating a telecommunications system by means of which publicly available telecommunications services are provided, shall,

1. from the time of beginning operation, at his own expense, provide technical facilities with which to implement telecommunications interception measures provided for by law and make organisational arrangements for the implementation, without undue delay, of such measures;
2. without undue delay after beginning operation, vis-à-vis the Regulatory Authority,
  - a) declare that he has made the arrangements according to para 1; and
  - b) nominate a body located in the Federal Republic of Germany to receive judicial orders destined for him, relating to telecommunications interception;
3. demonstrate to the Regulatory Authority, at no charge, that the technical facilities and organisational arrangements according to para 1 are compliant with the provisions of the ordinance according to subsection (2) and the technical directive according to subsection (3); to this end, he shall, without undue delay but not later than one month after beginning operation,
  - a) send to the Regulatory Authority the documents needed to prepare the checks the Regulatory Authority carries out to verify compliance; and
  - b) agree with the Regulatory Authority a date for demonstrating and verifying compliance;he shall assist the Regulatory Authority in the checks required for verifying compliance;
4. allow the Regulatory Authority, at its special request in a given, justified instance, to re-check, at no charge, his technical and organisational arrangements; and
5. tolerate the installation and operation on his premises of equipment for the implementation of measures under sections 5 and 8 of the Article 10 Act and grant staff of the office responsible for such measures and members and staff of the G10 Commission (section 1(2) of the Article 10 Act) access to such equipment for the discharge of their legal functions.

Any person offering publicly available telecommunications services without themselves operating a telecommunications system to do so shall, when choosing the operator of the telecommunications system to be used for doing so, make certain that the latter can carry out judicial orders relating to telecommunications interception without undue delay as provided for by the ordinance according to subsection (2) and by the technical directive according to subsection (3), and notify the Regulatory Authority without undue delay after beginning to provide service of which telecommunications services he is offering, by whom judicial intercept

orders concerning his subscribers are to be carried out and to which body located in the Federal Republic of Germany judicial orders relating to telecommunications interception are to be addressed. Any changes in the data on which the notifications according to sentence (1) para (2) b) and sentence 2 are based are to be notified to the Regulatory Authority without undue delay. In cases in which provisions according to subsection (3) are not yet available, the person with obligations shall configure the technical facilities according to sentence 1 para 1 in agreement with the Regulatory Authority. Sentences 1 to 4 do not apply where the ordinance according to subsection (2) provides for exemptions with regard to the telecommunications system. Section 100b(3) sentence 1 of the Code of Criminal Procedure, section 2(1) sentence 3 of the Article 10 Act and the relevant state regulations on preventive telecommunications interception by the police remain unaffected.

(2) The Federal Government shall be empowered

1. to make arrangements concerning

- a) the technical essential requirements and the organisational key elements for the implementation of intercepts, including the implementation of intercepts by a person acting on behalf of the person with obligations;
- b) the extent of the arrangements in the technical directive according to subsection (3);
- c) demonstration of compliance as provided for by subsection (1) sentence 1 paras 3 and 4; and
- d) details of the obligation of tolerance as required by subsection (1) sentence 1 para 5; and

2. to determine

- a) the cases in which and the conditions under which compliance with certain technical requirements can be dispensed with on a temporary basis;
- b) that the Regulatory Authority may, for technical reasons, allow exemptions in respect of meeting particular technical requirements; and
- c) in respect of which telecommunications systems and associated service offers technical facilities need not be offered or organisational measures need not be taken, in derogation of subsection (1) sentence 1 para 1, on account of basic technical considerations or for reasons of proportionality,

by ordinance having the force of law and requiring the consent of the German Bundesrat.

(3) The Regulatory Authority shall stipulate, in a technical directive to be drawn up in consultation with the authorised bodies and with the participation of industry associations and manufacturers, the technical details required to guarantee a full record of telecommunications intercepts and for configuration of the point of handover to the authorised bodies. International technical standards are to be taken into consideration; reasons for deviations from the standards are to be stated. The technical directive is to be published by the Regulatory Authority in its Official Gazette.

(4) Any person manufacturing or distributing technical facilities for the implementation of intercepts may require the Regulatory Authority to verify, by testing the interworking of a type



sample with particular telecommunications systems, whether or not the legal and technical provisions of the ordinance according to subsection (2) and of the technical directive according to subsection (3) have been met. The Regulatory Authority may, after due assessment of the circumstances, allow deviations from the technical requirements on a temporary basis, provided that implementation of the intercepts is secured in principle and only insignificant adjustments to the technical facilities of the authorised bodies are required. The Regulatory Authority is to notify the manufacturer or distributor in writing of the test results. The test results are noted by the Regulatory Authority in connection with the demonstration of compliance of the technical facilities with the applicable technical provisions which the person with obligations is required to provide under subsection (1) sentence 1 para 3 or 4. Consent to the framework concepts presented by manufacturers given by the Federal Ministry of Economics and Labour prior to the entry into force of this provision is deemed notification within the meaning of sentence 3.

(5) Any person obliged under subsection (1) in conjunction with the ordinance according to subsection (2) to make arrangements is to meet the requirements of the ordinance and the technical directive according to subsection (3) not later than one year following their publication, unless a longer period has been determined there for particular obligations. Defective-free technical facilities configured to this directive for telecommunications services already offered by the person with obligations shall, in the event of an amendment to the directive, meet the modified requirements not later than three years following its taking effect. Where shortcomings in the technical or organisational arrangements of the person with obligations are found in the process of compliance according to subsection (1) sentence 1 para 3 being demonstrated or a re-check according to subsection (1) sentence 1 para 4 being made, the person with obligations is to eliminate such shortcomings within a reasonable period of time as provided for by the Regulatory Authority; where shortcomings are found during operations, notably when intercepts are carried out, the person with obligations is to eliminate such shortcomings without undue delay. If type samples have been tested under subsection (4) for the technical facilities and deadlines set for the elimination of shortcomings, the Regulatory Authority shall take these deadlines into account in its specifications on the elimination of shortcomings according to sentence 3.

(6) Every operator of a telecommunications system renting to third parties network termination points in his telecommunications system under his publicly available service offer shall undertake to make available to the bodies authorised by law to carry out telecommunications intercepts, without undue delay and as a matter of priority, at their request, network termination points for transmission of the information obtained under an intercept. The technical configuration of such termination points may be laid down in the ordinance according to subsection (2). With the exception of special tariffs or surcharges for priority or early provision or fault repair, the tariffs payable by the general public apply in respect of such provision and use. Any special contractually agreed discounts remain unaffected by sentence 3.

(7) Telecommunications systems operated by legally authorised bodies and by means of which intervention in the privacy of telecommunications or in network operation is to be brought about, are to be technically configured in agreement with the Regulatory Authority. The Regulatory Authority is to comment on the technical configuration within a reasonable period of time.

(8) Operators of telecommunications systems with obligations under sections 100a and 100b of the Code of Criminal Procedure are to prepare, and make available to the Regulatory Authority at no charge, annual statistics of intercepts carried out under these provisions. The presentation of these statistics may be detailed in the ordinance according to subsection (2). Operators shall not disclose the statistics to third parties. The Regulatory Authority shall

aggregate the data provided by the undertakings and publish the result in its Official Gazette annually.

(9) The Federal Government shall be empowered to make arrangements, by ordinance having the force of law and requiring the consent of the German Bundestag and the German Bundesrat, with regard to appropriate compensation to be paid to service providers for services supplied by them in

1. enabling intercepts under sections 100a and 100b of the Code of Criminal Procedure, section 2(1), section 5 or section 8 of the Article 10 Act, section 39 of the Foreign Trade and Payments Act or the relevant state regulations, and
2. providing information in accordance with section 113.

The costs of providing technical facilities as required to provide the services according to sentence 1 are not the subject of such compensation arrangements.

