

# **ELECTRONIC COMMUNICATIONS BILL**

**REVISED – 3<sup>RD</sup> JULY, 2020**

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 application and non-application of the Bill.
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 policy on electronic communications after consultation with ECTEL, and give directions in writing on policy in relation to electronic communications to the Commission.
5. Part 3 of the Bill (*clauses 8–30*) relates for the National Telecommunications Regulatory Commission and incidental matters.
6. The Commission is preserved and continues in existence for the purposes of the Bill. As a body corporate, the Commission has the powers to sue in its corporate name, to contract, and 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 and communications 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 the national policy on electronic communications. 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; regulating the tariff of an electronic communications service; receiving fees; and providing the Minister with such information as he or she may require.

8. Clause 11 of the Bill makes provision for the Commission to delegate its functions to one or more of its commissioners, the Chief Executive Officer or another person.
9. Clause 12 of the Bill outlines the powers of the Commission. The powers of the Commission include issuing directions in writing to a licensee or frequency authorisation holder, imposing fixed administrative fines, and making rules to regulate its own procedure.
10. Clause 13 of the Bill provides for the term of appointment of a commissioner to be a period of three years 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. Clause 15 deals with revocation of the appointment of a commissioner. The grounds for revocation of appointment of a commissioner include being unable to perform his or her functions and being guilty of misconduct. Clause 15 provides that before revocation, the commissioner must be given an opportunity to be heard.
13. Clause 16 of the Bill provides for instances in which the office of a commissioner is vacated which include disqualification and resignation. Clause 16 further provides that 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, and also how a vacancy is to be filled by the Minister.
14. Clause 17 of the Bill deals with the remuneration of the Commission and how their remuneration or allowances are to be determined.
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. Clause 19 of the Bill deals with declaration of interest and abstention of voting by a commissioner. 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. If 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 amounts to 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. The Chief Executive Officer has no voting rights in meetings of the Commission.
18. Clause 21 of the Bill provides that a Secretary to the Commission, inspectors and other employees of the Commission are to be appointed by the Chief Executive Officer 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. Clause 23 of the Bill deals with secrecy and confidentiality. 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.
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. Clause 25 establishes the Electronic Communications Fund, which will comprise the annual financial contributions made by ECTEL to the Commission which is chargeable to the general budget of ECTEL, monies allocated to it by Parliament, monies received by the

Commission as grants or loans and application fees, application fees in respect of licences and fees in respect of numbering resources.

23. By virtue of clause 26 of the Bill, the financial year of the Commission commences on 1st October and ends on 30th 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 upcoming financial year for submission to ECTEL and submission to the Minister for laying in [Parliament/the National Assembly], once it has been approved by ECTEL.
25. Clause 28 provides that 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.
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. Clause 30 provides that 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.
28. Part 4 of the Bill (clauses 31-65) outlines the procedure for the licensing of electronic communications.
29. By virtue of clause 31 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 authorisation where a frequency authorisation is necessary. A person who contravenes clause 31 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.
30. Provision is made in clause 32 of the Bill for a private electronic communications network and in clause 33 of the Bill the class and scope of licences are outlined.
31. Clause 34 deals with the steps to be taken by the Commission, on the recommendation of ECTEL, if it is proposed that the number of licences to be granted for the operation of an electronic communications network or electronic communications service should be limited.
32. Clause 35 provides for the periodic assessment of the Electronic Communications Sector by ECTEL, and for ECTEL to advise the Minister after the periodic assessment whether on renewal of a licence or frequency authorisation, a modification to the terms is necessary.

33. Clause 36 provides for the Register that is to be kept and maintained by the Commission, the particulars to be contained in the Register, and other incidental matters.
34. Clauses 37 to 46 deals specifically with individual licences. These clauses outline the procedures for the application, grant or refusal, modification, renewal, suspension, revocation, and surrender of an individual licence.
35. Clauses 47 to 55 deals specifically with class licences. These clauses outline the procedures for the application, grant or refusal, modification, renewal, suspension, revocation, and surrender of a class licence.
36. Clauses 56 to 64 deals specifically with frequency authorisations. These clauses outline the procedures for the application, grant or refusal, modification, renewal, suspension, revocation, and surrender of a frequency authorisation.
37. Clause 65 makes provision for special licences which will be granted in cases of emergency. The application process and the grant or refusal procedure for a special licence are outlined.
38. Part 5 of the Bill (clause 66 to 68) deals with Change of Control and Ownership of Licences and Frequency Authorisations.
39. Part 6 of the Bill provides for the rights and obligations of a licensee or frequency authorisation holder (clauses 69 to 86). There are provisions for interconnection and access, interconnection and access agreements and cost of interconnection and access. In addition, access to road works, repair and restoration and access to land for inspection and maintenance are provided for in clauses 72, 73 and 74 of the Bill. Obligations relating to installation of facilities on private land or buildings, lease of capacity and contribution to the Universal Service and Access Fund are contained in clauses 75, 76 and 77 of the Bill. Data reporting, number portability and roaming are provided for in clauses 78, 79 and 80. Numbering and tariff obligations are set out in clauses 81 and 82 of the Bill. Clauses 83, 84 and 85 make provision for consumer protection, non-discrimination and communications during an emergency. Net neutrality is provided for in clause 86 of the Bill.
40. Part 7 of the Bill deals with Registration and Approval (clauses 87 & 88). Clause 87 provides for country code top level domain name registration and Clause 88 deals with all matters in relation to Type approvals.
41. Part 8 of the Bill provides for Competition (clauses 89 to 96). The regulation of competition is provided for in clause 89 of the Bill. Clause 90 of the Bill contains provisions on anti-competitive business conduct. Anti-competitive agreements, arrangements or understandings are prohibited by clause 91 of the Bill and reasonable allowances are specified under clause 92 of the Bill. Market analysis and significant market power and the abuse of significant market power are addressed in clauses 93 and 94 of the Bill. Clause 95 of the Bill highlights the obligations of licensees having significant market power and the powers of the Commission under Part 8 are specified in clause 96 of the Bill.
42. Part 9 of the Bill provides for the Universal Service and Access Fund and all matter in relation to that Fund in clauses 97 to 106 of the Bill.
43. Part 10 of the Bill makes provision for other offences (clauses 107 to 113). 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 107). Other offences

include interference, interception or destruction of a network, disclosure of personal information and giving false information (clauses 108-110). Cross-shareholding, harmful interference and the liability of a body corporate are provided for in clauses 111,112 and 113 of the Bill.

44. Part 11 of the Bill provides for investigation and issuing of a warrant for entry and search on suspicion of the contravention of the Bill. Clause 114 of the Bill makes provision for the investigation of breaches and a search warrant may be obtained under clause 115 of the Bill. Clauses 116 and 117 of the Bill make provision for obtaining and preserving evidence and forfeiture and injunctive relief.
45. Part 12 of the Bill makes provision for dispute resolution by the Commission and all related matters in clauses 118– 128. 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.
46. In Part 13 of the Bill, clauses 129–145 provides for the establishment and operation of the Electronic Communications 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 provided for by clause 145 of the Bill.
47. Part 14 of the Bill (clauses 146-157) provides for miscellaneous matters including fees, inspection of record or register and stoppage of communications. Additionally, Part 14 has requirements relating to exchange of information, copyright and permission under other laws. A general penalty and appeals to the High Court 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 and a transitional provision to ensure there is a smooth transition to the new legislative framework.
48. 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 authorisations.

# **ELECTRONIC COMMUNICATIONS BILL**

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# 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 date 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, frequency authorisation, or a type approval of equipment;

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

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



**“broadcasting”** means transmitting radio or video programming to the public on a free, paid, 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 130(a);

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

- (a) acquiring, directly or indirectly, including by merger —
  - (i) 50% or more of the licensee’s or frequency authorisation 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 authorisation 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 authorisation holder divesting its shares;
- (b) any direct or indirect sale or transfer of substantially all of the assets of the licensee or frequency authorisation holder;
- (c) an approved and completed plan of liquidation of the licensee or frequency authorisation holder or an agreement for the sale on liquidation of the licensee or frequency authorisation holder; the licensee or frequency authorisation holder determining and declaring that a change of control has occurred;

**“Chief Executive Officer”** means the person appointed as Chief Executive Officer under section 20(1);

**“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 preserved under section 8(1);

**“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 83(g);

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

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

**“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 mission”** include international organisation 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 a transmission system 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) Global System for Mobile telephones;
- (b) mobile radios;
- (c) modems;
- (d) wireless remote devices;
- (e) Private Automatic Branch Exchanges (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 authorisation”** means permission granted by the Minister under section 58(5) 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 authorisation holder”** means a person holding a frequency authorisation;

**“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 the Electronic Communications Fund established under section 25(1);

**“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, fibre, 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 authorisation;

**“inspector”** means a person appointed as an inspector under section 21(1);

**“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 two or more separate systems, networks, links, nodes, equipment, circuits or devices involving a physical link or interface and systems, networks, links, nodes, equipment, circuits or 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 33(1);

**“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;

**“merger”** means the cessation of two or more persons, at least one of which is or controls a licensee or frequency authorisation 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 authorisation is acquired.

**“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 filed at the Commission to discontinue an application for dispute resolution;

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

**“party”** means a person directly involved in a dispute under this Act or a person who has a contractual relationship with a licensee;

**“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;

**“predatory pricing”** means an anti-competitive pricing strategy under which a licensee with significant market power deliberately sets low, typically below cost or below market level prices for a given retail service, with the goal of undermining the profitability and commercial viability of competitors, with the expectation to raise prices and recoup the lost revenues after competitors have been driven from the market;

**“private electronic communications network”** means a system to provide an electronic communications service to a person that is for the sole and exclusive use of that person 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”** means a service provider that provides piped water or electricity to the public;

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

**“Register”** means the Register kept and maintained under section 36;

**“Regulations”** means Regulations made under section 155;

**“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;

**“Revised Treaty of Chaguaramas”** means Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy”

**“Revised Treaty of Bassterre”** means Revised Treaty of Bassterre establishing the Organisation of the Eastern Caribbean States including the Economic Union;

**“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;

**“secretary”** means a person appointed as secretary to the Commission under section 21(1);

**“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 or a structure on land;

**“special licence”** means a licence granted under section 65(7) by the Minister;

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

**“submarine cable landing station”** means the 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 129;

**“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;

**“universal service and access Fund”** means the Fund preserved and continued for the promotion of universal service and access under section 97(1);

**“utility installation”** means any physical component of a system owned or operated by a public utility to provide piped water or electricity;

**“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—
  - (a) to ensure that policies in relation to the management of electronic communications are in harmony with the recommendations of ECTEL;
  - (b) to ensure that the public interest and national security are preserved;
  - (c) to ensure consumer protection and the meeting of 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) to ensure the compliance by licensees for the protection of personal data, for secrecy of correspondence and with the principle of net neutrality;
  - (e) to ensure the absence of discrimination for traffic routing and access to an electronic communications service;
  - (f) to ensure the ability of retail customers to access and disseminate information and access applications and an electronic communications service of their choice;
  - (g) to ensure the application of appropriate standards in the operation of an electronic communications network and electronic communications service;
  - (h) to ensure the overall development of electronic communications in the interest of the sustainable development of [Name of ECTEL Contracting State];
  - (i) to promote and maintain fair and efficient market conduct and sustainable competition between licensees;
  - (j) to encourage, promote, facilitate and otherwise assist in the development of investment, innovation and competitiveness in electronic communications in [Name of ECTEL Contracting State];
  - (k) to establish a licensing system that is responsive to the changes in electronic communications;
  - (l) to ensure the provision of electronic communications at rates consistent with efficient electronic communications service;
  - (m) to 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) to ensure the effective and efficient use of spectrum; and
  - (o) to 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 any person, or an affiliate or subsidiary controlled by a person, that is a licensee or a frequency authorisation holder.
- (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, fire service, correctional service, public health service, emergency service, public security service or civil aviation authority except in relation to the requirement to have a frequency authorisation;
  - (c) terminal equipment used for programme, content and scheduling.

