

# FEDERAL LEGAL GAZETTE

FOR THE REPUBLIC OF AUSTRIA

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Part I

**70<sup>th</sup> Federal Act:** Enactment of a Telecommunications Act and Amendment of the Federal Act on Work Inspection in the Field of Transport and the KommAustria Act (NR: GP XXII RV 128 AB 184 S. 29. BR: 6800 AB 6804 S. 700.)  
[CELEX-no.: 32002L0019, 32002L0020, 32002L0021, 32002L0022, 32002L0058]

**70<sup>th</sup> Federal Act Enacting a Telecommunications Act and Amending the Federal Act on Work Inspection in the Field of Transport and the KommAustria Act**

The National Council [Nationalrat] has resolved that:

## Article I

### Federal Act Enacting a Telecommunications Act (Telecommunications Act 2003 – TKG 2003)

#### Table of contents

##### Section 1

##### General

- § 1 Purpose
- § 2 Exceptions from the scope of application
- § 3 Definitions
- § 4 Exceptional authorisation

##### Section 2

##### Wayleave rights and rights of joint use

- § 5 Wayleave rights
- § 6 Procedures for granting wayleave rights, compensation
- § 7 Right to use lines or systems secured by right
- § 8 Rights of joint use
- § 9 Procedures for granting rights of joint use
- § 10 Exercise of rights pursuant to § 5, § 7 and § 8
- § 11 Right of disposal by tolerating persons
- § 12 Transmission of rights pursuant to § 5, § 7 and § 8

§ 13 Expropriation

Section 3

Communications services, communications networks

- § 14 Provision of communications networks and services
- § 15 Notification obligation
- § 16 Installation and operation of communications networks
- § 17 Service quality
- § 18 Subscriber directory and directory inquiry service
- § 19 Additional facilities
- § 20 Emergency calls
- § 21 Accounting separation, financial reports
- § 22 Interoperability
- § 23 Number portability
- § 24 Tariff transparency
- § 25 Terms and conditions as well as tariffs

Section 4

Universal service

- § 26 Definition and scope
- § 27 Quality
- § 28 Inter-operator subscriber directory
- § 29 Control of expenditure
- § 30 Providers
- § 31 Financial compensation
- § 32 Universal Service Fund
- § 33 Turnover reports

Section 5

Regulation of competition

- § 34 Regulatory objectives
- § 35 Undertakings with significant market power
- § 36 Market definition procedure
- § 37 Market analysis procedure
- § 38 Obligation of non-discrimination
- § 39 Obligation of transparency
- § 40 Accounting separation
- § 41 Access to network facilities and network functions
- § 42 Price control and cost accounting for access
- § 43 Regulatory controls on retail services
- § 44 Provision of leased lines
- § 45 Obligations of undertakings with significant market power as to retail tariffs
- § 46 Carrier selection and carrier pre-selection
- § 47 Further obligations and procedural rules
- § 48 Interconnection obligation
- § 49 Scope of interconnection
- § 50 Recourse to the regulatory authority

## Section 6

### Frequencies

- § 51 Frequency administration
- § 52 Frequency usage plan
- § 53 Frequency allocation plan
- § 54 Frequency licensing
- § 55 Frequency licensing by the regulatory authority
- § 56 Transfer of frequencies, change in ownership structure
- § 57 Modifications of the frequency licence by the regulatory authority
- § 58 Frequency usage
- § 59 Frequency licence fee
- § 60 Expiry of the licence

## Section 7

### Addressing and numbering

- § 61 Definitions
- § 62 Purpose
- § 63 Plan for communications parameters
- § 64 Plan modifications
- § 65 Competence for the licensing of communications parameters, procedures
- § 66 Usage
- § 67 Usage fee
- § 68 Expiry of the licence

## Section 8

### Protection of users

- § 69 Rights of users and subscribers
- § 70 Default in payment
- § 71 Review of charges
- § 72 Disconnection

## Section 9

### Radio systems and telecommunications terminal equipment

- § 73 Technical requirements
- § 74 Installation and operation of radio systems
- § 75 Import, sale and possession of radio systems
- § 76 Type approval of radio systems
- § 77 Marking
- § 78 Usage

## Section 10

### Procedures, fees

- § 79 Procedures for approval and type approval
- § 80 Revocation of approval or type approval
- § 81 Authorisation procedure
- § 82 Fees
- § 83 Refusal

- § 84 Subsequent modifications of the authorisation
- § 85 Expiry of the authorisation

#### Section 11

##### Rights of supervision

- § 86 Scope
- § 87 Searches
- § 88 Supervision measures
- § 89 Shutdown of operation
- § 90 Duties to provide information
- § 91 Supervision measures of the regulatory authority

#### Section 12

##### Confidentiality of the communications, data protection

- § 92 General
- § 93 Confidentiality of the communications
- § 94 Technical facilities
- § 95 Security of network operation
- § 96 Data protection – General
- § 97 Master data
- § 98 Information to operators of emergency services
- § 99 Traffic data
- § 100 Bills
- § 101 Content data
- § 102 Location data other than traffic data
- § 103 Subscriber directory
- § 104 Presentation of calling line identification
- § 105 Automatic call forwarding
- § 106 Call tracing, malicious calls
- § 107 Unsolicited communications

#### Section 13

##### Penal provisions

- § 108 Violation of the rights of users
- § 109 Administrative penal regulations
- § 110 Publication of the penal order
- § 111 Skimming off of gains

#### Section 14

##### Authorities

- § 112 Telecommunications authorities
- § 113 Competences
- § 114 Participation by officers of the law enforcement agencies, enforcement
- § 115 Duties of Rundfunk und Telekom Regulierungs-GmbH
- § 116 Telekom-Control-Commission
- § 117 Duties
- § 118 Structure of the Telekom-Control-Commission

- § 119 Chairperson and rules of procedure
- § 120 Competences of KommAustria
- § 121 Procedural rules, stages of appeal
- § 122 Dispute settlement
- § 123 Transparency
- § 124 Information by the regulatory authority
- § 125 Business and company secrets
- § 126 Cooperation with other authorities
- § 127 Right to make requests to the Cartel Court
- § 128 Consultation procedure
- § 129 Coordination procedure
- § 130 Resolution of cross-border disputes
- § 131 Telecommunications Advisory Board

## Section 15

### Transitional and final provisions

- § 132 Expiry of legal provisions
- § 133 Transitional provisions
- § 134 References
- § 135 Publications
- § 136 Enforcement

## **Section 1**

### **General**

#### **Purpose**

**§ 1.** (1) The purpose of this Federal Act is to promote competition in the field of electronic communications so that the population and the economy can be provided with reliable, low-cost, high-quality and innovative communications services.

(2) The regulatory measures are designed to serve the following objectives:

1. to create a modern electronic communications infrastructure in order to promote high-level locational quality;
2. to ensure equal opportunities and operative competition in the provision of communications networks and communications services by
  - a) ensuring that all users derive maximum benefit in terms of choice, price and quality;
  - b) preventing distortion or restriction of competition;
  - c) encouraging efficient investment in infrastructure and promoting innovation;
  - d) ensuring efficient use and effective management of frequencies and numbering resources;
3. to promote the interests of the citizens by
  - a) ensuring that all citizens have access to universal service;
  - b) ensuring protection for consumers, in particular by simple and inexpensive dispute resolution procedures as well as a high level of protection of personal data and privacy;
  - c) providing information, in particular in the form of transparent tariffs and general terms and conditions;
  - d) ensuring the integrity and security of public communications networks.

(3) The measures listed in subsection (2) shall be technology neutral to the extent possible. Innovative technologies and services as well as newly emerging markets shall be subject to regulation only to the extent necessary to prevent distortion of competition and to achieve the objectives of this Act.

(4) The following Directives of the European Community have been transposed by this Federal Act:

1. Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (hereinafter referred to as Framework Directive), OJ L108, 24.04.2002, p. 33,
2. Directive 2002/20/EC on the authorisation of electronic communications networks and services (hereinafter referred to as Authorisation Directive), OJ L108, 24.04.2002, p. 21,
3. Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (hereinafter referred to as Universal Service Directive), OJ L108, 24.04.2002, p. 51,
4. Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (hereinafter referred to as Access Directive), OJ L108, 24.04.2002, p. 7, and
5. Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (hereinafter referred to as Data Protection Directive), OJ L201, 31.07.2002, p. 37.

### **Exceptions from the scope of application**

**§ 2.** (1) This Federal Act shall not apply to communications equipment (such as, in particular, radio systems and telecommunications terminal equipment) set up and operated exclusively for the purposes of national defence. However, frequency usage shall be defined in agreement with the Federal Ministry of Transport, Innovation and Technology.

(2) This Federal Act shall not apply to communications equipment (such as, in particular, radio systems and telecommunications terminal equipment) set up and operated exclusively for the purposes of the telecommunications authorities.

(3) The Industrial Code 1994 [Gewerbeordnung], BGBl. no. 194/1994, shall not apply to the provision of communications services and the operation of communications networks.

(4) The competences of the Cartel Court [Kartellgericht], the Federal Public Attorney for Cartel Matters [Bundeskartellanwalt] as well as the Federal Competition Authority [Wettbewerbsbehörde] shall remain unaffected.

### **Definitions**

**§ 3.** Within the meaning of this Federal Act

1. "operator" means an undertaking providing or authorised to provide a public communications network or an associated facility;

2. "provision of a communications network" means the establishment, operation, control or making available of such a network;
3. "operation of a communications service" means the exercise of legal control over the functions in their entirety that are needed to provide the respective communications service;
4. "operation of a communications network" means the exercise of the legal and actual control over the network functions in their entirety. Operation of a communications network within the meaning of this Act shall not be the case if the connection to other public communications networks is exclusively effected via the interfaces generally used for the local loop;
5. "end-user" means a user not providing public communications networks or publicly available communications services;
6. "radio system" means a product, or relevant component thereof, capable of communication by means of the emission and/or reception of radio waves utilising the spectrum allocated to terrestrial/space radio communication; electrical systems which are designed to prevent radio communications by means of radio waves are also considered radio systems;
7. "harmful interference" means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations;
8. "geographic number" means a number where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point;
9. "communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using communications networks and services; it does not include information society services, as defined in § 1 (1) item 2 of the Notification Act [Notifikationsgesetz], BGBl. I no. 183/1999, which do not consist wholly or mainly in the conveyance of signals on communications networks;
10. "communications lines" means fixed underground or overhead transmission paths (communications cable systems), including the associated switching, amplification or branching equipment, cable shafts and ducts;
11. "communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the electronic conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including

Internet) 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;

12. "leased lines" means the facilities which provide for transparent transmission capacity between network termination points and which do not include on-demand switching (switching functions which the user can control as part of the leased line provision);
13. "network termination point" (NTP) means the physical point, including the corresponding technical specifications, at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;
14. "user" means a natural person or legal entity using or requesting a publicly available communications 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 pre-payment cards, including cards for use with dialling codes;
16. "publicly available telephone service" means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan;
17. "public communications network" means a communications network used wholly or mainly for the provision of publicly available communications services;
18. "public telephone network" means a communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as facsimile and data;
19. "subscriber" means any natural person or legal entity who or which is party to a contract with a provider for the supply of such services;
20. "local loop" means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;
21. "telecommunications service" means a communications service with the exception of radio and television broadcasting;
22. "telecommunications terminal equipment" means a product enabling communication or a relevant component thereof which is intended to be connected directly or

indirectly by any means whatsoever to interfaces of public telecommunications networks;

23. “access” means the making available of facilities and/or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing communications services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop), access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems, access to number translation or systems offering equivalent functionality, access to fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services; access to virtual network services;
24. “associated facilities” means those facilities associated with a communications network and/or a communications service which enable and/or support the provision of services via that network and/or service;
25. “interconnection” means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators.

### **Exceptional authorisation**

**§ 4.** (1) The Federal Minister of Transport, Innovation and Technology may grant an authorisation for the installation and operation of radio systems for the purposes of technical testing on request if there are no objections from a technical point of view, in particular, if interference with other communications equipment is not to be expected. Such an authorisation shall be subject to a corresponding time limit.

(2) Prior to the licensing of frequencies designated in the frequency usage plan (§ 52 (2)) also for broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] in the form of an authorisation under subsection (1) as well as prior to modifications of this authorisation, the approval of KommAustria shall be obtained.

## **Section 2**

### **Wayleave rights and rights of joint use**

#### **Wayleave rights**

**§ 5.** (1) Without prejudice to the obligations under other legal regulations, wayleave rights shall comprise the right

1. to install and maintain communications lines overhead or underground,
2. to construct and maintain line supports, switching equipment and other line objects as well as additional accessories,
3. to insert into and conduct cable lines in buildings or other structures,
4. to operate the systems listed in items 1, 2 and 3 as well as
5. to prune which is understood to be the removal of obstructive tree plantings and the felling of individual trees, and to cut through woodland.

The subject matter of the respective wayleave right shall be the result of the agreement or of the decision by the telecommunications authority.

(2) The persons in charge of constructing and maintaining the systems set out in subsection (1) items 1, 2 or 3 shall be permitted to enter the inside of buildings only in the daytime, except for emergencies, after making an appointment with the owner of the building or his representative, and only to the extent not prohibited by other legal regulations.

(3) Providers of a communications network shall be entitled under this Act to exercise wayleave rights on public property, such as streets, footpaths, public places and the airspace above, with the exception of public water facilities, free of charge and without special authorisation. The term "free of charge" as defined in this provision shall not affect the legal bases for the collection of charges in existence already on 1 August 1997.

(4) Providers of a public communications network shall be entitled to exercise wayleave rights on private properties unless prevented by public considerations and if

1. the dedicated use of the property is not or only slightly restricted permanently by such use and if
2. a) there exists no line or system on a property or  
b) an existing system is to be expanded,  
c) there exists a line or system on a property which, however, is not owned by the person who wants to make use of the property, and joint use of the existing line or system is not possible or practicable or the owner of the line or system is not obliged to permit joint use pursuant to § 8 (1).

(5) The owner of a servient property pursuant to subsection (4) shall receive compensation corresponding to the loss in value.

### **Procedures for granting wayleave rights, compensation**

**§ 6.** (1) Persons entitled under § 5 (3) shall coordinate their approach to exercising these rights with the owners or authorised users of the properties concerned.

(2) If wayleave rights are claimed, the person entitled to erect the line shall notify the owners of the structures to be installed on their properties, enclosing a sketch. If other systems exist on the properties, their operators shall be treated in the same way.

(3) If no agreement is reached between the person obliged under § 5 (4) and the person entitled under § 5 (3) on the wayleave right on private properties or one-off compensation within a period of six weeks of receipt of the inquiry, either party involved may call upon the telecommunications authority for a decision.

(4) The installation of the intended system may be started only after the decision by the telecommunications authority relating to the wayleave right has taken legal effect.

(5) If either party involved refuses a proposal by the telecommunications authority referring to the amount of the compensation, the amount of the compensation shall be determined on the basis of an estimate by a sworn expert. The costs of the fees for the expert shall be borne by the party entitled to erect the line. These costs may be shared in an appropriate proportion if equitable.

(6) Within three months of issue of the notice determining the compensation, either party may file a motion to the district court having jurisdiction over the property subject to the right of use for determination of the amount. On recourse to the court, the notice issued by the authority relating to the decision on the compensation shall become ineffective. The motion filed to the court for determination of the compensation may be withdrawn only with the consent of the other parties.

### **Right to use lines or systems secured by right**

**§ 7.** If on a property a line or system secured by right is used by the owner of the line or system also for the installation, operation, expansion or replacement of communications lines, this shall be tolerated by the owner of the property unless additional restrictions are permanently imposed on the dedicated use of the property by the installation, operation, expansion or replacement of the communications line. The owner or other authorised user shall be paid an appropriate compensation unless such has already been paid for use for communications purposes. Within six months, the regulatory authority, in agreement with representatives of the parties involved, shall define nationwide uniform reference rates for one-off compensation, which shall be promulgated in an appropriate form and paid on request. As soon as an offer for compensation according to the uniform reference rates is made, there shall be no restrictions on the use of the property for the purposes of communications lines.

### **Rights of joint use**

**§ 8.** (1) A person having made use of a right of way pursuant to other federal laws or a wayleave right pursuant to § 5 or a right pursuant to § 7 or § 13 of this Federal Act must permit joint use of the communications lines installed on the basis of these rights, or of

parts thereof, if it is not possible or practicable to use public property and joint use is economically reasonable and technically feasible for the owner of the communications line.

(2) Owners or other authorised users of an antenna mast or a high-voltage mast must permit providers of a public communications network, fire brigades, rescue services as well as police authorities the joint use if this is technically feasible, in particular in terms of frequencies. The owner or other authorised user shall perform technical modifications required for this purpose or have them performed if the modifications are slight and the person seeking joint use pays the costs. The right of joint use shall also include joint use of the infrastructure necessary for operation. The owner or other authorised user must not use his power of disposal of the system to the disadvantage of the joint user.

(3) If a facility exists on a property whose owner or other authorised user is obliged to permit joint use under subsections (1) or (2), the owner or other authorised user of the property shall tolerate also such joint use unless additional restrictions are permanently imposed on the dedicated use of the property by joint use. If an increased physical burden of the property because of such additional joint use cannot be ruled out beyond doubt, the owner or authorised user of the property shall have a right to consent.

(4) The person having to tolerate joint use shall be paid appropriate compensation in monetary terms, where the costs of the installation, including the costs of the acquisition, as well as the current operating expenses of the system subject to joint use shall be adequately considered.

(5) High-voltage masts shall be structures together with foundations, groundings, insulators, accessories and fittings used to carry lines or line systems with an operating voltage of 110 kV or higher for the transmission of electrical energy.

### **Procedures for granting rights of joint use**

**§ 9.** (1) Every person obliged under § 8 (1) must make an offer for joint use to providers of a communications network on request. Every person obliged under § 8 (2) must make an offer for joint use to providers of a public communications network as well as to fire brigades, rescue services and police authorities on request. In this connection, all parties involved shall strive to enable and facilitate joint use.

(2) If no agreement is reached between the person obliged under § 8 (1) or (2) and the person entitled under § 5 (3) on the right of joint use or one-off compensation within a period of six weeks of receipt of the inquiry, either party involved may call upon the regulatory authority for a decision.

(3) Providers of a public communications network are obliged to draw up framework agreements for joint use of the antenna masts used by them.

(4) Framework agreements pursuant to subsection (3) and agreements on the rights of joint use pursuant to § 8 shall be submitted to the regulatory authority in writing and will be published by the regulatory authority.

### **Exercise of rights pursuant to § 5, § 7 and § 8**

**§ 10.** (1) In the exercise of rights pursuant to § 5, § 7 and § 8 utmost care shall be taken of the properties and systems used and the rights of third parties in a manner that is as little disturbing as possible. In particular, the person entitled under § 5 (3) shall make sure that, while the work is performed, the intended use of the property and the systems used is maintained at his expense and a state without complaint is restored as quickly as possible after termination of the work. Consideration shall be also shown for other existing or authorised work.

(2) Pruning may be demanded only to the extent absolutely essential for the installation, expansion and maintenance of the systems set out in § 5 (1) items 1, 2 or 3 and for the avoidance of operational disturbances. The person entitled under § 5 (3) may demand trees to be felled in closed woodlands only if there is no other efficient way to conduct a line and the maintenance and proper cultivation of the forest is not endangered.