## Section 111

### **Data for Information Requests from Security Authorities**

(1) Any person commercially providing or assisting in providing telecommunications services and in so doing allocating telephone numbers or providing telecommunications connections for telephone numbers allocated by other parties is, for the information procedures according to sections 112 and 113, to collect, prior to activation, and store without undue delay the telephone numbers, the name and address of the allocation holder, the effective date of the contract, the date of birth in the case of natural persons, and in the case of fixed lines, additionally the address for the line, even if such data are not required for operational purposes; where known, the date of termination of the contract is likewise to be stored. Sentence 1 also applies where the data are not included in directories of subscribers (section 104). A person with obligations according to sentence 1 receiving notice of any changes is to correct the data without undue delay; in this connection the person with obligations is subsequently to collect and store data according to sentence 1 not yet recorded if collecting the data is possible at no special effort. When the contractual relationship ends, the data are to be erased upon expiry of the calendar year following the year in which the contract terminated. Compensation for data collection and storage is not paid. The manner in which data for the information procedure according to section 113 are stored is optional.

(2) Where the service provider according to subsection (1) sentence 1 operates in conjunction with a sales partner, such partner shall collect data according to subsection (1) sentence 1 and transmit to the service provider, without undue delay, these and data collected under section 95; subsection (1) sentence 2 applies accordingly. Sentence 1 also applies to data relating to changes, inasmuch as the sales partner receives notice of them in the course of normal business transactions.

(3) Data within the meaning of subsection (1) sentence 1 need not be collected subsequently for contractual relationships existing on the date of entry into force of this provision, save in the cases referred to in subsection (1) sentence 3.

## Section 112

### **Automated Information Procedure**

(1) Any person providing publicly available telecommunications services shall store, without undue delay, data collected under section 111(1) sentences 1 and 3 and subsection (2) in customer data files in which the telephone numbers and quotas of telephone numbers allocated to other telecommunications service providers for further marketing or other use and, with regard to ported numbers, the current carrier portability codes, are also to be included. Section 111(1) sentences 3 and 4 apply accordingly with regard to the correction of customer data files. In the case of ported numbers the telephone number and associated carrier portability code are not to be erased before expiry of the year following the date on which the telephone number was returned to the network operator to whom it had originally been allocated. The person with obligations shall ensure that

1. the Regulatory Authority can, at all times, retrieve from customer data files data for information requests from the authorities referred to in subsection (2) by means of automated procedures in the Federal Republic of Germany;
2. data can be retrieved using incomplete search data or searches made by means of a similarity function.

The requesting office is to consider, without undue delay, the extent to which it needs the data provided and erase, without undue delay, any data not needed. The person with obligations is to ensure by technical and organisational measures that no retrievals can come to his notice.

(2) Information from the customer data files according to subsection (1) shall be provided to

1. the courts and criminal prosecution authorities;
2. federal and state police enforcement authorities for purposes of averting danger;
3. the Customs Criminological Office and customs investigation offices for criminal proceedings and the Customs Criminological Office for the preparation and execution of measures under section 39 of the Foreign Trade and Payments Act;
4. federal and state authorities for the protection of the Constitution, the Federal Armed Forces Counter-Intelligence Office and the Federal Intelligence Service;
5. the emergency service centres according to section 108 and the service centre for the maritime mobile emergency number "124124";
6. the Federal Financial Supervisory Authority; and
7. the authorities responsible under state legislation for the prosecution of administrative offences as provided for by section 4(3) of the Undeclared Work Act, via central inquiry offices,

as stipulated in subsection (4), at all times, as far as such information is needed to discharge their legal functions and the requests are submitted to the Regulatory Authority by means of automated procedures.

(3) The Federal Ministry of Economics and Labour shall be empowered to issue, in agreement with the Federal Chancellery, the Federal Ministry of the Interior, the Federal Ministry of Justice, the Federal Ministry of Finance and the Federal Ministry of Defence, an ordinance having the force of law and requiring the consent of the German Bundesrat, in which the following matters are regulated–

1. the essential requirements in respect of the technical procedures for
  - a) the transmission of requests to the Regulatory Authority;
  - b) the retrieval of data by the Regulatory Authority from persons with obligations, including the data types to be used for the queries; and
  - c) transmission by the Regulatory Authority to the requesting authorities of the data retrieved;
2. the security requirements to be observed; and
3. in respect of retrievals using incomplete search data and searches made by means of similarity functions for which specifications on the character sequences to be included in the search are provided by the Ministries contributing to the ordinance,
  - a) the minimum requirements in respect of the extent of the data to be entered in order to identify, as precisely as possible, the person to whom the search relates;
  - b) the permitted number of hits to be transmitted to the requesting authority; and
  - c) the requirements in respect of the erasure of data not needed.

In other respects, the ordinance may also restrict the query facility for the authorities referred to in subsection (2) paras 5 to 7 to the extent that is required for such authorities. The Regulatory Authority shall determine the technical details of the automated retrieval procedure in a technical directive to be drawn up with the participation of the associations concerned and the authorised bodies and to be brought into line with the state of the art, where required, and published by the Regulatory Authority in its Official Gazette. The person with obligations according to subsection (1) and the authorised bodies are to meet the requirements of the technical directive not later than one year following its publication. In the event of an amendment to the directive, defective-free technical facilities configured to the directive shall meet the modified requirements not later than three years following its taking effect.

(4) At the request of the authorities referred to in subsection (2), the Regulatory Authority is to retrieve and transmit to the requesting authority the relevant data sets from the customer data files according to subsection (1). It shall examine the admissibility of the transmission only where there is special reason to do so. Responsibility for such admissibility lies with the authorities referred to in subsection (2). For purposes of data protection control by the competent body, the Regulatory Authority shall record, for each retrieval, the time, the data used in the process of retrieval, the data retrieved, the person retrieving the data, the requesting authority and the reference number of the requesting authority. Use for any other purposes of data recorded is not permitted. Data recorded are to be erased after a period of one year.

(5) The person with obligations according to subsection (1) is to make all such technical arrangements in his area of responsibility as are required for the provision of information under

this provision, at his expense. This also includes procurement of the equipment required to secure confidentiality and protection against unauthorised access, installation of a suitable telecommunications connection, participation in the closed user system and the continued provision of all such arrangements as are required under the ordinance and the technical directive according to subsection (3). Compensation for information provided by means of automated procedures is not paid to persons with obligations.

## Section 113

### **Manual Information Procedure**

(1) Any person commercially providing or assisting in providing telecommunications services shall, in a given instance, provide the competent bodies, at their request, without undue delay, with information on data collected under sections 95 and 111 to the extent required for the prosecution of criminal or administrative offences, for averting danger to public safety or order and for the discharge of the legal functions of the federal and state authorities for the protection of the Constitution, the Federal Intelligence Service and the Federal Armed Forces Counter-Intelligence Office. The person with obligations according to sentence 1 shall provide information on data by means of which access to terminal equipment or to storage devices or units installed in such equipment or in the network is protected, notably personal identification numbers (PINs) or personal unlocking keys (PUKs), by virtue of an information request under section 161(1) sentence 1 or section 163(1) of the Code of Criminal Procedure, data collection provisions in federal or state police legislation for averting danger to public safety or order, section 8(1) of the Federal Constitution Protection Act, the corresponding provisions of the state constitution protection legislation, section 2(1) of the Federal Intelligence Service Act or section 4(1) of the Federal Armed Forces Counter-Intelligence Act; such data shall not be transmitted to any other public or private bodies. Access to data which are subject to telecommunications privacy shall be permitted only under the conditions of the relevant legislation. The person with obligations shall maintain silence vis-à-vis his customers and third parties about the provision of information.

(2) The person with obligations according to subsection (1) is to make such arrangements as are required in his area of responsibility for the provision of information, at his expense. In respect of information provided, the person with obligations is granted compensation by the requesting authority, the level of which, in derogation of section 17a(1) para 2 of the Reimbursement of Witnesses and Experts Act, is determined by the ordinance referred to in section 110(9). Sentence 2 also applies in those cases in which, under the manual information procedure, merely data are requested which the person with obligations also keeps available for retrieval under the automated information procedure according to section 112. Sentence 2 does not apply in those cases in which the information was not provided completely or was not provided correctly under the automated information procedure according to section 112.

## Section 114

### **Information Requests from the Federal Intelligence Service**

(1) Any person providing publicly available telecommunications services or operating transmission paths used for publicly available telecommunications services is to provide the Federal Ministry of Economics and Labour, upon request and at no charge, with information on the structures of telecommunications services and networks and on any forthcoming changes. Specific telecommunications activities and customer data of subscribers may not be the subject of any information under this provision.

(2) Requests for information according to subsection (1) are permissible only when a request for such information has been made by the Federal Intelligence Service and the information is required to discharge functions according to sections 5 and 8 of the Article 10 Act. Use of information obtained under this provision for any other purposes is ruled out.