### **PART 2**

## **POWERS AND DUTIES OF MINISTER**

#### **6. EXEMPTIONS**

- (1) The Minister, on the recommendation of ECTEL, by Order published in the Official Gazette, may exempt from the requirements of this this Act or any Part or provision of this Act —
  - (a) any category of ship;
  - (b) any category of aircraft;
  - (c) person or class of persons; or
  - (d) a diplomatic mission.
- (2) An exemption granted under subsection (1) —
  - (a) shall not apply in respect of the requirement for a frequency authorisation, if the use of frequency is necessary;

- (b) may include any other conditions; and
- (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 in writing on policy in relation to electronic communications to the Commission and the Commission shall comply with the directions.

## **PART 3**

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

## **8. PRESERVATION AND CONTINUATION OF THE COMMISSION**

- (1) 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), if 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 if 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.
- (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 fulfil 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) If 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 if—
    - (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 licensee 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 146;

- (g) receive, evaluate applications and make recommendations for the grant of class licences and forward applications for individual licences and frequency authorisations to ECTEL;
- (h) prepare the licence or frequency authorisations and other relevant documents for signature by the Minister, if the Minister decides to grant a licence or frequency authorisation;
- (i) monitor and ensure that licensees or frequency authorisation holders comply with the conditions attached to licences or frequency authorisation;
- (j) monitor compliance with the terms of interconnection or access agreements;
- (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 standards for quality of service, 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) carry out investigations for alleged breaches of this Act or Regulations made under this Act; and
- (s) 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 may 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 may —
  - (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 authorisation 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 authorisation 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 authorisation holder to direct the licensee or frequency authorisation 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) impose fixed administrative fines under provisions of this Act or Regulations made under this Act; and
  - (k) do anything incidental to its powers.
- (3) A licensee or frequency authorisation holder shall comply with a direction of the Commission under subsection (2)(e).
  - (4) A licensee or frequency authorisation 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 authorisation 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 code 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) The Commission shall, on the recommendation of ECTEL, apply benchmarking to retail pricing, if a licensee does not provide the Commission with sufficient information on retail tariffs under subsection (2)(i).

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

- (1) Unless a commissioner resigns under section 14 or a 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(4) or 23(4);
  - (d) has been disqualified or suspended on grounds of misconduct, by a competent authority, from practising 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) If the Minister revokes the appointment of a commissioner, he or she shall notify the commissioner of the revocation within 90 days, and shall in writing indicate the date the revocation will take effect and give reasons 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 the 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) If 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 and the Deputy Chairperson are not present, the commissioners present shall choose one of their members 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) If a commissioner declares an interest in a matter before the Commission under subsection (1), if the Commission determines that the interest of the commissioner is material, then the commissioner shall leave the meeting when the matter is being discussed.
- (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 —
  - (i) fails to comply with subsections (1) and (2);
  - (ii) votes in respect of a matter before the Commission in which he or she is materially interested, whether directly or indirectly; or

- (iii) 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.

(5) If a commissioner is guilty of misconduct under subsection (1), then section 15 applies.

## **20. CHIEF EXECUTIVE OFFICER**

- (1) The Commission shall appoint as the Chief Executive Officer, a person of not less than 7 years 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—
  - (a) to manage the day-to-day affairs of the Commission on such terms and conditions as the Commission determines;
  - (b) to subject to subsections (3) and (4), attend meetings of the Commission; and
  - (c) to 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, inspectors 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, [secretary, inspector or other employee] shall take the oath of secrecy set out in Schedule 1.
- (2) Subject to subsection (3), a commissioner, the Chief Executive Officer, an employee or a 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) shall 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) if 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) if lawfully made to a person with a view to the institution of, or for the purpose of —
    - (i) court proceedings; or
    - (ii) disciplinary proceedings relating to the discharge of functions by a commissioner, the Chief Executive Officer, an employee or a 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, the Chief Executive Officer, an employee or a member of an advisory committee, [secretary, inspector or other employee] 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, the Chief Executive Officer, an employee or a 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 which is chargeable to the general budget of ECTEL;
  - (c) monies received by the Commission as grants or loans; and
  - (d) application fees in respect of licences 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 prepare, 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 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, the Chief Executive Officer or an 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 authorisations;
  - (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.
- (3) The Minister shall, lay a copy of annual report submitted under subsection (1) before [Parliament/ National Assembly] within one month of his or her receipt or



if [Parliament/ National Assembly] is not in session, within one month of the next session of [Parliament/National Assembly].

## **PART 4**

### **LICENSING OF ELECTRONIC COMMUNICATIONS**

#### **31. PROHIBITION ON OPERATING A NETWORK OR PROVIDING SERVICE WITHOUT A LICENCE OR FREQUENCY AUTHORISATION**

- (1) Notwithstanding section 6 and subject to subsection (4), a person without a valid licence 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.
- (2) Notwithstanding section 6, if a frequency authorisation 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 authorisation.
- (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) If the use of frequency is necessary, but a licence is not required for an electronic communications network operated 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 the electronic communications network or providing the electronic communications service is required to obtain frequency authorisation.

#### **32. PRIVATE ELECTRONIC COMMUNICATIONS NETWORK**

- (1) The licence requirement in section 31 applies to—

- (a) the provision or operation of a private electronic communications network; and
  - (b) a frequency authorisation required to operate a private electronic communications network providing radio communication services or that utilises radio frequency spectrum.
- (2) A private electronic communications network shall not be used for resale, but an 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) If an 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, that operator is required to obtain a licence.
- (4) A private electronic communications network shall not be restricted to the carrying of voice only or data only or to any other similar use.

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

- (1) The classes of licences 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 154.

### **34. LIMITING THE NUMBER FOR LICENCE**

If it is proposed that the number of licences 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) publish 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 licences will be granted; and
  - (ii) reasons for proposing to limit the number of licences; and
- (d) undertake a periodic review of a limitation imposed on the number of licences granted.

### **35. PERIODIC REVIEW OF LICENCES AND FREQUENCY AUTHORISATIONS**

ECTEL shall do a periodic assessment of the Electronic Communications sector and advise the Minister whether on the renewal of a licence or frequency authorisation, a modification to the terms and conditions is needed as a result of —

- (a) a change in the Electronic Communications market or sector;
- (b) new or emerging technology in the Electronic Communications sector; or
- (c) the overall development of Electronic Communications in [ECTEL Contracting State].

### **36. REGISTER**

- (1) The Commission shall keep and maintain a register containing particulars of—
  - (a) all licences and frequency authorisations issued under this Act, including—
    - (i) the name and address of a licensee and frequency authorisation holder;
    - (ii) the date of an application for a licence or frequency authorisation;
    - (iii) the date of the grant or refusal of a licence or frequency authorisation;
    - (iv) the term of a licence or frequency authorisation; and
    - (v) contact details of a licensee or a frequency authorisation holder;

- (b) the date and effect of a 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 or frequency authorisation; and
  - (d) any other information that is prescribed by Regulations made under this Act.
- (2) The Register under subsection (1) may be kept in an electronic data storage and retrieval system.
- (3) The Registers shall be open to the public inspection during normal working hours and may be made available electronically or any format, as the Commission considers appropriate.
- (4) The Commission shall make copies of entries in the Register available to members of the public on payment of a prescribed fee.

## **INDIVIDUAL LICENCES**

### **37. APPLICATION FOR INDIVIDUAL LICENCES**

- (1) A person who wishes to apply for an individual licence, shall submit an application in the prescribed form with supporting documents to the Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.

### **38. PROCEDURE FOR PROCESSING APPLICATIONS FOR INDIVIDUAL LICENCES**

- (1) If the Commission receives an application for an individual licence, the Commission shall review the application for completeness.
- (2) If the Commission requires additional information or documents from an applicant for an individual licence, the Commission may, within 14 days of receipt of the application, request additional information or documents from the applicant.
- (3) If the Commission makes a request for additional information or documents under subsection (2), the applicant shall submit that information or documents to the Commission within 14 days of the request or within a further period of time granted and specified in writing by the Commission.

- (4) The Commission may refuse to grant a further time period under subsection (3) if it is reasonable to do so.
- (5) In determining whether it is reasonable to refuse to grant a further time period under subsection (4), the Commission may take into account—
  - (a) the type of information being requested;
  - (b) the history of the application; and
  - (c) any other relevant matter to the application.
- (6) If the Commission is satisfied with the completeness of an application for an individual licence, the Commission shall, within 7 days of receipt of the application under subsection (1) or the additional information or documents requested under subsection (2), forward a copy of that application and supporting documents to ECTEL for its review and recommendation.

### **39. GRANT OR REFUSAL OF INDIVIDUAL LICENCES**

- (1) If ECTEL receives a copy of an application for an individual licence and supporting documents from the Commission, ECTEL shall review the application and supporting documents and formulate its recommendation in writing for the grant or refusal of the individual licence.
- (2) ECTEL may, before formulating its recommendation in writing under subsection (1), request additional information or documents from the Commission.
- (3) In formulating a recommendation under subsection (1), 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 demands 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 need to 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 ECTEL.
- (4) Within 60 days of ECTEL's receipt of an application for an individual licence from the Commission—
  - (a) ECTEL shall submit its recommendation to the Commission; and
  - (b) the Commission shall submit ECTEL's recommendation for the grant or refusal of the licence and a copy of the application to the Minister.
- (5) The Minister may, within 28 days of the receipt of ECTEL's recommendation from the Commission, grant or refuse to grant an individual licence based on ECTEL's recommendation, and shall notify the applicant of the grant or the refusal.
- (6) ECTEL may modify its recommendation made in accordance with subsection 4, if ECTEL is satisfied that there is a significant change, before the Minister makes a decision under subsection 5.
- (7) If the Minister refuses to grant an individual licence to an applicant, the Minister shall give reasons for the refusal in writing to the applicant.
- (8) If the Minister refuses to grant an application for an individual licence, the applicant has a right to appeal under section 153.
- (9) The Minister, in granting an individual licence, 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.
- (10) The Commission shall issue an individual licence, granted by the Minister under subsection (4), to an applicant after the payment of the prescribed initial fee.

#### **40. VALIDITY OF INDIVIDUAL LICENCES**

Subject to section 45, an individual licence is valid for the period specified in the licence.

#### **41. PUBLICATION OF INDIVIDUAL LICENCES**

The Commission shall publish the grant of an individual licence in the Official *Gazette* and on its website.

