

## II. LEGAL AND REGULATORY FRAMEWORK

In 2004 the CRC continued the development of a legal and regulatory framework, which it to comply with the new trends in the development of telecommunications and harmonize with the EU legislation according to the commitments undertaken by the country with regard to its accession to the EU. At the end of 2003 the new Telecommunications Act (State Gazette, issue 88/2003), according to which new telecommunications activities were introduced, which are implemented on the grounds of an individual license or registration under a general license, the mechanism of regulation for the implementation of certain telecommunications activities was modified – some of which from individual licensing passed to registration under a general license.

In execution of the commitments undertaken by the Republic of Bulgaria for the approximation of the legislation to the regulatory framework of the European law as a part of the process of accession of the country to the EU, the new law developed some new principles with regard to the public relations related to the carrying out of telecommunications as lawfulness, effectiveness, transparency and equal treatment, predictability, proportionality and objectivity, public debates, reducing the regulatory impact to the required minimum. The regimes of regulation with availability of criteria clearly and objectively defined within the law were specified, ensuing from the policy implemented and conformed to the requirements of the European legislation for mitigation of the licensing regimes. The Act clearly regulates the procedures, conditions and terms for issuance, amendment, supplement, termination, temporary suspension, revocation and extension of the term of validity of the licenses.

### 1. Development of the secondary legislation under the Telecommunications Act

In 2004 the stipulated in the Telecommunications Act secondary legislation was worked out and adopted, which provided a possibility for the finalization of the applicable legal telecommunications framework, providing the possibility for real creation and development of a liberalized market.

**1.1** With regard to the new Act the CRC developed a draft of a new Ordinance on the Specification of the Kinds of Telecommunications Activities Subject to Individual Licensing and Registration under General License, which was proposed to the Minister of Transport and Communications for issuance. The new **Ordinance No 13 on the Specification of the Kinds of Telecommunications Activities Subject to Individual Licensing and Registration under General License** (Ordinance No 13), was issued on 22.12.2003 by the Minister of Transport and Communications and promulgated in the State Gazette, issue 2 dated 9.01.2004. Ordinance No 13 differentiates the specific kinds of telecommunication activities in conformity with the permission regime, which they are subject to, the issue for the free regime of telecommunication activities being regulated in the Telecommunications Act and remaining beyond the scope of the new Ordinance. In 2004 an amendment and supplement of the Ordinance was made (promulgated in the State Gazette, issue 68 dated 3.08.2004), by which the activities for the carrying out of telecommunications through telecommunication cellular networks from a terrestrial mobile radio service in conformity with standard NMT 450, GSM 450, CDMA 450 and use of digital technologies within radio frequency range 450 MHz, telecommunications cellular networks from a terrestrial mobile radio service in conformity with standard GSM 900, 1800 and DCS 1800, as well as telecommunication cellular networks from a terrestrial mobile radio service in conformity with standard UMTS were differentiated in the individual licensing regime. The carrying out of telecommunications with provided individually determined scarce resource was included in the activities subject to licensing – numbers through telecommunication networks for the provision of a fixed voice telephone service.

**1.2.** CRC worked out a new **Tariff for the fees collected by the Communications Regulation Commission under the Telecommunications Act**, adopted by a Decree of the Council of Ministers No 71 dated 7.04.2004 (promulgated in the State Gazette, issue 31 dated 16.04.2004 (the Tariff). The new provisions in the Tariff affected the payment of fees in conformity with the new telecommunication activities, which are implemented on the grounds of an individual license or registration under a general license=They reflected the modification in the certain telecommunications activities implementation regulation mechanism. The Tariff

incorporates the principle of cost-oriented fees and its purpose is to establish competitive conditions on the telecommunications market.