(3) Unless an agreement is reached between the parties involved, the pruning and felling of trees shall be carried out within a reasonable period of time by the tolerating person (manager of the public property used or owner of the private property used) at the request of the person entitled under § 5 (3); upon failure to observe the time limit or in case of imminent danger the pruning may be performed by the person entitled under § 5 (3).

(4) The costs of the pruning and the felling of trees shall be borne by the person entitled under § 5 (3).

(5) With the exception of the case pursuant to § 7, the persons entitled under § 5 (3) shall be obliged to lay their communications lines in the ground, subject to technical feasibility and considering the economic conditions where the owner of the property (authorised user) objects to the laying of lines in the airspace above his property.

### **Right of disposal by tolerating persons**

**§ 11.** (1) The rights pursuant to § 5, § 7 and § 8 shall not hinder the tolerating persons from freely disposing of their properties and systems (modification, building structures, improvements or other measures which make the use of the property or systems appear inadmissible pursuant to § 5, § 7 and § 8). If such disposal requires the removal or modification of the system of a person entitled under § 5 (3) or if it may cause damage to it, the tolerating person shall notify the person entitled under § 5 (3) thereof within reasonable time before the work is started. The person entitled under § 5 (3) shall take the required precautions in time and, where necessary, also remove or relocate his system at his own expense.

(2) If the party obliged to perform notification has failed to notify the other party in time and the system or its operation has been damaged by the measures taken by the party obliged to perform notification, he shall be liable to pay damages.

(3) Furthermore, the tolerating party shall be liable for damages if he intentionally caused the removal or relocation of a system by a false notification or if the person entitled under § 5 (3), within two weeks of receipt of the notification, suggested to carry out the intended modification in a different way where the system could have remained unmodified without affecting the intended purpose and offered to bear any extra costs which the tolerating party would have incurred and the tolerating party did not accept this offer without good cause.

### **Transmission of rights pursuant to § 5, § 7 and § 8**

**§ 12.** (1) Rights (toleration obligations) pursuant to § 5, § 7 and § 8 together with the associated obligations shall pass, by virtue of law, to the respective legal successor of the owner of the communications network, the communications facility or the communications line and the respective owner or authorised user of the antenna mast or high-voltage mast.

(2) They shall apply to any owner of the property or system made use of.

(3) The wayleave rights shall not be subject to registration in the land register, their exercise shall not constitute any title of prescription or limitation.

(4) Notwithstanding other necessary authorisations and permissions, the provider of a public communications network shall be entitled to transfer, in full or in part, the rights arising from this toleration obligation to third parties for the operation of this communications network.

### **Expropriation**

**§ 13.** (1) If the installation of a communications line or a public pay telephone is in the public interest and if the exercise of the rights pursuant to § 5, § 7 or § 8 does not achieve the desired objective at all or only by disproportionate means, expropriation shall be permitted.

(2) The installation of a communications line or a public pay telephone by the provider of a public communications network shall be considered, in any case, as lying in the public interest.

(3) Expropriation shall be achieved using the appropriate mildest means. If expropriation makes the dedicated use of the property impossible or unreasonable, ownership of the area to be encumbered shall be transferred to the expropriator at the request of the property owner against payment of adequate compensation.

(4) If the property would lose its practical usability for the owner by expropriation of part of the property, the entire property shall be compensated at his request.

(5) The telecommunications authority shall apply the provisions of the Federal Roads Act 1971 [Bundesstraßengesetz], BGBl. no. 286/1971, correspondingly to the expropriation and the calculation of the compensation to be paid by the expropriator.

The expropriation of properties serving for public railway or air traffic shall require the consent of the railway or aviation authorities.

### **Section 3**

#### **Communications services, communications networks**

##### **Provision of communications networks and services**

**§ 14.** Any person shall be entitled to provide communications networks and services in compliance with the statutory provisions.

##### **Notification obligation**

**§ 15.** (1) The intended provision of a public communications network or service as well as its modifications and its termination shall be notified to the regulatory authority prior to the start of operation, modification or termination.

(2) Notification shall be in writing and shall provide the following information:

1. name and address of the provider,
2. legal structure of the undertaking, where appropriate,
3. short description of the network or service,
4. anticipated date of the start of operation, modification or termination of the service.

(3) The regulatory authority shall acknowledge receipt of the notification within a week of receiving the complete notification. This certificate shall also point out the rights and obligations resulting from this Federal Act.

(4) If the regulatory authority has reason to assume, on the basis of the complete notification, that there is no provision of a public communications network or service, it shall inform the notifier of this fact within one week and carry out further investigation. If such further investigation shows that there is no provision of a public communications network or service, a declaratory notice shall be issued, at the party's request, within four weeks of receipt of the complete notification or the procedure shall be discontinued. Otherwise, a certificate pursuant to subsection (3) shall be issued.

(5) The regulatory authority shall publish the certificates issued under subsection (3) as well as the notices issued under subsection (4).

##### **Installation and operation of communications networks**

**§ 16.** (1) The installation and operation of infrastructure facilities and communications networks shall not require an authorisation. The provisions on the use of frequencies

and communications parameters, on compliance with the technical requirements and the interface descriptions of radio systems and telecommunications terminal equipment as well as § 15 shall remain unaffected.

(2) The architecture and functionality of the infrastructure facilities and communications networks that are designed for interconnection with public communications networks or for the provision of a public communications service shall correspond to the state of the art in respect of the

1. security of network operation,
2. maintenance of network integrity,
3. interoperability of services and
4. compliance with the interface descriptions published pursuant to § 5 of the Federal Act on Radio Systems and Telecommunications Terminal Equipment [Bundesgesetz über Funkanlagen und Telekommunikationsendeinrichtungen], BGBl. I no. 134/2001.

(3) The Federal Minister of Transport, Innovation and Technology may, by way of ordinance, specify detailed provisions on the security of network operation, the maintenance of network integrity and the interoperability of services, according to the state of the art and considering the relevant international regulations.

(4) The Federal Chancellor, in agreement with the Federal Minister of Transport, Innovation and Technology, may define, according to the state of the art, the measures required to ensure the availability of public fixed telephone networks and publicly available telephone services at fixed locations even in the case of complete failure of the public fixed telephone network or in cases of force majeure.

(5) KommAustria, in agreement with the Federal Minister of Transport, Innovation and Technology, may issue an ordinance under subsection (3) referring to broadcasting networks and the transmission of broadcasting signals.

### **Service quality**

**§ 17.** (1) Providers of public communications services shall publish comparable, adequate and up-to-date information about the quality of their services and provide it to the regulatory authority at its request prior to publishing.

(2) The Federal Minister of Transport, Innovation and Technology may, by way of ordinance, specify detailed provisions relating to the form, extent, contents and time frame of publishing as well as parameters describing the service quality, considering the relevant provisions of the European Communities, the state of the art, the economic conditions as well as the fact that the information shall be comparable, adequate in extent and up-to-date and shall serve the end-user. In this respect, in particular, the parameters, definitions and measurement methods laid down in the ordinance pursuant to § 27 shall be used.

(3) Subsections (1) and (2) shall not apply to the transmission of broadcasting signals.

(4) The regulatory authority shall be entitled to undertake, or have undertaken, independent reviews of the performance benchmarks to be able to check the accuracy and comparability of the information provided.

### **Subscriber directory and directory inquiry service**

**§ 18.** (1) Operators of a publicly available telephone service shall

1. maintain a directory of their subscribers to be kept up-to-date, which may be designed in printed form (book), as a telephone directory inquiry service, as an electronic data carrier or in any other technical form of communication and, in any case, shall contain the data compiled pursuant to § 69 (3); this provision is also being complied with if the provider guarantees that such a subscriber directory will be published;
2. maintain a telephone directory inquiry service on the contents of their subscriber directory; this provision is also being complied with if the provider guarantees that a different telephone directory inquiry service will provide this information;
3. grant their subscribers access to telephone directory inquiry services of other providers and to the telephone directory inquiry service as defined in § 28 (2);
4. provide other providers of a publicly available telephone service, at their request, with their subscriber directory containing the data pursuant to § 69 (3) as well as provide publishers of inter-operator subscriber directories or inter-operator directory inquiry services with their subscriber directory containing the data pursuant to § 69 (3) and (4) online or at least weekly in electronically readable form against a cost-oriented charge; and
5. provide access to operator and help services.

(2) Operators that provide services via carrier networks shall not be subject to the obligations under subsection (1) items 1, 2 and 4 in respect of these services.

(3) If no agreement is reached between the operator and the parties entitled under subsection (1) item 4 on the provision of the data as defined in § 69 (3) and (4) within six weeks of receipt of the inquiry, either party involved may call upon the regulatory authority. An order shall replace an agreement to be reached.

(4) If a subscriber does not want the data relating to him included in the subscriber directory, this data shall not be passed on to third parties either, except in the cases specified in § 90 (6) and § 98.

### **Additional facilities**

**§ 19.** Operators of a public telephone network shall make available to end-users DTMF (dual-tone multi-frequency operation) as well as presentation of calling-line identification, subject to technical feasibility.

### **Emergency calls**

**§ 20.** (1) Operators of a public telephone network or service shall ensure that connection to all emergency telephone numbers is established.

(2) Operators of a publicly available telephone service shall ensure that end-users are connected to all emergency telephone numbers free of charge.

(3) Operators of public telephone networks and services shall make sure that the number of the calling line is available for identification at the respective emergency service.

### **Accounting separation, financial reports**

**§ 21.** (1) Operators of public communications networks or services

1. who have special or exclusive rights for the provision of services in other sectors within the European Economic Area and

2. whose annual turnover in activities associated with communications networks and services in the federal territory is at least Euro 50 million

shall have structural separation for the activities associated with the provision of communications networks or services or keep separate accounts for the activities associated with the provision of communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, including an itemised breakdown of fixed assets and structural costs.

(2) The regulatory authority shall request operators of public communications networks or services, who are not obliged to submit their financial reports to an independent audit according to other statutory or European Community regulation, to submit their financial reports to independent auditing and publication.

### **Interoperability**

**§ 22.** Operators of public telephone networks or services shall

1. establish interoperability between the subscribers of all public telephone networks;

2. ensure interoperability also for calls to the European Telephony Numbering Space;

3. ensure interoperability to the extent technically and economically feasible also for calls to non-geographic numbers in other Member States, except where the called

subscriber has chosen, for commercial reasons, to limit access from certain geographical areas.

### **Number portability**

**§ 23.** (1) Operators of publicly available telephone services shall ensure that their subscribers may change the provider of the telephone service, retaining their numbers without any change in the usage type specific to the respective number range and, in the case of geographic numbers, change the location within the geographic area defined for the number range.

(2) Operators shall fix the amount of the charge due for the porting of a number in a cost-oriented way. The porting subscriber shall not be requested to pay a deterrent charge for the porting of the number.

(3) The Federal Minister of Transport, Innovation and Technology shall, by way of ordinance, specify detailed provisions relating to the porting of numbers between mobile communications networks, considering, in particular, international agreements, the technical possibilities, the required investments, the efficient information on the identity of the target network as well as the fact that the functionality of ported numbers shall be guaranteed also if the access network ceases to exist.

### **Tariff transparency**

**§ 24.** (1) The regulatory authority may, by way of ordinance, specify detailed provisions on

1. tariffs that may be charged for the provision of telecommunications services in number ranges with regulated fee limits,
2. numbers subject to event tariffing,
3. the terms and conditions of communicating the tariffs pursuant to items 1 and 2 to the user and
4. the type of tariff calculation.

In this respect, special consideration shall be given to end-users' interests worth protecting, to technical possibilities as well as to the fact that end-users can control their expenditure.

(2) The regulatory authority shall specify, by way of ordinance, detailed rules on the provision of value-added services in a transparent manner and in compliance with appropriate user protection. This may comprise, in particular, access controls in terms of specific user groups, provisions on advertisements, time limits for connections to value-added services, rules on dialer programs and tariff information if they are not covered by an ordinance under subsection (1). In this respect, special consideration shall be given, in particular, to end-users' interests worth protecting, to technical possibilities as well as

to the fact that end-users can control their expenditure. In the report pursuant to § 34 (2), the regulatory authority shall provide annual information on unfair practices and the corresponding steps taken.

(3) The regulatory authority shall maintain a directory of value-added services numbers that also gives the name and the address of the provider of the value-added service. The regulatory authority shall publish this directory and provide information on its contents on request.

### **Terms and conditions as well as tariffs**

**§ 25.** (1) Operators of communications networks or services shall issue general terms and conditions which shall also comprise a description of the services, as well as define the relevant tariff conditions. General terms and conditions as well as tariffs shall be notified to the regulatory authority before provision of the service is started and shall be promulgated in an appropriate form.

(2) Changes in general terms and conditions as well as in tariffs shall be notified to the regulatory authority before they take effect and shall be promulgated in an appropriate form. Changes not exclusively favourable for the subscriber shall be subject to a promulgation and notification period of two months. The provisions of the Consumer Protection Act [Konsumentenschutzgesetz], BGBl. no. 140/1979, as well as the General Civil Code [ABGB] shall remain unaffected.

(3) The essential information about changes that are not exclusively favourable shall be communicated to the subscriber in an appropriate form at least one month before the change takes effect, e.g. by printing it on a periodically drawn up bill. At the same time, the subscriber shall be advised of the time of entry into force of the changes as well as of the fact that he shall be entitled to terminate the contract until that time free of charge. The full text of the changes shall be sent to the subscribers at their request.

(4) General terms and conditions between operators of communications services and end-users shall contain at least:

1. operator name and address;
2. description of services comprising, at least, the services offered, the quality of the services offered, the time until first connection or first activation as well as the types of maintenance services offered;
3. term of the contract, conditions for renewal and termination of the provision of the services and the contractual relationship;
4. provisions on compensation and reimbursement upon non-compliance with the contractually agreed service quality;
5. reference to the possibility of instituting dispute settlement proceedings pursuant to § 122 as well as a short description thereof;

6. provisions on the intervals of periodical billing which must not exceed three months;

7. information about the existence of the uniform European emergency number 112.

5) Tariff provisions shall contain at least:

1. details about one-off, periodical and variable tariffs including the start and end times of tariffing of connections and the type of tariffing;

2. reference as to how the end-user may obtain information about operator's current tariffs;

3. discounts, where applicable.

(6) The regulatory authority may object within eight weeks to the general terms and conditions notified under subsections (1) and (2) if they contravene this Federal Act or the ordinances issued under this Act or § 879 and § 864a General Civil Code [ABGB] or § 6 and § 9 Consumer Protection Act [Konsumentenschutzgesetz]. The competences for review of the general terms and conditions according to other legal provisions shall remain unaffected.

(7) Operators of communications networks or services shall submit to the regulatory authority the general terms and conditions and the tariffs as well as any changes thereof in an electronic format as specified by the regulatory authority. The regulatory authority shall publish this information as well as information on universal service, in particular on the facilities and services listed in § 29 (2).

(8) With the exception of subsection (4) items 1 to 5, this provision shall not apply to operators of broadcasting networks and operators who provide transmission of broadcasting signals. Subsection (4) item 7 shall apply exclusively to operators of publicly available telephone services.

## **Section 4**

### **Universal service**

#### **Definition and scope**

**§ 26.** (1) Universal service is the provision of a minimum set of public services to all users at an affordable price regardless of their place of residence or work.

(2) In any event, universal service shall comprise the following services:

1. access to the publicly available telephone service at a fixed location where also a facsimile equipment and a modem can be operated, including the transmission in

terms of telecommunications of data at data rates that are sufficient to obtain functional Internet access;

2. the provision of an inter-operator directory inquiry service;
3. the preparation of an inter-operator subscriber directory of subscribers of publicly available telephone services as well as access to this directory;
4. coverage with public pay telephones on a nationwide basis at general and readily accessible locations.

(3) The regulatory authority shall approve on a nationwide basis and in a uniform way the tariffs, the changes in tariffs for services provided by an undertaking having universal service obligations as well as the terms and conditions for such services, correspondingly applying the procedure pursuant to § 45 and taking affordability into account.

(4) In addition to the information referred to in § 25, the general terms and conditions of the operator of universal service within the meaning of subsection (2) item 1 shall also comprise information on facilities and services for control of expenditure (§ 29 (2)) as well as on additional facilities (§ 19).

### **Quality**

**§ 27.** (1) Universal service shall be available on a nationwide basis at a uniform and affordable price in a certain quality. The Federal Minister of Transport, Innovation and Technology, in accordance with the relevant provisions of the European Communities and considering the state of the art and the economic conditions, shall define, by way of ordinance, the quality criteria and the target values. The following may be specified:

1. supply time for initial connection,
2. fault rate,
3. fault repair time,
4. successful call ratio,
5. call set up time,
6. response times for directory enquiry services,
7. response time for operator services,
8. proportion of public pay telephones in working order and the equipment of public pay telephones and
9. proportion of bill correctness complaints.

(2) In an ordinance under subsection (1), the obligation relating to the provision of public pay telephones may be suspended in full or in part. In this respect, the needs of the end-users as to geographical coverage, the number of public pay telephones, accessibility of public pay telephones by disabled users and the service quality shall be considered.

(3) Providers of universal services shall publish the achieved performance benchmarks once a year and notify them to the regulatory authority. The ordinance issued under subsection (1) may define also detailed provisions relating to the form, extent, contents and time frame of this notification and this publication, considering the ability of end-users and users to have access to comprehensive, comparable and user-friendly information.

(4) The regulatory authority shall be entitled to undertake, or have undertaken, independent reviews of the performance benchmarks to be able to check the accuracy and comparability of the information provided.

(5) If the specified performance benchmarks are not achieved on several occasions, the regulatory authority may issue orders pursuant to § 91.

### **Inter-operator subscriber directory**

**§ 28.** (1) The provider of universal service in charge of drawing up the inter-operator subscriber directory pursuant to § 26 (3) shall ensure that a uniform overall directory of all subscribers in compliance with § 69 is available in printed form in any case and is updated on a regular basis and at least once a year. This shall also apply to a subscriber directory arranged by trades (professional groups) subject to the available data. In addition, a subscriber directory in electronically readable form may be provided.

(2) The provider of universal service in charge of providing the inter-operator directory inquiry service pursuant to § 26 (2) shall ensure that a generally accessible telephone directory inquiry service is available to provide information about the data contained in the subscriber directory under subsection (1).

(3) The data made available for the overall directory and the directory inquiry service shall be processed and presented in accordance with the principle of non-discrimination. In the case of the subscriber directory, this shall be guaranteed by means of a draft presented by the responsible universal service provider to the regulatory authority, which shows that the requirements of the first sentence have been complied with and gives the intended form of the subscriber directory. If the draft does not comply with the requirements of the first sentence, the regulatory authority shall issue a notice within two weeks and, where appropriate, specify such incidental provisions as to guarantee compliance with the requirements.

### **Control of expenditure**

**§ 29.** (1) Providers of universal service shall establish their tariffs and terms and conditions in such a way that in the provision of facilities or services beyond the scope of

the provision of universal service the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the respective service.

(2) Providers of public telecommunications services shall bar outgoing calls to premium-rate services once a year free of charge at the request of their subscribers.

(3) Providers of universal service shall also provide to their subscribers the following facilities and services:

Member States are to ensure that national regulatory authorities may require designated undertakings to provide

1. means to pay for access to the public telephone network and use of publicly available telephone services on pre-paid terms,

2. means to pay for access to the public telephone network by instalments.

(4) The Federal Minister of Transport, Innovation and Technology may suspend these obligations, by way of ordinance, in full or in part. In this respect, it shall be considered whether these facilities are already widely available and that the subscribers can monitor and control their expenditure.

