

Decision Regulating various matters of a transitional nature arising out of previous Decisions of the High Representative as aforesaid and Enacting the Law on Communications of Bosnia and Herzegovina

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by

making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) "measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Noting that because there existed a need for a comprehensive regulatory regime for the broadcasting industry the High Representative, on 11 June 1998, issued a Decision establishing the Independent Media Commission;

Further noting that due to the Parliamentary Assembly's failure to adopt the Telecommunications Law of Bosnia and Herzegovina as submitted by the Council of Ministers, the High Representative, on 11 September 1998, issued a Decision enacting the Telecommunications Law, Official Gazette of Bosnia and Herzegovina 10/99;

Bearing in mind the exhortations of the Peace Implementation Council in its Communiqué of 7 December 2000 acknowledging the High Representative's intention to reinforce a comprehensive approach to communications by combining the competencies of the Independent Media Commission and the Telecommunications Regulatory Agency;

Recalling the Peace Implementation Council's exhortations of 23/24 May 2000, directing the High Representative to ensure rapid development of State-level regulatory mechanisms for telecommunications and media and to ensure that there were no duplicative or conflicting regulatory competencies at any level of government, and drawing the parties' attention to the need to foster functional and democratically accountable common institutions;

Further Recalling that, on 2 March 2001, the High Representative issued a Decision, Official Gazette of Bosnia and Herzegovina 8/01, Official Gazette of the Federation of Bosnia and Herzegovina 11/01, and Official Gazette of Republika Srpska 12/01, Combining the Competencies of the

Independent Media Commission and the Telecommunications Regulatory Agency, thereby creating the Communications Regulatory Agency;

Noting that the combination of the power and function of the Enforcement Panel and the Director General is necessary after a transitional time in order to allow the Agency to fulfil its responsibilities in a future fully liberalised environment;

Recognising that telecommunications plays a major role in the economic development of nations and that opening the telecommunications field to competition offers economic benefits to consumers and the business sector alike;

Observing that the Peace Implementation Council in its Communiqué of 1 February 2001 noted that the “momentum of economic reform needs to be strengthened” because “private investment is a key prerequisite to stop a deepening of the economic and social crisis in Bosnia and Herzegovina”;

Noting that economic development is a key strategic goal of the international community in Bosnia and Herzegovina, and fostering a competitive environment for telecommunications is an integral part of that process;

Observing that the Peace Implementation Council, in its Communiqué of 13 September 2001, called upon the local authorities to take “the required decisive and concrete steps toward the structural economic reforms so desperately needed to attract foreign investment”;

Observing that the Peace Implementation Council, in its Communiqué of 30-31 July 2002, welcomed the commitment to create a climate conducive to private enterprise and delivering high-quality affordable public services, thereby recognising that a competitive telecommunications environment is best fostered by an effective and efficient regulatory environment underpinned by a comprehensive and clear legal foundation that gives to the market the requisite legal

certainties necessary for investment and growth;

Recalling that a draft Communications Law of Bosnia and Herzegovina has been awaiting action by the Council of Ministers for the last eighteen (18) months;

Further noting that in the Agenda For Reform Agreed Between the Government of Bosnia and Herzegovina and the International Community dated July 2002, the authorities pledged to “pass and implement the Communications Law of Bosnia and Herzegovina as a key component toward full liberalisation and market competition of the telecom industry”;

Observing that the Communications Law of Bosnia and Herzegovina, which is a prerequisite for foreign investment and a necessary element for a fully functioning and empowered regulator, has yet to be adopted;

Recalling that the implementation of this Law and its objectives require a politically independent Communications Regulatory Agency that relies on the exceptional expertise and competence of the members of the Council of the Agency and the Director General, it is therefore necessary to ensure that the members of the Council of the Agency and the Director General are exclusively appointed on considerations based on their integrity, knowledge and professional merit.

Having considered and borne in mind the totality of the matters aforesaid, I hereby issue the following:

DECISION

1) Regulating various matters of a transitional nature arising out of previous Decisions of the High Representative as aforesaid; and

2) Enacting the Law on Communications of Bosnia and Herzegovina.

1 (a) All acts, codes, rules, guidelines and decisions made by the Independent Media Commission and the Telecommunications Regulatory Agency shall remain in force unless replaced or amended by decisions made by the Communications Regulatory Agency. In addition, all acts, codes, rules, guidelines and decisions made by the Communications Regulatory Agency as set forth by the Decision of the High Representative of 2 March 2001 shall remain in force unless replaced or amended by the agency itself.

1 (b) The current members of the Council of the Agency, appointed by the High Representative, shall remain in office until the expiry of their mandate at which time, and within sixty (60) days thereof, the Council of Ministers, on the basis of a list of candidates submitted by the Council of the Agency, and the Parliamentary Assembly of Bosnia and Herzegovina shall respectively nominate and appoint the succeeding members of the Council of the Agency in accordance with Article 39 of the Law.

1 (c) The Acting Chief Executive, appointed by the High Representative, shall remain in office until no later than 31 October 2003, by which time the Director General shall have been appointed pursuant to Article 40 of the Law.

1 (d) The mandate of the current six (6) members of the Enforcement Panel is hereby renewed until 31 December 2004. The High Representative shall replace a member of the Enforcement Panel in cases pursuant to Article 42 paragraphs (1a) through (1g) of the Law.

2) The Law on Communications of Bosnia and Herzegovina as hereinafter set out and which forms an integral part of the Decision herein is hereby enacted.

The Law on Communications of Bosnia and Herzegovina imposed by this Decision shall replace the Telecommunications Law of Bosnia and Herzegovina (Official Gazette of Bosnia and

Herzegovina 10/99).

The said Law shall enter into force pursuant to Article 50 thereof but on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts the same in due form, without amendment and with no conditions attached.

This Decision shall come into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina, the Official Gazette of the Federation of Bosnia and Herzegovina, the Official Gazette of Republika Srpska and the Official Gazette of the District of Brcko.