#### **42. PROCEDURE FOR GRANT OF INDIVIDUAL LICENCE AFTER GRANT OF THE SAME INDIVIDUAL LICENCE IN ANOTHER ECTEL CONTRACTING STATE**

- (1) If a licensee is granted an individual licence in another ECTEL Contracting State, the licensee may apply for an individual licence in [Name of ECTEL Contracting State] within 3 years of the grant of the individual licence in the other ECTEL Contracting State, by submitting an application in the prescribed form to the Commission, together with the prescribed application fee and a copy of the licence from the other ECTEL Contracting State.
- (2) The Commission shall not submit an application to ECTEL under subsection (1) if
  - (a) the licence granted in the other ECTEL Contracting State 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; or
  - (b) the licensee is bankrupt or insolvent.
- (3) The Commission shall inform ECTEL of any significant change that affects the decision of ECTEL to recommend the grant of the licence in [Name of ECTEL Contracting State] or another ECTEL Contracting State.
- (4) If there is a significant change since the grant of the individual licence in another ECTEL Contracting State, ECTEL may request further information from the applicant or give reasons for its refusal to recommend a grant of the individual licence in [Name of ECTEL Contracting State].
- (5) Upon receipt of a recommendation from ECTEL, the Commission shall submit the recommendation and a copy of the application to the Minister in accordance with the timeline outlined in section 39(4).
- (6) The Minister may, on the recommendation of ECTEL, grant or refuse to grant the individual licence in accordance with the timeline outlined in section 39(5).
- (7) ECTEL may modify its recommendation, if ECTEL is satisfied that there is a significant change, before the Minister makes a decision under subsection 6.

#### **43. MODIFICATION OF INDIVIDUAL LICENCES**

- (1) The Minister may, on the recommendation of ECTEL, modify an individual licence—
  - (a) with the agreement of the licensee; or
  - (b) if the modification is necessary in the public interest or for reasons of national security.
- (2) A licensee, who seeks a modification of its individual licence, shall apply in the same manner as it did for a licence under section 37.
- (3) A licensee is not required to pay an application fee for a modification to an individual licence if the modification is recommended by ECTEL.

#### **44. RENEWAL OF INDIVIDUAL LICENCES**

- (1) A licensee may renew its individual licence by applying 12 months before it expires in the same manner as it did for its current individual licence under section 37.
- (2) The Minister, on the recommendation of ECTEL, may renew an individual licence, unless—
  - (a) the licensee breached a term in its previous licence;
  - (b) the licensee failed to comply with a provision of this Act or its Regulations;
  - (c) the licensee failed to comply with a direction from 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 individual licence.
- (3) If the Minister, on the recommendation of ECTEL, intends not to renew an individual licence, the Minister shall within 6 months from the date of the application for renewal, give the licensee notice in writing of its intention not to renew the individual licence and outline the grounds on which it proposes not to renew the individual licence.
- (4) If the Minister, on the recommendation of ECTEL, intends not to renew an individual licence, the Minister shall give the licensee—
  - (a) an opportunity to presents its views; and



- (b) an opportunity to submit to the Commission, within such time as the ECTEL may specify, a written statement of objection.
- (5) The Commission shall immediately forward any views presented and statement of objection submitted under subsection (4) to ECTEL for its review and recommendation.
- (6) The Minister shall take into account any views presented and statement of objection submitted under subsection (4) and ECTEL's recommendation, before making a final decision on the renewal of an individual licence.
- (7) The Commission shall publish a renewal of an individual licence in the *Official Gazette* and on its website.

#### **45. SUSPENSION AND REVOCATION OF INDIVIDUAL LICENCES**

- (1) The Minister may, on the recommendation of ECTEL, suspend or revoke an individual licence if —
  - (a) the radio apparatus or station in respect of which the individual licence was granted interferes with an electronic communications service provided by a person to whom a licence is already granted for that purpose;
  - (b) the licensee contravenes this Act or any Regulations made under this Act;
  - (c) the licensee breaches a condition specified in the individual licence;
  - (d) the licensee is in default of payment of the licence fee or any other money owed under this Act;
  - (e) the suspension or revocation of the individual licence is necessary for reasons of national security or the public interest;
  - (f) the licensee is bankrupt, dissolved or liquidated; or
  - (g) the licensee fails to operate under the individual licence within one year from the date the individual licence was granted.
- (2) If the Minister, on the recommendation of ECTEL, intends to suspend or revoke an individual licence, the Minister shall give the licensee one month notice in writing of its intention to suspend or revoke the individual licence and outline the grounds on which it proposes to suspend or revoke the individual licence.
- (3) If the Minister, on the recommendation of ECTEL, intends to suspend or revoke an individual licence, the Minister shall give the licensee an opportunity to —
  - (a) present its views;
  - (b) remedy the breach of the individual licence or a term and condition of the individual licence; or

- (c) submit to the Minister, within such time as the Minister may specify, a written statement of objection to the suspension or revocation of the individual licence.
- (4) If a licensee presents its views or submits a written statement of objections under subsection (3), ECTEL shall review its recommendation to the Minister taking into account the views presented or the statement of objection submitted, and may change its recommendation to the Minister.
- (5) If the Minister, on the recommendation of ECTEL, suspends or revokes an individual licence, the Minister shall—
  - (a) notify the licensee within 30 days of the decision to suspend or revoke the individual licence; and
  - (b) give reasons in writing for the suspension or revocation of the individual licence.
- (6) If an individual licence is suspended, the licensee shall not provide an electronic communications service or operate an electronic communications network unless—
  - (a) ECTEL is satisfied that the grounds for suspension have been rectified, and communicates this to the Minister; and
  - (b) the Minister lifts the suspension of the individual licence.
- (7) A licensee, whose individual licence has been suspended or revoked, is required to pay fees that were due prior to the suspension or revocation of its individual licence.
- (8) The Commission shall publish the suspension or revocation of an individual licence in the *Official Gazette* and on its website.
- (9) If an individual licence is suspended or revoked by the Minister and the electronic communications network is partially or totally disconnected, ECTEL shall recommend to the Minister the measures to be applied by the licensee, so as to minimize any negative effects on the users of the electronic communications network.
- (10) If an individual licence has been revoked by the Minister, the licensee shall immediately surrender the licence to the Commission.

#### **46. SURRENDER OF INDIVIDUAL LICENCES**

- (1) A licensee may surrender an individual licence prior to its expiry, by making an application in the prescribed form to the Commission at least one year prior to the intended date of surrender.
- (2) An application for surrender under subsection (1) must be accompanied by the individual licence or, if that is not practicable, by a statement of the reasons for the failure to do so.

- (3) Upon receipt of an application for surrender under subsection (1), the Commission shall, within 7 days of receipt of the application, forward the application to ECTEL for its consideration.
- (4) Within 60 days of ECTEL's receipt of an application for surrender of an individual licence from the Commission—
  - (a) ECTEL shall submit its recommendation to the Commission; and
  - (b) the Commission shall submit ECTEL's recommendation for the grant or refusal of the surrender of the individual licence and a copy of the application to the Minister.
- (5) Before making a recommendation under subsection (4), ECTEL shall—
  - (a) give the licensee 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, shall not unreasonably refuse an application for surrender under subsection (1).
- (7) The Minister, on the recommendation of ECTEL, may grant the application for surrender of an individual licence, subject to a condition that the licensee takes the actions that ECTEL considers necessary.
- (8) The Minister, on the recommendation of ECTEL, may refuse to grant the application for surrender of an individual licence, but shall give reasons in writing for the refusal.
- (9) If the Minister, on the recommendation of ECTEL, refuses to grant an application for a surrender of an individual licence, the licensee shall have a right to appeal under section 153.
- (10) If the Minister, on the recommendation of ECTEL, refuses to grant an application for surrender of an individual licence and the licensee agrees to the refusal, the Commission shall return the individual licence to the licensee.
- (11) If an application for surrender of an individual licence is granted by the Minister, the individual licence terminates on the date of the surrender.
- (12) A licensee, whose individual licence has been surrendered, is required to pay fees that were due prior to the date of the surrender of the individual licence.
- (13) The Commission shall publish the surrender of an individual licence in the *Official Gazette* and on its website.

## **CLASS LICENCES**

### **47. APPLICATION FOR CLASS LICENCES**

- (1) A person who wishes to apply for a class licence, shall submit an application in the prescribed form and supporting documents to the Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.

### **48. PROCEDURE FOR PROCESSING APPLICATIONS FOR CLASS LICENCES**

- (1) If the Commission receives an application for a class licence, the Commission shall review the application for completeness.
- (2) If the Commission requires additional information or documents from an applicant for a class licence, the Commission may, within 14 days of receipt of the application, request additional information or documents from the applicant for the purpose of considering the application.
- (3) If the Commission makes a request for additional information or documents under subsection (2), the applicant shall submit that information or documents to the Commission within 14 days of the request or within a further period of time granted and specified in writing by the Commission.
- (4) The Commission may refuse to grant a further time period under subsection (3) if it is reasonable to do so.
- (5) In determining whether it is reasonable to refuse to grant a further time period under subsection (4), the Commission may take into account—
  - (a) the type of information being requested;
  - (b) the history of the application; and
  - (c) any other relevant matter to the application.
- (6) If the Commission is satisfied with the completeness of an application for a class licence, the Commission shall immediately consider that application and supporting documents.

### **49. GRANT OR REFUSAL OF CLASS LICENCES**

- (1) The Commission shall, when considering applications for class licences and supporting documents under section 48(6), formulate its recommendation in writing for the grant or refusal of the class licence.

- (2) In formulating a recommendation under subsection (1), the Commission 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 demands 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 need to 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.
- (3) The Commission shall, within 60 days of receipt of an application for a class licence under section 48(1) or additional information under section 48(3), submit its recommendation for the grant or refusal of the class licence and a copy of the application to the Minister.
- (4) The Minister may, within 28 days of the receipt of the recommendation from the Commission, grant or refuse to grant a class licence based on the Commission's recommendation, and shall notify the applicant of the grant or the refusal in writing.
- (5) If the Minister refuses to grant a class licence to an applicant, the Minister shall give reasons for the refusal in writing to the applicant.
- (6) If the Minister refuses to grant an application for a class licence, the applicant has a right to appeal under section 153.
- (7) The Minister may, in granting a class 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.
- (8) The Commission shall issue a class licence, granted by the Minister under subsection (4), to an applicant after the payment of the prescribed initial fee.

## **50. VALIDITY OF CLASS LICENCES**

Subject to section 54, a class licence is valid for the period specified in the licence.

## **51. PUBLICATION OF CLASS LICENCES**

The Commission shall publish the grant of a class licence in the *Official Gazette* and on its website.

## **52. MODIFICATION OF CLASS LICENCES**

- (1) The Minister may, on the recommendation of the Commission, modify a class licence —
  - (a) with the agreement of the licensee; or
  - (b) without the agreement of the licensee, if the modification is necessary in the public interest or for reasons of national security.
- (2) A licensee, who seeks a modification of its class licence, shall apply in the same manner as it did for a licence under section 47.
- (3) A licensee is not required to pay an application fee for a modification to a class licence if —
  - (a) the modification is recommended by Commission; or
  - (b) the Commission is of the view that a modification is necessary to avoid harmful interference.
- (4) The Commission is required to consult with ECTEL, before making any recommendation under this section.