### **Providers**

**§ 30.** (1) The provision of universal service shall be put out to public tender by the Federal Minister of Transport, Innovation and Technology and shall be awarded according to the rules of procedure governing the award of services. In the process, he may make use of the regulatory authority. Tenders may be handled separately according to service/product or regional aspects. The provision of universal service shall be put out to tender periodically and at least every ten years. However, a tender may not be required if only one undertaking meets the operational requirements for the provision of universal service and this undertaking is likely to guarantee the provision of universal service until the next call for tenders.

The award shall consider, above all, who will require the lowest contribution to the costs of providing the service. If several providers are commissioned to provide services that are differentiated according to service/product or regional aspects, it shall be taken into account that the total amount of payments under § 31 is as low as possible. An undertaking bound by a tender shall continue to be under this obligation until the obligation to provide universal service is imposed on somebody else.

(2) The call for tenders shall be published at least in the “Amtsblatt zur Wiener Zeitung“, specifying a reasonable tendering period and the area to be covered as well as the type of service to be provided.

(3) If no bid for the provision of the service tendered for is received within the tendering period or if the requirements for a call for tenders under subsection (1) do not exist, the Federal Minister of Transport, Innovation and Technology shall place the obligation on

the most appropriate provider to provide this service in compliance with the provisions laid down in this Federal Act and in the ordinances issued under this Federal Act as well as in the tendering conditions.

### **Financial compensation**

**§ 31.** (1) The provider of universal service shall be compensated, at his request, for the established costs incurred by the provision of the service that are unrecoverable despite efficient management if these costs constitute an unreasonable burden. The application shall be filed with the regulatory authority within one year of expiry of the business year of the universal service provider; otherwise the claim to compensation will be lost. The regulatory authority shall base the calculation upon the costs attributable to

1. elements of the services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards and
2. specific end-users who can only be served at a loss or under cost conditions falling outside normal commercial standards

and shall consider the market benefits accrued to the universal service provider.

(2) If the universal service provider has a share in the turnover on the relevant market that is greater than 80%, no compensation shall be claimed.

(3) In the proceedings regarding the determination of the amount of the compensation, the parties under the obligation to pay a universal service charge shall be parties to a joint procedure.

(4) The universal service provider shall present to the regulatory authority appropriate documentation upon submission of the application, enabling it to review the information in relation to the costs claimed. For this purpose, it may inspect the books and records either itself or commission an auditor, make comparisons to other providers as well as take other steps to achieve the required objective that correspond to the principle of proportionality. In justified cases, the regulatory authority may also determine an amount that is lower than the amount requested. The regulatory authority shall publish the results of the review.

(5) In the case of a call for tenders pursuant to § 30, the regulatory authority, however, shall grant a compensation which at most corresponds to the result of the tender.

### **Universal Service Fund**

**§ 32.** (1) If required, the regulatory authority shall set up and administer a Universal Service Fund for the financing of universal service (§ 31 (1)). The Fund shall publish an annual report on its activities and achievements, in which the net costs are presented taking into account market benefits and the shares attributable to the individual undertakings assessed as liable to contribute.

(2) Operators of telecommunications services with an annual turnover greater than Euro 5,000,000 from these activities shall contribute to the financing of the Universal Service Fund and to the financing of the fund administration in proportion of their market shares (universal service charge). The share shall be determined according to the proportion of their turnover to the total turnover of the companies assessed as liable to contribute on the respective market of service/product relevance.

(3) Upon completion of the procedure under subsection (1), the regulatory authority shall determine the shares of the parties contributing to this Fund and shall notify the parties concerned thereof. In calculating the amount of the shares the regulatory authority shall consider that the least distortion is caused to competition and to user demand.

(4) The operators contributing to the Fund pursuant to § 31 shall pay to the regulatory authority within three months the shares determined by the regulatory authority and attributable to them. The period shall start on the day of receipt of the notification referred to in subsection (3).

(5) If a party assessed as liable to contribute is in arrears with payment for more than four weeks, the regulatory authority shall issue a notice relating to the contributions in arrears and collect them.

### **Turnover reports**

**§ 33.** In procedures pursuant to § 31 and § 32, operators that are operative on the respective market for the specific telecommunications service shall, on request, notify their turnovers for the relevant service to the regulatory authority on an annual basis, if required, also retroactively. Otherwise, the regulatory authority may inspect the books and records itself or commission an auditor, or carry out an estimate.

## **Section 5**

### **Regulation of competition**

#### **Regulatory objectives**

**§ 34.** (1) The regulatory authority shall achieve the objectives of § 1 (2) by means of the measures set out in this section. In this respect, the regulatory authority shall, in particular, comply with the principle of proportionality.

(2) The regulatory authority shall keep monitoring the achievement of the regulatory objectives. It shall inform the Federal Minister of Transport, Innovation and Technology annually, at the latest in June, and shall report to the National Council [Nationalrat] to what extent the objectives of § 1 (2) have been achieved and what changes have been made against previous years. Also, proposals to improve or adapt the provisions of this Act or the ordinances issued under this Act may be submitted.

(3) In enforcing this Federal Act the regulatory authority shall consider the recommendations of the European Commission on the harmonised implementation of the directives transposed by this Federal Act. If the regulatory authority deviates from one of these recommendations, it shall notify the European Commission giving reasons.

### **Undertakings with significant market power**

**§ 35.** (1) An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

(2) In making an assessment of significant market power of an undertaking the regulatory authority shall consider, in particular, the following criteria:

1. overall size of the undertaking, its size in relation to that of the relevant market as well as the changes in the relative positions of the market players in the course of time,
2. high barriers to entry as well as the resulting extent of potential competition,
3. extent of countervailing buying power,
4. extent of elasticity of demand and supply,
5. the respective market phase,
6. technological advantages,
7. any advantages in the distribution and sales networks,
8. economies of scale, economies of scope and density,
9. extent of vertical integration,
10. extent of product differentiation,
11. access to financial resources,
12. control of infrastructure not easily duplicated,
13. general behaviour on the market, such as pricing, marketing policy, bundled products and services or establishment of barriers.

(3) Two or more undertakings may be found to be in a joint dominant position if, even in the absence of structural or other links between them, they operate in a market the structure of which is considered to be conducive to coordinated behaviour.

(4) In making an assessment of joint dominance of two or more undertakings the regulatory authority shall use, in particular, the following criteria:

1. extent of market concentration, the distribution of the market shares and their change in the course of time,
2. barriers to market entry, the resulting extent of potential competition,
3. extent of countervailing buying power,
4. existing market transparency,
5. the respective market phase,
6. homogeneous products,
7. underlying cost structures,
8. extent of elasticity of demand and supply,
9. extent of technological innovation and degree of maturity of the technology,
10. absence of excess capacity,
11. informal or other links between the market players,
12. retaliatory mechanisms,
13. extent of incentives for price competition.

(5) Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a horizontally and vertically or geographically related market, 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 market, thereby strengthening the market power of the undertaking.

### **Market definition procedure**

**§ 36.** (1) The regulatory authority shall, by way of ordinance, identify the relevant national markets subject to sector-specific regulation according to the national circumstances, in accordance with the principles of general competition law, taking into account the requirements of sector-specific regulation. This ordinance shall be reviewed regularly, however, at two-year intervals at the latest.

(2) The regulatory authority shall identify the relevant markets, taking account of the provisions of the European Communities.

(3) If the regulatory authority intends to define markets of service/product or geographical relevance that differ from those defined in the recommendation of the European Commission, it shall follow the procedures referred to in § 128 and § 129.

### **Market analysis procedure**

**§ 37.** (1) The regulatory authority shall, by virtue of office and taking account of the provisions of the European Communities, carry out at regular intervals an analysis of the relevant markets identified by the ordinance pursuant to § 36 (1), however, at two-year intervals at the latest. After determining whether one or more undertakings have significant market power on the respective relevant market or whether there is, in fact, effective competition, specific obligations shall be withdrawn, maintained, amended or imposed by means of this procedure.

(2) If the regulatory authority identifies in this procedure one or more undertakings as having significant market power on the relevant market and that, thus, there is no effective competition, it shall impose appropriate specific obligations as referred to in § 38 to § 46 or § 47 (1) on such undertakings. Specific obligations on undertakings already imposed for the relevant market shall be amended or maintained by the regulatory authority according to the results of the procedure, taking account of the regulatory objectives.

(3) If the regulatory authority concludes on the basis of the procedure that the relevant market is effectively competitive and, thus, no undertaking has significant market power, it must not impose obligations under subsection (2), with the exception of § 47 (2); in this case, the procedure relating to this market will be terminated formlessly and this decision will be published. If specific obligations on undertakings still exist on this market, they will be withdrawn by means of notice. The notice shall also specify a reasonable period not exceeding six months after which the withdrawal shall take effect.

(4) In the case of transnational markets identified by a decision of the European Commission, the national regulatory authorities concerned shall conduct the market analysis in close cooperation, taking account of the guidelines on market analysis and assessment of significant market power, and decide in a concerted fashion whether one or more undertakings have significant market power or whether there is, in fact, effective competition. Subsections (1), (2), (3) and (5) shall be applied correspondingly.

(5) Only the undertaking in relation to which specific obligations shall be imposed, amended or withdrawn shall be a party to this procedure.

(6) Users and operators of communications services or networks shall be under the obligation to participate in the procedures pursuant to § 36 and § 37 to the extent defined in § 90.

(7) The regulatory authority shall publish notices issued under subsections (2) to (4) and submit a copy to the European Commission.

### **Obligation of non-discrimination**

**§ 38.** (1) The regulatory authority may impose obligations of non-discrimination related to access on undertakings with significant market power.

(2) Obligations of non-discrimination shall ensure, in particular, that an undertaking with significant market power applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent 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 affiliated undertakings.

(3) The regulatory authority may require an undertaking with significant market power to publish a reference offer. The undertaking shall provide in the reference offer sufficiently unbundled subservices, break down the relevant offerings into components according to market needs and state the associated terms and conditions including prices.

(4) The national regulatory authority may impose changes to reference offers to give effect to obligations imposed under § 37 (2).

### **Obligation of transparency**

**§ 39.** (1) The regulatory authority may impose obligations for transparency related to access on undertakings with significant market power.

(2) Notwithstanding the provisions of § 90, for this purpose the regulatory authority may, in addition, impose on undertakings with significant market the obligations to make public the following information:

1. accounting information,
2. technical specifications,
3. network characteristics,
4. terms and conditions for supply and use and
5. prices including discounts.

(3) The regulatory authority may define the specific information to be published by the undertaking with significant market power, including the level of detail and the manner of publication.

### **Accounting separation**

**§ 40.** (1) The regulatory authority may require undertakings with significant market power to break down the costs for specific activities related to access in order to prevent unfair cross-subsidising.

(2) For this purpose, in particular a vertically integrated company may be required to make transparent and reproducible its wholesale prices and its internal transfer prices. The regulatory authority may specify the format and the accounting methodology to be used, including the level of detail and the manner in which the information shall be made available.

(3) If the regulatory authority has imposed specific obligations pursuant to § 38 or § 39, it may demand, notwithstanding the provisions of § 90, that accounting records, including all associated information and documents, are provided on request in the manner and format prescribed. The regulatory authority may publish this information, as far as this is required to promote competition.

### **Access to network facilities and network functions**

**§ 41.** (1) The regulatory authority may impose the obligation on undertakings with significant market power to meet requests for access to, and use of, network elements and associated facilities.

(2) The undertaking with significant market power may be required in particular:

1. to give third parties access to the network and unbundled parts thereof;
2. to provide specified services on a wholesale basis for resale by third parties;
3. not to withdraw access to facilities already granted;
4. to negotiate in good faith with undertakings requesting access;
5. to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
6. to provide co-location or other forms of facility sharing, including buildings, cable ducts or shafts;
7. to create the conditions needed to ensure interoperability of end-to-end services, including facilities for intelligent network services or roaming on mobile networks;
8. to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; and
9. to interconnect networks or network facilities.

(3) In imposing the obligations under subsection (2) the regulatory authority shall take particular account of:

1. the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;

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 safeguard competition in the long term;
5. any relevant intellectual property rights;
6. the provision of pan-European services.

### **Price control and cost accounting for access**

**§ 42.** (1) If the regulatory authority identifies, in the procedure pursuant to § 37, that an undertaking with significant market power might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users, the regulatory authority may impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices. In the process, the regulatory authority shall take into account the investment made by the operator and allow him a reasonable rate of return on capital employed, taking into account the risks involved. In addition, obligations concerning cost accounting systems may be imposed on undertakings with significant market power.

(2) Where an undertaking with significant market power has an obligation relating to the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the undertaking concerned. For the purpose of calculating the cost of efficient provision of services, the regulatory authority may use cost accounting methods independent of those used by the undertaking. The regulatory authority may require an undertaking with significant market power to provide full justification for its prices, and may, where appropriate, require prices to be adjusted. In this respect, the regulatory authority may also take account of prices available in comparable competitive markets.

(3) The regulatory authority shall ensure that, where implementation of a cost accounting system by an undertaking with significant market power is mandated, a description of the cost accounting system is made publicly available, showing the main categories under which costs are grouped and the rules used for the allocation of costs. The regulatory authority or a qualified independent body commissioned by the regulatory authority shall verify compliance with the cost accounting system on an annual basis. The regulatory authority shall publish a statement concerning compliance.

### **Regulatory controls on retail services**

**§ 43.** (1) If the regulatory authority has identified in a market analysis procedure that

1. the relevant retail market is not effectively competitive and

2. specific obligations pursuant to § 38 to § 42 or § 46 would not result in the achievement of the objectives set out in § 1 (2), it shall impose specific obligations pursuant to subsections (2) or (3) on undertakings having significant market power on a retail market.

(2) Specific obligations under subsection (1) may include requirements, in particular, that this undertaking shall not

1. charge excessive prices,
2. inhibit entry of new market players,
3. set predatory prices to restrict competition,
4. show undue preference to specific end-users or
5. unreasonably bundle services.

(3) Specific obligations under subsection (1) may also stipulate that the regulatory authority shall apply to this undertaking

1. appropriate retail price cap measures or
2. measures to control individual tariffs as regards cost oriented tariffs or prices on comparable markets.

(4) Undertakings subject to specific obligations under the foregoing subsections shall use cost accounting systems for this purpose the format and accounting methodology of which may be specified by the regulatory authority. The regulatory authority or a qualified independent body commissioned by the regulatory authority shall verify compliance with the cost accounting system. The regulatory authority shall ensure that a statement concerning compliance with these regulations is published once a year.

### **Provision of leased lines**

**§ 44.** (1) The regulatory authority shall impose obligations relating to the provision of a minimum set of leased lines on undertakings with significant market power on the market for the provision of part or all of the minimum set of leased lines, in accordance with the principles of non-discrimination, cost-orientation and transparency.

(2) The obligations for the provision of a minimum set of leased lines shall be imposed by the regulatory authority taking account of the relevant international regulations.

(3) Tariffs and general terms and conditions for leased lines under subsection (1) shall require approval by the regulatory authority pursuant to § 45.

(4) § 43 (4) shall apply correspondingly.

### **Obligations of undertakings with significant market power as to retail tariffs**

**§ 45.** (1) If an operator of communications services or networks who is under the obligation pursuant to § 43 to have his tariffs and general terms and conditions approved or an operator of communications services or networks who is under the obligation pursuant to § 44 files an application for approval of tariffs or general terms and conditions, the regulatory authority shall decide on this application within eight weeks.

(2) If the regulatory authority does not give a decision within this period, the tariffs or general terms and conditions applied for shall be deemed to have been approved. The running of the period shall be suspended as long as the required documentation and supporting documents are not submitted by the applicant. The regulatory authority shall inform the applicant within three weeks of filing the application whether any and, where applicable, which documents required for assessing cost-orientation shall be submitted.

(3) Tariffs subject to approval shall be determined, taking into account the measures imposed pursuant to § 43 (2) and (3), the duties to be carried out and the operating results.

(4) The regulatory authority may approve tariffs also in the form of price caps; it also may provide special tariffs.

(5) As far as it is required to achieve effective competition, tariff approval may comprise, in particular, the following incidental provisions:

1. a reasonable time limit,
2. the obligation to provide information on specific data pursuant to § 90,
3. obligations relating to the time of introducing approved tariffs,
4. a condition subsequent in the event that a different tariff is introduced or changed after approval has been granted,
5. obligations for the adjustment of approved tariffs in case of changed wholesale prices.

(6) The general terms and conditions shall not be approved if they do not comply with provisions of this Federal Act or the ordinances issued under this Act or § 879 and § 864a General Civil Code [ABGB] or § 6 and § 9 Consumer Protection Act [Konsumentenschutzgesetz]. The competences for review of the general terms and conditions according to other legal provisions shall remain unaffected.

### **Carrier selection and carrier pre-selection**

**§ 46.** (1) The regulatory authority shall require undertakings with significant market power for the provision of connection to and use of the public telephone network at a

fixed location to enable their subscribers to access the services of any interconnected provider of publicly available telephone services:

1. on a call-by-call basis by dialling a carrier selection code and
2. by means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling a carrier selection code.

(2) Pricing for access as well as activation fees in connection with carrier selection or carrier pre-selection shall be cost-oriented.

(3) Carrier selection or carrier pre-selection in other networks may be ordered by the regulatory authority under the provisions of § 41.

### **Further obligations and procedural rules**

**§ 47.** (1) In exceptional circumstances, the regulatory authority may impose obligations for access other than those specified in § 38 to § 42 on undertakings with significant market power. In this case, the regulatory authority shall make a corresponding application to the European Commission. The decision by the European Commission shall serve as a basis for the decision by the regulatory authority.

(2) The regulatory authority may impose the following obligations under § 38 to § 42 on undertakings that do not have significant market power:

1. the obligations of an operator of communications networks or services who has been granted rights of use for frequencies in a procedure pursuant to § 55;
2. technical conditions may be imposed on operators of communications networks or services who have been granted access, as far as this is required to ensure normal operation of the network;
3. obligations required for compliance with international commitments.

### **Interconnection obligation**

**§ 48.** (1) Every operator of a public communications network shall be under the obligation to make an offer for interconnection to other operators on request. All parties involved shall strive to achieve the objective of enabling and improving communication of the users of different public communications networks.

(2) Operators may use information acquired from other operators in the process of negotiating interconnection solely for the purpose for which the data were supplied. The operators shall respect at all times the confidentiality of the information transmitted and shall not pass it on to any other party, in particular other departments, subsidiaries or business partners for whom such information could provide a competitive advantage, except as otherwise provided by an agreement between operators.

(3) Standard interconnection offers pursuant to § 38 (3) and interconnection arrangements pursuant to subsection (1) shall be submitted to the regulatory authority.

### **Scope of interconnection**

**§ 49.** (1) Interconnection shall comprise at least the following services:

1. provision of the required switching data of the respective connection or, in case of packet-oriented services, of the routing data to the interconnecting operator;
2. delivery of the connections or data packages to the user of the interconnected operator;
3. provision of the data required for interconnection payments to the interconnection operator in an appropriate manner.

(2) The Federal Minister of Transport, Innovation and Technology shall, by way of ordinance, lay down detailed provisions on interconnection of public telephone networks. This ordinance shall also specify a minimum offer of unbundled network elements in public telephone networks. In preparing this ordinance it shall be taken into consideration to ensure effective competition and maintain continuous service quality as well as take account of the binding international regulations.