## Section 115

### **Monitoring and Enforcement of Obligations**

(1) The Regulatory Authority may give orders and take other measures to secure compliance with the provisions of Part 7 and the ordinances having the force of law issued by virtue of this Part and with the applicable technical directives. The person with obligations shall provide the necessary information at the request of the Regulatory Authority. To verify compliance with obligations the Regulatory Authority is authorised to enter and inspect, during normal business or working hours, business premises and production sites.

(2) The Regulatory Authority may set the following financial penalties in accordance with the Administrative Enforcement Act–

1. a fine not exceeding 500,000 euros to enforce obligations according to section 108(1), section 110(1), (5) or (6), an ordinance according to section 108(2), an ordinance according to section 110(2), an ordinance according to section 112(3) sentence 1, the technical directive according to section 108(3), the technical directive according to section 110(3) and the technical directive according to section 112(3) sentence 3;
2. a fine not exceeding 100,000 euros to enforce obligations according to sections 109, 112(1) and (3) sentence 4, subsection (5) sentences 1 and 2 and section 114(1); and
3. a fine not exceeding 20,000 euros to enforce obligations according to section 111(1) sentences 1 to 4 and subsection (2) and section 113(1) and (2) sentence 1.

In the event of repeated violations of the provisions of section 111(1) sentences 1 to 4 and subsection (2), section 112(1) and (3) sentence 4, subsection (5) sentences 1 and 2 or section 113(1) and (2) sentence 1, the activities of the person with obligations may be restricted by order of the Regulatory Authority in such a way that his customer base may not be changed, except as a result of contract expiry or notice of termination, until such time as the obligations ensuing from these provisions have been fulfilled.

(3) In the event of the non-fulfilment of obligations set out in Part 7, the Regulatory Authority may, in addition, wholly or partially prohibit operation of the telecommunications system concerned or commercial provision of the telecommunications service concerned if less severe action to enforce proper conduct is insufficient.

(4) As far as the data of natural or legal persons are collected, processed or used for the commercial provision of telecommunications services, monitoring by the Federal Data Protection Commissioner as provided for by sections 21 and 24 to 26(1) to (4) of the Federal Data Protection Act shall apply in place of monitoring as provided for by section 38 of the Federal Data Protection Act in respect of undertakings. The Federal Data Protection Commissioner shall lodge his complaints with the Regulatory Authority and transmit to it any further results of monitoring after due assessment of the circumstances.

(5) The privacy of telecommunications as laid down in Article 10 of the Basic Law shall be restricted to the extent required for the monitoring specified in subsections (1) and (4).

## **PART 8 REGULATORY AUTHORITY**

### Chapter 1 Organisation

#### Section 116

#### **Headquarters and Legal Status**

(1) The Regulatory Authority for Telecommunications and Posts shall discharge the functions and exercise the powers assigned to it under this Act and other laws. The Regulatory Authority is a higher federal authority responsible to the Federal Ministry of Economics and Labour with its headquarters in Bonn.

(2) The Regulatory Authority shall be run by a President. The President shall represent the Regulatory Authority in and out of court and lay down the administration and order of business by rules of procedure; these shall require confirmation by the Federal Ministry of Economics and Labour. Section 132(1) remains unaffected.

(3) The President and the two Vice Presidents shall be nominated by the Federal Government upon the proposal of the Advisory Council. Where, in spite of a request from the Federal Government, the Advisory Council fails to make a proposal within a period of four weeks, the right of nomination shall end. In the event of a proposal from the Advisory Council failing to meet with the approval of the Federal Government, the Advisory Council may submit a further proposal within a period of four weeks. The right of the Federal Government to take the final decision remains unaffected by this procedure.

(4) The President and the two Vice Presidents shall be appointed by the President of the Federal Republic of Germany.

#### Section 117

#### **Publication of Directives from the Federal Ministry of Economics and Labour**

All directives issued by the Federal Ministry of Economics and Labour shall be published in the Federal Gazette. This does not apply to such functions as are to be discharged by the Federal Ministry of Economics and Labour under its own jurisdiction by virtue of this Act or other laws and the discharge of which it has transferred to the Regulatory Authority.

#### Section 118

#### **Advisory Council**

(1) There shall be constituted at the Regulatory Authority an Advisory Council. It shall consist of nine members of the German Bundestag and nine representatives of the German Bundesrat. The representatives of the German Bundesrat shall be members or political representatives of

the government of a federal state. The members and deputy members of the Advisory Council shall be appointed by the Federal Government upon the proposal of the German Bundestag and the German Bundesrat.

(2) Members proposed by the German Bundestag shall be appointed to the Advisory Council for the duration of the legislative period of the German Bundestag. They shall remain in office at the end of this legislative period until such time as the new members have been appointed. Reappointment is permitted. The representatives proposed by the German Bundesrat shall be appointed to the Advisory Council for a period of four years; reappointment is permitted. They shall be removed from office if the German Bundesrat proposes another person in their place.

(3) Members may ask the Federal Ministry of Economics and Labour to release them from service, and resign from office. The declaration of release requires written form. Members proposed by the German Bundestag shall lose their membership when the requirements for their appointment cease to apply.

(4) Should a member resign from office, a new member shall be appointed in his place without undue delay. Until such time as a new member has been appointed and in the event of a member being temporarily prevented from performing his duties, the appointed deputy shall discharge his functions. Subsections (1) to (4) apply to deputy members accordingly.

#### Section 119

#### **Rules of Procedure, Chairmanship, Meetings of the Advisory Council**

(1) The Advisory Council shall adopt its rules of procedure, which require the approval of the Federal Ministry of Economics and Labour.

(2) The Advisory Council shall elect a Chairman and a Deputy Chairman from its members in accordance with its rules of procedure. The candidate obtaining the majority of votes shall be elected. If the required majority is not achieved in the first ballot, the majority of votes cast shall decide in the second. In the event of a tie in the second ballot, the matter shall be resolved by drawing lots.

(3) The Advisory Council shall constitute a quorum whenever more than half of the members nominated by the German Bundesrat and by the German Bundestag respectively are present. Resolutions shall be adopted by simple majority. In the event of a tied vote, a motion shall be dismissed.

(4) Where the Chairman considers debate of a resolution in draft unnecessary, the approval or comments of the members can be obtained by means of a written enquiry. Subsection (3) applies accordingly with regard to resolutions being effected. The enquiry should be made sufficiently early so that, at the request of a member or of the Regulatory Authority, the matter can still be debated in timely manner at a meeting.

(5) The Advisory Council should meet at least once a quarter. Meetings are to be convened when the Regulatory Authority or at least three members make a written request for such convocation. The Chairman of the Advisory Council may convene a meeting at any time.

(6) Ordinary meetings are not open to the public.



(7) The President of the Regulatory Authority and persons authorised by him or her may attend the meetings. They shall be consulted at all times. The Advisory Council may require the presence of the President of the Regulatory Authority or, should the President be prevented from attending, that of a deputy.

(8) Members and persons representing them shall receive a refund of their travelling expenses and a commensurate attendance fee as determined by the Federal Minister of Economics and Labour.

## Section 120

### **Functions of the Advisory Council**

The Advisory Council shall have the following responsibilities–

1. making proposals to the Federal Government concerning the appointment of the President and Vice Presidents of the Regulatory Authority;
2. participating in Regulatory Authority decisions in the cases specified in section 61(4) paras 2 and 4 and section 81;
3. entitlement to request measures with which to implement the aims of regulation and to secure universal service. The Regulatory Authority shall undertake to decide on such requests within a period of six weeks;
4. entitlement in relation to the Regulatory Authority to obtain information and comments. The Regulatory Authority has the duty to provide information to the Advisory Council;
5. advising the Regulatory Authority in drawing up the Strategic Plan according to section 122(2) and, in particular, in making policy decisions of market relevance;
6. being consulted when the Frequency Usage Plan according to section 54 is drawn up.

## Section 121

### **Activity Report**

(1) The Regulatory Authority shall submit to the federal legislative bodies, along with the report according to subsection (2), a report on its activities and on the situation in and development of the telecommunications sector. This report shall also comment on the question of whether or not modification of the determination of which telecommunications services have been deemed universal services within the meaning of section 78 is recommended.

