

(4) Section 20 (1) and (2) of this Act shall come into force on the 1st day of January 1989.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the terms “Demarcation point”, “PABX”, “Person”, and “Telex station”. 5

(2) Section 2 (1) of the principal Act is hereby further amended by adding to the definition of the term “Corporation” the words “; and includes any subsidiary (within the meaning of section 158 of the Companies Act 1955) of the Corporation”. 10

(3) Section 2 (1) of the principal Act is hereby further amended by omitting from the definition of the term “network” the words “, other than any system used only for broadcasting (as defined in section 2 of the Broadcasting Act 1976)”. 15

(4) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “network operator”, and substituting the following definition: 20

“ ‘Network operator’ means the Corporation and any person declared by the Governor-General by Order in Council under section 2A of this Act to be a network operator for the purposes of this Act:”.

(5) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “works”, and substituting the following definition: 25

“ ‘Works’ includes—

“(a) A line and any instrument, furniture, plant, office, building, machinery, engine, excavation, or work, of whatever description, used in relation to, or in any way connected with, a line; and

“(b) A fixed radio station:”.

(6) Section 2 (1) of the principal Act is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions: 30

“ ‘Fixed radio station’ means radio apparatus comprising transmitters or receivers, or a combination of transmitters and receivers, installed at a fixed location, for the purposes of carrying on a radiocommunication service: 35

“ ‘Packet telecommunications services’ means services in which data or voice telecommunications are transferred through a network in units or packets which include information to control the progress of the packet through the network: 40

5 “‘Radiocommunication’ means any transmission, emission, or reception of signs, signals, writing, images, sounds, or intelligence of any nature by electromagnetic waves of frequencies between 9 kilohertz and 3,000 gigahertz, propagated in space without artificial guide:

“‘Radio apparatus’ means any apparatus intended for the purpose of effecting radiocommunication, whether by transmission or reception, or both:

10 “‘Telephone telecommunications services’ means services in which voice signals are transmitted over a network designed for such purposes:

15 “‘Telex telecommunications services’ means services in which textual messages based on individual transmission of alphanumeric characters are transmitted over a network designed for such purposes:”.

(7) Section 2 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

20 “(1A) For the purposes of sections 11, 12, and 20 of this Act—
“‘Line’ means a wire or wires or a conductor of any other kind (including a fibre optic cable) used or intended to be used for telecommunication; and includes any pole, insulator, casing, minor fixture, tunnel, or other equipment or material used or intended to be used for supporting, enclosing, surrounding, or protecting any such wire or conductor; and also includes any part of a line:

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30 “‘Existing lines’ means any lines constructed by the Corporation before the 1st day of April 1989 and includes any lines that were wholly or partly in existence, or work on the construction, erection or laying of which commenced before the 1st day of April 1989.”

35 (8) Section 2 of the principal Act is hereby further amended by repealing subsection (2).

3. Order in Council declaring person to be network operator—The principal Act is hereby amended by inserting, after subsection (2), the following section:

40 “2A. (1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, declare a person to be a network operator for the purposes of this Act or any provision or provisions of this Act.

“(2) For the purposes of facilitating entry into and competition in telecommunications markets, the Minister shall

make a recommendation under **subsection (1)** of this section where the Minister is satisfied that a declaration is necessary to enable the person to commence or carry on business.”

4. Protection of network—The principal Act is hereby amended by repealing section 3. 5

5. Telecommunications links—The principal Act is hereby amended by repealing section 4.

6. New sections substituted—The principal Act is hereby amended by repealing section 5, and substituting the following sections: 10

“**5. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

“(a) Providing for the registration of persons establishing, operating, or maintaining facilities for the purpose of providing public switched telecommunications services, such as public telephone, telex, and packet telecommunications services to or from territories outside New Zealand: 15

“(b) Prescribing the terms and conditions subject to which any such registration may be granted, refused, amended, transferred, suspended, or revoked, and the fees payable in respect thereof: 20

“(c) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Part of this Act or the terms or conditions of any registration under any such regulations, and the amount of the fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$10,000. 25 30

“**5A. Registration**—(1) No person other than a person registered in accordance with regulations made under **section 5** of this Act, shall establish, operate, or maintain facilities for the purpose of providing public switched telecommunications services, such as public telephone, telex, and packet telecommunications services to or from territories outside New Zealand. 35

“(2) Every person who contravenes **subsection (1)** of this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding \$100,000, together with a fine not 40

exceeding \$10,000 for each day during which the offence continues.”

7. Interference with network—Section 6 of the principal Act is hereby amended by repealing subsections (3) and (4).

5 **8. Repeal of transitional provisions relating to customer equipment**—The principal Act is hereby amended by repealing section 7.

9. Offensive language and disturbing use of telephone—Section 8 of the principal Act is hereby amended
10 by repealing subsection (2), and substituting the following subsection:

“(2) Every person commits an offence against this Act who—

15 “(a) Uses, or causes or suffers to be used, any telephone station for the purpose of disturbing, annoying, or irritating any person, whether by calling up without speech or by wantonly or maliciously transmitting communications or sounds, with the intention of offending the recipient; or

20 “(b) In using a telephone station wilfully gives any fictitious order, instruction, or message.”

