

CONNECTING DISPARATE EVENTS:

THE LIBERALISATION OF THE

TELECOMMUNICATIONS SECTOR

IN SAINT LUCIA

ADDRESS BY:

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ON

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INTRODUCTION: DISPARATE EVENTS

Have you ever wondered how disparate events, seemingly unconnected, eventually acquire meaning and significance in your life? Is it chance or sheer fate that connects these events?

What has this to do with the formation of ECTEL and the liberalisation of the telecommunications sector?

Sometime in either 1989 or 1990, I received a telephone call from a young Attorney from Dominica. His name was Anthony W. Astaphan. The conversation went something like this:

“Dr. Anthony, I need some advice. I have a client in Dominica who wants to file a Constitutional action against the state on the ground that his company was denied a telecommunications licence.”

“Really,” I responded. “How is that a constitutional breach?”

“Well, the state has interfered with my client’s right to freedom of speech and to communicate.”

“So, how was your client’s right of freedom of expression breached?”

“You see, by the refusal of the state to consider an application from my client to provide public telecommunication services because it believes that an Act of Parliament compels it to protect the exclusive licence it has granted to Cable & Wireless.”

“So, what are you saying? Is it not reasonably justifiable in small country like Dominica with a small population to have one telecommunication provider? Surely, that must be in the public interest.”

“Not so,” was the reply from Astaphan. “Not if it breaches my client’s freedom of expression and the right to communicate ideas freely.”

I promised to think about the issues, look at the Constitution and the existing legislation, and call in due course.

Days later, I would telephone Astaphan that I had concluded that it was possible to initiate a constitutional motion against the State.

Many telephone calls were exchanged after that initial conversation. Those phone calls would eventually lead to one of the most enduring friendships in my life. Anthony Astaphan remains a close, loyal and treasured friend.

Unfortunately, his client, Marpin TV Company Limited, decided against filing the constitutional motion as it had no money to meet the cost of what it feared would be a bruising battle with Cable & Wireless.

This early encounter, perhaps more than any other, sensitized me, constitutionally and politically, to the inherent dangers of exclusivity in the telecommunications sector.

ENTER THE 1997 ELECTION CAMPAIGN

Enter the 1997 Election Campaign.

Supporters of the Saint Lucia Labour Party, in their thousands, gathered at the Vigie Playing Field in Castries for the launching of the 1997 Manifesto: *“New, Vision, New Directions for a New Century.”*

I believe that in those days, although I did not see him, the current Minister of Communications was there, in his red shirt, to witness this historic event.

It was my responsibility to speak on telecommunications. “Cable & Wireless is the most hated company operating in Saint Lucia today,” I thundered. The crowd roared with approval. Then, I outlined our policy on Telecommunications. The St. Lucia Labour Party pledged to:

(a) “Negotiate a flat rate for telephone services as a means of opening up the country and removing price discrimination for people living in rural areas.

(b) Ensure that each secondary school is provided access to the information highway.

© Require Cable & Wireless to increase its penetration rate by installing telephones not just to communities but to households.

(c) Ensure the introduction of measures to require Cable & Wireless to improve its customer services and the quality of services to consumers.

(d) Abolish tax on local telephone calls.

(e) Expand access to Cablevision (subscriber cable television)

(f) Enhance access to other national television programmes in the region to enable our people to keep in touch with the lives and happenings of other Caribbean people.” (Elections, 1997 Manifesto, Page 41).

Cable & Wireless neither forgot nor forgave me for my statement. I was reminded of it from time to time.

ENTER THE SLP GOVERNMENT

On the assumption of Government in May 1997, we learnt that Cable & Wireless had four, but different and exclusive licences. These included:-

1. The Domestic Telephone Agreement of 1980, which expired in September 2000 and was extended to March 31st 2001;
2. The External Licence of 1969, which was due to expire on March 31st 1994, but was extended to coincide with the termination date of the domestic licence, which was set at March 31st, 2001;
3. The Boatphone (Caribbean Cellular) Agreement of 1993, which expired on January 1st 2000, but was extended to March 31st 2001; and
4. The Cable TV Licence of 1986, which expired on October 31st 2001.

It quickly became clear that the expiry of these licences provided us with a unique opportunity to implement our Manifesto promises. Cabinet readily agreed to proceed to liberalise the sector. The next step was to secure the support of the OECS (Organisation of Eastern Caribbean States).

