(ii) the words "those services" wherever they appear and substituting therefor, in each case, the words "those facilities or specified services";

(b) in subsection (2), by deleting the word "services" and substituting therefor the words "facilities or specified services"; and

(c) by deleting subsections (3) and (4) and substituting therefor the following as subsections (3), (4) and (5)—

"(3) The Office may—

(a) after consultation with the Minister, make rules prescribing quality standards for the provision of facilities or specified services in relation to all licensees, and relating to the administration and resolution of customer complaints; and

(b) direct the licensees to conduct all required associated measurements and to report to the Office thereon in such manner and at such intervals as the Office may determine.

(4) Rules made under subsection (3) regarding customer complaints shall be applicable to, and shall be observed by, all licensees.

(5) The Office may—

(a) examine customer contracts in respect of facilities or specified services; and

(b) direct the modification of any term of such a contract which appears to the Office to be unreasonable or unfair."
30. Section 45 of the principal Act is repealed and the following substituted therefor—

"Restriction on power of licensee to refuse to provide facilities and services."

45. A licensee may—

(a) refuse to provide facilities or specified services to consumers; or

(b) discontinue or interrupt the provision of such facilities or specified services to a customer pursuant to an agreement with that customer,

only on grounds which are reasonable and non-discriminatory and where any such action is taken, the licensee shall state the reasons therefor.”.

31. Section 46 of the principal Act is amended in subsection (2) by inserting immediately after the word “rules” the words “, after consultation with the Minister”.

32. Section 48 of the principal Act is amended, in the marginal note thereto and in subsection (1), by deleting the words “voice services” wherever they appear and substituting therefor, in each case, the words “telecommunications services”.

33. Section 57 of the principal Act is amended by deleting the words “subject to affirmative resolution”.

34. Section 60 of the principal Act is amended—

(a) by deleting from the marginal note the words “or Office” and substituting therefor the words “, Office or Authority”; and

(b) in subsections (4), (5), (6) and (8) by inserting next after the word “Office” wherever it appears, the words “or Authority, as the case may be,” in each case.

35. Section 62 of the principal Act is amended—

(a) in subsections (1) and (2) by inserting next after the word “Office” wherever it appears, the words “or Authority, as the case may be,” in each case;
The Telecommunications (Amendment) Act, 2012 [No. 4] 33

(b) by deleting subsection (3) and substituting therefor the following—

“(3) Except where the Office or the Authority, as the case may be, considers the circumstances of any appeal to be exceptional so as to justify its staying the decision to which the appeal relates, it is hereby declared that, until the determination of the appeal, the decision of the Office or the Authority, as the case may be, to which an appeal relates shall not be affected by the appeal proceedings.”; and

(c) in subsection (5), by inserting next after the word “Office” the words “or Authority, as the case may be”.

36. Section 63 of the principal Act is amended—

(a) in the marginal note by inserting immediately after the word “Power” the words “of the Office.”;

(b) by renumbering subsections (3), (4) and (5) as subsections (6), (7) and (8); and

(c) by deleting subsections (1) and (2) and substituting therefor the following as subsections (1), (2), (3), (4) and (5)—

“(1) A person commits an offence if he—

(a) provides false or misleading information to the Office;

(b) fails to furnish any equipment, record, document or other information requested by the Office; or

(c) destroys or alters or causes to be destroyed or altered, any equipment, record, document or other information required to be so furnished.”
(2) A person commits an offence if he engages in any of the following conduct—

(a) operates or knowingly facilitates any bypass operation in contravention of this Act or regulations made under this Act;

(b) owns or operates an unlicensed facility;

(c) provides any specified services to the public without a licence issued under this Act;

(d) undertakes or embarks upon any course of action which could reasonably be expected to result in the disruption or interruption of the telecommunications industry; or

(e) breaches any order of the Office issued pursuant to subsection (3).

(3) The Office may, on its own initiative or on the application of any person, where it is satisfied that there are reasonable grounds for believing that any conduct specified in paragraphs (a) to (d) of subsection (2) or paragraph (a) of section 65 is being carried out by any person—

(a) issue to the person concerned—

(i) a cease and desist order in accordance with section 64;

(ii) an order requiring a licensee to pay compensation to any person affected by any action of the licensee in contravention of this Act or any regulations made under this Act or any licence, determination, memorandum, order or directive of the Office;
(iii) an order requiring the licensee to take such steps as are necessary to remedy the effects of any harm caused by the conduct of the licensee in contravention of this Act, any regulations made under this Act or any licence, determination, memorandum, order or directive of the Office;

(iv) an order to terminate, modify or nullify agreements, activities or decisions of the licensee which are found to be in contravention of this Act or, any regulation made under this Act or any licence, determination, memorandum, order or directive of the Office;

(b) apply to the court for an injunction against a licensee, whose actions, in the opinion of the Office, could cause severe disruption to the operations of another licensee or could cause irreparable damage.

