

Translation

A° 2011



N° 37 (G.T.*)

OFFICIAL BULLETIN

NATIONAL DECREE of 6 July 2011, no.11/0011, establishing the consolidated text of the National Ordinance on Telecommunications Facilities.

THE GOVERNOR of Curaçao,

On the recommendation of the Minister of Justice;

Having regard to:

Article 7A of the General Transitional Arrangements for Legislation and Administration of the Country of Curaçao;

H A S A P P R O V E D:

Single article

The consolidated text of the National Ordinance on Telecommunications Facilities as laid down in the annexe to this national decree shall be established.

Willemstad, 6 July 2011
F.M.D.L.S. GOEDGEDRAG

The Minister of Justice,
E.R. WILSOE

Published on 23 September 2011
The Minister of General Affairs,
G.F. SCHOTTE

**G.T.: consolidated text*

Consolidated text of the National Ordinance on Telecommunications Facilities¹

as it reads:

- a. following amendments made by the Netherlands Antilles by:
 - 1. the National Ordinance of 11 September 1997 (P.B. 1997, no. 237);
 - 2. the National Ordinance of 15 March 2001 (P.B. 2001, no. 24);
 - 3. the Transitional Arrangements for Decentralisation of the Netherlands Antilles (P.B. 2009, no. 75);and
- b. brought into line with the requirements as set forth in the articles 6, 7, and 7B of the General Transitional Arrangements for Legislation and Administration of the Country of Curaçao.

CHAPTER I
GENERAL PROVISIONS

Article 1

In this National Ordinance and the provisions based on it, the following terms are defined as stated below:

- a. Minister: the Minister of Traffic, Transport and Spatial Planning;
- b. telecommunication: any transfer, transmission or reception of data of any nature whatsoever by means of cables, via radio-electric means or by means of optical or other electromagnetic systems;
- c. public land:
 - 1. the public roads including the associated pavements, slopes, verges, ditches, bridges, viaducts, tunnels, culverts, revetments and other works;
 - 2. the waters and their corresponding bridges, the public gardens, squares and other places intended for the common use of all;
- d. cables: transmission lines intended for telecommunications;
- e. cable works: the supporting works associated with cables, protective works and signalling systems, as well as systems intended to establish a connection between cables in, on or above public land on the one hand and cables in buildings and associated land on the other hand or between the latter cables themselves;

¹P.B. 1995, no. 196 (continuous text of the National Ordinance of 3 June 1992, P.B. 1994, no. 45, as amended by the National Ordinance of 13 October 1995, P.B. 1995, 195).

- f. internal network: a complex of cables and cable works located within a building or block of buildings insofar as belonging to one company, whether or not connected by means of radio-electric transmission and receiving systems [transmitters and receivers], and with which various types of terminal equipment are connected, both among themselves and with the public telecommunications infrastructure;
- g. cable network: telecommunications infrastructure connected to and for the functioning of cable broadcasting systems and cable systems;
- h. telecommunications infrastructure: a complex of systems with associated resources, intended for telecommunications which, in whole or in part, exceeds public land, which complex is delimited by associated connecting points and includes the connections to foreign telecommunications systems;
- i. cable broadcasting system: a system or part thereof, intended for distributing broadcasting programs to one or more properties, homes or non-residential buildings or parts of buildings used by others, by using cables and cable works or radio links between fixed points;
- j. broadcasting programme: a programme of word, tone, or visual content, intended for all those who wish to receive it;
- k. fixed connection: a possibility for the direct transport of data between two connecting points, the realisation of which cannot be controlled by the user via a connecting point;
- l. connecting point: an endpoint of the telecommunications infrastructure, intended for connecting terminal equipment;
- m. terminal equipment: a system or complex of systems, intended for direct connection to the telecommunications infrastructure by means of a connecting point;
- n. the holder of the concession [concession holder]: the legal entity to which a concession has been granted pursuant to article 2, paragraph 2.

CHAPTER II
TELECOMMUNICATIONS INFRASTRUCTURE

§1. Concession

Article 2

1. In order to promote an efficient provision of telecommunications in the general social and economic interest, a concession to be granted by national decree for the installation, the maintenance and the operation of telecommunications infrastructure shall be required for others than the Country.
2. If the installation, the maintenance and the operation of the telecommunications infrastructure is performed by the Country, the provisions set forth in this National Ordinance regarding the concession or the holder of the concession respectively, shall, unless expressly provided otherwise, equally apply to the Country with the exception of article 32, paragraph 2.
3. The Minister shall assign to the holder of the concession, the radio frequencies necessary for the implementation of the concession, in the course of which regulations and restrictions may be imposed.
4. The holder of the concession shall ensure that the capacity, the quality and the properties of the telecommunications infrastructure are sufficient for an efficient provision of telecommunications.
5. Persons other than the concession holder shall only be permitted to install, maintain, have present, use or cause to be used, and operate or cause to be operated, telecommunications systems of a special nature or limited extent as referred to in Chapter III, with due observance of the provisions by or pursuant to Chapter III.