The Government of Saint Lucia raised the issue of liberalisation of the telecommunications sector with OECS Governments, sometime in October

1998. I remember the occasion well. The Government of Antigua listened but reminded the meeting that Cable & Wireless did not operate in Antigua. Grenada supported the proposal, but cautiously. Dominica announced that since September 1985, Cable & Wireless held an exclusive twenty-year licence covering both national and international licences. A 1995 Act guaranteed Cable & Wireless exclusivity. Dominica thought it was in a bind. St. Kitts and Nevis was strangely silent. Later, I would learn that the telephone company in St. Kitts and Nevis was jointly owned by the Government and Cable & Wireless. Saint Vincent and the Grenadines did not hesitate to support the proposal. The dependencies of Anguilla, Monsterrat and the British Virgin Islands reminded everyone of their constitutional status, and so had to toe the imperial line. This meant protecting the vital interests of Cable & Wireless.

I explained, sometimes patiently, sometimes energetically, sometimes persuasively that the end of the Cable & Wireless licences in Saint Lucia provided a historical opportunity to re-negotiate existing arrangements with Cable and Wireless, end its monololy, and liberalise the sector. I emphasised that we needed a regional approach to insulate each other from the inevitable pressures that would come our way.

Eventually, the Heads of Government agreed, nervously but cautiously, to engage Cable & Wireless and liberalise the sector.

SUPPORT OF THE WORLD BANK

The Governments knew that they had, a major disability- lack of expertise. Over the years, the Governments had invested little in training their people in Telecommunications. They too had come to rely exclusively on Cable & Wireless.

It was decided to turn to the World Bank both to provide advice and funding to finance the liberalisation of the sector. The World Bank loaned the participating islands six million EC dollars. Counterpart funding of four million came from the participating states.

The project became operational in October, 1998.

Everyone knew too, that the presence of the World Bank provided “a cushion” to contain Cable & Wireless. It was a shrewd move that paid good political dividends.

CONVINCING CABLE & WIRELESS

Armed with the decision of the Heads of Government, I proceeded to persuade Cable & Wireless that the Government of Saint Lucia wanted a new and different relationship. I reminded Cable & Wireless that it had been part of the Caribbean landscape, was a household name in Saint Lucia and so for all

practical purposes, part of our family. Cable & Wireless was not amused. It realised though, that the Government was determined to end its monopoly.

A LEGAL CHALLENGE

Meanwhile, Marpin decided to challenge the monopoly that Cable & Wireless enjoyed in Dominica. By notice of motion dated October 20, 1998, Marpin sought declaratory and other relief under the Fundamental Rights Provision of the Constitution of Dominica. The proceedings challenged the validity of the Dominica Act and the licence “insofar as the Act authorizes and the licence grants the exclusive licence for Cable & Wireless.” ¹[Cable & Wireless (Dominica) Limited vs Marpin Telecoms and Broadcasting Company Ltd, UKPC, October 30, 2000]. The High Court and later the Court of Appeal, agreed with Marpin that the exclusivity conferred by the licences secured by Cable & Wireless was in contravention of the Constitution.

Every Government in the OECS knew and understood the significance of this case. If Marpin succeeded, then all existing and exclusive licences to Cable & Wireless would be invalid. Cable & Wireless would not need to be persuaded to end its monopoly.

The stakes were high. Cable & Wireless appealed to the Privy Council.

¹ “Cable and Wireless (Dominica) Limited Vs Marpin Telecoms and Broadcasting Company Ltd, (2000) Privy Council Appeal No.15,3.

ONGOING NEGOTIATIONS

Meanwhile, the negotiations with Cable and Wireless commenced. The OECS Government established a Negotiating Team made up of all the participating Governments and readily agreed that Senator, the Hon. Calixte George of Saint Lucia be the Chairman and then Minister, Hon. Cedric Liburd of St. Kitts and Nevis as Deputy.

In Calixte George, we believed we had the perfect pick. Calixte was anti-colonialist, anti-monopolist, fiercely committing to liberalisation and had a solid grasp of the technological issues that would arise in the negotiations. Here was vintage Calixte George at the First Meeting of the Council of Ministers on October 18, 2000:

“It must be stated that our achievements so far could only be attained by our philosophical position, namely, that it was time to put a halt to the exploitation and advantage that was taken of previous Governments in the region who seemed impotent to tackle monopolistic giants who were allowed free reign with rate setting and virtual self regulation of their activities.”

It is little wonder that the officials of Cable & Wireless felt intimidated by Calixte George and proceeded to express their displeasure whenever the opportunity came their way.

CABLE & WIRELESS REACTS

At the domestic level, I continued, in the background, to dialogue privately with Cable & Wireless, reassuring the Company that we wanted them to be part of the telecommunications landscape but insisting on new arrangements.

The discussions were, sometimes, testy.

