

**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 ECTEL Member States by repealing and replacing the Telecommunications Acts with legislation which, given the converged environment, 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 (*clauses 1-6*) provides for preliminary matters including the short title and commencement of the Bill, interpretation, principal object of the Act, the provision to bind the [Crown/State], the application of the Act, exemptions and the powers of the Minister.
4. By virtue of clause 2 of the Bill words used throughout the Bill are defined for clarity. In particular, the definitions of “electronic communications” “electronic communications service”, “electronic communications network” have been defined.
5. The principal object of the Act provided for in clause 3 of the Bill puts the aim of the legislation in context and indicates the spirit and intention of the provisions of the Act. Although in some Member States the provision is not normally included in legislation, in the interest of harmonization it was included.
6. Clause 4 of the Bill expressly provides for the [Crown/State] to be bound by the provisions of the Act.
7. By virtue of clause 5 of the Bill, the Act does not apply to the program content and scheduling aspects of broadcasting networks and services, networks or services operated or provided exclusively by the armed forces, police force, fire service, correctional services, public security services, security services, emergency services, public health authorities and civil aviation authorities, or any terminal equipment used for those purposes. The Act however

applies to the transmission aspects of broadcasting. Additionally, where the use of frequency is necessary for a network or service, a frequency authorisation will be required even if a licence is not required.

8. 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 network or service, or a diplomatic mission from the Act or a part or provision of the Act, including an exemption from payment of fees
9. By virtue of clause 7 of the Bill, the Minister has the power to grant or refuse a licences or frequency authorisations in accordance with Part 3 of the Bill. The Minister is required to give reasons for failure to grant an application for a licence or frequency authorisation. The Minister is to consult with the Commission in the exercise of its powers and wherever practicable the Minister is to adopt the form, document, process and subsidiary legislation recommended by ECTEL and implement the policy and recommendations proposed by ECTEL.
10. Part 2 of the Bill (clauses 8-37) provides for the National Telecommunications Regulatory Commission.
11. The Commission is established as a body corporate so that it has the powers of a body corporate by virtue of the Interpretation Act including the power to sue in its name, to contract, to acquire and dispose of property. The Minister may give directions to the Commission of a policy nature (clause 8).
12. The Commission is to comprise not less than three or more than five commissioners, no more than two of whom shall be public officers. The Commissioners are required to have recognised standing and experience collectively in various disciplines including finance and accounting, telecommunications, information technology, project management and law. At least one commissioner must have experience and expertise in telecommunications (clause 9).
13. Clause 10 of the Bill provides for the term of appointment of a commissioner to be not less than three years subject to eligibility for re-appointment for a further term, a maximum of two consecutive terms and to staggering of appointments. Provision is made in clause 10 for eligibility and disqualification criteria including, criminal convictions, bankruptcy and pecuniary interest in a service provider.
14. By virtue of clause 11 of the Bill, the Commission functions as an advisory body to the Minister on the formulation of national electronic communications policy and tariffs. The Commission's functions include *inter alia*, the reviewing of applications for licences

and frequency authorisations and preparation of licences and frequency authorisations and other relevant documents for signature by the Minister, reviewing proposed interconnection agreements in accordance with the recommendation of ECTEL, resolving disputes relating to interconnection, resolving complaints related to harmful interference and the management of the Universal Service Fund.

15. The powers of the Commission include issuing of codes of practice and the institution of legal proceedings against a licensee or a frequency authorisation holder, dispute resolution and the power to regulate its own procedure (*clause 12*).
16. The Minister is required to designate one commissioner as the Chairperson to the Commission and the commissioners are required to designate one of their numbers as the Deputy Chairperson to act in the absence of the Chairperson (*clause 13*).
17. Clause 14 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 Act and is to attend meetings of the Commission unless directed otherwise by the Chairperson but the Chief Executive Officer has no voting rights in the meeting.
18. Pursuant to clause 15 of the Bill, a Secretary to the Commission, inspectors and other employees of the Commission are to be appointed by the Commission as necessary for the performance of the powers, duties and functions 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 16 of the Bill, the Commission may establish advisory committees to give advice to the Commission on matters relating to its functions. An advisory committee may be made up of members and non-members and its decisions are not binding on the Commission.
20. Clause 17 of the Bill makes provision for the Commission to delegate its power to carry out certain duties to one or more of its commissioners or to the Chief Executive Officer.
21. An oath of secrecy is to be taken by the commissioners, officers and employees of the Commission. Provision is made for the preservation of confidentiality by commissioners, officers, employees, agents and advisers of the Commission with regard to all matters coming to their knowledge in the performance of their duties including the business affairs of the Commission, applications to the Commission, affairs of service providers or customers, clients or members of service providers and other information obtained in the

course of duty. Exceptions to the duty of confidentiality include where disclosure is permitted by a court or where it is available to the public from another source (*Clause 18*).