(3) If link-up via lines is required for interconnection, the installation costs as well as the current expenses of the interconnected line shall be appropriately distributed between both operators.

### **Recourse to the regulatory authority**

**§ 50.** (1) If no agreement is reached between an operator of a public communications network or service on whom specific obligations under § 38, § 41, § 44 (1) and (2), § 47 or § 46 (2) have been imposed by the regulatory authority or who is under the obligation pursuant to § 23 (2), § 48 or § 49 (3) and another operator of a public communications network or service on the obligations existing under § 23 (2), § 38, § 41, § 44 (1) and (2), § 46 (2), § 47, § 48 or § 49 (3) within six weeks of receipt of the application despite negotiations, either party involved may have recourse to the regulatory authority.

(2) In justified cases the regulatory authority may institute proceedings also by virtue of office.

## **Section 6**

### **Frequencies**

#### **Frequency administration**

**§ 51.** (1) The Federal Minister of Transport, Innovation and Technology shall administer the frequency spectrum as well as the Austrian rights of use and orbital positions of

satellites, observing international agreements. He shall take appropriate measures to ensure efficient and interference-free use.

(2) The Federal Minister of Transport, Innovation and Technology shall define the frequency ranges to be allocated to the individual radio services and other applications of electromagnetic waves in a frequency range allocation plan. Further specifications relating to frequency usage may already be included in this plan if this is required to ensure interference-free and efficient frequency usage; in particular, specific frequency ranges may be dedicated according to geographical, temporal and factual considerations, which, upon compliance, shall not require an authorisation pursuant to § 81.

(3) The Federal Minister of Transport, Innovation and Technology may assign to the regulatory authority, at its request or by virtue of office, parts of the frequency spectrum dedicated pursuant to § 52 (3) for licensing pursuant to § 55, specifying in any case the intended use and the technical usage conditions.

(4) As regards frequencies which are provided for broadcasting in the frequency usage plan and the frequency allocation plan (§ 52 (2) and § 53), as defined in the Federal Constitutional Broadcasting Act [BVG-Rundfunk], the duties referred to in subsection (1) shall be performed by KommAustria (§ 1 KOG). This shall not apply to the exercise of duties according to Section 11.

### **Frequency usage plan**

**§ 52.** (1) The Federal Minister of Transport, Innovation and Technology shall draw up a frequency usage plan on the basis of the frequency range allocation plan, taking into account, in particular, international harmonisation, the technical development and the compatibility of frequency usage in the transmission media.

(2) The frequency usage plan shall contain the distribution of the frequency ranges to specific frequency usage as well as the definitions for such frequency usage. The frequency usage plan may consist of subplans.

(3) The frequency usage plan may also provide that the number of frequencies licensed in individual frequency ranges shall be limited. In this respect, any present and predictable future usage and the foreseeable technical development shall be taken into account as well as the fact that efficient use of the frequencies is guaranteed. The reasons for such provision shall be given and the reasoning shall be published.

(4) The provision under subsection (3) shall be reviewed at appropriate intervals, however, at two-year intervals at the latest.

### **Frequency allocation plan**

**§ 53.** The Federal Minister of Transport, Innovation and Technology may, by way of ordinance, specify detailed provisions on frequency usage and frequency licensing, in particular on the requirements to be met for licensing. In this respect, in particular, the

technical possibilities, the fundamental requirements in the public interest and efficient usage of frequencies shall be taken into account. The frequency allocation plan may consist of subplans.

### **Frequency licensing**

**§ 54.** (1) Frequency licensing shall take place in compliance with the frequency usage plan and the frequency allocation plan on a non-discriminatory basis, following reproducible and objective procedures.

(2) Frequencies shall be licensed for usage if

1. their intended use is specified in the frequency usage plan,
2. they are available in the intended usage area,
3. compatibility with other frequency usage is provided and
4. there is no conflict as to operational matters, such as usage of the frequency spectrum.

(3) The responsibility for frequency licensing as well as for modification and revocation of frequency licences shall lie with:

1. KommAustria for frequencies for the provision of radio broadcasting as defined in the Federal Constitutional Broadcasting Act [BVG-Rundfunk];
2. the regulatory authority for frequencies for which provision pursuant to § 52 (3) has been made in the frequency usage plan and
3. the telecommunications authority for all other frequencies.

(4) Approval by KommAustria shall be obtained prior to the licensing of frequencies which are provided also for broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] in the frequency usage plan (§ 52 (2)) and shall not be used for the provision of broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] as well as prior to modification of these licences. Approval by the National Telecommunications Authority shall be obtained prior to the licensing of frequencies which are not provided for broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] in the frequency usage plan (§ 52 (2)) and shall be used for the provision of broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] as well as prior to modification of these licences.

(5) KommAustria shall license the frequencies referred to in subsection (3) item 1 within six weeks of receipt of the complete application. If KommAustria has to carry out a comparative selection procedure, this period shall be extended by eight months. KommAustria shall notify the National Telecommunications Authority of any frequency

licence and operating authorisation granted as soon as possible; such notification shall contain all necessary data (in particular location, technical data, antenna diagrams etc.).

(6) In general, the frequencies referred to in subsection (3) item 2 shall be licensed in a procedure pursuant to § 55. If § 55 (12) items 2 to 4 is applied, the frequencies shall be licensed according to the application; in this case, the frequency licence fee shall be determined according to the offer made in the application.

(7) The frequency licence shall take account of the manner and extent of frequency usage, as far as this is required for efficient and interference-free usage of the frequencies and compatibility with other frequency usage.

(8) The frequency licence shall not be affected by obligations for compliance with statutory, technical or operational requirements under other statutory provisions.

(9) Licensing of frequencies for the operation of radio systems in the public interest shall be given precedence, as far as this is required for the performance of the applicant's duties.

(10) Licensing of frequencies shall be no guarantee for the quality of the radio connection.

(11) All frequencies may be licensed only for a limited period. The limitation shall be substantially and economically reasonable.

(12) A frequency licence may be revoked if the licensed frequency is not used for the intended purpose within six months of licensing or if usage is interrupted for more than six months.

(13) For frequencies that are used by generally authorised radio systems according to the frequency usage plan no separate frequency licence shall be required if the operated radio system complies with the ordinance pursuant to § 74 (3).

(14) The decision on the granting of rights of use for frequencies pursuant to subsection (3) item 3 shall be taken in compliance with the frequency usage plan in the course of granting the authorisation pursuant to § 74 within six weeks of receipt of the complete application unless a frequency coordination procedure under international agreements has to be completed first.

(15) Every frequency may be put into operation only on the basis of an authorisation granted by the telecommunications authority or KommAustria (operating authorisation).

### **Frequency licensing by the regulatory authority**

**§ 55.** (1) The regulatory authority shall license the frequencies it has been assigned to the applicant who complies with the general requirements of subsection (2) item 2 and guarantees the most efficient usage of the frequencies. This shall be determined by the amount of the frequency licence fee offered. The regulatory authority shall decide about

applications for frequency licensing within eight months of receipt of the application or, if this will result in a shorter period for decision, within six months of publication of the tender. These limits shall not apply if a frequency coordination procedure under international agreements has to be completed first. The decision shall be published.

(2) The regulatory authority shall carry out frequency licensing in accordance with the principles of an open, fair and non-discriminatory procedure as well as in compliance with economic efficiency. It shall put out the intended licensing of frequencies to public tender if

1. a demand has been established by virtue of office or
2. an application has been received and the regulatory authority concludes that the applicant will be in the position to comply with the incidental provisions linked with the right to use the frequencies. In particular, the applicant's technical capabilities and economic circumstances, his experience in the communications sector as well as in related business segments and his expertise shall be taken into account. There must not be any reason to assume that the proposed service will not be provided, in particular as regards quality and coverage obligation.

(3) After approval of the tendering conditions by the Federal Minister of Transport, Innovation and Technology the call for tenders shall be published in the "Amtsblatt zur Wiener Zeitung". In any event, it shall contain:

1. the ranges of the frequency spectrum assigned to the regulatory authority which are designed for licensing in a joint procedure;
2. the intended purpose of and the usage conditions for the frequencies to be licensed;
3. the prerequisites for the provision of the tender documents including refund of expenses, where applicable;
4. a period of at least two months during which applications for the licensing of frequencies can be made.

(4) In any event, the tender documents shall

1. present the basic principles of the procedure for determining the highest frequency licence fee and
2. describe the requirements in terms of form and contents of the application documents so as to ensure comparability of the applications.

They may also contain information on the amount of the minimum frequency licence fee to be offered. This information shall be modelled on the amount of the frequency allocation fees expected to be paid for the frequencies to be licensed. If frequency packages are licensed, the tender documents may provide that applications for the licensing of individual of these frequency packages, for a specific number of frequency packages or combinations of frequency packages are permitted.

(5) The regulatory authority may provide in the tender documents that the undertaking to which the frequencies are licensed by the regulatory authority may be authorised in a procedure pursuant to § 56 to transfer the rights of use for these frequencies to other undertakings as defined in § 15 partly for the entire usage term or for a specific period.

(6) Applications may deviate from the requirements laid down in the tender documents only if, and to the extent to which, this has been declared as permitted in the documents. After expiry of the tender period it shall not be permitted to modify and withdraw applications. This shall not apply to the raising of the offered amount of the frequency licence fee if such a raise has been explicitly declared as permitted in the tender documents within the framework of the rules for determining the highest bid (subsection (9)).

(7) Essential changes in the tendering conditions shall be permitted only to the extent to which statutory or internationally binding regulations for the Republic of Austria have changed.

(8) The applicants shall be parties to a joint procedure. By means of notice, the regulatory authority has to exclude applicants from the frequency licensing procedure whose applications are incomplete or unduly deviate from the tendering conditions or who do not comply with the general requirements pursuant to subsection (2).

(9) By means of a procedural order, the regulatory authority shall define appropriate rules for determining the highest bid. These rules shall be in accordance with the principles pursuant to subsection (2), first sentence, and subsection (4) item 1 as well as take account of the intended purpose of the frequencies to be licensed (subsection (3) item 2). The rules shall, in any case, also define the requirements for a bid to be valid and adequate guarantees for the bids. They shall stipulate that applicants who behave collusively in the determination of the highest bid may be excluded by means of a procedural order from further participating in the procedure for determining the highest bid. The rules shall be submitted to the applicants at least two weeks before the determination of the highest bid begins.

(10) The frequency licence may contain the following incidental provisions designed to comply in the best possible way with the objectives and provisions of this Act and the relevant regulations of the European Communities, in particular the Authorisation Directive:

1. designation of the intended purpose, the type of network and technology for which the rights of use for frequencies are granted, including, where applicable, the exclusive use of a frequency for transmission of specific content or specific audiovisual services;
2. incidental provisions required to ensure effective and efficient use of frequencies, including, where applicable, requirements relating to the range as well as rules relating to the time of start of operation and coverage;

3. technical and operational conditions necessary for the avoidance of harmful interference and special conditions for the limitation of exposure of the general public, where such conditions are different from those included in the general authorisation;
4. time limit;
5. conditions, if required, relating to the transfer of use of the frequencies at the initiative of the holder of these rights;
6. commitments which the undertaking obtaining the rights of use for frequencies has made in the course of a selection procedure;
7. obligations under relevant international agreements relating to the use of frequencies.

(11) At any stage of the procedure the regulatory authority may consult experts as well as advisers the costs of which shall be borne by the applicant who is licensed the frequencies. If there are several applicants, the costs shall be distributed on a pro rata basis.

(12) The regulatory authority shall be entitled to cancel the call for tenders and terminate the procedure at any stage for good cause, in particular if

1. the regulatory authority finds applicants to behave collusively and an efficient, fair and non-discriminatory procedure cannot be conducted;
2. none or only one applicant complies with the requirements under subsection (2);
3. none or only one applicant who complies with the requirements under subsection (2) actually takes part in the determination of the highest bid;
4. the procedure shows that the applicants have applied for less frequency spectrum than is designed for licensing.

All this shall not constitute any claim to compensation; claims for government liability shall remain unaffected.

(13) The provisions of this section shall not apply to the licensing of frequencies provided in the frequency usage plan for broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk].

### **Transfer of frequencies, change in ownership structure**

**§ 56.** (1) The transfer of rights of use for frequencies granted by the regulatory authority shall require prior approval by the regulatory authority. The regulatory authority shall publish the application for, and the decision on, approval of transfer of the rights of use for frequencies. In its decision the regulatory authority shall assess on an individual basis, in particular, the technical effects of a transfer on competition. Incidental

provisions may be included in the authorisation to the extent necessary to avoid adverse effects on competition. Approval shall be refused in any case if, despite the imposition of incidental provisions, an adverse effect on competition is likely to occur because of the transfer. The transfer may take place only on the condition that the rights of use remain unchanged for the frequencies in question.

(2) Essential changes in the ownership structure of undertakings that have been granted rights of use for frequencies in a procedure pursuant to § 55 shall require prior approval by the regulatory authority. Subsection (1), third to last sentences, shall apply correspondingly.

(3) Restrictions of frequency usage resulting from broadcasting regulations shall remain unaffected by this provision.

### **Modifications of the frequency licence by the regulatory authority**

**§ 57.** (1) The regulatory authority may modify the type and scope of the frequency licence if

1. a considerable increase in efficiency is possible because of technological advances or
2. it is required as a result of international circumstances, in particular further development of international telecommunications law or
3. this is necessary for adjustment to modified frequency usage due to international circumstances.

In carrying out such modifications the proportionality of the measure and the economic consequences for those concerned shall be taken into account.

(2) In the procedures pursuant to subsection (1) the intended modification of the licence shall be notified to the licence holder and he shall be granted a period for comment of at least four weeks pursuant to § 45 (3) General Administrative Procedures Act [Allgemeines Verwaltungsverfahrensgesetz, AVG].

(3) The licence holder shall carry out the ordered modifications pursuant to subsections (1) or (2) within a reasonable period at his expense. This shall not constitute any claim to compensation; claims for government liability shall remain unaffected.

(4) At the licence holder's request, the regulatory authority may modify the prescribed frequency usage if this is permitted on the basis of the intended use and the technical usage conditions (§ 51 (3)), taking into account, in particular, the technical development and the effects on competition.

### **Frequency usage**

**§ 58.** No right of possession of specific frequencies shall accrue from the licensing of frequencies. Only the right to use specific frequencies shall be granted.

### **Frequency licence fee**

**§ 59.** (1) To ensure efficient use of the frequency spectrum, holders of a frequency licence pursuant to § 55 shall pay a frequency licence fee in addition to the frequency usage fee.

(2) The application for licensing of a frequency pursuant to § 55 shall state the amount of the frequency licence fee the applicant is willing to pay as a one-off for usage of the frequencies in case of licensing. The regulatory authority shall prescribe the frequency licence fee in the frequency licensing notice, whereby the applicant shall be bound, in any case, by the licence amount specified in the application.

### **Expiry of the licence**

**§ 60.** (1) A licence granted by the regulatory authority shall expire by

1. renunciation,
2. revocation,
3. lapse of the period for which it was granted as well as
4. death or termination of the legal personality of the licence holder but not in cases of universal succession under company law.

(2) Upon the death of the licence holder, the administrator of the deceased's estate may make use of this right until the deceased's estate is formally transferred to the legitimate heir; the administrator of the deceased's estate, however, shall notify this fact to the regulatory authority without delay.

(3) The licence shall be revoked if the requirements under which it had been granted have ceased to exist. It may be revoked if the licence holder violates his obligations severely or repeatedly or has not exercised the authorisation for more than one year. Prior to the revocation, the licence holder shall be given a reasonable opportunity for comment.

(4) The licence shall be revoked if bankruptcy proceedings have been instituted against the licence holder or the bankruptcy petition has been dismissed for lack of sufficient assets likely to cover the costs of the bankruptcy proceedings; the regulatory authority may refrain from revocation if continuation is mainly in the creditors' interest.

(5) In the procedure under subsection (3), second sentence, § 91 shall be applied correspondingly. Any order under subsection (3) shall not constitute a claim to compensation. Claims for government liability shall remain unaffected.

## **Section 7**

### **Addressing and numbering**

#### **Definitions**

**§ 61.** In this section the term “communications parameters” means any characters, letters, digits and signals in their entirety that serve directly for network control of communications connections.

#### **Purpose**

**§ 62.** The purpose of this section shall be to provide for efficient structuring and administration of the communications parameters in their entirety in order to comply with the requirements of users and providers in an objective, transparent and non-discriminatory way.

#### **Plan for communications parameters**

**§ 63.** (1) The regulatory authority shall, by way of ordinance, issue a plan for communications parameters, which shall also specify the requirements for licensing of communications parameters. The plan for communications parameters may consist of subplans.

(2) This ordinance may also specify

- a) standards of conduct to be observed in the usage of communications parameters and
- b) the point of time at which and the periods during which modifications of already assigned communications parameters not complying with the requirements of the plan shall take place.

(3) In preparing this plan, in particular the relevant international regulations, the development of new national and international services as well as the availability of a sufficient number of communications parameters shall be taken into account.

(4) The operators of communications networks and services shall be obliged to take part in the implementation of the plans.

#### **Plan modifications**

**§ 64.** (1) The regulatory authority shall carry out modifications according to the state of the art to implement international obligations or recommendations as well as to ensure that communications parameters are available to a sufficient extent, taking into account the effects on the parties concerned, in particular the direct and indirect costs of the modifications.

(2) The parties affected by these modifications shall be obliged to carry out the measures required for implementation at their expense.

(3) The modification of the plan in part or in full, of the rules on licensing of communications parameters or the usage conditions shall not constitute any claim to compensation. Claims for government liability shall remain unaffected.

### **Competence for the licensing of communications parameters, procedures**

**§ 65.** (1) The regulatory authority shall be responsible for the efficient administration of the plan, in particular for recording the usage and for the licensing of communications parameters to users and operators of communications networks and services. They may be granted the right to administer subordinate elements autonomously.

(2) Operators of communications networks and services who have been granted the right under subsection (1) to administer subordinate elements autonomously shall be under the obligation not to discriminate against other operators of services in terms of the number sequences used to give access to their services. Furthermore, they shall be obliged to notify to the regulatory authority weekly which number sequences administered by them will be used in the future and by which operator.

(3) The regulatory authority shall license communications parameters to users and operators of communications networks and services for usage on request. The regulatory authority shall decide on the application without undue delay, however, within three weeks of receipt of the complete application at the latest. The decision shall be published.

(4) Notices under subsection (3) may contain the following incidental provisions:

1. designation of the service for which the communications parameter may be used;
2. an appropriate time limit according to the type and significance of the licensed communications parameter;
3. incidental provisions that are required to ensure effective and efficient usage of the communications parameter, in particular the obligation to notify the actual usage;
4. obligations required for compliance with relevant international agreements on the usage of communications parameters.

(5) Rights of use shall not be freely transferable. At the licence holder's request, the right of use shall be transferred from the regulatory authority in a procedure under subsection (3) to another user or operator of a communications network or service, except for cases of number porting pursuant to § 23. The operator of the admitting communications network shall notify these cases to the regulatory authority.

(6) The regulatory authority may modify licensed communications parameters in the public interest if this is required for good cause

1. for the security of public communications traffic,
2. for technical or operational reasons,
3. in the interest of the users in their entirety,
4. for adjustment to plan modifications pursuant to § 64,
5. for adjustment to modified frequency usage due to international circumstances or
6. for adjustment to market requirements,  
taking utmost account of the licence holder's economic and operational interests.