On one occasion, I received what I considered to be a rather rude letter from one of its new and young executives, fresh from the United Kingdom. The letter sought to question the motives and commitment of the Government of Saint Lucia. I decided not to reply but called in the Manager and advised him that under no circumstances would this young executive be tolerated in meetings with me or other officials of the Government of Saint Lucia. He was quickly withdrawn and returned to London.

PRIVY COUNCIL RESPONDS

On October 30th, 2000, the Privy Council delivered its judgment in the Marpin case.

In what can only be described as a “whobbly” judgment, the Privy Council said that, “whether or not the results reached in the court below were right, they were reached after an over circumscribed approach. “ Therefore, the matter must be remitted to the courts below as the case “is one calling for an

appreciation of local conditions” and an “evaluation of the evidence based on the correct principles.” [Page 14].

While the judgment in favour of Marpin was not upheld, it was, in some ways a pyrrhic victory because the Privy Council agreed that there was a valid question to be answered, that is, “whether in authorizing and granting exclusivity, the Act and the licence make provision that is reasonably required for the purpose of protecting the rights and freedoms of other persons.” [Page 13].

The writing was on the wall.

CABLE & WIRELESS STRIKES BACK

In early 2001, Cable & Wireless went on the offensive. It announced it was considering withdrawing from Saint Lucia. (Ref: Page 13 of the Saint Lucia Star Newspaper, 14th February, 2001). Fortunately, at the time of the announcement, the OECS Heads of Government had gathered in Barbados for a regional meeting.

I requested an urgent meeting. Some Heads were determined to proceed, others were nervous and uneasy. Sometimes, I wondered whether they were saying to themselves, “*what mess did Saint Lucia get us in.*” In the end, we agreed to issue a statement with one message: if Cable & Wireless chose to

pull out of Saint Lucia, then it must make an exit from all states. The message was simple and direct: *“Touch one, touch all.”*

Meanwhile, Trevor Clarke, a Barbadian and former Cable & Wireless executive waded in. In a statement widely reported in the region, he suggested that the OECS should follow the approach of the Government of Barbados and adopt a gradual approach. We declined his advice. Many felt that Mr. Clarke was unduly patronizing.

On February, 18, 2001, I addressed the nation on the threat by Cable & Wireless. I reviewed the issues, including the status of the negotiations, and announced that the Government would make contingency plans in the event of a pull out. I addressed the workers of Cable & Wireless directly. This is what I said:

“It is very unfortunate that some groups have decided to use Saint Lucian workers to create an atmosphere of hostility against the government. Such groups, if they have Saint Lucia’s interest at heart, should show greater sensitivity to the fears and concerns of workers. They should move quickly to put an end to the psychological warfare, which they have waged against these workers and the people of Saint Lucia, and should remove the uncertainties that currently exist in the minds of these workers, many of whom have given years of dedicated service to the

company. If Cable & Wireless is one of these groups it should be open and honest with its workers and should let Saint Lucians know that its decisions are cold commercial decisions, and are not due to a particular Saint Lucia peculiarity.

I would like to say to the employees of Cable & Wireless that the government is very aware of your concerns. I urge you to be strong in the face of threats, rumour and innuendo. I want you to realise that you are now fully competent to take over the running of the telecommunications industry in Saint Lucia. Your competence is the direct result of the policy of this and previous governments, which pleaded with Cable & Wireless to employ more locals in the running of the industry. Today, there is only one non-national at the managerial level employed with your Company in Saint Lucia. I may add too, that there are Saint Lucians abroad who have both the technical and managerial capabilities to run telecommunications companies such as Cable & Wireless.

I want to urge you to have more confidence in your own strengths and capacities. Just as Saint Lucia created the National Commercial Bank and the Saint Lucia Development Bank after the withdrawal of Chase Manhattan Bank, so we should not place limits on our capacity to manage the telecommunications industry

in St. Lucia. I want to urge you, the workers of Cable & Wireless, not to allow yourselves to be used against the interests of your country. You must attempt at all times to grasp and understand the issues in a broad and holistic way, and should give due consideration to the long-term interests of your country.

Finally, I want to re-assure you that your company has not closed the door on a continued presence in Saint Lucia. Your reactions should therefore be guided by the facts, and you must try to overcome defeatism and negativity in this period.

Employees of Cable & Wireless, you must remember that your skills will be needed in any post-Cable & Wireless environment. This period, therefore, calls for the highest levels of professionalism and commitment on your part, as prospective companies will be monitoring how well you respond to this challenge. You owe it to yourselves to give a strong account of your stewardship.”

These exhortations were of no avail. The workers, understandably, became uneasy, frightened and even more worried about their future. A solid majority is reported to have voted against The Saint Lucia Labour Party in 2001 and 2006. We paid a political price.