22. Clause 19 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 19 for meetings of the Commission to be duly constituted if at the meeting there is a quorum of not less than three commissioners participating in the meeting. 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. Minutes of a meeting of the Commission are to be recorded and kept by the Secretary to the Commission and are to be submitted to the Minister within 14 days of the meeting. 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.
23. By virtue of clause 20 of the Bill, a Commissioner who is in any way, either directly or indirectly, interested in a matter before the Commission is required to declare the nature of his or her interest at the first meeting of the Commission at which it is practicable to do so and where the Commission determines that the interest is material but that the Commissioner has not become disqualified by virtue of the provisions on disqualification, the commissioner is required to leave the meeting upon the matter coming up for discussion. Where a declaration is made, any departure of the commissioner from the meeting is to be noted in the minutes of the meeting. Failure to declare and interest, voting, in a matter in which a commissioner is materially interested and seeking to influence the vote of any other commissioner in relation to such a matter is misconduct which would lead to revocation of appointment of the commissioner. Decisions of the Commission taken at a meeting shall not be invalidated merely because a disqualified person sits at the meeting.

24. Clause 21 of the Bill provides for protection and indemnity of a commissioner or an employee of the Commission 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 Act. The protection does not extend in cases of personal injury.
25. Provision is made in clause 22 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.
26. The criteria for revocation of appointment of a commissioner by the Minister includes disqualification under the criteria set in clause 9(4), disqualification on grounds of national security, misconduct, disqualification or suspension on grounds of misconduct, by a competent authority, from practising a profession (*clause 23*).
27. Clause 24 of the Bill provides for the office of a commissioner to be vacated upon the death of the commissioner, if the commissioner becomes disqualified, if the commissioner resigns, if the commissioner's appointment is revoked or not renewed at the date of its expiry, or if the commissioner fails to attend three consecutive meetings or five meetings in the aggregate of the Commission in a twelve months period without a medical certificate or without being excused by the Chairperson in writing for ordinary commissioners and for Chairperson by the Minister in writing. A vacancy takes effect on the occurrence of the relevant condition and therefore no instrument of revocation by the Minister is required. The filling of any vacancy must be done in accordance with the provision relating to appointment of commissioners. 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.
28. Clause 25 of the Bill provides for the commissioners to be paid out of the funds of the Commission such remuneration and allowances as determined by Cabinet.
29. The revenue of the Commission is to comprise annual financial contributions made by ECTEL to the Commission and chargeable to the general budget of ECTEL, monies allocated to it by Parliament and monies received by the Commission as grants or loans (*clause 26*).
30. By virtue of clause 27 of the Bill, the financial year of the Commission commences on 1<sup>st</sup> January and ends on 31<sup>st</sup> December in each year.
31. Clause 28 of the Bill provides for the Commission to prepare a Budget with the estimates of its income and expenditure and a plan

of action for the Commission in respect of the ensuing financial year for approval by ECTEL and submission to the Minister for laying in [Parliament/the National Assembly].

32. The Commission is to keep proper records of accounts in accordance with generally accepted international accounting standards and principles and prepare and retain financial statements in respect of each financial year (*clause 29*).
33. By virtue of clause 30 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 may deem 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 deems necessary. The auditor's report is to be submitted to the Commission as soon as is practicable and in any event not later than three months after the end of the financial year.
34. 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. The annual report and the auditor's report are to be laid in [Parliament/National Assembly] within twenty eight days of receipt by the Minister or if [Parliament/National Assembly] is not in Session within twenty eight days of the commencement of the next Session of [Parliament/National Assembly] (*clauses 31 and 32*).
35. The Commission is exempt from the payment of taxes and fees on income property and documents (*clause 33*).
36. Clause 34 of the Bill provides for the right of access to the records of the Commission so that members of the public are able to access certain records and information held by the Commission subject to certain restrictions.
37. Clause 35 of the Bill makes provision for the Commission, in accordance with the recommendation of ECTEL, to issue codes of practice relating to services and networks and for a breach of a code of practice to be deemed to be a breach of a licence or frequency authorisation, as the case may be.
38. By virtue of clause 36 of the Bill, the Commission may issue directions to a licensee or frequency authorisation holder to take such measures or cease such activities as may be necessary. A

breach of a direction given by the Commission under this clause is a breach of the licence or frequency authorisation.