Sarajevo, 21 October 2002

Paddy Ashdown

High Representative

LAW ON COMMUNICATIONS OF BOSNIA AND HERZEGOVINA

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I. INTRODUCTION AND GENERAL PROVISIONS

Article 1

Scope of the Law

1. This Law regulates communications in Bosnia and Herzegovina, and the establishment and work of the Communications Regulatory Agency of Bosnia and Herzegovina in accordance with the Constitution of Bosnia and Herzegovina, which provides for the establishment and operation of common and international communications facilities.

2. Communications shall include telecommunications, radio, broadcasting (including cable television) and associated services and facilities.

3. This Law is without prejudice to telecommunications equipment installed and operated exclusively for the purpose of public security and defence and for the Communications Regulatory Agency. However, the frequencies used by such equipment shall be agreed with the Communications Regulatory Agency.

Article 2

Definitions

1. Except as provided for in paragraph (2) of this Article, all expressions used in this Law shall have the meaning given to them in the General Framework Agreement for Peace in Bosnia and Herzegovina, the regulations and recommendations of the International Telecommunication Union or the recommendations of the Conference of European Postal

and Telecommunications Administrations, as appropriate.

2. For the purpose of this law and the regulation of the communications sector:

a) **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 telecommunications services;

b) **Agency** means the Communications Regulatory Agency of Bosnia and Herzegovina;

c) **Broadcaster** means any legal or physical person providing broadcasting;

d) **Broadcasting** means any point-to-multipoint emission of signs, signals, text, images, sounds or data by wire, optical fibre, radio, or any other electromagnetic means intended for general reception by the public by means of receivers adapted for the purpose;

e) **Common facility** means the system encompassing any of the following: issues in connection with the radio frequency spectrum and the management thereof; licensing of all broadcasters; licensing of all telecommunications operators providing an international service or any service being of importance to the whole population of Bosnia and Herzegovina; the establishment and maintenance of a licence fee system for both broadcasting and telecommunications; establishment of technical and quality standards; the numbering plan; the information required to create or maintain directory enquiry services as well as any specification, standard or rule necessary for ensuring the interoperability and/or interconnection of public telecommunications networks, and the compatibility of terminal equipment therewith;

f) **Council of the Agency** means the Council of the Communications Regulatory Agency;

- g) **Council of Ministers** means the Council of Ministers of Bosnia and Herzegovina;
- h) **Directory database** means, in relation to a public telecommunications network, a list which contains the names, addresses and numbers of persons who may be contacted by means of that service;
- i) **Frequency database** means the record of frequency assignments made in the whole territory of Bosnia and Herzegovina;
- j) **Interconnection** means the physical and logical linking of public telecommunications 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;
- k) **International telecommunications services** means a telecommunications service provided between Bosnia and Herzegovina and any other country;
- l) **Ministry** means the Ministry designated in the Law of the Council of Ministers to be responsible for the relevant aspects of communications within the competence of Bosnia and Herzegovina;
- m) **Network termination point** means all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to and efficient communication through that public telecommunications network;
- n) **Mobile telecommunications services** means services whose provision consists, wholly or partly, in the

establishment of radio communications to a mobile user, and makes use wholly or partly of mobile systems;

o) **Public telecommunications network** means a telecommunications network used wholly or mainly for the provision of telecommunications services;

p) **Radio communication** means any communication by means of radio waves;

q) **Telecommunications network** means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, optical fibre, radio, or any other electromagnetic means, including but not limited to satellite networks as well as fixed and mobile terrestrial networks;

r) **Telecommunications operators** means public or private bodies, and the subsidiaries they control, which have been granted a licence for the provision of a public telecommunications network and/or telecommunications service;

s) **Telecommunications services** means services to the public that are normally provided for remuneration, and that consist wholly or mainly in the conveyance of signals on telecommunications networks, including but not limited to fixed, mobile and data;

t) **User** means a natural person or legal entity using or requesting a telecommunications service.

Article 3

Responsibilities of the Institutions of Bosnia and Herzegovina in Respect of Communications

1. In order to carry out the constitutional provisions in respect of communications the Council of Ministers shall be responsible for policy-making, and the Agency shall be responsible for the regulation.

2. The Council of Ministers shall be responsible for:

- a) Developing and adopting policy in line with existing legislation; and
- b) Determining the representation of Bosnia and Herzegovina in international forums concerned with communications.

3. The Agency shall be responsible for:

- a) Regulating broadcasting and public telecommunications networks and services, including licensing, tariffing, interconnection, and defining the basic conditions for the provision of common and international communications facilities; and
- b) Planning, co-ordinating, allocating and assigning the use of the radio frequency spectrum.

4. The Council of Ministers and the Agency according to the respective competencies as set out in this Law shall take all reasonable measures that are aimed at achieving the following objectives:

- a) The promotion of fair competition in order that users derive maximum benefit in terms of choice, price and quality;
- b) That there is no distortion or restriction of competition in the communications sector according to the Council of Ministers' sector policies;
- c) That efficient investment in infrastructure is encouraged and innovation promoted;
- d) That copyright and other intellectual property as well as personal data and privacy is protected;
- e) That efficient use and effective management of radio

frequencies and numbering resources are ensured in accordance with the radio regulations and other recommendations of the International Telecommunication Union, and with other international agreements entered into by Bosnia and Herzegovina.

Article 4

Regulatory Principles of Broadcasting and Telecommunications

1. The regulatory principles of broadcasting shall include:

a) The protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality;

b) The development of professional and viable commercial and public broadcasters with the intention of striking an appropriate balance between the two;

c) That broadcasters shall be separate from political control and manipulation, so as to strengthen democratic principles and the foundations of a market economy;

d) That licences shall be awarded on the basis of a process by which appropriate professional standards of programme content, technical operation and financing are ensured;

e) That broadcast advertising shall be regulated so as to be consistent with best European practice.

