

COMMONWEALTH OF DOMINICA

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title
2. Commencement
3. Principal object of Act
4. Interpretation
5. Act to bind the State
6. Non-application of Act and Exemption
7. Powers of Minister

PART II

THE NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION, ITS FUNCTIONS AND POWERS

8. Establishment of Commission
9. Qualifications and tenure of Commissioners
10. Resignation of Commissioners
11. Termination of office
12. Functions of Commission
13. Powers of Commission
14. Records
15. Commission to provide guidelines
16. Commission to investigate complaints
17. Dispute between licensees
18. Dispute resolution

19. Hearing of matter by Commission
20. Appearance
21. Powers of Commission when sitting as a tribunal
22. Awards
23. Review by Commission
24. Directions by the Minister
25. Meetings of Commission
26. Remuneration of Commissioners
27. Staff of Commission
28. Annual Report

PART III

LICENSING OF TELECOMMUNICATIONS PROVIDERS

29. Prohibition on engaging in telecommunications services without a licence
30. Procedure for grant of an individual licence
31. Content of individual licence
32. Grant of individual licence
33. Procedure for grant of a class licence
34. Content of class licence
35. Grant of frequency authorisation
36. Content of frequency authorisation
37. Amendment of Second Schedule
38. Licence and authorisation fee
39. Modification of licences and authorisation
40. Suspension and revocation of licences and authorisation
41. Surrender of licences and authorisation
42. Grant of Special Licence

PART IV

UNIVERSAL SERVICE, INTERCONNECTION, INFRA- STRUCTURE SHARING, NUMBERING

43. Provision of universal service

-
44. Universal Service Fund
 45. Purpose of Fund
 46. Interconnection and infrastructure sharing
 47. Interconnection agreements
 48. Cost of interconnection
 49. Infrastructure sharing
 50. Access to tower sites and underground facilities
 51. Private networks
 52. Numbering
 53. Domain name registration

PART V

COMPLIANCE AND MANAGEMENT

54. Appointment of inspectors
55. Right of entry
56. Search and seizure
57. Inspection of licence
58. Parties eligible to seek orders for forfeiture or injunctive relief

PART VI

OFFENCES

59. Connection of terminal equipment
60. Reduction of electrical interference
61. Unlawful interception
62. Secrecy of personal information
63. Malicious damage to apparatus
64. Unlawful interception and disclosure of personal information
65. Obstruction of investigation
66. Refusal to produce documents etc
67. Giving false information
68. Failure to attend and give evidence to Commission

PART VII

MISCELLANEOUS

- 69. Stoppage of telecommunications
- 70. Access to lands and road works
- 71. Copyright
- 72. Liability of public and private officials
- 73. Installation and operation of telecommunication by diplomatic missions
- 74. Regulations
- 75. Repeal and savings
- 76. Treaty to have force of law

SCHEDULES

- First Schedule
 - Second Schedule
 - Third Schedule
 - Fourth Schedule
-

COMMONWEALTH OF DOMINICA

Act No. 8 of 2000



I assent

(Sgd.) Vernon L. Shaw
President

13th October, 2000.

**AN ACT TO PROVIDE FOR THE REGULATION OF
TELECOMMUNICATIONS; TO ESTABLISH THE
NATIONAL TELECOMMUNICATIONS REGULA-
TORY COMMISSION; AND TO PROVIDE FOR
RELATED OR INCIDENTAL MATTERS**

(Gazetted 26th October, 2000.)

WHEREAS the Government of the Commonwealth of
Dominica (hereinafter called the Government) is a party to the
Treaty establishing the Eastern Caribbean Telecommunications

Authority signed at Grenada on May 4th, 2000 to promote open competition in telecommunications, harmonised policies on a regional level for telecommunications, provide for a universal service, fair pricing and the use of cost-based pricing methods by telecommunications providers.

AND WHEREAS in furtherance of its commitment, the Government undertakes to establish and operate the National Telecommunications Regulatory Commission to co-ordinate, facilitate and generally promote the purposes of the Agreement, and to establish an effective regulatory regime which will enhance the operation of telecommunications in the interests of the sustainable development of the Commonwealth of Dominica.

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

PART I

PRELIMINARY

- | | |
|--------------------------|--|
| Short title. | <p>1. This Act may be cited as the -
TELECOMMUNICATIONS ACT, 2000.</p> |
| Commencement. | <p>2. This Act shall come into force on such day as the Minister may, by Order published in the Gazette, appoint.</p> |
| Principal object of Act. | <p>3. (1) The principal object of this Act is to give effect to the purposes of the Treaty and to regulate the telecommunications sector in Dominica.</p> <p>(2) Without limiting the generality of subsection (1) the objects of this Act are to ensure -</p> <p style="padding-left: 40px;"><i>(a)</i> open entry, market liberalisation, and</p> |

competition in telecommunications;

- (b) policies and practices in relation to the management of telecommunications are in harmony with those of ECTEL;
- (c) the operation of a universal service regime so as to ensure the widest possible access to telecommunications at an affordable rate by the people of Dominica in order to enable them to share in the freedom to communicate over an efficient and modern telecommunications network;
- (d) fair pricing and the use of cost-based pricing methods by telecommunications providers in Dominica.
- (e) fair competition practices by telecommunications providers;
- (f) the introduction of advanced telecommunications technologies and an increased range of services;
- (g) the public interest and national security are preserved;
- (h) the application of appropriate standards in the operation of telecommunications; and
- (i) the overall development of telecommunications in the interest of the sustainable development of Dominica.

4.(1) In this Act, unless the context otherwise requires- Interpretation.

“applicant” means a person applying for a licence or a frequency authorisation;

“application” means an application for a licence or frequency authorisation, including a modification or renewal of a licence;

“application fee” means the fee payable to the Commission by an applicant for a licence or frequency authorisation;

“Board” means the Board of Directors of ECTEL appointed pursuant to Article 8 of the Treaty;

“broadcasting” means the transmission of radio or video programming to the public on a free, pay, subscription, or other basis, whether by cable television, terrestrial, or satellite means, or by other electronic delivery of such programming;

“class licence” means a licence, as distinct from an individual licence, issued on the same terms to each applicant of a category of users in respect of the operation of a type of telecommunications network or telecommunications service specified under section 7;

“Commission” means the National Telecommunications Regulatory Commission established by section 8;

“diplomatic missions” include international organisations accredited to Dominica;

“document” includes an electronic document;

“ECTEL” means the Eastern Caribbean Telecommunications Authority established by Article 2 of the Treaty;

“frequency authorisation” means an authorisation granted by the Minister under section 35 to use radio frequencies in con-

nection with the operation of a network or the provision of services under an individual licence or class licence or otherwise;

“frequency fees” means the prescribed fee payable by a frequency authorisation holder;

“individual licence” means a licence granted to a particular person in accordance with section 31 on terms specific to that person;

“infrastructure” includes facilities, submarine cables and landing sites, towers, sites and underground facilities;

“infrastructure sharing” means the joint utilisation of a particular physical structure, segment, element, or feature of the entire infrastructure;

“inspector” means a person appointed under section 54;

“interconnection” means the connection of two or more separate telecommunication systems, networks, links, nodes, equipment, circuits and devices involving a physical link or interface;

“land” includes any land under whatever tenure held and easement, servitude, right or privilege in or over land;

“licence” means an individual licence or a class licence;

“licence fees” means the initial, annual and renewal fees payable by an applicant;

“Minister” means the Minister to whom responsibility for telecommunications is assigned;

“person” includes any corporation, either aggregate or sole, any

partnership or association, and any undertaking, club, society, or other body of one or more persons and any individual;

“private network” means a system to provide telecommunications service to a person or entity that is for the sole and exclusive use of that person or entity and is not interconnected with the public telecommunications network;

“public telecommunications network” means a telecommunications network used for the provision of telecommunications services to the public;

“public voice telephony services” means the commercial provision to the public of the direct transport and switching of voice telephony in real time from and to network termination points;

“radio communications” means the transmission, emission or reception of signs, signals, text, images and sounds, or other intelligence of any nature by radio;

“radio equipment” means any equipment or apparatus designed or used for radio communications;

“records” includes existing licences, frequency authorisations, telecommunications equipment approvals, policy or operational documents, orders and documents relating to decisions;

“road” means any road or street or part thereof and includes all bridges, culverts, embankments, approaches, drains, verges, pavements, kerbs, footpaths, parapets and other works or things, forming part of any road or street;

“site” means land, or a building on land or a structure on land;

“special licence” means a licence granted pursuant to provisions of Section 7 by the Minister in an emergency or other exigent circumstance;

“telecommunications” means any form of transmission, emission, or reception of signs, text, images and sounds or other intelligence of any nature by wire, radio, optical or other electromagnetic means;

“telecommunications facilities” means any facility, apparatus or other thing that is used or capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility;

“telecommunications network” means any wire, radio, optical, or other electromagnetic system used to route, switch, or transmit telecommunications;

“telecommunications provider” means a person who is licensed under this Act to operate a telecommunications network or to provide telecommunications services;

“telecommunications services” means services provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise, or such other services as may be prescribed by the Minister from time to time;

“tender fees” means the fees payable by an applicant for an individual licence in order to participate in an open tender procedure ;

“terminal equipment” means equipment intended to be connected directly or indirectly to the network termination point of a telecommunications network in order to emit, transmit, or receive telecommunications services;

“tower” means a tower, or a pole, or a mast or a similar structure;

“Treaty” means the Treaty establishing the Eastern Caribbean Telecommunications Authority signed at St. George’s, Grenada on 4th of May, 2000 set out in the Fourth Schedule and includes that Treaty as amended from time to time;

“underground facility” means an underground facility that is used, installed, ready to be used, or intended to be used, to hold lines;

“Universal Service Fund” means the Fund established for the promotion of universal service by Section 44 of this Act;

“Universal service” includes the provision of -

- (a) public voice telephony;
- (b) internet access;
- (c) telecommunications services to schools, hospitals and similar institutions, and the disabled and physically challenged; or
- (d) other service by which people access efficient, affordable and modern telecommunications.

(2) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Treaty (whether or not a particular meaning is assigned to it by the Treaty) has in this Act the same meaning as in the Treaty .

Act to bind the State.

5. This Act binds the State.

Non-application of Act and Exemption.

6. (1) This Act shall not apply to -

-
- (a) the program content and scheduling, as opposed to the transmission aspects of broadcasting networks and services;
 - (b) telecommunications networks and services operated or provided exclusively by the armed forces, police force, public security, and civil aviation authorities except in relation to the requirement to have a frequency authorisation;
 - (c) any terminal equipment used for the purposes of paragraphs (a) or (b).

