

**REVISED DRAFT 14/05/18**

**ELECTRONIC COMMUNICATIONS BILL**

Final Draft

# ELECTRONIC COMMUNICATIONS BILL

## EXPLANATORY NOTE

1. The Bill for consideration is the Electronic Communications Bill.
2. The purpose of the Bill is to reform the legislation relating to telecommunications in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States by repealing and replacing the Telecommunications Acts with legislation which is broader in scope to encompass electronic communications. The Bill is aimed at allowing a liberalized and non-discriminatory entry into the electronic communications sector and enabling a robust competitive environment in which there is fairness, transparency and accountability on the part of the regulators of the sector.
3. Part 1 of the Bill provides for preliminary matters. In clause 1 of the Bill the short title and commencement of the Bill are specified. By virtue of clause 2 of the Bill words used throughout the Bill are defined for clarity. In particular, the terms “electronic communications” “electronic communications service”, “electronic communications network” have been defined. The objects of the Bill provided for in clause 3 of the Bill put the aim of the legislation in context and indicate the spirit and intention of the provisions of the Bill. Although in some Contracting States the provision is not normally included in legislation, in the interest of harmonization it was included. Clauses 4 and 5 of the Bill make provision for binding the [Crown/State] and the non-application of the Bill to broadcasting networks and services.
4. Part 2 of the Bill provides the powers and duties of the Minister. Clause 6 of the Bill provides for the Minister, on the recommendation of ECTEL, to exempt any person or category of person, any category of ship or aircraft, any type of electronic communications network or electronic communications service, or a diplomatic mission from the Bill or a part or provision of the Bill, including an exemption from payment of fees. By virtue of clause 7 of the Bill, the Minister may set the policy after consultation with ECTEL and give directions of policy or of a general nature.
5. Part 3 of the Bill (*clauses 8-31*) provides for the National Telecommunications Regulatory Commission.
6. The Commission is established or continued as a body corporate so that it has the powers of a body corporate by virtue of the Interpretation Act including the power to sue in its name, to contract, to acquire and dispose of property.
7. The Commission is to comprise not less than three or more than five commissioners, no more than two of whom are public officers. The Commissioners are required to have recognised standing and experience collectively in various disciplines including finance and accounting, electronic communications, information technology, project management and law. At least one commissioner must have experience and expertise in electronic

communications. Provision is also made for eligibility and disqualification criteria including, criminal convictions, bankruptcy and pecuniary interest in a licensee (*clause 9*). By virtue of clause 10 of the Bill, the Commission functions as an advisory body to the Minister on the formulation of national electronic communications policy and tariffs. The Commission's functions include *inter alia*, ensuring compliance of Contracting States with international obligations relating to electronic communications, setting technical standards of electronic communications that is compatible with international standards and to performing any other functions specified in the Bill.

8. Clause 11 of the Bill makes provision for the Commission to delegate its functions to one or more of its commissioners or to the Chief Executive Officer.
9. The powers of the Commission include issuing codes of practice and the institution of legal proceedings against a licensee or a frequency authorization holder, recording and investigation of disputes and the power to regulate its own procedure (*clause 12*).
10. Clause 13 of the Bill provides for the term of appointment of a commissioner to be a period of three-year subject to eligibility for re-appointment for a further term. A commissioner may serve a maximum of two consecutive terms and appointments may be staggered under clause 13 of the Bill.
11. Provision is made in clause 14 of the Bill for a commissioner other than the Chairperson to resign at any time by notice in writing addressed to the Minister through the Chairperson and for the Chairperson to resign at any time by notice in writing addressed directly to the Minister.
12. The grounds for revocation of appointment of a commissioner by the Minister includes disqualification under the criteria set in clause 9(5), disqualification on grounds of national security and misconduct. Disqualification or suspension on grounds of misconduct by a competent authority from practising a profession, or failure of the commissioner to attend three consecutive meetings or five meetings in the aggregate of the Commission in a twelve-month period without a medical certificate or without being excused by the Chairperson in writing for ordinary commissioners and for the Chairperson by the Minister in writing are other grounds for revocation of appointment (*clause 15*).
13. Clause 16 of the Bill provides for the office of a commissioner to be vacated upon the death of the commissioner, if the commissioner becomes disqualified, or the commissioner resigns. Other instances in which a vacancy would exist are: if the commissioner's appointment is revoked or not renewed at the date of its expiry. Decisions of the Commission at a meeting are not invalidated merely because there is a vacancy in membership as long as there is a quorum. A vacancy takes effect on the occurrence of the relevant condition and therefore no instrument of revocation by the Minister is required. The filling of any vacancy must be done in accordance with the provision relating to appointment of commissioners.
14. Clause 17 of the Bill provides for the commissioners to be paid out of the funds of the Commission such remuneration and allowances as determined by Cabinet.
15. Clause 18 of the Bill provides for meetings of the Commission to be held monthly as far as practicable and at such other times as may be necessary or expedient for the transaction of business of the Commission. The meetings are to be held at such places and times as the

Chairperson determines and provision is made for special meetings to be held within seven days of a written request by any three commissioners. A commissioner is deemed to be present where the commissioner participates by telephone, video link or satellite, and all commissioners participating in the meeting are able to hear and to speak to each other. The Chairperson presides over meetings of the Commission and in his or her absence, the Deputy Chairperson presides. Provision is made in clause 18 of the Bill for meetings of the Commission to be duly constituted if at the meeting there is a quorum of a majority of the members of the Commission. Decisions are to be taken by a simple majority of votes of commissioners present and voting, and in cases of equal division the Chairperson has the casting vote. Decisions of the Commission taken at a meeting shall not be invalidated merely because a disqualified person sits at the meeting. Minutes of a meeting of the Commission are to be recorded and kept by the Secretary to the Commission. The Commission has the discretion to co-opt any person to attend any particular meeting of the Commission at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Commission. A person co-opted does not have the right to vote.

16. By virtue of clause 19 of the Bill, a commissioner who is in any way, either directly or indirectly, interested in a matter before the Commission is required to declare the nature of his or her interest at the first meeting of the Commission at which it is practicable to do so and where the Commission determines that the interest is material but that the commissioner has not become disqualified by virtue of the provisions on disqualification, the commissioner is required to leave the meeting upon the matter coming up for discussion. Where a declaration is made, any departure of the commissioner from the meeting is to be noted in the minutes of the meeting. Failure to declare an interest, voting, in a matter in which a commissioner is materially interested and seeking to influence the vote of any other commissioner in relation to such a matter is misconduct which would lead to revocation of appointment of the commissioner.
17. Clause 20 of the Bill provides for the Commission to appoint a Chief Executive Officer to carry out the day to day affairs of the Commission. The Chief Executive Officer is to perform duties entrusted to him or her under the Bill and is to attend meetings of the Commission unless directed otherwise by the Chairperson but the Chief Executive Officer has no voting rights in the meeting.
18. Pursuant to clause 21 of the Bill, a Secretary to the Commission, inspectors and other employees of the Commission are to be appointed by the Commission as necessary for the performance of the functions and powers of the Commission. The Commission is to furnish each inspector with an identity card for production on request in the performance of his or her functions.
19. By virtue of clause 22 of the Bill, the Commission may establish advisory committees to give advice to the Commission on matters relating to its functions. Members of an advisory committee may or may not consist of commissioners or employees of the Commission and its decisions are not binding on the Commission.
20. An oath of secrecy is to be taken by the commissioners, Chief Executive Officer, employees or members of an advisory committee. Provision is made for the preservation of confidentiality by these persons of all matters coming to their knowledge in the performance of their duties including the business affairs of the Commission, applications

to the Commission or affairs of licensees or customers. Exceptions to the duty of confidentiality include where disclosure is permitted by a court or where it is available to the public from another source (*Clause 23*).

21. Clause 24 of the Bill provides for protection and indemnity of a commissioner, Chief Executive Officer, employee or member of an advisory committee from liability in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under the Bill. The protection does not extend to cases of personal injury.
22. The Electronic Communications Fund of the Commission is to comprise annual financial contributions made by ECTEL to the Commission and chargeable to the general budget of ECTEL, monies allocated to it by Parliament and monies received by the Commission as grants or loans and application fees (*clause 25*).
23. By virtue of clause 26 of the Bill, the financial year of the Commission commences on [1<sup>st</sup> October and ends on 30<sup>th</sup> September] in each year.
24. Clause 27 of the Bill provides for the Commission to prepare a Budget with the estimates of its income and expenditure and a work plan for the Commission in respect of the ensuing financial year for submission to ECTEL and submission to the Minister for laying in [Parliament/the National Assembly].
25. The Commission is to keep proper records of accounts in accordance with generally accepted international accounting standards and principles and prepare and retain financial statements in respect of each financial year (*clause 28*).
26. By virtue of clause 29 of the Bill, the Commission's accounts are to be audited annually by an independent auditor appointed by the Commission who is to conduct the audit in accordance with generally accepted international auditing standards. The Commission, the commissioners, the Chief Executive Officer and the employees are required to grant to the auditor all contracts, accounts, vouchers, or other documents which the auditor considers necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor considers necessary. The auditor's report is to be submitted to the Commission as soon as is practicable and in any event not later than four months after the end of the financial year.
27. The Commission is required to submit an annual report together with the auditor's report to ECTEL and to the Minister for transmission to the [Parliament/ National Assembly] not later than four months after the end of each financial year. (*clause 30*).
28. The Commission is exempt from the payment of taxes and fees on income property and documents (*clause 31*).
29. Part 4 of the Bill (*clauses 32-48*) provides for licensing of persons operating an electronic communications network or providing an electronic communications service.
30. By virtue of clause 32 of the Bill, a prohibition is placed on operating an electronic communications network or providing an electronic communications service without a licence, landing or operating submarine cables without a licence, or operating a network or providing an electronic communications service without a frequency authorization where a

frequency authorization is necessary. A person who contravenes clause 32 commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine not exceeding one million dollars or to both.

31. Provision is made in clause 33 of the Bill for a private electronic communications network and in clause 34 of the Bill the class and scope of licences is identified. Clause 34 further provides for sub-classes of licenses.
32. Provision is made in clause 35 of the Bill for the procedure for an application for a licence, the content of a licence and the grant or refusal of a licence.
33. Provisions for the grant of frequency authorizations are contained in clauses 36 and 37 of the Bill.
34. Provision is made in clauses 38, 39 and 40 of the Bill for the modification, transfer and change of control of a licence or frequency authorization. Clauses 41 and 42 of the Bill provide for notification of change of significant interest and renewal of a licence and frequency authorization.
35. In clauses 43, 44 and 45 of the Bill provision is made for suspension and revocation of the licence or frequency authorization, surrender of the licence or frequency authorization and the keeping of a register. Special licences are provided for in clause 46 of the Bill. Internet domain name registration and type approvals are provided for in clauses 47 and 48 of the Bill.
36. Part 5 of the Bill provides for the rights and obligations of the licensee or frequency authorization holder (*clauses 49 to 66*). Therefore, there are provisions for interconnection and access in clauses 49-51 of the Bill. In addition, access to road works, repair and restoration and access to land for inspection and maintenance are provided for in clauses 52, 53 and 54 of the Bill. Obligations relating to installation of facilities on private land and buildings, lease of capacity and contribution to the Universal Service and Access Fund are contained in clauses 55, 56 and 57 of the Bill. Data reporting, number portability and spectrum are provided for in clauses 58, 59 and 60. Roaming, numbering and tariff obligations are set out in clauses 61, 62 and 63 of the Bill. Clauses 64, 65 and **66** make provision for consumer protection, non-discrimination and communications during an emergency. **Net neutrality is provided for in clause 67 of the Bill.**
37. Part 6 of the Bill provides for Competition. **Clause 68** of the Bill contains provisions on anti-competitive business conduct. Anti-competitive agreements, arrangements or understandings are prohibited by **clause 69** of the Bill and reasonable allowances are specified under **clause 70** of the Bill. The regulation of competition by the Commission is provided for in **clause 71** of the Bill. Market analysis and significant market power and the abuse of significant market power are addressed in **clauses 72 and 73** of the Bill. **Clause 74** of the Bill highlights the obligations of licensees having significant market power and the powers of the Commission under this Part are specified in **clause 75** of the Bill.
38. Part 7 of the Bill provides for the Universal Service and Access Fund in **clauses 76 to 85** of the Bill.
39. Part 8 of the Bill makes provision for other offences. A prohibition is placed on the connection of equipment to a public network without the approval of the Commission and a contravention of that provision is an offence (*clause 86*). Other offences include

interception or destruction of a network, disclosure of personal information and giving false information (*clauses 87-89*). Cross-shareholding, harmful interference and the liability of a body corporate are provided for in **clauses 90, 91 and 92 of the Bill**.

40. Part 9 of the Bill provides for investigation and issuing of a warrant for entry and search on suspicion of the contravention of the Bill. **Clause 93** of the Bill makes provision for the investigation of breaches and a search warrant may be obtained under **clause 94** of the Bill. **Clauses 95 and 96** of the Bill make provision for obtaining and preserving evidence and forfeiture and injunctive relief.
41. Part 10 of the Bill makes provision for dispute resolution by the Commission in **clauses 97-107**. Upon receipt of an application the Commission may request that the parties negotiate, investigate the application or refer the application to the Tribunal, a Competition body, Consumer Protection body or any other applicable body.
42. In Part 11 of the Bill, **clauses 108-123** provides for the establishment and operation of an ad hoc Tribunal to hear and adjudicate claims relating to breaches of the Bill or the disposition of an investigation by the Commission. The continuation of an electronic communications service or electronic communications network during the dispute resolution is ensured by **clause 123** of the Bill.
43. Part 12 of the Bill (*clauses 124-134*) provides for miscellaneous matters including fees, inspection of record or register and stoppage of communications. Additionally, the Part has requirements relating to exchange of information, copyright and permission under other laws. A general penalty and appeals are provided for under this part. There are also provisions for the amendment of the Schedules, the making of Regulations by the Minister and the repeal and savings of the provisions of the Telecommunications Act.
44. The three Schedules attached to the Bill contain the form of the oath of secrecy, sub-classes of licences and conditions of licences and frequency authorizations.

# ELECTRONIC COMMUNICATIONS ACT

## ARRANGEMENT OF SECTIONS

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### Section

ELECTRONIC COMMUNICATIONS BILL .....	2
EXPLANATORY NOTE .....	2
PART 1.....	15
PRELIMINARY .....	15
1. SHORT TITLE AND COMMENCEMENT .....	15
2. INTERPRETATION .....	15
3. OBJECTS OF THIS ACT .....	21
4. ACT TO BIND [CROWN/STATE].....	22
5. NON-APPLICATION OF THIS ACT .....	22
PART 2.....	23
POWERS AND DUTIES OF MINISTER .....	23
6. EXEMPTIONS.....	23
7. POWERS AND DUTIES OF THE MINISTER.....	24
PART 3.....	24
THE NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION .....	24
8. [ESTABLISHMENT/CONTINUATION/PRESERVATION] OF THE COMMISSION .....	24
9. COMPOSITION OF THE COMMISSION .....	25
10. FUNCTIONS OF THE COMMISSION .....	26
11. DELEGATION .....	28
12. POWERS OF THE COMMISSION.....	29

13.	TENURE OF COMMISSIONERS .....	30
14.	RESIGNATION .....	30
15.	REVOCAION .....	31
16.	VACANCY.....	31
17.	REMUNERATION .....	32
18.	MEETINGS .....	32
19.	DECLARATION OF INTEREST AND ABSTENTION FROM VOTING .....	33
20.	CHIEF EXECUTIVE OFFICER .....	34
21.	SECRETARY, INSPECTORS AND OTHER EMPLOYEES.....	34
22.	ADVISORY COMMITTEES.....	35
23.	SECRECY AND CONFIDENTIALITY.....	35
24.	PROTECTION FROM LIABILTY .....	36
25.	ELECTRONIC COMMUNICATIONS FUND.....	36
27.	BUDGET AND WORK PLAN .....	37
28.	ACCOUNTS .....	37
29.	AUDIT.....	37
30.	ANNUAL REPORT .....	38
[31.	EXEMPTION FROM TAXES.....	38
PART 4.....		39
LICENSING, FREQUENCY AUTHORIZATION, REGISTRATION AND APPROVAL.....		39
32.	PROHIBITION ON OPERATING NETWORK OR PROVIDING SERVICE WITHOUT A LICENCE OR FREQUENCY AUTHORIZATION .....	39
33.	PRIVATE ELECTRONIC COMMUNICATIONS NETWORK.....	39
34.	CLASS AND SCOPE OF LICENCE .....	40
35.	PROCEDURE FOR GRANT OF LICENCE .....	40
36.	REQUIREMENT FOR A FREQUENCY AUTHORIZATION.....	44
37.	FREQUENCY AUTHORIZATION .....	44
38.	MODIFICATION OF LICENCE OR FREQUENCY AUTHORIZATION .....	45

39.	TRANSFER OF LICENCE OR FREQUENCY AUTHORIZATION.....	46
40.	CHANGE OF CONTROL OF THE LICENSEE OR FREQUENCY AUTHORIZATION HOLDER ...	46
41.	NOTIFICATION OF CHANGE OF SIGNIFICANT INTEREST .....	48
42.	RENEWAL OF LICENCE AND FREQUENCY AUTHORIZATION.....	50
43.	SUSPENSION AND REVOCATION OF LICENCE OR FREQUENCY AUTHORIZATION.....	51
44.	SURRENDER OF LICENCE OR FREQUENCY AUTHORIZATION BEFORE EXPIRY .....	52
45.	REGISTER .....	54
46.	SPECIAL LICENCE .....	54
47.	COUNTRY CODE TOP LEVEL DOMAIN NAME REGISTRATION .....	55
48.	TYPE APPROVALS.....	56
PART 5.....		57
RIGHTS AND OBLIGATIONS OF LICENSEE AND FREQUENCY AUTHORIZATION HOLDER.....		57
49.	INTERCONNECTION AND ACCESS .....	57
50.	INTERCONNECTION AND ACCESS AGREEMENTS.....	58
51.	COST OF INTERCONNECTION AND ACCESS .....	59
52.	ACCESS TO ROAD WORKS.....	60
53.	REPAIR AND RESTORATION.....	61
54.	ACCESS TO LANDS FOR INSPECTION AND MAINTENANCE.....	61
55.	INSTALLATION OF FACILITIES ON PRIVATE LAND OR BUILDINGS.....	62
56.	LEASE OF CAPACITY .....	63
57.	CONTRIBUTION TO UNIVERSAL SERVICE AND ACCESS FUND.....	64
58.	DATA REPORTING .....	64
59.	NUMBER PORTABILITY.....	66
60.	SPECTRUM .....	66

61.	ROAMING .....	67
62.	NUMBERING .....	67
63.	TARIFFS .....	67
64.	CONSUMER PROTECTION.....	68
65.	NON-DISCRIMINATION .....	68
66.	COMMUNICATIONS DURING AN EMERGENCY .....	69
67.	NET NEUTRALITY .....	69
	PART 6.....	70
	COMPETITION .....	70
68.	ANTI-COMPETITIVE BUSINESS CONDUCT.....	70
69.	ANTI-COMPETITIVE AGREEMENT, ARRANGEMENT OR UNDERSTANDING .....	72
70.	REASONABLE ALLOWANCE.....	72
71.	REGULATION OF COMPETITION .....	73
72.	MARKET ANALYSIS AND SIGNIFICANT MARKET POWER.....	74
73.	ABUSE OF SIGNIFICANT MARKET POWER.....	75
74.	OBLIGATIONS ON LICENSEES HAVING SIGNIFICANT MARKET POWER .....	75
75.	POWERS OF COMMISSION UNDER THIS PART.....	79
	PART 7.....	79
	UNIVERSAL SERVICE AND ACCESS FUND.....	79
76.	UNIVERSAL SERVICE AND ACCESS FUND.....	79
77.	OBJECTIVES.....	80
78.	MANAGEMENT OF UNIVERSAL SERVICE AND ACCESS FUND .....	81
79.	ASSISTANCE WITH MANAGEMENT OF THE FUND FROM ECTEL.....	82
80.	ALLOCATION OF FUNDS .....	82
81.	FUND PROJECTS .....	82
82.	FUND BANK ACCOUNTS.....	83

