



No. 9 of 2009

I assent,

(SIR COLVILLE N. YOUNG)
Governor-General

25th August, 2009

AN ACT to amend the Belize Telecommunications Act (No. 16 of 2002), to provide for assumption of control over telecommunications by the Government in the public interest; and to provide for matters connected therewith or incidental thereto.

(Gazetted 25th August, 2009.)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and the Senate of Belize and by the authority of the same, as follows:-

1. This Act may be cited as the

Short title.

BELIZE TELECOMMUNICATIONS
(AMENDMENT) ACT, 2009,

Act No. 16/02.
29/05. and shall be read and construed as one with the Belize Telecommunications Act which, as amended, is hereinafter referred to as the principal Act.

Repeal of
section 57A.
No. 29/05. 2. Section 57A of the principal Act [added by Act No. 29 of 2005] is hereby repealed.

Addition of
new Part XII
and sections
63 to 74. 3. The principal Act is hereby amended by the addition of the following as new Part XII (containing sections 63 to 74) immediately after section 62:-

**“ PART XII
ASSUMPTION OF CONTROL OVER
TELECOMMUNICATIONS BY THE
GOVERNMENT**

Assumption of
control by
Government
on revocation
of licence or
for a public
purpose. 63. (1) Where the licence granted to a public utility provider is revoked by the Public Utilities Commission, or where a licensee ceases operations or loses control of operations, or where the Minister considers that control over telecommunications should be acquired for a public purpose, the Minister may, with the approval of the Minister of Finance, by Order published in the *Gazette*, acquire for and on behalf of the Government, all such property as he may, from time to time, consider necessary to take possession of and to assume control over telecommunications, and every such order shall be *prima facie* evidence that the property to which it relates is required for a public purpose.

(2) Upon publication in the *Gazette* of the Order made pursuant to subsection (1) above, the property to which it relates shall vest absolutely in the Government free of

all encumbrances without any further assurance, and the Registrar General, the Registrar of Lands, the Registrar of Companies and all other relevant authorities shall take due notice thereof and shall make such annotations on the records as may be necessary and issue all such certificates or documents as may be required to perfect the title of the Government to all such property.

(3) In every case where the Minister makes an Order under subsection (1) above, there shall be paid to the owner of the property that has been acquired by virtue of the said Order, reasonable compensation within a reasonable time in accordance with the provisions of this Act.

(4) Any person claiming an interest in or right over the acquired property shall have a right of access to the courts for the purpose of determining whether the acquisition was duly carried out for a public purpose in accordance with this Act.

(5) Where a licence has been revoked by the Public Utilities Commission, the power vested in the Minister under subsection (1) above may be exercised notwithstanding that such revocation is the subject of any appeal or review proceedings.

(6) An Order made under subsection (1) above may contain such ancillary and consequential directions as may be necessary to give full effect to the Order, including the appointment of an interim Board of Directors of a public utility provider and of its subsidiaries.

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(7) Notwithstanding anything contained in the Interpretation Act, an Order made under subsection (1) above may provide that any contravention or breach thereof shall be punishable on summary conviction by a fine not exceeding five thousand dollars for each day the offence continues, or by a term of imprisonment not exceeding two years, or by both such fine and term of imprisonment.

(8) Every Order made by the Minister under this section shall be subject to negative resolution.

(9) In this section -

“**property**” includes shares, stock, interests of all kinds, including a mortgagee’s or chargee’s interest in property, telecommunications equipment, installations, service, apparatus or station, assets, cash and cash equivalents, rights, files, documentation, customer database, and all other property of whatever description, tangible or intangible, corporeal or incorporeal, including property held by the subsidiaries, affiliates or associates of a licensee;

“**licensee**” includes, where a licence has been revoked by the Public Utilities Commission, a person or entity, corporate or unincorporate, who held a licence immediately before such revocation.

(10) The power of the Minister to make an Order under this section shall be exercised by statutory instrument with legislative effect.

(11) The Minister may make successive Orders under this section as he may consider necessary and the foregoing provisions of this section shall apply to every such Order.