(7) In the procedure under subsection (6) the licence holder shall be notified of the intended modification of the licence and, pursuant to § 46 (3) General Administrative Procedures Act [Allgemeines Verwaltungsverfahrensgesetz, AVG], he shall be granted a period of at least four weeks for comment.

(8) The licence holder shall comply with any modification ordered under subsection (6) within a reasonable period at his expense. Such an order shall not constitute any claim to compensation. Claims for government liability shall remain unaffected.

### **Usage**

**§ 66.** No right of possession of specific communications parameters shall accrue from the allocation of communications parameters. Only the right to use specific communications parameters shall be granted.

### **Usage fee**

**§ 67.** (1) For each communications parameter a usage fee shall be paid. The Federal Minister of Transport, Innovation and Technology shall specify the amount of the usage fee by way of ordinance, taking into account, in particular, the personnel and factual expenses associated with the achievement of the specified objectives, the economic benefit derived from the licence and the optimum use of the communications parameters.

(2) Subsection (1) shall also apply to the cases in which communications parameters are in use or in stock at the time of entry into effect of this Federal Act.

### **Expiry of the licence**

**§ 68.** (1) The licence shall expire by

1. lapse of the period for which it was granted;
2. renouncement by the licence holder;

3. revocation;
4. death or termination of the legal personality of the licence holder but not in cases of universal succession under company law.

(2) Revocation shall be pronounced by the regulatory authority if

1. one of the requirements for licensing has ceased to exist;
2. this is necessary due to international requirements;
3. the licence holder has severely or repeatedly violated a provision of this section, an ordinance issued under § 24 or § 63 or the incidental provisions to be complied with under the licence.

(3) In the procedure under subsection (2) item 3, § 91 shall be applied correspondingly. Revocation shall not constitute a claim to compensation.

(4) The declaration of renunciation shall be made to the regulatory authority in writing.

## **Section 8**

### **Protection of users**

#### **Rights of users and subscribers**

**§ 69.** (1) Any person shall be entitled to use public communications services including universal service under the conditions of the published general terms and conditions and tariffs.

(2) Subscribers shall have the right according to the preconditions referred to in subsections (3) to (5) to have an entry in publicly available subscriber directories, to verify the entry, correct it and have it withdrawn.

(3) A subscriber shall have the right to request from the operator of the publicly available telephone service with whom he has a contractual relationship for the use of a line to have the following data included in the provider's subscriber directory free of charge: surname, first name(s), academic degree, address, subscriber number and, if the subscriber so requires, occupation.

(4) With the subscriber's consent additional data may be included in the subscriber directory. If this involves other persons, they shall also consent.

(5) If a subscriber so requests, the data relating to him shall not be included in the subscriber directory at all or in part (non-listing). This shall be free of charge. If a

subscriber so requests, the data relating to him shall not be included in an electronic subscriber directory which allows searching by data other than subscriber name.

### **Default in payment**

**§ 70.** The operator of a telecommunications service may interrupt or disconnect the service in case of default in payment only after having reminded the subscriber without success, warning to interrupt or disconnect the service and granting a period of grace of at least two weeks. Interruption of access to emergency telephone numbers shall not be permitted. Disconnection or interruption of services of the universal service as defined in § 26 (2) items 1 and 2 must not take place if the subscriber is in default solely with obligations under another contractual relationship of universal service or any other contractual relationship with the operator.

### **Review of charges**

**§ 71.** (1) If a subscriber doubts the correctness of the amount prescribed in the bill for telecommunications services, the operator shall, upon written request, review all facts on which the determination of this amount has been based and, as a result of this review, either confirm the correctness of the bill in writing or modify it correspondingly.

(2) If the regulatory authority is notified of an objection to an operator's bill, the maturity of the invoiced and contested amount shall be deferred beginning with this point in time until the dispute is settled. This notwithstanding, the operator may demand immediate payment of the amount that corresponds to the average amount of the last three phone bills. Excess amounts, including legal interest, shall be returned as per the day of collection.

(3) In the event that no reason for a recalculation of the contested amount is found, legal interest may be charged beginning with the date of maturity stated on the bill.

(4) In the event that a mistake has been made which might have been to the detriment of the subscriber and the correct charge cannot be identified, a flat-rate compensation shall be specified in the general terms and conditions that is based on the average use of this telecommunications service by the subscriber.

### **Disconnection**

**§ 72.** (1) Regardless of the institution of administrative penal proceedings, the operator of a public communications network or service may request a subscriber to remove terminal equipment interfering or not complying with the Federal Act on Radio Systems and Telecommunications Terminal Equipment, BGBl. no. 134/2001, from the network termination point without delay.

(2) If a subscriber does not comply with the request and other users of the network or service are affected or persons are endangered, the operator may disconnect the line from the network or service.

(3) However, if the subscriber raises an objection after receipt of the request (subsection (1)) and there is no negative effect or endangering as set out in subsection (2), the operator must not disconnect the line from the service or network but has to call upon the regulatory authority for a decision.

## **Section 9**

### **Radio systems and telecommunications terminal equipment**

#### **Technical requirements**

**§ 73.** (1) In relation to their structure and functionality, radio systems and telecommunications terminal equipment shall comply with the state of the art of technology and the preconditions to be met under international regulations.

(2) The installation and operation of radio systems and telecommunications terminal equipment shall ensure the protection of life and health of people as well as interference-free operation of other radio systems and telecommunications terminal equipment. The design of radio systems and telecommunications terminal equipment shall also take into account the requirements of environmental protection, in particular with regard to professional disposal, considering economic reasonableness.

(3) By way of ordinance, the Federal Minister of Transport, Innovation and Technology may specify, in line with the state of the art, detailed provisions and technical requirements for radio systems and telecommunications terminal equipment, in particular for

1. type approval of radio systems and
2. the operation of radio systems on foreign ships, aircraft and other means of transport on Austrian territory.

#### **Installation and operation of radio systems**

**§ 74.** (1) In principle, the installation and operation of a radio system shall be permitted only with an authorisation. The authorisation shall be granted if there is no reason for refusal.

(2) The authorisation for the installation and operation of an electrical facility which, pursuant to § 3 item 6, last sentence, shall be considered as a radio system shall be granted exclusively to law enforcement authorities.

(3) To the extent to which it is compatible with proper and interference-free telecommunications traffic, the Federal Minister of Transport, Innovation and Technology may declare, by way of ordinance, the installation and operation of radio systems for specific system types as generally authorised.

### **Import, sale and possession of radio systems**

**§ 75.** (1) In principle, the import, sale and possession of radio systems shall not require an authorisation.

(2) The Federal Minister of Transport, Innovation and Technology may, by way of ordinance, declare the import, sale and possession of radio transmission systems to be subject to an authorisation. In this respect, it shall be considered if the use of the radio system may increasingly endanger public security or, otherwise, may be in conflict with the exercise of official duties.

3) The authorisation under subsection (2) shall be granted if the Federal Act on Radio Systems and Telecommunications Terminal Equipment, BGBl. I no. 134/2001, does not apply to the radio system and there is reason to assume that the technical requirements pursuant to § 73 are complied with, in particular if no interference with other radio systems is to be expected and there is no other reason for refusal pursuant to § 83, or if the radio system serves for museum or demonstrative purposes.

### **Type approval of radio systems**

**§ 76.** (1) The Office for Radio Systems and Telecommunications Terminal Equipment shall establish on request if a radio system complies with the technical requirements pursuant to § 73 (type approval). Type approval shall be granted if the radio system complies with the technical requirements. The request shall not be permitted if the radio system concerned is subject to the Federal Act on Radio Systems and Telecommunications Terminal Equipment [Bundesgesetz über Funkanlagen und Telekommunikationseinrichtungen] or the Ordinance on Ship Equipment [Schiffsausrüstungsverordnung], BGBl. II no. 139/1999.

(2) An authorisation shall not be required if, according to the internationally binding regulations for the Republic of Austria on the basis of a conformity assessment procedure described therein or according to the Austrian regulations on a producer's declaration of conformity,

1. approval by a foreign body subject to international recognition (certificate of conformity) or
2. a producer's declaration of conformity has been obtained and the equipment is duly marked.

Such equipment shall be considered as authorised under subsection (1).

(3) By way of ordinance, the Federal Minister of Transport, Innovation and Technology, taking into consideration the binding international regulations, shall issue detailed provisions on conformity assessment procedures subject to international recognition (certification, prototype test and the like), national producer's declaration of conformity, marking of the equipment, product controls and monitoring duties.

## Marking

**§ 77.** (1) Notwithstanding the regulations of the Federal Act on Radio Systems and Telecommunications Terminal Equipment [Bundesgesetz über Funkanlagen und Telekommunikationseinrichtungen], BGBl. I no. 134/2001, the required marking of radio systems may be attached only by the person authorised to do so. The markings may be attached only to devices complying with the approved type. The markings shall be considered as public deeds.

(2) By way of ordinance, the Federal Minister of Transport, Innovation and Technology shall specify the appearance of these markings.

(3) If radio systems are marked pursuant to an ordinance issued under subsection (2) and the requirements pursuant to subsection (1) do not exist, the Office for Radio Systems and Telecommunications Terminal Equipment shall apply § 14 of the Federal Act on Radio Systems and Telecommunications Terminal Equipment [Bundesgesetz über Funkanlagen und Telekommunikationseinrichtungen] correspondingly. This shall also apply if radio systems or telecommunications terminal equipment bear markings which may be confused with the markings prescribed in the ordinance.

## Usage

**§ 78.** (1) Radio systems and telecommunications terminal equipment must not be abused. The following shall be considered as abuse:

1. any communication that threatens law and order or morality or violates the laws;
2. any severe harassment or intimidation of other users;
3. any violation of the duty to observe secrecy existing under this Act and the international agreements and
4. any communication that does not correspond to the authorised purpose of a radio system.

(2) Owners of radio systems and telecommunications terminal equipment shall take appropriate measures to rule out abuse to the extent to which they can be reasonably expected to do so as well as considering the fundamental right to data protection as defined in the Data Protection Act 2000, BGBl. I no. 165/1999. Service providers who only provide access to communications services shall not be considered as owners.

(3) Radio systems may be operated only for the authorised purpose as well as at the locations specified in the authorisation; mobile systems may be operated only in the usage area indicated in the authorisation.

(4) Radio transmission systems may be only operated using the frequencies and call signs assigned by means of the authorisation.

(5) Radio systems and telecommunications terminal equipment which have neither been authorised under the Telecommunications Act nor comply with the provisions of the Federal Act on Radio Systems and Telecommunications Terminal Equipment must not be connected to, nor operated in connection with, a public communications network,

## **Section 10**

### **Procedures, fees**

#### **Procedures for approval and type approval**

**§ 79.** (1) Only the producer or his agent may file an application for type approval of a radio system. An applicant domiciled outside the European Economic Area may file the application only through a person who has his principal residence in the European Economic Area.

(2) Applications under subsection (1) shall be filed in writing. An application for type approval shall be permitted only if the radio system bears a type label with the producer's or his agent's name and the device designation (type designation) he has chosen.

(3) Applications pursuant to subsection (1) shall be accompanied by an expert opinion of a recognised national or accredited foreign test authority in proof of compliance with the technical requirements pursuant to § 73. If foreign approval has already been granted, only a supplementary expert opinion in proof of the technical requirements not covered by this approval shall be submitted. Moreover, the Office for Radio Systems and Telecommunications Terminal Equipment may request that additional documents, such as descriptions and wiring schemes, and a prototype be submitted at the applicant's expense if this is required for the decision on the application.

(4) A radio system shall belong to the approved type if it is constructed according to the descriptions and wiring schemes submitted for the test and if its designation on the type label corresponds to the designation of the tested type.

(5) § 81 (6) and (7) shall apply also to approvals and type approvals.

#### **Revocation of approval or type approval**

**§ 80.** The approval shall be revoked if the requirements pursuant to § 77 (1) do not exist.

#### **Authorisation procedure**

**§ 81.** (1) Applications pursuant to § 74 shall be filed in writing. The application shall contain in any case:

1. applicant's name and address,

2. information about the intended use of the radio system and

3. information about the functionality of the radio system.

The application shall be accompanied by documentation in proof of the technical characteristics of the radio system as well as the declaration of conformity of the device.

(2) The Telecommunications Office in the area of local competence of which the radio system shall be operated shall decide on an application under subsection (1). KommAustria shall decide on applications under subsection (1) relating to radio transmission systems designed for broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk]. The authority shall take a decision within six weeks of receipt of the complete application unless a frequency coordination procedure under international agreements has to be completed first. If the authority has to carry out a comparative selection procedure, this period shall be extended by eight months.

(3) If a radio system is to be installed or operated in the area of local competence of two or more Telecommunications Offices, the Telecommunications Office in the area of local competence where the applicant has his principal residence shall have competence.

(4) Licensing of frequencies shall take place pursuant to § 54.

(5) Notices pursuant to § 74 shall be granted for a period not exceeding ten years.

(6) Notices pursuant to § 74, § 75 and § 76 may contain incidental provisions. Obligations may be imposed by means of conditions and requirements which should be observed to protect the life or health of humans, prevent damage to property, comply with international agreements, ensure interference-free operation of other telecommunications systems or for other technical or operational reasons, depending on the circumstances of the case.

(7) In cases of universal succession under company law the authority shall transfer the authorisation to another person or institution, at the holder's request, in its existing scope if there is no reason for refusal or revocation.

## **Fees**

**§ 82.** (1) Fees shall be paid for authorisations and approvals granted under this Federal Act.

(2) The user shall pay fees for the licensing and usage of frequencies and for other official acts in connection with frequency licensing and frequency administration. They shall serve for compensation of the expenditure for the administration of the frequencies, for planning, coordination and updates of frequency usage as well as for the required measurements, tests and compatibility examinations to ensure efficient and interference-free frequency usage. The fees shall consist of a one-off allocation fee and a usage fee to be paid periodically. The allocation fee shall not be due in cases where a frequency licence fee is paid.

(3) The fees for the administrative procedures to be carried out under this Federal Act, for the authorisations and approvals to be granted under this Federal Act as well as for the licensing and usage of frequencies shall be specified, by way of ordinance, by the Federal Minister of Transport, Innovation and Technology in agreement with the Federal Minister of Finance. In this respect, the personnel and factual expenses associated with the achievement of the specified objectives and the optimum usage of the frequency resources shall be taken into account. It shall be also considered whether frequencies shall be used commercially.

(4) If a person has evaded fees through an unlawful act, the Telecommunications Offices, regardless of the penalty imposed for the unlawful act, shall require the party at fault to pay the evaded fee within the period of limitation according to the rates in force at the time the unlawful act has been established.

(5) Fees in arrears may be collected by means of statements of arrears.

(6) KommAustria shall issue the ordinance pursuant to subsection (3) for frequencies designed for broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk]. In these cases KommAustria shall also carry out the procedure pursuant to subsection (4).

### **Refusal**

**§ 83.** The authorisation for the installation and operation of a radio system shall be granted unless

1. the system does not comply with the technical requirements pursuant to § 73, in particular if interference with other radio systems is to be expected;
2. the requested frequencies are not available in the intended usage area or cannot be licensed for operational reasons, such as usage of the frequency spectrum;
3. the required frequencies cannot be licensed in the interest of economic expansion and interference-free operation of radio systems in the public interest;
4. at least six months have passed since revocation pursuant to § 85 (3);
5. operation may jeopardise public security;
6. operation may hinder the performance of official duties or
7. efficient usage of the radio frequency spectrum is not guaranteed.

### **Subsequent modifications of the authorisation**

**§ 84.** (1) As far as provisions of the authorisation are concerned,

1. any change of location,
  2. any usage outside the usage area indicated in the authorisation in the case of mobile systems as well as
  3. any technical change of the system
- shall require prior approval by the competent Telecommunications Office.

(2) The authority may modify granted authorisations in the public interest if this is required for good cause

1. to ensure the security of public telecommunications traffic,
2. for technical or operational reasons,
3. due to international circumstances, in particular further development of international telecommunications law,
4. for adjustment to modified frequency usage due to international circumstances. In this respect, utmost account shall be taken of the authorisation holder's economic and operational interests.

(3) The authorisation holder shall comply with any modification ordered under subsection (2) within a reasonable period at his expense. Such an order shall not constitute any claim to compensation. Claims for government liability shall remain unaffected.

(4) If a user's increased communications have such a strong impact on the utilisation of the licensed frequencies that other users of the same frequency cannot use it as intended, the authority may license another frequency to the party whose radio operation has caused the limitation unless corrective action of a different kind is possible. The same shall apply if the intended frequency range of other users is restricted in connection with applications for expansion of existing radio networks.

(5) The duties pursuant to subsections (1) and (2) relating to authorisations in the field of broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] shall be performed by KommAustria.

### **Expiry of the authorisation**

**§ 85.** (1) The authorisation shall expire by

1. lapse of the period for which it was granted;
2. renouncement by the authorisation holder;
3. revocation;

4. death or termination of the legal personality of the authorisation holder.

(2) The authorisation for the installation and operation of a radio system and a frequency licence shall furthermore expire after twelve months beginning with the day of authorisation and licensing if essential parts of the system are not operational at that time. For systems requiring more comprehensive installation work the period may be extended to up to three years.

(3) Revocation shall be declared by the authority granting the authorisation if

1. the technical requirements pursuant to § 73 have changed substantially and the authorisation holder has not carried out the changes despite being requested;
2. this is required to ensure interference-free operation of a public communications network;
3. the authorisation holder has severely or repeatedly violated the provisions of this Act or the obligations or conditions to be complied with under the authorisation;
4. the requirements for the granting of the authorisation have ceased to exist, in particular if the respective frequency licence has expired;
5. the systems are not operated or not according to the intended purpose authorised or
6. the systems are not operated with the authorised technical characteristics and the authorisation holder has not carried out the modifications despite being requested.

(4) A frequency licence may be revoked on the grounds stated in § 54 (12).

(5) Revocation shall not constitute any claim to compensation.

(6) Revocation and renunciation shall not be tied to a time limit. The declaration of renunciation shall be submitted in writing to the Telecommunications Office granting the authorisation.

(7) Upon the death of the holder of an authorisation that is used for business purposes, the administrator of the deceased's estate may make use of this right until the deceased's estate is formally transferred to the legitimate heir; the administrator of the deceased's estate, however, shall notify this fact to the Telecommunications Office in the area of local competence without undue delay.

(8) Upon expiry of the authorisation, the system shall be shut down and shall be deinstalled within a reasonable period. Further remaining radio transmission systems shall be notified to the Telecommunications Office.

(9) KommAustria shall perform the duties pursuant to subsections (3) and (4) relating to authorisations in the field of broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk]. The declaration pursuant to

subsection (6) and the notifications pursuant to subsections (7) and (8) shall be made in these cases to KommAustria.

## **Section 11**

### **Rights of supervision**

#### **Scope**

**§ 86.** (1) Communications services shall be subject to supervision by the regulatory authority which may use the agents of the telecommunications authorities for this purpose.

(2) The agents of the Telecommunications Offices and the Office for Radio Systems and Telecommunications Terminal Equipment shall assist the regulatory authority on request within the scope of its range of functions, in particular in telecommunications matters.

(3) Telecommunications systems shall be subject to the supervision of the telecommunications authorities. Within the meaning of this section, telecommunications systems shall be all systems and devices for handling communications, such as, in particular, communications networks, cable broadcasting networks, radio systems and telecommunications terminal equipment.