83.	BUDGETS .....	84
84.	ACCOUNTS AND FINANCIAL AUDIT .....	84
85.	ANNUAL REPORT .....	84
	PART 8.....	85
	OTHER OFFENCES .....	85
86.	CONNECTION OF EQUIPMENT.....	85
87.	INTERFERENCE, [INTERCEPTION] OR DESTRUCTION OF NETWORK.....	85
88.	DISCLOSURE OF PERSONAL INFORMATION .....	85
89.	GIVING FALSE INFORMATION.....	86
90.	CROSS-SHAREHOLDING .....	86
91.	HARMFUL INTERFERENCE TO FACILITY OR TERMINAL EQUIPMENT .....	86
92.	LIABILITY OF BODY CORPORATE.....	86
	PART 9.....	87
	INVESTIGATION .....	87
93.	INVESTIGATION OF BREACHES .....	87
94.	SEARCH WARRANT.....	90
95.	OBTAINING OR PRESERVING EVIDENCE.....	91
96.	FORFEITURE AND INJUNCTIVE RELIEF .....	91
	PART 10.....	91
	DISPUTE RESOLUTION .....	91
97.	APPLICATION FOR DISPUTE RESOLUTION.....	91
98.	REQUEST FOR FURTHER INFORMATION.....	92
99.	NOTIFICATION OF LICENSEE.....	92
100.	RESPONSE BY LICENSEE .....	92
101.	PROCEDURE FOLLOWING RECEIPT OF APPLICATION AND RESPONSE .....	92
102.	FRIVOLOUS APPLICATIONS.....	93

103. NOTICE OF DISCONTINUANCE AND LIABILITY FOR COSTS.....	93
104. EXPEDITIOUS RESOLUTION OF DISPUTES .....	93
105. REDUCTION OR EXTENSION OF TIME .....	94
106. REGISTER AND TRACKING SYSTEM .....	94
107. REPORTING BY COMMISSION .....	94
PART 11.....	94
TRIBUNAL.....	94
108. ESTABLISHMENT OF TRIBUNAL .....	94
109. CONSTITUTION OF TRIBUNAL .....	95
110. FUNCTION OF TRIBUNAL .....	96
111. POWERS OF TRIBUNAL .....	96
112. DURATION OF APPOINTMENT .....	97
113. TEMPORARY APPOINTMENTS.....	97
114. RESIGNATION .....	98
115. REVOCATION .....	98
116. PUBLICATION.....	98
117. SECRETARY .....	98
118. REMUNERATION AND ALLOWANCES .....	98
119. HEARINGS.....	98
120. COMMUNICATION OF INFORMATION .....	99
121. VALIDITY .....	99
122. ISSUANCE OF DECISION UPON DETERMINATION BY TRIBUNAL .....	99
123. CONTINUATION OF SERVICE OR NETWORK DURING PROCESS.....	100
PART 12.....	100
MISCELLANEOUS .....	100
124. FEES .....	100

125. INSPECTION OF RECORD OR REGISTER.....	101
126. STOPPAGE OF COMMUNICATIONS .....	102
127. EXCHANGE OF INFORMATION.....	102
128. COPYRIGHT .....	102
129. PERMISSION UNDER OTHER LAWS.....	102
130. GENERAL PENALTY.....	102
131. APPEAL TO HIGH COURT .....	103
132. AMENDMENT OF SCHEDULES.....	103
133. REGULATIONS .....	103
134. REPEAL AND SAVINGS.....	105
SCHEDULE 1 .....	106
SCHEDULE 2 .....	107
SCHEDULE 3 .....	109

Final Draft

# ELECTRONIC COMMUNICATIONS ACT

(Act [ ] of 200[ ])

AN ACT to provide for the regulation of an electronic communications network and an electronic communications service and for related matters.

BE IT ENACTED.....

## PART 1 PRELIMINARY

### 1. SHORT TITLE AND COMMENCEMENT

- (1) This Act may be cited as the Electronic Communications Act, 20[ ].
- (2) This Act shall come into force on a day to be fixed by the Minister by Order published in the [Official] Gazette.

### 2. INTERPRETATION

- (1) In this Act [unless the context otherwise requires]—

“**access**” means the making available of infrastructure to another licensee under defined conditions on an exclusive or non-exclusive basis, for the purpose of providing an electronic communications service, including when they are used for the delivery of information society services or broadcast content services;

“**annual gross revenue**” means the gross revenue earned in the provision of an electronic communications service for the reporting year, received by, or due to a licensee and its affiliates, from whatever source derived before a deduction for an expense, discount, return or offset of any kind except domestic access and interconnection payments and taxes and charges collected for or on behalf of the Government of [ECTEL Contracting State];

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

“**application**” means a request for a licence or frequency authorization, including a request for a modification or renewal of a licence or frequency authorization;

“**application fee**” means the fee payable to the Commission by an applicant applying for a licence, frequency authorization, type approval or numbering or other application;

“**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;

“**Chairperson**” means —

(a) in relation to the Commission, the person designated as the Chairperson of the Commission under section 9(8); or

(b) in relation to the Tribunal, the legal practitioner appointed as the Chairperson of the Tribunal under **section 109(1)(a)**;

“**Chief Executive Officer**” means the person appointed as Chief Executive Officer under section 20;

“**class licence**” means a licence, other than an individual licence, issued on the same terms to each applicant of a category of users in respect to a class of electronic communications network, electronic communications service or both;

“**co-location**” means provision of the facilities and resources to a licensee seeking to install its network equipment at the premises of the licensee of a submarine cable landing station, including building space, power, cooling, security and maintenance services;

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

“**Competition body**” means a national or regional entity which makes decisions relating to competition;

“**Complaints Record**” means the Complaints Record maintained by a licensee under section 64(f);

“**commissioner**” means a person appointed as a commissioner under section 9;

“**complainant**” means an aggrieved party who makes a complaint to a licensee under section 64;

“**cost-oriented**” means pricing for an electronic communications service which is reasonably aligned with the underlying cost of providing the electronic communications service as determined by the Commission;

“**document**” includes an electronic document;

“**diplomatic missions**” include international organizations accredited to [Name of ECTEL Contracting State];

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

“**electronic**” means technology having electrical, digital, magnetic, optical, biometric, electrochemical, wireless, electromagnetic or similar capabilities;

**“electronic communications” —**

- (a) means a type of transmission, emission or reception and, where applicable switching or routing of -
  - (i) voice, data, text, sound, audio, video, animation, visual images, moving images, pictures, pulses, signals or other information, or
  - (ii) a combination of the information under subparagraph (i),

using wire, radio frequency, optical, other electromagnetic means or by way of any other technology, whether with or without the aid of tangible conduct;

- (b) includes telecommunication;
- (c) does not include content services;

**“electronic communications network”** means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical signals, electricity distribution systems, high-voltage lines or other electromagnetic means, including networks for radio and television broadcasting and cable television networks;

**“electronic communications service”** means a service provided wholly or partially by the conveyance of signals on an electronic communications network;

**“equipment”** includes —

- (a) wireless devices including —
  - (i) cellular telephones,
  - (ii) cordless telephones,
  - (iii) fax machines, and
  - (iv) GSM telephones;
- (b) mobile radios;
- (c) modems;
- (d) wireless remote devices;
- (e) PABXs (including Small Business Systems and Key Systems);
- (f) radio receivers;
- (g) radio transmitters;
- (h) satellite earth stations;
- (i) telecommunication switching equipment;

- (j) telephone instruments;
- (k) other equipment emitting a radio signal; and
- (l) any other customer premises equipment to be attached to any part of an electronic communications network;

**“exclusionary vertical restrictions”** mean contractual arrangements or informal business relationships between vertical related firms that impair the competitiveness of the upstream or downstream market;

**“frequency authorization”** means permission granted by the Minister under section 37 to use radio frequencies in connection with the operation of an electronic communications network or the provision of an electronic communications service under a licence or otherwise;

**“frequency authorization holder”** means a person holding a frequency authorization granted under section 37;

**“facility”** means any, apparatus or other thing that is used or capable of being used for electronic communications or for any operation directly connected with electronic communications;

**“Fund”** means –

- (a) the Electronic Communications Fund established under section 25; or
- (b) the Universal Service and Access Fund under **section 76**;

**“harmful interference”** means interference with the use of spectrum that impedes, degrades, obstructs or interrupts an electronic communications service or electronic communications network;

**“individual licence”** means an electronic communications licence issued to a particular person on terms specific to that person;

**“infrastructure”** includes a facility, submarine cable, fiber, landing site, submarine cable landing station, tower, site and underground facility;

**“initial fee”** means a onetime payment on the grant of a licence or frequency authorization;

**“inspector”** means a person appointed as such under section 21;

**“intercept”** means to acquire, block, view, capture, monitor or copy the contents or a portion of the contents of any communication during transmission through the use of any device or method;

**“interconnection”** means the connection of 2 or more separate systems, networks, links, nodes, equipment, circuits and devices involving a physical link or interface and systems, networks, links, nodes, equipment, circuits and devices;

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

**“licence”** means a class of licence specified under section 34;

**“licensee”** means a person holding a licence;

**“local loop”** means the physical circuit connecting the electronic communications network termination point at the premises of a retail customer to the main distribution frame or equivalent facility in the fixed public telephone network;

**“Minister”** means the [Minister to whom responsibility for electronic communications is assigned];

**“net neutrality”** means the principle that an electronic communications network and licensees permit all data over the internet by not discriminating, interrupting, throttling, blocking or degrading such data.

**“notice of discontinuance”** means a notice of discontinuance under **section 103**;

**“over the top”** means an application and electronic communications service provided to a user over an internet connection independent of the licensee that provides the internet connection, and includes audio, text, chat and video applications and other content;

**“park”** means an enclosed or private space set apart for ornament or to afford the benefit of pleasure and recreation;

**“parties”** means the persons directly involved in a dispute under this Act;

[**“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 electronic communications network”** means a system to provide an electronic communications 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 electronic communications network;

**“public electronic communications network”** means an electronic communications network used for the provision of an electronic communications service to the public;

**“public ground”** includes any open or enclosed space to which, for the time being, the public has or is permitted to have access;

**“public utility”** has the meaning assigned to it under [section of the Public Utilities Commission Act];

**“radio communications”** means the transmission, emission or reception of a sign, signal, text, image and sound, or other intelligence of any nature by radio;

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

**“records”** includes existing licenses, frequency authorizations, equipment, approvals, policy or operational documents, orders and documents relating to decisions;

**“Register”** means the Register kept and maintained under section 45;

**“Regulations”** means Regulations made under **section 133**;

**“relevant facilities”** means the associated facilities made available by a licensee in relation to a public electronic communications network;

**“retail customer”** means a consumer or subscriber, other than a licensee, who –

- (a) is obliged to pay periodically or on demand for an electronic communications service; or
- (b) has entered into an agreement for the provision of an electronic communications service;

**“road”** means any road or street or part of a road and includes a bridge, culvert, embankment, approach, drain, verge, pavement, kerb, footpath, parapet and other work or thing, forming part of any road or street;

**“road works”** means any activity, whether or not the activity involves breaking open a road or public ground, or that removes, alters or affects any utility installation;

**“scarce electronic communications”** includes numbers or spectrum required for the provision of an electronic communications service as determined by ECTEL;

**“significant interest”** in relation to an incorporated body, means a holding or interest in the company or in any holding company of the company held or owned by a person, alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly –

- (a) to control [20%] or more of the voting rights of that company at a general meeting of the company;
- (b) to a share of [20%] or more in dividends declared and paid by the company;
- (c) to a share of [20%] or more in any distribution of the surplus assets of the company;

**“significant market power”** in relation to a licensee, means that a licensee individually or jointly with others enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by affording the licensee the power to behave to an appreciable extent independently of its competitors and users;

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

**“special licence”** means a licence granted under section 46 by the Minister;

**“spectrum”** means the continuous range of electromagnetic wave frequencies used for electronic communications;

**“submarine cable landing station”** means technical installations for the landing and operation of a submarine cable;

**“tariffs”** include the rates, terms and conditions of an electronic communications service;

**“telecommunication”** includes the transmission, emission or reception of a signal, writing, pulse, image, sound or other intelligence of any kind by wire, radio, terrestrial or submarine cable, optical or electromagnetic spectrum or by way of any other technology;

**“terminal equipment”** means apparatus intended to be connected directly or indirectly to the electronic communications network termination point of an electronic communications network in order to emit, transmit, or receive an electronic communications service;

**“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 4<sup>th</sup> May, 2000 and includes that Treaty as amended from time to time;

**“Tribunal”** means the Electronic Communications Tribunal established under **section 108**;

**“underground facility”** means a facility located underground that is used, installed and ready to be used, or intended to be used, to hold lines;

**“universal service and access”** means the widespread provision of an electronic communications service or equipment that allows access to an electronic communications service under **section 76(2)(a)**;

**“utility installation”** means any physical component of a system owned or operated by a public utility to provide piped water or electricity, under the [Public Utilities Commission Act];

**“utility installation owner”** means the proprietor or operator of any utility installation;

**“virtual co-location”** means the interconnection of equipment of a licensee to the facilities of another licensee, without such equipment being within a physical location of the facilities.

- (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.

### **3. OBJECTS OF THIS ACT**

- (1) The principal object of this Act is to give effect to the purposes of the Treaty and to regulate an electronic communications service and an electronic communications network in [Name of ECTEL Contracting State].
- (2) Without limiting the generality of subsection (1) the objects of this Act include, to
- (a) ensure policies in relation to the management of electronic communications are in harmony with the recommendations of ECTEL;

- (b) ensure that public interest and national security are preserved;
- (c) ensure consumer protection and meeting the needs of all users, including disabled users, the elderly or users with social needs, in terms of access to an electronic communications service and facility;
- (d) ensure the compliance by licensees to the protection of personal data, secrecy of correspondence and to the principle of net neutrality;
- (e) ensure the absence of discrimination, in similar circumstances, in relationships between licensees and between licensees and over the top providers for traffic routing and access to an electronic communications service;
- (f) ensure the ability of retail customers to access and disseminate information and access applications and an electronic communications service of their choice;
- (g) ensure the application of appropriate standards in the operation of an electronic communications network and electronic communications service;
- (h) ensure the overall development of electronic communications in the interest of the sustainable development of [Name of ECTEL Contracting State];
- (i) promote and maintain fair and efficient market conduct and sustainable competition between licensees;
- (j) encourage, promote, facilitate and otherwise assist in the development of investment, innovation and competitiveness in electronic communications in [Name of ECTEL Contracting State];
- (k) establish a licensing system that is responsive to the changes in electronic communications;
- (l) ensure the provision of electronic communications at rates consistent with efficient electronic communications service;
- (m) allow for the exercise of regulatory functions in respect of the determination and approval of prices, tariffs and charges for the provision of electronic communication;
- (n) ensure the effective and efficient use of spectrum; and
- (o) ensure the possibility of using all types of technologies and all types of electronic communications services in the frequency bands available to these services, subject to technical feasibility.

#### **4. ACT TO BIND [CROWN/STATE]**

This Act binds the [Crown/State].

#### **5. APPLICATION AND NON-APPLICATION OF THIS ACT**

- (1) This Act applies to a body corporate that is a subsidiary of licensee or frequency authorization holder and another body corporate are subsidiaries of the same body corporate or if each of them is controlled by**

**the same person; and if the licensee or frequency authorization holder are affiliated with the same body corporate at the same time, they are affiliated with each other.**

- (2) This Act does not apply to –
- (a) the programme content and scheduling, as opposed to the transmission aspects of broadcasting networks and services;
  - (b) an electronic communications network and an electronic communications service 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 authorization;
  - (c) terminal equipment used for programme, content and scheduling.

## **PART 2**

### **POWERS AND DUTIES OF MINISTER**

#### **6. EXEMPTIONS**

- (1) The Minister may, on the recommendation of ECTEL, by Order published in the [Official] Gazette, exempt any category of ship or aircraft, or person or class of an electronic communications network or an electronic communications service from this Act or a part or provision of this Act.
- (2) The Minister may, on the recommendation of ECTEL, by Order published in the [Official] Gazette exempt a diplomatic mission from the requirements of this Act, or a part or provision of this Act.
- (3) An Order under subsection (1) or (2) —
  - (a) [shall be subject to the requirement for a frequency authorization where the use of frequency is necessary and shall be subject to the provisions of this Act relating to a frequency authorization; and]
  - (b) may include any other conditions; or
  - (c) may include an exemption from the payment of any fees or part of fees payable under this Act.

## **7. POWERS AND DUTIES OF THE MINISTER**

- (1)** The Minister shall, after consultation with ECTEL, set policy on electronic communications.
- (2)** The Minister may give directions of policy of a general nature on electronic communications to the Commission and the Commission shall comply with such directions.

## **PART 3**

### **THE NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION**

#### **8. [ESTABLISHMENT/CONTINUATION/PRESERVATION] OF THE COMMISSION**

- [(1)** There is established a body to be known as the National Telecommunications Regulatory Commission./ There shall continue to be a body to be called the National Telecommunications Regulatory Commission./ The body constituted under section [-] of the Telecommunications Act known as the National Telecommunications Regulatory Commission is preserved and continues in existence for the purposes of this Act.
- (2)** The Commission shall be a body corporate [to which [section [-] of the Interpretation Act, Cap.[-] applies]/ and –
  - (a)** shall have a common seal;
  - (b)** may sue and be sued in its corporate name; and
  - (c)** has the right to acquire and hold any [real/immovable or personal/movable property] for purposes for which the corporation is constituted and to dispose of or charge such property at pleasure.]
- (3)** The Commission shall establish and maintain an office and principal place of business within [Name of ECTEL Contracting State].
- (4)** The common seal shall be kept by the Chief Executive Officer at the office of the Commission and the affixing of the common seal of the Commission shall be in the presence of and witnessed by –
  - (a)** the Chairperson; and
  - (b)** the Chief Executive Officer or any person authorized in writing by the Chairperson.
- (5)** The service of documents on the Commission is deemed to be effective if delivered at the office of the Commission.

## 9. COMPOSITION OF THE COMMISSION

- (1) Subject to subsections (2) and (3), the Commission shall comprise not less than 3 or more than 5 commissioners who shall be appointed by the Minister.
- (2) Subject to subsections (3), (4) and (5), the commissioners shall be persons of recognized standing and experience, collectively having experience and expertise in —
  - (a) finance and accounting;
  - (b) information and communications technology;
  - (c) electronic communications;
  - (d) economics;
  - (e) law;
  - (f) competition;
  - (g) project management;
  - (h) business administration; and
  - (i) regulatory experience and training.
- (3) At least one of the commissioners shall be a person of recognized standing and experience in electronic communications and no more than two commissioners shall be public officers.
- (4) Subject to subsection (5), where it is not reasonably possible to appoint a person from a field listed in subsection (2), the Minister may appoint a commissioner who has expertise and experience in a related field.
- (5) A person is disqualified from being a commissioner and is not eligible to be appointed as a commissioner, or having been appointed, is not eligible to continue as a commissioner if that person —
  - (a) holds or is beneficially interested in more than [5%] of any stock, share, bond, debenture or other security of, or other interest in, a licensee;
  - (b) has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a licensee;
  - (c) is a director, officer, employee, agent or a person providing an electronic communications service or supplying goods to a licensee under a contract;
  - (d) is an undischarged bankrupt;
  - (e) is a threat to national security;
  - (f) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;

- (g) has been convicted of a [criminal] offence except where the offence –
    - (i) is a minor traffic offence,
    - (ii) is spent [in accordance with the Criminal Rehabilitation of Offenders Act, Cap [-] /in any manner]; or
  - (h) is a member of [Parliament/the National Assembly].
- (6) Notwithstanding subsection (5)(b), a person shall not be held to have a pecuniary or other material interest in a licensee in respect of which the Commission performs regulatory functions by reason only of the fact that, he or she is a consumer of a licensee in respect of which the Commission performs such regulatory functions.
- (7) In determining whether a person is eligible for appointment or to continue as a commissioner, the Minister shall have regard to all matters that the Minister considers relevant to the appointment including —
- (a) the probity, competence and soundness of judgment of the person for fulfilling the responsibilities of a commissioner; and
  - (b) the diligence with which the person is likely to fulfill the responsibilities of a commissioner.
- (8) The Minister shall designate one of the commissioners as the Chairperson of the Commission.
- (9) The Minister shall designate one of the other commissioners who is not designated as Chairperson as the Deputy Chairperson.
- (10) Where the Chairperson is absent, the Deputy Chairperson has all the powers of the Chairperson.
- (11) The Minister shall by notice published in the [Official] Gazette give notice of the names of the commissioners —
- (a) as the Commission is first constituted; and
  - (b) every change in the constitution of the Commission.

