

BILL No. 17 of 2012

Thursday 9th August, 2012

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

9th August, 2012.

The following Bill which will be introduced to the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



BILL No. 17 of 2012

PUBLIC UTILITIES COMMISSION (AMENDMENT) BILL 2012

ARRANGEMENT OF SECTIONS

SECTION

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A BILL
Intituled

ANACT to amend the Public Utilities Commission Act.

AN ACT to amend the Public Utilities Commission Act

AD. 2012 Enacted by the Parliament of Guyana:-

Short title.
Cap 57:01

1. This Act, which amends the Public Utilities Commission Act, may be cited as the Public Utilities Commission (Amendment) Act 2012.

Amendment of
the Arrangement
of Sections of the
Principal Act

2. The Arrangement of Sections of the Principal Act is amended as follows -

(a) section 64 -

after the word "utilities" by the insertion of the words " and
telecommunications undertakings";

(b) sections 71 and 73 -

after the word "utility" by the insertion of the words "or
telecommunications undertaking";

(c) sections 82 and 83 -

after the word "utility" by the insertion of the words "and telecommunications undertaking".

Amendment of section 2 of the Principal Act.

3. Section 2 of the Principal Act is amended -

(a) by the deletion in paragraph (a) of the words "or (b)";

(b) by the insertion immediately after paragraph (a) of the following as paragraph (aa)-

"(aa) with effect from the commencement of the Public Utilities Commission (Amendment) Act 2012, apply to telecommunications undertakings as specified herein;"

Amendment of section 3 of the Principal Act.

4. Section 3 of the Principal Act is amended as follows -

1. (a) in subsection (1) -

(a) by the substitution for paragraph (d) of the following paragraph as paragraph (d) -

"(d) "consumer", in relation to a public utility or, where applicable herein, a telecommunications undertaking, means a person making use of any service provided by the public utility or such telecommunications undertaking;"

(b) in paragraph (e) immediately after the word "utility"; by the insertion of the words "or a telecommunications undertaking";

(c) by the insertion immediately after paragraph (f) of the following paragraph as paragraph (ff) -

- (ff) "operator" has the meaning assigned to it in section 2 (1) of the Telecommunications Act 2012;"

(d) in paragraph (i) by the substitution for the full stop at the end of a semicolon and by the insertion of the following words immediately after the inserted semicolon -

"and for purposes of telecommunications undertakings, the term "service" has the meaning assigned to the term "telecommunications service" in section 2(1) of the Telecommunications Act, 2012;"

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(e) by the insertion immediately after paragraph (i) of the following paragraphs as paragraphs (j) and (k) -

(j) "service provider" has the meaning assigned to it in section 2(1) of the Telecommunications Act 2012;

(k) "telecommunications undertaking" has the meaning assigned to it in section 2(1) of the Telecommunications Act 2012.'

2. In subsection (2) by the insertion immediately after the word "utility" of the words -

"or, where specified herein a telecommunications undertaking".

Amendment of
section 4 of the
Principal Act.

5. Section 4 of the Principal Act is amended as follows -

(a) in subsection (1) by the deletion of paragraph (b);

(b) by the substitution for subsection (2) of the following subsection as subsection (2) -

"(2) Notwithstanding anything contained in subsection (1) or section 3(1)(k), any person, not otherwise a public utility or telecommunications undertaking, who or which provides any service only to a public utility or telecommunications undertaking, or only to himself or itself or his or its employees or tenants, where such service is not resold to or used by others, shall not be deemed to be a public utility or telecommunications undertaking:

Provided, however, that nothing in this subsection or any other provision of this Act shall be interpreted to exclude the application of this Act to persons engaged in wholesale arrangements or any other activity involved in the supply of a service, directly or indirectly, to or for the public."

Amendment of section 5 of the Principal Act.

6. Section 5(1A) of the Principal Act is amended by the insertion immediately after the word "utilities" of the words "and telecommunications undertakings".

Amendment of section 7 of the Principal Act.

7. Section 7(2) of the Principal Act is amended by the insertion immediately after the word "utility" of the words "or a telecommunications undertaking" and after the word "Act" of the words "or any other applicable written law".

Amendment of section 8 of the Principal Act.