(4) In a case where the Court issues an interim injunction in response to an application under subsection (3)(b), the Court shall not require a financial undertaking by the Office.

(5) A person who commits an offence under subsection (1) or (2) shall be liable—

(a) on summary conviction in a Resident Magistrate’s Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; or

(b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.”;
(d) in subsection (6), as renumbered, by deleting the words “subsection (1)” and substituting therefor the words “subsection (3)”; 

(e) in subsection (7) as renumbered, by deleting the numerals “(3)(a)” and substituting therefor the numerals “(6)(a)”; 

(f) in subsection 8, as renumbered, by deleting the numerals “(4)(b)” and substituting therefor the numerals “(7)(b)”. 

37. The principal Act is amended by inserting next after section 63 the following as sections 63A and 63B—

63A.—(1) A person commits an offence if he engages in any of the following conduct—

(a) provides false or misleading information to the Authority or to the Minister whether in support of an application under or any other matter in relation to this Act; 

(b) engages in the use of the spectrum without first obtaining a spectrum licence; 

(c) fails to furnish any equipment, record, document or other information requested by the Authority pursuant to this Act; 

(d) destroys or alters or causes to be destroyed or altered, any equipment, record, document or other information required to be so furnished; 

(e) being a spectrum licensee, utilizes frequencies other than those for which authorization was granted by the Authority or the Minister; 

(f) fails to comply with a request or directive issued by the Authority or
Minister in the manner and within the
time frame stipulated;

(g) being a spectrum licensee, fails to pay
spectrum licence fees and regulatory
fees prior to the commencement of the
relevant licensing period and in
accordance with the terms and
conditions of the spectrum licence;

(h) breaches orders, directives, deter-
minations or memoranda issued by the
Authority;

(i) behaves in a manner which contravenes
the provisions of—

(i) this Act or any regulations made
under the Act;

(ii) any spectrum licence; or

(iii) orders, directives, determina-
tions or memoranda of the
Authority;

(j) breaches any order of the Authority
issued pursuant to subsection (2);

(k) obstructs, hinders or prevents any
authorized officer from entering premises
for the purposes of carrying out an
investigation under this Act;

(l) wilfully uses any apparatus for the
purpose of causing harmful interference.

(2) The Authority may, on its own initiative
or on the application of any person, where it is
satisfied that there are reasonable grounds for
believing that any conduct specified in paragraphs
(a) to (l) of subsection (1) is being carried out by
any person—

(a) issue to the person concerned—

(i) a cease and desist order in
accordance with section 64;
(ii) an order requiring the spectrum licensee to take such steps as are necessary to remedy the effects of any harm caused by the conduct of the spectrum licensee in contravention of this Act, or regulations made under this Act, or any licence, determination, memorandum, order or directive of the Authority;

(iii) an order to terminate, modify or nullify agreements, activities or decisions of the spectrum licensee which are found to be in contravention of this Act or regulations made under this Act or any spectrum licence, determination, memorandum, order or directive of the Authority;

(b) apply to the court for an interim injunction against a spectrum licensee, whose actions, in the opinion of the Authority, could cause severe disruption to the operations of another spectrum licensee or could cause irreparable damage.

(3) In a case where a court issues an interim injunction in response to an application under subsection (2)(b), the court shall not require a financial undertaking by the Authority.

(4) An order under subsection (2) shall—

(a) state the facts constituting the alleged conduct and where appropriate, the name of the person against whom the allegation is made; and

(b) be accompanied by documents, if any, in support of the allegation.
(5) Before issuing a cease and desist order, the Authority shall cause to be served on the person concerned, a notice—

(a) containing a statement of the facts referred to in subsection (4)(a); and

(b) specifying the period within which and a place at which a hearing will be held to afford to the person concerned an opportunity to show cause why the order should not be made.

(6) Where at a hearing referred to in subsection (5)(b)—

(a) the person concerned fails to show cause why the cease and desist order should not be made, the order shall be issued; or

(b) the Authority determines that the alleged conduct has not occurred, a cease and desist order shall not be issued.

(7) A person who commits an offence under subsection (1) shall be liable on summary conviction in a Resident Magistrate’s Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

63B.—(1) This section applies to an offence against this Act and regulations made under this Act being a prescribed offence.