§2. Services

Article 3

1. In the interest of general social and economic matters, the holder of the concession shall be obliged to provide services to be described by national decree providing for general measures, which relate to the direct transport of data from and to connecting points, and to make the use thereof available to anyone in return for payment. This national decree may also instruct the holder of the concession to provide a telegraphic service, to be described in this decree, and to make its use available to anyone in return for payment.
2. The holder of the concession is obliged to make the use of fixed connections available to anyone in return for payment.
3. The holder of the concession is authorised to fully or partially exclude users of the facilities referred to in paragraphs 1 and 2 from the use thereof insofar as their use of these facilities constitutes such a burden on these facilities that it causes nuisance to other users of these

facilities, or, in the case of telecommunications outbound from Curaçao, such use occurs in such manner that it creates a reversal of the direction of communication, resulting in the fees payable by the user to the concession holder for using the said facilities do not accrue to the concession holder in full, unless arrangements have been made with the holder of the concession to that effect.²

Article 4

No person other than the holder of the concession shall be permitted to place and operate on public land, a publicly accessible facility intended for the direct transport of speech over the telecommunications infrastructure.

Article 4a

It is prohibited for anyone to offer facilities for telecommunications or the use thereof in any form or manner whatsoever, insofar as these facilities place such a burden on the facilities to be provided pursuant to the services referred to in article 3, paragraph 1, that nuisance is caused to other users of these facilities, or in the case of telecommunications outbound from Curaçao, these facilities create a reversal of the direction of communication, resulting in the fees payable by the user to the concession holder for the use of such facilities do not accrue to the concession holder in full, unless arrangements have been made with the holder of the concession to that effect.

Article 5

Only personnel authorised to that effect by the holder of the concession in charge of the performance of the services assigned to him by virtue of article 3, paragraph 1, and of the care of the fixed connections, may take cognizance of the data transported over the telecommunications infrastructure, but only to the extent necessary for the proper performance of such service.

Article 6

The manufacture, distribution or keeping in stock for distribution of lists and similar indications of connections to the services assigned to the holder of the concession pursuant to article 3, paragraph 1, or of other data relating to such services, as well as imitations, in any manner whatsoever, of printed matter, forms and documents in use by the holder of the concession, otherwise than with the consent of the holder of the concession, shall be prohibited, without prejudice to what has been provided for in respect of these objects in other statutory regulations.

² The Joint Court of Justice of the Netherlands Antilles and Aruba has ruled that this provision is not binding insofar as it gives the concession holder the authority to exclude users of call-back services in whole or in part on grounds of violation of article 10, paragraph 2, of the European Convention on Human Rights.

§3. Concession Conditions

Article 7

1. The conditions subject to which the concession is granted, shall be established by national decree.
2. In addition to conditions to be attached to the concession in each specific case, the conditions for the implementation of the provisions set forth in paragraph 4 of Article 2 and paragraphs 1 and 2 of Article 3 shall in any case pertain to:
 - a. the maintenance of a good telecommunications infrastructure and a good provision of services;
 - b. the manner and extent of service provision;
 - c. the collaboration between the concession holders;
 - d. the rates;
 - e. the confidentiality;
 - f. the protection of privacy;
 - g. the provision of periodic information to the Minister for supervisory purposes;
 - h. the establishment of a users' dispute resolution committee regarding the application of the general terms and conditions to be laid down by the holder of the concession;
 - i. the scope and nature of the concession;
 - j. the duration of the concession;
 - k. the grounds for revoking the concession.
3. The concession conditions shall only contain obligations in respect of the result to be achieved by the holder of the concession and not in respect of the manner of operational management to achieve this result.
4. A decision to establish or amend the concession conditions shall be taken with due observance of operation in a way appropriate to normal business practice and which safeguards the continuity of operations by the holder of the concession.
5. The holder of a concession shall pay a fee, to be so determined by national decree, for the costs pertaining to the granting of the concession, the supervision of compliance by the holder of the concession with the rules, regulations and restrictions laid down by or pursuant to this National Ordinance, as well as to the exercise by the Country of its powers in relation to telecommunications.
6. If the holder of a concession is a legal entity under private law, each director of such legal entity shall be jointly and severally liable for paying the fee referred to in paragraph 5.

Article 8

An amendment to the concession terms and conditions as referred to in article 7 shall not take effect until one year after its adoption by national decree, unless a public interest to be so indicated in such decree urgently requires this, or the holder of the concession agrees to an earlier entry into force.

§4. Other provisions

Article 9

1. In the performance of his obligations resting with him pursuant to this National Ordinance in respect of the provision of international telecommunications, the holder of the concession shall be obliged to comply with the relevant obligations arising from the International Telecommunications Convention with the accompanying annexes and rules and regulations, concluded in Nairobi on 6 November 1982 (Treaty Series 1983, 164), as it currently reads or has been amended since, and from other binding conventions or resolutions of international institutions.
2. In agreement with the Minister of General Affairs, the Minister shall issue regulations to the holder of the concession intended to:
 - a. ensuring a proper application of the first paragraph;
 - b. providing the necessary cooperation to the Minister and the Minister of General Affairs in the preparation of treaties and resolutions as referred to in paragraph 1 and the international consultations to be conducted to that effect.