In the end, Cable & Wireless backed away. It withdrew its threat of a pull out and negotiations resumed.

Perhaps, I should conclude by mentioning two particular experiences during the negotiation process.

THE “HOUSE SLAVE” COMMENT

The first is the famous comment by Calixte George that the Legal Advisor to Cable & Wireless behaved like a “House Slave”. The comment wounded her, deeply.

I knew the Legal Advisor, Lisa Agard, exceedingly well. In fact, she was a student of the Faculty of Law when I lectured there.

The setting was a negotiating meeting in Saint Lucia between officials of the OECS Governments and Cable & Wireless. Calixte George was in the chair.

The night before the meeting, I met Calixte and Petrus Compton, the Attorney General, to discuss the agenda. I reminded Calixte that as Chairman he needed to guide the meeting carefully, allow the other Ministers to do the talking and crucially, remain calm in the face of provocation. We agreed and went our separate ways.

Next day, all hell broke loose when Calixte uttered his now famous or infamous statement, depending, naturally, on how you look at it. The media had a field day. I guess Calixte had had enough of the sniping, innuendos, and attacks on his person, intellect, and integrity.

There was a sequel to this episode. Calixte appeared at my home the next day, sad and remorseful. He looked at me and said, *“Chief, I am sorry that I let you down.” I hugged him and told him, I understood!*

This sub-region owes a huge debt of appreciation and gratitude to Calixte George and the former Minister of Telecommunications in St. Kitts and Nevis, Cedric Liburd. It saddens me that we have never been able to thank him for leading and guiding the negotiations with Cable & Wireless. It was truly a crowning achievement.

THE IRISH MEETS THE ENGLISH

The next episode, I shall never forget is the encounter between Digicel and Cable & Wireless, to resolve issues of inter-connection. Cable & Wireless had accepted liberalisation, albeit, reluctantly. As had happened elsewhere, Digicel and Cable & Wireless could not agree on inter-connection between them. It became an explosive issue. Cable & Wireless was determined not to repeat the experience in Jamaica.

I was invited to help to resolve the impasse.

A meeting was summoned for the Royal Saint Lucian Hotel. The meeting commenced in the early hours of the evening and did not end until 4:00 a.m. the next day.

By now, Calixte George and I had become familiar with the negotiating style of the English and in particular, executives of Cable & Wireless. We were totally unprepared for the Irish.

They were tough, savvy and unrelenting. The negotiations were a replay of the historical tensions between the Irish and the English. All manner of insults and innuendos were hurled across the table. I had to stop the meeting on several occasions to cool tempers and to allow for negotiations, informally. For some, the chairs provided comfort, to sleep and rest in between bouts of insults and intemperance.

Ironically, Calixte George and I had to protect Cable & Wireless against the Irish onslaught, much to the displeasure of the Irish who felt that we should have united against what one of them described as “the common oppressor.”

In the end, at 4:00 a.m. in the morning, the two parties agreed to meet privately in Miami on an agreed date to resolve their differences. Surprisingly, they succeeded.

As always there are powerful lessons to be gathered from these experiences, some personal, others for the collective good.

I believe that the most powerful, if not the most resonating lesson, is in the simple and well-known adage: *“Unity is strength.”*

LESSON OF UNITY

At every critical stage of the development of this process was the unity of purpose and action among the participating states.

We seized the right moment. The conjuncture was perfect.

It started with the negotiations with the World Bank to fund the Telecommunications Reform Project. The regional approach and the establishment of a regional regulator were two factors that convinced the World Bank to provide the six million US dollar loan over a four-year period to finance the project.

It was the offer of a market of half a million persons as compared to a hundred thousand that convinced investors and maintained their interest in the region.

The development of our legislation, regulations and licences have been on a regional basis.

ECTEL A MODEL FOR THE WORLD

ECTEL has been a pioneer for regional regulation in telecommunications. It has been used as a model the World Bank and by the International Telecommunications Union as an example for other countries to follow. This is something we as a people need to be proud of.

While some persons have mistakenly labeled us as nations of copycats, the truth need to be told of our innovation and creativity in the Arts, Culture, Finance, Economics, Telecommunications Regulation, and Integration. After all, we are the people who pioneered the establishment of a single currency to serve several states, who fashioned a regional approach to the delivery of justice and the control of our air space.

Consistent with that spirit, allow me in closing to honour Calixte George. He said at the launching of ECTEL,

“[ECTEL] has evolved from our experiences. There are those who believe and in fact have stated that we are incapable of understanding the complexities of the Telecommunications Industry. To those persons I say that the result of testing our capability is manifested in what we are doing today.”

I thank you for this honour of addressing you.