(4) The telecommunications authorities shall be entitled to test telecommunications systems, in particular radio systems and telecommunications terminal equipment or parts thereof, for compliance with the provisions of this Act and the ordinances and notices issued under this Act. For this purpose, the agents of the telecommunications authorities, who duly identify themselves, shall be granted access to the premises or rooms where such systems are, or presumed to be, located. They shall be given all required information about the systems and their operation. Authorisation deeds as well as the certificates issued pursuant to § 15 shall be presented on request.

(5) If required for testing, the authorisation holder shall make the radio systems available for testing at his expense, at the request of the Telecommunications Office, at a specified location and the specified time. Radio systems may be also tested on-site at the authorisation holder's expense if this is practicable because of the size or technical design of the system or the financial expenses involved.

#### **Searches**

**§ 87.** (1) Upon the strong suspicion that a radio transmission system installed or operated without authorisation may endanger persons or damage property or if it is required to enforce obligations under international agreements, the telecommunications authorities may order searches of property, houses, persons and cars and in case of imminent danger their agents may conduct searches also on their own authority.

(2) Searches shall be carried out with the utmost respect for the persons present and the utmost care of property. Particular attention shall be paid to the fact that interference with the legal sphere of the person concerned shall be proportional as defined in § 29 of the Security Police Act [Sicherheitspolizeigesetz]. The provisions of § 141 (3) and § 142 (1), (2) and (4) Code of Criminal Procedure [Strafprozessordnung, StPO] shall apply correspondingly unless the purpose of the measure would be thwarted.

(3) The agent shall draw up short minutes on the spot about the sequence of events and the results of the search. One copy shall be handed over to the person searched or left at the site of the search.

### **Supervision measures**

**§ 88.** (1) In the event of interference of a telecommunications system with another telecommunications system the Telecommunications Offices may order and execute such measures as are necessary to protect the affected system and most appropriate for the systems in question, under the given circumstances and avoiding excessive costs.

(2) Telecommunications systems installed and operated without authorisation may be shut down without prior warning. This shall apply to telecommunications systems otherwise installed or operated contrary to the provisions of this Act only if it is required to preserve or restore interference-free communications traffic.

### **Shutdown of operation**

**§ 89.** (1) To maintain public law and order the Federal Minister of Transport, Innovation and Technology may shut down the operation of telecommunications systems in part or in full or for specific types of systems for a limited or unlimited period of time and impose temporary restrictions on the use of specific systems.

(2) An order pursuant to subsection (1) shall take utmost account of the operator's economic and operational interests; it shall not constitute any claim to compensation.

### **Duties to provide information**

**§ 90.** (1) Operators of communications networks or services as well as holders of rights of use for frequencies or communications parameters shall be obliged to provide, upon written request, to the Federal Minister of Transport, Innovation and Technology and the regulatory authority the information that is required for the execution of this Act and the relevant international regulations, in particular

1. information required for systematic or individual review of the obligations arising from this Federal Act or an ordinance issued under this Federal Act,
2. information required for individual review of the obligations if a complaint has been addressed to the regulatory authority or if it assumes a violation of duties for other reasons or conducts investigations on its own behalf,

3. information in procedures for the licensing of frequencies or communications parameters,
4. information required for a procedure pursuant to § 37,
5. information required for the publication of quality and price comparisons for services to the benefit of consumers.

This information shall be presented within the period specified and according to the time schedule and shall give the requested details. Undertakings may request information pursuant to item 3 also prior to the commencement of their activities. The requested information shall be in reasonable proportion to the execution of the tasks. The request shall be substantiated and the party concerned shall be notified of the specific purpose for which the information provided is to be used.

(2) To observe and monitor the development of the market and of competition pursuant to § 34 the Federal Minister of Transport, Innovation and Technology shall be authorised to order the preparation of statistics for the field of communications. The statistics shall be prepared by the regulatory authority.

(3) In addition to the statistical surveys, the order pursuant to subsection (2) shall comprise in particular:

1. the survey population;
2. statistical units;
3. the type of statistical survey;
4. survey characteristics;
5. the frequency and intervals of data survey;
6. the definition of the population obliged to give information;
7. whether and to what extent the results of the statistical surveys shall be published, observing the provisions of § 19 (2) Federal Statistics Act 2000 [Bundesstatistikgesetz], BGBl. I no. 163/1999.

(4) Individual data may be passed on to the “Bundesanstalt Statistik Österreich“ for purposes of federal statistics.

(5) The preparation of statistics shall take place, correspondingly applying the provisions of the Federal Statistics Act 2000 [Bundesstatistikgesetz], BGBl. I no. 163/1999.

(6) Operators of communications services shall be obliged to provide information to administrative authorities, at their written and substantiated request, on master data, as defined in § 92 (3) item 3 lit. a to e, of subscribers who are suspected of having

committed an administrative offence by an act using a public telecommunications network.

### **Supervision measures of the regulatory authority**

**§ 91.** (1) If the regulatory authority in relation to its duties has any reason to assume that an undertaking violates the provisions of this Federal Act, the provisions of an ordinance issued under this Federal Act or a notice issued under this Federal Act, it shall notify the undertaking thereof while granting at the same time the opportunity to comment on the allegations or remedy any shortcomings within a reasonable period following receipt of the notification. This period may be shorter than one month only if the undertaking concerned consents or has repeatedly violated the relevant provisions.

(2) If the regulatory authority establishes that the shortcomings due to which the supervision procedure had been started have not been remedied after expiry of the period, it shall, by way of notice, order reasonable measures called for to ensure compliance with the violated provisions and set a reasonable period during which the measure shall be complied with.

(3) If the measures ordered pursuant to subsection (2) are unsuccessful, the regulatory authority may suspend the right of an undertaking, which has severely or repeatedly violated its duties, to provide communications networks or communications services until the shortcomings have been remedied or may forbid this undertaking to continue to provide communications networks or communications services. For the same reasons, the regulatory authority may revoke the licences for frequencies and communications parameters.

(4) If a violation of the provisions of this Federal Act, the provisions of an ordinance issued under this Federal Act or a notice issued under this Federal Act constitutes a direct and serious threat to public order, security and health or if it results in serious economic or operational problems of other providers or users of communications networks or services, the regulatory authority may order measures pursuant to subsection (2) also in a procedure pursuant to § 57 General Administrative Procedures Act [Allgemeines Verwaltungsverfahrensgesetz, AVG].

## **Section 12**

### **Confidentiality of the communications, data protection**

#### **General**

**§ 92.** (1) Unless otherwise provided by this Federal Act, the provisions of the Data Protection Act 2000 [Datenschutzgesetz], BGBl. I no. 165/1999, shall apply to the facts regulated in this Federal Act.

(2) The provisions of the Code of Criminal Procedure [StPO], BGBl. no. 631/1975, shall remain unaffected by the provisions of this section.

(3) Irrespective of § 3, in this section the term

1. “provider” means an operator of public communications services;
2. “user” means any natural person using a publicly available communications service, for private or business purposes, without necessarily having subscribed to this service;
3. “master data” means all personal data required for the establishment, processing, modification or termination of the legal relations between the user and the provider or for the production and publication of subscriber directories, including
  - a) surname and first name,
  - b) academic degree,
  - c) residential address,
  - d) subscriber number and other contact information for the communication,
  - e) information on type and contents of the contractual relationship,
  - f) financial standing;
4. “traffic data” means any data processed for the purpose of the conveyance of a communication on a communications network or for the billing thereof;
- 4a. “access data” means the traffic data created at the operator during access by a subscriber to a public communications network and required for assignment to the subscriber of the network addresses used for a communication at a specific point of time;
5. “content data” means the contents of conveyed communications (item 7);
6. “location data” means any data processed in a communications network, indicating the geographic position of the telecommunications terminal equipment of a user of a publicly available communications service;
7. “communication” means any information exchanged or conveyed between a finite number of parties by means of a publicly available communications service. This does not include any information conveyed as part of a broadcasting service to the public over a communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information;
8. “call” means a connection established by means of a publicly available telephone service allowing two-way communication in real time;

9. "value added service" means any service which requires the processing of traffic data or location data other than traffic data beyond what is necessary for the transmission of a communication or the billing thereof;
10. "electronic mail" means any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient.

### **Confidentiality of the communications**

**§ 93.** (1) The content data, traffic data and location data shall be subject to confidentiality of the communications. Confidentiality of the communications shall also refer to the data of unsuccessful connection attempts.

(2) Every operator and all persons who are involved in the operator's activities shall observe confidentiality of the communications. The obligation to maintain confidentiality shall continue to exist also after termination of the activities under which it was established.

(3) Persons other than a user shall not be permitted to listen, tap, record, intercept or otherwise monitor communications and the related traffic and location data as well as pass on related information without the consent of all users concerned. This shall not apply to the recording and tracing of telephone calls when answering emergency calls and to cases of malicious call tracing as well as to technical storage which is necessary for the conveyance of a communication.

(4) If communications are received unintentionally by means of a radio system, a telecommunications terminal equipment or any other technical equipment which are not intended for this radio system, this telecommunications terminal equipment or the user of the other equipment, the contents of the communications as well as the fact that they have been received must neither be recorded nor communicated to unauthorised persons nor used for any purposes. Recorded communications shall be erased or otherwise destroyed.

### **Technical facilities**

**§ 94.** (1) The provider shall be obliged under an ordinance issued under subsection (3) to provide all facilities which are required for the interception of a telecommunication according to the provisions of the Code of Criminal Procedure [StPO].

(2) The operator shall take part in the interception of a telecommunication to the extent required, according to the provisions of the Code of Criminal Procedure [StPO]. The Federal Minister of Justice, in agreement with the Federal Minister of Transport, Innovation and Technology, the Federal Minister of Finance, the Federal Minister of the Interior and the Federal Minister of Defence, shall, by means of ordinance, provide for adequate compensation of costs, taking into account, in particular, the economic reasonableness of the effort, any possible interest of the undertaking concerned in the

services to be provided and any possible danger caused by the technical facilities provided which is to be averted by the participation requested.

(3) By way of ordinance, the Federal Minister of Transport, Innovation and Technology, in agreement with the Federal Ministers of the Interior and Justice, may specify, in line with the state of the art, detailed provisions for the design of the technical facilities to guarantee interception of a telecommunication according to the provisions of the Code of Criminal Procedure [StPO] and for the protection of the data to be transmitted from unauthorised notice by third parties. A report shall be submitted to the executive committee of the National Council [Nationalrat] directly after the ordinance has been issued.

### **Security of network operation**

**§ 95.** (1) The obligation to issue data security measures as defined in § 14 of the Data Protection Act 2000 [Datenschutzgesetz] related to the provision of a public communications service shall be imposed upon every operator for each service provided by him.

(2) Notwithstanding subsection (1), in case of a particular risk of a violation of confidentiality, the operator must inform the subscribers concerning such risk and, where the risk lies outside the scope of the measures to be taken by the service provider, of any possible remedies including their costs.

### **Data protection – General**

**§ 96.** (1) Master data, traffic data, location data and content data may be collected and processed only for the purposes of providing a communications service.

(2) The transmission of data referred to in subsection (1) may take place only to the extent necessary for the provision, by the provider, of the communications services for which these data have been collected and processed. The data may be used for the purpose of marketing of communications services or the provision of value added services as well as for other transmissions only with the consent of the data subjects that may be withdrawn at any time. Such use shall be restricted to the necessary extent and the period necessary for marketing. The providers must not make the provision of their services dependent on such consent.

(3) The provider shall be obliged to inform the subscriber or user of the personal data he will collect, process and transmit, on which legal basis and for which purposes this will take place and for how long the data will remain stored. This information shall also point out the right to refuse processing. This shall not be in conflict with technical storage or access if the sole purpose is to perform or facilitate the transmission of a communication via a communications network or, to the extent absolutely necessary, to provide a service explicitly requested by the subscriber or user. The subscriber shall also be informed of the usage possibilities based on search functions embedded in electronic versions of the directories. This information shall be given in an appropriate form, in particular within the framework of general terms and conditions and, at the latest, upon

commencement of the legal relations. The right to information pursuant to the Data Protection Act shall remain unaffected.

### **Master data**

**§ 97.** (1) Irrespective of § 90 (6) and § 96 (2), operators may collect and process master data only for the following purposes:

1. conclusion, execution, modification or termination of the contract with the subscriber;
2. subscriber billing;
3. preparation of subscriber directories, also pursuant to § 18, and
4. provision of information to emergency services.

(2) The operator shall erase the master data at the latest upon termination of the contractual relations with the subscriber. Exceptions shall be permitted only to the extent to which these data are still required to settle or collect charges, handle complaints or comply with other legal obligations.

### **Information to operators of emergency services**

**§ 98.** Operators shall provide information to operators of emergency services, at their request, on master data as defined in § 92 (3) item 3 lit. a to d as well as on location data as defined in § 92 (3) item 6. Both cases shall require an emergency to permit the transmission, which can be only averted by providing this information. The need for transmission of the information shall be documented by the emergency service operator and shall be presented to the operator without delay, however, at the latest within 24 hours. The operator must not make the transmission dependent on previous presentation of the need. The emergency service operator shall be responsible for the legal permissibility of the request for information.

### **Traffic data**

**§ 99.** (1) Except for cases regulated by law, traffic data must not be stored and shall be erased or made anonymous after termination of the connection.

(2) If required for the purposes of subscriber billing, including interconnection payments, the operator shall store traffic data up to the end of the period during which the bill may be lawfully challenged or payment pursued. These data shall be made available in full to the decision-taking body as well as to the arbitration authority. If proceedings on the amount of the charges are instituted, the data must not be erased until the final decision on the amount of the charges is taken. The amount of stored traffic data must be restricted to what is absolutely necessary.

(3) Processing of traffic data must be restricted to persons who handle billing or traffic management, fault recovery, customer enquiries, fraud detection or marketing

communications services or provide value added services, or have been commissioned by these persons, and must be restricted to what is absolutely necessary.

(4) Except for cases specially regulated by law, the operator shall not process a subscriber line according to subscriber numbers called from that line beyond the purposes of billing. With the subscriber's consent the operator may use the data for the purpose of marketing his own telecommunications services or for the provision of value added services.

### **Bills**

**§ 100.** (1) The subscriber fees shall be presented in the form of an itemised bill unless the subscriber objects. On request, the subscriber shall have the option of receiving the itemised bill on paper free of charge. The bill shall make reference to the possibility of reviewing the charges as well as how to contact the operator sending the bill.

(2) By way of ordinance, the regulatory authority may specify the level of detail and the mode in which the bill is provided, considering the type of subscriber relationship and the type of service, the technical possibilities, the protection of personal data as well as the fact that subscribers shall be able to control their expenditure and providers of value-added services are identified.

(3) In preparing the bill no data other than absolutely necessary may be processed. Called subscriber numbers or other information identifying the recipient of a communication may be shown in an itemised bill only in shortened form unless the tariff applied to a connection can be derived only from the non-shortened subscriber number or the subscriber has declared in writing that he has informed, and will inform, all other existing or future co-users of the line thereof. Any possible further restrictions under labour law shall remain unaffected. Calls or other connections not subject to billing as well as calls to or connections with emergency services must not be shown in the bill.

(4) The erasure of the data of a bill and the erasure of traffic data shall be subject to the same time limits.

### **Content data**

**§ 101.** (1) In principle, content data must not be stored unless storing constitutes an essential component of the communications service. If short-term storage is required for technical reasons, the provider shall immediately erase the stored data when the reasons cease to exist.

(2) The provider shall make technical and organisational arrangements to ensure that content data are not stored or only to the minimum extent required for technical reasons. If storage of the contents is a facility, the data shall be erased directly after provision of the service.

### **Location data other than traffic data**

**§ 102.** (1) Irrespective of § 98, location data other than traffic data may be processed only if they are

1. made anonymous or
2. the users or subscribers have given their consent which may be withdrawn at any time.

(2) Even in cases where consent of the users or subscribers has been obtained for the processing of data pursuant to subsection (1), the user or subscriber must have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each transmission.

(3) Processing of location data other than traffic data in accordance with subsections (1) and (2) must be restricted to what is necessary for the purposes of providing the value added service as well as to persons acting under the authority of the provider or of the third party providing the value added service.

### **Subscriber directory**

**§ 103.** (1) The operator may use and evaluate the data included in the subscriber directory pursuant to § 69 (3) and (4) only for the purposes of using the publicly available telephone service. Any other usage shall not be permitted. In particular, data must not be used to create electronic profiles of subscribers or to categorise these subscribers, except for the preparation and publication of subscriber directories. The operator shall make it more difficult to copy electronic subscriber directories, according to the state of the art and economic reasonableness.

(2) Transmission of data contained in a subscriber directory to the persons specified in § 18 (1) item 4 shall be permitted taking into account § 69 (5).

(3) The restriction of use under subsection (1) shall apply to data transmitted under subsection (2).

(4) The provisions of the foregoing subsections on the permitted use, evaluation and transmission of data relating to a subscriber shall not apply to court requests referring to the clearing up and prosecution of a specific criminal offence. By making technical and organisational arrangements the operator shall ensure that such requests can be complied with also in terms of data not entered pursuant to § 69 (5).

### **Presentation of calling line identification**

**§ 104.** (1) In the public communications network the calling user shall be offered the possibility, on his own initiative and free of charge, of preventing the presentation of the calling line identification on a per-call basis, except for emergency calls. The subscriber shall have this possibility on a per-line basis.

(2) In the public communications network the called subscriber shall be offered the possibility, on his own initiative and free of charge, of preventing the presentation of the

calling line identification of incoming calls. Where the calling line identification is presented prior to the call being established, the called subscriber shall be offered the possibility, on his own initiative and free of charge, of rejecting incoming calls where the presentation of the calling line identification has been prevented.

(3) In the public communications network the called subscriber shall be given the possibility of preventing, on his own initiative and free of charge, the presentation of his number to the calling user.

(4) The operator shall be obliged to inform in his terms and conditions of the possibility of presenting the calling line identification and the different options of preventing the presentation.

(5) The provisions of subsections (1) to (3) shall also apply to calls to countries not members of the European Union as well as to calls originating in such countries.

### **Automatic call forwarding**

**§ 105.** In the provision of services that allow automatic call forwarding operators shall ensure that any subscriber has the possibility, on his own initiative and free of charge, of stopping automatic call forwarding by a third party to the subscriber's terminal.

### **Call tracing, malicious calls**

**§ 106.** (1) Call tracing is the process of establishing the identity of a calling line, irrespective of the calling user's will.

(2) If a subscriber so requests for the tracing of malicious calls, the operator shall set up a trace or override the elimination of the presentation of calling line identification for future calls. He may collect a charge for this service.

(3) The subscriber shall be informed of the result of the trace if he convincingly shows during the trace that he has been receiving malicious calls.

### **Unsolicited communications**

**§ 107.** (1) Calls, including facsimile transmissions, for marketing purposes shall not be permitted without the prior consent of the subscriber. The consent of the subscriber shall be equivalent to the consent of a person authorised by the subscriber to use his line. The consent given may be withdrawn at any time; withdrawal of the consent shall not have an impact on any contractual relationship with the addressee of the consent.

(2) The sending of electronic mail – including SMS messages – to consumers as defined in § 1 (1) item 2 Consumer Protection Act [Konsumentenschutzgesetz] without the recipient's prior consent shall not be permitted if

1. the sending takes place for purposes of direct marketing or

2. is addressed to more than 50 recipients.