Article 10

1. The holder of the concession shall only be liable for damage resulting from the non-functioning or improper functioning of the telecommunications infrastructure and from shortcomings in the performance of the services assigned to him by virtue of article 3, paragraph 1, and of the provision of fixed connections, if such damage results from:
 - a. death or physical injury;
 - b. an act in violation of the articles 387, 390, 390b and 391 of the Criminal Code of Curaçao.
 - c. The non-delivery or incorrect delivery, the negligent management or processing of data concerning the users of the aforementioned services and of fixed connections, or errors in administrative operations pertaining to such data.
2. By national decree providing for general measures, amounts shall be established beyond which the liability, referred to in paragraph 1 shall not extend, whereby the level of the amounts may differ based on, inter alia, the nature of the event, the different services assigned to the holder of the concession by virtue of article 3, paragraph 1, and the care for fixed connections.
3. The holder of the concession may not invoke exclusion from or limitation of his liability arising from paragraphs 1 and 2 insofar as the damage arose from his own act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 11

With regard to the provision of international telecommunications, the concession holder shall only be liable in accordance with the provisions of the International Telecommunications Convention with the accompanying annexes and rules and regulations, and other treaties binding on Curaçao or resolutions of international institutions pertaining to international telecommunications.

CHAPTER III
TELECOMMUNICATIONS SYSTEMS OF A
SPECIAL NATURE OR LIMITED EXTENT

§ 1. Introductory provisions

Article 12

1. It is prohibited for a person who is authorised by virtue of section 2 of this Chapter to install, maintain or use a telecommunications system, to use such system, or cause it to be used:
 - a. to provide to third parties, services as described by virtue of article 3, paragraph 1;
 - b. to provide to third parties, direct data transport;
 - c. to provide to third parties, forms of telecommunication other than those referred to under a. and b. otherwise than by means of the telecommunications infrastructure.
2. The Minister may, with respect to a telecommunications system as referred to in article 15, grant an exemption from the prohibition set forth in paragraph 1 for telecommunication between users of a certain category to be specified in the exemption, if the holder of the concession is not willing or not able to make the use of an equivalent facility available within a reasonable period of time and on reasonable conditions.
3. The exemption may be subject to regulations and restrictions related to the purpose for which such exemption is granted.
4. The prohibition referred to in paragraph 1 shall not apply to the distribution of broadcasting programmes authorised by or pursuant to national ordinance by means of the systems referred to in paragraph 2.

Article 13

1. By or pursuant to a national decree providing for general measures, rules may be laid down regarding the making of decisions to grant, refuse, amend or revoke an authorisation for a telecommunications system as referred to in article 15, paragraph 1, article 16, paragraph 3a, article 18, paragraphs 1 and 3, article 18c, paragraph 1, regarding a supplementary authorisation as referred to in article 18b, paragraph 1, and regarding exemptions as referred to in article 12, paragraph 2 and article 19, paragraph 2.
2. These rules may only pertain to:
 - a. the manner in which an application for the granting, amendment or revocation of an authorisation or exemption shall be submitted and dealt with, and the manner in which the ex officio amendment or revocation of an authorisation or exemption shall be prepared;
 - b. the data to be provided in an application for the granting, amendment or revocation of an authorisation;
 - c. the time limit for deciding on the application.
3. The decisions to refuse, revoke or amend an authorisation or exemption as referred to in paragraph 1 shall state the reasons on which they are based.

§2. Radio-electric
transmitters and receivers

Article 14

For the purposes of this section and article 20, the following shall be equated with radio-electric transmitters:

- a. any assembly of parts suitable for forming a radio-electric transmitter equated with the same pursuant to the provisions set forth under b;
- b. the electric or electronic systems to be defined by national decree providing for general measures, that are suitable by means of use together with a radio-electric transmitter to form a radio-electric transmitter with other technical properties.

Article 15

1. It is prohibited, other than by virtue of a concession, to install, have present or operate radio-electric transmitters, unless such has been authorised by the Minister.
2. By or pursuant to a national decree providing for general measures, the following may be designated:
 - a. radio-electric transmitters for which no authorisation as referred to in paragraph 1 is required;
 - b. public bodies and categories of natural persons or legal entities that are exempt from the requirement for an authorisation in cases to be so specified.
3. By or pursuant to a national decree providing for general measures, rules may be laid down with regard to:
 - a. the authorisations referred to in paragraph 1;
 - b. the installation, presence and the use of radio-electric transmitters and receivers irrespective of whether an authorisation is required to that effect.
4. The rules referred to in paragraph 3 are intended to guarantee an efficient use of the ether. They may also be intended for the efficient provision of telecommunications in the general social and economic interest.
5. The rules referred to in paragraph 3 in any case pertain to:
 - a. the granting of authorisations as referred to in paragraph 1, in the course of which a distinction may be made on the basis of the duration of the authorisation, the nature of the radio-electric transmitter, and the purpose for which the authorisation is granted, as well as the regulations and restrictions to be attached to such authorisations;
 - b. the authority to operate categories of radio-electric transmitters to be so defined;
 - c. the technical requirements to be set for radio-electric transmitters;
 - d. the prevention and elimination of obstructions and interference caused by radio-electric transmitters in systems to be so defined;
 - e. the inspection of radio-electric transmitters;
 - f. that which is necessary for the implementation of treaties binding on Curaçao and resolutions of international institutions;