64. (1) As soon as may be after the acquisition of property by virtue of section 63, the Financial Secretary shall publish in the *Gazette* and in at least one newspaper of general circulation in Belize, a notice of acquisition containing particulars of the property that has been acquired and requiring all interested persons to submit their claims within such time as may be specified, being not less than one month after the date of publication of the notice in the *Gazette*.

Notice of
acquisition.

(2) The Financial Secretary shall cause a copy of the notice of acquisition to be served, either personally on, or by registered post addressed to the last known place of abode or business of, every person who is known or believed by the Financial Secretary to be entitled to compensation in respect of the acquisition, and whose whereabouts are known to the Financial Secretary.

(3) Any person who is required to make a claim under this section wilfully makes a claim which is false in any material particular commits an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year.

Financial
Secretary to
treat with
claimants.

65. (1) On receipt and verification of the claims, the Financial Secretary shall, without delay, and with the prior approval of the Minister of Finance, enter into negotiations with the claimants for the payment of reasonable compensation within a reasonable time.

(2) In default of determination by agreement, the compensation payable under this Act shall be determined by the Supreme Court (hereinafter referred to as "the Court") as hereinafter provided.

Proceedings in
respect of
claims to
compensation.

66. (1) Proceedings in respect of any claim to compensation under this Act (other than claims determined by agreement) may be taken either by the claimant or by the Financial Secretary and shall, unless otherwise provided by rules made under section 72, be commenced by a fixed date claim form and the procedure set out in the Supreme Court (Civil procedure) Rules, 2005, shall accordingly apply.

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(2) In any proceedings for assessment of compensation instituted by the Financial Secretary, every person by whom or on whose behalf any such compensation is claimed or who has an interest in the property in respect of which compensation is payable under this Act and whose whereabouts are known to the Financial Secretary shall be named as a party to the proceedings.

(3) Where in any such proceedings or otherwise, the Court is of the opinion that any person by whom or on whose behalf

compensation is claimed or who has an interest in the property in respect of which compensation is payable is subject to any disability or incapacity, the Court may appoint a guardian *ad litem* to protect the interests of that person.

Rules for
assessment of
compensation.

67. (1) Subject to this Act, the following rules shall apply to the determination of compensation for the acquisition of property:

- (a) the value of the property shall, subject as hereinafter provided, be taken to be the amount which the property in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realised at the date of publication in the *Gazette* of the Order made under section 63 of this Act;
- (b) where the property is acquired consequent upon the revocation of the licence of the public utility provider, or on the cessation of telecommunications operations by such provider, the market value of the property shall be reduced by such amount as may be considered reasonable in all the circumstances;

- (c) in assessing compensation, the Court shall employ the generally accepted methods of valuation of the kind of property that has been acquired, taking particularly into account the comparable sales of such property in Belize;
- (d) the special suitability or adaptability of the property for any purpose shall not be taken into account if that purpose is a purpose to which the property could be applied only in pursuance of statutory powers or other permit, licence or authority not already granted or revoked, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or a public statutory body;
- (e) account shall be taken of any pending litigation against the public utility provider and of any pending or potential claims against such provider;
- (f) all compensation assessed under this Act shall be expressed and payable in the lawful currency of Belize.

(2) In assessing compensation, no allowance shall be made on account of:-

- (i) the acquisition being compulsory or the degree of urgency or necessity which had led to the acquisition;
- (ii) any disinclination on the part of the person interested to part with the property acquired;
- (iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action or claim;
- (iv) any increase in the value of the property acquired likely to accrue from the use to which the property acquired will be put;
- (v) any outlay or improvement of, or other dealings with, such property, which have been made, commenced or effected within twelve months immediately before the publication of the Order under section 63, with the intention of enhancing the compensation to be awarded therefor in the event of such property being acquired for public purposes;

- (vi) any accommodation or other agreements or settlement deeds (by whatever name called), containing provisions contrary to law.

Interest.

68. (1) The Court, in awarding compensation, may add interest thereto and shall be guided by the rate paid by commercial banks in Belize on fixed deposits at the date of acquisition; so, however, that reasonable compensation shall be paid to the claimant having regard to all the circumstances.

