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NOTICE

The Honourable Sam Condor, Deputy Prime Minister and Minister responsible for Social and Community Development and Gender Affairs has been pleased to assent to the following Statutory Rules and Orders on 16th November 2004:

No. 16 of 2004 - The Domestic Violence (Prescription of Forms) Regulations, 2004.

The following Statutory Rules and Orders is Circulated in this issue of the *Gazette* and forms part thereof

No. 16 of 2004 - The Domestic Violence (Prescription of Forms) Regulations, 2004.

Dated 16th November 2004

The Honourable Denzil L Douglas, Prime Minister and Minister responsible for Telecommunications has been pleased to assent to the following Statutory Rules and Orders on 16th November 2004:

No. 17 of 2004 - The Telecommunications (Retail Tariff) Regulations, 2004.

The following Statutory Rules and Orders is circulated in this issue of the *Gazette* and forms part thereof

No. 17 of 2004 - The Telecommunications (Retail Tariff) Regulations, 2004.

Dated 16th November 2004.

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 17 of 2004

ARRANGEMENT OF REGULATIONS

Regulation

PART I - PRELIMINARY

1. Citation.
2. Commencement.
3. Interpretation.

PART 11 –GENERAL

4. Scope.
5. Objectives.

**PART III -DESIGNATED REGULATED SERVICES
AND UNREGULATED SERVICES**

6. Designating regulated services.
7. Designating unregulated services.
8. Change of designation not precluded.
9. Treatment of unregulated services under a price cap plan.
10. New telecommunications services.

PART IV - REGULATED SERVICES

11. General.
12. Substitution of rates, etc.
13. Rates of regulated services to be just and reasonable.
14. Tariffs not to be anti-competitive.
15. Discontinuation of regulated service.
16. Applications related to tariffs for regulated service.
- IT Applicant to file further information.
- 18, ECTEL recommendation to Commission.
19. Commission approval of r. 16 application.
20. Application for increase in rate for regulated service.
21. Deemed approval for increase in rate for regulated service.
22. Application to decrease regulated service rate.
23. Deemed approval of decrease in rate for regulated service.
24. ECTEL recommendation.
25. Market trials.
26. Minimum rates for regulated services.
27. Price cap plan.
28. Commission approval of price cap plan.
29. Notice to customers.

(ii)

PART V -UNREGULATED SERVICES

- 30. Changes in rates, terms and conditions.
- 31. Notice for certain unregulated services.

**PART VI -PETITIONS IN RELATION TO RATES, TERMS
AND CONDITIONS**

- 32. Filing of Petition.
- 33. Steps prior to issuing order.
- 34. No change to rates etc approved in price cap plan.

PART VII- AVAILABILITY OF INFORMATION

- 35. Requirement to publish rates, terms and conditions.
- 36. Compliance with request for information.
- 37. Appointment of independent auditor.
- 38. Auditor to submit report.
- 39. Notification of reports.

PART VIII- ADMINISTRATION

- 40. Orders.
- 41. Timing.
- 41. Disapproval of application.
- 43. Services deemed regulated.
- 44. Services deemed approved.
- 45. Approved price cap plan saved.
- 46. Price cap plan application saved.
- 47. Filed price cap plan saved.
- 48. Revocation-

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 17 of 2004

The Telecommunications (Retail Tariff) Regulations, 2004 made by the Minister in exercise of the powers conferred on him by section 54 of the Telecommunications Act, No. 2 of 2000.

PART I - PRELIMINARY

1. CITATION. These Regulations may be cited as the Telecommunications (Retail Tariff) Regulations, 2004.
2. COMMENCEMENT. These Regulations shall be deemed to have come into force on the 16th day of November, 2004.
3. INTERPRETATION. In these Regulations, unless the context otherwise requires,

"business day" means a day that falls on a Monday, Tuesday, Wednesday, Thursday or Friday, except where such day is a public holiday in Saint Christopher and Nevis;

"combination services" means a combination of telecommunications services provided by a telecommunications provider under a combined rate or rate formula where the offering of one or more services within the combination is contingent on acceptance of the entire combination and comprising

- (a) one or more regulated services, and one or more unregulated services; or
- (b) two or more regulated services:

"major supplier" means a telecommunications provider who is designated as a major supplier under regulation 6(5).