39. Clause 37 of the Bill provides for dispute resolution by the Commission so that the Commission has power, *inter alia*, to hear and determine disputes between service providers including disputes relating to unfair competition and dominance, hear and determine disputes between service providers and aggrieved persons and hear and determine complaints made by members of the public against service providers
40. Part 3 of the Bill (*clauses 38-58*) provides for licensing of persons operating a network or providing a service.
41. By virtue of clause 38 of the Bill, a prohibition is placed on operating a network or providing a service without a licence, landing or operating submarine cables without a licence, or operating a network or providing a service without a frequency authorisation where a frequency authorisation is necessary. A person who contravenes clause 37 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.
42. Provision is made in clause 39 of the Bill for the Minister, by Order published in the [Official] Gazette, to determine the scope and class of licences. Clause 39 further provides for a service provider to provide more than one service under a licence.
43. Provision is made in clauses 40 for the procedure for application for a licence, the content of a licence and the grant or refusal of a licence. Clause 40 provides that where the recommendation of ECTEL is required prior to the grant of a licence, the Minister must not grant a licence unless ECTEL recommends accordingly.
44. Provision is made in clause 41 of the Bill for the grant of a special licence by the Minister when an emergency or other exigent circumstance exists. A special licence is issued by the Minister for a term not exceeding ten calendar days and is not renewable.
45. Provisions for the grant of frequency authorisations are contained in clauses 42 of the Bill. The Commission consults with ECTEL prior to making a decision for the grant of a frequency authorisation.
46. By virtue of clause 43 of the Bill, the licence requirement in clause 38 applies to the provision or operation of a private network where a frequency authorisation is required to operate the private network or the private network utilises the radio frequency spectrum. A prohibition is placed on the use of a private network for resale, except where the owner resells spare capacity on the owner's facility

or assigns the owner's rights to use the facilities or sublets or otherwise gives control of its facilities to a service provider.

47. Provision is made in clause 44 of the Bill for the modification of a licence or frequency authorisation subject to the necessary recommendations, consultations and agreements.
48. Clause 45 of the Bill restricts the transfer or assignment of a licence or frequency authorisation to another person by a frequency authorisation holder or a licensee. The prior written approval of the Minister is required for a licensee or frequency authorisation holder to cause, permit or acquiesce in a sale, transfer, charge or other disposition or to issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in a person acquiring a significant interest in the licensee or frequency authorisation holder or results in 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. The obligation to obtain approval may be waived by the Minister, on receipt of a recommendation from the Commission where the shares of a licensee or frequency authorisation holder are publicly traded on the Eastern Caribbean Stock Exchange or other stock exchange approved in writing by the Minister responsible for Finance.
49. Provision is made in clause 46 of the Bill for investigation and issuing of a warrant for entry and search on suspicion of contravention of clause 37 which places a prohibition on operating a network or providing a service without a licence, landing or operating submarine cables without a licence and operating a network or providing a service without a frequency authorisation where a frequency authorisation is necessary.
50. Clauses 47-52 of the Bill provide for investigation of breaches and determination by the Commission of breaches by licensees or frequency authorisation holders, injunction relief, suspension and revocation of licences or frequency authorizations, surrender of licences or frequency authorisations on revocation, and voluntary surrender of licences.
51. Clause 53 of the Bill prohibits a service provider from taking advantage of its power in a market for the supply of a service with a view to eliminating or substantially damaging another service provider in that market or in any other market, preventing the entry of any other person into that market or any other market and deterring any other service provider from engaging in competitive conduct in that or in any other market. A service provider is, subject to specific exceptions, prohibited from discriminating between

persons who acquire or make use of a service in the market in which the service provider operates in relation to any fee or charge for the service provided, the performance characteristics of the service provided and any other term or condition on which the service is provided.

52. Clause 53 of the Bill additionally prohibits a service provider, subject to specific exceptions, from entering into or giving effect to any agreement, arrangement or understanding including an agreement, arrangement or understanding for a merger or an acquisition which has the purpose or has, or is likely to have, the effect of significantly lessening competition in any market for the supply of services or of any product used in connection with services, 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, any service or any product used in connection with services.
53. Part 4 of the Bill provides for universal service, interconnection, infrastructure sharing and numbering.
54. The Bill, in its definition of universal service in clause 2, has regard to the converged environment and provides for universal service for public voice telephony, internet access and other forms of services. By virtue of clause 54, a service provider bears the responsibility of providing the universal service where it is imposed as a condition of the licence. Provision is made in clause 55 of the Bill for the Universal Service Fund to be established and funded by contributions of service providers as a percentage of their gross revenue and compensation is paid from the universal service fund to service providers that are required to provide universal service. The Universal Service Fund is to be used to compensate any person who is required to provide or promote universal service (*clause 56*). Clause 78(2)(b), of the Bill provides for enactment of Regulations for the management of the Universal Service Fund and the computation of compensation required.
55. Clauses 57-59 of the Bill provide for interconnection. Clause 57 provides that a service provider operating a public network is required to enter into interconnection agreements with other service providers with the written approval of the Commission. By virtue of clause 58, an interconnection agreement must be approved in writing by the Commission acting in accordance with the advice of ECTEL. The cost of establishing any interconnection to the network of another service provider is borne by [both parties to the interconnection/the service provider requesting the interconnection] (*clause 59*).