(2) The Monopolies Commission shall, every two years, prepare an official report assessing the level and foreseeable development of competition and the question of whether or not there are sustainable competitive telecommunications markets in the Federal Republic of Germany, evaluating the application of the provisions of this Act concerning regulation and fair trading and commenting on other current questions of competition policy, in particular, on the question of whether or not the ruling in section 21(2) para 3 needs to be adjusted in light of the development of competition. The report should be completed by 30 November of the year in which a main report according to section 44 of the Competition Act is not submitted.

(3) The Federal Government shall submit to the federal legislative bodies, within a reasonable period of time, its comments on the report.

#### Section 122

##### **Annual Report**

(1) Once a year, the Regulatory Authority shall publish a report on the development of the telecommunications market presenting the main market data and consumer protection issues.

(2) To be included in the Annual Report, after public consultation, is a Strategic Plan listing matters of legal and economic policy to be addressed by the Regulatory Authority in the current year. The findings are to be published in the Annual Report for the following year.

(3) The Regulatory Authority shall publish the principles of its administration on a regular basis.

#### Section 123

##### **Cooperation with Other Authorities**

(1) In the cases specified in sections 10, 11, 61(3) and section 62(2) para 3 the Regulatory Authority shall take decisions in agreement with the Federal Cartel Office. Where the Regulatory Authority takes decisions in accordance with Part 2, Chapters 2 to 5, it shall give the Federal Cartel Office the opportunity to state its views in good time before closure of the case. Where the Federal Cartel Office opens cases in the telecommunications sector under sections 19 and 20(1) and (2) of the Competition Act, Article 82 of the EC Treaty or section 40(2) of the Competition Act, it shall give the Regulatory Authority the opportunity to state its views in good time before closure of the case. Both authorities shall seek to achieve a uniform interpretation of this Act and one which is consistent with the Competition Act. They are to inform each other of all observations and findings which may be of significance to the discharge of their respective functions.

(2) The Regulatory Authority shall work together with the state media authorities. At their request, the Regulatory Authority shall inform these authorities of findings required for the discharge of their functions.

#### Section 124

##### **Mediation**

Where appropriate, the Regulatory Authority may, to resolve telecommunications disputes, propose that the parties affected seek to reach mutual agreement before a mediator (mediation process).

#### Section 125

##### **Specialist Consulting**

(1) The Regulatory Authority may set up special commissions to prepare its decisions or to deliver opinions on regulatory issues. The members of such commissions shall, in the field of

telecommunications or postal services, have particular experience of economic, business management, socio-political, technological and legal matters, and possess proven expertise.

(2) The Regulatory Authority shall be given, on a continuing basis, specialist support in performing its functions. This concerns, in particular,

1. the regular assessment of national and international economic, business management, regulatory and social trends in telecommunications and postal services; and
2. the preparation and further development of the scientific basis for shaping universal service, the regulation of providers with significant market power, the rules governing open network provision and interconnection as well as numbering and customer protection.

## Chapter 2

### Powers

#### Section 126

#### **Prohibition**

(1) Where the Regulatory Authority finds that an undertaking is failing to meet its obligations by or under this Act, it shall require the undertaking to state its views and to take remedial action. It shall set a time limit for the undertaking to take remedial action.

(2) Where the undertaking fails to meet its obligations within the time limit set, the Regulatory Authority may order such measures as are necessary to secure adherence to the obligations. A reasonable time limit is to be set to allow the undertaking to comply with the measures.

(3) In the case of serious or repeated breaches of obligations by the undertaking or failure to comply with measures for remedial action ordered by the Regulatory Authority under subsection (2), the Regulatory Authority may prohibit the undertaking acting in the capacity of telecommunications network operator or service provider.

4) Where such breach of obligations represents a direct and serious threat to public safety and order or such neglect of duty will create serious economic or operational problems for other providers or users of telecommunications networks or services, the Regulatory Authority may, in derogation of the procedures set out in subsections (1) to (3), take provisional measures. The Regulatory Authority shall decide, after it has given the undertaking concerned the opportunity to state its views within a reasonable period, whether the provisional measures will be confirmed, withdrawn or modified.

(5) To enforce orders according to subsection (2), a penalty not exceeding 500,000 euros may be set in accordance with the Administrative Enforcement Act.

#### Section 127

#### **Information Requests**

(1) Without prejudice to other national reporting or information requirements, public telecommunications network operators and providers of publicly available telecommunications services are obliged, under the rights and obligations ensuing from this Act, to provide the

Regulatory Authority, upon request, with information required for execution of this Act. The Regulatory Authority may, in particular, require information for

1. the systematic or case-by-case verification of compliance with obligations ensuing from or by virtue of this Act;
2. the case-by-case verification of compliance with obligations when the Regulatory Authority has received a complaint or has other reasons to assume non-compliance with obligations or when it has opened investigations on its own initiative;
3. the publication of comparative overviews of quality and price of service for the benefit of end-users;
4. clearly defined statistical purposes;
5. market definition or market analysis procedures according to sections 10 and 11;
6. procedures for the grant of rights of use and for the review of the relevant applications; and
7. the use of numbers.

Information as referred to in sentence 3, paras 1 to 5 may not be required prior to, or as a condition of, market access.

(2) As far as is necessary to discharge functions assigned to it under this Act, the Regulatory Authority may require telecommunications undertakings as referred to in subsection (1)

1. to provide information on their economic situation, in particular on their sales figures; and
2. to allow their business records to be inspected and audited within normal business or working hours.

(3) The Regulatory Authority shall request information as referred to in subsections (1) and (2) and arrange an audit as referred to in subsection (2) para 2 by written order. The legal basis, the subject matter and the purpose of the information request are to be stated in such order. In all information requests a reasonable time limit shall be determined for provision of the information.

(4) Owners of undertakings or persons representing them and, in the case of legal persons, corporations or associations without legal capacity, those persons appointed representatives by law or statutes, are obliged to provide information requested under subsections (1) and (2), to submit business records and to tolerate the auditing of their business records and access to business premises and property during normal business or working hours.

(5) Persons commissioned by the Regulatory Authority to conduct audits may have access to the offices and business premises of undertakings and associations of undertakings during normal business or working hours.

(6) Searches may be carried out solely by order of the local court in whose district the search is to take place. With regard to appeals against such orders, sections 306 to 310 and 311a of the Code of Criminal Procedure apply accordingly. In cases of imminent danger, the persons designated in subsection (5) may carry out, during business hours, the necessary searches

without a judicial order. On site, a record of the search and its main findings shall be drawn up, from which, where a judicial order was not obtained, the facts leading to the assumption of imminent danger are also apparent.

(7) Objects and business records may be taken into custody as required or, where they are not handed over voluntarily, seized. With regard to seizure, subsection (6) applies accordingly.

(8) Persons with obligations to provide information under subsection (4) may refuse to answer any questions which would render themselves or relatives as specified in section 383(1) paras 1 to 3 of the Code of Civil Procedure liable to prosecution or to proceedings under the Administrative Offences Act. Knowledge or records obtained as a result of information requests or measures according to subsections (1) and (2) may not be used for taxation assessment proceedings or administrative fines proceedings involving an offence against tax laws or currency violations or for proceedings involving a fiscal or currency offence; sections 93, 97, 105(1), section 111(5) in conjunction with section 105(1) and section 116(1) of the Fiscal Code do not apply in this regard. Sentence 1 does not apply in respect of proceedings involving a fiscal offence or any related taxation assessment proceedings when there is an overriding public interest in the institution of such proceedings, or in the event of the intentional provision of false information by persons with obligations or by persons acting on their behalf.

(9) As far as audits reveal a violation of any conditions, orders or directions of the Regulatory Authority, the undertaking is to reimburse the Regulatory Authority with the expenses, including any fees for experts, incurred by such audits.

(10) To enforce such orders, the Regulatory Authority may set a penalty not exceeding 500,000 euros in accordance with the Administrative Enforcement Act.

## Section 128

### **Investigations**

(1) The Regulatory Authority may conduct all investigations and take all evidence necessary.

(2) With regard to real evidence, testimonies and expert opinions, section 372(1), sections 376, 377, 380 to 387, 390, 395 to 397, 398(1) and sections 401, 402, 404, 406 to 409, 411 to 414 of the Code of Civil Procedure apply accordingly; detention may not be imposed. The higher regional court shall have jurisdiction to decide upon appeals.