## **10. FUNCTIONS OF THE COMMISSION**

- (1) The functions of the Commission are to —
- (a) advise the Minister on the formulation of the national policy on electronic communications with a view to ensuring the efficient, economic and

harmonized development of electronic communications in [Name of ECTEL Contracting State];

- (b) ensure that [Name of ECTEL Contracting State] complies with international obligations relating to electronic communications;
- (c) be responsible for technical regulation and the setting of technical standards of electronic communications and ensure compatibility with international standards;
- (d) establish and manage a National Numbering Plan for the allocation of numbers or block of numbers among licensees in accordance with the regional plan established by ECTEL including reallocating and reassigning numbers to the extent reasonably required to implement and administer the National Numbering Plan and to pay all international fees and obligations in relation to numbering;
- (e) regulate the tariff of an electronic communications service including a retail tariff in accordance with prescribed tariff regulation regimes where –
  - (i) **an electronic communications service is being provided by one licensee or is being provided with a bundle where at least one electronic communications service is not in competition,**
  - (ii) an electronic communications service is being provided within universal service and access,
  - (iii) one or a group of licensees has significant market power in a relevant market,
  - (iv) a licensee with significant market power is cross-subsidizing an electronic communications service,
  - (v) there is evidence of anti-competitive pricing or conduct, or
  - (vi) such regulation is necessary in the public interest;
- (f) receive fees under **section 124;**
- (g) receive, evaluate applications and make recommendations for the grant of class licences and forward applications for individual licences and frequency authorizations to ECTEL;
- (h) where the Minister decides to grant a licence or frequency authorization, prepare the licence or frequency authorizations and other relevant documents for signature by the Minister;

- (i) monitor and ensure that licensees or frequency authorization holders comply with the conditions attached to licences or frequency authorization;
  - (j) monitor compliance with the terms of interconnection or access agreement;
  - (k) investigate and resolve complaints related to harmful interference;
  - (l) promote and protect the welfare and interests of consumers of electronic communications and advise the national body responsible for consumer protection;
  - (m) provide the Minister with such information as he or she may require;
  - (n) undertake, in conjunction with other institutions and entities where practicable, training, manpower planning, seminars and conferences in areas of national and regional importance in electronic communications;
  - (o) report to and advise the Minister on the legal, technical, financial, economic aspects of electronic communications and the social impact of electronic communications in conjunction with ECTEL and upon the recommendation of ECTEL;
  - (p) on the recommendation of ECTEL, specify quality of service indicators for an electronic communications service and the means to enforce a licensee's compliance with the stated quality of service standards, including measures by which a licensee compensates users who are adversely affected by a failure to provide electronic communications service in accordance with the standards;
  - (q) grant a certificate of type approval in respect of any item of equipment in [Name of ECTEL Contracting State];
  - (r) perform such other functions as are specified under this Act.
- (2) In the performance of its functions the Commission shall, in accordance with the Treaty, consult and liaise with ECTEL.
- (3) In discharging its function under subsection (1) (e) in relation to tariffs for the provision of an electronic communications service, the Commission may consider cost of acquisition of the content to the licensee.

## 11. DELEGATION

The Commission may, for the purpose of carrying out its functions under section 10, delegate, in writing, to one or, more commissioners, the Chief Executive Officer or another person, the power to carry out on behalf of the Commission such duties as the Commission determines.

## **12. POWERS OF THE COMMISSION**

- (1) The Commission has 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 this Act, the Regulations, a licence, frequency authorization or a direction given by the Commission;
  - (b) require payment of fees and recover outstanding fees;
  - (c) institute legal proceedings including legal proceedings against a licensee or frequency authorization holder for the purposes of compliance with this Act;
  - (d) hold public consultations pertaining to its functions;
  - (e) issue directions in writing to a licensee or frequency authorization holder to direct the licensee or frequency authorization holder to take such measures or cease such activities as may be necessary for the purpose of ensuring compliance with this Act;
  - (f) on the recommendation of ECTEL and by publication in the [Official Gazette] issue codes of practice relating to an electronic communications service or an electronic communications network and —
    - (i) make the codes of practice available for public scrutiny at the office of the Commission during business hours or on the websites operated by ECTEL and the Commission, or
    - (ii) reproduce the codes of practice at the request of any member of the public on payment of the prescribed fee;
  - [(g) make rules to regulate its own procedure;]
  - (h) require that equipment be tested in the prescribed manner and in accordance with international standards;

- (i) in the case of retail tariffs, request information from a licensee relating to the retail price of an electronic communications service or other financial information relating to the revenue or operation of a licensee;
  - (j) do anything incidental to its powers.
- (3) A licensee or frequency authorization holder shall comply with a direction of the Commission under subsection (2)(e).
- (4) A licensee or frequency authorization holder who contravenes subsection (3) is liable on summary conviction to a fine not exceeding \$50,000 or if the offence is a continuing offence, the licensee is liable to a further fine not exceeding \$5,000 for every day that the offence continues after conviction.
- (5) A licensee or frequency authorization holder shall at all times follow the codes of practice issued by the Commission under subsection (2)(f).
- (6) In all proceedings under this Act, the codes of practice issued by the Commission is admissible in evidence, and if any provision of a code of practice appears to the court or body conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.
- (7) If a licensee does not provide the Commission with sufficient information on retail tariffs under subsection (2)(i), the Commission on the recommendation of ECTEL shall apply benchmarking to retail pricing.

### **13. TENURE OF COMMISSIONERS**

- (1) Unless the commissioner resigns under section 14 or the commissioner's appointment is revoked under section 15, the appointment of a commissioner is for a period of 3 years and the commissioner is eligible for reappointment for a maximum of two consecutive terms.
- (2) Notwithstanding subsection (1), the appointment of a commissioner may be staggered.

### **14. RESIGNATION**

- (1) A commissioner, other than the Chairperson may resign his or her office at any time by notice in writing addressed to the Minister through the Chairperson.
- (2) The Chairperson may, at any time by notice in writing addressed to the Minister, resign from his or her office.

## **15. REVOCATION**

- (1) The Minister shall at any time, in writing, revoke the appointment of a commissioner if, upon evidence, the Minister is satisfied that the commissioner —
  - (a) is disqualified from being a commissioner under section 9(5);
  - (b) is unable to perform his or her functions;
  - (c) is guilty of misconduct under sections 19 and 23;
  - (d) has been disqualified or suspended on grounds of misconduct, by a competent authority, from practicing a profession;
  - (e) [fails to attend 3 consecutive meetings or 5 meetings in the aggregate of the Commission during any 12-month period of his or her term of appointment [without reasonable excuse/without presenting a medical certificate or without being excused, in the case of the Chairperson, by the Minister in writing or in the case of any other commissioner, by the Chairperson in writing.]
- (2) Before revoking the appointment of a commissioner under subsection (1), the Minister shall give the commissioner notice in writing of his or her intention to do so, specifying the proposed grounds for the revocation and shall give the commissioner an opportunity —
  - (a) to present his or her views; or
  - (b) to submit to the Minister, within such time as the Minister may specify, a written statement of objections to the revocation.
- (3) Where the Minister revokes the appointment of a commissioner, he or she shall notify the commissioner of the revocation within 90 days and shall give reasons in writing for the revocation.

## **16. VACANCY**

- (1) The office of a commissioner is vacated —
  - (a) upon the death of the commissioner;
  - (b) if the commissioner becomes disqualified under section 9(5);
  - (c) if the commissioner resigns under section 14;

- (d) if the Minister revokes the appointment of that commissioner under section 15; or
  - (e) if the commissioner's appointment has expired and is not renewed by the Minister.
- (2) A decision of the Commission taken at a meeting is not invalidated merely because there is a vacancy in membership as long as there is a quorum.
- (3) Where a vacancy exists in the membership of the Commission, the Minister shall in accordance with section 9 appoint a person to fill the vacancy.

## **17. REMUNERATION**

A commissioner shall be paid by the Commission out of the Fund such remuneration and allowances as may be determined by [Cabinet/Minister].

## **18. MEETINGS**

- (1) The Commission shall meet monthly as far as practicable and at such other times as may be necessary or expedient for the transaction of business of the Commission.
- (2) The meetings of the Commission shall be held at such places as the Chairperson determines.
- (3) The Chairperson may at any time call a special meeting of the Commission and shall cause a special meeting to be held within [7] days of a written request for that purpose addressed to the Chairperson by any commissioner.
- (4) The Chairperson and any other commissioner shall be deemed to be present at a meeting of the Commission if the Chairperson or the commissioner participates by telephone, video link or satellite, and all commissioners participating in the meeting are able to hear and to speak to each other.
- (5) At a meeting of the Commission —
  - (a) the Chairperson shall preside; or
  - (b) if the Chairperson is not present, the Deputy Chairperson shall preside;
  - (c) if the Chairperson or the Deputy Chairperson is not present, the commissioners present shall choose one of their numbers to preside.

- (6) A meeting of the Commission is constituted for all purposes if at the meeting there is a quorum of a majority of the members of the Commission.
- (7) Decisions of the Commission shall be taken by a simple majority of votes of commissioners present and voting at the meeting.
- (8) The Chairperson has an initial vote and in cases of equal division the Chairperson has the casting vote.
- (9) A decision of the Commission taken at a meeting is not invalidated merely because a disqualified person sits at the meeting as long as there is a quorum.
- (10) The Commission may co-opt any person to attend any particular meeting of the Commission at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Commission, but a co-opted person does not have the right to vote.
- (11) Minutes of each meeting of the Commission shall be recorded and kept by the Secretary.

**19. DECLARATION OF INTEREST AND ABSTENTION FROM VOTING**

- (1) A commissioner who is in any way, either directly or indirectly, interested in a matter before the Commission shall declare the nature of his or her interest at the first meeting of the Commission at which it is practicable to do so.
- (2) Where a commissioner declares an interest under subsection (1), the Commission shall determine whether or not the interest of the commissioner in a matter, is material and where the Commission determines the interest of the commissioner is material, the commissioner shall leave the meeting upon the matter coming up for discussion.
- (3) A declaration and the departure of a commissioner from the meeting in accordance with subsections (1) and (2) shall be noted in the minutes of the meeting.
- (4) A commissioner is guilty of misconduct if he or she —
  - (a) fails to comply with subsections (1) and (2);
  - (b) votes in respect of a matter before the Commission in which he or she is materially interested, whether directly or indirectly; or
  - (c) seeks to influence the vote of any other commissioner in relation to a matter before the Commission in which he or she is materially interested, whether directly or indirectly,

and section 15 applies.

## **20. CHIEF EXECUTIVE OFFICER**

- (1) The Commission shall appoint as the Chief Executive Officer a person of recognized standing and experience who possesses expertise in —
  - (a) finance and accounting;
  - (b) information and communications technology;
  - (c) electronic communications;
  - (d) economics;
  - (e) law;
  - (f) competition;
  - (g) project management;
  - (h) business administration; or
  - (i) regulatory experience and training.
- (2) The functions of the Chief Executive Officer include, to —
  - (a) manage the day-to-day affairs of the Commission on such terms and conditions as the Commission determines;
  - (b) subject to subsections (3) and (4), attend meetings of the Commission; and
  - (c) perform any other function assigned to the Chief Executive Officer by the Commission.
- (3) The Chief Executive Officer shall attend all meetings of the Commission unless the Chief Executive Officer —
  - (a) is instructed by the Chairperson of a meeting to withdraw; or
  - (b) has obtained leave of absence or is prevented from attending the meeting for good cause.
- (4) The Chief Executive Officer attending a meeting of the Commission under subsection (3) has no voting rights.

## **21. SECRETARY, INSPECTORS AND OTHER EMPLOYEES**

- (1) The Chief Executive Officer shall appoint, at such remuneration and on such terms and conditions as may be approved from time to time by the Commission, a Secretary to the Commission and such inspectors and other employees as the Commission considers necessary for the performance of the functions and powers of the Commission.

- (2) The Secretary, inspector or other employees appointed under subsection (1) shall perform the functions assigned to him or her by the Chief Executive Officer or pursuant to this Act.
- (3) The Commission shall furnish each inspector with an identity card containing a photograph of the inspector which he or she shall produce on request in the performance of his or her function.

## **22. ADVISORY COMMITTEES**

- (1) The Commission may, for the purpose of carrying out its functions pursuant to this Act, establish *ad hoc* advisory committees to give advice to the Commission on such matters relating to the functions of the Commission as the Commission determines.
- (2) The Commission may appoint persons as members of an advisory committee, whether or not such persons are commissioners or employees of the Commission and such persons shall hold office for such period as the Commission determines.
- (3) The advice given by an advisory committee is not binding on the Commission but may be considered by the Commission in making decisions for the purposes of the discharge of its functions.

## **23. SECRECY AND CONFIDENTIALITY**

- (1) A commissioner, Chief Executive Officer, employee or member of an advisory committee shall take the oath of secrecy set out in Schedule 1.
- (2) Subject to subsection (3), a commissioner, Chief Executive Officer, an employee or member of an advisory committee shall not disclose any information acquired in the course of his or her functions under this Act or any other law relating to —
  - (a) the business or affairs of the Commission;
  - (b) any application submitted to the Commission;
  - (c) the business or affairs of a licensee; or
  - (d) the affairs of a customer of a licensee.
- (3) Subsection (2) does not apply to a disclosure —
  - (a) in respect of the business affairs of a licensee or of a customer of a licensee, with the consent of the customer which consent has been voluntarily given;
  - (b) for the purpose of enabling or assisting the Commission in exercising a function conferred on it under this Act or any other law;

- (c) if the information disclosed is or has been available to the public from any other source;
  - (d) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a licensee or any customer of a licensee, to which the information relates, to be ascertained;
  - (e) lawfully made to a person with a view to the institution of, or for the purpose of—
    - (i) court proceedings,
    - (ii) disciplinary proceedings relating to the discharge of functions by a commissioner, Chief Executive Officer, employee or member of an advisory committee;
  - (f) for the purposes of any legal proceedings in connection with the winding up or dissolution of a licensee;
  - (g) for the appointment or duties of a receiver of a licensee; or
  - (h) for the purpose of assisting the Competition body in connection with competition.
- (4) A commissioner who breaches the oath of secrecy is guilty of misconduct and section 15 applies.

#### **24. PROTECTION FROM LIABILITY**

- (1) No action or other proceeding shall lie against a commissioner, Chief Executive Officer, employee or member of an advisory committee in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under this Act except in cases of personal injury.
- (2) The Commission shall indemnify a commissioner, Chief Executive Officer, employee or member of an advisory committee for the legal cost of defending an action in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under this Act.

#### **25. ELECTRONIC COMMUNICATIONS FUND**

- (1) There is hereby established a fund to be known as the Electronic Communications Fund to be used by the Commission as revenue for the execution of its functions and the discharge of its obligations under this Act.

- (2) The Fund comprises —
  - (a) monies allocated to it by Parliament;
  - (b) annual financial contributions made by ECTEL to the Commission and chargeable to the General budget of ECTEL;
  - (c) monies received by the Commission as grants or loans; and
  - (d) application fees in respect of licenses and fees in respect of numbering resources.

## **26. FINANCIAL YEAR**

The financial year of the Commission commences on [1<sup>st</sup> October and ends on 30<sup>th</sup> September in each year.]

## **27. BUDGET AND WORK PLAN**

- (1) The Commission shall cause to be prepared and shall adopt and submit to ECTEL for the Commission in respect of the financial year —
  - (a) a budget with the estimates of its income and expenditure; and
  - (b) a work plan.
- (2) The Commission shall, within one month after the approval by ECTEL of the budget and work plan, submit a copy of the same to the Minister and the Minister shall within one month of his or her receipt, lay the budget and work plan in [Parliament/ the National Assembly] or if [Parliament/ National Assembly] is not in session, within one month of the next Session of [Parliament/ the National Assembly].

## **28. ACCOUNTS**

The Commission shall keep proper records of accounts in accordance with generally accepted international accounting standards and principles and shall prepare and retain financial statements in respect of each financial year.

## **29. AUDIT**

- (1) The Commission shall, within 4 months after each financial year, have its accounts audited annually by an independent auditor appointed by the Commission who shall conduct the audit in accordance with generally accepted international auditing standards.

- (2) The commissioners, the Chief Executive Officer and employees of the Commission shall grant to the auditor appointed under subsection (1), access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor considers necessary, and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor considers necessary.
- (3) A commissioner, Chief Executive Officer or employee of the Commission who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both and to revocation of his or her appointment as a commissioner, Chief Executive Officer, or employee of the Commission in accordance with this Act.
- (4) The auditor shall prepare a report and shall submit the report to the Commission as soon as is reasonably practicable and in any event not later than 4 months after the end of the financial year.

### **30. ANNUAL REPORT**

- (1) Subject to subsection (2) and not later than 4 months after the end of each financial year, the Commission shall submit to ECTEL and to the Minister an annual report on the operations, activities and transactions of the Commission containing —
  - (a) an assessment of the state of electronic communications and its impact and significance for the development of [Name of ECTEL Contracting State];
  - (b) a description of the activities undertaken by the Commission including recommendations made in respect of licences and frequency authorizations;
  - (c) a description of actions taken to promote the Treaty including the implementation of the recommendations, policies and guidelines of ECTEL; and
  - (d) a financial statement of the Commission.
- (2) An annual report under subsection (1) shall be accompanied by the auditor's report under section 29.

### **[31. EXEMPTION FROM TAXES**

The Commission is exempt from the payment of taxes, levies, and fees on income, property and documents.]

**PART 4**  
**LICENSING, FREQUENCY AUTHORIZATION, REGISTRATION AND APPROVAL**

**32. PROHIBITION ON OPERATING NETWORK OR PROVIDING SERVICE WITHOUT A LICENCE OR FREQUENCY AUTHORIZATION**

- (1) Notwithstanding section 6 and subject to subsection (4), a person shall not —
  - (a) establish or operate an electronic communications network or provide an electronic communications service in [Name of ECTEL Contracting State]; or
  - (b) land or operate submarine cables within [Name of ECTEL Contracting State] for the purpose of connecting to an electronic communications network,without a valid licence.
- (2) Notwithstanding section 6, where a frequency authorization is necessary for or in relation to the operation of an electronic communications network or provision of an electronic communications service, a person shall not operate that electronic communications network or provide that electronic communications service without a frequency authorization.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction on indictment to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding 10 years or to both.
- (4) Where the use of frequency is necessary for an electronic communications network or an electronic communications service provided by the [armed forces, police force, fire service, correctional service, public health service, emergency service, public security service or civil aviation authority], the person operating or providing the electronic communications service shall require a frequency authorization in accordance with this Act and is subject to the provisions of this Act relating to a frequency authorization, but is not required to have a licence.

**33. PRIVATE ELECTRONIC COMMUNICATIONS NETWORK**

- (1) The licence requirement in section 32 applies to the provision or operation of a private electronic communications network and a frequency authorization required to operate a private electronic communications network providing radio communication services or that utilises the radio frequency spectrum.
- (2) A private electronic communications network shall not be used for resale, except that the owner of a private electronic communications network may resell spare capacity on the owner's facilities, cede or assign the rights to use the facilities, sublet or otherwise give control of the facilities to a licensee.

- (3) Where the operator of a private electronic communications network intends to offer an electronic communications service directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, the operator requires a licence under section 35.
- (4) A private electronic communications network shall not be restricted to the carrying of voice only or data only or to any other such use.

#### **34. CLASS AND SCOPE OF LICENCE**

- (1) The classes of licenses are –
  - (a) an individual licence;
  - (b) a class licence; or
  - (c) a class or sub-class of licence recommended by ECTEL under article 5(1) of the Treaty.
- (2) A licensee who holds an individual licence is authorized to deploy or operate any facilities based electronic communications network and provide any electronic communications services in accordance with the individual licence.
- (3) A licensee who holds a class licence is authorized to offer the electronic communications service included in the class licence.
- (4) The sub-classes of licences are specified in Schedule 2.
- (5) If ECTEL recommends -
  - (a) a class of licence under subsection (1)(c), the Minister may by order published in the [Official] Gazette specify the class of licence and the scope of the class of licence; or
  - (b) a sub-class of licence under subsection (1)(c), the Minister may amend Schedule 2 under section 132.

#### **35. PROCEDURE FOR GRANT OF LICENCE**

- (1) An applicant shall submit his or her application for a licence in the prescribed form to the Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.
- (3) The Commission may, within [14] days of an application for a licence being made under subsection (1) request additional information from an applicant for the purpose of considering the application.
- (4) Where the Commission makes a request for information under subsection (3), the applicant shall submit that information to the Commission within [14] days of the request or within a further period of time granted and specified in writing by the Commission.