56. Clause 60 of the Bill provides for clauses 57-59 to apply, with the necessary modifications, to infrastructure sharing.
57. Where access to towers, sites and underground facilities is technically feasible, a service provider is required, upon request to provide another service provider with access on terms as provided for in clauses 57-59 with the necessary modifications and as agreed between the service providers (*clause 61*).
58. Provision is made in clause 62 of the Bill for the Commission to establish and manage a national plan for spectrum management.
59. Provision is made in clause 63 of the Bill for the Commission to establish and manage a national plan for the allocation of numbers among service providers in accordance with the regional plan established by ECTEL. The Commission has the power to reallocate and reassign numbers to the extent reasonably required to implement and administer the national numbering plan.
60. The Commission is to establish and manage national plan for domain registration and is responsible for the registration and management of internet domain names but the Commission may delegate its responsibility to another body (*clause 64*).
61. Part 5 of the Bill makes provision for offences and penalties. 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. The Commission is to take into account the recommendation of ECTEL in granting approval (*clause 65*). Other offences include unlawful interference, interception or destruction of a network, giving false information, failure to attend and give evidence to the Commission (*clauses 66-68*). The liability of directors, managers, supervisors is provided for in clause 69 of the Bill.
62. Part 6 of the Bill (*clauses 70-79*) provides for miscellaneous matters including fees, stoppage of communications, access to lands and road works, copyright, installation and operation of network by diplomatic mission, permission under other laws, appeals, amendment to Schedules, the making of Regulations by the Minister and the repeal and savings of the provisions of the Telecommunications Act.

## **ELECTRONIC COMMUNICATIONS BILL**

# ELECTRONIC COMMUNICATIONS ACT

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# **ELECTRONIC COMMUNICATIONS ACT**

**(Act [] of 200[ ])**

**AN ACT** to provide for the regulation of electronic communications networks and services 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 200[ ].
- (2) This shall come into force on a day to be fixed by the Minister by Order published in the [Official] Gazette.

#### **2. INTERPRETATION**

In this Act [unless the context otherwise requires] -

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

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

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

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

“**Commission**” means the National Telecommunications Regulatory Commission established by section 9;

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

- “**document**” includes an electronic document;
- “**diplomatic missions**” include international organisations accredited to [Name of Member State];
- “**ECTEL**” means the Eastern Caribbean Telecommunications Authority established by Article 2 of the Treaty;
- “**electronic communications**” means any type of transmission and receipt of symbols, signals, writing, images and sounds, or any sort of communication on lines, by radio, optical, wire, or other electromagnetic systems;
- “**electronic communications network**” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical signals, electricity distribution systems, high-voltage lines or other electromagnetic means, including networks for radio and television broadcasting and cable television networks;
- “**electronic communications service**” means a service provided wholly or partially by the conveyance of signals on electronic communications networks;
- “**frequency authorisation**” means an authorisation granted by the Minister under section 42 to use radio frequencies in connection with the operation of a network or the provision of services under an individual licence or class licence or otherwise;
- “**frequency authorisation holder**” means a person holding a frequency authorization granted under section 42;
- “**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;
- “**infrastructure**” includes facilities, submarine cables and landing sites, towers, sites and underground facilities;
- “**infrastructure sharing**” means the joint utilisation of a particular physical structure, segment, element, or feature of the entire infrastructure;
- “**inspector**” means a person appointed as such under section 16;
- [“**interconnection**” means the connection of 2 or more separate systems networks, links, nodes, equipment,

circuits and devices involving a physical link or interface and systems, networks, links, nodes, equipment, circuits and devices involving a physical link or interface;]

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

“**licence**” means a licence issued under this Act;

“**licensee**” mean a person holding a valid licence granted under this Act;

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

“**network**” mean an electronic communications network;

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

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

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

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

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

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

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

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

“**Regulations**” means Regulations made under section 78;

“**road**” means any road or street or part thereof and includes all bridges, culverts, embankments, approaches, drains,

verges, pavements, kerbs, footpaths, parapets and other works or things, forming part of any road or street;

**“service”** means an electronic communications service;

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

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

**“special licence”** means a licence granted under section 41 by the Minister in an emergency or other exigent circumstances;

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

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

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

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

**“Universal Service Fund”** means the Fund established for the promotion of universal service under section 55;

**“universal service”** includes the provision of -

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

- (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 THE ACT**

- (1) The principal object of this Act is to give effect to the purposes of the Treaty and to regulate the electronic communications

services and electronic communications networks in [Name of Member State].

- (2) Without limiting the generality of subsection (1) the objects of this Act include, to ensure -
- (a) open entry, market liberalisation, and fair competition in electronic communications sector;
  - (b) policies and practices in relation to the management of electronic communications are in harmony with those of ECTEL;
  - (c) the operation of a universal service regime so as to ensure the widest possible access to electronic communications services at an affordable rate by the people of [Name of Member State] in order to enable them to share in the freedom to communicate over an efficient and modern electronic communications network;
  - (d) fair pricing and the use of cost-based pricing methods by service providers in [Name of Member State];
  - (e) the introduction of advanced electronic communications and an increased range of services;
  - (g) the public interest and national security are preserved;
  - (h) the application of appropriate standards in the operation of networks and services;
  - (i) the overall development of electronic communications in the interest of the sustainable development of [Name of Member State].

