

A BILL

ENTITLED

AN ACT to Validate and confirm as lawful the imposition, calculation and collection of spectrum regulatory fees, in good faith and inadvertent as to the imposition, calculation and collection of such fees being invalid, improper or without lawful authority, during the period commencing on the 1st day of April, 2004, and ending on the 22nd day of March, 2017; to indemnify the Government and all other persons from liability in relation thereto; and for connected matters.

WHEREAS section 26(1) of the *Telecommunications Act* (hereinafter referred to as “the Act”) provides that the Minister may impose an annual spectrum regulatory fee in accordance with the section and in relation to each spectrum licence issued under Part IV of the Act:

AND WHEREAS section 26(2) of the Act provides that the spectrum regulatory fee shall be such amount as the Minister considers necessary in order to cover the reasonable operating costs incurred by the Spectrum Management Authority (hereinafter referred to as “the Authority”) in relation to spectrum licences:

AND WHEREAS section 26(3) of the Act provides that the amount of the spectrum regulatory fee shall be calculated on the same basis in relation to each holder of a carrier licence and a service provider licence:

AND WHEREAS section 72(1) of the Act provides that the Minister may make regulations generally for giving effect to the provisions and purposes of the Act:

AND WHEREAS the Minister made the Telecommunications (Spectrum Regulatory Fees) Regulations, 2003 (hereinafter referred to as “the Regulations”), on the 30th day of April, 2003, to impose the collection of spectrum regulatory fees:

AND WHEREAS regulation 2 of the Regulations provides that each holder of a spectrum licence falling within the groups specified in the first column of the Schedule to the Regulations shall pay the appropriate regulatory fees to the Authority as specified in the second column of that Schedule:

AND WHEREAS, during the period commencing on the 1st day of April, 2004 and ending on the 22nd day of March, 2017, in order to cover the increased operating costs incurred to regulate spectrum licences, the Authority imposed, calculated and collected spectrum regulatory fees in excess of the sum imposed by the Regulations, in good faith and inadvertent as to the imposition, calculation and collection of such fees being invalid, improper or without lawful authority:

AND WHEREAS it is desirable to validate and confirm as valid, proper and lawful, the imposition, calculation and collection of the spectrum regulatory fees, in good faith and inadvertent as to the imposition, calculation and collection of such fees being invalid, improper or without lawful authority, during the period commencing on the 1st day of April, 2004 and ending on 22nd day of March, 2017, and to indemnify the Government and all other persons from liability in relation thereto:

[]

NOW, THEREFORE, BE IT ENACTED by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House

of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the Telecommunications (Spectrum Regulatory Fees) (Validation and Indemnity) Act, 2018. Short title.

2. In this Act, “Authority” has the meaning assigned to it by section 2 of the *Telecommunications Act*. Interpretation.

3.—(1) Notwithstanding the *Telecommunications Act*, the Telecommunications (Spectrum Regulatory Fees) Regulations, 2003, and anything to the contrary in any other enactment, the imposition, calculation and collection of spectrum regulatory fees by the Authority, in good faith and inadvertent as to the imposition, calculation and collection of such fees being invalid, improper or without lawful authority, during the period commencing on the 1st day of April, 2004, and ending on the 22nd day of March, 2017, is declared to have been validly, properly and lawfully made and done to all intents and purposes and with effect as if authorized pursuant to the *Telecommunications Act*. Validation and indemnity.

(2) For the avoidance of doubt, any unpaid portion of the spectrum regulatory fees validated by this section is lawfully payable to the Authority.

(3) Every person liable to be legally proceeded against on the ground that any of the acts done in good faith and inadvertent as described in subsection (1) was unauthorized, unlawfully done, or otherwise illegal or improper, is freed, acquitted, discharged and indemnified as well against The Queen’s Most Excellent Majesty, Her Heirs and Successors as well as against all persons, whatsoever, from such liability.

Passed in the Honourable House of Representatives this 17th day of July, 2018.

PEARNEL CHARLES, CD, MP, JP
Speaker.

MEMORANDUM OF OBJECTS AND REASONS

During the period commencing on the 1st day of April, 2004, and ending on the 22nd day of March, 2017, spectrum regulatory fees were imposed, calculated and collected in excess of the sums imposed by the Telecommunications (Spectrum Regulatory Fees) Regulations, 2003, in good faith and inadvertent as to the imposition, calculation and collection of such fees being invalid, improper or without lawful authority.

This Bill seeks to validate and confirm as lawful the imposition, calculation and collection of spectrum regulatory fees, in good faith and inadvertent as to the imposition, calculation and collection of such fees being invalid, improper or without lawful authority, during the period commencing on the 1st day of April, 2004, and ending on the 22nd day of March, 2017, and to indemnify the Government and all other persons from liability in relation thereto.

ANDREW WHEATLEY
Minister of Science, Energy and Technology.

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As passed in the Honourable House of Representatives.

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