"price cap plan" means an incentive-based method for regulation of the rates charged by a telecommunications provider for one or more regulated services, and may include other provisions as to the rates, or the maximum or minimum rates, terms and conditions for the regulated service;

"regulated service" means a telecommunications service that is designated by the Commission as a regulated service under regulation 6 or deemed to be a regulated service under regulation 43;

"tariff" means the rates, terms and conditions applicable to a regulated service;

"unregulated service" means a telecommunications service that is not a regulated service.

PART II-GENERAL

4. SCOPE. (1) These regulations apply to telecommunications services which a telecommunications provider provides or offers to provide to one or more customers that are members of the general public.

(2) These regulations do not apply to interconnection services or wholesale telecommunications services which a telecommunications provider provides or offers to provide to another telecommunications provider as contemplated by the Telecommunications (Interconnection) Regulations, 2002.

(3) Except in relation to rates, nothing in these regulations shall be interpreted to override the provisions in a telecommunications provider's licence relating to terms and conditions for specified telecommunications services.

5. OBJECTIVES. The following objectives shall guide the Commission, ECTEL and telecommunications providers in the applications of these regulations, that is to say,

- (a) the availability of reliable, affordable and high quality telecommunications services throughout the country should be fostered;
- (b) the interests of consumers, particularly low income consumers, should be safeguarded;
- (c) wherever practical, reliance on market forces in the provision of telecommunications services should be encouraged;
- (d) regulation, where required, should be efficient and effective;
- (e) the rates, terms and conditions for regulated services should be just and reasonable, not unreasonably discriminatory and not anti-competitive;
- (f) price regulation for regulated services should take account of the interest of telecommunications providers in earning a fair return on prudently made investment; and
- (g) telecommunications providers should be encouraged to operate efficiently.

PART III - DESIGNATING REGULATED SERVICES AND UNREGULATED SERVICES

6. DESIGNATING REGULATED SERVICES. (1) Where the Commission determines that a telecommunications service provided by a telecommunications provider is not subject to a degree of competition that is sufficient to protect the interests of customers, the Commission may designate the telecommunications service as a regulated service.

(2) No designation under regulation 6(1) shall be made unless ECTEL makes a recommendation to the Commission to that effect.

(3) A telecommunications service shall be deemed to have been designated by the Commission as a regulated service where the telecommunications provider consents

in writing to the designation, and files a copy of the consent with the Commission.

3

(4) A consent under regulation 6(3) may contain conditions as to its application, and where it does, such consent shall not be effective until the Commission accepts those conditions-

(5) A telecommunications provider who provides a regulated service shall be designated as a major **supplier for the purposes** of these regulations, unless the Commission exempts the telecommunications provider from the designation.

(6) Within 30 days of the designation by the Commission that a telecommunications service is a regulated service, or such other time period as the Commission may specify, the telecommunications provider shall file a tariff applicable to the regulated service with the Commission for approval and provide a copy to ECTEL.

7. DESIGNATING UNREGULATED SERVICES. (1) Where the Commission determines that a regulated service provided by a telecommunications provider is or will be subject to a degree of competition sufficient to protect the interests of customers, the Commission shall designate that telecommunications service as an unregulated service.

(2) The Commission may make a determination that a telecommunications service is an unregulated service where the Commission finds as a question of fact that to do so is consistent with the objectives set out in regulation 5.

(3) No determination under regulation 7(1) or (2) shall be made unless ECTEL makes a recommendation to the Commission to that effect.

(4) Proceedings under regulation 6(1) or 7 may be initiated upon application by a telecommunications provider or any other person or upon the recommendation of ECTEL.

8. CHANGE OF DESIGNATION NOT PRECLUDED. (1) A designation as a regulated service under regulation 6 does not preclude the subsequent determination by the Commission under regulation 7 with respect to the same telecommunications service.

(2) A determination by the Commission under regulation 7 does not preclude subsequent designation under regulation 6 with respect to the same telecommunications service.

9. TREATMENT OF UNREGULATED SERVICES UNDER A PRICE CAP PLAN. Where the Commission makes a determination under regulation 7 that a telecommunications service included in a price cap plan is an unregulated service, the Commission shall remove that telecommunications service from the price cap plan as soon as practicable and on such terms as may be specified in the price cap plan, or in the absence of such terms, as the Commission may decide,.