10. Rights of entry in respect of lines—The principal Act is hereby amended by repealing section 11, and substituting the following section:

25 “11. (1) Where a network operator wishes to enter upon any land (including land owned by the Crown) for the purpose of constructing, erecting, or laying any line, the network operator may, upon giving the owner and occupier of the land not less than 10 working days notice of its intention to do so, apply to the District Court for an order under this section.

30 “(2) On being satisfied that the construction, erection, or laying of any line is necessary for the purposes of telecommunications, and that the network operator has taken all reasonable steps to negotiate an agreement for entry, the Court may make an order authorising the network operator
35 to—

40 “(a) Enter and re-enter the land at reasonable times, with or without such assistants, aircraft, boats, vehicles, appliances, machinery, and equipment as are reasonably necessary for the construction, erection, or laying of any line:

“(b) Perform such work as may be reasonably necessary to construct, erect, or lay any line.

“(3) Every order under this section shall specify—

“(a) How and when entry is to be made; and

“(b) The specific powers intended to be exercised; and

“(c) Such other conditions as the Court thinks fit to impose.

“(4) Before exercising any powers authorised by an order made under this section, the network operator shall serve the order on the owner and occupier of the land to which the order relates.

“(5) Every officer, employee, or agent of a network operator acting in pursuance of an order made under this section shall have with him or her and shall produce on initial entry and if required to do so, evidence of his or her authority and identity.”

11. Rights of entry in respect of existing works and existing lines—Section 12 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to subsection (3) of this section, a network operator may enter upon land (including land owned by the Crown) for the purpose of gaining access to any existing works or existing lines owned by the operator and may perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing any such works or lines.”

12. New sections substituted—The principal Act is hereby amended by repealing section 15, and substituting the following sections:

“15. Construction or repairing of lines on roads—

(1) Except as provided in subsection (2) of this section a network operator may from time to time construct, place, and maintain lines in, on, along, over, across, or under any road; and for any of these purposes may open or break up any road, and alter the position thereunder of any pipe (not being a main) for the supply of water or gas; and may alter, repair, or remove any such lines or any part thereof.

“(2) No network operator shall exercise the powers contained in subsection (1) of this section otherwise than in accordance with such reasonable conditions as the local authority or other body or person having jurisdiction over that road may prescribe.

“15A. Notice to be given before alteration to lines or works on road—(1) Except as provided in subsection (3) of this

section, before a network operator proceeds to open or break up any road, the network operator shall give to the local authority or other body or person having jurisdiction over the road, at least 7 days written notice of the intention to undertake the work or such lesser period of notice as may be agreed by that local authority or other body or person.

“(2) Every such notice shall specify the location of the proposed work, the nature of the work to be undertaken, and the reasons for it.

“(3) Where any such work is rendered urgent and necessary by any defective equipment, or other emergency, the network operator shall be excused from complying with the requirements of **subsection (1)** of this section before commencing the work, but shall give the information required by **subsection (2)** of this section as soon as practicable thereafter.

“**15B. Offence for failure to comply with section 15 or section 15A**—A network operator who fails to comply with **section 15 or section 15A** of this Act commits an offence against this Act and shall be liable, on summary conviction, to a fine not exceeding \$10,000.

“**15c. Appeals in relation to conditions imposed—**

(1) Subject to **section 15b** of this Act, and to **subsection (2)** of this section, the network operator shall have a right of appeal to the District Court against any or all of the conditions imposed pursuant to **section 15 (2)** of this Act by the local authority or other body or person having jurisdiction over the road.

“(2) Every such appeal shall be made by giving notice of appeal within 20 working days after the date of notification of the conditions imposed or within such further time as the Court may allow.

“**15D. Determination of appeals**—In its determination of any appeal the District Court may confirm or modify any or all of the conditions imposed.”

13. Protection of existing works and lines—Section 20 of the principal Act is hereby amended—

(a) By inserting, after the words “existing works”, the words “or existing lines”:

(b) By inserting, after the words “the works”, and also after the words “such works”, the words “or lines”.

14. New Part inserted—The principal Act is hereby amended by inserting, after Part I, the following new Part IA:

“PART IA

“ENFORCEMENT AND REMEDIES

“20A. **Jurisdiction of High Court**—In accordance with this Part of this Act, the High Court shall hear and determine the following matters: 5

“(a) Applications for injunctions under **section 20c** of this Act:

“(b) Applications for damages under **section 20d** of this Act.

“20B. **Jurisdiction of District Courts**—In accordance with this Part of this Act, the District Courts shall hear and determine applications for damages under **section 20d** of this Act. 10

“20c. **Injunctions may be granted by Court for contravention of section 6**—(1) The High Court may, on the application of the network operator, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following: 15

“(a) A contravention of **section 6** of this Act:

“(b) Any attempt to contravene that provision:

“(c) Aiding, abetting, counselling, or procuring any other person to contravene that provision: 20

“(d) Inducing, or attempting to induce, any other person, whether by threats, promises, or otherwise, to contravene that provision:

“(e) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that provision: 25

“(f) Conspiring with any other person to contravene that provision.