(3) A record of the statements of the witnesses should be drawn up, to be signed by the investigating member of the Regulatory Authority and by a registrar also, if present. The record should include the place and date of the proceedings and the names of those assisting and of the parties concerned.

(4) The record is to be read to witnesses for their approval or presented for their own inspection. Approval given is to be noted and signed by the witnesses. In the event of the record not being signed, the reason is to be stated.

(5) With regard to the questioning of experts, subsections (3) and (4) apply accordingly.

(6) The Regulatory Authority may request the local court to administer an oath to witnesses if it deems an oath necessary to bring about true statements. The court shall decide upon such confirmation by oath.

## Section 129

### **Seizure**

(1) The Regulatory Authority may seize objects which may be important as evidence in its investigations. Any such seizure is to be notified to the parties concerned without undue delay.

(2) The Regulatory Authority is, within a period of three days, to seek judicial confirmation from the local court of the district in which seizure took place when neither the parties concerned nor adult relatives were present when seizure took place or when the parties concerned or, in their absence, adult relatives, expressly objected to such seizure.

(3) The parties concerned may at any time seek a judicial decision against seizure. They shall be instructed of this right. The court having jurisdiction according to subsection (2) shall decide on the motion.

(4) Appeals against judicial decisions are permissible. Sections 306 to 310 and 311a of the Code of Criminal Procedure apply accordingly.

## Section 130

### **Provisional Orders**

The Regulatory Authority may issue provisional orders pending a final decision.

## Section 131

### **Conclusion of Proceedings**

(1) Decisions of the Regulatory Authority are to be accompanied by a statement of reasons. They are to be served, along with the explanatory statement and information on permissible appeals, upon the parties concerned in accordance with the provisions of the Service in Administrative Procedure Act. Decisions issued in relation to an undertaking with its headquarters outside the area of application of this Act shall be served upon those designated by the undertaking and notified to the Regulatory Authority as persons authorised to accept service. Where the undertaking has not designated any such persons, the Regulatory Authority shall serve the decision by means of notice in the Federal Gazette.

(2) The closure of all proceedings not concluded by means of a decision served in accordance with subsection (1) sentences 2 to 4 upon the persons concerned is to be notified in writing to the persons concerned.

(3) The Regulatory Authority may charge the persons concerned with the cost of taking evidence as appears fair.

Chapter 3  
Proceedings

Subchapter 1  
Ruling Chambers

Section 132

**Ruling Chamber Decisions**

(1) The Regulatory Authority shall take decisions through its Ruling Chambers in the cases specified in Part 2, in section 55(9) and in sections 61, 62 and 81; subsection (3) sentence 1 remains unaffected. Decisions shall be taken by administrative act. Ruling Chambers shall, with the exception of the Chamber referred to in subsection (3), be constituted as provided for by the Federal Ministry of Economics and Labour.

(2) Chamber decisions shall be taken in the composition of Chairman and two Assessors. The Chairman and the Assessors shall be qualified to hold office in the senior administrative grade of the civil service. At least one member of the Ruling Chamber shall be qualified to exercise the functions of a judge.

(3) In the cases specified in section 55(9) and in sections 61, 62 and 81 the Ruling Chamber shall take decisions in the composition of the President as Chairman and the two Vice Presidents as Assessors; accordingly, subsection (2) sentences 2 and 3 do not apply as far as these cases are concerned. The authority to act as a deputy in cases of absence is regulated in the rules of procedure referred to in section 116(2). Decisions in the cases specified in section 61(4) paras 2 and 4 and in section 81 shall be taken in consultation with the Advisory Council.

(4) For the purposes of achieving a uniform ruling practice in comparable and related cases and of securing the consistency requirement according to section 27(2), procedures are to be stipulated in the Regulatory Authority's rules of procedure imposing extensive coordination and information obligations on the Ruling Chambers and the departments concerned prior to decisions being issued. Where Ruling Chamber decisions under sections 18, 19, 20, 21, 24, 30, 39, 40 and 41(1) are concerned, the rules of procedure shall ensure that determinations according to sections 10 and 11 are made by the President's Chamber.

Section 133

**Other Disputes between Undertakings**

(1) In the event of a dispute arising in connection with obligations ensuing from or by virtue of this Act between undertakings operating public telecommunications networks or offering publicly available telecommunications services, the Ruling Chamber shall, unless otherwise provided for by law, at the request of either party and after consultation with the parties concerned, issue a binding decision to resolve the dispute. The Ruling Chamber shall take its decision within a period not exceeding four months from the date of the request from one of the parties concerned to resolve the dispute.

(2) In the event of a dispute arising in a field covered by this Act between undertakings in different Member States where the dispute falls within the competence of the national regulatory authorities of at least two Member States, any of the parties may refer the dispute to the national

regulatory authority concerned. The Ruling Chamber is to take its decision in consultation with the national regulatory authority concerned within a period as referred to in subsection (1).

(3) Sections 126 to 132 and 134 to 137 apply accordingly.

#### Section 134

##### **Institution of Proceedings, Parties Concerned**

(1) Ruling Chambers shall institute proceedings on their own initiative or upon a motion.

(2) There shall take part in proceedings before the Chamber

1. the person presenting the motion;
2. the operators of public telecommunications networks and the providers of publicly available telecommunications services against whom the proceedings are directed; and
3. the persons and associations of persons whose interests are likely to be affected by the decision and to whom the Regulatory Authority has sent a summons to attend proceedings in response to their request.

#### Section 135

##### **Hearings, Oral Proceedings**

(1) The Chamber is to give parties concerned the opportunity to state their views.

(2) Where appropriate, the Chamber may give persons representing business circles affected by the proceedings the opportunity to state their views.

(3) The Chamber shall decide on the matter in question on the basis of public oral proceedings; subject to the agreement of the parties concerned, it can take its decision without oral proceedings. At the request of any of the parties concerned or on the Chamber's own initiative the public is to be excluded from part or all of the proceedings if it poses a threat to public order, specifically to national security, or to an important trade or operating secret.

#### Section 136

##### **Trade and Operating Secrets**

Without undue delay when documents are submitted for Ruling Chamber proceedings, all parties concerned are to mark those parts containing trade or operating secrets. In this case they shall submit an additional copy which, from their point of view, can be inspected without such secrets being disclosed. Where this does not happen, the Ruling Chamber may assume their agreement to inspection, unless it is aware of any special circumstances that do not justify such assumption. Where the Ruling Chamber considers marking the documents as confidential to be unjustified, it shall, prior to taking a decision on allowing inspection by third parties, consult with the submitting parties.



Subchapter 2  
Legal Proceedings

Section 137

**Appeals**

(1) Protests and action against Regulatory Authority decisions shall not have suspensory effect.

(2) In the case of section 132, there shall be no preliminary proceedings.

(3) In the case of section 132, appeals (on issues of fact and law) against judgments and appeals (on procedural issues) against other decisions of the administrative court shall be ruled out. This does not apply with regard to appeals against decisions according to section 138(3), appeals against denial of leave to appeal on questions of law under section 135 in conjunction with section 133 of the Code of Administrative Court Procedure and appeals against decisions on jurisdiction under section 17a(2) and (3) of the Courts Constitution Act. Section 17a(4) sentences 4 to 6 of the Courts Constitution Act apply accordingly with regard to appeals against decisions on jurisdiction.

Section 138

**Submission and Information Duties of the Regulatory Authority**

(1) Section 99(1) of the Code of Administrative Court Procedure applies with regard to the submission of documents or files, the transmission of electronic documents and the provision of information (submission of documents) by the Regulatory Authority. The Regulatory Authority shall act in place of the supreme supervisory authority.

(2) Upon the motion of a party, the court dealing with the main issue shall decide by order whether the documents are to be submitted or whether they may not be submitted. Where trade or operating secrets will be affected as a result of the submission of documents according to subsection (1), the court shall require the authority to submit the documents insofar as this is of relevance to the decision, there are no other ways of clarifying the matter and, after due assessment of all the circumstances of the particular case, the interest in submission of the documents outweighs the interest in confidentiality of the person concerned.