- (5) The Commission may refuse to grant a further time period under subsection (4) if it is reasonable to do so.
- (6) In determining whether it is reasonable to refuse to grant a further time period under subsection (5), the Commission may take into account —
- (a) the type of information being requested;
  - (b) the history of the application;
  - (c) any other matter.
- (7) Upon receipt of an application under subsection (1) or the information requested under subsection (3), the Commission shall —
- (a) consider applications for class licences;
  - (b) forward within [7] days, applications for individual licences to ECTEL.
- (8) Within 45 days of —
- (a) receipt of an application for a class licence under subsection (1) or information requested under subsection (3), the Commission shall submit its recommendation for the grant or refusal of the class licence and a copy of the application to the Minister; or
  - (b) receipt of an application for an individual licence from the Commission, ECTEL shall submit its recommendation to the Commission and the Commission shall transmit the recommendation of ECTEL for the grant or refusal to grant of the licence and a copy of the application to the Minister.
- (9) In making a recommendation under subsection (8), the Commission or ECTEL shall have regard to —
- (a) the purposes of the Treaty;
  - (b) the objective of universal service and access that will be promoted including the provision of internet access sufficient to meet reasonable demand at affordable prices;
  - (c) the protection of the interests of retail customers, purchasers and other users of an electronic communications service;
  - (d) the promotion of competition among licensees of an electronic communications service;
  - (e) the promotion of research, development and introduction of a new electronic communications service;

- (f) the encouragement of foreign and domestic investors to invest in electronic communications;
  - (g) appropriate technical and financial requirements;
  - (h) the safeguard of public interest and national security interests;
  - (i) the specified class within which the particular applicant falls; and
  - (j) such other matters as are determined by the Commission or ECTEL.
- (10) The Minister may grant or refuse to grant a licence within [28] days of the receipt of the recommendation from ECTEL or the Commission and shall notify the applicant of the grant or the refusal and shall give reasons in writing for a refusal.
- (11) Notwithstanding subsection (10), the Minister shall not grant an individual licence unless ECTEL recommends the grant of such licence.
- (12) Where an application is refused the applicant has the right to appeal under **section 131**.
- (13) The Minister may, in granting a licence include **a term or condition** specified in Schedule 3 **that is non-discriminatory, including ensuring that –**
- (a) **electronic communication providers of similar types of electronic communications networks or electronic communications services are treated similarly;**
  - (b) **a licence does not favour one electronic communications provider or class of electronic communications provider; and**
  - (c) **the issuance of the licence is likely to enhance competition in a market.**
- (14) A licence granted under subsection (10) shall be issued on payment of the prescribed initial fee.
- (15) Where the Commission determines that, based on the national numbering plan, an electronic communications number or block of numbers is required for provision of an electronic communications service in the application is available, and upon payment of the prescribed initial fee, the Commission shall assign a number or a block of numbers with or without conditions.
- (16) Subject to section 43, a licence is valid for the period specified in the licence.
- (17) The Commission shall publish the grant or refusal of a licence under this section.

- (18) Where a licensee is granted an individual licence in another ECTEL Contracting State, the licensee may seek an individual licence in [Name of ECTEL Contracting State] within 3 years of obtaining the licence by submitting his or her application in the prescribed form to the Commission together with the prescribed application fee and a copy of the licence, unless —
- (a) the licence has elapsed due to the failure of the licensee to commence operations within the 12-month period commencing from the date of the grant of the licence;
  - (b) the bankruptcy or insolvency of the licensee; or
  - (c) any other circumstances existing at the time that reverses the decision of ECTEL.
- (19) Before making a recommendation to the Minister for the grant or refusal of an application under subsection (18), the Commission shall verify that ECTEL is not aware of any significant change that affects the previous decision of ECTEL to recommend the grant of the licence but where there is a change ECTEL may request further information from the applicant or give reasons for its refusal to recommend a grant.
- (20) Upon receipt of a recommendation from ECTEL, the Commission shall transmit the recommendation and a copy of the application to the Minister who shall proceed to grant or refuse the licence.
- (21) If it is proposed that the number of licenses to be granted for the operation of an electronic communications network or electronic communications service should be limited, the Commission shall, on the recommendation of ECTEL —**
- (a) public a consultative document containing reasons for the proposed limitation;**
  - (b) consider representations made to it in respect of the proposed limitation;**
  - (c) publish a notice in the [Official] *Gazette* and in a local newspaper having a wide circulation stating the —**
    - (i) grounds and period during which licenses will be granted, and**
    - (ii) reasons for proposing to limit the number of licenses; and**
  - (d) undertake a periodic review of a limitation imposed on the number of licenses granted.**

**36. REQUIREMENT FOR A FREQUENCY AUTHORIZATION**

- (1) Notwithstanding section 6, a person shall not use spectrum for an electronic communications service without a valid frequency authorization.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding 10 years or to both.

**37. FREQUENCY AUTHORIZATION**

- (1) An applicant for a frequency authorization shall submit his or her application in the prescribed form to the Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.
- (3) Upon receipt of the application, the Commission shall, within 7 days, forward the application to ECTEL.
- (4) ECTEL may within [7] days of an application for a frequency authorization being made under subsection (1) request additional information from an applicant for the purpose of considering the application.
- (5) Where ECTEL makes a request for information under subsection (4), the applicant shall submit that information to ECTEL within [14] days of the request or within a further period of time granted and specified in writing by ECTEL.
- (6) ECTEL may refuse to grant a further time period under subsection (5) if it is reasonable to do so.
- (7) In determining whether it is reasonable to refuse to grant a further time period under subsection (6), ECTEL may take into account —
  - (a) the type of information being requested;
  - (b) the history of the application;
  - (c) any other matter.
- (8) ECTEL shall, within [45] days of receipt of an application under subsection (3) or receipt of additional information under subsection (4), inform the Commission in writing whether there are any reasons based on the regional spectrum plan or any spectrum policy or regulation for granting or not granting the frequency authorization.

- (9) Without prejudice to subsection (8) ECTEL shall submit its recommendation to the Commission and the Commission shall transmit the recommendation of ECTEL for the grant or refusal to grant of the frequency authorization and a copy of the application to the Minister.
- (10) The Minister may, in accordance with the recommendation of ECTEL, grant or refuse to grant a frequency authorization within [14] days of receipt of the recommendation and shall notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.
- (11) A frequency authorization granted under subsection (9) shall be issued on payment of the prescribed initial fee.
- (12) The Minister, in granting a frequency authorization may include all or any of the terms and conditions specified in Schedule 3. **that is non-discriminatory, including ensuring that –**
  - (a) **electronic communication providers of similar types of electronic communications networks or electronic communications services are treated similarly;**
  - (b) **a licence does not favour one electronic communications provider or class of electronic communications provider; and**
  - (c) **the issuance of the licence is likely to enhance competition in a market.**
- (13) Subject to section 43, a frequency authorization is valid for the period specified in the frequency authorization.
- (14) The Commission shall publish the grant or refusal of a frequency authorization.

### **38. MODIFICATION OF LICENCE OR FREQUENCY AUTHORIZATION**

- (1) The Minister may, on the receipt of a recommendation from ECTEL or the Commission, modify a licence or frequency authorization —
  - (a) with the agreement of the licensee or the frequency authorization holder; or
  - (b) without the agreement of the licensee or the frequency authorization holder where the modification is necessary in the public interest or for reasons of national security.
- (2) A licensee or frequency authorization holder who seeks a modification of his or her licence or frequency authorization shall apply in the same manner as he or she did for a licence under section 35 or a frequency authorization under section 37.

- (3) The Commission shall make recommendations under this section after consultation with ECTEL.
- (4) Where the modification of a licence or frequency authorization is recommended by ECTEL or the Commission or where in the opinion of ECTEL and the Commission modification is necessary to avoid harmful interference, the licensee or frequency authorization holder shall not pay an application fee.

### **39. TRANSFER OF LICENCE OR FREQUENCY AUTHORIZATION**

- (1) A licence or frequency authorization is personal to the licensee or frequency authorization holder and the licence or frequency authorization shall not be transferred.
- (2) In this section, “transfer” includes an assignment, sub-licensing or any passing of the licence or frequency authorization to a person other than the initial licensee or frequency authorization holder, whether or not that person has a business activity, significant assets or interest.
- (3) A licensee or frequency authorization holder who contravenes subsection (1) is liable to the revocation of his or her licence or frequency authorization under section 43.

### **40. CHANGE OF CONTROL OF THE LICENSEE OR FREQUENCY AUTHORIZATION HOLDER**

- (1) A licensee or frequency authorization holder shall not cause, permit or acquiesce in any change of control unless the licensee or frequency authorization holder submits a written application for written approval to ECTEL and the Commission at least 90 days prior to such change of control.
- (2) A licensee or frequency authorization holder who contravenes subsection (1) is liable to the revocation of his or her licence or frequency authorization under section 43.
- (3) Upon receipt of the application under subsection (1) –
  - (a) in the case of an individual licence or frequency authorization, ECTEL shall conduct an evaluation of the application; and
  - (b) in the case of a class licence, the Commission shall conduct an evaluation of the application.
- (4) Without prejudice to subsection (3), ECTEL and the Commission shall, in conducting an evaluation of an application, take into account –
  - (a) whether the change of control would be inconsistent with the terms of the licence or frequency authorization;

- (b) whether the change of control would have, or be likely to have, the effect of substantially lessening competition in a market in [Name of ECTEL Contracting State];
  - (c) whether the change of control would have an effect contrary to public interest or for reasons of national security;
  - (d) the market position of the licensee and the economic and financial power of the licensee;
  - (e) the alternatives available to suppliers and users;
  - (f) access of the licensee to suppliers or markets, any legal or other barriers to entry;
  - (g) supply and demand trends for the electronic communications service;
  - (h) the interests of the intermediate and ultimate consumers; and
  - (i) the development of technical and economic progress provided by competition.
- (5) Upon completion of the evaluation of the applications –
- (a) under subsections (3)(a) and (4), ECTEL, shall forward its recommendation to the Commission and the Commission shall transmit the recommendation to the Minister, with a copy of the application.
  - (b) under subsections (3)(b) and (4), the Commission shall forward its recommendation to the Minister, with a copy of the application.
- (6) Before making a recommendation under subsection (5), the Commission or ECTEL shall –
- (a) give the acquirer, the licensee or frequency authorization holder and any interested persons a reasonable opportunity to make representations; and
  - (b) consider the representations, if any, made under paragraph (a).
- (7) Within 21 days of receipt of the recommendation from ECTEL or the Commission, the Minister may, acting on the recommendation inform the applicant in writing —
- (a) of the grant of approval of the change of control; or
  - (b) of the grant of approval of the change of control subject to the conditions that the acquirer, the licensee or frequency authorization holder takes the

actions that ECTEL or the Commission considers necessary to eliminate or avoid the adverse effects; or

(c) of the refusal to grant approval for the change of control giving the reasons for his or her refusal.

(8) In this section -

**“change of control”**, in relation to a licensee or frequency authorization holder, means when a person, alone or with other persons, takes charge of the licensee or frequency authorization holder –

- (a) by acquiring directly or indirectly including by merger –
  - (i) 50% or more of the licensee’s or frequency authorization holder’s voting share,
  - (ii) rights or contracts which confer decisive influence on the composition, voting or decisions of organs of the licensee or frequency authorization holder,
  - (iii) while not holding the rights or entitled to the rights under a contract under subparagraph (ii), has the power to exercise the rights deriving from such right or contract,
  - (iv) through the licensee or frequency authorization holder divesting its shares;
- (b) by any direct or indirect sale or transfer of substantially all of the assets of the licensee or frequency authorization holder;
- (c) by an approved and completed plan of liquidation of the licensee or frequency authorization holder or an agreement for the sale on liquidation of the licensee or frequency authorization holder;
- (d) by the licensee or frequency authorization holder determining and declaring that a change of control has occurred;

**“merger”** means the cessation of two or more persons, at least one of which is or controls a licensee or frequency authorization holder from being distinct, whether by purchase or lease of shares, amalgamation, combination, joint venture or any other method through which influence over the policy of another licensee or frequency authorization is acquired.

#### **41. NOTIFICATION OF CHANGE OF SIGNIFICANT INTEREST**

(1) A licensee or a frequency authorization holder shall not issue or allot any shares or cause, permit or acquiesce in any other reorganization of its share capital that results in –

- (a) a person acquiring a significant interest in the licensee or frequency authorization holder; or

- (b) a person who already owns or holds a significant interest in the licensee or frequency authorization holder, increasing or decreasing the size of his or her interest,

unless the licensee or frequency authorization holder notifies the Commission in writing not less than 90 days prior to the issue, allotment or other reorganization.

- (2) Upon receipt of a notification under subsection (1), the Commission shall submit a copy of the notification to ECTEL.
- (3) Notwithstanding subsection (1) a licensee or frequency authorization holder whose shares are publicly traded on the [Eastern Caribbean Securities Exchange] or other stock exchange approved in writing by the Minister responsible for finance, may submit a written application to the Commission to waive a notification of an issue, allotment or other reorganization of shares.
- (4) The Commission, on the recommendation of ECTEL, may grant the application under subsection (3) and in granting the waiver include a condition that the licensee or frequency authorization holder shall, as soon as reasonably practicable, notify the Minister through the Commission of any change in significant interest.
- (5) A licensee or frequency authorization holder who fails to comply with subsection (1) commits an offence and is liable on conviction on indictment to a fine of 3% of its annual gross revenue for the previous year or revocation of his or her licence or frequency authorization.
- (6) Subject to subsection (8), within 80 days of receipt, the Minister shall, on the recommendation of ECTEL, issue a certificate of non-objection with or without conditions.
- (7) The Minister shall before issuing a certificate under subsection (6) take into account the public interest, national security, the purpose of the Treaty and the purpose of ECTEL.
- (8) A licensee who fails to comply with a condition in a certificate of non-objection under subsection (6) commits an offence and is liable on conviction on indictment to a fine not exceeding \$1,000,000.

## 42. RENEWAL OF LICENCE AND FREQUENCY AUTHORIZATION

- (1) A licensee or frequency authorization holder may renew the licence or frequency authorization by applying 12 months before the expiration of the licence or frequency authorization in the same manner as he or she did for a licence under section 35 or a frequency authorization under section 37.
- (2) The Minister, on the recommendation of ECTEL or the Commission, may renew a licence or frequency authorization granted under this Act for a period equivalent to the first licence or the first frequency authorization granted unless —
  - (a) the licensee or the frequency authorization holder failed to operate within the terms of the first licence or the first frequency authorization;
  - (b) the licensee or the frequency authorization holder failed to comply materially with any of the provisions of this Act, Regulations or the terms and conditions of the licence or the frequency authorization;
  - (c) the licensee or the frequency authorization holder failed to comply materially with any direction of ECTEL or the Commission; or
  - (d) the Minister, on the recommendation of ECTEL, has determined that it is not in the public interest to renew the licence or frequency authorization.
- (3) Before determining not to renew a licence or a frequency authorization under subsection (1), the Minister, on the recommendation of ECTEL or the Commission, shall give the licensee or the frequency authorization holder, within 6 months, notice in writing of its intention not to renew such licence or frequency authorization, specifying the grounds on which it proposes not to renew the licence or frequency authorization, and shall give the licensee or the frequency authorization holder the opportunity —
  - (a) to present his or her views; and
  - (b) to submit to the Commission within such time as the Commission or ECTEL may specify a written statement of objections to the decision not to renew the licence or the frequency authorization,which the Commission shall take into account before reaching a decision on renewal.
- (4) The Commission shall make recommendations under this section after consultation with ECTEL.

- (5) The Commission shall publish the renewal of a licence and frequency authorization.

#### **43. SUSPENSION AND REVOCATION OF LICENCE OR FREQUENCY AUTHORIZATION**

- (1) The Minister may, on the recommendation of ECTEL, suspend, or revoke a licence or frequency authorization, where —
- (a) the radio apparatus or station in respect of which the licence or frequency authorization was granted interferes with an electronic communications service provided by a person to whom a licence or frequency authorization is already granted for that purpose;
  - (b) the licensee or frequency authorization holder contravenes this Act or any other law;
  - (c) the licensee or frequency authorization holder fails to comply with a condition specified in the licence or frequency authorization;
  - (d) the licensee or frequency authorization holder is in default of payment of the licence fee, frequency authorization fee or any other money owed under this Act;
  - (e) the suspension or revocation is necessary for reasons of national security or the public interest;
  - (f) the licensee or frequency authorization holder is bankrupt, dissolved or liquidated;
  - (g) the licensee or frequency authorization holder fails to operate under the class licence or individual licence one year from the date the licence or frequency authorization was granted;
  - (h) any other prescribed circumstances exist.
- (2) Before suspending or revoking a licence or frequency authorization under subsection (1), the Minister shall give the licensee or frequency authorization holder one-month notice in writing of his or her intention to do so, specifying the proposed grounds for suspending or revoking the licence or frequency authorization, and shall give the licensee or frequency authorization holder an opportunity to —
- (a) present his or her views;
  - (b) remedy the breach of the licence or frequency authorization or a term and condition of the licence or frequency authorization; or
  - (c) 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 or frequency authorization.
- (3) Where a licensee or frequency authorization holder presents his or her views or submits a written statement of objections under subsection (2), ECTEL or the Commission shall review its recommendation to the Minister taking into account the views presented or the statement and may change its recommendation to the Minister.

- (4) Where the Minister, on the recommendation of ECTEL or the Commission, suspends or revokes a licence or frequency authorization under this section, the Minister shall notify the licensee or frequency authorization holder of the suspension or revocation and shall give reasons in writing for the suspension or revocation.
- (5) Where a licence or frequency authorization is suspended, the licensee or frequency authorization holder shall not provide an electronic communications service or operate an electronic communications network unless ECTEL or the Commission is satisfied that the grounds for suspension have been rectified.
- (6) Suspension or revocation of a licence or frequency authorization does not relieve a licensee or frequency authorization holder of the duty to pay fees that are due and owing prior to suspension or revocation under this Act.
- (7) The Commission shall publish the suspension or revocation of a licence or frequency authorization.
- (8) Where a licence or frequency authorization is suspended or revoked and the electronic communications network is partially or totally disconnected, ECTEL or the Commission shall recommend and instruct the measures to be applied so as to minimize any negative effects on the users of the electronic communications network.
- (9) Where a licence or frequency authorization has been revoked under this section, the licensee or frequency authorization holder shall surrender the licence or frequency authorization to the Commission.

#### **44. SURRENDER OF LICENCE OR FREQUENCY AUTHORIZATION BEFORE EXPIRY**

- (1) A licensee or a frequency authorization holder may surrender a licence or frequency authorization prior to its expiry, by making an application in the prescribed form to the Commission at least one year prior to the desired date of surrender.
- (2) An application under subsection (1) must be accompanied by the licence or frequency authorization or, if that is not practicable, by a statement of the reasons for the failure to do so.
- (3) Upon receipt of an application under subsection (1) the Commission shall –
  - (a) consider applications for surrender of class licences;
  - (b) forward within [7] days, applications for surrender of individual licences to ECTEL.
- (4) Within 45 days of –

- (a) receipt of an application for surrender of a class licence under subsection (1) the Commission shall submit its recommendation for the grant or refusal of surrender of the class licence and a copy of the application to the Minister; or
  - (b) receipt of an application for the surrender of an individual licence from the Commission, ECTEL shall submit its recommendation to the Commission and the Commission shall transmit the recommendation of ECTEL for the grant or refusal of surrender of the individual licence and a copy of the application to the Minister.
- (5) Before making a recommendation under subsection (4), the Commission or ECTEL shall –
- (a) give the licensee or frequency authorization holder and any interested persons a reasonable opportunity to make representations; and
  - (b) consider the representations, if any, made under paragraph (a).
- (6) The Minister, on the recommendation of ECTEL, or the Commission, shall not unreasonably refuse the application under subsection (1).
- (7) The Minister, on the recommendation of ECTEL, or the Commission may grant the application for surrender, subject to conditions that the licensee or frequency authorization holder takes the actions that ECTEL or the Commission considers necessary.
- (8) The Minister, on the recommendation of ECTEL, or the Commission may refuse to grant the application for surrender and where the Minister refuses an application for surrender he or she shall give reasons for his or her refusal in writing.
- (9) Where the Minister on the recommendation of ECTEL or the Commission, refuses to grant the application for surrender of the licensee or frequency authorization, the licensee shall in such circumstances have a right to appeal under **section 131**.
- (10) Where the Minister, on the recommendation of ECTEL, or the Commission refuses to grant an application for surrender and the licensee or frequency authorization holder agrees to such refusal, the Minister shall return the licence or frequency authorization to the licensee or frequency authorization holder.
- (11) Where an application for surrender is granted under this section, the licence or frequency authorization lapses on the grant of the application of surrender by the Minister.