2. The regulatory principles of telecommunications shall include:

a) That all users shall have access to telecommunications services on a transparent, objective and non-discriminatory basis which can be provided by a telecommunications operator for a reasonable return;

- b) That any user of telecommunications services shall have unrestricted access by means of that service to any other such user;
- c) That the interests of all users of telecommunications services shall be protected in respect of the availability of such services, their quality and the prices charged for them;
- d) That the quality levels for the provision of telecommunications services and telecommunications equipment shall be compatible, as soon as possible, with standards generally adopted in the European Union;
- e) That tariffs charged for telecommunications services shall be transparent and non-discriminatory;
- f) That subject to meeting their obligations to provide telecommunications services, telecommunications operators shall be permitted to function along normal, commercial lines;
- g) That open entry into the provision of telecommunications services will be encouraged according to the Council of Ministers' sector policies.

II. GENERAL PROVISIONS FOR TELECOMMUNICATIONS INFRASTRUCTURE

Article 5

Installation and Operation

1. The installation and operation of public telecommunication networks shall be subject to the licensing procedure according to Article 10 of this Law. Telecommunications equipment and network intended to be interconnected with public telecommunications networks or for providing a telecommunications service shall comply with the recognised state of the art of their design and operation with regard to:

- a) The safety of network operations;
- b) Network integrity;
- c) Interoperability of services;
- d) Connection conditions for terminal equipment.

2. In accordance with the current state of the art, the Council of the Agency may issue more detailed rules concerning the safety of network usage, network integrity, interoperability of services and the connection conditions for telecommunications terminal equipment and may require certification procedures by the Agency to assure the integrity of the networks are maintained.

Article 6

Temporary Approval for a Network Licence

1. The Agency may, upon request, grant temporary approval for the installation and operation of radio systems and telecommunications terminal equipment for the purpose of technical and/or commercial testing, provided that there are no objections from the technical aspect, particularly if no interference with other telecommunications equipment is expected for a maximum period of six (6) months.

2. Upon expiry of the period set forth in paragraph (1) of this Article, the service may continue to be provided only pursuant to this Law.

III. TELECOMMUNICATIONS SERVICES

Article 7

Provision of Telecommunications Services

1. The provision of telecommunications services over mobile and fixed networks shall be subject to a licence pursuant to this Law.

2. The provision of Internet services shall be subject to a licence until the telecommunications market is fully liberalised as determined by the Council of Ministers' sector policy.

3. Telecommunications operators shall meet the following requirements:

a) Enter into a written contract with users;

b) Make available to their service users, free of charge and in an appropriate manner, a short and clear summary of the tariffs applicable;

c) At the request of the Agency deliver, within a reasonable period, business data, network data and traffic data including confidential data, if the telecommunications operator shall have kept such data as confidential.

Article 8

Functioning and Maintenance of Telecommunications Services

1. Telecommunications operators shall ensure the proper functioning of their system and the provision of telecommunications services pursuant to this Law.

2. Telecommunications operators shall maintain their system in a working condition and undertake timely measures for the removal of interferences and failures in their system.

3. Telecommunications operators shall, without any unnecessary delay, notify the Agency of any significant interruption in telecommunications connections as defined by the Agency.

4. The Agency may determine conditions, quality standards, time limits and the procedure for the provision of telecommunications services in a rule.

Article 9

Obligations of Telecommunications Operators Providing Public Voice Telephony Services

1. Telecommunications operators providing a public voice telephony service shall:
 - a) Maintain an up-to-date subscriber directory;
 - b) Maintain a directory enquiry service for subscriber lines;
 - c) Provide access free of charge to emergency services; and
 - d) Make their subscriber directory available on request to the Agency free of charge, and to other providers for an appropriate payment in electronic form or on-line for the purpose of providing information or publishing directories.
2. Subscribers shall have the right to decide whether or not their number shall be included in the database.

Article 10

Granting of a Licence

1. An application for a licence shall be made to the Agency. The Agency shall issue a licence within two (2) months. Where competitive or comparative selection procedures are to be used, the Agency may extend the evaluation period up to four (4) months to ensure that such procedures are fair, reasonable, open, non-discriminatory and transparent to all interested parties.
2. The licence shall be granted:
 - a) If the applicant has the necessary technical competence; and
 - b) There is no reason to assume that the applicant will not provide the relevant service in accordance with the licence,

in particular as far as the obligations concerning quality and supply are concerned. The financial strength of the applicant, his experience in the telecommunications sector and related sectors, and his expertise shall all be taken into consideration.

3. Where the granting of rights of use of frequencies or numbers have to be limited, the Agency shall grant such rights on the basis of selection criteria which must be objective, non-discriminatory, transparent and proportionate. Such selection criteria must give due weight to the achievement of the objectives and regulatory principles of Articles 3 and 4 of this Law.

4. For the purpose of determining whether or not to grant a licence, the Agency shall be entitled to receive all information relating to the applicant.

5. In the case of a negative decision, reasons shall be given for the denial of the licence and there shall be a right to appeal the decision to the Council of the Agency.

Article 11

Transfer and Modification of a Licence

1. The licence may be transferred in whole or in part only with the consent of the Agency. The Agency shall define the conditions for the transfer of the licence.

2. The Agency may modify individual provisions of the licence prior to its expiry if the modification is necessary to protect the public interest. In addition, the licence may be modified:

a) Upon application, if the due fulfilment of the arrangements of the licence is no longer reasonable due to changes of the circumstances, provided that the interests are safeguarded by the Agency and fair competition is not impaired;

b) Upon application or by the Agency if modifications are necessary to the frequencies allocated for use in the licence in view of changes in the technical or legal requirements in the interest of efficient frequency management and fair competition.

3. Modifications to the licence conditions shall be made with due regard for the economic and operational interests of the licensee. This does not justify any claims for compensation.

IV. UNIVERSAL TELECOMMUNICATIONS SERVICES

Article 12

Universal Telecommunications Services

1. Universal telecommunications services are a minimum set of telecommunications services to which all members of the public shall have access at an affordable price throughout the whole territory of Bosnia and Herzegovina.

2. The Council of Ministers shall, based on a proposal of the Agency, define the scope of universal telecommunications services and, if necessary, a financing mechanism, thereby taking into account the actual social needs of the citizens and the economic and technological developments of the market.

