

## **Summary of Amendments – Electronic Communications Bill**

Since 2009, ECTEL commenced the process of legislative reform for the telecommunications sector, with the development of the Electronic Communications Bill, having gone through several rounds of consultations with participation of various stakeholders and their contributions being considered by the Directorate in the revision of its final version.

The Electronic Communications Bill was approved and adopted by ECTEL's Council of Ministers at its 33<sup>rd</sup> Council of Ministers' meeting held on 13<sup>th</sup> April, 2016.

Since the date of approval by Council in 2016, the Directorate and each Contracting State, through its Legislative Drafting Units, have made amendments to the Electronic Communications Bill, in preparation for promulgation in each of ECTEL's Contracting State. The Amendments have been approved by the Council of Ministers at its 38<sup>th</sup> and 39<sup>th</sup> meetings held 29<sup>th</sup> November, 2018 and 23<sup>rd</sup> May, 2019 respectively.

The Amendments made to the Electronic Communications Bill are as follows:

### **1. Interpretation-Part 1**

Additional definitions were inserted in the interpretation section of the Bill to further assist with the clarity of the Bill such as **“Change of Control” (the definition included in the previous part that dealt with change of control, were removed and replaced in clause 2)**, **“Competition Body”**, **“Secretary”**, **“Revised Treaty of Basseterre”**, **“Universal Service and Access Fund”**. Also, there was minor revision of definitions as well for words/terms such as **“Fund”** and **“Public Utility”**.

### **2. Powers and Duties of the Minister-Part 2**

In **Clause 7 (2)** of the Bill, the Power of the Minister is now more specific and certain. Previously, the Minister had the discretion to give directions on policy of a general nature on electronic communications to the Commission.

**3. Functions of the Commission- Part 3**

In **Clause 10 (1)** an additional function of the Commission was inserted to align with the functions of the Tribunal in **Part 13**. This additional function of the Commission is to carry out investigations for alleged breaches of this Bill or Regulations made under this Bill.

**4. Powers of the Commission- Part 3**

In **Clause 12 (2)** an additional power of the Commission was inserted into the Bill. Under the Bill and Regulations made under the Bill, the Commission now has the power to impose fixed administrative fines for breaches and offences committed by licensees and frequency authorisation holders.

**5. Exemption from Taxes**

The provision in the Bill which exempted the Commission from the payment of taxes, levies, and fees on income, property and documents has been removed.

**6. Licensing of Electronic Communications- Part 4**

**Part 4 (clauses 31 to 65)** of the Bill which deals with the Licensing procedure for Electronic Communications, has been broken down into categories. Therefore, there are now separate provisions specifically for individual licences, class licences and frequency authorisations, which were previously combined. The separation was necessary to ensure that the procedure for each category of licence is sufficiently clear, as there are some distinct differences with the procedure for each category of licence and frequency authorisation. The time period for the entire application process was also increased from 45 days to 60 days, similar to what was provided in the Telecommunications Act.

**Clause 35** was included to provide ECTEL powers to assess the electronic communications sector and make periodic reviews as it relates to terms and

conditions needed for renewal or modification of all licences. This was approved by Council of Ministers at its 39<sup>th</sup> Meeting.

**Clause 39** was amended to include a new sub-provision as **clause 39(6)** that ECTEL may modify its recommendation made in accordance with sub-clause **(4)**, if ECTEL is satisfied that there is a significant change, before the Minister makes a decision under sub-clause **(5)**. This change would be aligned to the amendment of **Clause 42**, to reflect the procedure to manage reciprocity for individual licences granted in one ECTEL Contracting State, for grants in the other ECTEL Contracting States.

**7. Net Neutrality-Clause 86**

At the 38<sup>th</sup> Council of Minister's Meeting, the Council approved the removal of the parameters in this provision, to allow the development of Net Neutrality Regulations, which will include parameters and policy decisions. The net neutrality provision in the Electronic Communications Bill states that service providers shall adopt net neutrality and also gives the Minister the power to make regulations on Net Neutrality.

**8. Change of Control and Ownership of Licences and Frequency Authorisations- Part 5**

The provisions that deal with transfer of licences and frequency authorisations, change of control of the licensee or frequency authorisation holder, and Notification of Change of Significant Interest were removed from the previous Part of the Bill that deals with the Licensing procedure for Electronic Communications. These provisions are now outlined in **Part 5** of the Bill.

**9. Competition- Part 8**

The Revised Treaty of Basseterre was included in the Interpretation section, as Article 4.2 (k) of that Treaty, gives the OECS Commission the mandate for competition for its Member States. **Clause 89(2)** was amended because there will be no competition body in existence once the Bill is promulgated, for the Commission to refer a matter

that involves anti-competitive business conduct which has the effect of substantially lessening competition in a relevant market. Thus, **Clause 89(2)** now requires the Commission to refer a matter to ECTEL, that involves anti-competitive business conduct which has the effect of substantially lessening competition in a relevant market. Further, **Clause 89(7)** was included, to give the Minister the power to make regulations for competition, should it become necessary, in the absence of an established Competition body.

#### **10. Tribunal-Part 13**

In **Clause 130** the qualifications for the other two (2) Members of the Tribunal were amended, which now requires not less than 10 years training or experience in one of the areas listed. Further, **Clause 130 and 131(3)** were amended to reflect and confirm the decision, that the Chief Justice will be authority to make appointments to the Tribunal, where previously there were two (2) options for the Member States to choose. This amendment was made as a result of ECTEL receiving official correspondence from the Chief Justice confirming this appointment arrangement during the consultative process of the Bill.

**Clause 139** was amended to now provide that a list of persons eligible to be appointed as Secretary to the Tribunal, would be compiled by the Commission and submitted to ECTEL for recommendation. This is essential to keep the appointment separate and apart from the Commission's purview, to ensure a separation of investigative powers by the Commission and adjudication function of the Tribunal. This Secretary will function outside of the Commission's staffing arrangement, as all matters being brought to the Tribunal are to be dealt with in a quasi-judicial manner at the Secretariat of the Tribunal, with isolation from the Commission's purview.

#### **11. Repeal and Savings-Part 14**

**Clause 156(3)** was amended to ensure that the provision aligns with the "*Change of Law*" provision being introduced in the licences issued under the Telecommunications Act.

**12. Transitional-Part 14**

A transitional provision was inserted in the Bill as **Clause 157**. **Clause 157** facilitates the change from one statutory regime to another. Thus, the transitional provision will allow for a smoother transition from the current legislative framework under the Telecommunications Act to the new legislative framework under the Electronic Communications Act (once promulgated and in force). Therefore, it was necessary to include a Transitional provision within the Electronic Communications Bill to regulate the coming into operation of those provisions and modify the effect during the period of transition. Therefore, it should be noted that the Transitional provision has a temporary operation and would become inoperable two (2) years from the date the Electronic Communications Act comes into force in each Contracting State.