10. NEW TELECOMMUNICATIONS SERVICES, (1) For the purposes of this regulation, a "new telecommunications service" means a telecommunications service or combination service that a major supplier does not presently provide or offer to provide.

(2) A major supplier who proposes to make available a new telecommunications service shall, at least ten business days before providing the new telecommunications service,

(a) file with the Commission a description of the new

telecommunications service, including the rates, terms and

conditions applicable to the service, and the major supplier's assessment as to the categorisation of the new telecommunications service as a regulated service or an unregulated service; and

(b) provide a copy of the description to ECTEL.

(3) In making its assessment in sub-regulation (2),

(a) the major supplier shall categorise a new telecommunication service consistent with the categorisation of its existing telecommunications services; and

(b) the major supplier shall categorise as a regulated service, a new telecommunications service that is a combination service comprising predominantly or exclusively regulated services.

(4) Without prejudice to any subsequent designation under regulation 6, or subsequent determination under regulation 7, the Commission shall be deemed to have accepted the categorisation of the new telecommunications service, as assessed by the major supplier, unless, prior to the end of the ten business day period referred to in sub-regulation (2), the Commission determines an alternative categorisation.

(5) The major supplier may file the information required to be filed pursuant to this regulation on an ex-parte basis, and the Commission and ECTEL shall not disclose such information until such time when the Commission makes a determination of the categorisation of the new telecommunications service.

(6) No determination under sub-regulation (4) shall be made unless ECTEL makes a recommendation to the Commission to that effect.

PART IV - REGULATED SERVICES

11. **GENERAL.** No telecommunications provider shall provide a regulated service except in accordance with a tariff filed with and approved by the Commission.

12. **SUBSTITUTION OF RATES, ETC.** For the purposes of this Part, the Commission may determine any matter and make any order relating to tariffs and the Commission may substitute rates, terms and conditions for those in effect or applied for.

13. **RATES FOR REGULATED SERVICES TO BE JUST AND REASONABLE.** Every rate charged by a major supplier for a regulated service shall be just and reasonable.

14. **TARIFFS NOT TO BE ANTI-COMPETITIVE.** No provision of a major supplier's tariff shall be anti-competitive.

15. **DISCONTINUATION OF REGULATED SERVICE.** (1) A major supplier shall not discontinue the provision of a regulated service without the prior approval of the Commission where that regulated service is specified in a price cap plan as requiring the approval of the Commission for discontinuation.

(2) An application to discontinue a regulated service in accordance with regulation 5(1) shall be deemed to be approved if the Commission neither approves nor denies such application within sixty days of the application being filed and a copy provided to ECTEL.

(3) A major supplier shall give the Commission and customers of the service sixty days notice of its decision to discontinue the provision of a regulated service which is not specified in a price cap plan as requiring the approval of the Commission for discontinuation.

(4) Subject to sub-regulation (1), a major supplier shall give the Commission fifteen days notice of its decision to no longer offer an existing regulated service to new customers.

16. APPLICATIONS RELATED TO TARIFFS FOR REGULATED SERVICE.

Except as provided under regulation 22 or 25, a telecommunications provider who purposes to establish or change the tariff for a regulated service shall, at least thirty days before the tariff or change in tariff is to come into effect,

- (a) file an application with the Commission;
- (b) provide a copy of the application to ECTEL; and
- (c) provide notice of the application, and a summary of its contents, to customers.

17. APPLICANT TO FILE FURTHER INFORMATION. The Commission or ECTEL, or both, may require that the telecommunications provider file further information relating to its application.

18. ECTEL RECOMMENDATION TO COMMISSION. ECTEL may, within thirty days of receipt of the application under regulation 16 or within ten days of receipt of the further information required under regulation 17, whichever is later, make recommendation to the Commission, and the Commission shall, as soon as practicable, provide a copy of such recommendation to the telecommunications provider.

19. COMMISSION APPROVAL OF R.16 APPLICATION. Where the Commission approves an application under regulation 16, and the Commission substitutes one or more rates, terms and conditions for those in the telecommunications provider's application, such approval is conditional on the telecommunications provider filing its acceptance to the substitution with the Commission within three business days after the Commission's approval.