(2) The Minister may, on the recommendation of ECTEL, by Order, exempt any category of ship or aircraft, or person or type of network or service from this Act.

(3) The Minister may by Order exempt a Diplomatic Mission from the requirements of this Act.

(4) Any exemptions under sub-section (2) or (3) may be subject to conditions.

7. (1) The Minister may grant -

Powers of Minister.

- (a) an individual licence;
- (b) a class licence;
- (c) a frequency authorisation in respect of a licence; or
- (d) a special licence.

(2) Where the Minister fails to grant to an applicant a licence or frequency authorisation he shall give that applicant his reasons for that decision in writing.

(3) The Minister, on receipt of a recommendation from ECTEL, shall by notice published in the Gazette, specify the telecommunications networks and services that are subject to an individual licence, a class licence or a frequency authorisation.

(4) In the exercise of his powers the Minister shall consult with the Commission.

(5) The Minister shall wherever practicable in the exercise of his powers;

(a) adopt the form, document, process and subsidiary legislation as recommended by ECTEL; and

(b) implement policy and recommendations proposed by ECTEL.

PART II

THE NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION, ITS FUNCTIONS AND POWERS

Establishment of Commission.

8. (1) There is established a Commission to be known as the National Telecommunications Regulatory Commission which shall be under the general direction and control of the Minister.

(2) The Commission shall consist of not less than three and not more than five Commissioners, all of whom shall be appointed by the Minister on such terms and conditions as he may specify in their instruments of appointment.

(3) The Minister shall appoint one of the Commissioners to be the Chairperson.

9. (1) The Commissioners shall be persons of recognised standing and experience, all of whom may be drawn from the following disciplines

Qualifications and tenure of Commissioners.

- (a) finance and accounting;
- (b) telecommunications;
- (c) economics;
- (d) law; or
- (e) other related fields

except that at least one of the Commissioners shall be a person of recognised standing and experience in telecommunications.

(2) A Commissioner holds office for a period of three years unless he resigns or is removed from office in accordance with this Part.

10. (1) A Commissioner, other than the Chairperson, may resign his office in writing, and his resignation shall be addressed to the Minister through the Chairperson.

Resignation of Commissioners.

(2) The Chairperson of the Commission may at any time in writing addressed to the Minister, resign from his office.

11. The Minister shall remove a Commissioner from office -

Termination of office.

- (a) for inability to perform the functions of his office;
- (b) for being absent from three consecutive meetings of the Commission or five meetings in aggregate during any

twelve month period of his term of appointment;

- (c) if he is declared bankrupt or compounds with his creditors;
- (d) for misconduct; or
- (e) for any other conduct inconsistent with his functions.

Functions of Commission.

- 12.** (1) The functions of the Commission are to -
- (a) advise the Minister on the formulation of national policy on telecommunications matters with a view to ensuring the efficient, economic and harmonised development of the telecommunication and broadcasting services and radio communications of Dominica;
 - (b) ensure compliance with the Government's international obligations on telecommunications;
 - (c) be responsible for technical regulation and the setting of technical standards of telecommunications and ensure compatibility with international standards;
 - (d) plan, supervise, regulate and manage the use of the radio frequency spectrum in conjunction with ECTEL, including the assignment and registration of radio frequencies to be used by all stations operating in Dominica or on any ship, aircraft, vessel, or other

floating or airborne contrivance or spacecraft registered in Dominica.

- (e) regulate prices for telecommunications services;
- (f) advise the Minister in all matters related to tariffs for telecommunications service;
- (g) collect all fees prescribed and any other tariffs levied under this Act or regulations;
- (h) receive and review applications for class licences and advise the Minister accordingly;
- (i) monitor and ensure that licensees comply with the conditions attached to their licences;
- (j) review proposed interconnection agreements by telecommunications providers and recommend to the Minister whether or not he should approve such agreements;
- (k) investigate and resolve any dispute relating to interconnections or sharing of infrastructure between telecommunications providers;
- (l) investigate and resolve complaints related to harmful interference;
- (m) monitor anti-competitive practices in the telecommunications sector and advise the national body responsible for the regulation of anti-competitive practices accordingly;
- (n) maintain a register of licensees and frequency authorisation holders;

-
- (o) provide the Minister with such information as he may require from time to time;
 - (p) undertake in conjunction with other institutions and entities where practicable, training, manpower planning, seminars and conferences in areas of national and regional importance in telecommunications;
 - (q) report to and advise the Minister on the legal, technical, financial, economic aspects of telecommunications, and the social impact of telecommunications;
 - (r) manage the universal service fund; and
 - (s) perform such other functions as are prescribed.

(2) In the performance of its functions the Commission shall consult and liaise with ECTEL.

Powers of Commission.

13. (1) The Commission shall have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Commission has the power to -

- (a) acquire information relevant to the performance of its functions including whether or not a person is in breach of a licence, frequency authorisation or this Act;
- (b) require payment of fees;
- (c) initiate legal proceedings against a licensee or authorised frequency holder for the

purposes of compliance;

(d) hold public hearings pertaining to its functions;

(e) do anything incidental to its powers; and

(f) sit as a tribunal.

14. (1) Subject to subsection (2), a record of the Commission shall, upon request, be available for public inspection at the offices of the Commission on payment of the prescribed fee. Records.

(2) The following records shall not, except in accordance with this section, be made available to the public for inspection:

(a) records relating to the internal personnel rules and practices of the Commission;

(b) personnel records, medical records, and other records whose disclosure would constitute an invasion of personal privacy;

(c) secret records relating to national defence or security;

(d) records of intra-governmental communications relating to governmental decision processes;

(e) records of information obtained by the Commission in the course of its frequency monitoring activities;

- (f) records containing information relating to the valuation of the property of the telecommunications providers;
- (g) records of trade secrets or proprietary, commercial, financial or technical information which is customarily guarded from competitors;
- (h) records of information which are subject to judicial privilege; and
- (i) records which are not open to public inspection by virtue of the provisions of any enactment.

(3) The Commission shall make available records referred to in paragraphs (d) of subsection (2) through the discovery process in court proceedings.

(4) The Commission shall not disclose an investigative record compiled for enforcement purposes for public inspection if to do so -

- (a) interferes with enforcement proceedings;
- (b) deprives a person of the right to fair trial or impartial adjudication;
- (c) constitutes an unjustified invasion of personal privacy;
- (d) discloses the identity of a confidential source;
- (e) discloses investigative techniques or procedures; or

(f) endangers the life or physical safety of the law enforcement personnel or any other person.

(5) An application for authorisation of equipment and materials relating to an application for a licence or frequency authorisation is not available for public inspection until the Commission approves the application for a licence or frequency authorisation.

(6) Records of information submitted in connection with audits, investigations and examinations shall not be made available for public inspection until the Commission acts upon the matter.

(7) The Commission shall cause to be published in the Gazette:

(a) licences issued, modified, renewed or revoked;

(b) exemptions granted under the Act; and

(c) enforcement orders of the Commission.

15. (1) The Commission may, on the recommendation of ECTEL, provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined, and on other matters as prescribed.

Commission to provide guidelines.

(2) Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made available to a person on payment of the prescribed fee.

(3) The Commission may give written directions to a licensee or frequency authorisation holder in connection with the performance of its functions or to implement the guidelines of the Commission.

Commission to investigate complaints.

16. (1) The Commission shall investigate a complaint by a person who is aggrieved by the actions or conduct of a telecommunications provider in respect of a decision against that person.

(2). The Commission shall investigate a complaint only where that person has first sought redress for the complaint from the telecommunications provider and that complaint has not been amicably resolved.

Dispute between licensees.

17. (1) The Commission, when presented with a dispute between licensees requiring an interpretation of licences, frequency authorisations or regulations, shall refer the matter to ECTEL with a request that ECTEL provide the Commission with an opinion, or with the consent of the licensees refer the matter to ECTEL for mediation or arbitration and in keeping with the provisions of the Treaty.

(2) The Commission shall take account of the opinion and recommendation of ECTEL in resolving the relevant dispute.

Dispute resolution.

18. (1) The Commission shall, wherever practicable, apply conciliation, mediation, and alternative dispute resolution techniques in resolving disputes.

(2) For the following purposes the Commission is hereby established as a telecommunications tribunal:-

- (a) to hear and determine disputes between licensees of telecommunications services;

-
- (b) to hear and adjudicate disputes between licensees and the public involving alleged breaches of the Act or regulations, or licences or frequency authorisations;
 - (c) to hear and determine complaints by subscribers relating to rates payable for telecommunications services;
 - (d) to hear and determine claims by a licensee for a change in rates payable for any of its services;
 - (e) to hear and determine objections to agreements between licensees;
 - (f) of its own motion or at the instance of the Minister, to review and determine the rate payable for any telecommunications service;
 - (g) to hear and determine complaints between licensees and members of the public.

(3) The tribunal under subsection (2) shall comprise the chairperson and two other Commissioners nominated for the purpose by the Chairperson.

(4) Where any Commissioner withdraws from any proceedings on a matter before the Commission on account of interest, illness or otherwise, another Commissioner may be nominated to replace him, save that in the case of an equality of votes the Chairperson shall have a casting vote.

19. (1) The Commission shall expeditiously hear and inquire into and investigate any matter which is before it, and in particular shall hear, receive and consider statements, arguments and evidence made, presented or tendered-

Hearing of matter
by Commission.

-
- (a) by or on behalf of any complainant;
 - (b) by or on behalf of the telecommunications licensee or provider; or
 - (c) on behalf of the Minister.

(2) The Commission shall determine the periods that are reasonably necessary for the fair and adequate presentation of the matter by the respective parties thereto and the Commission may require those matters to be presented within the respective periods so determined.

(3) The Commission may require evidence or arguments to be presented in writing and may decide the matters upon which it will hear oral evidence or arguments.

(4) All matters brought before the Commission shall be determined by a majority of the members thereof.

(5) Any party to a matter brought before the Commission shall be entitled as of right to appeal to the Court of Appeal from any judgement, order or award of the Commission.

Appearance.

20. Every party to a matter shall be entitled to appear at the hearing thereon, and may be represented by an attorney or any other person who in the opinion of the tribunal is competent to assist such person in the presentation of the matter.

Powers of Commission when sitting as a tribunal.

- 21.** (1) The Commission shall have powers to:
- (a) issue summons to compel the attendance of witnesses;
 - (b) examine witnesses on oath, affirmation or otherwise; and
 - (c) compel the production of documents.

(2) Summons issued by the Commission shall be under the hand of the Chairperson.