- (12) Surrender of a licence or frequency authorization does not relieve the licensee or frequency authorization holder of the duty to pay fees that are due and owing prior to the coming into effect of the date of surrender.
- (13) The Commission shall publish the surrender of a licence or frequency authorization in the [Official] Gazette.

#### **45. REGISTER**

- (1) The Commission shall keep and maintain a register containing particulars of—
  - (a) an application for a licence made under this Act, including the name and address of the applicant, the date of the application, contact details of the applicant and the licence in relation to which the application is being made;
  - (b) the date and effect of any decision made in respect of an application made under paragraph (a);
  - (c) a modification, transfer, change of control, change of significant interest, renewal, suspension or revocation of a licence;
  - (d) any other prescribed matter.
- (2) The Register under subsection (1) may be kept in an electronic data storage and retrieval system.

#### **46. SPECIAL LICENCE**

- (1) Where a licence is necessary in an emergency or other exigent circumstance a person shall make an application for a special licence.
- (2) An applicant for a special licence shall submit the application in the prescribed form to the Minister and shall immediately submit a copy of the application to the Commission together with the prescribed application fee.
- (3) The Commission may, upon receipt of an application for a special licence under subsection (1), request additional information from an applicant for the purpose of considering the application.
- (4) Where the Commission makes a request for information under subsection (3), the applicant shall immediately submit the information to the Commission.
- (5) Where a frequency authorization is required under the special licence, the Commission shall forward the application for the special licence to ECTEL for its recommendation before the Commission makes a recommendation under subsection (6).

- (6) The Commission shall submit its recommendation to the Minister within [12] business hours of receipt of an application under subsection (2) or information being submitted under subsection (3).
- (7) The Minister may, on the recommendation of the Commission, grant a special licence within [12] hours of the receipt of the recommendation from the Commission.
- (8) Where the Minister, on the recommendation of the Commission, refuses to grant a special licence he or she shall notify the applicant of the refusal and shall give reasons in writing for the refusal.
- (9) Where an application is refused the applicant has the right to appeal under **section 131**.
- (10) A special licence granted under subsection (7) shall be issued on payment of the prescribed fee.
- (11) A special licence shall be for a term not exceeding [21] calendar days and is not renewable.
- (12) The Commission shall publish the grant or refusal of a special licence.
- (13) In this section –  
“**emergency**” includes a disaster, an act of God or threat to national security;  
“**exigent circumstance**” means a distinct and organized event of major sporting, cultural or national significance to be held for not more than 7 days.

#### **47. COUNTRY CODE TOP LEVEL DOMAIN NAME REGISTRATION**

- (1) The Commission shall establish and manage a national plan for country code top level domain name registration in accordance with the regional plan established by ECTEL.
- (2) The Commission shall register and manage country code top level domain names in [Name of ECTEL Contracting State].
- (3) Without limiting the generality of section 11, the Commission may, with the approval of ECTEL, delegate its responsibility under subsection (2) to another body corporate.
- (4) A person who registers and manages country code top level domain names in [Name of ECTEL Contracting State] without being delegated the responsibility under subsection (3) commits an offence and is liable on indictment to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding 10 years or to both fine and imprisonment country code top level domain name registration”

#### 48. TYPE APPROVALS

- (1) A licensee, frequency authorization holder, manufacturer or retailer shall not install, sell for use or use an item of equipment in [Name of ECTEL Contracting State], unless the Commission grants a certificate of type approval in respect of that type of equipment.
- (2) A licensee, frequency authorization holder, manufacturer or retailer who is granted a certificate of type approval by the Commission for use of any of the items specified in subsection (2) shall not be required to apply to the Commission for further approval, if that person subsequently uses the same model of equipment.
- (3) An application to the Commission for type approval of equipment shall be signed by —
  - (a) an authorized representative of the applicant; or
  - (b) the applicant personally.
- (4) A licensee or frequency authorization holder who applies for type approval in respect of equipment shall forward to the Commission —
  - (a) a sample of the equipment if requested;
  - (b) completed application forms;
  - (c) the prescribed fee;
  - (d) the relevant literature; and
  - (e) the technical specifications specified by the Commission after consultation with ECTEL.
- (5) Copies of the application forms, the related documentation and samples referred to in subsection (4) may be forwarded by the Commission to ECTEL for recommendations and review.
- (6) The Commission may recognize type approvals granted by other ECTEL Contracting States, and shall consult and liaise with ECTEL, in respect of such matters where necessary.
- (7) The Commission may, upon the recommendation of ECTEL, determine the technical regulations to be recognized in [Name of ECTEL Contracting State] and other approved ECTEL Contracting States for the purposes of giving effect to the recognition of, or exemption from, type approval procedures.
- (8) The Commission shall recognize type approvals granted by internationally recognized type approval agencies.
- (9) The Commission shall ensure that appropriate manuals containing the legal requirements of type approval by Contracting States which it recognizes is made available to licensees and other interested parties.

## PART 5

### RIGHTS AND OBLIGATIONS OF LICENSEE AND FREQUENCY AUTHORIZATION HOLDER

#### 49. INTERCONNECTION AND ACCESS

- (1) Subject to subsection (5), a licensee who operates a public electronic communications network or submarine cable landing station shall provide —
  - (a) interconnection on his or her electronic communications network to another licensee; or
  - (b) access to infrastructure to another licensee including —
    - (i) where access to a —
      - (A) tower owned or operated by the licensee;
      - (B) site owned, occupied or controlled by the licensee; and
      - (C) underground facility owned or operated by the licensee,is technically feasible, access to the tower, site and underground facility for the purpose of enabling the other licensee to install a facility for use in connection with the supply of an electronic communications service,
    - (ii) where a submarine cable landing station is owned or operated by the licensee —
      - (A) access to its submarine cable landing station or co-location including virtual co-location in the prescribed manner;
      - (B) access to international submarine cable capacity that it holds on a submarine cable connected to its landing station and with the capacity held by third persons on all submarine cables connected to the submarine cable landing station in the prescribed manner and publish a reference interconnection or access offer in the time and manner prescribed for access to international submarine capacity; or
  - (c) interconnection under paragraph (a) and access under paragraph (b).
- (2) A licensee who fails to comply with subsection (1) commits an offence and is liable on indictment to a fine of 3% of its annual gross revenue for the previous year.

- (3) A licensee who wishes to interconnect with or access the electronic communications network of another licensee shall make a request to that other licensee in writing.
- (4) A licensee to whom a request for interconnection or access is made, shall, in writing, respond to the request within a period of 28 days from the date of the request.
- (5) A licensee in granting a request under subsection (3) shall agree, with the person making the request, the date the interconnection or access shall be effected.
- (6) A licensee to whom a request for interconnection or access is made may in his or her response refuse that request in writing on reasonable technical grounds.
- (7) Where the provision of access to infrastructure is not technically feasible, the Commission may, on the recommendation of ECTEL, make a decision or give a directive to the licensee as it considers appropriate, to facilitate alternative access arrangements, including —
  - (a) virtual co-location;
  - (b) conditioning additional equipment;
  - (c) optimizing the use of existing space; or
  - (d) finding adjacent space.
- (8) Where a decision or directive under subsection (7) requires additional and justified investment by a licensee, the licensee may —
  - (a) prior to investment, enter a joint investment agreement with one or more other licensees interested in accessing the infrastructure;
  - (b) increase the price for access to such infrastructure by a specific margin reflecting the additional costs incurred.
- (9) The increase under subsection (8)(b) is applicable to a tower and site modified to comply with a decision or direction of the Commission under subsection (7).
- (10) Interconnection or access provided by a licensee shall be on terms which are not less favourable than —
  - (a) those of the licensee providing the interconnection or access;
  - (b) the electronic communications service of non-affiliated suppliers; or
  - (c) the electronic communications service of the subsidiaries or affiliates of the licensee of the interconnection or access.

## **50. INTERCONNECTION AND ACCESS AGREEMENTS**

- (1) A licensee shall not enter into an interconnection or access agreement or both to implement or provide interconnection or access unless the interconnection or access agreement is approved in writing by the Commission acting on the recommendation of ECTEL.

- (2) Upon receipt of an interconnection or access agreement or both, the Commission shall review the interconnection or access agreement or both by licensees, and, in accordance with the recommendation of ECTEL, may approve or disapprove of such interconnection or access agreement.
- (3) Interconnection or access agreement or both, between licensees shall be in writing, and copies of the agreements shall be kept as a record maintained by the Commission for that purpose.

## **51. COST OF INTERCONNECTION AND ACCESS**

- (1) The cost of establishing any interconnection or access or both to the electronic communications network of another licensee shall be borne by the licensee requesting the interconnection or access.
- (2) The cost referred to in subsection (1) shall be based on cost-oriented rates that are —
  - (a) reasonable and arrived at in a transparent manner having regard to economic feasibility; and
  - (b) sufficiently unbundled such that the licensee requesting the interconnection or access does not have to pay for electronic communications network components that are not required for the interconnection or access or both.
- (3) In the case where the licensee owning or operating a submarine cable landing station in [Name of ECTEL Contracting State] does not provide the Commission with sufficient financial information to determine whether or not its rates are cost-oriented, the Commission, on the recommendation of ECTEL, shall require the owner or operator to offer rates based on benchmarking.
- (4) Prices for access to and use of different towers and sites may vary according to the facilities involved, but must be just, reasonable and based on the costs of the owner of the facilities.
- (5) A licensee shall make available, on request, prices for access to and use of facilities that it owns in a manner that is —
  - (a) clear and unambiguous; and
  - (b) disaggregated such that the licensee requesting access shall only have to pay for access to facilities or parts of the electronic communications network it requires to provide the electronic communications service involved.
- (6) The Commission may require a licensee to publish the prices for access on the licensee's website and in an appropriate publicly available document.
- (7) A licensee providing an interconnection or access in setting rates for interconnection or access shall comply with guidelines and standards to facilitate interconnection or access established by the Commission, on the recommendation of ECTEL.

- (8) A licensee shall not, in respect of any rates charged for interconnection or access provided to another licensee, vary the rates on the basis of the type of customers to be served, or on the type of electronic communications service.

## **52. ACCESS TO ROAD WORKS**

- (1) In connection with its operation of a public electronic communications network, a licensee may install or maintain a facility in or over a road or public ground, or on the shore and bed of the sea, or remove the facility in accordance with the [Physical Planning and Development Act] and, for that purpose, may, in accordance with the development plan for the area and the provisions of the [Roads Act] and any other written law, carry out road works.
- (2) Before carrying out any road works for the purposes specified in subsection (1), a licensee shall—
- (a) obtain from the [Planning Department] plans showing the utility installations that might be affected;
  - (b) submit detailed plans of the intended road works to each utility installation owner likely to be affected;
  - (c) not commence any road works that might affect a utility installation without first having requested and obtained written permission from the affected utility installation owner; and
  - (d) notify the Commission of any intended road works.
- (3) Where permission is obtained under subsection (2)(d), road works shall not commence until the expiration of 14 days from the date of the receipt of the permission.
- (4) In the event of an emergency, the licensee of the public electronic communications network may dispense with the requirement set out in subsection (2)(c) or (d) where the Commission certifies in writing that the intended road works are necessitated by an emergency.
- (5) The removal or alteration of any utility installation shall be undertaken by the affected utility installation owner, and the cost shall be borne by the licensee.
- (6) Pursuant to the notification received by the Commission under subsection (2) (d), the Commission shall notify other licensees of a public electronic communications network or public utilities of the intended road works and inquire of them whether they have any intention of undertaking similar type road works.

- (7) A licensee of a public electronic communications network notified under subsection (6) shall not carry out road works within 3 months of the receipt of such notification except where such licensee proves to the satisfaction of the Commission the necessity of carrying out emergency works.
- (8) Where two or more licensees intend on carrying out road works, the licensees shall co-operate and agree on the sharing of costs and in the case of dispute the matter shall be referred to ECTEL.
- (9) Prior to performing road works, a licensee shall publish a description of the road works in at least one newspaper in [Name of ECTEL Contracting State] and shall otherwise inform affected persons by such other means as the Commission specifies.

### **53. REPAIR AND RESTORATION**

- (1) Where a licensee causes damage to any utility installation in carrying out road works, it shall immediately notify the utility installation owner and may request the utility installation owner to repair the damage to the utility installation.
- (2) The licensee shall compensate the utility installation owner for the full cost of repair.
- (3) A licensee shall, as speedily as possible, complete all road works and restore the road and public grounds, including the removal of any debris, to the satisfaction of the [Planning Department] and the [Ministry responsible for infrastructure]; such satisfaction to be expressed in writing.
- (4) Where a licensee fails to comply with subsection (3), the licensee is liable for any expenditure that the [Planning Department/utility installation owner] incurs and for any other loss by any other person.
- (5) The liability of the licensee under subsection (4) continues for a period of 2 years or until the [Planning Department/utility installation owner] expresses satisfaction in writing under subsection (3).

### **54. ACCESS TO LANDS FOR INSPECTION AND MAINTENANCE**

- (1) A licensee authorized in writing by the [Planning Department] may, with the permission of the landowner, at any reasonable time, enter upon and survey any land, other than land covered by buildings or used as a garden or park, for the purpose of ascertaining whether the land would be suitable for use by the licensee for, or in connection with, the establishment or operation of an electronic communications network.

- (2) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the licensee 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 licensee shall pay to that person compensation in respect of the disturbance.
- (3) In engaging in the inspection of land, installation or maintenance of facilities, a licensee shall take all reasonable steps to—
  - (a) act in accordance with good engineering practice;
  - (b) protect the environment;
  - (c) ensure the safety of persons and property; and
  - (d) ensure that the activity interferes as little as practicable with the operations of a public utility, roads and paths, the movement of traffic, and the use of public grounds and other land.
- (4) Where there is a dispute between the parties as to the level of compensation, the parties may take the matter to the Commission.

## **55. INSTALLATION OF FACILITIES ON PRIVATE LAND OR BUILDINGS**

- (1) Subject to this section, a licensee may install and maintain facilities along, on or over any land or building and may enter upon any land and place to maintain facilities and repair or renew any facilities.
- (2) Where a licensee wishes to install facilities on private land or buildings the licensee shall first obtain the written permission of the landowner, occupier or agent and the landowner, occupier or agent is entitled to compensation.
- (3) Subsection (2) does not apply where the facilities are used to provide an electronic communications service to the landowner, occupier, agent or tenant.
- (4) In connection with the exercise of its powers under subsection (1), a licensee —
  - (a) may lop or trim any tree that, in its opinion, is likely to damage or obstruct its facilities;
  - (b) shall cause as little damage as possible and shall pay full compensation to all persons for any damage sustained by reason of or in consequence of the exercise by such licensee of such powers; and
  - (c) is subject to the following restrictions—

- (i) it shall not place any facilities on any private land or building in such manner so as to cause interference with or obstruction of the occupier of any lands in any business or cultivation carried on upon such land or building,
  - (ii) it shall not place any facilities, lop or trim any trees on any private land or building, until it has given at least 14 days' notice in writing to the landowner, occupier or agent of the land or building of its intention to do so, specifying the work to be done and notifying such person of his rights to give notice of an objection to the Commission pursuant to subparagraph (iii),
  - (iii) on receipt of the notice under subparagraph (ii), the landowner, occupier or agent may, within 14 days thereafter, give notice in writing of his or her objection to the Commission, whereupon the licensee shall not proceed with the work or such part as is objected to until authorized by the Commission to do so.
- (5) In the event of disagreement over the quantum of any compensation to which a landowner is entitled pursuant to subsection (2) or of any other dispute relating to the installation or maintenance of facilities on or over private land or buildings, the matter shall be referred to the Commission.
- (6) To minimize disruption to landowners, a licensee shall, to the extent feasible, provide other licensees with access to its facilities and shall coordinate its installation or maintenance of facilities on or over private land or buildings.

## **56. LEASE OF CAPACITY**

- (1) A licensee may lease from a utility installation owner any capacity of electronic communications infrastructure or facility available on a utility installation.
- (2) The technical and financial offers for the lease of capacity under subsection (1) shall be published on the website of the Commission after the approval of the Commission and the Commission shall consult with ECTEL before giving its approval.
- (3) Any agreement for the lease of capacity must be in accordance with the technical and financial offers under subsection (2).
- (4) A licensee shall forward a copy of the agreement under subsection (3) to the Commission for information.

## 57. CONTRIBUTION TO UNIVERSAL SERVICE AND ACCESS FUND

- (1) A licensee shall contribute to the Universal Service and Access Fund.
- (2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 and in the case of a continuing offence to a fine not exceeding \$1,000 for each day that the offence continues after conviction.

## 58. DATA REPORTING

- (1) A licensee shall comply with the following data reporting obligations of the Commission and ECTEL —
  - (a) quarterly on the 14<sup>th</sup> day of the month following the end of the quarter, provide rates of mobile voice and broadband, fixed voice broadband services, fixed voice and subscriber television services;
  - (b) annually provide market share and geographical penetration rates of mobile voice and broadband services, fixed voice and broadband services and subscriber television services;
  - (c) annually on March 30 in each year, provide copies of standard consumer contracts in relation to mobile voice and broadband services, fixed voice and broadband services;
  - (d) annually on March 30 in each year, provide the terms and conditions of wholesale and standard non-residential consumer contracts including wholesale contracts with other licensees;
  - (e) prior to July 31 of each year, provide information on existing electronic communications network infrastructure that it holds, in full ownership or on the basis of a long-term right of use and where a licensee uses a hosting infrastructure of which it is not the owner, the licensee shall communicate the name of the infrastructure's owner and —
    - (i) in the case of wired networks, vector data geo tagged for an existing electronic communications network including an overhead wiring network and the location of the access or interconnection points,
    - (ii) in the case of mobile networks —
      - (A) existing radio sites and equipment deployed and resources available regarding the sites;

- (B) the number and identification name, geographic location and vector data geo tagged of the deployed sites;
  - (C) the number and type of towers deployed on each site;
  - (D) the identity of tower users;
  - (E) the total height of each tower, heights already used and those on which space is available in meters;
  - (F) the total load on the infrastructure, the charge used and the load available to third parties;
  - (G) the existence of a roaming agreement or of an interconnection or access agreement, if applicable;
  - (H) the power supply including electricity connection, presence and number of generators and solar panels;
  - (I) the number of shelters, storage facilities, occupied offices, space available in the shelters, storage facilities and the occupants of the shelters, storage facilities;
  - (J) the technology used to connect the site to the electronic communications network;
- (f) when capacity of a site is limited and does not allow the access to the site, provide justification for the equipment already deployed;
  - (g) annually within [120] days of the end of its reporting year, provide its annual report including audited financial statements;
  - (h) provide any other information as may be requested by ECTEL and the Commission.
- (2) The ECTEL and the Commission shall not disclose confidential commercially sensitive information received under subsection (1) except with the prior written consent of the licensee.
- (3) ECTEL and the Commission may, in the case of subsection (1)(f) –
- (a) post the list of towers and sites available for access on its websites;
  - (b) communicate information to the Utilities Authorities upon request.

- (4) Where ECTEL and the Commission requests other information under subsection (1)(g), the licensee shall provide the information within a period of one month of the request.
- (5) The Commission may conduct checks on site to verify the information supplied by a licensee under subsection (1).

## **59. NUMBER PORTABILITY**

- (1) A licensee shall offer number portability in accordance with the prescribed requirements.
- (2) The Minister may, by notice published in the [Official] Gazette specify the applicable deadline for all licensees to ensure that they possess the capabilities necessary to enable them to –
  - (a) export a number to another licensee; and
  - (b) import a number from another licensee.
- (3) Where a licensee provides an electronic communications service by means of an electronic communications network of another licensee, the first licensee and the licensee who owns the public electronic communications network shall co-operate, to the extent necessary in order to offer number portability, as if the public electronic communications network and the licensee were a single public electronic communications network.
- (4) A person shall not operate a clearing house for number portability unless the person holds a valid licence issued by the Minister.
- (5) A person who operate a clearing house under subsection (4) without holding a valid licence issued by the Minister, commits an offence and is liable on conviction on indictment to a fine not exceeding \$1,000,000.
- (6) A licensee who fails to co-operate with a clearing house commits an offence and is liable on conviction on indictment to a fine not exceeding 3% of the gross annual income of the previous year.

## **60. SPECTRUM**

A frequency authorization holder shall use the radio frequency spectrum granted by the Minister in accordance with the terms and conditions as contained within the frequency authorization document.