20. APPLICATION FOR INCREASE IN RATE FOR REGULATED SERVICE, Notwithstanding regulation 13, but subject to regulation 26, the Commission shall approve as filed an application under regulation 16 to change the rate for a regulated service, where the proposed change complies with a price cap plan approved by the Commission.

21. DEEMED APPROVAL OF INCREASE * IN RATE FOR REGULATED SERVICE. The Commission shall be deemed to have approved an application to increase the rate of a service which is subject to a price cap plan, where it neither approves nor denies the application within forty-five days of filing.

22. APPLICATION TO DECREASE REGULATED SERVICE RATE. A telecommunications provider that proposes to only decrease the rate charged for a regulated service shall, at least 3 business days before the reduced rate is to come into effect,

- (a) file an application with the Commission;

- (b) provide a copy of the application to ECTEL.
- (c)

23. DEEMED APPROVAL OF DECREASE IN RATE FOR REGULATED

SERVICE. The Commission shall be deemed to have approved an application under regulation 22 if the Commission does not approve or disapprove the application within three business days after the application is filed with the Commission and a copy provided to ECTEL.

24. ECTEL RECOMMENDATION. (1) Where ECTEL considers that a major supplier's tariff is not just and reasonable, ECTEL may recommend to the Commission that the major supplier's tariff be changed, and the Commission shall, as soon as practicable, provide a copy of such recommendation to the telecommunications provider.

(2) Subject to regulation 26, the Commission shall not change the rate for an existing regulated service, where the existing rate complies with a price cap plan approved by the Commission.

25. MARKET TRIALS. (1) A telecommunications provider may conduct a market trial or short-term promotion for a regulated service or a combination service without prior approval of the Commission provided that:

- (a) the market trial or short-term promotion does not exceed ninety days in duration;
- (b) the market trial or short-term promotion is not similar to a market trial or short term promotion that concluded less than one hundred and twenty days earlier; and
- (c) the telecommunications provider file a description of the market trial or short term promotion, and the rates, terms and conditions applicable thereto, with the Commission, and provide a copy to ECTEL, at least ten days before the beginning of the market trial or short term promotion.

(2) The major supplier may file the information required to be filed pursuant to this regulation on an ex-parle basis, and the Commission and ECTEL shall not disclose such information until at least such time as the telecommunications provider has commenced the market trial or short-term promotion.

(3) The Commission may, on application or on its own motion, order a telecommunications provider not to conduct a market trial or short-term promotion for a regulated service or a combination service, or may require a telecommunications provider to suspend or discontinue a market trial or short term promotion in progress where such market trial or short term promotion would be contrary to sub-regulation (1) or where the Commission determines that the market trial or short-term promotion is anti-competitive,

26. MINIMUM RATES FOR REGULATED SERVICES. (1) A telecommunications provider shall not charge a rate for a regulated service or a combination service that is less than the long run incremental cost of providing the service, except

- (a) where the telecommunications provider is conducting a

market trial or short term promotion where such market trial or short term promotion is not anti-competitive; or

7

(b) where the Commission determines that it is in the public interest to do so,

(2) The Commission may, upon application by ECTEL or any other person, require a telecommunications provider to demonstrate that the rate charged for a regulated service or the combination service satisfies the requirements of sub-regulation (1).

(3) Where the Commission requires a telecommunications provider to demonstrate that the rates charged for a regulated service or combination service satisfies the requirements of sub-regulation (1):

- (a) the telecommunications provider shall file with the Commission a report demonstrating such compliance within thirty days; and
- (b) the Commission shall approve or disapprove the rates charged for the regulated service or the combination service within thirty days of the filing of the telecommunications provider's report.

(4) Where the Commission disapproves the rates charged for a regulated service or a combination service pursuant to sub-regulation (3), the telecommunications provider shall forthwith increase the rates in the manner specified by the Commission.

27. PRICE CAP PLAN. (1) ECTEL or a major supplier may develop a price cap plan applicable to the major supplier.

(2) Prior to finalising a price cap plan for filing with the Commission, ECTEL or the major supplier, as the case may be, shall provide the other with a copy of the proposed price cap plan, and allow at least thirty days during which ECTEL and the major supplier may exchange comments on the proposed price cap plan.