3. The Council of Ministers shall, based on a proposal of the Agency, designate telecommunications operators responsible for the provision of universal telecommunications services, with the objective to cover the whole territory of Bosnia and Herzegovina following the principles of objectivity, transparency, non-discrimination and proportionality.

4. The Agency shall define the quality criteria for the provision of universal telecommunications services in a rule and control compliance with it.

V. TELECOMMUNICATIONS MARKET COMPETITION

Article 13

General Provision

1. The Council of Ministers shall define the steps towards full liberalisation pursuant to the Telecommunications Sector Policy.

Article 14

Telecommunications Operators with Significant Market Power

1. A telecommunications operator shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

2. The Agency shall, once a year, carry out an analysis of the relevant market and publish a list of all telecommunications operators who, in a specified geographical area, have significant market power.

Article 15

Open Network Provision (ONP) and Interfaces

1. A telecommunications operator with significant market power shall, in accordance with the principle of non-discrimination, provide competitors in the market with services under comparable circumstances, under equal conditions and at the same level of quality as those provided for its own needs or for the needs of associated companies.

2. The telecommunications operator referred to in paragraph (1) of this Article shall not restrict access to the network except for reasons based on essential requirements, namely:

a) Security of network operations;

- b) Maintenance of network integrity;
- c) Interoperability of services in justified cases; and
- d) Protection of data, as appropriate.

3. The Agency may impose a code of conduct on, or prohibit certain behaviour by a telecommunications operator infringing the provisions set forth in paragraph (1) of this Article, or declare contracts null and void, and fully or partially invalid, if said telecommunications operator abuses its significant market power. Prior to such action being taken the Agency shall request the telecommunications operator concerned to end the abuse which is objected to within an appropriate deadline.

4. An abuse shall be presumed in the event that a telecommunications operator with significant market power shall provide itself or associated companies with access to its internally offered services or to services offered by it in the market upon conditions more favourable than the conditions upon which other competitors may use such services within their own ranges of services.

5. A telecommunications operator with significant market power shall offer interfaces in accordance with the Open Network Provision principles. The Agency shall make available the Open Network Principles at the request of a telecommunications operator.

6. The Agency may be empowered to oblige telecommunications operators with significant market power providing public telecommunications networks to provide interconnection at cost-oriented tariffs if it considers this necessary in order to achieve the objectives as laid down in Articles 3 paragraph (4), and 4 of this Law.

Article 16

Obligation to Negotiate

1. Any telecommunications operator providing a public telecommunications network shall be obliged to make an interconnection offer to other operators at their request. All parties concerned shall aim to enable and improve communication among users of different public telecommunications networks.

2. If an agreement on interconnection cannot be reached between telecommunications operators providing public telecommunications networks within six (6) weeks of receipt of the request, each of the parties involved in the interconnection may apply to the Agency for mediation.

3. In the case referred to in paragraph (2) of this Article, the Agency shall, within six (6) weeks or, exceptionally, within a period not to exceed ten (10) weeks upon receipt of the request, hear the participants of the interconnection and decide on the modalities and terms and conditions of interconnection in accordance with European practice, and shall pass a decision which shall supersede the contract between the participants of interconnection, in the part giving rise to disagreement.

4. The Agency shall have the right to request from telecommunications operators with significant market power a list of standard interconnection offers for their public telecommunications networks. They shall be submitted in writing to the Agency, and the Agency shall publish them as appropriate.

Article 17

Minimum Provision on Leased Lines

1. Telecommunications operators with significant market power providing leased lines shall be obliged to offer publicly to the market dominated by them, a minimum set of lines for lease, presenting uniform technical features

pursuant to relevant European Directives. The Agency shall, at the request of a telecommunications operator, provide relevant information regarding the technical features thereof.

Article 18

Access to and Interconnection of Public Telecommunications Networks

1. A telecommunications operator with significant market power shall enable other users to access his public telecommunications network or unbundled parts of such network. The obligation related to interconnection shall not apply provided that the telecommunications operator shall present evidence to substantiate that said obligation might not be appropriate in that particular case. The Agency shall pass a decision on such justifiability within six (6) weeks and on whether an additional technical or economic outlay for the requested services would be reasonable from the point of view of the special rules on market competition.

2. Access to the network shall be granted via termination points being generally available on the market (general network access). It can also be granted via special connections (special network access) at the request of the user.

3. Agreements on network access and interconnection shall be based on objective criteria, be comprehensible and provide non-discriminatory access with equal opportunity to the public telecommunications networks of a telecommunications operator pursuant to paragraph (1) of this Article.

Article 19

Scope of Interconnection

1. Interconnection shall comprise at least the following services:

a) Access by an alternative telecommunications operator

to the network of the telecommunications operator with significant market power through programmed network selection or dialling of selection codes according to the numbering plan;

b) Provision of the necessary traffic data of the relevant connection to the interconnecting telecommunications operator;

c) Switching of calls to users of other interconnecting telecommunications operator;

d) Provision of accounting data in a suitable form for the interconnecting telecommunications operator.

2. Detailed provisions relating to interconnection shall be defined by the Agency in a rule. In doing so, the Agency shall take into consideration the safeguarding of effective competition, maintenance of consistent service quality and compliance with binding international regulations. In addition, the Agency shall determine a minimum number of unbundled network elements required to be offered.

3. In the event of disputes, the Agency shall decide upon the appropriateness of the costs and the technical feasibility of network access and interconnection.

Article 20

Business Conditions and Tariffs

1. Telecommunications operators shall set up business conditions, describe the services offered and specify the relevant tariffs. The business conditions, service description and tariffs shall be presented to the Agency and published in a suitable form. If approval is required pursuant to paragraphs (3) and (6) of this Article, the telecommunications service shall not be provided until this approval is given.

2. Changes to the business conditions and tariffs shall

be published in a suitable form at least one (1) month prior to the effective date thereof. Any change to the content of a contract shall entitle the other contracting party to terminate the contract with the telecommunications operator within four (4) weeks of the publication of the change.

3. With regard to the business conditions of a telecommunications operator with significant market power, the approval of the Agency shall be obtained for the following telecommunications services:

a) Voice telephony service via a fixed or mobile network; and

b) Provision of leased lines.