(3) The motion is to be filed within a period of one month of the notification by the court to the parties concerned of the Regulatory Authority's decision on submission of the documents. The Regulatory Authority is to submit the documents at the court's request; section 100 of the Code of Administrative Court Procedure does not apply. The members of the court have a duty to observe secrecy; the reasons for the decision may not allow the nature or content of confidential documents to be ascertained. The court's decision on whether the documents are to be submitted or whether they may be submitted is appealable to the Federal Administrative Court. The appellate court division dealing with the main issue shall decide on the appeal. Sentences 2 and 3 apply accordingly with regard to the appeal proceedings.

(4) If, under the court's unappealable decision, the documents are not to be submitted or may not be submitted, the court or, in appeal proceedings, the court of appeal, shall return the documents submitted under subsection (3) sentence 2 to the Regulatory Authority immediately.

The court decision shall not be based on the content of any such documents unless all the parties concerned have given their consent.

#### Section 139

### **Participation of the Regulatory Authority in Civil Proceedings**

Section 90(1) and (2) of the Competition Act apply accordingly with regard to civil proceedings ensuing from this Act. In all such cases the Regulatory Authority and its President shall act in place of the Federal Cartel Office and its President.

#### Subchapter 3

#### International Affairs

#### Section 140

### **International Affairs**

The Regulatory Authority shall act on behalf of the Federal Ministry of Economics and Labour in the field of European and international telecommunications policy, in particular as regards participation in European and international institutions and organisations. This does not apply in respect of functions discharged by the Regulatory Authority under its own jurisdiction by virtue of this Act or other laws or by virtue of regulations of the European Communities.

#### Section 141

### **Recognised Accounting Authority in the Maritime Mobile Service**

(1) The Federal Ministry of Economics and Labour shall be empowered to stipulate, by ordinance having the force of law but not requiring the consent of the German Bundesrat, the requirements and the procedure for recognition as a recognised accounting authority in the international maritime mobile service as provided for by the International Telecommunication Union. The procedure shall also specify the conditions for denial or revocation of such recognition.

(2) The authority responsible for the recognition of accounting authorities in the area of application of this Act shall be the Regulatory Authority.

**PART 9**  
**CHARGES**

Section 142

**Fees and Expenses**

(1) The Regulatory Authority shall charge fees and expenses for the following official acts—

1. decisions on the grant of rights of use for frequencies according to section 55;
2. decisions on the grant of rights of use for telephone numbers by virtue of the ordinance according to section 66(4);
3. processing of applications for the registration of diallers using premium rate numbers;
4. case-by-case coordination, advance publication, assignment and notification of satellite systems according to section 56;
5. other official acts closely related to decisions taken under paras 1 to 4;
6. measures to counteract violations of this Act or of ordinances having the force of law issued by virtue of this Act;
7. decisions on the transfer of rights of way according to section 69; and
8. activities in connection with the procedure for recognition as a recognised accounting authority in the international maritime mobile service according to section 141.

Fees and expenses are also payable when an application for performance of an official act as specified in sentence 1

1. is rejected for reasons other than that of the authority not being responsible for the matter in question; or
2. is withdrawn after the beginning, but prior to completion, of processing.

(2) The Federal Ministry of Economics and Labour shall be empowered to stipulate in greater detail, in agreement with the Federal Ministry of Finance, by ordinance having the force of law but not requiring the consent of the German Bundesrat, chargeable acts and the level of the fees, including the mode of payment. The fee scales are to be calculated in such a way as to recover the costs incurred by the official acts. The provisions of the Administrative Expenses Act apply additionally. In derogation of sentence 2, the fees payable for decisions on the grant of rights of use according to subsection (1) paras 1 and 2 are to be determined in such a way that they serve, as a steering mechanism, to secure optimal and efficient use of these commodities in line with the aims of this Act. Sentences 2 to 4 do not apply when numbers or frequencies of exceptionally great economic value are allocated by means of competitive or comparative selection procedures. The Federal Ministry of Economics and Labour may transfer to the Regulatory Authority the power referred to in sentence 1 by ordinance having the force of law, securing the arrangement on agreement between the authorities concerned when it does so. An ordinance as referred to in sentence 6, including its repeal, requires the agreement of the Federal Ministry of Economics and Labour and the Federal Ministry of Finance.

(3) In derogation of the provisions of the Administrative Expenses Act, ordinances as referred to in subsection (2) sentence 1 may regulate the following matters–

1. the extent of the expenses to be refunded; and
2. the fees payable in respect of revocation or withdrawal of a grant of rights of use according to subsection (1) paras 1 or 2 or of a transfer of rights of way according to subsection (1) para 7 where this is attributable to the parties concerned.

(4) Fees and expenses may be assessed until the close of the fourth calendar year following creation of the debt (limitation of assessment period). Where an application for cancellation of or modification to the assessment is submitted prior to expiry of the time limit, the running of the assessment period is interrupted until such time as an unappealable decision on the application has been taken. The right to payment of fees and expenses shall lapse at the close of the fifth calendar year following assessment (lapse of right to enforce payment). In other respects, section 20 of the Administrative Expenses Act applies.

(5) In the case of auctions according to section 61(5) a fee for the grant of rights of use according to subsection (1) para 1 shall be payable only when it exceeds the proceeds from the auction.

(6) Authorities responsible for the construction and maintenance of public ways may, within their area of responsibility, adopt arrangements under which solely fees and expenses that cover the administrative costs of issuing notices of consent according to section 68(3) to the use of public ways may be charged. Flat-rate fees are permitted.

## Section 143

### **Frequency Usage Contribution Charges**

(1) The Regulatory Authority shall levy annual contribution charges to recover costs it incurs for the management, control and enforcement of general assignments and rights of use for spectrum and orbit usage under this Act and the ordinances issued by virtue of this Act. This includes, in particular, costs incurred by the Regulatory Authority for the following activities–

1. the planning and further development of frequency usages, including the necessary measurements, tests and compatibility studies to secure efficient and interference-free use of frequencies; and
2. international cooperation, harmonisation and standardisation.

(2) Liable to make contributions are all those who have been assigned frequencies. The share of the costs shall be allocated to the separate user groups produced by frequency allocation, as far as possible on an expenditure-related basis. Within these groups, the costs shall be split in accordance with the use of frequencies. Contributions are also payable when a frequency is used by virtue of another administrative act or on a lasting basis without an assignment. This applies, in particular, with regard to rights granted before 1 August 1996, insofar as they include determinations on frequency usage.

(3) Not to be included in the costs to be recovered under subsection (1) are costs for which fees according to section 142 or fees according to section 16 of the Radio Equipment and

Telecommunications Terminal Equipment Act of 31 January 2001 (Federal Law Gazette Part I page 170) or fees or contributions according to sections 10 or 11 of the Electromagnetic Compatibility Act of 18 September 1998 (Federal Law Gazette Part I page 2882) or the ordinances issued by virtue of these provisions have already been levied.

(4) The Federal Ministry of Economics and Labour shall be empowered to determine, in agreement with the Federal Ministry of Finance, by ordinance having the force of law but not requiring the consent of the German Bundesrat, and as provided for by the above subsections, details of the category of persons liable to pay contribution charges, the rates of contribution charge and the procedure for the collection of contribution charges, including the mode of payment. The share of the costs attributable to public interest is to be taken into account in the form of a reduction in the level of contribution. The Federal Ministry of Economics and Labour may transfer to the Regulatory Authority the power according to sentence 1 by ordinance having the force of law, securing the arrangement on agreement between the authorities concerned when it does so.

## Section 144

### **Telecommunications Contribution Charges**

(1) Persons with obligations under section 6(1) and section 4 of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) shall pay a contribution charge to offset costs incurred by the Regulatory Authority for measures to secure fair competition and to promote public telecommunications markets with sustainable competition and for the management, control and enforcement of rights and obligations ensuing from this Act and from ordinances issued and rights of use granted under this Act, unless such costs are otherwise covered by fees or contribution charges levied under this Act. This also includes costs incurred by exercise of the functions referred to in sentence 1 in respect of international cooperation. The share of the costs attributable to public interest is to be taken into account in the form of a reduction in the level of contribution.

(2) The relevant costs according to subsection (1) shall be split proportionately among the separate undertakings in accordance with their revenues from activities according to section 6(1) and levied by the Regulatory Authority as an annual contribution charge.