(3) Sections 65, 66, 67 and 68 shall apply in respect of the commission when sitting as a tribunal.

22. In addition to the powers conferred on the Commission under section 13, the Commission may, in relation to any matter brought before it -

Awards.

- (a) make provisional or interim orders or awards relating to the matters or part thereof, or give directions in pursuance of the hearing or determination;
- (b) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter or part thereof if it appears that the matter or part thereof is trivial or vexatious or that further proceedings are not necessary or desirable in the public interest;
- (c) order any party to pay costs and expenses, including expenses of witnesses, as are specified in the order;
- (d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

23. The Commission may review, vary or rescind decisions or orders made by it; and where a hearing is required before that decision or order is made, the decision or order shall not be suspended or revoked without a further hearing.

Review by
Commission.

Directions by the Minister.

24. The Minister may give directions to the Commission of a policy nature, and the Commission shall comply with those directions.

Meetings of Commission

25. Meetings of the Commission shall be conducted in accordance with the First Schedule.

Remuneration of Commissioners.

26. (1) Commissioners shall be paid such remuneration as the Minister may determine and specify in their instruments of appointment.

(2) The Commissioners and any other persons whose services the Commission deems necessary to engage shall be entitled to receive and shall be paid remuneration for their attendance at an inquiry at such rates as may be approved by the Minister.

Staff of Commission.

27. The Commission shall have such staff and the services of such specialist persons as is necessary for the performance of its functions.

Annual Report.

28. (1) The Commission shall submit annually to the Minister at the end of each calendar year a report which includes -

- (a) an assessment of the state of telecommunications and its impact and significance for the development of Dominica.
- (b) a description of the activities undertaken by the Commission including recommendations made in respect of licences and frequency authorisations;
- (c) actions taken to promote the Treaty including the implementation of the recommendations, policies and guidelines of ECTEL;
- (d) a financial report of the Commission; and

(e) such other matters as are prescribed.

(2) The Minister shall cause a copy of a report submitted under subsection (1) to be laid before Parliament within twenty-eight days of its receipt by the Minister, or if Parliament is not in session, within twenty-eight days of the commencement of its next session.

PART III

LICENSING OF TELECOMMUNICATIONS PROVIDERS

29. (1) A person shall not establish or operate a telecommunications network or provide a telecommunications service without a licence.

Prohibition on engaging in telecommunications services without a licence.

(2) Where a frequency authorisation is necessary for or in relation to the operation of a telecommunications network or a telecommunications service, a person shall not operate that network or service without that authorisation.

(3) A person who wishes to land or operate submarine cables within the territory of Dominica for the purpose of connecting to a telecommunications network shall first obtain a licence, in addition to any other approvals, licences or permits required under the laws of Dominica.

(4) A person who contravenes subsection (1) or (2) or (3) commits an offence and shall be liable on indictment to a fine not exceeding one million dollars or to imprisonment for a period not exceeding ten years.

30. (1) An applicant for an individual licence shall submit his application in the prescribed form to the Commission for consideration by ECTEL, together with the prescribed fee.

Procedure for grant of an individual licence.

(2) The Commission shall immediately transmit the application to ECTEL, for its review and recommendation.

(3) On receipt of the recommendation from ECTEL, the Commission shall transmit the application together with ECTEL's recommendation to the Minister for consideration of the grant of an individual licence.

(4) Where in the absence of an invitation to tender in respect of telecommunications network or service there is only one applicant the Commission shall submit the application to ECTEL for its review and recommendation;

Grant of individual licence.

31. (1) The Minister may, in granting the individual licence, include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

(2) An individual licence shall include the terms and conditions specified in Part 2 of the Second Schedule.

Content of individual licence.

32. (1) The Minister shall, before granting an individual licence, take into account -

- (a) the purposes of the Treaty ;
- (b) the recommendation of ECTEL;
- (c) whether the objective of universal service will be promoted including the provision of public telephony services sufficient to meet reasonable demand at affordable prices;
- (d) whether the interests of subscribers, purchasers and other users of telecommunications services will be protected;
- (e) whether competition among telecommunications providers of telecommunications services will be promoted;

-
- (f) whether research, development and introduction of new telecommunications services will be promoted;
 - (g) whether foreign and domestic investors will be encouraged to invest in telecommunications;
 - (h) appropriate technical and financial requirements;
 - (i) whether the public interest and national security interests will be safeguarded; and
 - (j) such other matters as are prescribed.

(2) The Minister shall not grant an individual licence unless ECTEL recommends accordingly.

33. (1) An applicant shall submit his application for a class licence to the Commission in the prescribed form together with the prescribed application fee.

Procedure for grant of a class licence.

(2) The Commission shall upon receipt of the application determine, whether the particular applicant falls within the definition of a class licence.

34. (1) The Minister may, in granting a class licence, include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

Content of class licence.

(2) A class licence shall include the terms and conditions specified in Part 2 of the Second Schedule.

35. (1) An applicant for a frequency authorisation shall submit his application to the Commission in accordance with the prescribed form together with the prescribed application fee.

Grant of frequency authorisation.

(2) The Commission shall, upon receipt of the application and after consultation with ECTEL, recommend to the Minister whether or not the particular applicant shall be granted a frequency authorisation.

(3) The Minister may grant the frequency authorisation where the Commission recommends accordingly.

Content of
frequency authori-
sation.

36. (1) The Minister may, in granting a frequency authorisation, include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

(2) A frequency authorisation shall include all the terms and conditions as specified in Part II of the Second schedule.

Amendment of
Second Schedule.

37. The Minister may, on the recommendation of ECTEL, amend the Second Schedule by Order.

Licence and
authorisation fee.

38. The Commission shall receive from the applicant the prescribed fee for or in relation to a licence or a frequency authorisation in the manner prescribed.

Modification of
licences and
authorisation.

39. (1) The Minister may, on the receipt of a recommendation from ECTEL, modify an individual licence where he and the licensee agree in writing.

(2) The Minister may, on receipt of a recommendation from ECTEL, modify a class licence following appropriate consultation with members of the relevant class.

(3) The Minister may, on receipt of a recommendation from ECTEL, modify a frequency authorisation where he and the licensee agree in writing.

(4) The Minister may on the receipt of a recommendation from ECTEL modify any licence or frequency authorisation without the agreement of the licensee if he is of the view that the modification is necessary in the public interest or for

reasons of national security.

(5) A licensee who seeks a modification of a licence shall apply in the same manner as he did for the initial licence.

40. (1) The Minister may suspend or revoke a licence, or vary a term and condition of that licence if it is not a statutory term or condition by a notice in writing served on the licensee.

Suspension and revocation of licences and authorisation.

(2) The Minister may suspend, revoke or refuse to renew a licence where -

- (a) the radio apparatus or station in respect of which the licence was granted interferes with a telecommunications service provided by a person to whom a licence is already granted for that purpose;
- (b) the licensee contravenes this Act;
- (c) the licensee fails to observe a term or condition specified in his licence;
- (d) the licensee is in default of payment of the licence or renewal fee or any other money owed to the Government;
- (e) ECTEL recommends the suspension or revocation;
- (f) the suspension or revocation is necessary for reasons of national security or the public interest.

(3) Before suspending or revoking a licence under subsection (2), the Minister shall give the licensee two months notice in writing of his intention to do so, specifying the grounds on which he proposes to suspend or revoke the licence, and shall give the licensee an opportunity -

- (a) to present his views;
- (b) to remedy the breach of the licence or term and condition; or
- (c) to submit to the Minister within such time as the Minister may specify, a written statement of objections to the suspension or revocation of the licence,

which the Minister shall take into account before reaching a decision.

(4) This section also applies with any necessary modification to a frequency authorisation holder.

Surrender of licences and authorisation.

41. Where a licence or authorisation has been revoked, every licensee and every other person in whose possession or under whose control the licence or authorisation may be, shall surrender the licence or authorisation to the Commission if required by the Minister.

Grant of Special Licence.

42. (1) An applicant for a special licence shall submit his application in the prescribed form to the Minister together with the prescribed application fee.

(2) The Minister may grant a special licence when an emergency or other exigent circumstance exists.

(3) A special licence shall be for a term not to exceed 10 calendar days and shall not be renewable.

(4) The Minister shall immediately upon issue of a special licence, inform the Commission and ECTEL.

PART IV

UNIVERSAL SERVICE, INTERCONNECTION, INFRASTRUCTURE SHARING, NUMBERING

43. (1) The Minister may, on the recommendation of ECTEL, include as a condition in the licence of a telecommunications provider a requirement to provide universal service, except that such requirement shall be carried out in a transparent, non-discriminatory and competitively neutral manner.

Provision of universal service.

(2) A telecommunications provider who is required by its licence to provide universal service to any person shall do so at such price and with the quality of service specified in the licence.

44. (1) There shall be established a Fund to be known as the Universal Service Fund, which Fund shall be managed by the Commission in accordance with regulations made by the Minister on the recommendation of ECTEL.

Universal Service Fund.

(2) Every telecommunication provider shall contribute to the Universal Service Fund.

(3) The Minister shall, by Order, on the recommendation of ECTEL, specify the percentage of the gross revenue which a telecommunications provider shall contribute to the Universal Service Fund referred to in subsection (1) except that the percentage to be contributed shall be the same for all providers.

(4) The Minister shall by Order on the recommendation of ECTEL specify which telecommunications provider in Dominica is entitled to receive payments from the Universal Service Fund.

Purpose of Fund.

45. (1) The Fund shall be used by the Commission, on the recommendation of ECTEL, to compensate any telecommunications provider who is required to provide universal service by virtue of section 43 of this Act or to otherwise promote universal service.

(2) The amount of compensation payable by virtue of subsection (1) of this section shall be computed in accordance with the regulations made by the Minister on the recommendation of ECTEL, and the conditions attached to the licence of the telecommunications provider and shall be paid to the relevant telecommunications providers by the Commission.

(3) In making the regulations referred to in subsection (2) of this section the Minister shall also be guided by the actual cost that is incurred in making available the required universal service.

Interconnection and infrastructure sharing.

46. (1) Subject to subsection (5), a telecommunications provider who operates a public telecommunications network shall not refuse, obstruct, or in any way impede another telecommunications provider from making an interconnection with his telecommunications network.

(2) A telecommunications provider who wishes to interconnect with the telecommunications network of another telecommunications provider shall so request that provider in writing.

(3) A telecommunications provider to whom a request for interconnection is made shall, in writing, respond to the request within a period of four weeks from the date it is made to him.

(4) A telecommunications provider in acceding within four weeks to the request for interconnection shall nominate the time as agreed to by both parties in which the interconnection shall be effected.