## **61. ROAMING**

A licensee shall comply with the national and regional standards applicable to roaming.

## **62. NUMBERING**

A licensee shall —

- (a) pay the annual fee on or before November 1 of each year for each number or block of numbers allocated to the licensee;
- (b) use numbers in accordance with the National Numbering Plan established and managed by the Commission.

## **63. TARIFFS**

- (1) Notwithstanding section 10(1)(e), tariffs for an electronic communications service, shall be determined by licensees in accordance with principles of supply and demand.
- (2) A licensee shall provide tariffs that are fair and reasonable and shall not discriminate among similarly situated persons.
- (3) A licensee shall publish the tariffs for electronic communications service by –
  - (a) publishing the tariffs in a directory, if appropriate;
  - (b) publishing current tariffs on his or her website;
  - (c) sending or providing a copy of the tariffs or any part of the tariffs to any customer or group of customers who requests such a copy; or
  - (d) placing a copy of the tariffs in every registered office and place of business owned or controlled by the licensee; or
  - (e) any other means which the Commission determines.
- (4) A licensee shall ensure that tariffs published under subsection (3) include information relating to –
  - (a) the name and address of the registered office of the licensee;
  - (b) a clear description of the electronic communications service offered;
  - (c) where any subscription or periodic rental charge is applicable, details of which electronic communications service is included within such charges;
  - (d) standard rates;
  - (e) details of standard discounts and special and targeted tariff schemes in respect of –
    - (i) access,
    - (ii) all types of usage charges, and

- (iii) any maintenance service;
- (f) details on any compensation or refund policy;
- (g) any type of maintenance offered;
- (h) standard contract conditions offered, including any relevant minimum contractual period;
- (i) the methods of dispute settlement.

#### **64. CONSUMER PROTECTION**

A licensee shall —

- (a) provide the prescribed information to consumers in the prescribed manner;
- (b) provide customer contracts in the prescribed manner and containing the prescribed terms and conditions;
- (c) advertise and promote an electronic communications service or electronic communications network as prescribed;
- (d) protect data and information in the prescribed manner;
- (e) carry out prescribed billing, charging and credit practices;
- (f) establish the prescribed complaints handling procedure and for the purpose of complaints, keep and maintain a Complaints Record for the purposes of registering complaints and a Complaints Record Tracking System for the purpose of tracking the status or resolution of complaints between itself and a complainant;
- (g) promote and protect the welfare and interest of consumers of electronic communications in accordance with the Regulations.

#### **65. NON-DISCRIMINATION**

A licensee shall not discriminate between persons who are in an equivalent situation and who acquire or make use of an electronic communications service in the market in which the licensee operates in relation to -

- (a) any fee or charge for the electronic communications service provided;
- (b) the performance characteristics of the electronic communications service provided; or
- (c) any other condition on which the electronic communications service is provided.

## **66. COMMUNICATIONS DURING AN EMERGENCY**

- (1) Where an emergency is declared under any other law, a licensee or frequency authorization holder of electronic communications or mass electronic communications systems shall give priority to requests and order for the transmission of voice or data that the Minister considers necessary in the interest of national security.
- (2) A licensee or frequency authorization holder may, if a facility is disrupted as a result of the emergency or during a period of emergency, use an electronic communications service for emergency communications in a manner other than specified in the licensee or frequency authorization or as prescribed.
- (3) The use of an electronic communications service for emergency communications shall be discontinued when normal electronic communications service is available or when the special use of the facility, equipment or electronic communications service is terminated by the Minister.
- (4) Where the Minister requires a licensee to give priority to communications of the Government, the communications shall have priority over all other communications but be in accordance with international standards.
- (5) A licensee or frequency authorization holder shall develop and co-operate in the development and implementation of plans for operating an electronic communications network and providing an electronic communications service during an emergency and periods of serious and substantial interruption in the provision of an electronic communications service.
- (6) The Minister may assume direct control of the electronic communications service and issue operating regulations.

## **67. NET NEUTRALITY**

- (1) Subject to subsection (2), a licensee shall adopt net neutrality.
- (2) Net neutrality is subject to reasonable network management.
- (3) The Minister shall, by Order published in the [Official] Gazette, on the recommendation of ECTEL, specify the manner in which net neutrality will be achieved.
- (4) In this section, “reasonable network management” includes practices, employed by a licensee to –
  - (a) reduce or mitigate the effects of congestion on the electronic communications network;

- (b) serve the purpose of grid maintenance and contribute to an efficient use of network resources;
- (c) address quality of service concerns; or
- (d) optimise overall transmission quality.

(5) Reasonable network management should be reasonable, proportionate, transparently disclosed, non-discriminatory and auditable, and not based on commercial considerations.

## **PART 6**

### **COMPETITION**

#### **68. ANTI-COMPETITIVE BUSINESS CONDUCT**

- (2) Subject to subsection (5), a licensee shall not engage in any anti-competitive business conduct which has the purpose or effect of substantially lessening competition in any aspect of electronic communications in [Name of ECTEL Contracting State].
- (2) The Commission, on the recommendation of ECTEL, may from time to time publish guidelines which clarify the meanings of substantial lessening of competition in electronic communications in [Name of ECTEL Contracting State] and such guidelines may include reference to the following —
  - (a) agreements between licensees, decisions by associations of licensees and concerted practices by licensees which have as their object or effect the prevention, restriction or distortion of competition within [Name of ECTEL Contracting State];
  - (b) actions by which a licensee abuses its significant market power within [Name of ECTEL Contracting State]; or
  - (c) any other like conduct by licensees whose object or effect is to frustrate the benefits expected from the establishment of the CARICOM Single Market and Economy and the OECS Economic Union and of ECTEL.
- (3) Subject to subsection (5), the clauses, agreements and commitments generally having the object or effect of restricting, limiting or affecting competition are void.
- (4) Any exclusive right for the provision of an electronic communications network or an electronic communications service is prohibited.
- (5) A licensee shall not be treated as engaging in anti-competitive business conduct if he or she establishes that the activity complained of —

- (a) contributes to —
    - (i) the improvement of production or distribution of goods and electronic communications service, or
    - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
  - (b) imposes on another licensee affected only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a) and does not afford the licensee engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or an electronic communications service.
- (6) **A licensee shall not –**
- (a) refuse to make available in a timely manner to other licensees, technical information about facilities and commercially relevant information necessary for the exercise of their activity;
  - (b) use information obtained from competitors for anti-competitive purposes;
  - (c) use an electronic communications service not subject to competition to subsidize an electronic communications service which is subject to competition.
- (7) In this section “**anti-competitive business conduct**” includes –
- (a) the direct or indirect fixing of purchase or selling prices;
  - (b) the limitation or control of production, markets, investment or technical development;
  - (c) the artificial dividing up of markets or restriction of supply sources;
  - (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;
  - (e) making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by nature or according to commercial practice, have no connection with the subject matter of the contract;
  - (f) unauthorized denial of access to networks;

- (g) predatory pricing;
- (h) price discrimination;
- (i) exclusionary vertical restrictions; and
- (j) bid-rigging.

## **69. ANTI-COMPETITIVE AGREEMENT, ARRANGEMENT OR UNDERSTANDING**

- (1) Subject to subsection (2), a licensee shall not enter into or give effect to any agreement, arrangement or understanding –
  - (a) including an agreement, arrangement or understanding for an acquisition which has the purpose or has, or is likely to have, the effect of substantially lessening competition in any market for the supply of an electronic communications service or of any product used in connection with an electronic communications service;
  - (b) with another licensee which has the purpose or has, or is likely to have, the effect of fixing, controlling or maintaining the prices for, or any discount, allowance, credit or rebate for, an electronic communications service or any product used in connection with an electronic communications service.
- (2) Subsection (1) does not apply to an agreement, arrangement or understanding which -
  - (a) contributes to –
    - (i) the improvement of production or distribution of goods and electronic communications service, or
    - (ii) the promotion of technical or economic progress;
  - (b) imposes on the licensees affected only such restrictions as are indispensable to the attainment of the objectives under paragraph (a) and does not afford the licensee engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or electronic communications service concerned.

## **70. REASONABLE ALLOWANCE**

Nothing in **section 69** prevents a licensee from making a reasonable allowance, subject to the approval by the Commission, for the cost of providing an electronic communications service where the difference results from –

- (a) different quantities in which the electronic communications service is supplied;
- (b) different transmission capacities needed for the supply of the electronic communications service;
- (c) different places from or to which the electronic communications service is provided;
- (d) different periods for which the electronic communications service is provided;
- (e) different performance characteristics of the electronic communications service provided; or
- (f) doing an act in good faith to meet a price or benefit offered by a competitor.

## **71. REGULATION OF COMPETITION**

- (1) Without prejudice to the competence of any court or the Competition body in accordance with the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, the Commission shall have competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws whether of a general or specific nature, as it relates to electronic communications in [Name of ECTEL Contracting State].
- (2) Where an investigation by the Commission involves anti-competitive business conduct which has the effect of substantially lessening competition in a relevant market in [Name of ECTEL Contracting State], the Commission may consult the Competition body established for [Name of ECTEL Contracting State].
- (3) In consulting with the Competition body, the Commission shall send all documents relevant to the investigation to the Competition body, subject to the Competition body applying the same confidentiality obligations regarding trade secrets as the Commission.
- (4) A decision of the Competition body under this section is binding on the Commission and is enforceable in accordance with Rules made by the Supreme Court under the Supreme Court Judicature Act, as though it were a judgement of the High Court.
- (5) The Commission may share information with other competition bodies.

## 72. MARKET ANALYSIS AND SIGNIFICANT MARKET POWER

- (1) Pursuant to its powers under Article 5 of the Treaty, ECTEL -
  - (a) shall adopt a recommendation which identifies relevant product and electronic communications service markets within the electronic communications sector in [Name of ECTEL Contracting State], whose characteristics may justify the imposition of specific regulatory obligations set out in this Act;
  - (b) on behalf of the Commission and in consultation with it, shall –
    - (i) perform market analysis in [Name of ECTEL Contracting State]
    - (ii) assess if one or more licensees have significant market power in a relevant market in [Name of ECTEL Contracting State] and designate the licensee as having significant market power.
- (2) Prior to conducting the market analysis under subsection (1)(b)(i), ECTEL and the Commission shall publish the objectives and methodology to be used and after publish the results.
- (3) In assessing significant market power under subsection (1)(b)(ii), the Commission shall -
  - (a) provide ECTEL with all required information;
  - (b) adopt decisions relating to market analysis and determination of licensees that have significant market power in the relevant market in compliance with the findings of ECTEL.
- (4) ECTEL and the Commission shall in conducting market analysis and assessment of significant market power in accordance with the guidelines relating to market analysis and assessment of significant market power for an electronic communications network and services.
- (5) In assessing the significant market power of a licensee, ECTEL and the Commission shall take into account -
  - (a) the ability of a person to behave to an appreciable extent independently of or jointly with competitors, customers and consumers;
  - (b) the market share of the licensee or the traffic volume of the licensee with respect to the size of the relevant market;
  - (c) the possible significant market power of the licensee on an upstream market strengthening its leading position on a downstream market;

- (d) control of the means of access to the retail customer;
  - (e) access to financial resources and experience in providing products and electronic communications services;
  - (f) more generally, the ability of the licensee to influence market conditions.
- (6) The Commission shall prepare a list of licensees designated as having significant market power in the relevant market.
- (7) Notwithstanding this section, a licensee may apply to the Commission to have its status as having significant market power reviewed, on such terms and according to such procedures as the Commission may determine, acting on a recommendation from ECTEL.

### **73. ABUSE OF SIGNIFICANT MARKET POWER**

- (1) Pursuant to **section 68(2) (b)**, a licensee shall not take advantage of its significant market power in a market for the supply of an electronic communications service with a view to preventing, restricting or distorting competition in the market.
- (2) Without prejudice to subsection (1), in determining whether a licensee has abused its significant market power, ECTEL in consultation with the Commission, shall take into account the provisions of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy and its further amendments or the Revised Treaty of Basseterre establishing the OECS Economic Union.

### **74. OBLIGATIONS ON LICENSEES HAVING SIGNIFICANT MARKET POWER**

- (1) Where, following a market analysis, a licensee is designated as having significant market power in a given market, the Commission on the recommendation of ECTEL may impose, one or more of the following obligations –
- (a) the obligation to interconnect its electronic communications network with the network of another licensee for the purpose of originating, transiting or terminating traffic, and to provide such interconnection under prescribed terms and conditions;
  - (b) the obligation to provide wholesale services to other licensees for resale and, where necessary, to offer prescribed minimum features, functionality or other attributes;
  - (c) the obligation to meet reasonable requests for access to, and the use of, specified network elements and relevant facilities and services and to

provide such access under prescribed specifications, terms and conditions including, as the circumstances may warrant, the obligation to provide —

- (i) co-location with third parties or other forms of access to infrastructure, including the access to ducts, conduit, buildings, cabinets or masts,
  - (ii) unbundled access to specified network elements including access to local loop and broadband capacities available on a terrestrial electronic communications network, backhaul facility, duct, dark fiber and associated database,
  - (iii) information about technical interfaces, protocols or key technologies that are required for the interoperability of services and timely information with regard to any planned changes to the same,
  - (iv) software systems necessary for provisioning electronic communications, including operational support systems, and
  - (v) up-to-date information systems or databases containing information relating to the location or availability of particular mandated access components or for ordering, provisioning, maintenance and repair requests and billing;
- (d) the obligation to meet reasonable requests for access under prescribed terms and conditions including, as the circumstances may warrant —
- (i) access to physical infrastructure including buildings, ducts and masts,
  - (ii) access to number translation or systems offering equivalent functionality,
  - (iii) access to fixed and mobile networks, in particular, access necessary to facilitate virtual network services,
  - (iv) access to subscription audio-visual services; and
  - (v) such other forms of access to wireline or wireless network features and functionality as prescribed to promote or protect effective competition in a relevant market;
- (e) the obligation to provide access or interconnection or both subject to prescribed terms and conditions that are transparent, including the publication of reference access or reference interconnection offers or both in the prescribed manner;

- (f) the obligations of transparency and non-discrimination in the provision of retail services to retail customers and wholesale services to other licensees, including the requirements to —
  - (i) apply equivalent terms and conditions in equivalent circumstances to retail customers or to other licensees; and
  - (ii) in the case of wholesale services, to provide facilities, services and information to others under the same conditions and of the same quality as it provides for its own internal purposes or to those of its divisions, subsidiaries, partners and affiliates;
- (g) the obligation to comply with prescribed requirements relating to the pricing of wholesale and retail tariff regulation regimes of electronic communications, including obligations relating to the cost orientation of prices and transparency;
- (h) the obligation to provide prescribed types of wholesale access or interconnection prior to the introduction of prescribed downstream services that rely on such inputs by a licensee or its subsidiaries, partners and affiliates;
- (i) the obligation to establish and maintain a cost accounting system in accordance with cost allocation and separation rules that are prescribed for the purpose of ensuring that a vertically integrated licensee's costs and revenues are properly attributed or assigned to specific activities and facilitate the detection of anti-competitive cross-subsidies by an independent auditor;
- (j) the obligation to publish audit information in a format that contributes to an open and competitive market while preserving the confidentiality of accounting data prescribed as commercially sensitive;
- (k) the obligation not to unreasonably bundle other services with a prescribed service, whether provided by the licensee, its subsidiaries, partners or affiliates, including a prohibition against —
  - (i) anti-competitive tying arrangements, and
  - (ii) offering bundles at retail prices that are predatory or cannot be replicated by an efficient competitor;
- (l) the obligation to provide carrier selection and related terms and conditions in the prescribed manner;
- (m) any other obligations that the Commission, on the recommendation of ECTEL determines.

- (2) In order to support the retail tariff regulation regime under subsection (1)(g), a determination of the cost accounting methods should be made publicly available [by the Commission on the recommendation of ECTEL], showing at least the main categories under which costs are grouped and the rules used for the allocation of costs.
- (3) Where market failures persist despite the implementation of the obligations under subsection (1), the Commission, on the recommendation of ECTEL, may direct a licensee to –
  - (a) transfer its wholesale supply business to an independent economic entity, distinct of the economic entity operating retail electronic communications service or;
  - (b) divest specified assets under the conditions set out by the Commission and the Commission shall approve the company interested in acquiring the divested assets before divestment occurs.
- (4) Where a licensee that has a significant market power fails to comply with subsections (1) and (3), the Commission may apply for injunctive relief under **section 96**.
- (5) In assessing the proportionality of the obligations it is likely to impose on a licensee having significant market power, the Commission shall take into account the following criteria -
  - (a) the technical and economic viability of using or setting up competing facilities, given the pace of market development and the nature and type of interconnection and access involved;
  - (b) the feasibility of providing the access proposed, in view of the available capacity and technical conditions;
  - (c) the investment made by the licensee including a reasonable rate of return on capital employed efficiently, in view of the risks involved;
  - (d) the need to preserve long-term competition;
  - (e) any relevant intellectual property rights;
  - (f) the available offers and prices in available markets;
  - (g) the real impact of the provision of competition;
  - (h) the desirability of securing an electronic communications service throughout [Name of ECTEL Contracting State].
- (6) The obligations imposed on licensees having significant market power on one or more markets pursuant to subsections (2) and (3) are subject to a public decision of the Commission, accessible to all interested parties but confidential information including trade secrets is excluded.

## **75. POWERS OF COMMISSION UNDER THIS PART**

- (1) Without prejudice to its powers to regulate the tariff of interconnection or access offers, the Commission may –
  - (a) carry out tests of non-discrimination on the tariffs of the on-net and off-net offers of the licensees on the retail market to ensure that the price differential between on-net and off-net offers, including promotional offers, do not unduly strengthen its market share at the expense of its competitors;
  - (b) carry out tests to ensure that the structure and level of prices, including promotional offers, of a licensee that is vertically integrated or has significant market power, on the retail market, does not prevent its competitors from providing a competitive offer in reasonably profitable conditions;
  - (c) regulate the difference between the prices of on-net and off-net offers of licensees on the retail market;
  - (d) regulate the abuse of promotional offers in terms of duration and frequency and require the submission of appropriate information to the Commission;
  - (e) request the modification of the licensee's offer on the market; request the suspension of the licensee's offer on the market, in the case of serious and immediate damage to competition in the electronic communications market.
- (2) In the exercise of its powers under subsection (1), the Commission shall consult with ECTEL.

## **PART 7**

### **UNIVERSAL SERVICE AND ACCESS FUND**

#### **76. UNIVERSAL SERVICE AND ACCESS FUND**

- [(1) There shall be established a fund to be known as the Universal Service and Access Fund./There shall continue to be a fund to be called the Universal Service and Access Fund./The fund established under section [ ] of the Telecommunications Act known as the universal service fund is preserved and continues in existence for the purposes of this Act but shall be known after the commencement of this Act as the Universal Service and Access Fund.]

- (2) The Minister shall, by Order published in the [Official] Gazette, on the recommendation of ECTEL, specify —
- (a) **the electronic communications service, equipment, geographic area, population group or institution to which universal service and access applies; or**
  - (b) the percentage of the gross annual revenue which a licensee shall contribute to the Universal Service and Access Fund, except that the percentage to be contributed shall be the same for all licensees.
- (3) The Universal Service and Access Fund consists of —
- (a) contributions by licensees as specified under subsection (2);
  - (b) any funds that may be directly appropriated by Parliament for purposes of the Fund; and
  - (c) official grants, donations, bequests or other contributions, or transfers granted by an individual or other legal entity.