8. Section 8 of the Principal Act is amended as follows -

(a) in subsection (1)

(i) by the insertion immediately after the word "utility" where it appears for the first time of the words "telecommunications undertaking,"

(ii) by the insertion immediately after the word "utility" where it appears for the second time of the words "or telecommunications undertaking" and where it appears for the third time of the words "or a telecommunications undertaking";

(b) in subsection (4) by the insertion immediately after the word "utility" wherever it appears of the words "or telecommunications undertaking".

**Amendment of
section 10 of the
Principal Act.**

9. Section 10(1) of the Principal Act is amended as follows -

(a) in paragraphs (a), (b) and (c) by the insertion immediately after the word "utility" wherever it appears of the words "or telecommunications undertaking";

(b) in paragraph (e) in the opening part by the insertion immediately after the word "utility," of the words "a telecommunications undertaking, or" and by the insertion immediately after the word "utility" in the first and third places where it appears of the words "or a telecommunications undertaking".

**Amendment of
section 20 of the
Principal Act**

10. Section 20 of the Principal Act is amended as follows -

(a) by the substitution in subsection (3) for paragraph (a) of the following paragraph as paragraph (a) -

"(a) sums assessed by the Commission and paid over to it by public utilities and telecommunications undertakings in accordance with Part XI and any other applicable law;"

(b) by substituting for subsection (4) of the following subsection as subsection (4)-

"(4) Except to the extent that this Act or any other applicable written law, or regulations made under any of them, may designate the payment of fines and penalties to the Commission.

the public utility or telecommunications undertaking to credit

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all sums assessed by the Commission in the nature of fines and penalties imposed upon a public utility, a telecommunications undertaking, or any other company or person under this Act shall be paid directly to the Accountant General by such public utility, telecommunications undertaking, or other company or person".

Amendment of
section 21 of the
Principal Act.

11. Section 21 of the Principal Act is amended 'as follows -

(a) in subsection (1) by the insertion after the word "Act" of the words " and any other applicable written law";

(b) in subsection (2) and in the marginal note by the substitution for the words "1990" of the words "2012", by the insertion immediately after the word "utility" wherever it appears, of the words "or telecommunications undertaking";

(c) in subsection (3) by the insertion after the word "Act" where it appears for the second time of the words "or other laws referred to in subsection (2)".

Amendment of
section 22 of the
Principal Act.

12. Section 22 of the Principal Act is amended by the insertion in paragraph (d) immediately after the word "utility" of the words " or a telecommunications undertaking".

Amendment of section 10 of the Principal Act

9. Section 10(1) of the Principal Act is amended as follows-

- (a) in paragraphs (b) and (c) by the deletion of the words "and telecommunications undertakings";
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Amendment of section 23 of the Principal Act

13. Section 23 of the Principal Act is amended by the insertion immediately after the word "utilities" of the words "and telecommunications undertakings".

Amendment of section 24 of the Principal Act

14. Section 24 of the Principal Act is amended by the insertion immediately after the word "Act" of the words "and as may be specified in any other applicable law" and by the insertion immediately after the word "utility" of the words "or telecommunications undertaking".

Amendment of section 36 of the Principal Act

15. Section 36 of the Principal Act is amended as follows-

(a) in subsection (1) by the deletion of the words "switchboards, exchanges,";

(b) in subsection (2) by the deletion of the words "interconnection,";

(c) by the insertion immediately after subsection (4) of the following as subsection (5) -

(5) (a) Nothing in this section shall be deemed to apply to interconnection, access, collocation, or sharing of facilities between telecommunications undertakings, or collocation or sharing of facilities and utility installations between telecommunications undertakings and public utilities, which matters shall be governed by the Telecommunications Act 2012 and the regulations issued

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thereunder.

(b) For purposes of this subsection, the terms "interconnection," "access," "collocation," "facilities," and "utility installations" shall have the meanings assigned to them in the Telecommunications Act 2012 and the regulations issued thereunder."

**Amendment of
section 52 of the
Principal Act**

16. Section 52 of the Principal Act is repealed and the following section re-enacted for section 52 -

" 52. (1) A complaint under this Act or any other applicable law against a public utility or a telecommunications undertaking may be made by the Minister or any person (including any other public utility or telecommunications undertaking) having an interest in the subject matter.