1.3. After the Telecommunications Act came in force, the CRC focused its efforts on the development of the secondary legislation, which to form the overall legal and regulatory framework for the realization and development of telecommunications. The following ordinances were adopted and issued in 2004 in conformity with the requirements of the Telecommunications Act:

- **Ordinance on the Conditions and Procedure for the Provisions of the “Leased Lines” Service** - (promulgated in the State Gazette, issue 10 from 06.02.2004 r.)
- **Ordinance No 12 of 5 May 2004 on the Conditions and Procedure for Issuance of Individual Licenses for Provision of a Fixed Voice Telephone Service** (promulgated in the State Gazette, issue 46 of 2004)
- **Ordinance No 10 of 29 June 2004 on the Conditions and Procedure for Interconnection of Telecommunications Networks** (promulgated in the State Gazette, issue 60 of 2004)
- **Ordinance No 14 of 27.07.2004 on the Conditions and Procedure for Carrying out of Telecommunications through Radio Equipment Radio Equipment Networks for Own Needs through the Use of Radio Frequency Spectrum for Common Use** (promulgated in the State Gazette, issue promulgated in the State Gazette, issue 72 of 2004)
- **Ordinances on Determination of Procedural Rules and Technical Parameters for Work of the Radio Broadcasting Service** (promulgated in the State Gazette, issue 76 of 2004)
- **Ordinance No 15 on the Conditions and Procedure for the Provision of a Universal Telecommunications Service and the Quality It Satisfies** (promulgated in the State Gazette, issue 85 of 2004)
- **Ordinance on the Determination of the Procedural Rules and Technical Parameters for Work of Telecommunications Networks from the Fixed Radio Service** (promulgated in the State Gazette, issue 75 of 2004)
- **Ordinance No 7 of 04.10.2004 on the Conditions and Procedure for Issuance of Individual Licenses without a Contest or Tender for Carrying out of Telecommunications through Telecommunications Networks from the Fixed Radio Service** (promulgated in the State Gazette, issue 93 of 2004)
- **Ordinance No 16 of 13.10.2004 on the Rules for Distribution and the Procedures for Provision for Use, Reservation and Revocation of Numbers, Addresses and Names** (promulgated in the State Gazette, issue 95 of 2004)
- **Ordinance on the Destruction or Provision of Belongings Taken Away in Favor of the State in Accordance with the Procedure established by the Telecommunications Act** (promulgated in the State Gazette, issue 87 of 2004)

1.4. The new Telecommunications Act introduced for the first time the concept of “operator with significant market power” (OSMP), as well as the criteria and mechanisms for its determination by the CRC. Besides the definition in the Act that a public operator has a significant market power when it is in a possession of a share equal to or bigger than 25 per cent of the relevant telecommunication market with territorial scope defined in his license, the CRC was entitled also to define that an operator has a significant market power with a share smaller than 25 per cent of the relevant market, when certain prerequisites are available. In this respect and in compliance with the specific provisions input in the Telecommunications Act and referring to the activities of OSMP and in compliance with the requirements of Art. 45 of the Act, the CRC, in coordination with the Competition Protection Commission, developed **Methodology for the Conditions and Procedure for Determination of Operators with Significant Market Power**, which was adopted by the Council of Ministers by its Decree No 155 of 05.07.2004 (promulgated in the State Gazette, issue 61 of 13.07.2004). The adopted Methodology regulates the conditions and the procedure for determination by the CRC of operators with significant power over the relevant telecommunications market (OSMP). Its goal is to create publicity and transparency with regard to the criteria and parameters for determination of operators with a significant market power, the research of the market and the collection of the information needed for the purpose.

1.5. In the view of the introduction of the universal telecommunication service, its scope as well as the regulation of rights and obligations for the operators that should provide it, the CRC developed **Methodology for the Conditions and Procedure for Determination of the Affordability of the Universal Telecommunication Service**, which was adopted by a Decree of the Council of Ministers No 229 of 31.08.2004 (promulgated in the State Gazette, issue 78 of 2004). The Methodology regulates the formation of the prices of the universal telecommunication service by the public operators in conformity with the principles input in it. The operators are obligated to send to the CRC the prices of the services determined by them and the documents related to their price formation, the regulatory authority being entitled in the event of discrepancy of the prices with the requirements of the methodology to return them with mandatory instructions for re-processing.