(5) A telecommunications provider to whom a request for interconnection is made may in his response refuse that request in writing on reasonable technical grounds only.

(6) A telecommunications provider on receipt of a refusal for interconnection may refer that refusal to the Commission for review and possible dispute resolution.

(7) A telecommunications provider providing an interconnection service in accordance with this section shall impose reasonable cost based rates, and such other reasonable terms and conditions as the Commission may, on the recommendation of ECTEL, determine.

(8) Any interconnection service provided by a telecommunications provider pursuant to the provisions of subsection (7) above shall be on terms which are not less favourable than:

- (a) those of the provider of the interconnection service;
- (b) the services of non-affiliated suppliers; or
- (c) the services of the subsidiaries or affiliates of the provider of the interconnection service.

(9) No telecommunications provider shall, in respect to any rates charged by him for interconnection services provided by him to another telecommunications provider, vary the rates on the basis of the type of customers to be served, or on the type of services that the telecommunications provider requesting the interconnection services intends to provide.

Interconnection
agreement.

47. (1) No person shall enter into any interconnection agreement, implement or provide interconnection service without first submitting the proposed agreement to the Commission for its approval, which approval shall be in writing.

(2) Interconnection agreements between telecommunications providers shall be in writing, and copies of the agreements shall be kept in a public registry maintained by the Commission for that purpose and open to public inspection during normal working hours.

(3) The Commission shall, after consulting ECTEL, prepare, publish, and make available copies of the procedures to be followed by the telecommunications providers when negotiating interconnection agreements.

Cost of intercon-
nection.

48. (1) The cost of establishing any interconnection to the telecommunications network of another telecommunications provider shall be borne by the telecommunications provider requesting the interconnection.

(2) The cost referred to in subsection (1) of this section shall be based on cost-oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility, and sufficiently unbundled such that the supplier of the interconnection service does not have to pay for network components that are not required for the interconnection service to be provided.

Infrastructure
sharing.

49. Sections 46, 47 and 48 shall apply to infrastructure sharing, *mutatis mutandis*.

Access to tower
sites and under-
ground facilities.

50. (1) Where access to telecommunications towers, sites and underground facilities is technically feasible, a telecommunications provider (the first provider) must, upon request, give another telecommunications provider (the second provider) access to a telecommunications tower owned or operated

by the first provider, or to a site owned, occupied or controlled by the first provider, or to an eligible underground facility owned or operated by the first provider, for the sole purpose of enabling the second provider to install a facility for use in connection with the supply of a telecommunications service.

(2) A telecommunications provider, in planning the provision of future telecommunications services, must co-operate with other telecommunications providers to share sites and eligible underground facilities.

(3) Access to sites, towers or eligible underground facilities pursuant to this section shall, *mutatis mutandis*, be on such terms as set out in sections 46 to 48 above, and otherwise on such terms and conditions as are agreed between providers or, failing agreement as determined by the Commission.

51. (1) The licence requirement in section 29 of the Act applies to the provision or operation of private telecommunications networks and a frequency authorisation is required to operate a private telecommunications network providing radio-communications services or that utilises the radio frequency spectrum.

Private networks.

(2) A private telecommunication network shall not be used for resale, except that the owner of a private network may resell spare capacity on its facilities or cede or assign his or her rights to use such facilities or sublet or otherwise part with control thereof to a licensed telecommunications operator.

(3) Where the operator of a private network intends to offer telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, such an operator requires to apply for an individual licence under section 30 of the Act.

(4) A private telecommunication network shall not be restricted to the carrying of voice only or data only or to any

other such use.

Numbering. **52.** (1) The Commission shall establish and manage a national plan for the allocation of numbers among telecommunications providers in accordance with the regional plan established by ECTEL.

(2) The Commission shall, in managing the national plan for the allocation of numbers among telecommunications providers, have the power to reallocate and reassign numbers to the extent reasonably required to implement and administer the national numbering plan.

Domain name registration. **53.** The Commission shall assume responsibility for the registration and management of Internet domain names.

PART V

COMPLIANCE AND MANAGEMENT

Appointment of inspectors. **54.** (1) The Commission may by instrument in writing appoint inspectors for the purposes of this Act.

(2) The Commission shall furnish each inspector with an identity card containing a photograph of the holder which he shall produce on request in the performance of his functions.

(3) An inspector may investigate any complaint or conduct concerning an allegation of a breach of the Act, licence or frequency authorisation.

Right of entry. **55.** (1) Subject to subsections (2),(3) & (4), an inspector may, on reasonable suspicion that a licensee or frequency authorisation holder is engaged in conduct that is contrary to this Act, or the relevant licence or authorisation, enter any vehicle, ship, vessel, aircraft, or premises and search the vehicle, ship,

vessel, aircraft, or premises, as the case may be, and he may, in that process -

- (a) remove any document or extracts of the document; or
- (b) seize any telecommunications apparatus from the person with the custody or possession of the document or apparatus.

(2) An inspector shall not enter any vehicle, ship, vessel, aircraft, or premises in exercise of the powers conferred on him by subsection (1) unless the occupier or the person in charge of the vehicle, ship, vessel, aircraft or premises consents to the entry or, where he does not, where the inspector first obtains a search warrant.

(3) An inspector shall not seize any telecommunications apparatus in exercise of the powers conferred on him by subsection (1) without a court order.

(4) An inspector shall, on entering the vehicle, ship, vessel, aircraft, or premises identify himself to the person in charge of the vehicle, ship, vessel, aircraft, or premises, as the case may be, by showing the person the search warrant together with his official identity card.

(5) An inspector shall, on completing the search, leave with the person in charge of the vehicle, ship, vessel, aircraft, or premises, as the case may be, a receipt in which it is indicated a list of documents or extracts taken by the inspector.

(6) An inspector may copy any document removed by him in accordance with the provisions of subsection (1) of this section, and return the document to the owner or person in charge of the document.

Search and seizure.

56. (1) Where a magistrate is satisfied by information on oath that -

- (a) there is reasonable ground for suspecting that an offence under this Act has been committed or is about to be committed; and
- (b) evidence of the commission of that offence is to be found on any premises, vehicle, vessel or aircraft specified in the information,

he may issue a search warrant authorising the inspector named in the warrant, with or without a Police Officer, to enter and search the premises, vehicle, vessel or aircraft specified in the information and examine, test or seize any apparatus and equipment.

(2) Any document, telecommunications apparatus or other thing seized pursuant to a search warrant shall -

- (a) where legal proceedings are not commenced within a period of thirty days from the date of seizure of the document, telecommunications apparatus or thing be returned to the owner; or
- (b) where legal proceedings are commenced before the expiry of the thirty days, be kept until the conclusion of those proceedings.

(3) Where a licensee is convicted of an offence under this Act in respect of any document, telecommunications apparatus or thing seized under this Part the Court may order the forfeiture of that document, telecommunications apparatus or thing.

Inspection of licence.

57. Any person who holds a valid licence or frequency authorisation shall exhibit his licence for inspection on demand to an inspector.

58. The court may, on application of the Commission or an interested party,

Parties eligible to seek orders for forfeiture or injunctive relief.

- (a) make an order for forfeiture of any equipment used for the commission of the offence; and
- (b) grant an order restraining a person from engaging in activities contrary to this Act.

PART VI

OFFENCES

59. (1) A person shall not connect any terminal equipment to a public telecommunications network without the written approval of the Commission.

Connection of terminal equipment.

(2) The Commission shall, before giving the approval, take into account the recommendations of ECTEL relating to equipment approval.

(3) Notwithstanding sub-sections (1) and (2), the Minister may, on the recommendation of ECTEL, exempt by Order, any person from the requirements of this section.

(4) A person who connects any terminal equipment contrary to this section commits an offence and is liable, on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding two years.

60. No person shall use or cause to be used any thing that is capable of causing electrical interference with the normal functioning or use of a licensed telecommunications network or operation of telecommunications apparatus, unless such a thing is equipped with filters, suppressors or other devices, or is otherwise modified to minimise the interference to a level as prescribed.

Reduction of electrical interference.

Unlawful interception.

61. Any message transmitted over a public telecommunications network, shall be confidential and shall not be intercepted or interrupted without the consent of the sender, or without a court order made under this Act or any other enactment.

Secrecy of personal information.

62. Any personal information relating to a subscriber shall be confidential and shall not be disclosed by any telecommunications provider without the consent of the subscriber or court order under this Act or any other enactment.

Malicious damage to apparatus.

63. (1) No person shall remove, injure, or destroy any telecommunications network or telecommunications apparatus, except in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and shall, on summary conviction, be liable to a fine not exceeding fifteen thousand dollars or to imprisonment for a period not exceeding two years, and if he is convicted on indictment he is liable to a fine not exceeding thirty thousand dollars or to imprisonment for a period not exceeding four years.

Unlawful interception and disclosure of personal information.

64. (1) A person who -

(a) contravenes section 61; or

(b) knowingly discloses any personal information contrary to section 62;

commits an offence and is liable, on conviction on indictment, to a fine not exceeding fifteen thousand dollars or to imprisonment for a period not exceeding one year.

(2) Subsection (1) (b) shall not apply to a disclosure made to the Customs department, the Income Tax department or the Police.

65. A person who, in any manner, impedes, prevents, or obstructs any investigation being carried out by the Commission under this Act commits an offence and is liable, on conviction on indictment, to a fine of eight thousand dollars or to imprisonment for a period not exceeding six months.

Obstruction of investigation.

66. A person who -

Refusal to produce documents etc.

(a) refuses to produce any document, record, thing, or any information required by the Commission under this Act; or

(b) destroys or alters, or causes to be destroyed or altered, any document, record or thing required to be produced under this Act;

commits an offence and is liable, on conviction on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding six months.

67. A person who knowingly gives false or misleading information to the Commission commits an offence and is liable, on conviction on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding six months.

Giving false information.

68. A person who -

Failure to attend and give evidence to Commission.

(a) refuses or fails, without reasonable excuse, to appear before the Commission, having been required to do so; or

(b) refuses to take an oath or make an affirmation having appeared before the Commission as a witness;

commits an offence, and is liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding three months.

PART VII

MISCELLANEOUS

Stoppage of
telecommunica-
tions.

69. No message which appears dangerous to the security of Dominica or contrary to public order or decency shall be accepted for transmission, and if, in the opinion of the person receiving it, the message contains elements that constitute an offence, he shall immediately inform the Commission which shall take the necessary appropriate action.

Access to lands and
road works.