(3) During the period referred to in sub-regulation (2), ECTEL and the major supplier shall make reasonable efforts to reach agreement on the terms of the price cap plan for filing with the Commission.

28. COMMISSION APPROVAL OF PRICE CAP PLAN. (1) Following the Thirty-day period in regulation 27(3), ECTEL or the major supplier may file the price cap plan with the Commission for approval.

(2) Within thirty days of the filing under sub-regulation (1), the Commission shall initiate a public consultation process on *the proposed* price cap plan.

(3) Within sixty days of *the completion* of the public consultation process under sub-regulation (2), the Commission shall either approve or disapprove the price cap plan.

(4) Where ECTEL and a major supplier agree on the provisions of the price cap plan filed with the Commission

- (a) the Commission shall approve or disapprove the price cap plan within one hundred and twenty days after the price cap plan is filed with the Commission, failing which the Commission shall be deemed to have approved the price cap plan; and

- (b) the Commission shall not amend the price cap plan except pursuant to an application filed by ECTEL or the major supplier, where the provisions of the amendment are agreed by ECTEL and the major supplier.

(5) Where the Commission approves a price cap plan, it shall come into effect on the date established in the price cap plan, or such other date as ECTEL and the major supplier may agree, and subject to compliance with such conditions as may be specified in the price cap plan.

(6) A major supplier shall comply with all reporting, monitoring and compliance requirements specified in an approved price cap plan, or as the Commission may direct.

29. NOTICE TO CUSTOMERS. Where a major supplier gives notice to its customers of an application filed with the Commission under regulation 16, the notice shall, unless the Commission directs otherwise,

- (a) be published both on the major supplier's website and in a local newspaper with widespread circulation;
- (b) briefly describe the subject matter of the application in plain language;
- (c) set out the proposed effective date of the matters described in the application;
- (d) indicate that the complete application is available for examination on the major supplier's website, and at its main office in Saint Christopher and Nevis at the address stated in the notice, and at the Commission's office at the address stated in the notice;
- (e) inform customers that they may make submissions to the Commission within 15 days of the filing date, and setting out the postal, facsimile transmission and email addresses of the Commission for the filing of such submissions; and
- (f) request customers that make submission to the Commission to provide a copy of the submissions to both the major supplier and ECTEL, and setting out the postal, facsimile transmission and email addresses of the major supplier and ECTEL.

PART V - UNREGULATED SERVICES

30. CHANGES IN RATES, TERMS AND CONDITIONS- Subject to any specific commitment in its licence, a telecommunications provider may change the rates, terms and conditions applicable to an unregulated service without the Commission's approval.

31. NOTICE FOR CERTAIN UNREGULATED SERVICES. Where a telecommunications provider is subject to conditions of licence that restrict or limit the rates that may be charged for an unregulated service, the telecommunications provider shall give notice to the Commission, ECTEL and affected customers of any increase in the rates, or change in the terms and conditions, applicable to the unregulated service at least fifteen days before the new rates, terms and conditions come into effect.

**PART VI - PETITIONS IN RELATION TO RATES, TERMS
AND CONDITIONS**

32. FILING OF PETITION. (1) Any person may file a petition with the Commission for the purpose of initiating an investigation into the rates, terms and conditions for regulated services provided by a telecommunications provider.

(2) A petition filed pursuant to sub-regulation (1), shall:

- (a) be in writing;
- (b) state the interest of the petitioner;
- (c) specify the name of the telecommunications provider; and
- (d) specify the reasons for instituting the investigation.

(3) The Commission may reject, without further process, a petition that is frivolous, vexatious or that raises issues previously decided by the Commission,

33. STEPS PRIOR TO ISSUING ORDER. In response to a petition under regulation 32, the Commission may make an order suspending, cancelling, or changing the rates, terms and conditions applicable to a regulated service, but before so doing, the Commission shall:

- (a) seek the recommendation of ECTEL; and
- (b) provide the telecommunications provider with an opportunity to make submissions to the Commission in response to the petition, and to ECTEL's recommendation.

34- NO CHANGE TO RATES ETC APPROVED IN PRICE CAP PLAN.

Subject to regulation 26, the Commission shall not suspend, cancel or change a rate, term or condition that complies with an approved price cap plan, where the provisions of the price cap plan have been agreed by ECTEL and the telecommunications provider to which the price cap plan applies.