## **2. Mitigation of the licensing regime for certain telecommunications activities at which no scarce resource is required and passing from individual licensing to registration under a General License**

2.1. With the entry into force of the new Telecommunications Act a change took place in the regulation regime of telecommunication activities performed through cable networks for radio- and television signals and data transmission networks. The hereinabove indicated activities passed from the individual licensing regime to a regime of registration under a General License.

In view of the provisions of Art. 49, Para. 1, item 3 of the Telecommunications Act and Art. 7, items 1 and 2 of Ordinance No 13, the CRC adopted **General License No 201** of 23.12.2003 on the realization of telecommunications using public telecommunications cable network for radio and television programs and the provision of telecommunication services through it (General License No 201) and **General License No 217** of 23.12.2003 on the realization of telecommunications using public telecommunications network for data transmission without using scarce resources and the provision of telecommunication services through it (General License No 217). General Licenses No 201 and No 217 were promulgated in the State Gazette, issue 2 of 09.01.2004.

On the grounds of Art. 27, item 8 in relation to § 8, Para. 1 of the Transitional and Final Provisions of the Telecommunications Act, § 2 of the Transitional and Final Provisions of General License No 201 and § 2 of the Transitional and Final Provisions of General License No 217, the CRC passed decisions for registration under a General License of operators with issued individual licenses for construction, maintenance and operation of public telecommunication networks for radio and television signals and for the construction, maintenance and operation of a public telecommunication network for data transmission without using radio frequency spectrum.

At the time of re-registration there were 1383 individual licenses issued by the CRC for the construction, maintenance and operation of public cable telecommunication networks for radio and television signals and 42 individual licenses for construction, maintenance and operation of a telecommunication network for data transmission without using a radio frequency spectrum.

In view of the provision of § 8 of the Transitional and Final Provisions of the Telecommunications Act, the registration certificates under General Licenses No 201 and No 217 were issued within a one-month term from the promulgation of the General Licenses in the State Gazette, without the payment of a registration fee by the operators.

2.2. In 2004 the CRC issued twelve general licenses:

- **General License No 202** on realization of telecommunications through satellite networks for reporting purposes – SNG (promulgated in the State Gazette, issue 75 of 27.08.2004);
- **General License No 203** on realization of telecommunications through telecommunication networks SAP/SAB, inclusive of ENG/OB (promulgated in the State Gazette, issue 75 of 27.08.2004);
- **General License No 204** on the realization of telecommunications at the provision of access to voice telephone service through public pay phones (promulgated in the State Gazette, issue 56 of 29.06.2004);

- **General License No 207** on realization of telecommunications through radio equipment from the amateur radio service (promulgated in the State Gazette, issue 75 of 27.08.2004);
- **General License No 211** on realization of telecommunications through private telecommunication networks from a mobile radio service (PMR) – for short-term events (promulgated in the State Gazette, issue 101 of 16.11.2004);
- **General License No 212** on realization of telecommunications through private telecommunication networks from a mobile radio service (PMR) (promulgated in the State Gazette, issue 75 of 27.08.2004);
- **General License No 213** on realization of telecommunications through private telecommunication networks from a mobile radio service for personal calls (promulgated in the State Gazette, issue 75 of 27.08.2004);
- **General License No 215** on realization of telecommunications through private telecommunication networks from the fixed satellite radio service - VSAT networks (promulgated in the State Gazette, issue 75 of 27.08.2004);
- **General License No 216** on realization of telecommunication services – access to satellite systems (promulgated in the State Gazette, issue 75 of 27.08.2004);
- **General License No 218** on realization of telecommunications through a public telecommunication telex network (promulgated in the State Gazette, issue 101 of 16.11.2004);
- **General License No 219** on realization of telecommunications through a public telecommunication telegraph network (promulgated in the State Gazette, issue 101 of 16.11.2004);
- **General License No 220** on realization of telecommunications through public networks RLAN from a mobile radio network (promulgated in the State Gazette, issue 101 of 16.11.2004).