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

This Act binds the [Crown/State].

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

- (1) This Act does not apply to -
- (a) subject to subsection (2), the program content and scheduling aspects of broadcasting networks and services;
  - [(b) subject to subsection (3), networks or services operated or provided exclusively by the [armed forces, police force, fire service, correctional services, public health services, emergency services, public security services, and civil aviation authorities];
  - (c) any terminal equipment used for the purposes of paragraphs (a) or (b).
- (2) This Act applies to the transmission aspects of broadcasting.

- (3) Where the use of frequency is necessary for a network or service provided by a person referred to in subsection (1)(b), the person operating or providing the service shall require a frequency authorisation in accordance with this Act and shall be subject to the provisions of this Act relating to a frequency authorisation, but shall not require a licence.

## **6. EXEMPTIONS**

- (1) The Minister may, on the recommendation of ECTEL or the Commission, by Order published in the [Official] Gazette, exempt any category of ship or aircraft, or person or type of network or service from this Act or a part or provision of the Act.
- (2) The Minister may by Order published in the [Official] Gazette exempt a diplomatic mission from the requirements of this Act, or a part or provision of this Act.
- (3) An exemption under sub-section (1) or (2) -
  - (a) [shall be subject to the requirement for a frequency authorisation where the use of frequency is necessary and shall be subject to the provisions of this Act relating to a frequency authorisation; and]
  - (b) may be subject to any other conditions specified in the Order;
  - (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 may grant or refuse to grant a licence or frequency authorisation in accordance with Part 3.
- (2) Where the Minister refuses to grant to an applicant a licence or frequency authorisation, the Minister shall give that applicant reasons for that decision in writing in accordance with Part 3.
- (3) The Minister, on receipt of a recommendation from ECTEL shall by notice published in the [Official] Gazette, specify the network and service that are subject to a licence or a frequency authorisation.
- (4) In the exercise of his or her powers the Minister shall consult with the Commission.
- (5) The Minister shall wherever practicable in the exercise of his or her powers—

- (a) adopt the form, document, process and subsidiary legislation as recommended by ECTEL; and
- (b) implement policy and recommendations proposed by ECTEL.

## **PART 2**

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

#### **8. ESTABLISHMENT OF THE COMMISSION**

- (1) There is established a body to be known as the [National [Telecommunications] Regulatory Commission.
- (2) The Commission shall be a body corporate to which section [ ] of the Interpretation Act, Cap.[ ] applies.] and shall have a common seal and, *inter alia* -
  - (a) may sue and be sued in its corporate name; and
  - (b) 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 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 authorised in writing by the Chairperson.
- (4) The Commission shall establish and maintain an office and principal place of business within [Name of Member State].
- (5) The service of documents on the Commission is deemed to be effective if delivered at the office of the Commission.
- (6) The Minister may give directions to the Commission of a policy nature and the Commission shall comply with those directions.

#### **9. COMPOSITION OF THE COMMISSION**

- (1) Subject to subsections (2), (3), the Commission shall comprise not less than 3 or more than 5 commissioners who shall be appointed by the Minister on such terms and conditions as the Minister may specify in the commissioner's instruments of appointment.

- (2) Subject to subsections (3) and (4), the commissioners shall be persons of recognised standing and experience, collectively having experience and expertise in -
- (a) finance and accounting;
  - (b) information and communications technology;
  - (c) telecommunications;
  - (d) economics;
  - (e) law;
  - (f) project management;
  - (g) business administration; and
  - (h) regulatory experience and training,
- except that at least one of the commissioners shall be a person of recognised standing and experience in telecommunications and no more than two commissioners shall be public officers.
- (3) Subject to subsection (4), where it is not reasonably possible to appoint a person from a field listed in subsection (2), the Minister may appoint a commissioner who has expertise and experience in a related field.
- (4) A person shall be 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 service provider;
  - (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 service provider;
  - (c) is a director, officer, employee, agent or a person providing a service or supplying goods to a service provider under a contract;
  - (d) has filed for bankruptcy in a court or is declared by a court to be a bankrupt;
  - (e) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
  - (f) has been convicted of a criminal offence except where the offence-
    - (i) is a minor traffic offence,
    - (ii) is spent in accordance with [Criminal Rehabilitation of Offenders Act, Cap [ ]];
  - (g) is a member of [Parliament/ the National Assembly].