(2) Where the Office or Authority, as the case may be, believes that a person has committed an offence in relation to its area of regulation and to which this section applies, the Office or Authority may give that person the prescribed notice in writing offering the opportunity of the discharge of liability to conviction for that offence by payment to the Office or Authority, as the case may be, in the manner specified in the notice, of the prescribed pecuniary penalty applicable.
(3) A person shall not be liable to be convicted of any offence referred to in subsection (2) if the pecuniary penalty is paid in accordance with this section and any requirement in respect of which the offence was committed is complied with before the expiration of the period specified in the notice referred to in subsection (2) and shall be a date not less than twenty-one days following the issue of the notice.

(4) Where any person pays the pecuniary penalty in accordance with subsection (3) and complies with any other requirement specified in the notice, the Office or Authority, as the case may be, shall accept that amount as complete satisfaction of any liability to conviction.

(5) Payment of a pecuniary penalty under this section shall be made to the Office or Authority, as the case may be, which shall cause it to be paid into the Consolidated Fund.

(6) In any proceedings for an offence to which this section applies, a certificate that payment of the pecuniary penalty was or was not made to the Office or Authority, as the case may be, by a date specified in the certificate shall, if the certificate purports to be signed by the Office or, as the case may be, the Authority, be sufficient evidence of the facts stated, unless the contrary is proved.

(7) A notice under subsection (2) shall—

(a) specify the offence alleged;
(b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and

(c) state the period during which, by virtue of subsection (3), proceedings will not be taken for the offence, the amount of the pecuniary penalty, and the address at which the pecuniary penalty may be paid.

(8) In any proceedings for an offence to which subsection (2) applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a penalty thereunder unless, in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice or, as the case may be, to such a payment or non-payment.

(9) The Minister may make regulations providing for any matter incidental to the operation of this section, and in particular—

(a) prescribing the offences to which this section applies;

(b) prescribing the form of notice under subsection (2), and the place at which a pecuniary penalty is payable; and

(c) prescribing the duties of the Office and Authority and the information, with regard to any payment made pursuant to a notice under this section, to be supplied to the Office or Authority, as the case may require.

"
38. Section 65 of the principal Act is repealed and the following substituted therefor—

65. The Court may exercise any of the powers specified in section 66, if the Court is satisfied—

(a) on an application by the Office, that a licensee has engaged in any of the following conduct—

(i) breaches any order, directive, determination or memorandum of the Office;

(ii) behaves in a manner which is inconsistent with or contravenes provisions of—

(A) this Act or any regulations made under this Act or the Office of Utilities Regulation Act or any regulations made thereunder;

(B) any licence; or

(C) any order, directive, determination or memorandum of the Office;

(iii) breaches any quality of service standards established or approved by the Office; or

(iv) undertakes or embarks upon any course of action which could reasonably be expected
to result in the disruption or interruption of the telecommunications industry.

(b) on an application by the Authority that a spectrum licensee—

(i) has engaged in any of the conduct specified in section 63A(1); or

(ii) has contravened any provision of this Act or any regulations made under this Act.

39. Subsection (1) of section 66 of the principal Act is amended—

(a) by deleting paragraph (a) and substituting therefor the following—

"(a) order the offending licensee to pay to the Crown a pecuniary penalty not exceeding two hundred million dollars or the offending spectrum licensee to pay to the Crown a pecuniary penalty not exceeding three million dollars’; and

(b) in paragraph (b), by—

(i) inserting immediately after the word “licensee” the words “or spectrum licensee”; and

(ii) deleting the words “subsection (1)(a) or (b) of”.

40. Section 71 of the principal Act is amended—

(a) in subsection (1), by deleting the words “The Office” and substituting therefor the words “Unless otherwise specified in this Act, the Office”; and

(b) in subsection (2), by deleting the words “five hundred thousand” and substituting therefor the words “two million”.
41. The principal Act is amended by inserting next after section 71 the following as section 71A—

"Office may
forbear
enforce-
ment.

71A. Notwithstanding the powers of the Office under this Act, the Office may forbear from enforcing any provision of this Act or of any regulations made under this Act if the Office determines that—

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

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

(c) forbearance from applying the provision or regulations will not impede the administration of this Act; or

(d) forbearance from enforcing the provision or regulations is consistent with the public interest."

42. Subsection (2) of section 72 of the principal Act is amended by deleting the words “five hundred thousand” and substituting therefor the words “three million”.

43. The principal Act is amended by inserting next after section 72 the following as section 72A—

"Power of
Minister to
amend
monetary
penalties.

72A. The Minister may, by order subject to affirmative resolution, amend the monetary penalties imposed by this Act."
44. The principal Act is amended by inserting next after the Second Schedule the following as the Third Schedule—

"THIRD SCHEDULE  (Sections 38A and 38C)

The Universal Service Fund

1.—(1) The seal of the Fund shall be kept in the custody of the chairman or of any officer of the Fund authorized by the Board in that behalf, and shall be affixed to instruments pursuant to a motion of the Board in the presence of the chairman or any other member duly authorized to act in that behalf, and the secretary.