PART VII - AVAILABILITY OF INFORMATION

35. REQUIREMENT TO PUBLISH RATES, TERMS AND CONDITIONS.

Unless the Commission otherwise permits, a telecommunications provider shall make the rates, terms and conditions for its telecommunications services available to the public by

- (a) publishing in its white pages directory, if any, the rates for its regulated services and for its generally available unregulated services that are currently available at the time of publication; and
- (b) publishing current rates, terms and conditions on its Internet website for its regulated services and generally available unregulated services.

36. COMPLIANCE WITH REQUEST FOR INFORMATION. A telecommunications provider shall comply with a request for information from the Commission or ECTEL including a request for information in respect of an audit

37, APPOINTMENT OF INDEPENDENT AUDITOR. The Commission

may appoint an independent auditor to conduct audits into information provided by a telecommunications provider, in order to verify the accuracy of the information so provided.

10

38. AUDITOR TO SUBMIT REPORT. An auditor who is appointed pursuant to regulation 37 shall provide the Commission and the telecommunications provider with a report containing the conclusions and reasons for its findings.

39. NOTIFICATION OF REPORTS. Where the Commission is in receipt of An audit report, which discloses that certain information provided by the telecommunications provider is inaccurate or incomplete, the Commission shall provide to the telecommunications provider

- (a) a copy of the report, including the findings of the auditor and the reasons for those findings;
- (b) notice of the action which the Commission proposes the licensed telecommunications provider must take to remedy the inaccuracy or incompleteness;
- (c) notice of any additional action that the Commission intends to take; and
- (d) an opportunity to respond to the notice and the required time frame for such response.

PART VIII -ADMINISTRATION

40 ORDERS. The Commission may order a telecommunications provider, at or within any time and subject to any conditions that it determines, to do anything the person is required to do under these regulations, and may forbid a person to do anything that the telecommunications provider is prohibited from doing under these regulations.

41. TIMING. The Commission may extend the period of time, whether fixed by these regulations or otherwise, for doing anything required or permitted to be done pursuant to these regulations, or in proceedings before the Commission or under its decisions.

42. DISAPPROVAL OF APPLICATION. Where the Commission makes an Order disapproving an application filed under regulation 32, it shall

- (a) issue the Order in writing;
- (b) state the reasons for the disapproval;
- (c) endeavour to issue the reasons at the time of the order, but in no event later than twenty-one days thereafter
- (d) send the Order to the applicant on the date of issue;
- (e) send the reasons as soon as they are issued; and
- (f) publish the order and reasons on the Commission's website and in the *Gazette*.

43. SERVICES DEEMED REGULATED. Where, as of the date of these regulations coming into force, a major supplier and ECTEL have agreed on a price cap

plan, all services designated as regulated in that price cap plan shall be deemed to be regulated services for the purposes of these regulations, and all services designated as unregulated in that price cap plan shall be deemed to be unregulated services for the purposes of these regulations.

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44. SERVICES DEEMED APPROVED. (1) As of the date of these regulations coming into force, the regulated services referred to in regulation 43 shall be deemed approved hereunder, and shall continue as regulated services under these regulations at the rates, and subject to the terms and conditions, in effect at the date that these regulations come into force.

(2) Nothing in this regulation shall derogate from a major supplier's obligations to make price changes in accordance with a previously approved price cap plan.

45. APPROVED PRICE CAP PLAN SAVED. A price cap plan that is approved by the Commission before these regulations come into force shall continue as an approved price cap plan under these regulations.

46. PRICE CAP PLAN APPLICATION SAVED- Where an application for approval of a price cap plan is filed with the Commission before these regulations come into force, the Commission shall remain seized of the application under these regulations at the date that these regulations come into force and as if filed under these regulations.

47. FILED PRICE CAP PLAN SAVED. Where ECTEL and a telecommunications provider agree on the provisions of a price cap plan that is filed with the Commission before these regulations come into force, the provisions of the price cap plan shall be considered as agreed by ECTEL and the telecommunications provider under these regulations.

48. REVOCATION. The Telecommunications (Tariff) Regulations, 2002 is hereby revoked,

Made by the Minister this 16th day of November 2004.

DENZIL L DOUGLAS
Minister of Telecommunications