4. In the event of a telecommunications operator with no significant market power, the business conditions and any material changes thereto shall be presented to the Agency prior to commencement of the provision of services or prior to the date on which such changes shall become effective. In the case of the services specified in paragraph (3a) of this Article, the Agency may challenge the business conditions within eight (8) weeks if these are in contravention of this Law or rules passed pursuant to this Law.

5. Should it be necessary to amend the business conditions in order to settle a dispute, such amendments may be determined with the consent of the Agency.

6. With regard to tariffs of a telecommunications operator with significant market power, the approval of the Agency shall be obtained for the following telecommunications services:

a) Voice telephony service via a fixed or mobile network; and

b) Provision of leased lines.

7. In the event of a telecommunications operator with no significant market power the tariffs of the services as defined in paragraph (6) of this Article shall be notified to the Agency prior to the commencement of the application thereof. The tariffs shall be uniform within a tariff zone.

8. With regard to publication of business conditions and determination of tariffs of telecommunications operators with significant market power, the Agency shall determine by a rule the framework conditions, including the principles, to be used to structure the tariffs. The following in particular shall be specified: type and content of the obligation to render services, the basis on which the tariffs shall be calculated, the interface conditions, the quality of various transmission paths, conditions for use, network access and interconnection, as well as the time-limits for placing a ban on cross-subsidising, which shall enable the introduction of new services and technologies.

Article 21

Structural Separation and Separate Accounting

1. Undertakings with significant market power in markets other than telecommunications markets or exercising special or exclusive rights in other sectors shall be prohibited from cross-subsidising the tariffs for their telecommunications services from areas in which they shall have special or exclusive rights. The principle of cost basis shall be applied to determine the level of the tariffs charged by companies having significant market power.

2. Telecommunications operators with significant market power in markets other than telecommunications markets, or exercising special or exclusive rights in other sectors, shall adequately separate, with respect to organisation and calculation, their business activities in the sector of telecommunications from their other business activities, in order to ensure transparency in the flow of services and

payments between these sectors in which they are active.

3. Telecommunications operators with significant market power in a telecommunications market shall be prohibited from cross-subsidising their services.

4. Telecommunications operators with significant market power in a telecommunications market shall adequately separate, on the one hand, their activities related to interconnection and, on the other hand, other activities, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their interconnection activity.

5. The Agency may suspend the requirements of paragraphs (3) and (4) of this Article for a limited period of time but not longer than three (3) years after the entry into force of this Law in order to allow telecommunications operators to be able to fulfil this requirement.

6. The Agency shall, ex officio or at the request of a market participant, initiate an investigation if there is reasonable suspicion of an infringement of the provisions of this Article. It may inspect the books and records of the telecommunications operator concerned and require details of their allocation of costs.

Article 22

Cost Accounting

1. Telecommunications operators with significant market power on the telecommunications market shall operate a cost accounting system that assigns costs and cost elements to all the services and service elements and permits subsequent auditing in compliance with the Agency's rules, and the specific provisions set out in the licences. The Agency shall have the right to access cost accounting information.

2. The Agency may suspend the requirements of paragraph

(1) of this Article for a limited period of time but not longer than three (3) years after the entry into force of this Law in order to allow telecommunications operators to be able to fulfil this requirement.

VI. ADDRESSING AND NUMBERING

Article 23

Definitions

1. The terms used in this part shall have the following meanings:

a) **Address** means the totality of all addressing elements used to specify the destination of a communications link;

b) **Addressing elements** means characters, letters, digits and signals used to identify individual communications links;

c) **Addressing plan** means the totality of all possible combinations of addressing elements being used for the personal identification of persons, computer processes, machines, devices or telecommunications equipment involved in the telecommunications process;

d) **Carrier Pre-selection** means a facility whereby subscribers who so request can:

– choose certain categories of telecommunications services to be carried by the pre-selected operator without having to dial an access code prefix or follow any other procedure to invoke such routing; and

– suspend any pre-selected choice in above for individual calls on a call-by-call basis by dialling an access code prefix having made arrangements to do so with other telecommunications operators;

e) **Carrier Selection** means a facility whereby subscribers through dialling an access code prefix on call-by-call basis

can choose certain categories of telecommunications services to be carried by the selected operator;

f) **Numbers** means sequences of digits used for the purposes of addressing in telecommunications networks;

g) **Numbering plan** means the totality of all possible combinations of addressing elements that use digits for the personal identification of persons, computer processes, machines, devices or telecommunications equipment involved in the telecommunications process;

h) **Number portability** means the possibility for subscribers who request it to keep their number in a fixed telephone network on a special location, irrespective of the change of the telecommunications operator.

Article 24

Scope

1. The purpose of addressing shall be the efficient structuring and managing of an addressing area in order to satisfy the requirements of telecommunications operators in a fair and non-discriminatory manner.

2. In order to achieve the objectives referred to in paragraph (1) of this Article, the Agency shall create addressing plans and prescribe the conditions for realisation of a right to the assignment and use of addresses.

Article 25

Numbering Plans

1. During the creation of numbering plans, the Agency shall take international regulations into account, particularly with regard to their structure. It shall undertake adequate measures in order to ensure the availability of an adequate number of addresses. Space shall be left in numbering plans, whenever technically possible, for

new national and international services and for the portability of numbers.

2. The structure of the numbering plans and the rules determining the number allocation shall guarantee an equal opportunity and equal procedure to all telecommunications operators.

Article 26

Changes to Numbering Plans

1. The Agency may make changes to the numbering plans in order to enforce international obligations or recommendations and to safeguard the adequate availability of addressing elements according to the latest level achieved. Consideration shall be given to the effects produced on the parties concerned, in particular to direct and indirect adjustment costs.

2. Telecommunications operators affected by such changes shall have the obligation to implement the necessary measures at their own cost.

3. Changes to the numbering plans, in whole or in part, or changes to rules governing the allocation of numbers, shall not in any way justify claims for damages.