- g. the manufacture, trade, installation or repair of radio-electric transmitters upon practising a profession or carrying on a business;
6. An authorisation shall be refused in case:
- a. the granting thereof would be in violation of the rules laid down by virtue of paragraph 5;
 - b. an efficient use of the ether so requires;
 - c. in the general social and economic interest, an efficient provision of telecommunications is not compatible with this;
 - d. it has been requested for the purpose of distributing broadcasting programmes and the granting thereof would be contrary to the distribution of broadcasting programmes permitted by or pursuant to national ordinance;
 - e. the granting will endanger the security of the Country or the rule of law.
7. An authorisation may also be refused in case:
- a. a previously granted authorisation as referred to in paragraph 1 has been revoked on grounds of a violation of the rules laid down by or pursuant to this National Ordinance or of the regulations or restrictions attached to the authorisation;
 - b. the applicant has failed to comply with any of his obligations arising from a previously granted authorisation;
 - c. the application does not comply with the rules laid down to that effect by virtue of article 13.
8. An authorisation may be revoked in case:
- a. the holder of the authorisation has failed to comply with the rules laid down by or pursuant to this Act or the regulations and restrictions attached to the authorisation;
 - b. an efficient use of the ether so requires;
 - c. an efficient provision of telecommunications so requires in the general social and economic interest;
 - d. the fear is justified that if the authorisation remains in force, this will constitute a danger to the security of Curaçao or the rule of law;
 - e. the grounds on which the authorisation was granted, have ceased to have effect.
9. An authorisation may be revoked by the Governor if the fear is justified that if such authorisation remains in force, this will constitute a danger to the security of the Kingdom.

Article 16

- 1. By or pursuant to a national decree providing for general measures, rules may be laid down with regard to radio-electric receivers that are not exclusively intended for the reception of broadcasting programmes.
- 2. With regard to the rules referred to in paragraph 1, the provisions set forth in article 15, paragraph 5, shall apply mutatis mutandis.
- 3. In addition, the rules referred to in paragraph 1 may only pertain to:
 - a. setting as a requirement, an authorisation from the Minister for the installation, presence and use of types of receivers to be indicated to that effect, otherwise than by virtue of the

- concession in the interest of protecting the rights of third parties in radio communications or complying with treaties binding on Curaçao and resolutions of international institutions as well as the regulations and restrictions to be attached to such authorisation;
- b. the use of that which can be received with a receiver for the protection of the rights of third parties.
4. An authorisation as referred to in paragraph 3 under a. may be refused in case:
- a. the protection of third-party rights in radio communications so requires;
 - b. the compliance with conventions binding on Curaçao or resolutions of international institutions so requires;
 - c. the application does not meet the rules laid down to that effect by virtue of article 13.
5. An authorisation may be revoked if the holder of the authorisation fails to comply with the rules laid down by or pursuant to this National Ordinance or with the regulations and restrictions attached to the authorisation.
6. The provisions set forth in this article shall not apply to radio-electric receivers that constitute part of a cable broadcasting system.

Article 17

1. No authorisation shall be required by virtue of article 15 or 16 for the radio-electric transmitters or receivers on board of:
- a. ships, other than those from Curaçao, which are in Curaçao waters; or
 - b. aircraft other than those from Curaçao, which are in the airspace of Curaçao or on the territory of Curaçao, if a licence has been issued for them in accordance with the International Telecommunications Convention with the accompanying annexes and regulations, and this licence has been recognised by the Minister.
2. The Minister may lay down rules for the use of the radio-electric transmitters referred to in paragraph 1.

§3. Cable broadcasting systems

Article 18

1. It is prohibited to install, maintain, operate, or cause to be operated a cable broadcasting system, other than by virtue of a concession, unless such has been authorised by the Minister.
2. The categories of cable broadcasting systems of a very small extent, to be designated by the Minister, which shall comply with rules to be laid down by the Minister with regard to the technology of such systems, shall be exempted from the prohibition referred to in paragraph 1. The Minister shall notify the Minister of Justice of any intention to make such a designation.
3. Regulations and restrictions may be attached to an authorisation, which may pertain to the following:

- a. the duration of the authorisation;
 - b. the number of homes for which the authorisation is granted and to which the obligation to connect applies;
 - c. the technique, structure and quality of the system;
 - d. the use of a certain part of the telecommunications infrastructure;
 - e. a mandatory signal supply to other cable broadcasting systems;
 - f. the allocation and use of radio frequencies;
 - g. the prevention or elimination of interference to third parties by the use of the system;
 - h. the obligation to install the cable broadcasting system within a certain period of time after the authorisation has acquired legal effect;
 - i. the protection of the rights of third parties and the compliance with conventions that are binding on Curaçao and resolutions of international institutions.
4. An authorisation may be refused in case:
- a. the application does not meet the rules laid down to that effect by virtue of article 13;
 - b. the applicant does not have sufficient technical and financial resources to guarantee the continuity of the operation of the cable broadcasting system;
 - c. an authorisation has already been granted for the area the application pertains to.
5. An authorisation may be revoked in case:
- a. the holder of the authorisation does not comply with the rules laid down by or pursuant to this act or with the regulations and restrictions attached to the authorisation;
 - b. the holder of the authorisation no longer has sufficient technical and financial resources to guarantee the continuity of the operation of the cable broadcasting system;
 - c. the grounds on which the authorisation was granted, have ceased to have effect.