70. (1) A person nominated by a public telecommunications provider and duly authorised in writing by the Minister or relevant authority may, at any reasonable time, enter upon and survey any land, other than land covered by buildings or used as a garden or pleasure ground, for the purpose of ascertaining whether the land would be suitable for use by the provider for, or in connection with, the establishment or running of the provider's system.

(2) For the purpose of providing a telecommunications service, a licensee may lay or maintain or remove, any line or cable, in or over a street or a public ground and shall repair and restore the street and public ground to the satisfaction of the relevant authority.

(3) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the telecommunications provider shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the provider shall pay to that person compensation in respect of the disturbance.

(4) In engaging in the inspection of land, installation of facilities, or maintenance of facilities, a telecommunications provider must take all reasonable steps to act in accordance with good engineering practice, to protect the environment, to protect the safety of persons and property, and to ensure that the activity interferes as little as practicable with the operations of a public utility, public roads and paths, the movement of traffic, and the use of land.

(5) A telecommunications provider who engages in any activity covered in subsection (1) or (2) must ensure that a facility installed over a road, bridge, path or navigable water is installed in a way that will allow reasonable passage by persons, vehicles and vessels.

71. The grant of a licence or frequency authorisation does not authorise the licensee or the holder of the authorisation to infringe any copyright, which may exist in the matter transmitted by him under his licence or authorisation.

Copyright.

72. Where a breach of this Act or licence has been committed by a person (other than an individual) any individual who at the time of the breach was director, manager, supervisor, partner or other similarly responsible individual, including a public official, may be found individually liable for that breach if, having regard to the nature of his functions and his reasonable ability to prevent that breach, the breach was committed with his consent or connivance or he failed to exercise reasonable diligence to prevent the breach.

Liability of public and private officials.

73. (1) Notwithstanding this Act a diplomatic mission established in Dominica may establish and operate telecommunications, including radio apparatus, with the permission of the Minister.

Installation and operation of telecommunication by diplomatic missions.

(2) A diplomatic mission shall make proper arrangements for the use of its telecommunications permitted under subsection (1) in accordance with this Act.

Regulations.

74. (1) The Minister may make regulations to give effect to this Act.

(2) Without limiting the generality of sub-section (1), the Minister may make regulations providing, in particular, for or in relation to -

- (a) forms and procedures in respect of the grant of a licence or a frequency authorisation;
- (b) matters relating to the provision of universal service and the management of the Universal Service Fund;
- (c) the type of terminal equipment to be connected to a public telecommunications network;
- (d) interconnection between telecommunications providers, and the sharing of infrastructure by telecommunications providers;
- (e) interconnection agreements;
- (f) matters relating to the allocation of numbers among the telecommunications providers;
- (g) stoppage or interception of telecommunications;
- (h) management of the spectrum;
- (i) adopting industry codes of practice, with or without amendment;

-
- (j) the procedure and standards relating to the submission, review and approval by the Commission of telecommunications tariffs;
 - (k) the control, measurement and suppression of electrical interference in relation to the working of telecommunications apparatus;
 - (l) matters of confidentiality including on the part of all persons employed in or in any way connected with the maintenance and working of any telecommunications network or telecommunications apparatus;
 - (m) public inspection of records of the Commission;
 - (n) procedures for the treatment of complaints;
 - (o) procedures for dispute resolution;
 - (p) matters for which guidelines are to be issued by the Commission;
 - (q) matters relating to the quality of telecommunications services;
 - (r) technical regulation and setting of technical standards;
 - (s) fees, including the amount and circumstances in which they are payable;
 - (t) conduct of public hearings;
 - (u) private networks and VSATS;

- (v) cost studies and pricing models;
- (w) Submarine cables and landing rights; and
- (x) Registration and Management of Domain Names

(3) Where ECTEL recommends regulations for adoption for the purpose of the Treaty the Minister shall take all reasonable steps to ensure their promulgation.

Repeal and savings.

75. (1) The Acts specified in the Third Schedule to this Act are hereby repealed.

(2) Notwithstanding the repeal of the Acts specified in the Third Schedule, and until such time as regulations are made under this Act, any regulations made under the repealed Acts shall continue into force with such modifications as are necessary to bring them in conformity with this Act.

(3) A person authorised to operate a telecommunications network or provide a telecommunications service or use radio frequencies as at the date of the entry into force of this Act shall be deemed to be operating such network or providing such service or using such radio frequencies pursuant to a licence issued under this Act for six months from the entry into force of this Act. Thereafter, any such telecommunications provider shall require a licence under this Act.

Treaty to have force of law.

76. The terms of the Treaty as set out in the Fourth Schedule shall have the force of law as if enacted in this Act.

FIRST SCHEDULE**CONDUCT OF MEETINGS OF THE COMMISSION**

1. The Commission shall meet at such times and at such places as the Commission considers necessary or expedient for the transaction of its business.

2. The Chairperson may at any time call a special meeting of the Commission, and shall call a special meeting of the Commission within fourteen days of receipt of a request for that purpose addressed to him in writing and signed by any two Commissioners.

3. The quorum of the Commission at any meeting shall be three Commissioners.

4. In the absence of the Chairperson, the Commissioners present shall elect from their number a Commissioner to preside at the meeting of the Commission.

5. Decisions of the Commission shall be by majority of votes of members present and voting.

6.(a) Minutes of each meeting of the Commission shall be recorded and kept by the Secretary to the Commission.

(b) A certified copy of the minutes of each meeting confirmed by the Commission shall be forwarded to the Minister within fourteen days after the meeting at which they were confirmed.

7. Where the Commission considers it necessary, it may invite any person to attend its meeting, but that person shall not vote on matters before the Commission.

8. Subject to this Schedule, the Commission may regulate its own procedure, and may delegate to any Commissioner power and authority to carry out on behalf of the Commission such duties as the Commission may determine.

9. Where a Commissioner has an interest, directly or indirectly, in any matter before the Commission in which his private capacity conflicts with his duties as a Commissioner and which matter is a subject of consideration by the Commission, the Commissioner shall, as soon as practicable after becoming aware of the interest in the matter, disclose his interest to the Chairperson.

10. The Commissioner referred to in paragraph 9 of this Schedule shall not, unless otherwise decided by the Commission, take part in the consideration of the matter, and if allowed to take part in the consideration of the matter he shall not vote on the matter.

Sections 31, 34, 36.

SECOND SCHEDULE

PART 1

CONDITIONS THAT MAY BE INCLUDED IN LICENCES AND FREQUENCY AUTHORISATIONS

Licences and frequency authorisations granted under this Act may contain any or all of the following conditions:

- (a) the networks and services which the licensee or authorisation holder is and is not entitled to operate and provide, and the networks to which the network of the licensee or authorisation holder can be connected;

-
- (b) the duration of the licence or authorisation;
 - (c) the build-out of the network and geographical and subscriber targets for the provision of the relevant services;
 - (d) the use of radio spectrum;
 - (e) the provision of services to rural or sparsely populated areas or other specified areas in which it would otherwise be uneconomical to provide services;
 - (f) the provision of services to the blind, deaf, physically and mentally handicapped and other disadvantaged persons;
 - (g) the interconnection of the licensee's network with those of other operators;
 - (h) the sharing of telecommunications infrastructure;
 - (i) prohibitions of anti-competitive conduct;
 - (j) the allocation and use by the licensee of numbers; and
 - (k) provision of universal service.

SECOND SCHEDULE

PART 2

CONDITIONS THAT MUST BE INCLUDED IN LICENCES AND FREQUENCY AUTHORISATIONS

Licences and frequency authorisations granted under this Act shall contain all of the following conditions:

- (a) period of licence and procedure for renewal or variation at behest of the applicant;
- (b) a condition stipulating that the licence or frequency authorisation shall only enter into force upon payment by the licensee or authorisation holder to ECTEL or the Commission of the prescribed fee;
- (c) a condition requiring the licensee or authorisation holder to pay annual anniversary fees and renewal fees on specified dates;
- (d) a condition requiring the licensee or frequency authorisation holder to provide ECTEL with such documents and information as ECTEL shall require and request in order to fulfil its purposes and functions;
- (e) a condition requiring the licensee or frequency authorisation holder to comply with any direction made by the Commission under section 15(1);
- (f) provision of information and documents as required by and to the Commission and ECTEL;
- (g) non-exclusivity of the licence, and exclusivity or otherwise of the frequency authorisation;
- (h) contribution to universal service;
- (i) procedure to deal with complaints of customers, or subscribers;
- (j) compliance with the recommendations of ECTEL;
- (k) payment of moneys owed to the Government;

-
- (l) the submission to the Commission of a complete audited financial report;
- (m) specification of the fees depending on the divergent or convergent* nature of the services provided.

*Convergent nature means the process of multiple telecommunication services provided over a single medium.

Section 74.

THIRD SCHEDULE

LIST OF ENACTMENTS THAT ARE REPEALED

1. The Telecommunications Act, No. 18 of 1995
2. The Telephones Act, Ordinance, cap. 259 of 1961 Revised Laws.

Section. 76

FOURTH SCHEDULE

TREATY

ESTABLISHING

THE EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY

PREAMBLE

The governments of the Contracting States,

DESIROUS of creating a competitive environment for tel-

communications in the Contracting States:

CONSCIOUS that the benefit of universal telecommunications services should be realised by the people of the Contracting States:

DETERMINED to provide affordable, modern, efficient, competitive and universally available telecommunications services to the people of the Contracting States:

CONVINCED that a liberalised and competitive telecommunications sector is essential for the future economic and social development of the Contracting States:

RECOGNISING that a harmonised and co-ordinated approach by the contracting States is required to achieve a liberalised and competitive telecommunications sector:

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Definitions

1. For the purposes of this treaty,

“Application” means application for a licence or frequency authorization including a variation or renewal of a licence;

“Board” means the Board of Directors referred to in Article 8 of this Treaty;

“Broadcaster” means a provider of broadcasting services;

“Broadcasting” means the transmission of radio or video programming to the public on a free pay, subscription or other basis whether by cable television, terrestrial or satellite means,

or by other electronic delivery of such programming.

“Chairman” means the Chairman of ECTEL;

“Class Licence” means a licence issued on the same terms to each applicant of a category of users in respect of the operation of a specified type of telecommunications network or a specified type of telecommunications services or both;

“Contracting States” means the Commonwealth of Dominica, Grenada, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and any State, which becomes a party to this Treaty by virtue of Article 22.

“Council” means the Council of Ministers referred to in Article 7;

“Director General” means the Director-General of the Organization of Eastern Caribbean States;

“Directive” means a policy directive given by the Council to the Board pursuant to Article 7;

“ECTEL” means the Eastern Caribbean Telecommunications Authority established by this Treaty.