## **53. RENEWAL OF CLASS LICENCES**

- (1) A licensee may renew its class by applying 12 months before it expires in the same manner as it did for its current class licence under section 47.
- (2) The Minister, on the recommendation of the Commission, may renew a class licence, unless —
  - (a) the licensee breached a term in its previous licence;

- (b) the licensee failed to comply with a provision of this Act or its Regulations;
  - (c) the licensee failed to comply with a direction from the Commission; or
  - (d) the Minister, on the recommendation of the Commission, has determined that it is not in the public interest to renew the class licence.
- (3) If the Minister, on the recommendation of the Commission, intends not to renew a class licence, the Minister shall within 6 months from the date of the application for renewal, give the licensee notice in writing of its intention not to renew the class licence and outline the grounds on which it proposes not to renew the class licence.
- (4) If the Minister, on the recommendation of the Commission, intends not to renew a class licence, the Minister shall give the licensee —
  - (a) an opportunity to presents its views; and
  - (b) an opportunity to submit to the Commission, within such time as the Commission may specify, a written statement of objection.
- (5) The Minister shall take into account any views presented and statement of objection submitted under subsection (4) and the Commission's recommendation, before making a final decision on the renewal of a class licence.
- (6) The Commission shall publish a renewal of a class licence in the Official *Gazette* and on its website.

#### **54. SUSPENSION AND REVOCATION OF CLASS LICENCES**

- (1) The Minister may, on the recommendation of the Commission, suspend or revoke a class licence if —
  - (a) the radio apparatus or station in respect of which the class licence was granted interferes with an electronic communications service provided by a person to whom a licence is already granted for that purpose;
  - (b) the licensee contravenes this Act or any Regulations made under this Act;
  - (c) the licensee breaches a condition specified in the class licence;
  - (d) the licensee is in default of payment of the licence fee or any other money owed under this Act;
  - (e) the suspension or revocation of the class licence is necessary for reasons of national security or the public interest;
  - (f) the licensee is bankrupt, dissolved or liquidated; or
  - (g) the licensee fails to operate under the class licence within one year from the date the class licence was granted.

- (2) If the Minister, on the recommendation of the Commission, intends to suspend or revoke a class licence, the Minister shall give the licensee one month notice in writing of its intention to suspend or revoke the class licence and outline the grounds on which it proposes to suspend or revoke the class licence.
- (3) If the Minister, on the recommendation of the Commission, intends to suspend or revoke a class licence, the Minister shall give the licensee an opportunity to —
- (a) present its views;
  - (b) remedy the breach of the class licence or a term and condition of the class licence; or
  - (c) submit to the Minister, within such time as the Minister may specify, a written statement of objection to the suspension or revocation of the class licence.
- (4) If a licensee presents its views or submits a written statement of objections under subsection (3), the Commission shall review its recommendation to the Minister taking into account the views presented or the statement of objection submitted, and may change its recommendation to the Minister.
- (5) If the Minister, on the recommendation of the Commission, suspends or revokes a class licence, the Minister shall —
- (a) notify the licensee within 30 days of the decision to suspend or revoke the class licence; and
  - (b) give reasons in writing for the suspension or revocation of the class licence.
- (6) If a class licence is suspended, the licensee shall not provide an electronic communications service or operate an electronic communications network unless —
- (a) the Commission is satisfied that the grounds for suspension have been rectified, and communicates this to the Minister; and
  - (b) the Minister lifts the suspension of the class licence.
- (7) A licensee, whose class licence has been suspended or revoked, is required to pay fees that were due prior to the suspension or revocation of its class licence.
- (8) The Commission shall publish the suspension or revocation of a class licence in the Official *Gazette* and on its website.
- (9) If a class licence is suspended or revoked by the Minister and the electronic communications network is partially or totally disconnected, 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.

- (10) If a class licence has been revoked by the Minister, the licensee shall surrender the class licence to the Commission.

## **55. SURRENDER OF CLASS LICENCES**

- (1) A licensee may surrender a class licence prior to its expiry, by making an application in the prescribed form to the Commission at least one year prior to the intended date of surrender.
- (2) An application under subsection (1) must be accompanied by the class licence 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 consider the application for surrender of a class licence.
- (4) Within 60 days of 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.
- (5) Before making a recommendation under subsection (4), the Commission shall —
  - (a) give the licensee 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 the Commission, shall not unreasonably refuse an application for surrender under subsection (1).
- (7) The Minister, on the recommendation of ECTEL or the Commission, may grant the application for surrender, subject to a condition that the licensee takes the actions that the Commission considers necessary.
- (8) The Minister, on the recommendation of the Commission, may refuse to grant the application for surrender of a class licence, but shall give reasons in writing for the refusal.
- (9) If the Minister, on the recommendation of the Commission, refuses to grant an application for a surrender of a class licence, the licensee shall have a right to appeal under section 153.

- (10) If the Minister, on the recommendation of the Commission, refuses to grant an application for surrender of a class licence and the licensee agrees to the refusal, the Commission shall return the Class licence to the licensee.
- (11) If an application for surrender of a class licence is granted by the Minister, the class licence terminates on the date of the surrender.
- (12) A licensee, whose class licence has been surrendered, is required to pay fees that were due prior to the date of the surrender of the class licence.
- (13) The Commission shall publish the surrender of a class licence in the *Official Gazette* and on its website.

## **FREQUENCY AUTHORISATION**

### **56. APPLICATION FOR FREQUENCY AUTHORISATION**

- (1) A person who wishes to apply for frequency authorisation, shall submit an application in the prescribed form and supporting documents to the Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.

### **57. PROCEDURE FOR PROCESSING APPLICATIONS FOR FREQUENCY AUTHORISATION**

- (1) If the Commission receives an application for frequency authorisation, the Commission shall review the application for completeness.
- (2) If the Commission requires additional information or documents from an applicant for frequency authorisation, the Commission may, within 14 days of receipt of the application, request additional information or documents from the applicant.
- (3) If the Commission makes a request for additional information or documents under subsection (2), the applicant shall submit that information or documents to the Commission within 14 days of the request or within a further period of time granted and specified in writing by the Commission.
- (4) The Commission may refuse to grant a further time period under subsection (3) if it is reasonable to do so.
- (5) In determining whether it is reasonable to refuse to grant a further time period under subsection (4), the Commission may take into account —

- (a) the type of information being requested;
  - (b) the history of the application; and
  - (c) any other relevant matter to the application.
- (6) If the Commission is satisfied with the completeness of an application for frequency authorisation, the Commission shall, within 7 days of receipt of the application for frequency authorisation under subsection (1) or additional information or documents under subsection (2), forward a copy of that application and supporting documents to ECTEL for its review and recommendation.

## **58. GRANT OR REFUSAL OF FREQUENCY AUTHORISATION**

- (1) If ECTEL receives a copy of an application for frequency authorisation and supporting documents from the Commission, ECTEL shall review the application and supporting documents and formulate its recommendation in writing for the grant or refusal of the frequency authorisation based on the regional spectrum plan, a spectrum policy or Regulation.
- (2) ECTEL may, before formulating its recommendation in writing under subsection (1), request additional information or documents from the Commission.
- (3) In formulating a recommendation under subsection (1), ECTEL shall have regard to —
  - (a) the purposes of the Treaty;
  - (b) the spectrum plan;
  - (c) the spectrum policy;
  - (d) the objective of universal service and access that will be promoted including the provision of internet access sufficient to meet reasonable demands at affordable prices;
  - (e) the protection of the interests of retail customers, purchasers and other users of an electronic communications service;
  - (f) the promotion of competition among licensees of an electronic communications service;
  - (g) the promotion of research, development and introduction of a new electronic communications service;
  - (h) the encouragement of foreign and domestic investors to invest in electronic communications;
  - (i) appropriate technical and financial requirements;
  - (j) the need to safeguard of public interest and national security interests;

- (k) the specified class within which the particular applicant falls; and
  - (l) such other matters as are determined by ECTEL.
- (4) Within 60 days of ECTEL's receipt of an application for frequency authorisation from the Commission —
  - (a) ECTEL shall submit its recommendation to the Commission; and
  - (b) the Commission shall submit ECTEL's recommendation for the grant or refusal of the frequency authorisation and a copy of the application to the Minister.
- (5) The Minister may, within 28 days of the receipt of ECTEL's recommendation from the Commission, grant or refuse to grant the frequency authorisation based on ECTEL's recommendation, and shall notify the applicant of the grant or the refusal in writing.
- (6) If the Minister grants frequency authorisation to an applicant, that applicant becomes a frequency authorisation holder and shall use the radio frequency spectrum granted by the Minister in accordance with the terms and conditions as contained within the frequency authorisation document.
- (7) If the Minister refuses to grant frequency authorisation to an applicant, the Minister shall give reasons for the refusal in writing to the applicant.
- (8) If the Minister refuses to grant an application for a frequency authorisation, the applicant has a right to appeal under section 153.
- (9) The Minister, in granting frequency authorisation, 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 frequency authorisation does not favour one electronic communications provider or class of electronic communications provider; and
  - (c) the issuance of the frequency authorisation is likely to enhance competition in a market.
- (10) The Commission shall issue a frequency authorisation, granted by the Minister under subsection (5), to an applicant after the payment of the prescribed initial fee.

## **59. VALIDITY OF FREQUENCY AUTHORISATION**

Subject to section 63, a frequency authorisation is valid for the period specified in the frequency authorisation.

## **60. PUBLICATION OF FREQUENCY AUTHORISATION**

The Commission shall publish the grant of a frequency authorisation in the *Official Gazette* and on its website.

## **61. MODIFICATION OF FREQUENCY AUTHORISATION**

- (1) The Minister may, on the recommendation of ECTEL, modify a frequency authorisation —
  - (a) with the agreement of the frequency authorisation holder; or
  - (b) without the agreement of the frequency authorisation holder, if the modification is necessary in the public interest or for reasons of national security.
- (2) A frequency authorisation holder, who seeks a modification of its frequency authorisation, shall apply in the same manner as it did for a frequency authorisation under section 56.
- (3) A frequency authorisation holder is not required to pay an application fee for a modification to frequency authorisation if —
  - (a) the modification is recommended by ECTEL; or
  - (b) ECTEL is of the view that a modification is necessary to avoid harmful interference.

## **62. RENEWAL OF FREQUENCY AUTHORISATION**

- (1) A frequency authorisation holder may renew its frequency authorisation by applying 12 months before it expires in the same manner as it did for its current frequency authorisation under section 56.
- (2) The Minister, on the recommendation of ECTEL, may renew a frequency authorisation, unless —
  - (a) the frequency authorisation holder breached a term in its previous frequency authorisation;

- (b) the frequency authorisation holder failed to comply with a provision of this Act or its Regulations;
  - (c) the frequency authorisation holder failed to comply with a direction from 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 frequency authorisation.
- (3) If the Minister, on the recommendation of ECTEL, intends to not renew a frequency authorisation, the Minister shall within 6 months from the date of the application for renewal, give the frequency authorisation holder notice in writing of its intention to not renew the frequency authorisation and outline the grounds on which it proposes to not renew the frequency authorisation .
- (4) If the Minister, on the recommendation of ECTEL, intends to not renew a frequency authorisation, the Minister shall give the frequency authorisation holder —
  - (a) the opportunity to presents its views; and
  - (b) to submit to the Commission, within such time as the ECTEL may specify, a written statement of objection.
- (5) The Commission, shall immediately forward any views presented and statement of objection submitted under subsection (4) to ECTEL for its review and recommendation.
- (6) The Minister shall take into account any views presented and statement of objection submitted under subsection (4) and ECTEL's recommendation, before making a final decision on the renewal of a frequency authorisation.
- (7) The Commission shall publish a renewal of a frequency authorisation in the *Official Gazette* and on its website.