Article 18a

By or pursuant to national decree providing for general measures, rules shall be laid down with regard to:

- a. the validity of an authorisation and a supplementary authorisation as referred to in article 18b, paragraph 1;
- b. technical requirements to be laid down for cable broadcasting systems and the cable networks connected to them;
- c. requirements to be laid down for those who install cable broadcasting systems; and
- d. the inspection of a cable broadcasting system and the cable network connected to it.

Article 18b

1. A person who installs, maintains or operates a cable broadcasting system with an authorisation or by virtue of an exemption as referred to in article 18 paragraph 2, is forbidden to operate such system, or cause it to be operated, other than for the purpose of distributing broadcasting programmes, unless he has obtained additional authorisation from the Minister.
2. A supplementary authorisation shall be granted for the operation of the cable broadcasting system as a means of transport for other services relating to telecommunications, with the

exception of services between those connected to the cable broadcasting system.

3. Regulations may be attached to a supplementary authorisation and a supplementary authorisation may be granted subject to restrictions. These may pertain to:
 - a. the duration of the supplementary authorisation;
 - b. the installation of technical facilities;
 - c. the prevention or elimination of interference to third parties by the use of the cable broadcasting system;
 - d. the protection of the rights of third parties; and
 - e. the compliance with conventions that are binding on Curaçao and resolutions of international institutions.
4. A supplementary authorisation shall be refused if in the general social and economic interest the efficient provision of telecommunications is not compatible with its granting as well as on the grounds as specified in article 18, paragraph 4 (a) and (b).
5. A supplementary authorisation may be revoked if in the general and economic interest the efficient provision of telecommunications so requires, as well as on the grounds as specified in article 18, paragraph 5.

§3a. Cable systems not being cable broadcasting systems

Article 18c

1. It is prohibited, other than pursuant to a concession, to install, maintain and use a system intended for telecommunications by means of cables and cable works, which is not a cable broadcasting system as referred to in article 18, in whole or in part in, on or above public land, unless such has been authorised by the Minister.
2. An authorisation for such a system shall be refused:
 - a. if the holder of the concession is willing and able within a reasonable period of time and on reasonable terms, to make available the use of a facility equivalent to such a system, or
 - b. in other respects, in the general social and economic interest an efficient provision of telecommunications is not compatible with the granting of a licence.
3. An authorisation may also be refused if the application does not meet the rules laid down in article 13 to that effect.
4. Regulations may be attached to an authorisation and an authorisation may be granted subject to restrictions. These may pertain to:
 - a. the duration of the authorisation;
 - b. the technology and structure of the system;
 - c. the prevention or elimination of interference to third parties through the use of the system;
 - d. the prevention of impairing the efficiency of the telecommunications infrastructure;
 - e. the method of connection to the telecommunications infrastructure.

5. An authorisation may be revoked in case:
 - a. in the general social and economic interest an efficient provision of telecommunications so requires;
 - b. the holder of the authorisation does not comply with the rules laid down by or pursuant to this National Ordinance or the regulations or restrictions attached to the authorisation subject to which it was granted;
 - c. the grounds on which the authorisation was granted, have ceased to have effect.
6. The provisions set forth in article 18a shall apply mutatis mutandis to systems referred to in paragraph 1.

§4. Other provisions

Article 19

1. It is prohibited for anyone who is authorised by virtue of sections 2, 3, and 3a of this Chapter to install, maintain, use, or operate or cause to be operated, a telecommunications system as referred to therein, to connect such system or cause it to be connected to another such system, otherwise than by means of the telecommunications infrastructure.
2. The Minister may grant exemption from the prohibition set forth in paragraph 1 for a telecommunications system as referred to in the articles 15, 16 and 18c, if the holder of the concession is not willing or able to make available an equivalent facility within a reasonable period of time and on reasonable terms.
3. In connection with the purpose for which an exemption is granted, regulations may be attached to an exemption and an exemption may be granted subject to restrictions.
4. The prohibition set forth in paragraph 1 shall not apply to the signal supply from a cable broadcasting system to other cable broadcasting systems in Curaçao, if the signal supply has been made obligatory by virtue of article 18, paragraph 3e.

Article 20

It is prohibited to supply, lease or otherwise make available radio-electric transmitters or receivers to natural persons or legal entities to whom no authorisation has been granted, required by or pursuant to this National Ordinance for the installation, presence and use of the relevant transmitters or receivers.

Article 21

The provisions by or pursuant to this chapter shall not apply to the systems referred to therein, intended for telecommunications which are intended for use by government bodies or services to be so designated by the Minister following consultation with the Ministers whom it also concerns, in charge of the care for the security of the Country or with the enforcement of the rule of law, which designation may be subject to regulations and restrictions.