“ECTEL Fund” means the Fund established by Article 10;

“Frequency authorisation means an authorisation granted by the Minister to use radio frequencies in connection with the operation of a network or the provision of services under an individual licence or class licence or otherwise;

“Individual Licence” means a telecommunications licence issued to a particular person or terms specific to that person.

“Managing Director” means the person appointed under Article 9 to the post of managing director of ECTEL;

“Minister” means the Minister responsible for telecommunications in each Contracting State respectively.

“Organisation” means the Organisation of the Eastern Caribbean States established by The Treaty of Basseterre, of 18th June 1981;

“Person” includes any corporation, either aggregate or sole, any partnership or association and any undertaking, club, or society, other body of one or more persons, and any individual.

“Radio-Communications” means the transmission, emissions or reception of signs, signals, text, images and sounds, or other intelligence of any nature by radio;

“Radio equipment” means any equipment designed or used for radio communications;

“Relevant bank” means the bank approved by the Council for the conduct of ECTEL’s business.

“Telecommunications” means any form of transmission, emission, or reception of signs, signals, text images and sounds or other intelligence of any nature by wire, radio, optical or other electromagnetic system;

“Telecommunications Licence” means a licence issued to a telecommunications provider for the operation of a telecommunications network or the provision of telecommunications services;

“Telecommunications Provider” means a person who is licensed to operate a telecommunications network or to provide telecommunications services;

“Telecommunications Services” means services provided by a telecommunications provider;

“Tender fees” means the fees payable by an applicant for an individual licence in order to participate in an open tender procedure;

“Terminal equipment” means equipment intended to be connected directly or indirectly to the network termination point of a telecommunications network in order to emit, transmit or receive telecommunications services;

“Universal service” includes:

- (a) Public voice telephony to the population of a Contracting State;
- (b) Internet access to the population of a Contracting State;
- (c) Telecommunications services to schools, hospitals and similar institutions and to the disabled and physically challenged;
- (d) The promotion of telecommunications services so as to ensure that as wide a range of people as possible share in the freedom to communicate by having access to efficient and modern telecommunications at an affordable cost.

“Universal Service Fund” means the Fund established by Contracting States under Article 12.

ARTICLE 2

Establishment of the Eastern Caribbean Telecommunications Authority

By this Treaty the Contracting States establish for and among themselves the Eastern Caribbean Telecommunications Authority (hereinafter called ECTEL).

ARTICLE 3

General Obligations

1. The Contracting States undertake to put in place all appropriate measures, including the enactment of an appropriate legal and regulatory framework to promote the purposes of this Treaty, the performance of their obligations under this Treaty, the implementation of the decisions of the Council and other matters for the efficient and effective operations of ECTEL.
2. The Contracting States undertake to put in place in their respective jurisdictions a Telecommunications regulatory body to be known as the National Telecommunications Regulatory Commission which shall co-ordinate and liaise with ECTEL.

ARTICLE 4

Purposes of ECTEL

1. The major purposes of ECTEL shall be to promote:
 - (a) open entry, market liberalisation and competition in telecommunications of the Contracting States;
 - (b) harmonised policies on a regional level for telecommunications of the Contracting States;
 - (c) a universal service, so as to ensure the widest possible access to telecommunications at an affordable rate by the people of the Contracting States and to enable the people of the Contracting States to share in the freedom to communicate over an efficient and modern telecommunications network;

-
- (d) an objective and harmonised regulatory regime in telecommunications of the Contracting States;
 - (e) fair pricing and the use of cost-based pricing methods by telecommunications providers in the Contracting States;
 - (f) fair competition practices by discouraging anti-competitive practices by telecommunications providers in the contracting states;
 - (g) the introduction of advanced telecommunications technologies and an increased range of services in the Contracting States;
 - (h) increased penetration of telecommunications in the Contracting States;
 - (i) the overall development of telecommunications in the Contracting States;
 - (j) national consultations in the development of telecommunications.

2. To advance the purposes of ECTEL the Contracting States undertake to:

- (a) collaborate and co-ordinate with each other and with ECTEL;
- (b) take all appropriate measures for ensuring implementation of the policy and recommendations of ECTEL;
- (c) meet the financial and other commitments under this Treaty to ensure efficient operations of ECTEL.

ARTICLE 5

Functions and Powers of ECTEL

1. ECTEL's functions are to —

- (a) co-ordinate with, and advise, the Contracting States on the conduct and regulation of telecommunications and ancillary matters for ensuring the purposes of this Treaty;
- (b) prepare and maintain a harmonised regional radio spectrum plan;
- (c) recommend a regional policy for the conduct of telecommunications, in particular in relation to universal service, interconnection, numbering and pricing, and to monitor its implementation in the Contracting States;
- (d) recommend to the Contracting States the type of telecommunications networks or services which should be subject to an individual licence and class licence, respectively, and exemptions, if any;
- (e) recommend to the Contracting States the type of communications networks, services and radio equipment which should be subject to frequency authorisation and exemption, if any;
- (f) prepare and recommend to the Contracting States forms, other instruments and regulations for the adoption by the Contracting States for the purpose of harmonisation of telecommunications, including application forms and other forms in

respect of licences, frequency authorisations and tender documents;

- (g) design and operate open tender procedures for individual licences as requested by Contracting States;
- (h) review applications for individual licences submitted by a Contracting State, and to recommend applicants who satisfy the relevant technical and financial requirements for individual licences;
- (i) recommend to the Contracting States terms and conditions to be included in a licence, particularly with respect to the provision of universal service;
- (j) recommend to the Contracting States matters relating to the management of frequency authorisations, including the sale, if any, by auction;
- (k) monitor, in collaboration with the Contracting State, the effectiveness of the licence for the purpose of this Treaty and make the appropriate recommendation to the Contracting State including recommending suspension or revocation of the licence;
- (l) recommend to the Contracting States an appropriate fee structure for licences or other matters for or in relation to the conduct or regulation of telecommunications;
- (m) recommend a regional cost-based pricing regime for implementation by each Contracting State;
- (n) recommend the technical standards and procedures for the approval of equipment including

radio equipment for use in the operation of telecommunications in each Contracting State;

- (o) co-ordinate activities with relevant international organisations, States or other bodies or persons for the promotion and implementation of this Treaty;
- (p) advise Contracting States on the management of the Universal Service Fund and make recommendations on applications for disbursements from these Funds;
- (q) prepare annual reports for submission to the Council on the execution of its functions;
- (r) perform such other functions as are assigned to it by resolution of the Council.

2. ECTEL shall have the power to enter into appropriate contractual and administrative arrangements as may be required for the execution of its functions.

ARTICLE 6

Structure of ECTEL

1. ECTEL shall comprise a Council of Ministers responsible for the formulation of policy for the management of telecommunications in the Contracting States to whom a Board of Directors is answerable, together with such staff as ECTEL requires for the performance of its functions under the supervision and control of a Managing Director.

2. These persons or bodies shall perform the functions and act within the limits of powers conferred upon them by or under this Treaty.

ARTICLE 7

Composition and Functions of the Council

1. The Council of Ministers shall consist of the Ministers of the Contracting States responsible for telecommunications, and the Director-General or his representative as ex-officio member.

2. The functions of the Council are to:

- (a) promote the effective implementation of this Treaty;
- (b) promote the purposes of ECTEL;
- (c) give directives to the Board on matters arising out of this Treaty, including the generation and disbursement of revenue;
- (d) ensure that the Board is responsive to the needs of the Contracting States in the conduct of the telecommunications policy;
- (e) approve ECTEL's annual operating budget;
- (f) approve forms and procedures for the application for an individual licence;
- (g) determine, from time to time, the internal organisational structure of ECTEL;
- (h) determine the fees payable to ECTEL for the performance of its functions.

3. The Council shall meet at least once a year:

- (a) to receive reports from the Board on the activities of the Board;
- (b) to receive reports on developments in telecommunications in the region; and,
- (c) to give directives to the Board relating to the management of telecommunications in the Contracting States and other matters in relation to the promotion of this Treaty.

4. The Council shall initially elect one of the Ministers to be Chairman for a period of one year and subsequently the Chairmanship shall rotate among the Ministers of Contracting States.

5. The Council shall determine its own procedures subject to the procedures specified in Annex 1.

6. The Council may, in addition to its regular meetings, hold such other meetings as it may decide or upon a request of two of its members.

7. A quorum of the Council shall be a majority of the total number of the members of the Council and decisions shall be taken by a majority vote of members present and voting. In the event of a tie, the Chairman shall have a casting vote.

8. Decisions of the Council shall be communicated in writing to the Board and shall be binding on the Board while they remain in effect.

9. Expenses for the attendance of Ministers at Council meetings shall be paid by ECTEL

ARTICLE 8

Composition and Functions of Board of Directors

1. The Board shall consist of one member from each Contracting State to be appointed by the Minister or an alternate, designated by the Minister for a term of one year.
2. The Managing Director shall be an ex officio member of the Board.
3. The functions of the Board are to:
 - (a) ensure effective implementation of this Treaty and policies in accordance with the directives from the Council;
 - (b) make recommendations to the Council on any matter relating to telecommunications;
 - (c) report to the Council on the activities of the Board and Managing Director;
 - (d) devise the forms and process for the application and recommendation for an individual licence, and to ensure the transparency of the process;
 - (e) recommend to the Council the internal organisational structure of ECTEL;
 - (f) authorise the tender procedures and fees payable to ECTEL for applications;
 - (g) determine the fees payable for the open tender process for individual licences where relevant;
 - (h) recommend directions to licensees and frequency authorisation holders in relation to non-compliance

with relevant telecommunications legislation, licences, frequency authorisations and regulations;

- (i)* advise Contracting States on the management of the Universal Service Fund;
- (j)* establish rules and procedures consistent with this Treaty for the management and operation of ECTEL;
- (k)* establish procedures for the operation of the ECTEL Fund, including receipt of revenues from the applications process and disbursements for the operations of ECTEL;
- (l)* ensure prompt consideration of an application for an individual licence;
- (m)* monitor, in conjunction with the respective National Telecommunications Regulatory Commissions, compliance with relevant telecommunications legislation, licences or frequency authorisations, and recommendations made by ECTEL by licencees and frequency authorisation holders;
- (n)* advise the Contracting States of any breach of telecommunications legislation, licence or frequency authorisation or recommendation of ECTEL for appropriate action.

4. The Council shall appoint the Chairman of the Board for a term of one year after which the office of Chairman may rotate annually among the Contracting States.