- (5) Notwithstanding subsection (4)(b), a person shall not be held to have a pecuniary or other material interest in a service provider in respect of which the Commission performs regulatory functions by reason only of the fact that, he or she is a consumer of a service provider in respect of which the Commission performs regulatory functions.
- (6) In determining whether a person is eligible for appointment as a commissioner, the Minister shall have regard to all matters that the Minister considers relevant to the appointment including-
  - (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of a commissioner; and
  - (b) the diligence with which that person is likely to fulfill the responsibilities of a commissioner.
- (7) 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.
- (8) Where under section 24 a vacancy exists in the membership of the Commission, the Minister shall in accordance with this section appoint a person to fill the vacancy.
- (9) The Minister shall by notice published in the [Official] Gazette give notice of the names of the Commissioners as the Commission is first constituted and every change in the constitution of the Commission.
- (10) A person appointed as a commissioner shall act in the public interest to carry out the purposes of this Act and not based on his or her personal or business interest

## **10. TENURE OF COMMISSIONERS**

The appointment of a commissioner shall, be for a period not less than 3 years, subject to -

- (a) eligibility for reappointment for a further term;
  - (b) a maximum of two consecutive terms; and
  - (c) staggering of appointments,
- unless the commissioner resigns under section 22 or the commissioner's appointment is revoked under section 23.]

## 11. FUNCTIONS OF THE COMMISSION

- (1) The functions of the Commission are to -
  - (a) advise the Minister on the formulation of national policy on electronic communications matters with a view to ensuring the efficient, economic and harmonised development of the electronic communications sector in [Name of Member State];
  - (b) ensure compliance with the Government's 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) plan, supervise, regulate and manage the use of the radio frequency spectrum in conjunction with ECTEL, including the assignment and registration of radio frequencies to be used by all stations operating in [Name of Member State] or on any ship, aircraft, vessel, or other floating or airborne contrivance or spacecraft registered in [Name of Member State];
  - (e) regulate prices for services;
  - (f) advise the Minister in all matters related to tariffs for services;
  - (g) collect, for paying into the Consolidated Fund, all fees prescribed other than fees collected by ECTEL under section 73;
  - (h) receive and review applications for licences and frequency authorisations and advise the Minister accordingly;
  - (i) where the Minister decides to grant a licence or frequency authorisation prepare the licence or frequency authorisations and other relevant documents for signature by the Minister;
  - (j) monitor and ensure that licensees or frequency authorisation holders comply with the conditions attached to their licences or frequency authorisation, as the case may be;
  - (k) review proposed interconnection agreements by service providers and in accordance with the recommendation of ECTEL approve or disapprove of such interconnection agreements;
  - (l) resolve disputes in accordance with section 36;
  - (m) monitor anti-competitive practices in the electronic communications sector and advise the national body responsible for the regulation of anti-competitive practices accordingly;

- (n) maintain a register containing records of licensees and frequency authorisation holders in the prescribed form;
  - (o) provide the Minister with such information as he or she may require;
  - (p) undertake in conjunction with other institutions and entities where practicable, training, manpower planning, seminars and conferences in areas of national and regional importance in electronic communications;
  - (q) report to and advise the Minister on the legal, technical, financial, economic aspects of electronic communications and the social impact of electronic communications;
  - (r) manage the universal service fund;
  - (s) perform such other functions as are prescribed.
- (2) In the performance of its functions the Commission shall where necessary, consult and liaise with ECTEL.

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

- (1) The Commission has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions and subject to this Act and the Regulations and has the power to regulate its own procedure.
- (2) Without limiting the generality of subsection (1), the Commission has the power to -
  - (a) acquire information relevant to the performance of its functions including whether or not a person is in breach of this Act, the Regulations, a licence, frequency authorisation or a direction given by the Commission;
  - (b) require payment of fees;
  - (c) institute legal proceedings including legal proceedings against a licensee or frequency authorisation holder for the purposes of compliance;
  - (d) hold public hearings pertaining to its functions;
  - (e) issue codes of practice for the electronic communications sector in accordance with section 35;
  - (f) perform dispute resolution;
  - (g) make rules to regulate its own procedure;
  - (h) do anything incidental to its powers.

## **13. CHAIRPERSON AND DEPUTY CHAIRPERSON**

- (1) The Minister shall designate one of the Commissioners as the Chairperson of the Commission.

- (2) The Commissioners shall designate one of their number as the Deputy Chairperson.
- (3) Where the Chairperson is absent, the Deputy Chairperson shall have all the powers of the Chairperson.
- (4) The Minister shall by publication in the [Official] Gazette give notice of a designation made under this section.

#### **14. CHIEF EXECUTIVE OFFICER**

- (1) The Commission shall appoint a suitable person as the Chief Executive Officer to manage the day to day affairs of the Commission on such terms and conditions as the Commission determines.
- (2) Notwithstanding the generality of subsection (1), the Chief Executive Officer shall perform the following functions all the functions entrusted to him or her under this Act or the Regulations or by the Commission.
- (3) Subject to subsection (5), a 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;
  - (b) has obtained leave of absence or is prevented from attending for good cause.
- (4) The Chief Executive Officer attending a meeting of the Commission in accordance with subsection (3) has no voting rights.