(3) Prior consent to electronic mail pursuant to subsection (2) shall not be required if

1. the sender has received the contact details for the communication in the context of a sale or a service to his customers and
2. the communication is transmitted for the purpose of direct marketing of his own similar products or services and
3. the customer clearly and distinctly has been given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details when they are collected and on the occasion of each message in case the customer has not initially refused such use.

(4) The sending of electronic mail – including SMS messages – to recipients other than the ones set out in subsection (2) shall be permitted without the recipient's prior consent if the sender gives the recipient the express opportunity in the electronic mail or the SMS message to refuse the receipt of further messages.

(5) The sending of electronic communications for purposes of direct marketing shall be prohibited even where the requirements of subsections (2), (3) and (4) exist if the identity of the sender on whose behalf the communication is transmitted is disguised or concealed or if there is no valid address to which the recipient may send a request that such communications cease.

(6) If administrative offences pursuant to subsection (1) have not been committed in Austria, they shall be considered as having been committed in the place where the call reaches the subscriber's line.

## **Section 13**

### **Penal provisions**

#### **Violation of the rights of users**

**§ 108.** (1) Any person as defined in § 93 (2) who

1. without authorisation discloses the fact or the contents of the telecommunications traffic of specific persons to an unauthorised person or gives such a person the opportunity to perceive facts himself that are subject to the obligation to maintain secrecy,
2. falsifies, incorrectly relates, modifies, suppresses or incorrectly conveys a communication or withholds it from the intended recipient without authorisation

shall be punished by the court with a prison sentence of up to three months or a fine of up to 180 times the daily rate unless the offence carries a more severe penalty under another provision.

(2) The offender shall be prosecuted only at the request of the aggrieved party.

### **Administrative penal regulations**

**§ 109.** (1) Any person who

1. contrary to § 57 (3) fails to comply with a modification that has been ordered;
2. contrary to § 65 (8) fails to comply with a modification that has been ordered;
3. contrary to § 74 (1) installs or operates a radio system without authorisation;
4. contrary to an ordinance issued under § 75 (2) imports, sells or possesses a radio system without authorisation;
5. contrary to § 78 (1) abuses a radio system or telecommunications terminal equipment;
6. contrary to § 78 (2) fails to take the appropriate measures to rule out abuse of radio systems or telecommunications terminal equipment;
7. contrary to § 78 (3) operates a radio system for purposes other than intended at an unauthorised location or in an unauthorised usage area;
8. contrary to § 78 (4) operates radio transmission systems using unauthorised frequencies or call signs;
9. contrary to § 78 (5) connects telecommunications terminal equipment which is not approved or does not comply with the Federal Act on Radio Systems and Telecommunications Terminal Equipment to, or operates it in connection with, a public communications network;
10. contrary to § 84 (1) fails to notify modifications or to comply with modifications ordered pursuant to § 84 (2);
11. contrary to § 84 (4) fails to comply with a modification that has been ordered;
12. contrary to § 86 (4) fails to provide the required information or to submit the requested documents or certificates;
13. contrary to § 86 (5) fails to provide radio systems for testing at the specified location or the specified time

shall be guilty of an administrative offence and shall be punished by a fine of up to Euro 4,000.--.

(2) Any person who

1. contrary to § 55 (10) fails to comply with incidental provisions;
2. contrary to § 56 (1) fails to comply with incidental provisions;
3. contrary to § 65 (4) fails to comply with incidental provisions;
4. contrary to § 77 (1) marks radio systems without being authorised;
5. contrary to § 77 (1) marks radio systems not complying with the approved type;
6. contrary to § 81 (6) fails to comply with incidental provisions;
7. contrary to § 86 (4) fails to grant the agents of the Telecommunications Offices access to property or premises;
8. contrary to § 87 (1) prevents a search;
9. violates an ordinance or a notice issued under this Federal Act shall be guilty of an administrative offence and shall be punished by a fine of up to Euro 8,000.--.

(3) Any person who

1. contrary to § 17 (1) fails to publish information on the service quality or to notify this information to the regulatory authority;
2. contrary to § 18 fails to comply with the duties of an operator of a publicly available telephone service;
3. contrary to § 19 fails to provide additional facilities;
4. contrary to § 20 (1) fails to ensure connection to all emergency telephone numbers;
5. contrary to § 20 (2) fails to ensure connection to emergency telephone numbers free of charge;
6. contrary to § 20 (3) fails to ensure that the presentation of calling line identification is available at the emergency service;
7. contrary to § 21 (1) fails to comply with separate accounting;
8. contrary to § 23 (1) fails to ensure number portability;
9. contrary to § 27 (3) fails to publish or notify performance benchmarks;

10. contrary to § 33 fails to notify his turnover;
11. contrary to § 48 (3) fails to submit reference interconnection offers or interconnection agreements;
12. contrary to § 65 (2) behaves in a discriminatory way or fails to perform the weekly notification;
13. contrary to § 90 fails to provide the necessary information or information on master data;
14. contrary to § 94 (2) fails to take part in the interception of a telecommunication to the required extent;
15. contrary to § 95 (2) fails to inform the subscribers;
16. contrary to § 96 (3) fails to inform the subscribers;
17. contrary to § 98 fails to provide information on master data or location data;
18. contrary to § 103 (1) fails to make it more difficult to copy electronic subscriber directories;
19. contrary to § 107 (1) makes calls for marketing purposes;
20. contrary to § 107 (2) and (4) sends electronic mail;
21. contrary to § 107 (5) sends electronic communications for the purposes of direct marketing  
shall be guilty of an administrative offence and shall be punished by a fine of up to Euro 37,000.--.

(4) Any person who

1. contrary to § 15 (1) fails to notify the provision of a communications network or service;
2. contrary to § 22 fails to establish interoperability;
3. contrary to § 25 (1) or (2) fails to notify general terms and conditions or tariff conditions or changes thereof to the regulatory authority in due time before the service is started or the change takes effect;
4. contrary to § 37 fails to take part in a procedure pursuant to § 36 or § 37 to the extent defined in § 90;
5. contrary to § 45 fails to make an application relating to tariffs that may be subject to approval;

6. violates a notice issued under this Federal Act, imposing specific measures;
7. contrary to § 94 (1) fails to provide facilities for the interception of a telecommunication  
shall be guilty of an administrative offence and shall be punished by a fine of up to Euro 58,000.--.
- (5) In assessing the fines pursuant to subsections (1) to (4) it shall be also considered if the offence has been committed for professional purposes or repeatedly. If the offence has been committed for professional purposes, the unlawful benefit achieved according to the result of the preliminary investigation shall be taken into account in the assessment.
- (6) An administrative offence pursuant to subsections (1) to (4) shall not exist if the punishable act is a criminal offence that falls within the jurisdiction of the courts or shall be subject to a more severe penalty according to other administrative penal provisions.
- (7) In the penal order the objects used for committing the offence may be declared as forfeited for the benefit of the state.
- (8) The fines imposed by the Telecommunications Offices under this Federal Act shall go to the state.
- (9) If an accused person in proceedings pursuant to subsections (1) to (4) is an operator of public communications services or networks, the administrative offence prosecution authority shall notify the regulatory authority of the completion of the proceedings.

### **Publication of the penal order**

**§ 110.** The penal order issued for a punishable act pursuant to § 109 (4) may rule that the penal order be published within a specific period in one or more periodicals at the expense of the convicted person if the offender had already been punished twice for offences that are based on the same detrimental inclination as the offence for which he has been convicted now and, given the nature of the offence, it is to be expected that, otherwise, the offender will continue to commit offences punishable under this Federal Act. The publication shall relate to the judgement of the penal order. If special circumstances so require, also publication of the grounds of the penal order may be ordered.

### **Skimming off of gains**

**§ 111.** (1) If the regulatory authority establishes that an undertaking has gained economic advantage due to an unlawful act in violation of this Federal Act or the provisions of an ordinance or a notice issued under this Federal Act, the regulatory authority may file apply to the Cartel Court to fix an amount and skim it off. In the process, the Cartel Court shall be bound by the regulatory authority establishing the existence of an unlawful act. The amount to be skimmed off shall depend on the extent

of the economic advantage and may be set by the Cartel Court to be up to 10% of the undertaking's turnover of the preceding year. The regulatory authority shall be a party to these proceedings.

(2) The amount skimmed off shall be used for the financing of Rundfunk und Telekom Regulierungs-GmbH.

## **Section 14**

### **Authorities**

#### **Telecommunications authorities**

**§ 112.** Telecommunications authorities shall be the Federal Minister of Transport, Innovation and Technology as National Telecommunications Authority as well as the Telecommunications Offices subordinate to the National Telecommunications Authority and the Office for Radio Systems and Telecommunications Terminal Equipment.

#### **Competences**

**§ 113.** (1) The area of local competence of the National Telecommunications Authority and the Office for Radio Systems and Telecommunications Terminal Equipment shall extend to the whole federal territory.

(2) The Telecommunications Offices are located:

1. in Graz for the provinces of Styria and Carinthia,
2. in Innsbruck for the provinces of Tyrol and Vorarlberg,
3. in Linz for the provinces of Upper Austria and Salzburg as well as
4. in Vienna for the provinces of Vienna, Lower Austria and Burgenland.

(3) The Telecommunications Office with local competence shall be responsible for the official acts under this Federal Act unless otherwise provided. If a measure affects the area of competence of two or more Telecommunications Offices, concerted action shall be taken. In procedures pursuant to § 6 (3) the Telecommunications Office shall take a decision within three months.

(4) Unless otherwise provided, the Office for Radio Systems and Telecommunications Terminal Equipment shall be responsible for

1. decisions on applications for type approval of radio systems,
2. revocation of approvals and type approvals granted.

(5) The Federal Minister of Transport, Innovation and Technology (National Telecommunications Authority) shall be responsible for

1. issuing basic guidelines for the activities of the regulatory authority,
2. issuing and administration of the regulations required for the execution of the international agreements, in particular on the use of the frequency spectrum,
3. decisions on appeals to notices by the Telecommunications Offices and the Office for Radio Systems and Telecommunications Terminal Equipment unless an independent administrative senate has jurisdiction. Appeals to decisions by the Telecommunications Office pursuant to subsection (3), last sentence, shall be decided within three months.

(6) The Federal Minister of Transport, Innovation and Technology shall regularly evaluate the statutory provisions and submit a corresponding report to the National Council [Nationalrat] at two-year intervals.

#### **Participation by officers of the law enforcement agencies, enforcement**

**§ 114.** (1) The officers of the law enforcement agencies shall assist the Telecommunications Offices and their agents, at their request, to ensure the exercise of the interception powers within the scope of their lawful sphere of activity.

(2) The notices issued by the telecommunications authorities shall be enforced by the Telecommunications Offices themselves, applying the regulations of the Administrative Enforcement Act [Verwaltungsvollstreckungsgesetz], except where payment is involved.

#### **Duties of Rundfunk und Telekom Regulierungs-GmbH**

**§ 115.** (1) Rundfunk und Telekom Regulierungs-GmbH [RTR-GmbH] shall perform all duties conferred to the regulatory authority by this Federal Act and the ordinances issued under this Federal Act unless the Telekom-Control-Commission (§ 117) or KommAustria have competence.

(2) In case of disputes that fall within the competences of the regulatory authorities of two or more Member States the request may be directed to the regulatory authorities concerned which shall coordinate their course of action.

(3) RTR-GmbH may be asked to take part in discussions about disagreements resulting from this Federal Act according to the criteria to be published by RTR-GmbH. A corresponding request shall be addressed in writing to RTR-GmbH by all parties involved. The consultation of RTR-GmbH shall not preclude the institution of administrative proceedings under the provisions of this Act. Agreements pursuant to this subsection which are reached with RTR-GmbH participating shall be legally effective only between the parties involved. Enforcement shall be possible only by means of civil law proceedings.

## **Telekom-Control-Commission**

**§ 116.** (1) The Telekom-Control-Commission shall be established to perform the functions specified in § 117.

(2) The Telekom-Control-Commission shall be based with Rundfunk und Telekom Regulierungs-GmbH. The Telekom-Control-Commission shall be managed by Rundfunk und Telekom Regulierungs-GmbH. Within the framework of their activities on behalf of the Telekom-Control-Commission the staff of Rundfunk und Telekom Regulierungs-GmbH shall be bound by the instructions of the chairperson or the member designated in the rules of procedure.

(3) Pursuant to Article 20 (2) of the Federal Constitutional Act [B-VG], the members of the Telekom-Control-Commission shall not be bound by instructions in the performance of their duties.

### **Duties**

**§ 117.** The Telekom-Control-Commission shall have the following duties:

1. to order joint use in case of a dispute pursuant to § 9 (2),
2. to decide in cases pursuant to § 18 (3),
3. to execute the right to object pursuant to § 25,
4. to determine the financial compensation to be paid from the Universal Service Fund pursuant to § 31,
5. to determine the contribution to be paid into the Universal Service Fund pursuant to § 32,
6. to identify an undertaking or undertakings as having significant market power on the respective relevant market and to impose specific obligations pursuant to § 37,
7. to decide in cases pursuant to § 23 (2), § 38, § 41, § 44 (1) and (2), § 46 (2), § 47, § 48 and § 49 (3),
8. to approve general terms and conditions as well as tariffs and to execute the right to object pursuant to § 26 and § 45,
9. to license frequencies pursuant to § 54 (3) item 2 for which provision is made in the frequency usage plan pursuant to § 52 (3),
10. to decide on the transfer of frequencies pursuant to § 56,
11. to change and revoke the licensed frequencies pursuant to § 57 and § 60, respectively,

12. to decide on the right to provide communications networks or services pursuant to § 91 (3),
13. to decide about temporary orders pursuant to § 91 (4),
14. to establish violations and request the skimming off of gains pursuant to § 111,
15. to make a request to the Cartel Court pursuant to § 127.

### **Structure of the Telekom-Control-Commission**

**§ 118.** (1) The Telekom-Control-Commission shall consist of three members who are appointed by the federal government. One member shall belong to the judiciary. In appointing this member, the federal government shall consider three candidates suggested by the president of the Supreme Court. The other two members shall be appointed at the suggestion of the Federal Minister of Transport, Innovation and Technology. In this respect, it shall be considered that one member shall have relevant technical and the other shall have legal and economic expertise. The term of office of the Telekom-Control-Commission shall be five years. Reappointment shall be permitted.

(2) The Federal Minister of Transport, Innovation and Technology shall appoint a substitute member for each member. The substitute member shall take the place of a member if the member is prevented from fulfilling his duties.

(3) The following must not be members of the Telekom-Control-Commission:

1. members of the federal government or a provincial government as well as state secretaries;
2. persons who are in a close legal or de facto relationship with those who make use of a function of the Telekom-Control-Commission;
3. persons not eligible to the National Council [Nationalrat].

(4) If a member of the Telekom-Control-Commission fails to take part in three consecutive meetings without adequate excuse or if a ground for exclusion pursuant to subsection (3) occurs subsequently, the Telekom-Control-Commission shall establish such fact after hearing the member, which shall result in the loss of membership.

(5) Subsections (1), (3) and (4) shall apply correspondingly to the substitute members.

(6) If a member dies or retires prematurely on a voluntary basis or pursuant to subsection (4), the respective substitute member shall become a member of the Telekom-Control-Commission and, applying subsections (1) and (2), a new substitute member shall be appointed to serve until the end of the term of office.

(7) The members of the Telekom-Control-Commission shall be entitled to receive compensation of reasonable travel expenses and out-of-pocket expenses as well as an attendance fee which shall be fixed by the Federal Minister of Transport, Innovation and Technology in agreement with the Federal Minister of Finance, by way of ordinance, taking into account the significance and the scope of the duties to be performed by the Telekom-Control-Commission.

### **Chairperson and rules of procedure**

**§ 119.** (1) The judicial member shall be chairperson of the Telekom-Control-Commission.

(2) The Telekom-Control-Commission shall define its rules of procedure under which one of its members shall be put in charge of handling day-to-day business matters.

(3) Decisions by the Telekom-Control-Commission shall require a unanimous vote in order to be valid. Abstention shall not be permitted.

### **Competences of KommAustria**

**§ 120.** (1) In derogation of the division of competences set out in § 115 and § 117,

a) if an application instituting proceedings refers to the use of a communications network, an associated facility or the use of a communications service for the distribution of broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk], or supplementary broadcasting services as defined in § 2 Private Television Act [Privatfernsehgesetz], BGBl. no. 84/2001, or

b) if a regulatory measure refers to a market for the distribution of broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] or of supplementary broadcasting services,

KommAustria shall perform the following duties of the regulatory authority within the meaning of this Federal Act:

1. defining the reference rates pursuant to § 7,
2. ordering joint use pursuant to § 8 and § 9,
3. duties pursuant to § 15 and § 21,
4. duties concerning the regulation of competition according to Section 5 of this Federal Act,
5. transfer of frequencies pursuant to § 56,
6. approval of modifications pursuant to § 57 and revocation pursuant to § 60,

7. duties pursuant to § 90,
8. supervision measures pursuant to § 91,
9. skimming off of gains pursuant to § 111,
10. dispute settlement pursuant to § 122,
11. duties pursuant to § 124 to § 130.

(2) The Telekom-Control-Commission and KommAustria shall exchange information regularly on the subject matters and the parties of newly pending proceedings.

(3) KommAustria shall act as a party in proceedings before the Telekom-Control-Commission on request if the proceedings refer to the use of a communications network, an associated facility or the use of a communications service also for the distribution of broadcasting within the meaning of the Federal Constitutional Broadcasting Act [BVG-Rundfunk] as well as of supplementary broadcasting services.

(4) The Telekom-Control-Commission shall act as a party in proceedings before KommAustria on request if the proceedings refer to the use of a communications network, an associated facility or the use of a communications service also for telecommunications services.

(5) If KommAustria acts as a party pursuant to subsection (3), it may file a complaint to the Administrative Court [Verwaltungsgerichtshof] against decisions of the Telekom-Control-Commission on grounds of unlawfulness.

### **Procedural rules, stages of appeal**

**§ 121.** (1) Unless otherwise provided by this Federal Act, the Telekom-Control-Commission shall apply the General Administrative Procedures Act 1991 [Allgemeines Verwaltungsverfahrensgesetz].

(2) Applications referring to § 117 items 1, 2 and 7 shall be passed on to Rundfunk und Telekom Regulierungs-GmbH to carry out conciliation proceedings.

(3) If an application under subsection (2) is passed on to Rundfunk und Telekom Regulierungs-GmbH, conciliation proceedings shall be carried out. If an agreement is reached within six weeks, the proceedings before the Telekom-Control-Commission shall be discontinued; otherwise, the proceedings shall be continued. The Telekom-Control-Commission shall decide within four months of receipt of the application. This decision shall replace an agreement to be reached. The parties to the conciliation proceedings shall be obliged to take part in the proceedings and answer all inquiries necessary to assess the situation as well as provide the necessary documents.

(4) § 39 (3) General Administrative Procedures Act [Allgemeines Verwaltungsverfahrensgesetz, AVG] shall apply subject to the provision that upon completion of the preliminary investigation new matters cannot be raised.

(5) The Telekom-Control-Commission shall take decisions at the highest instance. Its decisions shall not be subject to quashing or modification by administrative action. A decision by the Telekom-Control-Commission may be appealed by filing a complaint to the Administrative Court [Verwaltungsgerichtshof].