Article 27

Number Portability, Carrier Selection, Carrier Pre-selection

1. The Agency shall ensure that the necessary preparatory measures for the introduction of number portability for telephone numbers in the form of network operator portability be initiated so that number portability be available in Bosnia and Herzegovina in accordance with the time set by the Council of Ministers. The Agency shall prescribe the scheme and the dynamics of introducing number portability, taking into account the scheme that is being applied in the European Union in a manner that shall not

present an obstacle to market competition.

2. The numbering plans shall be designed to ensure that users can freely select connection network operators.

3. The Council of Ministers shall take the decision as of when these services have to be made available.

4. Based on the decision of the Council of Ministers, the Agency shall define the details in a rule.

Article 28

Numbering Management and Number Allocation

1. The Agency shall be responsible for the efficient management of the numbering plans, particularly for the efficient use thereof, and for the assignment of addressing elements to telecommunications operators.

2. The Agency shall, in response to requests, allocate addressing elements to telecommunications operators for their use. The allocation shall follow objective and non-discriminatory principles, in particular the principle of equal opportunities.

Article 29

Use of Addresses

1. Addressing elements allocated to a designated telecommunications operator may not become the property thereof. The telecommunications operator shall only have the right to use certain elements.

2. The Agency shall have the right to receive any information as necessary for the management of the allocated addressing elements. The allocation of addresses to a telecommunications operator shall be subject to the payment of a fee.

VII. PROVISIONS ON RADIO FREQUENCY SPECTRUM

Article 30

Frequency Management and Frequency Allocation Plan

1. The Agency in co-ordination with the Council of Ministers shall manage the frequency spectrum in compliance with international agreements. The Agency shall take appropriate measures to ensure efficient and non-interfering use of Bosnia and Herzegovina's radio spectrum.

2. The Agency shall adopt a plan allocating radio frequency bands, with which it shall define the radio frequencies or radio frequency bands intended for individual radio-communications and individual groups of users. This shall be published in a suitable form.

Article 31

Frequency Usage Plan

1. The Agency shall prepare a frequency usage plan on the basis of the frequency allocation plan. The frequency usage plan shall contain the division of the frequency ranges into frequency usages and specifications for these frequency usages. It shall be published in a suitable form.

Article 32

Use of Radio Frequencies

1. The use of radio frequencies shall be subject to an authorisation by the Agency. The assignment of frequencies shall be non-discriminatory in accordance with the frequency usage plan and on the basis of objective criteria set up by the Agency. The Agency shall decide on the application within six (6) weeks, unless special circumstances, such as incompleteness of the documentation, require that a longer period is needed.

2. Frequencies shall be assigned for use by the Agency

if they:

- a) Are specified for use in the frequency usage plan;
- b) Are available; and
- c) Are compatible with other frequency usages.

3. The Agency shall define detailed provisions relating to frequency usage and frequency assignment including the requirements for the assignment in a rule.

VIII. RADIO AND TELECOMMUNICATIONS TERMINAL EQUIPMENT

Article 33

Radio and Telecommunications Terminal Equipment

1. Radio and telecommunications terminal equipment shall satisfy the provisions of this Law in order to be freely marketed, freely transferred and used in Bosnia and Herzegovina under the condition that it is correctly installed and maintained.

2. The provisions of this section shall not apply to:

a) Receive only radio equipment intended to be used solely for the reception of sound and television broadcasting services;

b) Radio and telecommunications terminal equipment that is covered by special regulations and is designed for civil aviation, air traffic management, and maritime transport;

c) Radio and telecommunications terminal equipment used exclusively for the needs of public security and defence.

3. In addition to the cases specified in paragraph (2) of this Article, this chapter shall also not apply to radio equipment from self-assembly kits used by amateur radio users, with the exception of equipment that is freely sold on the market. Collections of components intended for assembly by

amateur radio enthusiasts and factory-made radio equipment, that amateur radio users modify and use, shall not be deemed to be equipment freely sold on the market.

Article 34

Essential Requirements

1. Radio and telecommunications terminal equipment shall comply with the following essential requirements:
 - a) The requirements to protect the health and safety of the user and any other person; and
 - b) The requirements regarding electromagnetic compatibility.
2. Radio equipment shall be built in such a way that it makes efficient use of the radio frequency spectrum for terrestrial, space and orbital radio communications and avoids harmful interference.
3. Any apparatus that meets harmonised standards of the European Union shall be presumed to be in compliance with paragraphs (1) and (2) of this Article.

Article 35

Putting into Service and Right to Connect

1. Any apparatus that complies with the essential requirements of Article 34 and has been declared in conformity with the applicable conformity assessment procedure as laid down in relevant European Directives and affixed with the CE conformity marking shall be allowed to be put into service for its intended use.
2. Any apparatus that does not fulfil the requirements of paragraph (1) of this Article shall pass a conformity assessment procedure by a domestic conformity assessment body. The Agency in consultation with the Council of Ministers shall define the manner of equipment attesting and the criteria that

domestic bodies have to meet.

3. Notwithstanding paragraph (1) of this Article, the Agency may restrict the putting into service of radio equipment for reasons related to the effective and appropriate use of the radio spectrum, avoidance of harmful interference or matters relating to public health.

4. Operators may not refuse to connect telecommunications terminal equipment to appropriate interfaces for technical reasons if the equipment complies with the requirements of this Law.

5. If radio and telecommunications terminal equipment that fulfils the requirements of this Law causes serious damage to the network, harmful radio interference or damage to the operation of the network, the telecommunications operator of a public telecommunications network may be authorised to refuse connection, to disconnect such apparatus or to withdraw it from service. The telecommunications operator shall notify the user and the Agency of such a measure without delay. The Agency shall be authorised to confirm or overrule such measure.

6. The Agency shall be empowered to take all measures to prevent connection to public telecommunications networks of any apparatus that does not fulfil the requirements of this Law.

IX. COMMUNICATIONS REGULATORY AGENCY

Article 36

The Agency

1. The Agency is a functionally independent and a non-profit making institution with the status of a legal person under the laws of Bosnia and Herzegovina. The Agency shall carry out its duties pursuant to the objectives and regulatory principles as enumerated in Articles 3 and 4 of this Law and

the Council of Ministers' sector policies. In fulfilment of its duties, the Agency shall act in accordance with the principles of objectivity, transparency and non-discrimination. Members of the Agency's bodies, its officers and staff shall act in the interests of Bosnia and Herzegovina as a whole.