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

- (1) The Commission 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 powers, duties and functions of the Commission.
- (2) The Secretary, an inspector or other employee appointed under subsection (1) shall perform the duties assigned to him or her by this Act and the Chief Executive Officer.

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

## **16. ADVISORY COMMITTEES**

- (1) The Commission may, for the purpose of carrying out its functions pursuant to this Act, establish advisory committees to give advice to the Commission on such matters relating to the Commission's functions as the Commission may determine.
- (2) The Commission may appoint persons as members of an advisory committee established under subsection (1), whether or not Commissioners or who are not employees of the Commission, and such persons shall hold office for such period as the Commission may determine.
- (3) The decisions taken by an advisory committee appointed under subsections (1) and (2) are not binding on the Commission but may be considered by the Commission in making decisions for the purposes of the discharge of its functions.

## **17. DELEGATION**

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

## **18. OATH OF SECRECY AND CONFIDENTIALITY**

- (1) A commissioner or an officer or employee of the Commission shall be required to take the oath of secrecy set out in Schedule 1.
- (2) Subject to subsection (3), a commissioner, an officer an employee, an agent or an adviser of the Commission shall not disclose any information relating to -
  - (a) the business or affairs of the Commission;
  - (b) any application submitted to the Commission under this Act;
  - (c) the business or affairs of a service provider; or
  - (d) the affairs of a customer, member, client of a service provider,

that the commissioner, officer, employee, agent or adviser has acquired in the course of his or her duties or in the exercise of the Commission's functions under this Act or any other law.

- (3) Subsection (1) does not apply to a disclosure -
- (a) in respect of the business affairs of a service provider or of a customer, member, client of a service provider, with the consent of the person or the customer, member, client, as the case may be, which consent has been voluntarily given;
  - (b) for the purpose of enabling or assisting the Commission in exercising a function conferred on it under this Act or any other law;
  - (c) if the information disclosed is or has been available to the public from any other source;
  - (d) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a service provider of any customer, member, client of a service provider, to which the information relates, to be ascertained;
  - (e) lawfully made to a person with a view to the institution of, or for the purpose of -
    - (i) criminal proceedings;
    - (ii) disciplinary proceedings relating to the discharge of duties by a Commissioner or officer of the Commission;
  - (f) for the purposes of any legal proceedings in connection with the winding up or dissolution of a service provider; or
  - (g) for the appointment or duties of a receiver of a service provider.

## **19. 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 shall determine.]
- (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 [3] commissioners.
- (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 neither the Chairperson nor the Deputy Chairperson is present, the commissioners present shall choose one of their number to preside.
- (6) A meeting of the Commission is duly constituted for all purposes if at the meeting there is a quorum of not less than 3 commissioners participating in the meeting.
- (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 shall have an original vote and in cases of equal division the Chairperson shall have the casting vote.
- (9) 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 shall not have the right to vote.
- (10) Minutes of each meeting of the Commission shall be recorded and kept by the Secretary.
- (11) A certified copy of the minutes of each meeting confirmed by the Commission shall be forwarded to the Minister within 14 days after the meeting at which they were confirmed.

## **20. DECLARATION OF INTEREST AND ABSTENTION FROM VOTING**

- (1) A commissioner who is in any way, either directly or indirectly, interested in a matter before the Commission shall declare the nature of his or her interest at the first meeting of the Commission at which it is practicable to do so.
- (2) Where a commissioner declares an interest under subsection (3), the Commission shall determine whether or not the Commissioner's interest in a matter, is material and where the Commission determines the commissioner's interest is material, the Commissioner shall leave the meeting upon the matter coming up for discussion.

- (3) A declaration and the departure of a commissioner from the meeting in accordance with subsection (1) shall be noted in the minutes of the meeting.
- (4) A commissioner who -
  - (a) fail to comply with subsection (1);
  - (b) votes in respect of a matter before the Commission in which he or she is materially interested, whether directly or indirectly; or
  - (c) seeks to influence the vote of any other commissioner in relation to a matter before the Commission in which he or she is materially interested, whether directly or indirectly;is guilty of misconduct and section 23 shall apply.

## **21. PROTECTION FROM LIABILITY**

- (1) No action or other proceeding shall lie against a commissioner, or an officer or employee of the Commission 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, or an officer or employee of the Commission 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.

## **22 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.

## **23. REVOCATION**

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(4);
- (b) for inability to perform the functions of his or her office;
- (c) is guilty of misconduct;

- (d) has been disqualified or suspended on grounds of misconduct, by a competent authority, from practising a profession;
- (e) is disqualified on grounds of national security;
- (f) [if the commissioner fails to attend 3 consecutive meetings of the Commission or 5 meetings in the aggregate of the Commission during any 12 month period of his or her term of appointment the Commission [without reasonable excuse /without presenting a medical certificate or without being excused by Minister in writing], in the case of the Chairperson or by the Chairperson in writing in the case of any other Commissioner.]