(2) A complaint shall state the particulars of the act or omission complained of, the public utility or telecommunications undertaking against which the complaint is made and the relief sought.

(3) The Commission may make rules prescribing the form in which any complaint shall be made:

9. Section 10(1) of the Principal Act is amended as follows:-

(a) in paragraphs (a) and (b) by the insertion of

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Provided that a complaint that furnishes the particulars and information required to be provided by the form shall not be rejected only on the ground that it is not strictly in accordance with the form.

(4) (a) The Commission shall resolve every complaint brought by a consumer, or by the Minister or the Commission itself, regarding any bill issued by a public utility or a telecommunications undertaking to the consumer, by the issuance of an order, binding upon the consumer and the public utility or telecommunications undertaking, within one hundred and twenty days following the initiation of the complaint with or by the Commission, and every order issued shall be binding upon the consumer and the public utility or telecommunications undertaking, as the case may be:..

(b) Every order issued under paragraph (a) shall be based upon the Commission's review of the evidence as may have been submitted to it by the consumer and the public utility or telecommunications undertaking, and any evidence developed by the Commission itself, within a one hundred and twenty day period, and shall require the consumer to pay any amounts owing to the public utility or the telecommunications undertaking, or

the public utility or telecommunications undertaking to credit any amounts due to the consumer to his account, within a reasonable time, but in any event not more than ninety days from the date of the order.

(c) The Commission shall make rules, subject to the approval of the Minister, governing the procedure for determining the consumer's complaints provided for in paragraph (a).

(5) To the extent that any other applicable law or regulations issued thereunder varies or supplements the provisions of this Part, such law or regulations shall apply, but the provisions of this Part that are not so varied or supplemented shall continue to apply as provided herein."

**Amendment of
section 53 of the
Principal Act.**

17. Section 53 of the Principal Act is amended by the insertion immediately after the word "utility" where it first appears of the words "or a telecommunications undertaking" and where the word "utility" appears for the second and third times insert after it the words "or telecommunications undertaking".

**Amendment of
section 55 of the
Principal Act.**

18. Section 55 of the Principal Act is amended as follows -

(a) by the insertion in subsection (1) immediately after the word

"utility" where it first appears of the words "or telecommunications undertaking,, and by the insertion immediately after the word "utility" where it appears for the second time of the words "or that telecommunications undertaking";

(b) in subsection 2 by the insertion immediately after the word "utility" of the words "or telecommunications undertaking".

Amendment of section 56 of the Principal Act.

19. Section 56 of the Principal Act is amended as follows -

(a) by the insertion in subsection (1) immediately after the word "Act" of the words "or any other applicable law" and by the insertion immediately after the word "utility" in the two places where it appears of the words "or telecommunications undertaking";

(b) by the insertion in subsection (3) immediately after the word "utility" of the words "or telecommunications undertaking"

Amendment of section 57 of the Principal Act.

20. Section 57 of the Principal Act is amended as follows -

(a) in subsection (1) by the insertion immediately after the word "utility" of the words "or a telecommunications undertaking"

(b) in subsection (2) by the insertion immediately after the word «utility" of the words "or telecommunications undertaking".

Amendment of
section 59 of the
Principal Act.

21. Section 59(5) of the Principal Act is amended by the insertion immediately after the word "utility" where it appears for the first time of the words "or the telecommunications undertaking" and where it appears the second time, of the words "or telecommunications undertaking".

Amendment of
section 60 of the
Principal Act.

22. Section 60 of the Principal Act is amended by the insertion immediately after the word "utility" of the words "or telecommunications undertaking".

Amendment of
section 52 of the
Principal Act.

23. Section 62 of the Principal Act is amended by the deletion of the words beginning with the word "between" where it first appears and ending with word "utility" where it appears for the second time.

Amendment of
section 64 of the
Principal Act.