2. The bodies of the Agency are the Council of the Agency and the Director General whose duties are enumerated in Articles 39 and 40 of this Law.

3. Neither the Council of Ministers, nor individual Ministers nor any other person shall in any way interfere in the decision-making of the Agency in individual cases.

Article 37

Duties of the Agency

1. Pursuant to the provisions of this Law the duties of the Agency shall be:

a) To promulgate rules on broadcasting and telecommunications, and ensure adherence thereto;

b) To license broadcasters and telecommunications operators pursuant to the provisions of this Law, and monitor their compliance with licence conditions;

c) To plan, manage, allocate and assign frequency spectrum and monitor the use of it as well as to maintain and publish a frequency usage plan for the whole territory of Bosnia and Herzegovina;

d) To require the disclosure of such information as is necessary for the due performance of its regulatory obligations;

e) To apply technical and quality standards, for example to ensure interconnection and functionality of public

telecommunications networks and telecommunications services;

f) To establish and maintain a technical licence fee system for both broadcasting and telecommunications; and

g) Such other duties as are assigned to it under this Law or by the Council of Ministers.

Article 38

Procedure for Making Rules of the Agency

1. The Agency shall, before making the rules provided for in this Law:

a) Publish the draft rule;

b) Allow not less than fourteen (14) days for the filing of comments; and

c) Give due consideration to all comments concerning the published draft rule.

2. Rules of the Agency shall enter into force on the eighth (8) day following the day of publication in the Official Gazette of Bosnia and Herzegovina.

Article 39

Council of the Agency

1. The Agency shall have a Council that shall guide the Agency with regard to strategic issues of law implementation and will confer with and receive reports from the Director General. The Council of the Agency shall adopt codes of practice and rules for broadcasting and telecommunications. Additionally, the Council of the Agency shall serve as an appellate body for decisions of the Director General.

2. The Council of the Agency shall consist of seven (7) members nominated by the Council of Ministers on the basis of a list of candidates submitted by the Council of the Agency,

that shall comprise twice as many candidates as posts available, and appointed by the Parliament of Bosnia and Herzegovina. The Parliament shall accept or reject these nominations within thirty (30) days after submission of the nominations. If the Parliament rejects a nomination, the Council of Ministers shall nominate another person from the list of candidates submitted by the Council of the Agency, and submit this nomination to the Parliament of Bosnia and Herzegovina. Members of the Council of the Agency shall be appointed in their personal capacity as individuals with exceptional legal, economic, technical or other relevant expertise and experience for the fields of telecommunications and/or broadcasting for a term of four (4) years and may be re-appointed only once. The members shall elect a chairman and a vice-chairman from amongst themselves. The Council of the Agency shall meet a minimum of four (4) times a year. The Director General shall report to the Council of the Agency on strategic issues of implementation. The Director General shall attend all meetings of the Council of the Agency as a non-voting participant.

3. Officials in legislative or executive functions at any level of Government, or members of political party organs shall not be named as candidates for the membership of the Council of the Agency.

4. Members of the Council of the Agency shall declare any interest in a telecommunications operator or a broadcaster and shall recuse themselves in cases that present a conflict of interest.

Article 40

Director General

1. The Agency shall be managed by a Director General who shall be nominated by the Council of the Agency and approved by the Council of Ministers within thirty (30) days after

submission of the nomination. The Director General shall be responsible for all regulatory functions of the Agency. In addition, the Director General shall be responsible for all administrative functions of the Agency including, but not limited to the implementation of this Law and other relevant laws, all staffing issues, and the establishment of internal procedural rules. The Director General shall have a term of four (4) years and may be re-appointed only once.

2. The nomination of Director General shall be made following a public competition that has to be announced in the Official Gazette and allow at least four (4) weeks for the submission of the application. Applicants shall have relevant experience in the fields of telecommunications and/or broadcasting and proven management skills.

3. Officials in legislative or executive functions at any level of Government, or members of political party organs shall not be nominated as Director General.

4. The Director General shall not have any financial relation with a telecommunications operator or a broadcaster.

Article 41

Decision-Making by the Council of the Agency

1. All decisions of the Council of the Agency shall as far as possible be made by consensus. In the event that a consensus cannot be achieved, the Council of the Agency shall reach a simple majority decision on that matter, provided that at least four (4) members are present and vote. In the event of a tie, the chairman of the meeting shall have the casting vote.

Article 42

Dismissal of Members of the Council of the Agency, and the Director General

1. The Parliament of Bosnia and Herzegovina shall have the sole authority to dismiss the members of the Council of the Agency before completion of their mandate. The Council of Ministers shall have the sole authority to dismiss the Director General before completion of the mandate. Such early termination may occur only in the limited circumstances defined below:

a) Illness rendering the Director General, or members of the Council of the Agency incapable of performing his or her duties;

b) Conviction of a crime punishable by imprisonment;

c) A conflict of interest by the Director General, or a member of the Council of the Agency, as defined in the Agency's Code of Ethics, including when a member of his or her household is an owner, shareholder, or member of the boards or supervisory boards or other relevant governing bodies, director or president or other manager of any licensee or associate undertaking of any licensee;

d) Resignation;

e) Non-performance of duties for members of the Council of the Agency, as reflected by failure to participate in three (3) or more successive meetings; or

f) Failure of the Director General to perform his/her duties pursuant to this Law, internal Agency rules or his/her Contract of Employment;

g) Violation of the Agency's Code of Ethics.

2. The Council of the Agency shall adopt the Code of Ethics.

Article 43

Provisions with Regard to the Agency's Staff

1. The staff of the Agency as defined in paragraph (2) of this Article shall be civil servants in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Law on Civil Service), that shall apply except as provided in the following paragraphs.