## 77. OBJECTIVES

The objectives of the Fund are to —

- (a) ensure efficient access to and use of an electronic communications network and an electronic communications service throughout [ECTEL Contracting State] with special focus on rural, under-served and maritime areas, with a goal to help promote social, educational and economic development;
- (b) ensure the reasonable availability and affordability of a basic and advanced electronic communications service over both wired and wireless networks at the community, household and individual levels, particularly where the commercial electronic communications market may be unable to deliver such services in a financially viable manner independently, as well as to the physically challenged, elderly, and indigent communities;
- (c) provide support for the introduction and expansion of an electronic communications service to institutions;
- (d) promote technological innovation in electronic communications;
- (e) provide human resource training and capacity building in support of a Fund project;
- (f) support the development of locally relevant information, content or applications to be delivered over an electronic communications network;  
or
- (g) **provide grant funds for information and communication technology entrepreneurial start-ups.**

## 78. MANAGEMENT OF UNIVERSAL SERVICE AND ACCESS FUND

- (1) The Commission shall establish mechanisms for proper management of the Fund.
- (2) Without limiting the generality of subsection (1), the Commission –
  - (a) may appoint a Fund Administrator under subsection (3) to manage the Fund;
  - (b) shall —
    - (i) develop appropriate indicators of electronic communication access within [ECTEL Contracting State],
    - (ii) identify appropriate targets for moving toward universal service and access nationwide within a reasonable time frame,
    - (iii) monitor and enforce the mechanism for the assessment, collection and recovery of the required contributions to the Fund,
    - (iv) liaise and consult with the Minister and ECTEL to promote consistency between the operation of the Fund and national and regional electronic communication policies,
    - (v) liaise and consult with licensees and other industry stakeholders on the status of electronic communication industry technologies, markets, and other relevant developments.
- (3) The Commission may appoint as Fund Administrator, a person who —
  - (a) is a graduate of an accredited university, or a chartered or certified institute;
  - (b) has knowledge and experience in one or more of the following:
    - (i) management,
    - (ii) finance,
    - (iii) accounting,
    - (iv) electronic communications,
    - (v) or any other related field to ensure adequate performance of the requirements of the position; and
  - (c) does not have a conflict of interest with regard to the principal functions of the Fund.
- (4) A person who fails to disclose a conflict of interest to the Commission is liable to have his or her appointment as Fund Administrator summarily terminated without compensation.
- (5) Subject to subsection (6) the Fund Administrator shall be appointed on such terms and conditions as shall be set out in the contract of employment.
- (6) The Fund Administrator shall report to the Chief Executive Officer for all personnel and administrative matters, but shall submit his or her recommendations for Fund Project decisions both to the Chief Executive Officer and to the Chairperson.

- (7) Subject to the direction of the Commission, the Fund Administrator shall do all things necessary for and incidental to the proper functioning of the Fund.
- (8) The functions of the Fund Administrator include, to —
  - (a) assist the Commission in identifying potential projects for Fund support;
  - (b) define, prepare and distribute bidding documents and other documentation for projects approved for Fund financing and implementation;
  - (c) supervise and monitor Fund projects;
  - (d) participate in the selection of consultants to support Fund project implementation;
  - (e) sensitize the public of Universal Service and Access Fund matters;
  - (f) supervise the preparation and monitoring of the Fund’s Operating budget;
  - (g) prepare progress reports on Fund Projects and overall Fund operations, and prepare or cause to be prepared the financial statements of the Fund for the approval of the Commission;
  - (h) request and receive project proposals;
  - (i) prepare bid evaluation reports; and
  - (j) any other function assigned to the Fund Administrator by the Commission.

**79. ASSISTANCE WITH MANAGEMENT OF THE FUND FROM ECTEL**

- (1) ECTEL shall provide assistance to the Commission in relation to the performance of technical tasks associated with the management of the Fund.
- (2) Without limiting the generality of subsection (1), ECTEL may contribute financial, accounting, technical and legal expertise in –
  - (a) the maintenance of Fund accounts; or
  - (b) electronic communications market analysis and review of Fund objectives.

**80. ALLOCATION OF FUNDS**

The Fund may be allocated to **finance** Fund projects, **grant funds to information and communication technology entrepreneurial start-ups** or to promote universal service and access.

**81. FUND PROJECTS**

- (1) In identifying projects for fund allocation the Commission -
  - (a) shall promote the establishment of efficient, self-sustaining entities, which may continue to expand access to electronic communications on their own initiative, requiring the minimum amounts of Fund resources possible;

- (b) may use the Fund to support projects that may not be economically feasible without Fund support;
  - (c) may use the Fund to finance projects to the extent necessary to create adequate economic incentives for investors;
  - (d) shall take into account the policy of Government when determining which fund projects would receive funding in any given financial year.
- (2) The Commission shall, in the prescribed manner —
- (a) determine, in consultation with ECTEL and the public and industry stakeholders, appropriate socio-economic criteria to identify the geographic areas, population groups, institutions and organizations that may be eligible to benefit from Fund projects;
  - (b) approve the application, qualification, and competitive bidding conditions for the awarding of funds under designated projects;
  - (c) evaluate and define the scope and terms of potential Fund projects;
  - (d) monitor Fund projects and enforce the terms of Fund project contracts;
  - (e) determine whether sole source procurement can be used.
- (3) ECTEL shall provide assistance to the Commission in relation to the performance of technical tasks associated with the allocation of Fund projects.
- (4) Without prejudice to subsection (3), ECTEL may contribute financial, accounting, technical and legal expertise in one or all of the following –
- (a) identification of prospective Fund projects;
  - (b) conduct of project appraisals for short-listed projects;
  - (c) development of documents and other materials for the competitive bidding process, including bidding documents;
  - (d) valuation of bidder eligibility and technical and financial proposals;
  - (e) evaluation of bids;
  - (f) preparation of annual reports, project reviews and monitoring;
  - (g) reviewing and monitoring Fund projects.
- (5) ECTEL shall recommend to the Commission whether sole source procurement may be used.

## **82. FUND BANK ACCOUNTS**

- (1) The Fund's income shall be kept in accounts, separate and independent from the other operating accounts of the Commission.
- (2) The Fund's income shall be initially deposited in a designated Fund bank account and shall be disbursed upon authorization of the Commission for specific Fund related activities in accordance with the guidelines.

### **83. BUDGETS**

- (1) The Commission shall prepare and keep annually through accounting allocations –
  - (a) a Fund Projects Budget; and
  - (b) an Operating Budget.
- (2) The Fund Projects Budget **under subsection (1)(a)** shall be allocated to Fund Projects that have been selected and approved for financing in accordance with the Regulations.
- (3) The Operating Budget under subsection (1)(b) shall not exceed 10% of the Fund Projects Budget.
- (4) Grant funds for information and communication technology entrepreneurial start-ups shall not exceed 10% of the Fund Projects Budget.
- (5) The Minister shall, by Order published in the [Official] Gazette, on the recommendation of ECTEL, vary the percentage (%) of the Operating Budget to be utilized in relation to subsection (3) or to be applied in relation to Grant Funds in subsection 4.
- (6) Before the end of the financial year, the Commission shall prepare budget forecasts for the Fund for the following financial year, subject to the prescribed Fund Operating Plan.

### **84. ACCOUNTS AND FINANCIAL AUDIT**

- (1) The Commission shall keep books of accounts and maintain proper records of the operations of the Fund in accordance with international accounting standards.
- (2) The accounts of the Fund may at any time and shall, at the end of each financial year, be audited by an independent auditor appointed by the Commission on such terms and conditions as the Commission may determine.

### **85. ANNUAL REPORT**

The Commission shall include in its annual report:

- (a) the audited financial statements of the Fund;
- (b) details of activities supported by the Fund; and
- (c) details of awards of contracts.

## PART 8

### OTHER OFFENCES

#### 86. CONNECTION OF EQUIPMENT

- [(1) A person shall not connect any equipment to a public electronic communications network without the written approval of the Commission.
- (2) The Commission shall, before giving approval under subsection (1), take into account the recommendations of ECTEL relating to equipment approval.
- (3) A person who connects any equipment contrary to this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding 2 years or to both.]

#### 87. INTERFERENCE, [INTERCEPTION] OR DESTRUCTION OF NETWORK

- (1) A person shall not —
  - (a) use or cause to be used anything that is capable of causing electromagnetic interference with the normal functioning, or use of a licensed electronic communications network or operation of apparatus, unless such a thing is equipped with filters, suppressors or other devices, or is otherwise modified to minimise the interference to a prescribed level;
  - (b) [intercept] or interrupt any message transmitted over a public electronic communications network without the consent of the sender except as provided under this Act or any other enactment; or
  - (c) remove, damage, or destroy any electronic communications network, or apparatus, except in accordance with this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction —
  - (a) in the case of a first offence, to a fine not exceeding \$15,000; or
  - (b) in the case of a subsequent offence, on indictment to a fine not exceeding \$30,000 or to imprisonment for a period not exceeding 4 years or to both.

#### 88. DISCLOSURE OF PERSONAL INFORMATION

- (1) A licensee shall not disclose personal information relating to a retail customer except —
  - (a) with the consent of the retail customer; or
  - (b) under a court order under this Act or any other enactment.

- (2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 4 years or to both.

**89. GIVING FALSE INFORMATION**

- (1) A person shall not knowingly give false or misleading information to the Commission.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

**90. CROSS-SHAREHOLDING**

- (1) A licensee shall not directly or indirectly hold share capital or voting rights of another licensee in an ECTEL Contracting State.
- (2) A licensee who contravenes subsection (1) is liable on summary conviction to a fine of \$50,000 or if the offence is a continuing offence, the licensee is liable to a further fine not exceeding \$5,000 for every day that the offence continues after conviction and in addition to revocation of the licence.

**91. HARMFUL INTERFERENCE TO FACILITY OR TERMINAL EQUIPMENT**

- (1) A licensee or frequency authorization holder shall not operate a facility or terminal equipment in a manner that is likely to cause harmful interference.
- (2) Where the Commission issues a direction to the licensee or frequency authorization holder to cease operating the facility or terminal equipment, the licensee or frequency authorization holder shall not resume use of the facility or terminal equipment until the condition causing the harmful interference has been corrected.
- (3) A licensee or frequency authorization holder who operates a facility or terminal equipment in contravention of subsections (1) and (2) commits an offence and is liable on summary conviction to a fine not exceeding \$1000 or if the offence is a continuing offence, the licensee or frequency authorization holder is liable to a further fine not exceeding \$5,000 for every day that the offence continues after conviction.

**92. LIABILITY OF BODY CORPORATE**

Where a breach of a licence or offence has been committed under this Act by a body corporate the person who at the time of the breach or commission of the offence was

director, manager, partner or other officer, is liable for that breach or offence and liable to the same penalty if having regard to —

- (a) the nature of his or her functions; and
- (b) his or her reasonable ability to prevent that breach or offence, the breach or offence was committed with his or her consent or connivance, or he or she failed to exercise reasonable diligence to prevent the breach.

## **PART 9 INVESTIGATION**

### **93. INVESTIGATION OF BREACHES**

- (1) Where the Commission reasonably suspects that a licensee or a frequency authorization holder is in breach of this Act, the Regulations or a licence or a frequency authorization or where an allegation of breach is made to the Commission against a licensee or frequency authorization holder.
- (2) **On receipt of an allegation under subsection (1), the Commission shall determine whether there is reason to suspect that there is a breach of this Act, the Regulations or the licence or frequency authorization and there appears to be substantial damage or risk of substantial damage arising from the breach.**
- (3) **If the Commission determines that an investigation is required under subsection (1) or (2), the Commission shall in writing issue an investigation notice and an inspector may conduct of an investigation it considers necessary in relation to the licensee or frequency authorization holder.**
- (4) **An investigation notice under subsection (3) must state —**
  - (a) **that the Commission is investigating an alleged breach of this Act, the Regulations or a licence or frequency authorization;**
  - (b) **the reasons for the suspicion of the breach, including a matter of fact or law which is relevant to the investigation;**
  - (c) **that information is required from the licensee or frequency authorization holder in order to proceed with the investigation.**
- (5) An inspector referred to under subsection (2) may subject to subsections (6) (7), (8),(9), (10), (11) and (12) perform the following in the course of the investigation —
  - (a) request the production of documents and records in the custody or control of the licensee or frequency authorization holder;
  - (b) request the appearance of an officer or employee of the licensee or frequency authorization holder, or any other person for the purpose of

- ascertaining compliance with this Act, the Regulations or the licence or frequency authorization;
- (c) inspect, examine or make copies of any document or record in the possession of the licensee or frequency authorization holder relevant to the licence or frequency authorization;
  - (d) require the verification of income and all other matters pertinent to the electronic communications service, the licence or the frequency authorization;
  - (e) enter and inspect any vehicle, vessel, aircraft or premises occupied or owned by the licensee or the frequency authorization holder for the purpose of ascertaining compliance with this Act, the Regulations, the licence or the frequency authorization;
  - (f) seize, remove or impound a document relating to the licence or frequency authorization for the purpose of examination and inspection; or
  - (g) seize any apparatus relating to the licence or frequency authorization for the purpose of examination and inspection.
- (6) A person shall not refuse or fail, without reasonable excuse, to appear before the Commission, having been required to do so under subsection (5) (b).
- (7) A person who contravenes subsection (6) commits an offence, and is liable, on summary conviction, to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 6 months or to both.
- (8) An inspector shall not enter a vehicle, ship, vessel, aircraft, or premises in exercise of the powers conferred on him or her 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 or she does not, the inspector first obtains a search warrant under **section 94**.
- (9) An inspector shall not seize apparatus in exercise of the powers conferred on him or her by subsection (5) without a court order.
- (10) An inspector shall, on entering the vehicle, ship, vessel, aircraft, or premises identify himself or herself to the person in charge of the vehicle, ship, vessel, aircraft or premises, at the time of entry, by showing the person the search warrant obtained under **section 94** together with his or her identity card.
- (11) An inspector shall, on completing the search, leave with the person in charge of the vehicle, ship, vessel, aircraft, or premises, a receipt in which it is recorded a list of documents or extracts taken by the inspector.
- (12) An inspector may copy a document removed by him or her **under subsection (5)** of this section, and return the document to the owner or person in charge of the document.
- (13) **In determining matters concerning the breach, the Commission in arriving at its decision –**

- (a) shall provide the licensee or frequency authorisation holder with an opportunity to make representation on the matter before the Commission;
  - (b) may provide an opportunity for the public to make representation in connection with the material issues;
  - (c) shall give consideration to the representations of the licensee or frequency authorization holder;
  - (d) shall, if there has been a public consultation, give consideration to the public comments received;
  - (e) shall not be bound by technicalities, legal forms or rules of evidence;
  - (f) shall act as expeditiously as a proper consideration of the matters may allow, having regard to the need to carefully and quickly inquire into and investigate the breach and matters affecting the merits and fair settlement of the matter;
  - (g) may inform itself of any matter relevant to the breach in any way it thinks appropriate.
- (14) The Commission's decision and directions shall be non-discriminatory and the Commission shall treat similarly situated parties in the same manner and on the same basis.
- (15) During an investigation the Commission may direct a licensee or frequency authorization holder to cease and desist from a specified conduct, if the Commission is satisfied that –
- (a) there is prima facie evidence that the licensee or frequency authorization holder breached this Act, the Regulations, licence or frequency authorization;
  - (b) continuation of the licensee or frequency authorization holder's conduct is likely to cause serious harm to other licensees or frequency authorization holders, consumers or the general public;
  - (c) the potential harm in allowing the licensee or frequency authorization holders to continue its conduct outweighs the burden on the licensee or frequency authorization holder;
  - (d) it is in the public interest.
- (16) If the Commission determines that the licensee or frequency authorization holder has breached this Act, the Regulations, licence or frequency authorization, the Commission after consultation with ECTEL may take the following enforcement actions –
- (a) direct the licensee or frequency authorization holder to cease engaging in the provision of the service or use of the particular frequency;

- (b) direct the licensee or frequency authorization holder to take specific remedial action and provide proof to the satisfaction of the Commission that the remedial action has been undertaken;
  - (c) refer the matter to the Director of Public Prosecutions for the institution of criminal proceedings.
- (17) If the licensee or frequency authorization holder fails to comply with subsection (16) (a) and (b) the Commission shall advise ECTEL by submitting a full report on the matter.
- (18) ECTEL on review of the report submitted in accordance with subsection (17) shall make further recommendations to the Commission.

#### 94. SEARCH WARRANT

- (1) Where the Commission reasonably suspects that a person is contravening a provision under this Act, an inspector may lay before a Magistrate, an information on oath setting out the grounds for the suspicion and apply for the issue of a warrant to search the vehicle, ship, vessel, aircraft or premises where the electronic communications service is believed to be provided or the electronic communications network is believed to be operated.
- (2) Where an application is made under subsection (1) for a warrant, the Magistrate may issue a warrant authorizing an inspector, whether named in the warrant or not, with such assistance, including assistance from a police officer and by such force as is necessary and reasonable, to enter upon the vehicle, ship, vessel, aircraft or premises, to search and inspect the premises and-
- (a) examine, inspect, make copies of, seize or remove any document or record; and
  - (b) seize any equipment or other property;
- found on the premises in the course of the search that the inspector has reasonable grounds to believe is being used in the contravention of a provision under this Act.
- (3) A person who –
- (a) destroys or alters, or causes to be destroyed or altered, any document, record, equipment or other property required under subsection (2); or
  - (b) hinders, obstructs, prevents or interferes with an inspector under this section,
- commits an offence and is liable on conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 3 years or to both.
- (4) Any document, record, equipment or other property seized under a search warrant shall where legal proceedings —

- (a) are not commenced within a period of [180] days from the date of seizure of the document, record, equipment or other property be returned to the owner; or
  - (b) are commenced before the expiry of the [180] days, be kept until the conclusion of the proceedings.
- (5) Where a person is convicted of an offence under this Act in respect of any document, record, equipment or other property seized under this Part, the court may order the forfeiture of that document, record, equipment or other property seized.

#### **95. OBTAINING OR PRESERVING EVIDENCE**

An inspector shall take any steps or measures which appear to him or her desirable for the purposes of obtaining or preserving any evidence which relates to an application for dispute resolution and may to that end obtain the assistance of any police officer.

#### **96. FORFEITURE AND INJUNCTIVE RELIEF**

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

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

### **PART 10**

## **DISPUTE RESOLUTION**

#### **97. APPLICATION FOR DISPUTE RESOLUTION**

- (1) Where —
- (a) after 30 days of making a complaint under section 64(f), a licensee is unable to resolve the complaint of a retail customer or other members of the public;
  - (b) after having negotiated for a period of at least 60 days, licensees fail to conclude an interconnection or access agreement under this Act;
  - (c) after exhausting the dispute resolution process incorporated in an interconnection or access agreement and reference interconnection or access offer, a dispute arises between two licensees on matters related to the interconnection or access agreement or a reference interconnection or access offer,

either party may file an application in the prescribed form with the Commission for assistance with resolution of the dispute.

- (2) Where the Commission receives an application under subsection (1), the Commission shall give a certified copy of the application to the applicant.

**98. REQUEST FOR FURTHER INFORMATION**

- (1) Upon receipt of an application under **section 97**, the Commission shall review the application and request such additional information from a party as may be required.
- (2) Where in respect of an application the Commission requires information in writing, the information must be furnished in the prescribed format for presentation of such information.

**99. NOTIFICATION OF LICENSEE**

- (1) Immediately after receipt of an application under **section 97**, the Commission shall, in writing, notify the licensee of the substance of the application unless in the Commission's opinion, to do so might adversely affect or hinder any investigation that is being or may be carried out in respect of the application.
- (2) A licensee who is notified of an application under subsection (1) shall make a record of the application in the Complaints Record.

**100. RESPONSE BY LICENSEE**

Where a licensee is notified under **section 99**, the licensee may, within 10 days submit a response to the application to the Commission.

**101. PROCEDURE FOLLOWING RECEIPT OF APPLICATION AND RESPONSE**

- (1) The Commission shall assess the application and the response of the licensee, if provided, and may –
  - (a) where appropriate, require the retail customer to negotiate with the licensee;
  - (b) investigate the application;
  - (c) where the application indicates that a serious issue has arisen or a sufficient number of applications indicate that a policy issue has arisen, forward such issue and documentation to ECTEL for consideration and advice concerning impact on regional policy issues;
  - (d) where an application involves a dispute between licensees, refer the application to ECTEL in accordance with Article 13 of the Treaty;
  - (e) wherever practicable use conciliation, mediation or arbitration processes to resolve the dispute in the prescribed manner;

- (f) refer the application to the Competition body;
  - (g) refer the application to the [Consumer Protection Board];
  - (h) refer the application to the Tribunal; or
  - (i) refer the application to any other applicable body.
- (2) The Commission shall give notice in writing to the applicant and the licensee of the decision under subsection (1), giving reasons for such decision.
- (3) Notwithstanding subsection (1), the Commission may prior to making a decision, require further information to be furnished by the applicant or licensee or any other person.

#### **102. FRIVOLOUS APPLICATIONS**

- (1) Where the Commission is of the view that an application is of a frivolous nature, the applicant shall be informed, in writing, that no investigation shall be undertaken in the matter or that investigations have been discontinued.
- (2) Where a decision is taken not to investigate or to discontinue investigations under subsection (1), the Commission shall, within 7 days inform the licensee and the applicant.
- (3) Notwithstanding subsections (1) and (2), where the Commission is of the opinion that the disposal of an application was obtained as a result of a misunderstanding, threat or other improper pressure, the Commission may order that the application continue to be dealt with, giving written reasons for its decision to the applicant and the licensee.