(2) The seal of the Fund shall be authenticated by the signature of the secretary or any other member of the Board duly authorized to act in that behalf.

2.—(1) Subject to sub-paragraph (2), the Fund shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit a chief executive officer and such other officers and employees as it thinks necessary for the proper carrying out of the provisions of this Act.

(2) The Fund shall act in accordance with such guidelines in relation to emoluments payable to the staff of public bodies, as are issued from time to time by the Minister responsible for the public service.

3. All documents, other than those required by law to be under seal, documents made by, and all decisions of, the Fund may be signed under the hand of the chairman or any member of the Board authorized to act in that behalf or an officer of the Fund so authorized.

The Board of Management of the Fund

4. The Board shall consist of such number of members being not less than nine nor more than thirteen as the Minister may, from time to time, appoint including—

(a) the following persons who shall be ex-officio members:

(i) the Financial Secretary or his nominee;
(ii) the Director General of the Planning Institute of Jamaica or his nominee;

(iii) the Chief Executive Officer of the Fund;

(b) such other persons who appear to the Minister to have ability and experience in matters relating to the activities of the Fund (hereinafter referred to as “selected members”).

5.—(1) The Minister shall appoint—

(a) one of the members to be chairman of the Board; and

(b) a deputy chairman from among the other members.

(2) In the case of the absence or inability to act of the chairman, the deputy chairman shall exercise the functions of the chairman.

(3) In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman, the remaining members shall elect one of their number to act as chairman of that meeting.

6. Subject to the provisions of this Schedule, a selected member of the Board shall hold office for a period not exceeding three years and each such member shall be eligible for reappointment.

7. The Minister may appoint any person to act in the place of any member of the Board in the case of the absence or inability to act of such member.

8. A selected member of the Board may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

9. The Minister may at any time revoke the appointment of a selected member if he considers it expedient so to do.

10. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the Gazette.
11.—(1) The Minister may, on the application of any selected member of the Board, grant leave of absence to such member.

(2) The appointment of a selected member shall be regarded as terminated if, without the grant of leave of absence, that member is absent from three consecutive meetings of the Board.

12.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business (but at least six meetings shall be held within each financial year) and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The chairman may at any time call a special meeting of the Board to be held within seven days of a written request for the purpose addressed to him by any two members of the Board.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the deputy chairman or the person elected to act as chairman in accordance with paragraph 5(3) shall preside at the meetings of the Board, and when so presiding the chairman, deputy chairman or the person elected to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Board shall be the number rounded up that approximates to one-half the number of the membership.

(5) The decisions of the Board shall be by a majority of votes and, in addition to an original vote, the chairman or other member presiding at the meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes in proper form of each meeting of the Board shall be kept.

(7) Subject to the provisions of this Schedule the Board may regulate its own proceedings.
13. A member of the Board who is directly or indirectly interested in any matter which is being dealt with by the Board shall—

(a) disclose the nature of his interest at a meeting of the Board; and

(b) not take part in any deliberation or decision of the Board with respect to that matter.

14.—(1) The Board may appoint such committees as it thinks fit, consisting wholly or partly of members of the Board and may delegate to such committees such of the Board’s functions as it thinks fit.

(2) A delegation under sub-paragraph (1) shall not prevent the exercise by the Board of any function so delegated.

15. There shall be paid to the chairman and each member of the Board such remuneration, if any (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

16. No act done or proceedings taken under this Act by the Board shall be questioned on the ground of—

(a) the existence of any vacancy in the chairmanship of, or any defect in the constitution of, the Board; or

(b) any omission, defect or irregularity not affecting the merits of the case.

17.—(1) No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operation of the Board.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Fund shall be liable to the extent that it would be if that member were an employee or agent of the Fund.

18. The office of a selected member of the Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica."
45.—(1) Any instrument which was issued, served or granted under any provision of the principal Act which is repealed, amended or which ceases to have effect by virtue of this Act shall, without prejudice to any power to amend such instrument, and subject to such modification as may be necessary to bring it in conformity with the principal Act as amended by this Act, continue in force until superseded, revoked or otherwise terminated, and shall be deemed to have been issued, served or granted under the principal Act as amended by this Act.

(2) In this section “instrument” means any licence, notice, determination, order, declaration or other authority or any instrument or other requirement, as the circumstances may require that was issued, served or granted pursuant to the principal Act and was in operation prior to the coming into operation of this Act.