5. A Chairman may be appointed to serve for more than one term.

6. The Board shall meet as often as the business of ECTEL may require, and may convene special meetings at the request of a member made to the Chairman in writing.

7. The Chairman of the Board shall preside at any meeting of the Board, and in his absence or inability to act the members present shall elect one of their number to preside over the meeting.

8. A member of the Board who is unable to attend any meeting of the Board may designate the alternate member to attend or act in his place.

9. The quorum of the Board at any meeting shall be a majority of the total number of members of the Board and the decisions of the Board shall be by majority vote of the members present and voting. In the event of a tie, the Chairman or the presiding member shall have the casting vote.

10. The Managing Director shall attend all meetings of the Board, but shall not vote on any matter before the Board.

11. The Board may co-opt any other person to attend and take part in its meetings, but that person shall not vote on any matter before the Board.

12. Whenever, in the opinion of the Chairman, there arises a situation where any action requires approval of the Board, and such action cannot be postponed until the next meeting of the Board, or the action cannot await the calling of a special meeting of the Board, the Chairman shall request members to vote on the matter without a meeting, such vote to be ratified at the next regular meeting of the Board.

13. Where a member of the Board has any interest, directly or indirectly, in any matter in which his private capacity conflicts with his duties as a member of the Board and which is a subject of consideration by the Board, the member shall, as soon as prac-

licable after becoming aware of the interest in the matter, disclose his interest to the Board, and the member shall not take part in the consideration of the matter, or vote on the matter.

14. The Council may recommend to the Minister who appointed a member of the Board that the member be removed or the member's term not be renewed, in case of one or more of the following:

- (a) he is declared bankrupt;
- (b) he becomes unable, due to illness, mental or physical incapacity, to discharge the functions of his office;
- (c) he does anything that is contrary to paragraph 13 of this Article;
- (d) he is convicted of a serious criminal offence.

15. The Board shall determine its own procedures subject to the procedures specified in Annex 2.

16. Expenses for the attendance of a Board member at a Board meeting, and an honorarium to be set by the Council shall be paid by ECTEL.

ARTICLE 9

Directorate

1. The Directorate shall be responsible for the general administration of this Treaty and for the day to day management of ECTEL.

2. The Directorate shall comprise a Managing Director and such other staff as ECTEL requires.

3. The Managing Director shall be appointed by the Council on the advice of the Board for a term of three years, subject to renewal, and on such other terms and conditions as may be specified in his instrument of appointment, except that the Board may appoint a Managing Director to act in case of a temporary vacancy.

4. The Managing Director shall be responsible for the day to day management of ECTEL and without limiting the generality of the foregoing is responsible for:

- (a) the efficient use and management of the resources of ECTEL;
- (b) the implementation of the directives of the Council;
- (c) the preparation for consideration and adoption by the Board, of recommendations to be made to the Council pursuant to Article 8;
- (d) recommendations for and in relation to the issue of licences and frequency authorisations;
- (e) the proper management of the ECTEL Fund;
- (f) preparing the annual operating budget of ECTEL;
- (g) entering into contracts and signing recommendations, directions, opinion and other instruments and documents on behalf of ECTEL;
- (h) carrying out such other duties as may be assigned by the Board.

5. The Managing Director may, in the discharge of his functions, delegate such of his powers as are necessary to the staff of ECTEL.

6. The Managing Director shall devote the whole of his professional time to the affairs of ECTEL, and shall not, while holding office, have any interest, directly or indirectly, in any telecommunications provider, broadcaster, telecommunications equipment manufacturer, or supplier in the jurisdiction of any Contracting State nor shall he engage in any other business, profession or employment without the prior approval of the Council.

7. The Managing Director shall be removed from office by the Council on the advice of the Board, before the expiry of his term of three years if:

- (a) he is declared bankrupt;
- (b) he becomes unable, through illness, mental or physical incapacity, to discharge the functions of his office;
- (c) he does anything that is contrary to paragraph 4 of this Article;
- (d) he is convicted of a serious criminal offence;
- (e) he commits serious or repeated breaches of his obligation to attend Board meetings set out in Article 8; or
- (f) he fails to effectively perform his functions as Managing Director.

ARTICLE 10

Budget and Financial Management of ECTEL

1. There shall be established with a relevant bank a Fund to be known as the Eastern Caribbean Telecommunications Authority

Fund (the ECTEL Fund) to be used to fund the operations of ECTEL.

2. The Managing Director shall prepare for each year the general budget and any special budgets for approval by the Board which shall then be submitted to the Council for consideration and adoption.

3. All expenses of ECTEL shall be approved in respect of each financial year by the Council and shall be chargeable to the general budget or to a special budget.

4. Revenues of ECTEL shall comprise payments made in accordance with this Treaty, including royalties received with respect to the management of the spectrum and such other revenues as the Council shall authorize.

5. To the extent that, in any year, the revenues are insufficient to meet the budget of ECTEL for that year, the deficit shall be made up by contributions by each of the Contracting States and from such other sources as may be determined by the Council.

6. Each Contracting State undertakes to pay any contribution to the budget of ECTEL, which it is required to make pursuant to in the previous paragraph of this article within sixty days of receiving a written request from ECTEL.

7. To the extent that, in any year, the revenues exceed the budget of ECTEL, the excess shall be returned to the Contracting States as directed by the Council.

8. The Council shall appoint an External Auditor to submit to it an annual audit report which includes a financial and management audit of ECTEL and the ECTEL Fund.

ARTICLE 11

Licences and Frequency Authorisations

1. The Contracting States agree that:

- (a) each application made in a Contracting State for an individual licence shall be submitted to ECTEL of its review and recommendation in order to ensure compliance with ECTEL Technical and Financial Requirement and this Treaty;
- (b) an application for a class licence in a Contracting State shall be submitted to the relevant licensing authority in the Contracting State;
- (c) an application for a licence solely for the purposes of telecommunications services in a Contracting state shall be submitted to the relevant licensing authority in the Contracting State;
- (d) an application for a frequency authorisation in a Contracting State shall be submitted to ECTEL;
- (e) ECTEL shall manage the spectrum on behalf of the Contracting States.

2. The Contracting States undertake to ensure that the following matters are taken into account in the granting of a licence.

- (a) the promotion of the objective of universal service so that the largest possible number of persons may share in the freedom to communicate over an efficient and modern telecommunications network at affordable prices;
- (b) the protection of the interests of subscribers,

purchasers and other users of telecommunications services, particularly with respect to privacy.

- (c) the promotion of competition among providers of telecommunications services.
- (d) the promotion of research, development and introduction of new telecommunications services and telecommunications technology;
- (e) the encouragement of local investment in telecommunications;
- (f) the safeguarding of the public interest and national security;
- (g) the development of human resources through training and transfer of technology.

ARTICLE 12

Universal Service Fund

1. Each Contracting State agrees to establish a Fund, within its jurisdiction, to be known as the Universal Service Fund for the purpose of promoting the widest possible access to telecommunications at an affordable cost to the people of the Contracting States.

2. The revenues of the Fund shall consist of payments made by individual licencees direct to the Fund in accordance with conditions of their licences requiring contributions to promote universal service.

3. Contracting States shall manage the Universal Service Fund taking into account the recommendations of ECTEL.

ARTICLE 13

Settlement of Disputes between Licensees

1. In the event of a dispute between licensees, a Contracting State may-

- (a) refer the matter to ECTEL for an opinion; or
- (b) With the consent of the licensees, refer the matter to ECTEL for mediation.

2. Upon receipt of a reference for an opinion from a Contracting State, ECTEL shall review the facts and the questions of law presented and, within thirty days of receipt of the reference, provide an opinion and a recommendation for the resolution of the dispute.

3. Where further information is required to provide an opinion or recommendation, ECTEL shall within ten days of the receipt of the reference, request the Contracting State to supply the further information required by a date specified by ECTEL.

4. ECTEL shall, within thirty days of receiving the further information or documentation required, provide the opinion and recommendation accordingly to the Contracting State or where the information is not provided ECTEL shall provide the opinion within thirty days of the specified date.

5. Upon request of a reference for mediation ECTEL shall, in consultation with the licensees, ensure early commencement of the mediation and on conclusion provide the Contracting State and licensees with a report.

ARTICLE 14

Settlement of Disputes between Contracting States

1. Any dispute, which may arise between Contracting States concerning the interpretation or application of this Treaty shall, upon the request of one to the other be amicably resolved by direct agreement.
2. If the parties concerned cannot reach agreement they may jointly seek the good offices of, or request mediation by, a third party including ECTEL.
3. If the dispute is not resolved within three months of the date on which the request is made under paragraphs 1 or 2, any party to the dispute may submit it to the arbitration procedure provided in Annex 3.
4. In the event of a resolution of a dispute by any of the means referred to in this Article other than in accordance with Annex 3, the costs shall be borne by the respective parties.
5. Any decision made in accordance with this article in resolution of a dispute shall be final and binding on the parties.

ARTICLE 15

Relations with other International Organisations and other Countries

1. ECTEL shall seek to establish such relations with other international organisations and other countries as may facilitate the fulfilment of its purposes and functions.
2. ECTEL may conclude formal agreements or establish

effective working relationships with such international organisations and governments of other countries.

ARTICLE 16

Participation in other Arrangements

1. Nothing in this Treaty shall preclude any Contracting State from participating in other arrangements either with other Contracting States or non-Contracting States provided that its participation in such arrangements does not derogate from the provisions of this Treaty.

2. The rights and obligations arising from agreements concluded before the entry into force of this Treaty between Contracting States or between Contracting States and other countries or international organisations shall not be affected by the provisions of this Treaty.

3. To the extent that such agreements are not compatible with this Treaty, each Contracting State shall take all appropriate steps to eliminate the incompatibilities established and to this end shall be assisted by other Contracting States.

ARTICLE 17

Commencement of Operations of ECTEL

1. At its first meeting after the entry into force of this Treaty the Council shall, *inter alia*:

- (a) ensure that members of the Board are duly appointed under Article 8;
- (b) appoint an interim Managing Director pending the

appointment of the Managing Director under Article 9;

- (c) determine the organisational structure of ECTEL in accordance with this Treaty;
- (d) make appropriate financial arrangements for meeting initial expenses for the operations of ECTEL;
- (e) issue such directives to the Board as are necessary for the expeditious and effective implementation of the provisions of this Treaty.

2. Upon the entry into force of this Treaty, the Contracting States shall make counterpart payments due and owing to ECTEL in connection with the OECS Telecommunications Reform Project.