#### **103. NOTICE OF DISCONTINUANCE AND LIABILITY FOR COSTS**

- (1) An applicant or licensee may notify the Commission by notice of discontinuance in the prescribed form that he or she wishes to discontinue the application.
- (2) Notwithstanding the provisions of subsection (1), the applicant or licensee is liable for all costs incurred up to the date of discontinuance.
- (3) A notice of discontinuance under subsection (1) shall be signed by the applicant and licensee.

#### **104. EXPEDITIOUS RESOLUTION OF DISPUTES**

- (1) The Commission shall, subject to **section 105**, use its best efforts to resolve a dispute within 60 days from the date an application is made under **section 97**.
- (2) Without limiting the generality of subsection (1), the Commission shall take steps to resolve a dispute as expeditiously as practicable having regard to —
- (a) the matters in dispute;

- (b) preserving any agreements between the parties over issues that are not in dispute; and
- (c) any time limits for resolving the dispute as set out in this Act.

#### **105. REDUCTION OR EXTENSION OF TIME**

- (1) Notwithstanding the provisions of this Act, the Commission may, on the application of the applicant or licensee or on its own motion, and if the Commission determines it necessary to a fair resolution and in the best interests of the public, reduce or extend the time limit for the resolution of a dispute.
- (2) The Commission shall set out —
  - (a) the reasons for reducing or extending any time limit and the new time limit;
  - (b) the actions to be taken during any reduced or extended time limit so as to encourage efficiency;
  - (c) the steps to be taken if agreement is not reached within the extended time limit.

#### **106. REGISTER AND TRACKING SYSTEM**

- (1) The Commission shall keep and maintain in the prescribed form a Dispute Resolution Register for the purpose of registering disputes.
- (2) The Commission shall keep and maintain a Dispute Resolution Register Tracking System for the purpose of tracking the status or resolution of disputes.

#### **107. REPORTING BY COMMISSION**

- (1) The Commission shall on a regular basis submit a report to ECTEL concerning —
  - (a) the nature of application;
  - (b) the decision taken in the dispute; and
  - (c) the impact of the decision on national and regional electronic communication policies.
- (2) The Commission shall submit to ECTEL and the Minister a final report on all investigations.

### **PART 11**

### **TRIBUNAL**

#### **108. ESTABLISHMENT OF TRIBUNAL**

There is established a Tribunal to be known as the Electronic Communications Tribunal.

## 109. CONSTITUTION OF TRIBUNAL

- (1) Subject to subsection (2), the Tribunal consists of 3 members appointed by the [Chief Justice or Judicial and Legal Services Commission] as follows –
  - (a) a Chairperson who is a legal practitioner of not less than 10 years standing; and
  - (b) other members who have training or experience in one or more of the following areas –
    - (i) finance and accounting,
    - (ii) information and communications technology,
    - (iii) the type of electronic communications to be considered in the dispute,
    - (iv) economics,
    - (v) competition,
    - (vi) project management,
    - (vii) business administration, or
    - (viii) regulatory experience and training.
- (2) A person is disqualified from being a member of the Tribunal and is not eligible to be appointed as a member of the Tribunal, or having been appointed, is not eligible to continue as a member if that person —
  - (a) holds or is beneficially interested in more than [5%] of any stock, share, bond, debenture or other security of, or other interest in, a licensee;
  - (b) has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a licensee;
  - (c) is a director, officer, employee, agent or a person providing an electronic communications service or supplying goods to a licensee under a contract;
  - (d) is an undischarged bankrupt;
  - (e) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;

- (f) has been convicted of a [criminal] offence except where the offence-
    - (i) is a minor traffic offence;
    - (ii) is spent [in accordance with the Criminal Rehabilitation of Offenders Act, Cap [ ] [in any manner];or
  - (g) is a member of [Parliament/the National Assembly].
- (3) For the purposes of subsection (1), the Commission shall compile a list of persons who are eligible to be appointed as members of the Tribunal and shall publish the list annually.

#### **110. FUNCTION OF TRIBUNAL**

The function of the Tribunal is to hear and adjudicate –

- (a) claims with respect to disputes between licensees and the public involving alleged breaches of this Act;
- (b) claims with respect to the disposition of an investigation or application made to the Commission.

#### **111. POWERS OF TRIBUNAL**

- (1) The powers of the Tribunal are to—
  - (a) issue a summons in the prescribed form to compel the attendance of witnesses;
  - (b) examine witnesses on oath, affirmation or otherwise; and
  - (c) compel the production of documents.
- (2) A summons issued by the Tribunal under subsection (1) shall be under the hand of the Chairperson.
- (3) A person who refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons served on him or her is liable to a fine not exceeding [\$1500].
- (4) A party to a matter before the Tribunal is entitled to appear at the hearing and may be represented by an [attorney-at-law] or any other person who in the opinion of the Tribunal is competent to assist the person in the presentation of the matter.
- (5) The Tribunal may with respect to a matter brought before it —
  - (a) make provisional or interim orders or awards relating to the matters or part of the matter, or give directions under 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 of the matter if it appears that the matter or part of the matter is frivolous 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 decision;
- (d) where a licensee is in breach of the competition provisions in Part 6 –
  - (i) issue an enforcement order against the licensee having significant market power,
  - (ii) order the cessation of abusive conduct or specify changes in the conduct of a licensee to limit the abusive aspects,
  - (iii) recommend the suspension or revocation of the licence,
  - (iv) order compensation to be paid to retail customers or competitors injured by the abusive conduct,
  - (v) order the restructuring of the licensee, or
  - (vi) facilitate and approve settlement with the aggrieved licensee;
- (e) where after an investigation under **section 93**, the Tribunal finds that a licensee or frequency authorization holder is in breach of this Act, the Regulations, the licence or the frequency authorization, the Tribunal may -
  - (i) direct that the licensee or frequency authorization holder take remedial action and stipulate a time period within which such remedial action is to be completed,
  - (ii) direct the licensee or frequency authorization holder to compensate one or more of its retail customers for foreseeable damage caused to the retail customer within a specific time period,
  - (iii) recommend the suspension or revocation of the licence or frequency authorization by the Minister; or
  - (iv) 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.

6 Notwithstanding the power of the Tribunal to recommend the suspension or revocation of the licence or frequency authorization for breach, where a licensee or frequency authorization holder fails to comply with a direction given by the Tribunal under subsection (5)(e)(ii) the Commission may enforce the decision of the Tribunal by taking the matter to the High Court.

## **112. DURATION OF APPOINTMENT**

A member of the Tribunal, subject to the provisions of this Act, holds office for the period that the claim is heard but is eligible for reappointment.

## **113. TEMPORARY APPOINTMENTS**

Where the Chairperson or any member of the Tribunal is absent or unable to perform the functions of their office, the [Chief Justice or Judicial and Legal Service Commission] may appoint another person to act temporarily in place of the Chairperson or that member.

#### **114. RESIGNATION**

Any member of the Tribunal, may at any time resign from office by instrument in writing addressed to the [Chief Justice or Judicial and Legal Service Commission] and transmitted through the Chairperson, and such resignation takes effect as from the date of receipt of that instrument by the [Chief Justice or Judicial and Legal Service Commission].

#### **115. REVOCATION**

The [Chief Justice or Judicial and Legal Service Commission] may at any time revoke the appointment of any member of the Tribunal, including the Chairperson.

#### **116. PUBLICATION**

The appointment of any member of the Tribunal, temporary appointment of any member of the Tribunal, resignation or the termination of office of any person as a member, whether by death, effluxion of time or otherwise, shall be published in the [Official/Gazette].

#### **117. SECRETARY**

- (1) The [Chief Justice or Judicial and Legal Service Commission] shall appoint a [public officer] to be Secretary of the Tribunal.
- (2) The Secretary shall keep a written record of all proceedings of the Tribunal, which shall be confirmed by the Chairperson.

#### **118. REMUNERATION AND ALLOWANCES**

Each member of the Tribunal shall be paid such remuneration and allowances, if any, as Cabinet determines.

#### **119. HEARINGS**

- (1) The Tribunal shall convene hearings at such time, at such places and on such days as may be necessary or expedient for the discharge of its functions.
- (2) The quorum for hearings of the Tribunal shall comprise a majority of the members, but where a member is disqualified from taking part in the proceedings of the Tribunal in respect of any matter, that member shall be disregarded for the purpose of constituting a quorum for hearing, deliberating on and deciding that matter.
- (3) The decisions of the Tribunal is by a majority of votes of those members present and voting and, the Chairperson has an initial vote and in cases of equal division the Chairperson has the casting vote.

- (4) A member of the Tribunal shall, as soon as is practicable inform, the Chairperson of any matter in which he or she has, either directly or indirectly, personally or by his or her spouse, partner, business associate or company, any pecuniary or business interest and that member shall take no part, directly or indirectly, in any hearing, deliberation or decision by the Tribunal on that matter.
- (5) The decisions of the Tribunal are authenticated by the signature of the Chairperson and the Secretary.
- (6) A decision of the Tribunal is binding on the Commission and is enforceable as though it were a judgement of the [district/magistrate court].
- (7) Subject to the provisions of this section, the Tribunal may make rules to regulate its own proceedings.

## **120. COMMUNICATION OF INFORMATION**

A member of the Tribunal shall not, either directly or indirectly, except in the performance of a function under or in connection with this or any other written law or as required by any other legal duty, make a record of or divulge or communicate to any person information concerning the affairs of another person which he or she acquired by reason of his or her office under or for the purposes of this Act.

## **121. VALIDITY**

The validity of any proceedings of the Tribunal is not affected by any vacancy in its membership or by any defect in the appointment of any of its members.

## **122. ISSUANCE OF DECISION UPON DETERMINATION BY TRIBUNAL**

- (1) Where the Tribunal determines a matter under this Act, the Tribunal may issue a decision —
  - (a) dismissing the claim;
  - (b) approving the relief sought; or
  - (c) approving the relief sought with such amendment or variation as it considers fit.
- (2) A decision made under subsection (1) shall —
  - (a) specify the date within which it must be complied with; and
  - (b) be binding on the parties.
- (3) The Tribunal shall —
  - (a) serve the decision on the parties; and
  - (b) within 10 days of service of the decision under paragraph (a) make the decision available to the public by notice published in the [Official]

Gazette and by such other means as the Tribunal may consider appropriate.

- (4) The Tribunal shall, subsequent to the issue of the decision, take such action so as to verify that the proper action is taken by the appropriate party as of the date ordered by the Tribunal.
- (5) A person who fails to comply with a decision is liable —
  - (a) in the case of a licensee, to suspension or revocation of a licence in accordance with this Act; and
  - (b) in the case of a retail customer or other member of the public, to termination of the electronic communications service.

### **123. CONTINUATION OF SERVICE OR NETWORK DURING PROCESS**

- (1) Notwithstanding any provision of a customer agreement, a licensee which is a party to a claim shall not during the period of adjudication terminate the electronic communications service or electronic communications network to —
  - (a) a retail customer; or
  - (b) any member of the public,for breach of contract or non-payment, unless specifically approved by the Tribunal after notice of the termination in writing to the retail customer or member of the public of not less than 7 days and an opportunity for the retail customer to be heard by the Tribunal.
- (2) Save as may be provided in any contractual arrangement between licensees, a dispute between parties shall not cause the partial or total disconnection of an electronic communications network or electronic communications service, unless the Tribunal determines that such partial or total disconnection is necessary and so advise in the decision.

## **PART 12 MISCELLANEOUS**

### **124. FEES**

- (1) The Commission shall receive fees payable under this Act.
- (2) Application fees and other fees are payable to the Commission and shall form part of the revenue of the Commission.
- (3) Fees with respect to spectrum are remitted to ECTEL and shall form part of the revenue of ECTEL.
- (4) Initial fees and annual licence fees shall be paid to the [Accountant General].

## 125. INSPECTION OF RECORD OR REGISTER

- (1) A Record or Register kept and maintained under this Act is open for inspection by the public on payment of the prescribed fee and on the fulfillment of any other conditions as the Commission may consider just.
- (2) A person seeking inspection of a Record or Register shall apply to the officer designated by the Commission who shall —
  - (a) allow inspection; and
  - (b) on payment of the fee referred to in subsection (1), make available extracts of the relevant portions of the Register.
- (3) Notwithstanding subsections (1) and (2), the Commission may, through the website maintained by it, allow access to the Record or Register.
- (4) Notwithstanding subsection (1), the Commission shall not, except in accordance with this section, make the following records 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 the disclosure of which 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 licensees;
  - (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.
- (5) The Commission shall make available records referred to in subsection (4)(d) through the discovery process in court proceedings.
- (6) 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 a 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 law enforcement personnel or any other person.
- (7) An application for a licence or frequency authorization is not available for public inspection until the application for the licence or frequency authorization is granted by the Minister.
- (8) 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.

#### **126. STOPPAGE OF COMMUNICATIONS**

No communication which appears dangerous to the security of [Name of ECTEL Contracting State] 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 or she shall immediately inform the Commission and the Commission shall take the necessary appropriate action.

#### **127. EXCHANGE OF INFORMATION**

The Commission and ECTEL may exchange information with other similar organizations, subject to the organizations applying the same confidentiality obligations regarding trade secrets as the Commission and ECTEL.

#### **128. COPYRIGHT**

For the avoidance of doubt, the grant of a licence or frequency authorization does not authorize the licensee or the frequency authorization holder to infringe any copyright, which may exist in the matter transmitted by the licensee under his or her licence or frequency authorization.

#### **129. PERMISSION UNDER OTHER LAWS**

If a licensee or frequency authorization holder requires permission from an authority other than the Commission or ECTEL in order to provide an electronic communications service, this Act does not prevent the licensee or frequency authorization holder from obtaining that permission.

#### **130. GENERAL PENALTY**

A person who contravenes or fails to comply with any of the provisions of this Act or Regulations made under this Act for which no penalty is specifically provided is liable on summary conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a fine not exceeding \$1,000 for each day that the offence continues after conviction.

### **131. APPEAL TO HIGH COURT**

A person may appeal to the High Court against –

- (a) a decision of the Minister;
- (b) a decision of ECTEL;
- (c) a decision of the Tribunal,
- (d) a decision of the NTRC

made under this Act within 28 days of receipt of the decision.

### **132. AMENDMENT OF SCHEDULES**

The Minister may, on the recommendation of ECTEL, amend Schedule 1, Schedule 2 or Schedule 3 by Order published in the [Official Gazette].

### **133. REGULATIONS**

- (1) The Minister may, on the recommendation of ECTEL, make Regulations to give effect to the objects and provisions of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may, on the recommendation of ECTEL, make Regulations providing, in particular, for or in relation to —
  - (a) forms, procedures and time frames in respect of the grant of a licence or a frequency authorization;
  - (b) matters relating to the provision of universal service and access and the management of the Universal Service and Access Fund;
  - (c) the type of terminal equipment to be connected to a public electronic communications network;
  - (d) public safety standards relevant to electronic communications;
  - (e) interconnection between licensees, and the sharing of infrastructure by licensees;
  - (f) interconnection agreements;
  - (g) matters relating to the allocation of numbers among the licensees;
  - (h) stoppage or interception or disruption of information and communications;
  - (i) management of the spectrum;
  - (j) adopting codes of practice relevant to the electronic communications sector with or without amendment;
  - (k) the procedure and standards relating to the submission, review and approval by the Commission of tariffs;
  - (l) the control, measurement and suppression of electromagnetic interference in relation to the working of apparatus;

- (m) matters of confidentiality including on the part of all persons employed in or in any way connected with the maintenance and working of any electronic communications network or apparatus;
  - (n) public inspection of records of the Commission;
  - (o) procedures for the treatment of complaints;
  - (p) procedures for dispute resolution;
  - (q) matters for which guidelines are to be issued by the Commission;
  - (r) matters relating to the quality of service;
  - (s) technical regulation and setting of technical standards;
  - (t) fees, including the amount and circumstances in which they are payable;
  - (u) conduct of public hearings;
  - (v) private electronic communications networks and Very Small Aperture Terminal;
  - (w) cost studies and pricing models;
  - (x) submarine cables and landing rights;
  - (y) registration and management of domain names;
  - (z) monitoring and investigating, preventing and punishing or ensuring the punishment of anti-competitive practices in the electronic communications sector;
  - (aa) consumer electronic communications service agreements;
  - (bb) confidentiality of customer information;
  - (cc) emergencies;
  - (dd) guidelines on market analysis and assessment of significant market power;
  - (ee) access to network infrastructure; or
  - (ff) wholesale access or services;
  - (gg) retail pricing;
  - (hh) reasonable traffic management by licensees;
- (ii) net neutrality

- (3) Without limiting the generality of subsection (1), the Minister may, on the recommendation of ECTEL, make Regulations creating offences for breach of any provision of the Regulations and for a penalty not exceeding \$5000 for any such offence.
- (4) ECTEL shall make recommendations under this section after consultation with the Commission.
- (5) Regulations made under this section are subject to an affirmative resolution of Parliament.

#### 134. REPEAL AND SAVINGS

- (1) The Telecommunications Act [ ] is repealed.
- (2) Notwithstanding subsection (1) —
  - (a) any Regulations, Order or other subsidiary legislation made pursuant to the repealed Act, shall, if in force at the commencement of this Act, continue in force until replaced by any Regulation, Order or other subsidiary legislation made under this Act; and
  - (b) any act, decision or other matter carried out pursuant to the repealed Act shall be deemed to have been carried out under this Act.
- (3) A person authorized 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 is deemed to be operating an electronic communications network or providing an electronic communications service or using such radio frequencies under a licence issued under this Act.
- (4) A declaration of dominance or consent to dominance under the Telecommunications Act [ ] is a determination of significant market power at the date of the entry into force of this Act.

Final Draft

# SCHEDULE 1

(Section 23)

## Oath of Secrecy

### Form of oath to be taken by the Commissioners, officer and employees

I,.....(name) [swear/affirm] that I will well and faithfully carry out my duties and obligations under the Electronic Communications Act, 200[ ] and the Regulations, rules and instructions thereunder and that I will not without due authority in that behalf disclose or make known any matter or thing that comes to my knowledge by reason of my employment or office.

[ ]

Final Draft

## SCHEDULE 2

(Section 34)

### LICENCE SUB-CLASSES

<b>Licence</b>	<b>Sub-class</b>
Class	Aeronautical Mobile Radio Aircraft Station Amateur Radio Audio Text/Video Text Broadcast AM Radio Station Broadcast FM Radio Station Broadcast Television Station Community FM Radio Station Family Radio Service International Simple Voice Resale Internet Protocol Telephony Services Land Mobile Radio Maritime Mobile Radio Mobile Virtual Network Operator Services Private Networks and Services Resale of Leased Circuits Value Added Services Public Radio Paging
Individual	Fixed Public Electronic Communications Networks and Services Internet Networks and Services Public Mobile Electronic Communications Networks and Services Submarine Cable Landing Subscriber Television Number Portability Administration Services

Special	Emergency Exigency
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Final Draft

## SCHEDULE 3

(Sections 35 and 37)

### CONDITIONS FOR LICENCES AND FREQUENCY AUTHORIZATIONS

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

- (a) the electronic communications network and electronic communications service which the licensee or frequency authorization holder is and is not entitled to operate and provide, and the electronic communications network to which the electronic communications network of the licensee or frequency authorization holder can be connected;
- (b) the build-out of the electronic communications network and geographical and retail customer targets for the provision of the relevant electronic communications service;
- (c) the use of radio spectrum;
- (d) the provision of an electronic communications service to rural or sparsely populated areas or other specified areas in which it would otherwise be uneconomical to provide an electronic communications service;
- (e) the provision of an electronic communications service to the blind, deaf, physically and medically handicapped and other disadvantaged persons;
- (f) the interconnection of the licensee's electronic communications network with those of other operators;
- (g) the access to electronic communications networks;
- (h) the access to towers, sites and underground facilities;
- (i) the sharing of infrastructure;
- (j) prohibitions of anti-competitive conduct;
- (k) the allocation and use by the licensee of numbers;
- (l) provision of universal service and access;
- (m) the period of licence or frequency authorization and period for renewal, modification or surrender;
- (n) a condition stipulating that the licence enters into force upon payment by the licensee to ECTEL or the Commission of the prescribed fee;
- (o) non-exclusivity of the licence;
- (p) contribution to the Universal Service and Access Fund;
- (q) specification of the fees depending on the divergent or convergent nature of the electronic communications service provided;
- (r) exclusivity or otherwise of the frequency authorization;
- (s) technical and accounting information to be provided to ECTEL and the Commission;