The adopted general licenses reflected the amendments made in the Telecommunications Act and in Ordinance No 13 with regard to the above indicated activities regulation regime – regulation of new kinds of activities and passing to others from individual licensing to a registration regime.

**2.3.** In connection with the registration regime under general license at realization of telecommunications through telecommunication networks or radio equipment through the use of radio frequency spectrum for shared use and in conformity with the powers granted by the Telecommunications Act, the CRC passed Resolution No 717 dated 12.02.2004. By it the Commission defined the bands within the radio frequency spectrum designated for shared use as well as the objectives, they may be used for, with taking the National Plan for allocation of the radio frequency spectrum to radio frequencies and radio frequency bands for civil needs, for the needs of the national security and the defense, as well as for shared use between them, into consideration.

### **3. Liberalization of the telecommunications market of fixed public telephone networks and fixed voice telephone services and creation of a possibility for the entrance of new alternative operators onto the market**

By Decisions No 1748 and No 1749 of 16 September the CRC defined BTC PLC as OSMP on the market of fixed public telephone networks and fixed voice telephone services as well as on the “leased lines” service provision market.

**3.1.** In view of the determination of BTC PLC as OSMP, a number of obligations arose for the Company, defined in conformity with the provisions of the Telecommunications Act. In particular, **the specific obligations of BTC PLC** refer to the following:

- Realization of **interconnection** of the network of BTC PLC with the network of other operators with observation of the specific requirements of Chapter VII, Section I of the Telecommunications Act, as well as determination of cost-oriented prices for the provision of the interconnection related services,

which shall be defined in conformity with the provisions Art. 215, Para. 1, item 2 and Art. 216 of the Telecommunications Act;

- Provision of the service **“leased lines” from the minimum package** with observation of the requirements of Chapter VII, Section III of the Telecommunications Act and determination of prices for the provision of this service pursuant to Art. 215, Para.1, item 3 and Art. 216 of the Telecommunications Act;
- Provision of **unbundled access to the local loop** of BTC PLC, as well as determination of prices for the provision of unbundled access at prices determined in conformity with the requirements of Art. 215, Para. 1, item 5 and Art. 216 of the Telecommunications Act;
- Provision of **specific access to the fixed telephone network** of BTC PLC at prices determined in conformity with the requirements of Art. 215, Para. 1, item 4 and Art. 216 of the Telecommunications Act;
- Provision of **shared use of premises, telecommunications facilities, channels, towers and other facilities**, part of BTC PLC network, at cost-oriented prices.

**3.2.** The real fulfillment of all described herein above obligations of BTC PLC was implemented as follows:

**3.2.1.** With regard to the realization of **interconnection** of BTC PLC network with the network of other operators:

By Decision No 1410 of 29.06.2004, the CRC approved a Reference interconnection offer worked out by BTC PLC= (RIO).

With the passing of the hereinabove indicated decision the obligation undertaken by the Republic of Bulgaria at the negotiations under Chapter 19 (Telecommunications) at the Conference in Brussels of 26.06.2001 was fulfilled, which is reflected pursuant to item 6.2., letter “b” of document CONF-BG 39/01 and reflects the position of the state with regard to the term for approval and publication of the Reference Interconnection Offer.

Besides fulfillment of obligations in the sphere of the state interests, guaranteeing of important public interests in the sphere of telecommunications was also reached with the adoption of the RIO.

With the entry into force of the RIO approved by CRC, the possibility for entrance of new participants into the telecommunications services market is guaranteed, which services are provided through the realization of interconnection, in particular the provision of a voice telephone service.

Effective competition is provided with the entrance of new operators into the market. This leads to improvement of the conditions for the provision of telecommunications services to the consumers in this manner the goals set up in Art. 2, items 1 and 3 of the Telecommunications Act shall also be attained, which refer to the development of the competition and consumer protection. Otherwise the process of realization of interconnection between operators would be suspended, which will result in the suspension of the liberalization processes on the telecommunication market.