(2) The interest under subsection (1) above may be added for the whole or any part of the period between the date of acquisition of the property and the date of the payment of the compensation awarded by the Court.

Costs in proceedings in the Supreme Court.

69. (1) Subject to this section, the amount of costs to be awarded in proceedings in the Supreme Court and all questions relating thereto shall be determined by the Court.

(2) Where an unconditional offer in writing of any sum as compensation to any claimant has been made by or on behalf of the Financial Secretary with the prior approval of the Minister of Finance and the sum awarded as compensation does not exceed the sum offered, the Court shall, unless for special reasons it considers otherwise, order the claimant to bear his own costs and to pay the costs of the Financial Secretary so far as the costs of the Financial Secretary were incurred after the offer was made.

(3) Where the claimant has failed to put forward a proper claim in sufficient time to enable the Financial Secretary to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by or on behalf of the Financial Secretary at the time when, in the opinion of the Court, a proper claim should have been put forward and the claimant had been awarded a sum not exceeding the amount of such offer.

(4) Where a claimant has indicated in writing to accept any sum as compensation and has put forward a proper claim in sufficient time to enable the Financial Secretary to make a formal offer and the sum awarded is equal to or exceeds that sum, the Court shall, unless for special reasons it considers otherwise, order the Financial Secretary to bear his own costs and to pay the costs of the claimant so far as the costs of the claimant were incurred after he had indicated in writing to accept such sum as compensation.

(5) Where the Court orders the claimant to pay the costs or any part of the costs of the Financial Secretary, the Financial Secretary may deduct the amount so payable by the claimant from the amount of compensation payable to him.

(6) For the purpose of this section, costs includes fees, charges and expenses.

70. Unless the Court considers that injustice may otherwise be done, no claim for compensation in respect of compulsory

Limitation of
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making
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(4) Where a claimant has indicated in writing to accept any sum as compensation and has put forward a proper claim in sufficient time to enable the Financial Secretary to make a formal offer and the sum awarded is equal to or exceeds that sum, the Court shall, unless for special reasons it considers otherwise, order the Financial Secretary to bear his own costs and to pay the costs of the claimant so far as the costs of the claimant were incurred after he had indicated in writing to accept such sum as compensation.

(5) Where the Court orders the claimant to pay the costs or any part of the costs of the Financial Secretary, the Financial Secretary may deduct the amount so payable by the claimant from the amount of compensation payable to him.

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acquisition of property under this Act shall be admitted or entertained by the Government unless it is made in writing to the Financial Secretary within twelve months after the publication in the *Gazette* of the notice of acquisition pursuant to section 64 of this Act.

Payment of
compensation
etc.

71. All amounts which have been awarded by way of compensation under this Act, including interest and costs to be paid by the Financial Secretary, and all other costs, charges and expenses which shall be incurred under the authority of this Act, shall be paid out of moneys voted for the purpose by the National Assembly and all such compensation shall be paid within a reasonable time:

Provided that the Financial Secretary shall be entitled to deduct from any compensation which may have been awarded such sums as are due to the Government as arrears of any taxes, duties and charges, and all other sums whatsoever, which are owed to the Government by the person entitled to compensation.

Rules of
Court.

72. The Chief Justice may, with the approval of the Attorney General, make rules for regulating the practice and procedure to be adopted in proceedings in the Supreme Court under this Act, but until such rules are made, the Supreme Court (Civil Procedure) Rules, 2005 will continue to apply.

SI 75/2005.

Appeals.

73. Either party may appeal to the Court of Appeal against the determination of the Supreme Court under this Act, and every

such appeal shall be made within the time and in the manner laid down by the Court of Appeal Act and the rules made thereunder.

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74. Subject to the Belize Constitution, where there is a conflict between the provisions of this Part of this Act (or any Orders made thereunder) and any other law, rule or regulation, or the articles of association or other corporate documents of a public utility provider or its subsidiaries, this Part and any Orders made thereunder shall prevail.”

This part to prevail.
CAP. 4.