CHAPTER IV
TERMINAL EQUIPMENT

Article 22

1. By or pursuant to a national decree providing for general measures, technical requirements shall be laid down which terminal equipment or internal networks shall meet, and rules shall be laid down for testing terminal equipment for conformity with the set technical requirements.
2. In addition, by or pursuant to national decree providing for general measures, rules shall be laid down pertaining to:
 - a. accrediting institutions which test terminal equipment for the purpose of approving such equipment for connection to the telecommunications infrastructure, as well as with regard to the supervision of these institutions;
 - b. issuing declarations of conformity for terminal equipment;
 - c. allowing terminal equipment to be connected to the telecommunications infrastructure and the manner in which the allowance of terminal equipment is to be announced;
 - d. approving an internal network;
 - e. applying for the allowance as referred to in subsection c. and the approval as referred to in subsection d.
3. Only terminal equipment, allowed for this purpose, may be connected or kept connected to the telecommunications infrastructure.
4. The allowance of terminal equipment may only be refused:
 - a. if the required declaration or declarations of conformity and the other required documents and data have not been submitted with the application;
 - b. if the terminal equipment does not meet the requirements and rules laid down by virtue of paragraph 1.
5. The allowance of terminal equipment may only be revoked if it has become apparent that such terminal equipment:
 - a. deviates to a significant degree from the declaration or declarations of conformity and the other required documents and data submitted with the application for being allowed;
 - b. does not meet the requirements and rules laid down by virtue of paragraph 1.
6. The provisions set forth in paragraph 4(b) and paragraph 5(b) shall apply mutatis mutandis with regard to the approval of internal networks.
7. It is prohibited in the exercise of a profession or the carrying on of a business to sell, rent out or in any other manner make available, keep in stock, offer for sale or hire or deliver terminal equipment on or destined for the Netherlands Antilles market, if it is not known in the prescribed manner that such terminal equipment has been approved.
8. The professional or commercial installation and maintenance of terminal equipment shall only be allowed with due observance of the rules to be laid down with regard to the professional competence, by or pursuant to a national decree providing for general measures.

CHAPTER V
INTERFERENCE SUPPRESSION OF
ELECTRIC AND ELECTRONIC SYSTEMS

Article 23

1. By or pursuant to a national decree providing for general measures, rules may be laid down with regard to electric or electronic systems, not being systems as referred to in articles 15, 16, 18 and 18c, concerning the prevention of and resistance to electromagnetic interferences.
2. It shall be prohibited to manufacture, import, sell, rent out or otherwise make available, hold in stock, offer for sale or rent, or deliver, or import systems as referred to in paragraph 1, on or destined for the Curaçao market if these do not comply with the technical requirements set forth in the rules referred to in paragraph 1.

CHAPTER VI
PROVISIONS ON THE OBLIGATION TO TOLERATE THE INSTALLATION, MAINTENANCE
AND REMOVAL OF CABLES AND CABLE WORKS BELONGING TO THE
TELECOMMUNICATIONS INFRASTRUCTURE

Article 24

For the purposes of this chapter, cable works shall be considered equivalent to cables.

Article 25

If for the design of a facility for the telecommunications infrastructure, digging, surveying or setting signs on someone's land is deemed necessary, the users of the land must tolerate this, provided that they have been notified in writing by the holder of the concession forty-eight hours in advance.

Article 26

1. The owners of land are obliged to allow cables for the purposes of the telecommunications infrastructure, in and above their land.
2. The owners of buildings and structures are obliged to permit cables to be run over them; however, these cables may not be attached to buildings and structures without the owners' permission.
3. The owners of land, buildings and structures as referred to in paragraphs 1 and 2 shall also be obliged to allow such activities to be performed on their land and above their buildings and structures as are necessary to maintain and remove the cables.
4. The cables, although placed in, on or over special property, must be made accessible at all times to the personnel of the holder of the concession charged with their maintenance.

Article 27

The damage which may arise from the application of the provisions of the two preceding articles shall be recovered from the holder of the concession after it has been assessed by the court of first instance, subject to appeal, and that assessment has been declared enforceable by the said court.

Article 28

The holder of the concession is obliged to relocate cables for the purpose of the telecommunications infrastructure at his own expense, if such relocation is necessary for the erection of buildings or the performance of works by or on behalf of the person on whom an obligation of tolerance rests.

Article 29

The laying of cables for the purpose of the telecommunications infrastructure along or over residential properties must take place in such manner that no nuisance is caused to the residents, either by the cables themselves or by vibrations thereof.

Article 30

The holder of the concession is obliged to install the necessary facilities to protect the cables intended for the telecommunications infrastructure against lightning.