Having in mind that the interconnection is a dynamic process and in developing the telecommunication market, the conditions of realization of interconnection are changing, the provision of Art. 17, Para. 2 of the Ordinance on the Conditions and Procedure for Interconnection of the Networks define as an obligation for OSMP to modify its RIO once a year.

By Decision No 2295 of 29.12.2004, the CRC approved the proposed by BTC PLC modification of the Reference Offer approved by Resolution No 1410/29.06.2004.

**3.2.2.** By Decision No 1487 of 15 July 2004 the CRC approved Reference Offer for the provision by BTC PLC of the service **“leased lines” from the minimum package**.

With the adoption of the Reference Leased Lines Offer, in which the conditions for the provision of the “leased lines” service from the minimum package are defined, publicity, equal treatment and transparency of its provision were provided.

**3.2.3.** As to the obligations of BTC PLC with regard to the provision of **unbundled access to the local loop**

By Decision No 2297/29.12.2004 CRC approved the RUO, providing BTC PLC with mandatory instructions for its modification as well.

With the entry of the RUO into force, a real possibility will be provided for the conduct of negotiations and conclusion of Contracts between BTC PLC and the operators, by which the operators will be provided with a possibility to use the already built up by BTC PLC subscription network for the provision of both broadband services and of a fixed voice telephone service. In this manner conditions shall be created for the encouragement of the competition at the provision of the hereinabove indicated services and their higher quality for the final users shall be provided for.

**3.2.4** By Decision No 1933 of 28.10.2004 the CRC determined **MOBILTEL AD as an operator with significant power over the market of mobile telecommunication networks and provision of voice telephone service through them** and imposed the stipulated in the Telecommunications Act obligations to the Company related to interconnection, aimed at the non-admission of disloyal competition, prevention of the misuse with significant market presence and protection of the consumers' interests.

**4.** By Decision No 1723 of 07.09.2004 as a result of a tender procedure the CRC issued an individual license to PRO WAVE OOD for the realization of telecommunications through a public mobile telecommunications network in conformity with **TETRA technology with national coverage** with a term of 15 years.

**5.** By Resolution No 1314 dated 07 June 2004 the CRC issued an individual license for realization of telecommunications through a public telecommunications mobile cellular network in conformity with **GSM standard with national coverage** with a term of 20 years of BTC PLC.

The issuance of the third GSM license created a real possibility for the future development of the competition on the mobile networks and services market.

**6. Intentions for the issuance of individual licenses** for the realization of telecommunications through a public telecommunications network from a fixed telecommunications network of the kind "**point-to-multipoint**" with national coverage were announced as well as for realization of telecommunications through a public telecommunications mobile cellular network in conformity with **UMTS standard with national coverage**. The conduct of the tenders is forthcoming in 2005.

**7.** In conformity with the provisions of Art. 19, Para. 4 of the Telecommunications Act and Art. 32, Para. 1 of the Electronic Document and the Electronic Signature Act (EDESA), the CRC, in the capacity of an independent specialized state authority performs functions relating to the registration and supervision over the activities for the provision of certification services related to the electronic signature in accordance with the procedure established in EDESA.

In view of the execution of its supervision powers, by Minutes of the Meeting Decision No 4 of 22.07.2004 the CRC approved **Methodology for Supervision of Certification Services Providers**. The designation of the indicated Methodology is to provide for an appropriate framework of procedures, criteria and mechanisms, which shall be used during the factual exercise of the supervision powers of CRC.

## **8. COURT REPRESENTATION**

### **8.1 Before the Supreme Administrative Court**

In 2004 the legal advisers of the Commission participated in the preparation and the court representation under 110 lawsuits in the Supreme Administrative Court (SAC), which may be in general united in conformity with problems in the following kind:

- 1.** Administrative cases against individual administrative decisions of the CRC and of the Chairperson of the CRC - 70 initiated cases;

2. Administrative cases against decisions of the CRC for the establishment of public state receivables – 33 initiated cases;
3. Administrative cases before SAC against the decision of the CRC for the issuance of the third GSM license to BTC PLC – 2 initiated cases;
4. Administrative cases initiated pursuant to the Civil Servants Act – 5 cases.