### **63. SUSPENSION AND REVOCATION OF FREQUENCY AUTHORISATION**

- (1) The Minister may, on the recommendation of ECTEL, suspend or revoke a frequency authorisation if —
  - (a) the radio apparatus or station in respect of which the frequency authorisation was granted interferes with an electronic communications service provided by a person to whom a frequency authorisation is already granted for that purpose;
  - (b) the frequency authorisation holder contravenes this Act or any Regulations made under this Act;

- (c) the frequency authorisation holder breaches a condition specified in the frequency authorisation;
  - (d) the frequency authorisation holder is in default of payment of the frequency authorisation fee or any other money owed under this Act;
  - (e) the suspension or revocation of the frequency authorisation is necessary for reasons of national security or the public interest;
  - (f) the frequency authorisation holder is bankrupt, dissolved or liquidated; or
  - (g) the frequency authorisation holder fails to operate under the frequency authorisation within one year from the date the frequency authorisation was granted.
- (2) If the Minister, on the recommendation of ECTEL, intends to suspend or revoke a frequency authorisation, the Minister shall give the frequency authorisation one month notice in writing of its intention to suspend or revoke the frequency authorisation and outline the grounds on which it proposes to suspend or revoke the frequency authorisation.
- (3) If the Minister, on the recommendation of ECTEL, intends to suspend or revoke a frequency authorisation, the Minister shall give the frequency authorisation holder an opportunity to —
- (a) present its views;
  - (b) remedy the breach of the frequency authorisation or a term and condition of the frequency authorisation; or
  - (c) submit to the Minister, within such time as the Minister may specify, a written statement of objection to the suspension or revocation of the frequency authorisation.
- (4) If a frequency authorisation holder presents its views or submits a written statement of objections under subsection (3), ECTEL shall review its recommendation to the Minister taking into account the views presented or the statement of objection submitted, and may change its recommendation to the Minister.
- (5) If the Minister, on the recommendation of ECTEL, suspends or revokes a frequency authorisation, the Minister shall —
- (a) notify the frequency authorisation holder within 30 days of the decision to suspend or revoke the frequency authorisation; and
  - (b) give reasons in writing for the suspension or revocation of the frequency authorisation.

- (6) If a frequency authorisation is suspended, the frequency authorisation holder shall not provide an electronic communications service or operate an electronic communications network unless —
  - (a) ECTEL is satisfied that the grounds for suspension have been rectified, and communicates this to the Minister; and
  - (b) the Minister lifts the suspension of the frequency authorisation.
- (7) A frequency authorisation holder, whose frequency authorisation has been suspended or revoked, is required to pay fees that were due prior to the suspension or revocation of its frequency authorisation.
- (8) The Commission shall publish the suspension or revocation of a frequency authorisation in the Official *Gazette* and on its website.
- (9) If a frequency authorisation is suspended or revoked and the electronic communications network is partially or totally disconnected, ECTEL shall recommend and instruct the measures to be applied so as to minimize any negative effects on the users of the electronic communications network.
- (10) If a frequency authorisation has been revoked by the Minister, the frequency authorisation holder shall surrender the frequency authorisation to the Commission.

#### **64. SURRENDER OF FREQUENCY AUTHORISATION**

- (1) A frequency authorisation holder may surrender a frequency authorisation prior to its expiry, by making an application in the prescribed form to the Commission at least one year prior to the intended date of surrender.
- (2) An application under subsection (1) must be accompanied by the frequency authorisation or, if that is not practicable, by a statement of the reasons for the failure to do so.
- (3) Upon receipt of an application for surrender under subsection (1), the Commission shall within 7 days of receipt of the application, forward the application to ECTEL for its consideration.
- (4) Within 60 days of ECTEL's receipt of an application for surrender of a frequency authorisation from the Commission —
  - (a) ECTEL shall submit its recommendation to the Commission; and
  - (b) the Commission shall submit ECTEL's recommendation for the grant or refusal of the surrender of the frequency authorisation and a copy of the application to the Minister.



- (5) Before making a recommendation under subsection (4), ECTEL shall —
  - (a) give the frequency authorisation 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, shall not unreasonably refuse the application for surrender under subsection (1).
- (7) The Minister, on the recommendation of ECTEL, may grant the application for surrender of a frequency authorisation, subject to a condition that the frequency authorisation holder takes the actions that ECTEL considers necessary.
- (8) The Minister, on the recommendation of ECTEL, may refuse to grant the application for surrender of a frequency authorisation, but shall give reasons in writing for the refusal.
- (9) If the Minister on the recommendation of ECTEL, refuses to grant an application for a surrender of a frequency authorisation, the frequency authorisation holder shall have a right to appeal under section 153.
- (10) If the Minister, on the recommendation of ECTEL, refuses to grant an application for surrender of a frequency authorisation and frequency authorisation holder agrees to the refusal, the Commission shall return the frequency authorisation to the frequency authorisation holder.
- (11) If an application for surrender of a frequency authorisation is granted by Minister, the frequency authorisation terminates on the date of the surrender.
- (12) A frequency authorisation holder, whose frequency authorisation has been surrendered, is required to pay fees that were due prior to the date of the surrender of the frequency authorisation.
- (13) The Commission shall publish the surrender of a frequency authorisation in the *Official Gazette* and on its website.

## **SPECIAL LICENCE**

### **65. SPECIAL LICENCE**

- (1) If 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 (2), request additional information from an applicant for the purpose of considering the application.
- (4) If the Commission makes a request for information under subsection (3), the applicant shall immediately submit the information to the Commission.
- (5) If a frequency authorisation is required under a special licence, the Commission shall forward the application for the special licence to ECTEL for its recommendation, before the Commission submits its 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 additional information being submitted under subsection (4).
- (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) If the Minister, on the recommendation of the Commission, refuses to grant a special licence, the Minister shall—
  - (a) notify the applicant of the refusal within 7 days of the decision; and
  - (b) give reasons in writing for the refusal.
- (9) If an application for a special licence is refused, the applicant has the right to appeal under section 153.
- (10) A special licence granted under subsection (7) shall be issued on payment of the prescribed fee.
- (11) A special licence is valid for the period specified in it which shall not exceed 21 calendar days and is not renewable.
- (12) The Commission shall publish the grant of a special licence in the Official *Gazette* and on its website.
- (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.

## **PART 5**

### **CHANGE OF CONTROL AND OWNERSHIP OF LICENCES AND FREQUENCY AUTHORISATIONS**

#### **66. TRANSFER OF LICENCES AND FREQUENCY AUTHORISATIONS**

- (1) A licence and frequency authorisation is personal to a licensee and a frequency authorisation holder and shall not be transferred.
- (2) In this section, “transfer” includes an assignment, sub-licensing or any passing of a licence and frequency authorisation to a person other than the initial licensee or frequency authorisation holder, whether or not that person has a business activity, significant assets or interest.
- (3) A licensee or a frequency authorisation holder who contravenes subsection (1) is liable to the revocation of its licence and frequency authorisation under sections 45, 54, or 63.

#### **67. CHANGE OF CONTROL OF THE LICENSEE OR FREQUENCY AUTHORISATION HOLDER**

- (1) A licensee or frequency authorisation holder shall not cause, permit or acquiesce in any change of control unless the licensee or frequency authorisation 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 authorisation holder who contravenes subsection (1) is liable to the revocation of his or her licence or frequency authorisation under sections 45, 54, or 63.
- (3) Upon receipt of the application under subsection (1) —
  - (a) in the case of an individual licence or frequency authorisation, 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 authorisation;
  - (b) whether the change of control would have, or is 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; or
  - (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 authorisation 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 shall, acting on the recommendation inform the applicant in writing of —
- (a) the grant of approval of the change of control;

- (b) the grant of approval of the change of control subject to the condition that the acquirer, the licensee or frequency authorisation holder takes the actions that ECTEL or the Commission considers necessary to eliminate or avoid the adverse effects; or
- (c) the refusal to grant approval for the change of control, giving the reasons for the refusal.

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

- (1) A licensee or a frequency authorisation holder shall not issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in —
  - (a) a person acquiring a significant interest in the licensee or frequency authorisation holder; or
  - (b) a person who already owns or holds a significant interest in the licensee or frequency authorisation holder, increasing or decreasing the size of his or her interest,
 unless the licensee or frequency authorisation holder notifies the Commission in writing not less than 90 days prior to the issue, allotment or other reorganisation.
- (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 authorisation 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 reorganisation of shares.
- (4) The Commission, on the recommendation of ECTEL, may grant an application under subsection (3) and in granting the waiver include a condition that the licensee or frequency authorisation holder shall, as soon as reasonably practicable, notify the Minister through the Commission of any change in significant interest.
- (5) A licensee or frequency authorisation 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 authorisation.
- (6) Subject to subsection (7), within 80 days of receipt, the Minister shall on the recommendation of ECTEL, issue its non-objection in writing, 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 or frequency authorisation holder 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

## **PART 6**

### **RIGHTS AND OBLIGATIONS OF LICENSEE AND FREQUENCY AUTHORISATION HOLDER**

#### **69. INTERCONNECTION AND ACCESS**

- (1) Subject to subsection (8), a licensee who operates a public electronic communications network shall provide —
  - (a) interconnection on his or her electronic communications network to another licensee;
  - (b) access to another licensee, to infrastructure that is owned, operated, occupied or controlled by the licensee, if it is technically feasible to enable that other licensee to install a facility, for use in connection with the supply of an electronic communications service; or
  - (c) both interconnection under paragraph (a) and access under paragraph (b).
- (2) Subject to subsection (8), a licensee who owns or operates a submarine cable landing station shall provide —
  - (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
  - (c) access to another licensee, to infrastructure that is owned, operated, occupied or controlled by the licensee, if it is technically feasible to enable that other licensee to install a facility, for use in connection with the supply of an electronic communications service.

- (3) A licensee, who owns or operates a submarine cable landing station, shall publish a reference access offer in the time and manner prescribed for access to international submarine capacity.
- (4) A licensee who fails to comply with subsections (1) and (2) commits an offence and is liable on indictment to a fine of 3% of its annual gross revenue for the previous year.
- (5) A licensee, who wishes to interconnect with or access the electronic communications network or submarine cable landing station of another licensee, shall make a request to that other licensee in writing.
- (6) A licensee, to whom a request for interconnection or access is made, shall respond in writing to the request within a period of 28 days from the date of the request.
- (7) A licensee, in granting a request made under subsection (5), shall agree with the person making the request, the start date of the interconnection or access.
- (8) 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.
- (9) If 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; and
  - (d) finding adjacent space.
- (10) If a decision or directive under subsection (9) 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; and
  - (b) increase the price for access to the infrastructure by a specific margin reflecting the additional costs incurred.
- (11) The increase under subsection (10)(b) is applicable to any infrastructure that is modified to comply with a decision or direction of the Commission under subsection (9).
- (12) A licensee shall provide interconnection or access 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 providing the interconnection or access.

## **70. 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 from a licensee, the Commission —
  - (a) shall review the interconnection or access agreement or both; and,
  - (b) in accordance with the recommendation of ECTEL, may approve or disapprove of the interconnection or access agreement.
- (3) An interconnection or access agreement between licensees, shall be in writing, and copies of the agreement shall be kept as a record maintained by the Commission for that purpose.