24. Section 64 of the Principal Act is amended as follows -

(a) in subsection (1) and in the marginal note by the insertion immediately after the word "utilities" of the words "and telecommunications undertaking\$";

(b) in subsection (2)-

(i) by the substitution for paragraph (b) of the following paragraph as paragraph (b) -

"(b) one percent of the gross revenue derived from

services in the case of any operator or service provider;
and";

(ii) in paragraph (c) by the insertion immediately after the
word "utility" of the words "or other telecommunications
undertaking";

(c) by the substitution for subsection (3) of the following
subsection as subsection (3) -

"(3) The Commission shall, on the basis of the budget
that it shall submit to the Ministry of Finance pursuant to
section 20 and no later than forty-five days before the
beginning of the financial year to which such budget
relates, determine and notify each public utility and
telecommunications undertaking under its jurisdiction,
and that is subject to an annual assessment pursuant to
subsection (2), of the annual assessment upon such public
utility and telecommunications undertaking and of the
annual assessment upon each other public utility and
telecommunications undertaking under the Commission's
jurisdiction."

(d) in subsections (4) and (6) by the insertion immediately after
the words "utility" of the words "or a telecommunications
undertaking";

to the public utility or the telecommunications undertaking,

(d) in subsection (4) by the insertion immediately after the word

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(e) in subsection (5) by the insertion immediately after the word
"utility" of the words "or telecommunications undertaking",

Amendment of
section 65 of the
Principal Act.

25. Section 65 of the Principal Act is amended as follows -

1. (a) in subsection (1) by the insertion immediately after the
word "utility" wherever it appears of the words "or
telecommunications undertaking" and by the deletion of
the words "to any one public utility";

(b) in subsection (1)(a) -

(i) by the substitution for subparagraph (ii) of the
following paragraph as subparagraph (ii) -

"(ii) one-half percent in the case of any operator or
service provider;"

(ii) in subparagraph (iii) by the insertion immediately
after the word "utility" of the words "or
telecommunications undertaking";

(c) in subsection 1(b) -

(i) by the substitution for subparagraph (ii) of the
following paragraph as subparagraph (ii) -

"(ii) one-tenth of one percent in the case of any operator
or service provider;"

services in the case of any operator or service provider;

(ii) in subparagraph (iii) by the insertion immediately after the word "utility" of the words "or telecommunications undertaking".

2. in subsection (2) by the insertion immediately after the word "utility" in the two places where it appears of the words "or a telecommunications undertaking".

Amendment of section **66** of the Principal Act.

26. Section 66(1) of the Principal Act is amended by the insertion before the words "any party" of the words "the Commission or" and by the substitution for the word "may" of the words "shall register and".

Amendment of section **70** of the Principal Act.

27. Section 70 of the Principal Act is amended by the insertion immediately after the word "utility" of the words "or telecommunications undertaking".

Amendment of section **71** of the Principal Act.

28. Section 71 of the Principal Act is amended by the insertion immediately after the word "utility" of the words "and telecommunications undertaking" and by the insertion after the word "utility" in the marginal note of the words "or telecommunications undertaking".

(d) in subsection (4) by the insertion immediately after the word

Amendment of
section 72 of the
Principal Act

29. Section 72 of the Principal Act is amended by the insertion immediately after the word "utility" of the words "or telecommunications undertaking".

Amendment of
section 73 of the
Principal Act

30. Section 73 of the Principal Act is amended by the insertion immediately after the word "utility" where it appears for the first, second and third times of the words "or telecommunications undertaking" and where the word "utility" appears for the fourth time by the insertion of the words "and telecommunications undertaking"; and in the marginal note by the insertion immediately after the word "utility" of the words "or telecommunications undertaking".

Amendment of
section 75 of the
Principal Act

31. Section 75 of the Principal Act is amended as follows -

(a) by re-numbering it as subsection (1) and in the re-numbered subsection by the insertion immediately after the word "utility" where it appears for the first time of the words "or telecommunications undertaking" and where the word "utility" appears for the second time by the insertion of the words "or telecommunications undertaking" immediately after it,

(b) insert the following as subsection (2) after the re-numbered subsection (1) -

"(2) To the extent that any other applicable law or

services in the case of any operator or service provider;

regulations issued thereunder varies or supplements a penalty provided for in this Part, the penalty provided in such law or regulations shall apply, but the provisions of this Part that are not so varied or supplemented shall continue to apply as provided herein."

Amendment of section 82 of the Principal Act.

32. Section 82 of the Principal Act including the marginal note is amended by the insertion immediately after the word "utility" of the words "and telecommunications undertaking".

Amendment of section 83 of the Principal Act.