“(2) The Court may at any time rescind or vary an injunction granted under this section. 30

“(3) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

“(a) If it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or 35

“(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not it appears to the Court that the person intends 40
to engage again, or to continue to engage, in conduct of that kind.

“(4) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

5 “(a) If it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

10 “(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not the person has previously engaged in conduct of that kind and whether or not there is imminent danger of substantial damage to any person if the first-mentioned person
15 engages in conduct of that kind.

“20D. **Actions for damages for contravention of section 6**—(1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes any of the following:

20 “(a) A contravention of **section 6** of this Act:

“ (b) Aiding, abetting, counselling, or procuring the contravention of that section:

“ (c) Inducing by threats, promises, or otherwise, the contravention of that section:

25 “(d) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of that section:

“ (e) Conspiring with any other person in the contravention of that section.

30 “(2) In the exercise of its jurisdiction under this section a District Court shall not make an order requiring a person to pay an amount exceeding \$12,000.”

35 **15. Interpretation**—Section 21 of the principal Act is hereby amended by inserting, in the appropriate alphabetical order, the following definitions:

40 “ ‘Interfering equipment’ means any apparatus or equipment of any kind (whether radio apparatus or equipment or not) that may generate electric waves (being radio frequency energy) likely to interfere with radiocommunications; and includes an electric power line within the meaning of the Public Works Act 1981:

“ ‘Registrar’ means the Registrar of a Court; and includes any Deputy Registrar:”.

16. Powers to obtain documents and radio apparatus—

(1) Section 26 of the principal Act is hereby amended by inserting, after the word “premises”, in each place where it occurs, the words “building, aircraft, ship, carriage, vehicle, box, receptacle, or place”. 5

(2) Section 26 of the principal Act is hereby further amended by inserting, after the words “radio apparatus”, in each place where they occur, the words “or interfering equipment”. 10

(3) Section 26 (3) of the principal Act is hereby amended by inserting, after the words “Justice of the Peace”, in each place where they occur, the words “or any Registrar (not being a constable)”.

(4) Section 26 (4) of the principal Act is hereby amended by repealing the words “, within such period as shall be specified in the warrant,”, and substituting the words “or any constable”. 15

(5) Section 26 of the principal Act is hereby further amended by inserting, after subsection (4), the following subsections: 20

“(4A) Any warrant may be executed by the person named in the warrant or by any constable.

“(4B) Every warrant to search any premises, building, aircraft, ship, carriage, vehicle, or place shall authorise the persons named in the warrant or any constable at any time within one month from the date thereof to enter and search the premises, building, aircraft, ship, carriage, vehicle, or place with such assistants as may be necessary, and, if necessary, to use force for making entry, whether by breaking open doors or otherwise; and shall authorise any person named in the warrant or any constable to break open any box or receptacle, by force if necessary. 30

“(4C) Every warrant to search any box or receptacle shall authorise any person named in the warrant to break open the box or receptacle, by force if necessary.” 35

17. Penalties—(1) Section 27 (1) is hereby amended by inserting, after the words “this Act”, the words “or against any regulations made under this Part of this Act”.

(2) Section 27 of the principal Act is hereby further amended by inserting, after the words “radio apparatus”, in each place where they occur, the words “or interfering equipment”. 40

18. Delegation of powers by Secretary—(1) The principal Act is hereby amended by repealing section 28.

(2) Every delegation made under section 28 of the principal Act that was in force immediately before the commencement of this Act shall continue to have effect according to its tenor as if it had been made on that commencement under section 28
5 or section 41 of the State Sector Act 1988 and may be amended and revoked accordingly.

19. Regulations—(1) Section 30 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraphs:

10 “(aa) Providing for the allocation of licences by competitive tender, and for the payment of consideration to the Crown pursuant to any such tender:

“(ab) Providing for the exemption of certain radio apparatus, as determined by the Secretary, from the
15 requirement to be licensed:”.

(2) Section 30 (2) of the principal Act is hereby further amended by inserting, after paragraph (e), the following paragraph:

20 “(ea) Providing for offences in respect of contraventions of any regulations made under this section:”.

(3) Section 30 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

25 “(2A) Without limiting the Acts Interpretation Act 1924, no regulation made under this Act shall be invalid because it leaves any matter to the discretion of the Secretary or any other person or because it authorises the Secretary or any other person to give any consent or approval or to set any standard on or subject to conditions to be approved by the Secretary.”

20. Amendments to other enactments—(1) The
30 Broadcasting Act 1976 is hereby amended by repealing section 52 (as substituted by section 32 (1) of the State-Owned Enterprises Act 1986).

(2) The State-Owned Enterprises Act 1986 is hereby
35 consequentially amended by omitting so much of the Third Schedule as relates to section 52 of the Broadcasting Act 1976.

(3) The Town and Country Planning Act 1977 is hereby amended by repealing paragraph (b) of section 64 (1), and substituting the following paragraph:

“(b) Lines as defined in section 2(1A) of the
Telecommunications Act 1987.