## **71. 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) If a 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) The prices imposed by a licensee 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 who provides an interconnection or access, shall comply with the guidelines and standards to facilitate interconnection or access, established by the Commission on the recommendation of ECTEL, when setting rates for interconnection or access.
- (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.

## **72. 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) obtain written permission from any affected utility installation owner; and
  - (d) notify the Commission of any intended road works.

- (3) If permission is obtained under subsection (2)(c), 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) if 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) The Commission, after being notified by a licensee of any intended road works, shall notify other licensees of a public electronic communications network or public utilities of the intended road works, and inquire whether they have any intention of undertaking a similar type of 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 if such licensee proves to the satisfaction of the Commission the necessity of carrying out emergency works.
- (8) If 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 having a wide circulation in [Name of ECTEL Contracting State] and shall otherwise inform affected persons by such other means as the Commission specifies.

### **73. REPAIR AND RESTORATION**

- (1) If 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].
- (4) A licensee shall obtain a written report of satisfaction from the [Planning Department] and the [Ministry responsible for Infrastructure].

- (5) If a licensee fails to comply with subsection (3), the licensee is liable for any expenses that the [Planning Department/utility installation owner] incurs and for any other loss by any other person.
- (6) The liability of the licensee under subsection (5) continues for a period of 2 years or until the [Planning Department/utility installation owner] expresses satisfaction in writing under subsection (4).

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

- (1) A licensee, authorized in writing by the [Planning Department], may with the permission of the landowner and at a 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) A licensee, who exercises the power under subsection (1) and damages the land or chattels, shall fix the damage or compensate the owner of the land or chattel.
- (3) A licensee, who exercises the power under subsection (1) and disturbs a person's enjoyment of his or her land or chattels, shall compensate that person for the disturbance.
- (4) 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.
- (5) If there is a dispute between the parties as to the level of compensation, the parties may take the matter to the Commission, and the Commission shall make a decision on the matter.

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

- (1) A licensee, subject to subsection (2) 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) If a licensee wishes to install facilities on private land or buildings the licensee shall first obtain the written permission from the landowner, occupier or agent and the landowner, occupier or agent is entitled to compensation.
- (3) Subsection (2) does not apply if 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 power 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 as a consequence of the exercise by the licensee; and
  - (c) shall not place any facilities on any private land or building in a manner that will cause interference with, or obstruction to the occupier of a land or building;
  - (d) 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;
  - (e) shall notify the landowner, occupier, or agent of his or her right to give notice of an objection in writing, within 14 days of receiving notice of the licensee's intention; and
  - (f) shall not proceed with any work that a landowner, occupier or agent has objected to, until authorized to do so by the Commission.
- (5) In the event of disagreement over the quantum of any compensation to which a landowner is entitled under subsection (2), or of any other dispute relating to the installation or maintenance of facilities on, or over a private land or building, the matter shall be referred to the Commission, and the Commission shall make a decision on the matter.
- (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.

## **76. 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 shall 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 its information.

## **77. 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.

## **78. DATA REPORTING**

- (1) A licensee shall comply with the reporting obligations of the Commission and ECTEL by —
  - (a) providing rates of electronic communications services;
  - (b) providing market share and geographical penetration rates electronic communications services;
  - (c) providing copies of standard consumer contracts and terms and conditions in relation to electronic communications services;
  - (d) providing the terms and conditions of wholesale and standard non-residential consumer contracts including wholesale contracts with other licensees;
  - (e) providing 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 if 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; and
  - (J) the technology used to connect the site to the electronic communications network.
- (f) providing justification for the equipment already deployed, when capacity of a site is limited and does not allow the access to the site;
  - (g) providing its annual report including audited financial statements, annually within 120 days of the end of its reporting year; and
  - (h) providing any other information as may be requested by ECTEL or the Commission.
- (2) 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; and
    - (b) communicate information to public utilities authorities upon request.
  - (4) If ECTEL and the Commission requests other information in addition to the information provided 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).

## **79. NUMBER PORTABILITY**

- (1) A licensee shall offer number portability in accordance with the prescribed requirements.
- (2) A person shall not operate a clearing house for number portability, unless the person holds a valid licence issued by the Minister.
- (3) A person who operates a clearing house 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.
- (4) A licensee shall cooperate with the clearing house at all times.
- (5) A licensee who fails to cooperate 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.

## **80. ROAMING**

A licensee shall comply with the national and regional standards applicable to roaming, and the provisions of the Mobile Electronic Communications (Roaming Services) Act [ ] and Regulations [ ]

## **81. NUMBERING**

- (1) The Commission shall assign a number or a block of numbers with or without conditions to a licensee, if the Commission determines that based on the National Numbering Plan, an electronic communications number or block of numbers is required to provide an electronic communications service is available, and the licensee pays the prescribed initial fee.
- (2) 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; and
  - (b) use numbers in accordance with the National Numbering Plan established and managed by the Commission.
- (3) A licensee shall not use a number or block of numbers unless —
  - (a) the Commission assigns a number or block of numbers for its use; and
  - (b) the licensee pays the annual fee to the Commission.

## **82. 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 set 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;
  - (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) details of which electronic communications service is included within such charges, if any subscription or periodic rental charge is applicable;
  - (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; and
  - (i) the methods of dispute settlement.

## **83. CONSUMER PROTECTION**

A licensee shall —



- (a) provide the prescribed information to consumers in the prescribed manner;
- (b) provide customer contracts in the prescribed manner which contain 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;
- (g) 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; and
- (h) promote and protect the welfare and interest of consumers of electronic communications in accordance with the Regulations.

#### **84. 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.

#### **85. COMMUNICATIONS DURING AN EMERGENCY**

- (1) If an emergency is declared under any other law, a licensee or frequency authorisation holder of electronic communications or mass electronic communications systems shall give priority to requests and orders for the transmission of voice or data that the Minister considers necessary in the interest of national security.
- (2) A licensee or frequency authorisation 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 licence or frequency authorisation or as prescribed.

- (3) A licensee or frequency authorisation holder shall discontinue the use of an electronic communications service for emergency communications 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) If 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 authorisation 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.

#### **86. NET NEUTRALITY**

- (1) Subject to subsection (2), a licensee shall adopt net neutrality.
- (2) The Minister shall, on the recommendation of ECTEL, make Regulations providing for net neutrality.

### **PART 7**

## **REGISTRATION AND APPROVAL**

#### **87. 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.

## **88. TYPE APPROVALS**

- (1) A licensee, frequency authorisation 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 authorisation holder, manufacturer or retailer who is granted a certificate of type approval by the Commission for use of any equipment 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 authorisation holder who applies for type approval 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 recognise type approvals granted by other ECTEL Contracting States, and shall consult and liaise with ECTEL in respect of such matters if 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, are made available to licensees, frequency authorisation holders and other interested parties.

## **PART 8**

### **COMPETITION**

#### **89. REGULATION OF COMPETITION**

- (1) Without prejudice to the competence of any court or a Competition body in accordance with the Revised Treaty of Chaguaramas and the Revised Treaty of Basseterre, 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) If a matter before 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 shall refer the matter to ECTEL.
- (3) The Commission shall, in referring the matter to ECTEL under subsection 2, provide ECTEL with all required information and ECTEL shall investigate the matter and submit its recommendations to the Commission.
- (4) In conducting an investigation under subsection (3), ECTEL may consult with a Competition body.
- (5) The Commission shall adopt a decision in compliance with the recommendations of ECTEL.
- (6) The Commission and ECTEL may share information with other Competition bodies.
- (7) The Minister may, on the recommendation of ECTEL, make regulations on competition in the electronic communications sector.

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

- (1) 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 with the object or effect of frustrating the benefits expected from the establishment of the CARICOM Single Market and Economy, the OECS Economic Union and 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) An 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 conduct 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; and
  - (b) imposes on another licensee 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 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 an activity;
  - (b) use information obtained from competitors to engage in anti-competitive business conduct;
  - (c) use an electronic communications service which is 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 that results in 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; and
  - (i) exclusionary vertical restrictions.

## **91. 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; and
  - (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.

## **92. REASONABLE ALLOWANCE**

Nothing in section 90 prevents a licensee from making a reasonable allowance, subject to the approval by the Commission, for the cost of providing an electronic communications service if 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.

## **93. MARKET ANALYSIS AND SIGNIFICANT MARKET POWER**

- (1) Pursuant to its powers under Article 5 of the Treaty, ECTEL shall —
- (a) adopt a recommendation which identifies relevant product and electronic communications service markets within the electronic communications sector in [Name of ECTEL Contracting State], that have characteristics that may justify the imposition of specific regulatory obligations set out in this Act; and

- (b) on behalf of, and in consultation with the Commission—
    - (i) perform market analysis in [Name of ECTEL Contracting State]; and
    - (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 —
  - (a) publish the objectives and methodology to be used for the market analysis; and;
  - (b) publish the results of the market analysis on their website.
- (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 conduct 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 significant market power in respect 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 a retail customer;
  - (e) access to financial resources and experience in providing products and electronic communications services; and
  - (f) 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 a relevant market.
- (7) Notwithstanding this section, a licensee may apply to the Commission for the review of its status as having significant market power, on such terms and according to such procedures as the Commission determines, acting on a recommendation from ECTEL.

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

- (1) Pursuant to section 90(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 and its further amendments or the Revised Treaty of Basseterre establishing the OECS Economic Union.

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

- (1) If following a market analysis, a licensee is determined to have 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, if 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 fibre and associated database;
- (iii) timely information about, including planned changes to, technical interfaces, protocols or key technologies that are required for the interoperability of services;
  - (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 access —
- (i) to physical infrastructure including buildings, ducts and masts;
  - (ii) to number translation or systems offering equivalent functionality;
  - (iii) to fixed and mobile networks, in particular, access necessary to facilitate virtual network services;
  - (iv) to subscription audio-visual services; and
  - (v) 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, provide facilities, services and information to other licensees 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 inputs by a licensee or its subsidiaries, partners or 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 shall be published in the *Official Gazette* 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) If 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 the 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) If a licensee that has a significant market power fails to comply with subsection (1) or (3), the Commission may apply for injunctive relief under section 117.
- (5) The Commission, in assessing the proportionality of the obligations it is likely to impose on a licensee that has significant market power, shall take into account—
  - (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 consultation, accessible to all interested parties, but confidential information including trade secrets is excluded.

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

Without prejudice to its powers to regulate the tariff of interconnection or access offers, the Commission may, after consultation with ECTEL—

- (a) carry out tests of non-discrimination on the tariffs of the on-net and off-net offers of a licensee 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; or
- (f) 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.

## **PART 9**

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

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

- (1) 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 must contribute to the Universal Service and Access Fund, which 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);
  - (b) funds directly allocated to the Fund by Parliament; and
  - (c) official grants, donations, bequests or other contributions, or transfers granted by an individual or other legal entity.

## **98. 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 if 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; and
- (g) provide grant funds for information and communication technology entrepreneurial start-ups.