33. Section 83 of the Principal Act is amended as follows -

(a) in subsection (1) in the opening part and the marginal note by the insertion immediately after the word "utility" the words "or telecommunications undertaking", and in the ending part by the insertion immediately after the word "utility" of the words "or the telecommunications undertaking";

(b) in subsection (2) by the insertion immediately after the word "utility" of the words "and telecommunications undertaking"

(c) in subsection (3) by the insertion immediately after the word "utility" of the words "or a telecommunications undertaking";

(d) in subsection (4) by the insertion immediately after the word "utility" where it appears for the first and third times of the words "or the telecommunications undertaking"; and by the insertion after the word "utility" where it appears for the second time of the words "or a telecommunications undertaking";

(e) in subsection (5) by the substitution for the proviso of the following proviso -

"Provided that the Commission shall take all due and reasonable care to protect and shall not publish or otherwise make publicly available the trade secrets of the public utility or the telecommunications undertaking, third party confidential information, or any other information that may aid a competitor or potential competitor of the public utility or the telecommunications undertaking."

Amendment of
section 85 of the
Principal Act.

34. Section 85 of the Principal Act is amended as follows -

(a) in subsection (1)(a) by the insertion immediately after the word "Act" of the words "and any other applicable law";

(b) in subsection (1)(c) by the insertion immediately after the word "utilities" of the words "and telecommunications undertakings".

Amendment of
section 87 of the
Principal Act.

35. Section 87 of the Principal Act is amended as follows –

(a) in the opening part by the insertion immediately after the word "utility" of the words "or a telecommunications undertaking";

(b) in paragraph (b) by the insertion immediately after the word "utilities" of the words "or telecommunications undertaking", and by the insertion immediately after the word "utility" of the words "or a telecommunications undertaking";

(c) in paragraph (c) immediately after the words "utilities and" by the insertion of the words "telecommunications undertakings and" and after the word "utility" by the insertion of the words "and a telecommunications undertaking";

(d) in paragraph (g) by the insertion immediately after the word "Act" of the words "and any other applicable written law".

EXPLANATORY MEMORANDUM

The Public Utilities Commission (Amendment) Bill 2012 seeks to amend the Public Utilities Commission Act (the "Principal Act") as needed to conform with the new regime for an open, liberalised and competitive telecommunications sector provided for in the Telecommunications Bill 2012, submitted contemporaneously with this Bill. The two Bills present a clear, harmonized, transparent and non-discriminatory legal regime for telecommunications, with a level playing field for all sector participants, similar to that found in other countries worldwide, including most Caribbean countries. Under the Bills, the Public Utilities Commission ("Commission") will continue to function as the economic regulator of the telecommunications sector, with responsibility for ensuring a competitive environment, seamless interconnection and access between and among telecommunications networks, and price regulation only where required to protect consumers and competition, with the expectation of greater choice, better service quality and lower prices for consumers.

This Bill effects two types of related amendments. First, it removes telecommunications undertakings from the Principal Act's provision on rate-setting and quality, development and expansion of services and facilities, which are more appropriate for the regulation of monopolies, not an open, competitive communications sector. Under the Telecommunications Bill and comprehensive regulations anticipated to be promulgated upon enactment, prices will be set in most instances by the marketplace. However, the Commission will continue to regulate the prices charged by telecommunications service providers that are capable of controlling the market (either alone or jointly with another provider) or that engage in anti-competitive conduct. The Commission will also continue to enforce the quality of service provided to consumers, as

Short title.

Definitions.

well as consumer rights with regard to telecommunications services and the confidentiality of all users of such services. In addition, the Telecommunications Bill and anticipated regulations will address deficiencies in the Principal Act, by giving the Commission new enforcement powers to ensure competition in telecommunications services and the integrated functioning of the sector.

Second, while continuing to require the Commission to give effect to the terms of a licence issued to a telecommunications undertaking and any agreement between the Government and a telecommunications undertaking, this Bill eliminates from the Principal Act similar provisions regarding agreements between the Government and an investor in relation to the privatisation or capitalisation of a telecommunications undertaking. These amendments coordinate with the standardisation of the terms of licences provided for under the Telecommunications Bill and are essential to achieving the level playing field that is the hallmark of an open, competitive telecommunications sector.

A handwritten signature in black ink, appearing to read 'Jean Chrétien', is written over a rectangular area of the document. The signature is fluid and cursive.

Prime Minister