(3) Fees paid under the Telecommunications Licence Fees Ordinance of 28 July 1997 (Federal Law Gazette Part I page 1936) and fees taken into account under section 16(2) of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) shall, insofar as they exceed the fees payable under section 16(1) of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) for the grant of a licence and the fees payable under the ordinance issued by virtue of that Act for the administrative cost of the grant of a licence, count towards the contribution charge. Section 143(3) applies accordingly.

(4) The Federal Ministry of Economics and Labour shall be empowered to regulate, by ordinance having the force of law but not requiring the consent of the German Bundesrat, in agreement with the Federal Ministry of Finance, details of the collection of contribution charges, notably the distribution key and reference date, the minimum assessment, the splitting mechanism, including a suitable estimation procedure and a classification scheme for determining the relevant costs according to subsection (2), the obligation to provide information on sales, including a suitable procedure allowing for flat-rate payment, as well as payment deadlines, mode of payment and the level of penalties for late payment. The ordinance may also set out arrangements for the provisional determination of contribution charges. The Federal

Ministry of Economics and Labour may transfer to the Regulatory Authority the power according to sentence 1 by ordinance having the force of law, securing the arrangement on agreement between the authorities concerned when it does so. An ordinance according to sentence 3, including its repeal, shall require the agreement of the Federal Ministry of Economics and Labour and the Federal Ministry of Finance.

#### Section 145

### **Cost of Out-of-Court Dispute Resolution Procedures**

Fees and expenses are payable for out-of-court dispute resolution procedures according to section 45(3) para 6. The level of the fee payable for resolution is determined as provided for by section 11(2) sentences 2 and 3 of the Court Costs Act. Sections 3 to 9 of the Code of Civil Procedure apply accordingly with regard to determination of the amount in dispute. Where the dispute resolution office submits a proposal for resolution, it shall rule on the costs, having regard to the findings of fact and the matter in dispute, as appears fair. The cost ruling should be made along with the dispute resolution proposal. Each party shall bear the costs it has incurred for participation in the procedure itself. In other respects, sections 8 to 21 of the Administrative Expenses Act apply accordingly.

#### Section 146

### **Cost of Preliminary Proceedings**

Fees and expenses are payable for preliminary proceedings. A fee not exceeding the fee fixed for the contested official act is payable for the complete or partial rejection of a protest. Where a fee is not payable for the contested official act of the Regulatory Authority, the fee is determined as provided for by section 11(2) sentences 2 and 3 of the Court Costs Act; section 145 sentence 3 applies accordingly. Where a protest is withdrawn after processing has begun but prior to its completion, the fee shall not exceed 75 percent of the protest fee. The protests office shall decide the costs according to sentences 2 and 4 as appears fair.

#### Section 147

### **Information from the Regulatory Authority**

The Regulatory Authority shall publish a yearly overview of its administrative costs and the total sum of charges collected. Where required, the fees and rates of contribution charges shall be adjusted for the future in the ordinances concerned.

**PART 10**  
**PENAL AND ADMINISTRATIVE FINES PROVISIONS**

Section 148  
**Penal Provisions**

(1) Any person who,

1. in contravention of section 89 sentence 1 or 2, intercepts a communication or imparts to others the content of a communication or the fact of its reception; or
2. in contravention of section 90(1) sentence 1,
  - a) owns, or
  - b) manufactures, markets, imports or otherwise introduces in the area of application of this Act

transmitting equipment as referred to there,

is liable to a term of imprisonment not exceeding two years, or to a financial penalty.

(2) Where action in the cases of subsection (1) para 2 b) arises through negligence, the offender is liable to a term of imprisonment not exceeding one year, or to a financial penalty.

Section 149  
**Administrative Fines Provisions**

(1) An administrative offence is deemed to have been committed by any person who, intentionally or negligently,

1. in contravention of section 4, fails to provide information, to provide it correctly, to provide it completely or to provide it in timely manner;
2. in contravention of section 6(1), fails to notify the Regulatory Authority, to notify it correctly, to notify it completely, to notify it as prescribed or to notify it in timely manner;
3. in contravention of section 17 sentence 2, passes on information;
4. contravenes an enforceable order according to
  - a) section 20, section 23(3) sentence 2, section 29(1) sentence 1 para 1 or subsection (2) sentence 1 or 2, section 37(3) sentence 2, also in conjunction with section 38(4) sentence 4, section 38(4) sentence 2, also in conjunction with section 39(3) sentence 1 or section 42(4) sentence 1, also in conjunction with section 18(2) sentence 2;
  - b) section 67(1) sentence 4 or section 109(3) sentence 3;

- c) section 29(1) sentence 2, section 39(3) sentence 2, section 65 or section 127(2) para 1;
5. in contravention of section 22(3) sentence 1, fails to submit an agreement or to submit it in timely manner;
  6. charges rates without approval as required under section 30(1) or section 39(1) sentence 1;
  7. in contravention of section 38(1) sentence 1 or 3 or section 39(3) sentence 4, fails to inform the Regulatory Authority of rates or rate measures, to inform it correctly, to inform it completely or to inform it in timely manner;
  8. in contravention of section 47(1), fails to provide subscriber data, to provide them correctly, to provide them completely or to provide them in timely manner;
  9. in contravention of section 50(3) para 4, fails to notify the Regulatory Authority, to notify it correctly, to notify it completely or to notify it in timely manner;
  10. uses a frequency without frequency assignment as required under section 55(1) sentence 1;
  11. exercises German rights to orbit or frequency usage without assignment of such rights as required under section 56(1) sentence 1;
  12. contravenes an enforceable condition according to section 60(2) sentence 1;
  13. contravenes an ordinance according to section 66(4) sentence 1 or an enforceable order issued by virtue of such ordinance, insofar as the ordinance refers to this administrative fines provision in respect of a particular offence;
  14. in contravention of section 87(1) sentence 1 or section 110(1) sentence 2 or 3, fails to inform or notify the Regulatory Authority, to inform or notify it correctly, to inform or notify it completely or to inform or notify it in timely manner;
  15. in contravention of section 90(3), advertises transmitting equipment;
  16. in contravention of section 95(2) or section 96(2) sentence 1 or subsection (3) sentence 1, uses data;
  17. in contravention of section 96(2) sentence 2 or section 97(3) sentence 2, fails to erase data or to erase them in timely manner;
  18. in contravention of section 106(2) sentence 2, fails to erase data and documents or to erase them in timely manner;
  19. in contravention of section 108(1) sentence 1, also in conjunction with an ordinance according to section 108(2) sentence 1 para 1, fails to provide access to emergency services or to provide it as prescribed;
  20. in contravention of section 108(1) sentence 2 in conjunction with an ordinance according to section 108(2) sentence 1 para 4, fails to transmit the data or information as referred to there or to transmit them in timely manner;



21. in contravention of section 109(3) sentence 2 or 4, fails to submit or to resubmit a security concept or to submit or to resubmit it in timely manner;
22. in contravention of section 110(1) sentence 1 para 1 in conjunction with an ordinance according to section 110(2) para 1 a), fails to provide a technical facility or to make organisational arrangements;
23. in contravention of section 110(1) sentence 1 para 2 b), fails to nominate a body as named there or to nominate it in timely manner;
24. in contravention of section 110(1) sentence 1 para 3, fails to demonstrate compliance or to demonstrate it in timely manner;
25. in contravention of section 110(1) sentence 1 para 4, fails to allow a re-check;
26. in contravention of section 110(1) sentence 1 para 5, fails to tolerate the installation or operation of equipment referred to there or to grant access to such equipment;
27. in contravention of section 110(5) sentence 3, fails to eliminate shortcomings or to eliminate them in timely manner;
28. in contravention of section 110(6) sentence 1, fails to make available a network termination point, to make it available as prescribed or to make it available in timely manner;
29. in contravention of section 111(1) sentence 1, also in conjunction with sentence 2, or in contravention of section 111(1) sentence 3 or 4, fails to collect data or to collect them in timely manner, fails to store data or to store them in timely manner, fails to correct data or to correct them in timely manner or fails to erase data or to erase them in timely manner;
30. in contravention of section 111(2) sentence 1, also in conjunction with sentence 2, fails to collect data or to collect them in timely manner or fails to transmit data or to transmit them in timely manner;
31. in contravention of section 112(1) sentence 4, fails to ensure that the Regulatory Authority can retrieve data from customer data files;
32. in contravention of section 112(1) sentence 6, fails to ensure that no retrievals can come to his notice;
33. in contravention of section 113(1) sentence 1 or 2, section 114(1) sentence 1 or section 127(1) sentence 1, fails to provide information, to provide it correctly, to provide it completely or to provide it in timely manner;
34. in contravention of section 113(1) sentence 2 second half-sentence, transmits data; or
35. in contravention of section 113(1) sentence 4, fails to maintain silence.