CHAPTER VII
FEES

Article 31

1. In accordance with rules to be laid down by or pursuant to a national decree providing for general measures, a fee to be set by the Minister shall be due for the following:
 - a. an authorisation as referred to in article 15 paragraph 1, article 16 paragraph 3(a), article 18 paragraphs 1 and 3 and article 18c, as well as a supplementary authorisation referred to in article 18b, which fee shall be payable for the cost of involvement in granting the authorisation, in acquiring the right to operate radio-electric transmitters as referred to in Article 15 paragraph 5(b) and in ensuring that the holder of the authorisation complies with the rules, regulations and restrictions imposed by or pursuant to this National Ordinance;
 - b. the costs of involvement in:
 - 1o. the inspection of radio-electric systems, as referred to in article 15 paragraph 5(e);
 - 2o. the inspection of cable broadcasting and cable systems, as referred to in article 18a (d) and article 18c paragraph 6 respectively, as well as of the cable networks connected to them;
 - 3o. the approval of terminal equipment and the inspection of internal networks, as referred to in article 22 paragraph 2(c); and

- 4o. the supervision of compliance with the requirements in respect of the inspections and approvals referred to under 1o, 2o and 3o.
 - c. the costs of handling complaints about interference or obstruction as referred to in article 15, paragraph 5 (d), article 16, paragraph 2, insofar as article 15, paragraph 5 (d) has been declared applicable mutatis mutandis, article 18, paragraph 3 (g) and article 22, paragraph 1;
 - d. an accreditation as referred to in article 22, paragraph 2 (a), which fee shall be due for the costs of the involvement in granting the approval and supervising the compliance by an approved body with the rules laid down by or pursuant to this National Ordinance with regard to the accreditation, unless such accreditation has not been given by the Minister on request, but on his own initiative, and this testing authority is not established in Curaçao;
 - e. the costs of the involvement in granting an exemption as referred to in article 12, paragraph 2, and the supervision of compliance with such exemption.
2. If the fees referred to in paragraph 1 are payable by a legal entity under private law, each director of this legal entity shall be jointly and severally liable for the payment of such fees.

CHAPTER VIII SUPERVISION

Article 31a

1. The persons appointed for this purpose by national decree shall be charged with the supervision of compliance with the provisions laid down by or pursuant to this National Ordinance. Such appointment shall be published in the Curaçao Gazette.
2. The persons so appointed by virtue of paragraph 1 shall only be authorised to the extent that such is reasonably necessary for the performance of their duties:
 - a. to request any information;
 - b. to require inspection of all books, documents and other data carriers and to take copies thereof, or to temporarily take these along for that purpose;
 - c. to subject goods to inspection and examination and to temporarily take them along for that purpose;
 - d. to enter all places, with the exception of dwellings, without the express permission of the occupant, accompanied by persons appointed by them;
 - e. to enter dwellings or parts of vessels intended as dwellings without the express permission of the occupant.
3. If necessary, access to a place as referred to in paragraph 2(d) shall be provided with the aid of the police.
4. Title X of Book 3 of the Code of Criminal Procedure shall apply mutatis mutandis to the entry of dwellings or parts of vessels intended as dwellings as referred to in paragraph 2(e), with the exception of the articles 155 paragraph 4, 156 paragraph 2, 157 paragraphs 2 and 3, 158 paragraph 1, last sentence, and article 160 paragraph 1, on the understanding that the authorisation shall be granted by the Procurator General.

5. By national decree providing for general measures, rules may be laid down with regard to the exercise of the duties of the persons appointed by virtue of paragraph 1.
6. Everyone shall be obliged to render all cooperation demanded by virtue of paragraph 2, to the persons appointed on grounds of paragraph 1.

Article 32

1. If the holder of the concession fails to comply with an obligation imposed on him pursuant to this National Ordinance, the Minister may give him a substantiated instruction in writing.
2. In the event of non-compliance with the instruction, the Minister may impose on the holder of the concession, an administrative fine of up to one hundred thousand guilders.

Article 33

1. If the rules laid down for systems as referred to in articles 15, 16, 18, 18b, 18c, 22 and 23 or the rules and restrictions on preventing and removing interference and obstructions in other systems are not complied with, in accordance with rules to be laid down by national decree providing for general measures, the Minister shall be authorised to give instructions to the owner of such system to prevent and remedy interference and obstructions and, in the event of non-compliance with the instructions, to have the necessary work done with regard to such system at his expense in order to prevent and remedy interference and obstructions.
2. If the rules laid down with regard to the installation, the presence or the use of telecommunications systems as referred to in section 2 of chapter III or the regulations or restrictions attached to an authorisation for such systems are not complied with, the Minister shall be authorised, subject to rules with regard to telecommunications systems as referred to above in accordance with that national decree providing for general measures:
 - a. to prohibit the holder of the system from transmitting in whole or in part;
 - b. to have the system sealed and to have it taken into custody at the expense of the holder of the system;
 - c. to impose an administrative fine of up to fifty thousand guilders on the holder of the authorisation for the system.
3. The holder of a telecommunications system in respect of which a compulsory measure as referred to in paragraph 2 (a) or (b) has been mentioned, shall be obliged to comply with or to tolerate such compulsory measure.
4. The provisions set forth in paragraph 2 opening words and under (c) shall apply mutatis mutandis to the telecommunications systems referred to in sections 3 and 3a of chapter III.

Article 34

1. The Minister may by means of a writ of execution collect any fee payable pursuant to article 7, paragraph 6, and article 31 and any penalty imposed pursuant to article 32 or article 33, as well

as the other costs referred to in the latter article, increased by the costs incidental to collection.