ARTICLE 18

Privileges and Immunities

1. ECTEL as an international organisation, shall enjoy legal personality.

2. ECTEL shall have in the territory of each Contracting State:

- (a) the legal capacity required for the performance of its functions under the Treaty; and
- (b) power to acquire, hold or dispose of movable or immovable property.

3. In the exercise of its legal personality under this article, ECTEL shall be represented by the Managing Director.

4. The privileges and immunities granted to senior officials of ECTEL at its Headquarters and in the Contracting States shall be the same as accorded to the members of a diplomatic mission accredited at the Headquarters of ECTEL and in the Contracting States under the provisions of the Vienna Convention on Diplomatic Relations of 18th April 1961.

5. The privileges and immunities granted to ECTEL at the headquarters of ECTEL shall be the same as granted to diplomatic missions at the Headquarters of ECTEL and in the Contracting States under the Vienna Convention on Diplomatic Relations of 18th April 1961. Other privileges and immunities to be recognised and granted by the Contracting States in the connection with ECTEL shall be determined by the Council.

ARTICLE 19

Headquarters of ECTEL

1. The Contracting States shall agree to the location of the Headquarters of ECTEL.

2. The Contracting States agree that the Host Government shall provide and maintain suitable accommodation for ECTEL

ARTICLE 20

Signature and Ratification

1. This Treaty and any amendment to this Treaty shall be open for signature to the Contracting States and the countries referred to in Article 22;

2. This Treaty is subject to ratification by the signatories in accordance with their respective constitutional process.

3. Instruments of ratification of accession shall be deposited with the Secretariat of the Organisation and the Director-General of the Organisation shall notify all signatories of each such deposit.

4. The original text of this Treaty shall be deposited with the Secretariat of the Organisation, which shall transmit certified copies to all the signatories.

ARTICLE 21

Entry into force

This Treaty shall enter into force on the deposit with the Organisation of three instruments of ratification.

ARTICLE 22

Admission to Membership, Accession and Adherence

1. Any Member State or Associate Member State of the Organisation, may at any time, notify the Director-General of its intention to become a party to this Treaty.

2. The Director-General shall, on receipt of the notification, transmit a copy of it to all parties to this Treaty.

3. The date specified in the notification by the Member State or Associate State of the Organisation for its membership in ECTEL, shall be the date of its membership.

4. Any state or territory in the Caribbean region which is not a member of the Organisation may apply to become a party to this Treaty and shall be so admitted by a unanimous decision of the Contracting States. The Contracting States shall determine the nature and extent of the rights and obligations of such State or territory.

5. The Contracting States shall determine the date of membership of a State or territory, which is not a member of the Organisation.

ARTICLE 23

Amendment of this Treaty

This treaty may be amended at any time, and the amendment shall only take effect after it is accepted by all the Contracting States and the instruments of acceptance shall be deposited with the Secretariat of the Organisation.

ARTICLE 24

Compliance

Contracting States, which are in arrears of their contributions under this Treaty in excess of one annual payment, shall after a decision of the Council by majority vote, have their voting rights suspended for such period as the Council may determine.

ARTICLE 25

Withdrawal

1. A Contracting State may withdraw from this Treaty by giving written notice of the intended withdrawal to the Council through the Director-General, and the withdrawal shall take effect twelve months after the notice is received by the Director-General.

2. A Contracting State, which withdraws from this Treaty, shall discharge all its financial obligations arising under the Treaty and shall respect any financial commitment undertaken before the effective date of withdrawal.

3. Any Contracting State which withdraws from this Treaty during the period of its operation shall have no claim to any part of the proceeds until the liquidation of the assets of ECTEL on the termination of this Treaty at which time, it shall be entitled to the value of its assets at the date of withdrawal.

ARTICLE 26

Termination

1. The Heads of Government of the Contracting States may, by resolution adopted by two-thirds majority of their number, terminate the operations of ECTEL.

2. ECTEL shall, after its operations are terminated in accordance with this Article, cease all activities, except that incidental to the orderly realisation, conservation, and preservation of its assets and settlement of its obligations

3. No distribution of the assets and properties of ECTEL shall be made to the Contracting States until all liabilities to creditors have been discharged or provided for and until the Council, by resolution adopted by two-thirds majority of its members, decide to make the distribution.

4. The net assets and properties of ECTEL, which shall remain after the settlement referred to in paragraph 3 of this Article, shall be distributed to the Contracting States in accordance with the imputed equity interest formula to be determined by the Council.

IN WITNESS WHEREOF the undersigned have signed this Treaty on behalf of their respective Governments, as St. Georges, Grenada, this 4th Day of May, 2000.

For the Government of:

Commonwealth of Dominica: Roosevelt Douglas

Grenada: Keith Mitchel

Saint Christopher and Nevis: Denzil Douglas

Saint Lucia: Kenny D. Anthony

Saint Vincent and The Grenadines: James Mitchell

ANNEX 1

PROCEDURES OF THE COUNCIL

Article 7

1. The Council shall meet at such times and at such places as the Council considers necessary or expedient for the transaction of its business.
2. The Chairman may at any time call a special meeting of the Council, and shall call a special meeting of the Council within fourteen days of receipt of a request for that purpose addressed to him in writing and signed by any two Ministers.
3. (1) The quorum of the Council at any meeting shall be a majority of the Ministers.

(2) The decisions of the Council that require unanimous consent shall not take effect until each Minister has registered his consent.
4. In the absence of the Chairman, the Members present shall elect from their number a Minister to preside at the meeting of the Council.
5. Except where applicable law or this Treaty requires otherwise, decisions of the Council shall be by majority votes of members present and voting.
6. Minutes of each meeting of the Council shall be recorded and kept by the Secretary to the Council.

7. The Council may invite any person to attend any meeting of the Council where the Council considers it necessary to do so, but that person shall not vote on a matter before the Council.

8. Subject to this Schedule, the Council may regulate its own procedure, and may delegate to any Minister power and authority to carry out on behalf of the Council such duties as the Council may determine.

9. Where a Minister has an interest, directly or indirectly, in any matter before the Council in which his private capacity conflicts with his duties as a Council Member and which matter is a subject of consideration by the Council, the Minister shall, as soon as practicable after becoming aware of the interest in the matter, disclose his interest to the Chairman.

ANNEX 2

PROCEDURES OF THE BOARD

Article 8

1. The Board shall meet at such times and at such places as the Board considers necessary or expedient for the transaction of its business.

2. The Chairman may at any time call a special meeting of the Board, and shall call a special meeting of the Board within fourteen days of receipt of a request for that purpose addressed to him in writing and signed by any two Ministers.

3. The quorum of the Board at any meeting shall be a majority of the Board Members.

4. In the absence of the Chairman, the Members present shall elect from their number a Board Member to preside at the meeting of the Board.

5. Decisions of the Board shall be by majority votes of members present and voting.

6.(1) Minutes of each meeting of the Board shall be recorded and kept by the Secretary to the Board.

(2) A certified copy of minutes of each meeting confirmed by the Board shall be forwarded to the members of the Council of Ministers within fourteen days after the meeting at which they were confirmed.

7. The Board may invite any person to attend any meeting of the Board where the Board considers it necessary to do so, but that person shall not vote on a matter before the Board.

8. Subject to this Schedule, the Board may regulate its own procedure, and may delegate to any Board Member power and authority to carry out on behalf of the Board such duties as the Board may determine.

9. (1) Except as provided in sub-paragraph (2) of this section, every portion of every meeting of the Board, except Special Meetings conducted telephonically, shall be open to public observation. Observation does not include participation or disruptive conduct by observers, and persons engaging in such conduct may be removed from the meeting.

(2) The Board, by a majority vote, may direct that a meeting be closed to the public and information pertaining to such meeting that would otherwise be publicly disclosed be withheld because the matter to be discussed involves information that—

(a) should be kept secret in the interest of national defence or foreign policy;

-
- (b) relates solely to the internal personnel rules and practices of ECTEL;
 - (c) constitutes trade secrets, proprietary commercial or financial information, or other privileged or confidential information;
 - (d) concerns allegations against or a formal censure of any individual;
 - (e) constitutes information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (f) constitutes investigation records compiled for law enforcement purposes, or information which, if written, would be contained in such records.
 - (g) the premature disclosure of which would be likely to significantly frustrate implementation of ECTEL orders, recommendations, or directions ;
or
 - (h) specifically concerns ECTEL participating in an enforcement action, judicial proceeding or arbitration.

10. Notices of meetings open to the public shall be published at least one week prior to the meeting; such notices shall state the time, place and subject matter of the meeting, that the meeting is open to the public.

11. ECTEL shall have an official seal, which shall be affixed to any document or instrument in accordance with a resolution of the Board, and the Managing Director or some other duly authorised person shall keep it in the safe custody at the Principal Office of ECTEL.

ANNEX 3

ARBITRATION PROCESS

Article 14

1. A list of arbitrators consisting of qualified jurists shall be drawn up and maintained by the Managing Director of ECTEL. To this end, every Contracting State shall be invited to nominate two arbitrators, and the names of the persons so nominated shall constitute the list. The term of an arbitrator, including that of any arbitrator nominated to fill a casual vacancy, shall be five years and may be renewed. An arbitrator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. (a) When a request has been made to the Managing Director under Article 14, the Managing Director shall bring the dispute before an Arbitration Commission constituted as follows:

The Contracting State or Contracting States constituting one of the parties to the dispute shall appoint:

(1) one arbitrator who is a citizen of that Contracting State or of one of those Contracting States and who may or may not be chosen from the list referred to in paragraph 1; and

(2) One arbitrator who is not a citizen of that Contracting State or of any of those Contracting States and who shall be chosen from the list.

(b) The Contracting State or Contracting States constituting the other party to the dispute shall appoint two arbitrators in the same way. The four arbitrators chosen by the parties shall be appointed within thirty days following the date on which the Managing Director received the request.

- (c) The four arbitrators shall, within thirty days following the date of the last of their own appointments, appoint a fifth arbitrator chosen from the list, who shall be chairman.
- (d) If the appointment of the Chairman or of any of the other arbitrators has not been made within the period prescribed above for such appointment, the Managing Director shall make it within thirty days following the expiry of that period. The Managing Director may make the appointment of the Chairman either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.
- (e) Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Arbitration Commission shall decide its own procedure. The Commission with the consent of the parties to the dispute may invite any Contracting State of ECTEL to submit to its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority of the five members.

4. The Commission may draw the attention of the parties to the dispute any measures, which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within six months of its constitution. Its report shall be deposited with the Managing Director and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law shall be binding upon the parties.

7. The Managing Director shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by ECTEL.

Passed in the House of Assembly this 5th day of September, 2000.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Assembly

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau

(Price: \$17.80)