## **99. 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; and
  - (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; and
  - (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 a Fund Administrator, an individual who shall —
  - (a) be a graduate of an accredited university, or a chartered or certified institute;
  - (b) have knowledge and experience in one or more of the following:
    - (i) management;
    - (ii) finance;
    - (iii) accounting;
    - (iv) electronic communications; or
    - (v) any other related field to ensure adequate performance of the requirements of the position; and
  - (c) not have a conflict of interest with regard to the 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) The Fund Administrator, subject to subsection (6), 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) The Fund Administrator, subject to the direction of the Commission, shall do all things necessary for and incidental to the proper functioning of the Fund.
- (8) The functions of the Fund Administrator include —
  - (a) assisting the Commission in identifying potential projects for Fund support;
  - (b) defining, preparing and distributing bidding documents and other documentation for projects approved for Fund financing and implementation;
  - (c) supervising and monitoring Fund projects;
  - (d) participating in the selection of consultants to support Fund project implementation;

- (e) sensitising the public of matters relating to the Universal Service and Access Fund;
- (f) supervising the preparation and monitoring of the Fund's Operating budget;
- (g) preparing progress reports on Fund projects and overall Fund operations;
- (h) preparing the financial statements of the Fund for the approval of the Commission;
- (i) requesting and receiving project proposals;
- (j) preparing bid evaluation reports; and
- (k) any other function assigned to the Fund Administrator by the Commission.

#### **100. 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; and
  - (b) electronic communications market analysis and review of Fund objectives.

#### **101. 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.

#### **102. 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 resources of the Fund;
  - (b) may use the Fund to finance projects that may not be economically feasible without support from the Fund;
  - (c) may use the Fund to finance projects to the extent necessary to create adequate economic incentives for investors; and
  - (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, the public and industry stakeholders, appropriate socio-economic criteria to identify the geographic areas, population groups, institutions and organisations that may be eligible to benefit from Fund projects;
  - (b) approve the application, qualification, and competitive bidding conditions for the allocation 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 contracts for Fund project; and
  - (e) determine whether sole source procurement is appropriate for the allocation of funds under designated projects.
- (3) ECTEL shall provide assistance to the Commission in relation to the performance of technical tasks associated with the selection of Fund projects.
- (4) Without prejudice to the generality of subsection (3), ECTEL may contribute financial, accounting, technical and legal expertise in one or more 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; or
  - (g) reviewing and monitoring Fund projects.
- (5) A determination made by the Commission under subsection 2(e), is subject to the recommendation of ECTEL.

### **103. 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 bank account designated by the Commission for the Fund and shall be disbursed upon authorisation of the Commission for specific Fund related activities in accordance with the guidelines developed by the Commission.

#### **104. BUDGETS**

- (1) The Commission shall prepare and keep annually through accounting allocations—
  - (a) a Fund Projects Budget; and
  - (b) a Fund 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 Fund Operating Budget under subsection (1)(b) shall not exceed 10% of the Fund Projects Budget.
- (4) Allocations from the funds for information and communication technology entrepreneurial start-ups shall not exceed 10% of the Fund Projects Budget.
- (5) The Minister, on the recommendation of ECTEL, may vary the percentage of the Fund Operating Budget to be utilized in relation to subsection (3) or to be applied in relation to Grant Funds in subsection (4), by Order published in the Official Gazette.
- (6) Before the end of the financial year, the Commission shall prepare budget forecasts for the Fund for the subsequent financial year, subject to the prescribed Fund Operating Plan.

#### **105. 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 be audited at any time by an independent auditor appointed by the Commission on such terms and conditions as the Commission determines.
- (3) Without limiting the generality of subsection (2), the accounts of the Fund shall be audited at the end of each financial year, by an independent auditor appointed by the Commission, on such terms and conditions as the Commission determines.

#### **106. ANNUAL REPORT**

The Commission shall include in the annual report under section 30 —

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

- (c) details of awards of contracts.

## **PART 10**

### **OTHER OFFENCES**

#### **107. CONNECTION OF EQUIPMENT**

- (1) A person shall not connect any equipment to a public electronic communications network without —
  - (a) submitting a written request to the Commission for approval; and
  - (b) receiving written approval from 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 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.

#### **108. 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 that thing is equipped with filters, suppressors or other devices, or is otherwise modified to minimise the interference.
  - (b) intercept or interrupt a 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 an electronic communications network, or apparatus, except in accordance with this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable —
  - (a) in the case of a first offence, on summary conviction 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.

#### **109. 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.

#### **110. GIVING FALSE OR MISLEADING 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.

#### **111. 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 revocation of their licence.

#### **112. HARMFUL INTERFERENCE TO FACILITY OR TERMINAL EQUIPMENT**

- (1) A licensee or frequency authorisation holder shall not operate a facility or terminal equipment in a manner that is likely to cause harmful interference.
- (2) If the Commission issues a direction to the licensee or frequency authorisation holder to cease operating the facility or terminal equipment, the licensee or frequency authorisation 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 authorisation holder who operates a facility or terminal equipment contrary to subsections (1) or (2), commits an offence and is liable —
  - (a) on summary conviction to a fine not exceeding \$50,000; or
  - (b) if the offence is a continuing offence, to a further fine not exceeding \$5,000 for every day that the offence continues after conviction.

### **113. LIABILITY OF BODY CORPORATE**

- (1) If there is a breach of a licence or an 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 a senior officer who is considered the directing mind and will of the body corporate, is liable for that breach or offence.
- (2) When determining which employee of the body corporate that is responsible for the breach or offence under subsection (1), the Commission shall take into account —
  - (a) the nature of his or her functions;
  - (b) his or her reasonable ability to prevent that breach or offence;
  - (c) whether the breach or offence was committed with his or her consent or connivance; and
  - (d) whether he or she failed to exercise reasonable diligence to prevent the breach.

## **PART 11**

### **INVESTIGATION**

### **114. INVESTIGATION OF BREACHES**

- (1) The Commission may investigate a licensee or a frequency authorisation holder, if the Commission reasonably suspects that a licensee or a frequency authorisation holder is in breach of this Act, any Regulations made under this Act, a licence or a frequency authorisation, or if an allegation of breach is made to the Commission against a licensee or frequency authorisation holder.
- (2) If an allegation of a breach is made, the Commission shall determine whether there is reason to suspect that there is a breach of this Act, any Regulations made under this Act, a licence or a frequency authorisation, and whether 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, if there is a reasonable suspicion of breach or an allegation of breach is made, the Commission shall in writing, issue an investigation notice to the licensee or frequency

authorisation holder, and an inspector may conduct an investigation if he or she considers it necessary in relation to the licensee or frequency authorisation 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 authorisation;
  - (b) the reasons for the suspicion of the breach or details of the allegation of the breach, including a matter of fact or law which is relevant to the investigation; and
  - (c) that information is required from the licensee or frequency authorisation holder in order to proceed with the investigation.
- (5) An inspector may, subject to subsections (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 authorisation holder;
  - (b) request that of an officer or employee of the licensee or frequency authorisation holder, or any other person appear before the Commission, for the purpose of ascertaining compliance with this Act, the Regulations, a licence or frequency authorisation;
  - (c) inspect, examine or make copies of a document or record in the possession of a licensee or frequency authorisation holder relevant to the licence or frequency authorisation;
  - (d) require the verification of income and all other matters pertinent to the electronic communications service, a licence or frequency authorisation;
  - (e) enter and inspect a vehicle, vessel, aircraft or premises occupied or owned by the licensee or the frequency authorisation holder for the purpose of ascertaining compliance with this Act, the Regulations, a licence or frequency authorisation;
  - (f) seize, remove or impound a document relating to a licence or frequency authorisation for the purpose of examination and inspection; or
  - (g) seize an apparatus relating to a licence or frequency authorisation for the purpose of examination and inspection.
- (6) A person shall not refuse or fail, without a 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 (5), unless the occupier or the person in charge of the vehicle, ship, vessel, aircraft or premises consents to the entry or, if he or she does not, the inspector first obtains a search warrant under section 93.
- (9) An inspector shall not seize apparatus without a court order.
- (10) An inspector shall, on entering a 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 93 together with his or her identity card.
- (11) An inspector shall leave a receipt, which shows the documents or extracts taken by the inspector, with the occupier or person in charge of the vehicle, ship, vessel, aircraft, or premises, after completing a search.
- (12) An inspector may copy a document removed by him or her under subsection (5)(c) of this section, and return the document to the owner or person in charge of the document.
- (13) In determining matters concerning a 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 authorisation 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 a breach and matters affecting the merits and fair settlement of a matter; and
  - (g) may inform itself of a matter relevant to the breach.
- (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 authorisation 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 authorisation holder breached this Act, the Regulations, licence or frequency authorisation;
  - (b) continuation of the licensee or frequency authorisation holder's conduct is likely to cause serious harm to other licensees or frequency authorisation holders, consumers or the general public;
  - (c) the potential harm in allowing the licensee or frequency authorisation holder to continue its conduct outweighs the burden on the licensee or frequency authorisation holder; and
  - (d) it is in the public interest.
- (16) If the Commission determines that the licensee or frequency authorisation holder has breached this Act, the Regulations, licence or frequency authorisation, the Commission after consultation with ECTEL may take the following enforcement actions —
- (a) direct the licensee or frequency authorisation holder to cease engaging in the provision of the service or use of the particular frequency;
  - (b) direct the licensee or frequency authorisation holder to take specific remedial action and provide proof to the satisfaction of the Commission that the remedial action has been undertaken; or
  - (c) refer the matter to the Director of Public Prosecutions for the institution of criminal proceedings.
- (17) If the licensee or frequency authorisation holder fails to comply with a direction under subsection (16) (a) or (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.

## **115. SEARCH WARRANT**

- (1) If 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 a warrant to search a vehicle, ship, vessel, aircraft or premises if the electronic communications service is believed to be provided or the electronic communications network is believed to be operated.



- (2) If an application is made under subsection (1) for a warrant, the Magistrate may issue a warrant authorising an inspector named in the warrant, to enter a vehicle, ship, vessel, aircraft or premises, to search and inspect the vehicle, ship, vessel, aircraft or premises with assistance from a police officer and by such force as is necessary and reasonable, and —
- (a) to examine, inspect, make copies of, seize or remove any document or record; and
  - (b) to seize any equipment or other property,
- found on the vehicle, ship, vessel, aircraft or 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, 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 on indictment to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.
- (4) Any document, record, equipment or other property seized under a search warrant shall —
- (a) if legal proceedings 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 person in charge; or
  - (b) if legal proceedings are commenced before the expiry of the 180 days, be kept until the conclusion of the proceedings.
- (5) If 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.

## **116. OBTAINING OR PRESERVING EVIDENCE**

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

## **117. 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 12**

### **DISPUTE RESOLUTION**

## **118. APPLICATION FOR DISPUTE RESOLUTION**

- (1) If —
  - (a) after 30 days of making a complaint 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) If the Commission receives an application under subsection (1), the Commission shall give a certified copy of the application to the applicant.

## **119. REQUEST FOR FURTHER INFORMATION**

- (1) Upon receipt of an application under section 118, the Commission shall review the application and may request further information from a party if required.
- (2) If the Commission makes a request for further information under subsection (1), the party to whom the request is made, shall submit the information to the Commission in writing.

## **120. NOTIFICATION OF LICENSEE OR FREQUENCY AUTHORISATION HOLDER**

- (1) Upon receipt of an application under section 118, the Commission shall, in writing, notify the licensee or frequency authorisation holder of the substance of the application, unless the Commission is of the opinion that to do so will adversely affect or hinder an investigation that is being or may be carried out in respect of the application.
- (2) A licensee or frequency authorisation holder who is notified of an application under subsection (1), shall make a record of the application in the Complaints Record.