2. The Agency shall employ such officers and staff as may be necessary for the efficient performance of its functions under this Law. The Agency shall ensure that all staff is recruited on the basis of professional merits and skills. Instead of Chapter II of the Law on Civil Service, the Council of the Agency shall determine which positions fall under the scope of the Law on Civil Service as amended by this Law. Such determination shall follow the general principles of the Law on Civil Service.

3. Should a vacancy for a position exist within the Agency, the Agency shall be allowed in urgent cases to appoint a replacement on a temporary basis until such time as the Civil Service Agency completes the formal recruitment process.

4. The Council of the Agency shall establish by way of a decision the pay structure for calculation of the Agency's staff salaries, the various salary grades in which the staff shall be categorised, and any permissible bonuses. In determining the salary grades the Council of the Agency shall take into account the specific skills and experience that are required to fulfil the responsibilities, and the objective to harmonise salaries with the salary structure of the civil service of the institutions of Bosnia and Herzegovina in the long term. Therefore the provisions of Chapter V of the Law on Civil Service shall not apply.

Article 44

Financial Matters

1. The budget of the Agency shall relate directly to the Council of Ministers' sector policies. The Director General

shall submit a budget for each fiscal year, previously adopted by the Council of the Agency, to the Council of Ministers for approval. Until the budget is approved or altered by the Council of Ministers, the Agency shall operate the budget adopted by the Council of the Agency. The funding of the Agency shall come from the following sources:

a) Recurrent technical licence fees for the regulation and supervision of the telecommunications operators and broadcasters; and

b) Grants or donations received by the Agency insofar as they are in conformity with general principles of law. When grants or donations are given for specific tasks or projects in the public interest, they shall be accounted for separately to the approved budget and not be included therein.

2. Funds received by the Agency shall be used in accordance with the Agency's budget as directed by the Director General.

3. Fines collected by the Agency in the performance of its right to apply enforcement measures, and levies invoiced as directed by the Council of Ministers shall be remitted to the Council of Ministers for inclusion in the budget of the institutions of Bosnia and Herzegovina.

4. The use of funds by the Agency shall be subject to review by the Supreme Audit Institution and in addition audited by an independent auditor every year.

5. The Agency shall prepare an annual report of its finances and activities, and shall submit it to the Council of Ministers. The Council of Ministers shall consider the Agency's annual report and publish it not later than four (4) months after the end of each financial year.

X. PROCEDURAL PROVISIONS

Article 45

Complaints

1. Notwithstanding the jurisdiction of civil courts, users or interested parties may refer complaints, in particular complaints about the quality of service that have not been satisfactorily resolved with the telecommunications operator to the Agency. The Agency shall endeavour to resolve the complaints within a reasonable period of time. All parties involved shall co-operate in this process and shall submit to the Agency all information and documentation required to assess the situation. The Agency may specify the types of complaints it will handle and the method used.

Article 46

Enforcement Measures

1. In securing compliance with Agency codes of practice and rules, the Agency shall have enforcement authority in accordance with European regulatory practices.

2. If a telecommunications or broadcasting network or service is being operated without a licence, the Agency is empowered to take all necessary steps to stop the operation thereof.

3. The Agency shall have the authority to apply enforcement measures proportional to the violations in accordance with the following scale:

- a) Oral and written warnings;
- b) Inspection of licensed facilities;
- c) Concrete demands for action or cessation, to be complied with within a specified time limit;
- d) Assessment of a financial penalty not to exceed 150,000 KM in case of deliberate or negligent violation of individual provisions of the Law or of conditions specified in

the licence or in the codes of practice and rules of the Agency. The level of the financial imposition shall be commensurate with the gravity of the infringement and, where applicable, with the gross financial benefits derived from the infringement. In case of repeated violations, the financial imposition may not exceed 300,000 KM. The Agency shall devise a schedule of infractions and resulting penalties, which shall be adopted by the Council of Ministers;

e) Orders to interrupt broadcasting or the provision of telecommunications services for a period not exceeding three (3) months;

f) Revocation of a licence.

4. Upon request of the Agency, all law enforcement agencies in Bosnia and Herzegovina shall assist it in the enforcement of its decisions.

Article 47

Appeals

1. In deciding upon appeals against decisions of the Director General, the Council of the Agency shall act pursuant to the Law on Administrative Procedures of Bosnia and Herzegovina, and shall make a full review of the appealed decision.

2. Appeals against the decisions of the Director General shall not suspend the effectiveness thereof.

3. Decisions of the Council of the Agency shall be final and binding in administrative procedure. Legal review of the decision can be initiated before the State Court of Bosnia and Herzegovina.

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 48

Continuity

1. Rules of the Agency issued prior to the entry into force of this law are in full force and effect.

Article 49

Transition of the Enforcement Panel

1. The Agency shall have, in addition to the Council of the Agency and the Director General, an Enforcement Panel until 31 December 2004, at which point the Enforcement Panel shall cease to be a body of the Agency and its role and functions shall henceforth be performed under the authority of the Director General. The Enforcement Panel shall consist of six (6) members.

2. The Enforcement Panel shall be empowered to deal with any cases concerning violation of licence conditions and rules promulgated by the Agency and to impose appropriate remedies and sanctions. Such decisions may be appealed to the Council of the Agency, which shall act pursuant to Article 47 paragraph (1) of this Law. Appeals against the decisions of the Enforcement Panel shall not suspend the effectiveness thereof.

3. All decisions of the Enforcement Panel shall as far as possible be made by consensus. In the event that a consensus cannot be achieved, the Enforcement Panel shall reach a simple majority decision on that matter, provided that at least four (4) members are present and vote. In the event of a tie, the chairman of the meeting shall have the casting vote.

4. Members of the Enforcement Panel shall declare any interest in a telecommunications operator or broadcaster and shall recuse themselves in cases that present a conflict of interest.

Article 50

Entry into Force and Publication

1. This Law shall enter into force eight (8) days after its publication in the Official Gazette of Bosnia and Herzegovina. This Law shall also be published in the Official Gazettes of the Federation of Bosnia and Herzegovina and the Republika Srpska.

2. This Law fully replaces the Telecommunications Law of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina 10/1999 of 29 June 1999.