(2) Such offences may be punishable by a fine not exceeding five hundred thousand euros in the cases of an offence according to subsection (1) para 4 a), paras 6, 10, 22, 27 and 31, by a fine not exceeding three hundred thousand euros in the cases of an offence according to subsection (1) paras 16 to 18, 26, 29 and 34, by a fine not exceeding one hundred thousand euros in the cases of an offence according to subsection (1) para 4 b), paras 12, 13, 15, 19, 21

and 30, by a fine not exceeding fifty thousand euros in the cases of an offence according to subsection (1) paras 5, 7, 8, 9, 11, 20, 23 and 24, and by a fine not exceeding ten thousand euros in the other cases of offences according to subsection (1). The fine should exceed the economic benefit the offender has derived from the offence. Amounts as referred to in sentence 1 which are not sufficient for this may be exceeded.

(3) Administrative authority within the meaning of section 36(1) para 1 of the Administrative Offences Act shall be the Regulatory Authority.

## **PART 11**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### Section 150

#### **Transitional Provisions**

(1) Determinations of market dominance made by the Regulatory Authority prior to the entry into force of this Act and the resulting obligations shall remain in effect until such time as they are replaced by new decisions taken in accordance with Part 2. This also applies when the determinations of market dominance merely constitute part of the statement of reasons for an administrative act. Sentence 1 applies accordingly with regard to obligations set out in sections 36, 37 and 39 second alternative of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120).

(2) Undertakings which have given notification under the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) that they provide telecommunications services or are licensees shall, without prejudice to the obligation set out in section 144(1) sentence 1, not be subject to the notification requirement according to section 6.

(3) Existing frequency assignments, number allocations and rights of way granted under section 8 of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) shall remain in effect. The same applies to rights acquired beforehand entitling the holder to use frequencies.

(4) Where frequency usage and licence rights have been granted in markets in which competitive or comparative selection procedures have been carried out, rights thus granted and obligations thus entered into shall continue. This applies, in particular, in respect of the obligation to admit service providers, applicable at the time the mobile licences were granted.

(5) Section 21(2) para 3 applies until 30 June 2008 subject to the proviso that wholesale line rental has to be made available only in conjunction with calls.

(6) Section 48(2) para 2 applies with regard to equipment placed on the market as from 1 January 2005.

(7) Until such time as a Frequency Usage Plan according to section 54 is issued, frequencies shall be assigned in accordance with the provisions of the applicable National Table of Frequency Allocations.

(8) Section 62(1) to (3) do not apply to rights granted under section 2(1) of the Telecommunication Installations Act as published on 3 July 1989 (Federal Law Gazette Part I

page 1455) or to licences granted or frequencies assigned under sections 10, 11 and 47(5) of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) for the period of validity specified for such licences and frequencies.

(9) Where Deutsche Telekom AG intends not to offer universal services as specified in section 78(2) to the full extent or to offer them under less favourable conditions than those specified in this Act, it shall notify the Regulatory Authority of such intentions one year prior to their taking effect.

(10) The Telecommunications Interception Ordinance of 22 January 2002 (Federal Law Gazette Part I page 458), last amended by Article 328 of the Ordinance of 25 November 2003 (Federal Law Gazette Part I page 2304) applies in place of the ordinance according to section 110(2) until such time as this ordinance has entered into force.

(11) The technical directive issued under section 11 of the Telecommunications Interception Ordinance as amended at the time of entry into force of section 110 applies in place of the technical directive according to section 110(3) until such time as this directive has been issued.

(12) In respect of contractual relationships existing on the date of entry into force of this provision, persons with obligations under section 112(1) shall enter data they have to hand as a result of earlier data surveys without undue delay in customer data files according to section 112(1). In respect of contracts concluded after the entry into force of section 112, data which providers have not yet been able to include in a customer data file on account of the file structure used hitherto shall be included without undue delay following adaptation of the file. The interface specification published by the Regulatory Authority under section 90(2) and (6) of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) as amended at the time of the entry into force of section 112 applies in place of the technical directive according to section 112(3) sentence 3 until such time as this directive has been issued.

(13) The admissibility of appeals against court decisions shall be decided in accordance with the provisions applicable to date if the court decision is pronounced prior to the entry into force of this Act or served ex officio instead of pronouncement.

(14) The provisions to date are applicable to motions submitted under section 99(2) of the Code of Administrative Court Procedure prior to the entry into force of this Act.

## Section 151

### **Amendment of Other Legal Provisions**

(1) The Code of Criminal Procedure as published on 7 April 1987 (Federal Law Gazette Part I pages 1047, 1319), last amended by Article 4(22) of the Act of 5 May 2004 (Federal Law Gazette Part I page 718) shall be amended as follows—

in section 100b(3) sentence 2 for the words "section 88 of the Telecommunications Act" there shall be substituted the words "section 110 of the Telecommunications Act".

(2) The Article 10 Act of 26 June 2001 (Federal Law Gazette Part I pages 1254, 2298), last amended by Article 4(6) of the Act of 5 May 2004 (Federal Law Gazette Part I page 718) shall be amended as follows—

1. in section 2(1) sentence 4 for the words "section 88 of the Telecommunications Act" there shall be substituted the words "section 110 of the Telecommunications Act";
2. section 20 shall read as follows–

"Section 20  
Compensation

Bodies authorised under section 1(1) shall pay compensation for services according to section 2(1), the level of which shall be determined, in respect of measures for

- a) postal intercepts, in accordance with section 17a of the Reimbursement of Witnesses and Experts Act; and
- b) telecommunications intercepts, in accordance with the ordinance referred to in section 110(9)."

(3) Section 17a(1) para 3 subpara (1) second and third half-sentences and subsection (6) of the Reimbursement of Witnesses and Experts Act as published on 1 October 1969 (Federal Law Gazette Part I page 1756), last amended by Article 1(5) of the Act of 22 February 2002 (Federal Law Gazette Part I page 981) shall expire on the date of the entry into force of the ordinance according to section 110(9).

Section 152  
**Entry into Force, Expiry**

(1) Subject to sentence 2, this Act shall enter into force on the day following its promulgation. Section 43(a) and (b), section 96(1) para 9 a) to 9 f) in conjunction with subsection (2) sentence 1 and section 97(6) and (7) of the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120), last amended by Article 4(73) of the Act of 5 May 2004 (Federal Law Gazette Part I page 718) remain applicable in the version valid until the entry into force of this Act until such time as the ordinance according to section 66(4) of this Act has been issued. In respect of section 43b(2) this applies subject to the proviso that the pricing information requirement is no longer restricted to calls from the fixed network as from 1 August 2004.

(2) The Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120), last amended by Article 4(73) of the Act of 5 May 2004 (Federal Law Gazette Part I page 718), the Television Signals Transmission Act of 14 November 1997 (Federal Law Gazette Part I page 2710), last amended by Article 222 of the Ordinance of 25 November 2003 (Federal Law Gazette Part I page 2304), the Telecommunications Rates Regulation Ordinance of 1 October 1996 (Federal Law Gazette Part I page 1492), the Network Access Ordinance of 23 October 1996 (Federal Law Gazette Part I page 1568), the Telecommunications Universal Service Ordinance of 30 January 1997 (Federal Law Gazette Part I page 141), section 4 of the Telecommunications Customer Protection Ordinance of 11 December 1997 (Federal Law Gazette Part I page 2910), last amended by the Ordinance of 20 August 2002 (Federal Law Gazette Part I page 3365), the Telecommunications Data Protection Ordinance of 18 December 2000 (Federal Law Gazette Part I page 1740), amended by Article 2 of the Act of 9 August 2003 (Federal Law Gazette Part I page 1590), the Frequency Assignment Ordinance of 26 April 2001 (Federal Law Gazette Part I page 829) and the Telecommunications Licence Fees Ordinance of 9 September 2002 (Federal Law Gazette Part I page 3542) shall expire on the day following the promulgation of this Act.