## **121. RESPONSE BY LICENSEE OR FREQUENCY AUTHORISATION HOLDER**

If a licensee or frequency authorisation holder is notified under section 120, the licensee may, within 10 days submit a response to the application to the Commission.

## **122. 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) if appropriate, require the retail customer to negotiate with the licensee;
  - (b) investigate the application;
  - (c) if 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) if an application involves a dispute between licensees, refer the application to ECTEL in accordance with Article 13 of the Treaty;
  - (e) if 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 body with responsibility for Consumer Protection;
  - (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.

### **123. FRIVOLOUS APPLICATIONS**

- (1) If the Commission is of the view that an application is of a frivolous nature, the Commission may decide not to investigate the matter or to discontinue an investigation that was ongoing.
- (2) If a decision is made not to investigate or to discontinue an investigation under subsection (1), the Commission shall, within 7 days of the decision, inform the applicant and the licensee of the decision in writing.
- (3) Notwithstanding subsections (1) and (2), if 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 be investigated or reinstated, giving written reasons for its decision to the applicant and the licensee.

### **124. 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 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 or licensee.

### **125. EXPEDITIOUS RESOLUTION OF DISPUTES**

- (1) The Commission shall, subject to section 126, use its best efforts to resolve a dispute within 60 days from the date an application is made under section 118.
- (2) Without limiting the generality of subsection (1), the Commission shall take steps to resolve a dispute as expeditiously and as practicable as possible 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.

## **126. 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, reduce or extend the time limit for the resolution of a dispute, if the Commission determines it necessary for the fair resolution of a dispute and in the best interests of the public.
- (2) The Commission shall set out —
  - (a) the reasons for reducing or extending a time limit and the new time limit;
  - (b) the actions to be taken during a reduced or extended time limit so as to encourage efficiency;
  - (c) the steps to be taken if an agreement is not reached within the extended time limit.

## **127. 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 implement and maintain a Dispute Resolution Register Tracking System for the purpose of tracking the status or resolution of disputes.

## **128. REPORTING BY COMMISSION**

- (1) The Commission shall submit a report to ECTEL quarterly concerning —
  - (a) the number of applications received in the previous quarter;
  - (b) the nature of each application received in previous quarter;
  - (c) the status of each application received;
  - (d) a decision taken in a dispute; and
  - (e) 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 an investigation, when the investigation concludes.

# **PART 13**

## **TRIBUNAL**

## **129. ESTABLISHMENT OF TRIBUNAL**

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

### **130. CONSTITUTION OF TRIBUNAL**

Subject to section 131, the Tribunal consists of 3 members appointed by the Chief Justice as follows —

- (a) a Chairperson who is a legal practitioner of not less than 10 years standing; and
- (b) two other members having not less than 10 years training or experience in one or more of the following areas —
  - (i) finance and economics;
  - (ii) information and communications technology;
  - (iii) spectrum management;
  - (iv) competition;
  - (v) consumer protection; or
  - (vi) public utilities regulation.

### **131. ELIGIBILITY FOR APPOINTMENT**

- (1) 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, or agent of a person providing an electronic communications service;
  - (d) is a supplier of goods or services to a licensee under a contract;
  - (e) is an undischarged bankrupt;
  - (f) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
  - (g) has been convicted of criminal offence except if 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].

- (2) The Commission shall —
  - (a) compile a list of persons annually, who are eligible to be appointed as members of the Tribunal; and
  - (b) submit the list to ECTEL for its record.
- (3) If an appointment is being made to the Tribunal by the Chief Justice, ECTEL shall submit the list of persons eligible to be appointed as members of the Tribunal to the Chief Justice or the Judicial and Legal Services Commission.

### **132. FUNCTIONS OF THE 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; and
- (b) claims with respect to the disposition of an investigation or application made to the Commission.

### **133. POWERS OF TRIBUNAL**

- (1) The powers of the Tribunal are to —
  - (a) issue a summons in the prescribed form for 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 signed by 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 to a party;
  - (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; or
- (d) if a licensee is in breach of a provision in Part 8—
  - (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 the 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.
- (6) If after an investigation under section 114, the Tribunal finds that a licensee or frequency authorisation holder is in breach of this Act, the Regulations, a licence or a frequency authorisation, the Tribunal may—
  - (a) direct that the licensee or frequency authorisation holder take remedial action and stipulate a time period within which such remedial action is to be completed;
  - (b) direct the licensee or frequency authorisation holder to compensate one or more of its retail customers for foreseeable damage caused to the retail customer within a specific time period;
  - (c) recommend that ECTEL make a recommendation to the Minister for the suspension or revocation of a licence or frequency authorisation; or
  - (d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.
- (7) If a licensee or frequency authorisation holder fails to comply with a direction given by the Tribunal, the Commission may enforce the decision of the Tribunal by taking the matter to the High Court.

#### **134. 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.

#### **135. TEMPORARY APPOINTMENTS**

If the Chairperson or any member of the Tribunal is absent or unable to perform the functions of his or her 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.



### **136. RESIGNATION**

Any member of the Tribunal, may at any time resign from office by notice 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.

### **137. REVOCATION**

- (1) 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.
- (2) If the Chief Justice or the Judicial and Legal Service Commission revokes the appointment of a member of the Tribunal, the Chief Justice or the Judicial and Legal Service Commission shall within 90 days of the decision —
  - (a) notify the member in writing of the revocation and the date the revocation will take effect; and
  - (b) give the member reasons in writing for the revocation.

### **138. 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*.

### **139. SECRETARY**

- (1) The Commission, on the recommendation of ECTEL, shall appoint a person 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.
- (3) The Commission shall compile a list of persons who are eligible to be appointed as Secretary to the Tribunal.
- (4) The Commission shall submit the compiled list under subsection (3) to ECTEL for its record.

### **140. REMUNERATION AND ALLOWANCES**

Each member of the Tribunal shall be paid such remuneration and allowances, if any, as stipulated in the Electronic Communications (Rules of Procedure of the Electronic Communications Tribunal) Regulations [ ].

#### **141. 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 if 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) A decision 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 High Court.
- (7) Subject to the provisions of this section, the Tribunal may make rules to regulate its own proceedings.

#### **142. 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 enactment 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.

#### **143. 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.

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

- (1) If 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.

#### **145. 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 14**

### **MISCELLANEOUS**

#### **146. 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 shall be 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/Consolidated Fund].

#### **147. 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 authorisation is not available for public inspection until the application for the licence or frequency authorisation 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.

#### **148. 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.

#### **149. EXCHANGE OF INFORMATION**

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

## **150. COPYRIGHT**

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

## **151. PERMISSION UNDER OTHER LAWS**

If a licensee or frequency authorisation 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 authorisation holder from obtaining that permission.

## **152. 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.

## **153. APPEAL TO HIGH COURT**

A person may, within 28 days of receipt of the decision made under this Act, appeal to the High Court against—

- (a) a decision of the Minister;
- (b) a decision of ECTEL;
- (c) a decision of the Tribunal; or
- (d) a decision of the Commission.

## **154. 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*.

## **155. 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 authorisation;
- (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) universal service and access fund;
  - (hh) retail pricing;
  - (ii) reasonable traffic management by licensees;
  - (jj) net neutrality;
  - (kk) number portability; and
  - (ll) procedure of the Tribunal.
- (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 \$50,000 for any such offence.
- (4) ECTEL shall make recommendations under this section after consultation with the Commission.

## **156. REPEAL AND SAVINGS**

- (1) The following legislations are repealed —
- (a) Telecommunications Act [ ] is repealed;
  - (b) Telecommunications (Licensing and Authorisation) Regulations [ ].
- (2) Notwithstanding subsection (1) —
- (a) any subsidiary legislation made under the repealed Act shall, in so far as it is not inconsistent with this Act, remain in operation until revoked or replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act; and
  - (b) any act done, or any decision, appointment, or other matter made under the repealed Act, shall be deemed for all purposes to have been done or made under this Act.
- (3) A person authorised to operate a telecommunications network or provide a telecommunications service or use radio frequencies [immediately before the



commencement] [as at the date of entry into force] of this Act, is deemed to be operating an electronic communications network or providing an electronic communications service or using 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.

## **157. TRANSITIONAL**

- (1) Notwithstanding any other provision in any other law, a person authorised to operate a telecommunications network, or provide a telecommunications service or use radio frequencies immediately before the date of entry into force of this Act, may continue to operate an electronic communications network, or provide an electronic communications service or use such radio frequencies for a period of one year after the commencement of this Act, as if they have been granted a licence or frequency authorisation under this Act.
- (2) Within one year of commencement of this Act, the Minister shall, acting on the recommendation of ECTEL, issue a licence subject to subsection (3) to a person under subsection (1) who makes a request within 12 months of commencement of this Act to be licensed.
- (3) A licence issued for the purposes of subsection (2) shall be subject to new terms and conditions in accordance with this Act and Regulations made under this Act.

## **SCHEDULE 1**

(Section 23)

### **Oath of Secrecy of the Commission**

#### **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, 20[ ] 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.

**Dated** ..... day of ..... 20\*\*

**Name of.....**

**Signature of.....**

## SCHEDULE 2

(Section 34)

### LICENCE - SUB-CLASSES

Licence	Sub-class
<ul style="list-style-type: none"> <li>○ <b>Class</b></li> </ul>	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
<ul style="list-style-type: none"> <li>○ <b>Individual</b></li> </ul>	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
<ul style="list-style-type: none"> <li>○ <b>Special</b></li> </ul>	Emergency Exigency

## **SCHEDULE 3**

### **Conditions for licences and frequency authorisations**

Licences and frequency authorisations 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 authorisation holder is and is not entitled to operate and provide;
- (b) the electronic communications network to which the electronic communications network of the licensee or frequency authorisation holder can be connected to;
- (c) the build-out of the electronic communications network, geographical coverage and retail customer targets for the provision of the relevant electronic communications service;
- (d) the use of radio spectrum;
- (e) 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;
- (f) the provision of an electronic communications service to persons with disabilities;
- (g) the interconnection of the licensee's electronic communications network with those of other licensees;
- (h) the access to electronic communications networks;
- (i) the access to towers, sites and underground facilities;
- (j) the sharing of infrastructure;
- (k) prohibitions of anti-competitive conduct;
- (l) the allocation and use by the licensee of numbers;
- (m) the provision of universal service and access;
- (n) the period of licence or frequency authorisation and period for renewal, modification or surrender;
- (o) that the licence enters into force upon payment by the licensee to ECTEL or the Commission of the prescribed fee;
- (p) non-exclusivity of the licence;
- (q) contribution to the Universal Service and Access Fund;
- (r) specification of the fees depending on the divergent or convergent nature of the electronic communications service provided;
- (s) exclusivity or otherwise of the frequency authorisation;
- (t) technical and accounting information to be provided to ECTEL and the Commission;
- (u) consumer protection;

- (v) quality of service;
- (w) roaming;
- (x) licence transfer, assignment and cession or change of control;
- (y) net neutrality;
- (z) number portability;
- (aa) access to submarine cable landing stations; or
- (bb) any other matters which the Minister considers necessary in accordance with the purpose of the Treaty, public interest and national security.

Passed in the [ ] this day of , 20[ ].

Final Draft