## **8.2. Before district and regional courts**

From the penal decrees issued in 2004 68 were appealed pursuant to the Telecommunications Act and 1 pursuant to the Postal Services Act, the initiated cases being in their greater part of administrative penal nature and are still pending before various instances before the relevant district and regional courts in the country.

Preparation of defenses in writing was conducted and in this respect at an average two appearances at a court session was performed under the cases initiated before district and regional courts throughout the country.

All the correspondences with regard to appealed penal decrees drawn out in the grounds of violations of the Telecommunications Act were prepared and sent within term to the relevant courts.

The relevant cassation complaints were prepared against the decisions by which the relevant first instance court revokes penal decrees.

## **8.3 Administrative penal activities of the CRC**

### **8.3.1. Analysis of the administrative penal activities**

In 2004 the administrative penal activities of the CRC was directed at post-licensing control over the execution of the conditions of the individual and general licenses on the part of the telecommunications operators, as well as in an insignificant degree at the suspension of the illegal implementation of various telecommunications activities.

Great attention was paid on the part of the regulatory authority to the obligations of the operators declared as OSMP, as well as to the provision of the universal telecommunications service.

What was specific in the administrative penal process during the first half of 2004 was the parallel application of the provisions of the Telecommunications Act (revoked) and the Telecommunications Act (promulgated in the State Gazette, issue 88/2003). This was imposed by the principle in the administrative penal process for application of the act effective at the time of the commitment of the administrative infringement. In compliance with the provisions of the Administrative Infringements and Penalties Act, the exemption to this principle being applied with regard to infringements in accordance with the procedure established by Art. 136 of the Telecommunications Act (revoked), for which the provision of Art. 240 of the Telecommunications Act (State Gazette, issue 88/2003) anticipate a sanction regime more favorable for the perpetrator.

### **8.3.2. Issued penal decrees**

**197 no. of penal decrees were issued** in 2004, of which 15 are for violations of the Postal Services Act (PSA), and the remaining ones – for administrative infringements in accordance with the procedure established by the Telecommunications Act (SG, issue 88/2003) and an insignificant number pursuant to the Telecommunications Act (revoked). The biggest part of the administrative infringements pursuant to the Telecommunications Act is for the implementation the compositions of Art. 234, Para. 1 and Art. 233, Para. 4 and 5 of the Telecommunications Act (SG, issue 88/2003), but infringements are also observed, to which one of the strictest sanctions stipulated in the Telecommunications Act is applied – the one of Art. 233, Para. 1.

**62 no. of resolutions** were issued by the Chairperson of the CRC during the year for suspension or discontinuation of the administrative penal proceedings, of which 2 no. were pursuant to the Postal Services Act.

In 2004 a trend to a smaller number of administrative infringements is observed, relating to the non-payment of licensing fees on the part of the telecommunications operators. This, on one hand is due to the decrease of the licensing regimes and the drop off of the post-licensing fees for the operators registered under general licenses, and on the other hand – to the higher discipline of the operators with regard to their licensing obligations.

A bigger number of the administrative infringements is reported related to the realization of telecommunications without a registration under General License No 217 dated 23 December 2003 on the realization of telecommunications using public telecommunications network for data transmission without using scarce resources and the provision of telecommunication services through it, as well as General License No 220 dated 1 October 2004 on realization of telecommunications through public networks RLAN from a mobile radio service.

**8.3.3.** Special attention must be paid to the **collection of the fines and the property sanctions**, due to CRC under penal decrees entered into force in 2004.

In the first place it should be underlined that in 2004 emphasis was placed over the collection of public state receivables under penal decrees which became effective during this time period. Voluntary execution invitations were sent to the operators who had not paid the amounts due in a voluntary manner, by which they were provided with a possibility to pay them within a 7-day time period. After the expiration of this term CRC undertook actions for compulsory collection for the public state receivables under penal decrees which had entered into force through the State Receivables Collection Agency.

In consequence of the actions undertaken the collectibility of the public state receivables of CRC under penal decrees entered into force was increased.