### **Dispute settlement**

**§ 122.** (1) Irrespective of the jurisdiction of the courts of law, users, operators of communications networks or services and interest groups may submit cases of dispute or complaint to the regulatory authority, in particular

1. in relation to the quality of the service and payment disputes which have not been settled satisfactorily between a customer and an operator, in particular with the operator of universal service, or
2. about an alleged violation of this Act.

The operators shall be obliged to take part in such proceedings and answer all inquiries necessary to assess the situation as well as provide the necessary documents. The regulatory authority shall negotiate an amicable solution or communicate its opinion on the case in question to the parties.

(2) The regulatory authority shall define guidelines for carrying out the proceedings provided in subsection (1), where, in particular, time limits shall be laid down for termination of the proceedings, as may be required in the respective situation. The guidelines shall be published in an appropriate form.

### **Transparency**

**§ 123.** (1) Decisions of fundamental significance taken by Rundfunk und Telekom Regulierungs-GmbH and the Telekom-Control-Commission shall be published in an appropriate manner with due regard to data protection.

(2) Considering § 125, the regulatory authority shall publish information which contributes to an open, competition-oriented market.

### **Information by the regulatory authority**

**§ 124.** The regulatory authority shall transmit to the European Commission, at its substantiated written request, the information needed for the performance of its duties. If the information to be transmitted to the European Commission refers to data provided by operators of communications services or networks, the regulatory authority shall inform these operators of the transmission of the information.

### **Business and company secrets**

**§ 125.** (1) The regulatory authority shall keep confidential business and company secrets that have been disclosed to it, in particular in compliance with the Data Protection Act [Datenschutzgesetz].

(2) It shall be the duty of the regulatory authority to qualify a fact as a company or business secret and, in the process, it shall also weigh the interests of the person entitled to secrecy against the interests of third parties in its disclosure.

(3) If the regulatory authority has reasonable doubt about a fact warranting its secrecy, it shall inform the person entitled to secrecy of this fact and ask him to prove his economic interest in the secret.

### **Cooperation with other authorities**

**§ 126.** (1) To the extent necessary for the performance of the duties assigned to the regulatory authority, the regulatory authority shall be entitled to bring to the notice of the Cartel Court [Kartellgericht], the Higher Cartel Court [Kartellobergericht], the Public Attorney for Cartel Matters [Bundeskartellanwalt], the Federal Competition Authority [Bundeswettbewerbsbehörde], the European Commission and the regulatory authorities of other Member States the information, and to submit the documents, they require to carry out their functions in matters of joint interest.

(2) If the regulatory authority receives information from the European Commission or other regulatory authorities that is marked confidential, it shall ensure that it is treated confidentially.

### **Right to make requests to the Cartel Court**

**§ 127.** (1) If the regulatory authority has reason to assume in the course of its activities that a fact is subject to cartel law, it shall review this fact and, where appropriate, shall file a request to the Cartel Court [Kartellgericht] pursuant to § 8a Cartel Act [Kartellgesetz, KartG], BGBl. no. 600/1988.

(2) In the proceedings before the Cartel Court [Kartellgericht] shown below the regulatory authority shall be obliged to make an application if the provisions on the purpose and objectives of this Federal Act are affected:

1. prohibition of cartels (§ 25 KartG);
2. withdrawal of approval of a cartel (§ 27 KartG);
3. prohibition of a vertical tying arrangement relating to distribution (§ 30c KartG);
4. order to withdraw recommendations of associations (§ 33 KartG);
5. supervision of abuse and prohibition of retaliatory measures (§ 37 KartG);

6. performance of a merger in a forbidden manner (§ 42a KartG).

### **Consultation procedure**

**§ 128.** (1) The Federal Minister of Transport, Innovation and Technology as well as the regulatory authority shall give interested persons the opportunity to comment, within a reasonable period, on draft measures pursuant to this Federal Act that are likely to have a significant impact on the relevant market, except for measures pursuant to § 91 (4), § 122 and § 130. The consultation procedures as well as their results shall be made publicly available by the respective authority unless otherwise provided in § 125.

(2) Any procedural time limits shall be suspended during the period granted for comment.

(3) If the draft refers to an individual measure that is being considered at the request of a party, only withdrawal of the request shall be permitted during the period granted for comment. In such case the proceedings shall be discontinued and the relevant decision shall be published.

(4) The Federal Minister of Transport, Innovation and Technology as well as the regulatory authority shall give interested persons the opportunity to comment, within a reasonable period, on questions relating to end-user or consumer rights in connection with public communications services. They shall take account of these comments, as appropriate, in particular if they are expected to have a significant impact on the market.

### **Coordination procedure**

**§ 129.** (1) If the draft measure pursuant to § 128, which is expected to have an effect on trade between Member States, refers to

1. market definition (§ 36),

2. market analysis (§ 37),

3. interconnection or

4. obligations imposed pursuant to § 38 to § 42,

the draft, together with a statement of the reasons, shall be made available to the European Commission as well as the national regulatory authorities of the Member States of the European Community and the European Commission as well as the national regulatory authorities of the Member States of the European Community shall be informed.

(2) The European Commission as well as the national regulatory authorities of the Member States of the European Community may comment on the respective draft within one month. Utmost consideration shall be taken of these comments. With the exception

of the cases referred to in subsection (3), the resulting measure may be put into effect. It shall be communicated to the European Commission.

(3) The measure shall be deferred for further two months if

1. it refers to decisions pursuant to § 36 (3) or § 37 (1) and
2. it will have an effect on trade between Member States and
3. the European Commission has communicated that it considers the measure an obstacle to the Single Market or that there is serious doubt about compatibility with Community law, in particular with the objectives set out in § 1. If the European Commission requests withdrawal of the draft, stating objective and detailed reasons, the process of creating a standard shall be terminated. Procedural time limits shall remain suspended while the procedure under this subsection is being followed.

(4) Measures under subsection (1) may be issued for a maximum period of three months without requiring the procedures under subsections (1) and (3) if the measure needs to be taken instantly, with exceptional circumstances prevailing, to ensure competition and to protect the interests of the users. The European Commission as well as the national regulatory authorities of the Member States of the European Community shall be informed without delay, with a full statement of the reasons enclosed. Prior to extending the validity period of the measure, the procedures under subsections (1) and (3) shall be carried out.

(5) For practical reasons, an agent responsible for creating standards may instruct the regulatory authority to publish the draft as well as the incoming comments.

(6) The regulatory authority shall maintain and publish a list of pending procedures under subsections (1) to (4).

### **Resolution of cross-border disputes**

**§ 130.** In the event of cross-border disputes between parties in different Member States, where the dispute lies within the competence of authorities from at least two Member States, any party may call upon the competent authorities. The authorities shall coordinate their efforts in order to bring about a resolution of the dispute. The competence of the courts of law shall remain unaffected.

### **Telecommunications Advisory Board**

**§ 131.** (1) To advise the Federal Minister of Transport, Innovation and Technology and the regulatory authority, in particular in respect of fundamental telecommunications issues and their effects on the development of competition, on Austria as an economic location and on the needs of the consumers as well as further development of universal service a Telecommunications Advisory Board shall be established at the Federal Minister of Transport, Innovation and Technology.

(2) The Telecommunications Advisory Board shall comprise a maximum of ten members who are appointed by the Federal Minister of Transport, Innovation and Technology for six years. Only persons who have adequate experience in economics, business administration, social politics, technology and law as well as in the field of consumer protection may be appointed as members. Each discipline referred to shall be covered by at least one member.

(3) Members of the Telecommunications Advisory Board shall qualify for compensation of travel expenses.

(4) The Telecommunications Advisory Board shall elect a chairperson and a deputy from among its members to serve for a period of two years. Re-election shall be permitted.

(5) The Telecommunications Advisory Board shall define its rules of procedure. The regulatory authority shall be in charge of the management. The meetings shall be closed to the public.

(6) The Telecommunications Advisory Board may commission studies for scientific presentation of the subjects to be covered.

(7) The Telecommunications Advisory Board shall be financed by the regulatory authority.

## **Section 15**

### **Transitional and final provisions**

#### **Expiry of legal provisions**

**§ 132.** With the entry into force of this Federal Act, the Telecommunications Act [Telekommunikationsgesetz], BGBl. I no. 100/1997 (TKG), as last amended by the Federal Act BGBl. I no. 134/2002, as well as the Act on Telecommunications Routes [Telekommunikationswegegesetz], BGBl. no. 435/1929, as last amended by the Federal Act BGBl. I no. 100/1997, shall become ineffective.

#### **Transitional provisions**

**§ 133.** (1) Administrative proceedings pending at the time of entry into force of this Federal Act shall be concluded under the law in force until this Federal Act takes effect.

(2) Proceedings whose concluding notice has been issued under the provisions of the TKG and has been quashed by a ruling of the Constitutional Court [Verfassungsgerichtshof] or the Administrative Court [Verwaltungsgerichtshof] shall be concluded under the law in force at the time the concluding notice has been issued.

(3) Authorisations and approvals existing at the time of entry into force of this Federal Act shall remain valid. Determinations by the regulatory authority concerning the uniform

reference rate pursuant to § 8 (1) TKG shall remain in effect until corresponding determinations based on this Federal Act are issued.

(4) Notifications pursuant to § 13 TKG and licences pursuant to § 14 TKG existing at the time of entry into force of this Federal Act shall expire upon the entry into force of this Federal Act unless otherwise provided in subsection (6). The confirmation of the notification submitted and the licence document pursuant to the TKG shall be considered as certificates within the meaning of § 15 (3).

(5) If at the time of entry into force of this Federal Act communications services are provided which so far have not been subject to notification but shall be notified under this Federal Act in the future, notification pursuant to § 15 (1) shall be made without delay.

(6) Rights and obligations constituted in the course of a selection procedure based on competition or comparison shall remain unaffected; this shall apply, in particular, to the obligation of “national roaming” on the occasion of the award procedure relating to UMTS/IMT-2000. The rights and obligations shall be considered as incidental provisions within the meaning of § 55 (10). Rights and obligations resulting from the licensing of frequencies to licence holders shall also remain unaffected.

(7) If the regulatory authority, prior to the entry into force of this Federal Act, has identified an undertaking as having significant market power as defined in § 33 TKG, the obligations for undertakings with significant market power under the TKG shall continue to exist until a notice pursuant to § 37 (2) has been issued to the undertaking concerned or removal of the obligations pursuant to § 37 (3) becomes effective.

(8) If the regulatory authority, prior to the entry into force of this Federal Act, has identified an undertaking as having significant market power as defined in § 33 TKG on the market for fixed network voice telephony as defined in § 3 TKG, this undertaking shall be considered as “notified operator” within the meaning of Regulation 2887/2000/EC on unbundled access to the local loop, OJ L336 of 30 December 2000, p 4.

(9) Undertakings under the obligation to provide universal service until the entry into force of this Federal Act shall do so until 31 December 2004. The Federal Minister of Transport, Innovation and Technology shall review in time if the prerequisites for a call for tenders exist. For this purpose, the Federal Minister of Transport, Innovation and Technology may make use of the regulatory authority. If the prerequisites do not exist, the review shall be repeated at intervals not longer than five years. The providers of universal service shall each continue to be under the obligation pursuant to § 26 until a procedure pursuant to § 30 has been concluded. The application for financial compensation pursuant to § 31 for the years 1999 to 2002 shall be filed within nine months of entry into force of this Federal Act, failing which the claim shall be forfeited.

(10) The Numbering Ordinance [Numerierungsverordnung], BGBl. II no. 416/1997, the Ordinance Specifying Access Codes for Emergency Services [Verordnung über die Festlegung von Zugangskennzahlen für Notrufdienste], BGBl. II no. 278/1999, as well as

the Charges Ordinance [Entgeltverordnung], BGBl. II no. 158/1999, shall remain in force until corresponding ordinances under this Federal Act are issued.

(11) The Telekom-Control-Commission in office at the time of entry into force of this Federal Act shall remain in office until the end of its term of office.

### **References**

**§ 134.** References in this Federal Act to other federal laws or ordinances shall be considered as references to the respective law or ordinance as amended.

### **Publications**

**§ 135.** (1) Ordinances and promulgations by the Federal Minister of Transport, Innovation and Technology may contain references to documents with technical subject matters, in particular measurement and test methods, plans and graphs, which are of interest only to a limited number of persons and shall be promulgated by making them available for inspection during office hours.

(2) Ordinances by the regulatory authority shall be promulgated by making them available for inspection at Rundfunk und Telekom Regulierungs-GmbH. The regulatory authority shall announce the issuing of its ordinances, stating their essential subject matters, in the "Amtsblatt zur Wiener Zeitung". This announcement shall contain a reference to the inspection options.

(3) Information to be published by the regulatory authority according to the provisions of this Federal Act shall be included, in any case, in the regulatory authority's web site.

### **Enforcement**

**§ 136.** (1) The Federal Minister of Transport, Innovation and Technology shall be in charge of enforcing this Federal Act unless otherwise provided in subsections (2) to (8).

(2) The Federal Chancellor in agreement with the Federal Minister of Transport, Innovation and Technology shall be in charge of enforcing § 16 (4) and (5).

(3) The Federal Minister of Transport, Innovation and Technology in agreement with the Federal Minister of Finance shall be in charge of enforcing § 82 (3).

(4) The Federal Chancellor shall be in charge of enforcing § 82 (6).

(5) The Federal Minister of Justice in agreement with the Federal Minister of Transport, Innovation and Technology, the Federal Minister of Finance, the Federal Minister of the Interior and Federal Minister of Defence shall be in charge of enforcing § 94 (2).

(6) The Federal Minister of Transport, Innovation and Technology in agreement with the Federal Minister of the Interior and the Federal Minister of Justice shall be in charge of enforcing § 94 (3).

(7) The Federal Minister of Justice shall be in charge of enforcing § 108.

(8) The Federal Minister of the Interior shall be in charge of enforcing § 114 (1).

## **Article II**

### **Amendment of the Federal Act on Work Inspection in the Field of Transport [Verkehrs-Arbeitsinspektion]**

The Federal Act on Work Inspection in the Field of Transport, BGBl. no. 650/1994, as last amended by the Federal Act BGBl. I no. 32/2002, shall be amended as follows:

*§ 1 (2) item 1 lit. e shall read:*

”e) of undertakings and enterprises which mainly provide leased lines pursuant to § 3 item 12 of the Telecommunications Act 2003, BGBl. I no. 70/2003, as well as of undertakings and enterprises which mainly provide a publicly available telephone service pursuant to § 3 item 16 of the Telecommunications Act 2003,“

## **Article III**

### **Federal Act Amending the KommAustria Act [KommAustria-Gesetz]**

The KommAustria Act [KommAustria-Gesetz, KOG], BGBl. I no. 32/2001, shall be amended as follows:

*1. § 10 including heading shall read:*

#### **“Financing and administration of financial resources**

**§ 10.** (1) The expenses of RTR-GmbH shall be financed by financial contributions which shall be made by the providers who are subject to notification pursuant to § 15 TKG 2003 and by broadcasters (contributories) established in Austria.

(2) The financial contributions shall be calculated as a proportion of the respective contributory’s turnover to the total sector-specific turnover and collected, using for the calculation the overall turnover achieved in Austria by the provision of telecommunications services or the provision of broadcasting (sectors), with the exception of the programme fee (§ 31 Austrian Broadcasting Act – [ORF-G]).

(3) The revenues pursuant to subsection (1) shall go to RTR-GmbH. The sum of revenues from the financing contributions collected shall cover, to the greatest extent possible, the amount of the financing expenses for the duties of RTR-GmbH. Any surplus or loss from the preceding year shall be taken into account in fixing the financing contributions for the subsequent year. Where revenues (subsection (1)) from different sectors are used, they shall cover only the respective sector-specific expenses of RTR-

GmbH and shall be shown separately in terms of accounting. The revenues shall be used in line with the principles of efficiency, economical management and effectiveness.

(4) Amounts that have been skimmed off pursuant to § 111 TKG 2003 shall be credited against the financing contributions to be made by the other contributories, however, only up to the amount of the financing contribution owed by each operator in the respective year. Any amounts remaining after such crediting shall be treated in keeping with subsection (3), last sentence.

(5) For economical reasons, in particular where the effort of collecting contributions would be out of proportion to the contributions payable, the turnover of a contributory that remains below a turnover limit set by the Telekom-Control-Commission by way of ordinance shall not be included in the overall sector-specific turnover. Such contributories shall not be required to pay the financing contribution. Prior to issuing the ordinance, the contributories shall be given the opportunity to comment. KommAustria may also issue an ordinance related to the sector for the provision of broadcasting.

(6) The contributories shall report to RTR-GmbH by 15 January their turnover planned for the current year. If the planned turnover is not reported despite a reminder and granting a reasonable period of grace, the contributory's expected turnover shall be estimated by RTR-GmbH.

(7) RTR-GmbH shall estimate and publish the sector-specific expenses of RTR-GmbH in an appropriate manner, according to the principles of efficiency, economical management and effectiveness, by the end of February of each year: In the same way, the sector-specific overall turnover shall be calculated on the basis of the reports received from the contributories pursuant to subsection (5) and, where appropriate, the estimates of RTR-GmbH and shall be published.

(8) On the basis of the published estimates RTR-GmbH shall prescribe to the contributories the financing contributions in four partial amounts payable to RTR-GmbH at the end of the respective quarter.

(9) The contributories shall report the turnover they have actually achieved to RTR-GmbH by 31 May of the subsequent year. Turnover figures which cannot be determined precisely using a reasonable effort shall be estimated by RTR-GmbH.

(10) RTR-GmbH shall determine and publish the actual sector-specific expenses as well as the actual sector-specific overall turnover by 30 September of the subsequent year. Prior to publishing the actual sector-specific expenses as well as the actual sector-specific overall turnover, the contributories shall be given the opportunity to comment.

(11) After publishing the actual sector-specific expenses and the actual sector-specific overall turnover RTR-GmbH shall either credit the financing contributions paid or request additional payment, as applicable.

(12) In the event that an undertaking does not or not properly comply with the obligation to pay the financing contribution, KommAustria, where the undertaking is a broadcasting

provider, or the Telekom-Control-Commission, where the undertaking is a provider under the notification obligation pursuant to § 15 TKG 2003, shall prescribe payment of the financing contribution by means of notice.

(13) For the determination of the financing contributions RTR-GmbH, KommAustria, the Telekom-Control-Commission as well as the auditors commissioned shall answer inquiries and, in justified cases, allow inspection of the records and books to the extent necessary on request.

(14) RTR-GmbH shall compensate the staff of KommAustria for all expenses incurred by their activities including incidental costs. These costs shall be taken into account in fixing the financing contributions for the sector for the provision of broadcasting. Furthermore, for the civil servants employed in KommAustria a contribution for coverage of the pension expenses shall be paid in the amount of 31.8% of the expenses attributable to active income. Active income shall be considered to be all payments for which pension contributions have to be paid. The pension contributions withheld from the civil servants shall be credited. In case of a future change in the amount of the civil servant pension contribution pursuant to § 22 of the Salary Act 1956 [Gehaltsgesetz] the percentage of the contribution margin shall change equivalently.”

*2. In § 15, the word order “pursuant to § 10 (8)” shall be replaced by the word order “pursuant to § 10 (13)”.*

*3. In § 17, subsection (6) as set out below shall be inserted after subsection (5):*

“(6) Persons and undertakings holding a licence under the TKG at the time of entry into effect of this Federal Act shall pay financing contributions until 31 December 2003, pursuant to § 10 KOG as amended by BGBl. I no. 32/2001.”

**Klestil**

**Schüssel**