2. The writ of execution shall constitute an enforceable title, which may be enforced pursuant to the rules of the Code of Civil Procedure. The writ of execution shall be served at the expense of the offender.
3. An objection against the writ of execution may be lodged by summoning the Country during a period of one month following service.
4. The objection shall suspend the enforcement. At the request of the Country the court may lift the suspension of the enforcement.

CHAPTER IX PENAL PROVISIONS

Article 35

1. Anyone who
 - a. installs telecommunications infrastructure without the concession as required pursuant to article 2, paragraph 1,
 - b. acts in contravention of article 4a,
 - c. acts in contravention of article 15 paragraph 1,
 - d. acts in contravention of article 20,shall be liable to imprisonment not exceeding six months or a fine of twenty-five thousand guilders.
2. The person who, with the intention to benefit himself or another person unlawfully, by means of a technical intervention causes a service to be provided by using the telecommunications infrastructure or a cable broadcasting system as referred to in article 18, shall be liable to imprisonment not exceeding four years or a fine of one hundred thousand guilders.
3. The following shall be liable to imprisonment not exceeding six months or a fine of ten thousand guilders:
 - a. violation of article 12 paragraph 1, article 18 paragraph 1, article 18b paragraph 1, article 18c, paragraph 1, article 19 paragraph 1, article 22 paragraph 6 and article 23 paragraph 2;
 - b. connecting or keeping connected terminal equipment to the telecommunications infrastructure, which equipment has not been approved as referred to in article 22 paragraph 3;
 - c. non-compliance with the obligation as referred to in article 33 paragraph 3.
4. Violation of the rules laid down by or pursuant to national decree providing for general measures referred to in article 15, paragraph 3, article 16 paragraph 1, article 18a, article 22 paragraph 7, article 23 paragraph 1, or of the rules laid down by virtue of article 17 paragraph 2, insofar as expressly designated as a criminal offence, shall be liable to imprisonment for a term not exceeding four months or a fine of ten thousand guilders.
5. The acts made punishable under the paragraphs 1 and 2 of this article are serious crimes.

The acts made punishable under paragraphs 3 and 4 of this article are minor offences.

Article 35a
[Repealed]

Article 36

In addition to the officials referred to in article 184 of the Code of Criminal Procedure, the persons appointed to that effect by national decree on the joint recommendation of the Minister and the Minister of Justice shall be responsible for investigating the acts punishable pursuant to this National Ordinance. Such designation shall be published in the Curaçao Gazette.

By national decree providing for general measures, rules may be laid down regarding the requirements to be met by the persons appointed by virtue of paragraph 1.

Article 37
[Repealed]

Article 38
[Repealed]

CHAPTER IXa APPEAL

Article 38a

Any person whose interests are directly affected by an order made pursuant to this National Ordinance, with the exception of those relating to a designation of public bodies or services as referred to in Article 21, may lodge an appeal against this to the court of first instance.

CHAPTER X SPECIAL PROVISIONS

Article 39

Everyone is permitted to make use of the services assigned to the holder of the concession by virtue of article 3, paragraph 1, with due observance of the provisions to be laid down to that effect. However, a service so assigned, may be refused or interrupted if its contents are deemed to be in conflict with the security of Curaçao or the rule of law. The reason for such refusal or interruption shall be notified to the commissioning authority. The decision of the Minister may be invoked in this matter.

Article 40

In the public interest, international telecommunications may be placed under supervision or partially suspended by the Minister for an indefinite period of time.

Article 41

In case of a state of war or siege, international telecommunications may be placed under the control of the Governor.

Article 42

In special circumstances relating to the enforcement of the international rule of law or to the international relations, the holder of the concession is obliged to follow the instructions of the Minister, in agreement with the Minister of General Affairs, concerning the provision of telecommunications from and to foreign countries.

CHAPTER XI
OTHER PROVISIONS

Article 43

The holder of the concession is obliged to cooperate in the execution of an authorised special order to listen in on or record telecommunications that are transmitted over the telecommunications infrastructure.

Article 44

1. By national decree providing for general measures, rules shall be laid down with regard to the establishment of a Council for Advice and Consultation concerning telecommunications.
2. The rules referred to in paragraph 1 shall in any case pertain to:
 - a. the composition and working methods of the council;
 - b. the duties and powers of the council with regard to:
 - 1°. advising the Minister;
 - 2°. conducting consultations and promoting the collaboration between the holders of a concession as referred to in article 2 paragraph 1;
 - 3°. settling disputes between the holders of a concession;
 - 4°. discussing international problems.
3. By national decree providing for general measures, the Minister may be authorised to take a decision on disputes as referred to in paragraph 2 (b) (3), which shall be binding on the holders of a concession.

CHAPTER XII
TRANSITIONAL AND FINAL
PROVISIONS

Article 45
[Repealed]

Article 46
[Repealed]

Article 47

This National Ordinance shall enter into force on a date to be determined by national decree.

Article 48

This National Ordinance may be cited as the "National Ordinance on Telecommunications Facilities".