## **24. 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(4);
  - (c) if the commissioner resigns under section 22;
  - (d) if Minister revokes the appointment of that commissioner under section 23;
  - (e) if the commissioner's appointment is not renewed by Minister as of the date of expiry of the commissioner's term of appointment; or
- (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.

## **25. REMUNERATION**

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

## **[26. REVENUE**

The Revenue of the Commission shall comprise the following -

- (a) monies allocated to it by Parliament;
- (b) annual financial contributions made by ECTEL to the Commission and chargeable to the General Budget of ECTEL; and
- (c) monies received by the Commission as grants or loans.]

## **27. FINANCIAL YEAR**

The financial year of the Commission commences on 1<sup>st</sup> January and ends on 31<sup>st</sup> December in each year.

## **28. BUDGET AND PLAN OF ACTION**

- (1) The Commission shall not later than October 31<sup>st</sup> in each year cause to be prepared and shall adopt and [submit to ECTEL for the approval of ECTEL] -
  - (a) a budget with the estimates of its income and expenditure ; and
  - (b) a plan of action,
  - (c) for the Commission in respect of the next financial year.
- (2) The Commission shall within one month after the approval by ECTEL of the budget and plan of action submit a copy of the same to the Minister and the Minister shall within one month of its receipt by the Minister, or if [Parliament/ National Assembly] is not in session, within one month of the next Session of [Parliament/ the National Assembly] lay the budget and plan action in [Parliament/ the National Assembly].

## **29. 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.

## **30. AUDIT**

- (1) The Commission shall within 2 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 Commission, 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 may deem 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 deems necessary.

- (3) A person who fails to comply with subsection (2) commits an offence and on summary conviction is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six 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 3 months after the end of the financial year.

### **31. 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 and 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 Member 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;
  - (d) a financial statement of the Commission.
- (2) An annual report under subsection (1) shall be accompanied by the auditor's report under section 31.

### **32. SUBMISSION OF ANNUAL REPORT TO [PARLIAMENT/ NATIONAL ASSEMBLY]**

The Minister shall cause a copy of an annual report submitted under section 28 to be laid in [Parliament/ the National Assembly] within 28 days of its receipt by the Minister, or if [Parliament/the

National Assembly] is not in session, within 28 days of the next Session of [Parliament/the National Assembly].

### **33. EXEMPTION FROM TAXES**

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

### **34. PUBLIC ACCESS TO RECORDS OF THE COMMISSION**

- (1) Subject to the remaining subsections of this section, upon request, the Commission shall make a record of the Commission, including a record contained in the register referred to in section 11, available for public inspection at the offices of the Commission on payment of the prescribed fee.
- (2) 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 whose disclosure would constitute an invasion of personal privacy;
  - (c) secret records relating to national defence or security;
  - (d) records of intra-governmental communications relating to governmental decision processes;
  - (e) records of information obtained by the Commission in the course of its frequency monitoring activities;
  - (f) records containing information relating to the valuation of the property of the service providers;
  - (g) records of trade secrets or proprietary commercial, financial or technical information which is customarily guarded from competitors;
  - (h) records of information which are subject to judicial privilege; and
  - (i) records which are not open to public inspection by virtue of the provisions of any enactment.

- (3) The Commission shall make available records referred to in subsection (2)(d) through the discovery process in court proceedings.
- (4) The Commission shall not disclose an investigative record compiled for enforcement purposes for public inspection if to do so -
  - (a) interferes with enforcement proceedings;
  - (b) deprives a person of the right to fair trial or impartial adjudication;
  - (c) constitutes an unjustified invasion of personal privacy;
  - (d) discloses the identity of a confidential source;
  - (e) discloses investigative techniques or procedures; or
  - (f) endangers the life or physical safety of the law enforcement personnel or any other person.
- (5) An application for authorisation of equipment and materials relating to an application for a licence or frequency authorisation is not available for public inspection until the application for a licence or frequency authorisation is approved by the Minister or the Commission as the case may be.
- (6) Records of information submitted in connection with audits, investigations and examinations shall not be made available for public inspection until the Commission acts upon the matter.
- (7) The Commission shall cause to be published in the Official Gazette -
  - (a) licences issued, modified, renewed or revoked;
  - (b) exemptions granted under this Act; and
  - (c) enforcement orders of the Commission.

### **35. COMMISSION TO ISSUE CODES OF PRACTICE**

- (1) In accordance with the recommendation of ECTEL and by notice published in the [Official Gazette] the Commission may issue codes of practice relating to services and networks.
- (2) Codes of practice issued by the Commission under subsection (1) -
  - (a) shall be available to for public scrutiny at the office of the Commission during business hours or on the websites operated by ECTEL and the Commission; or
  - (b) may be reproduced by ECTEL or the Commission at the request of any member of the public on payment of the prescribed fee.

- (3) A breach of the codes of practice issued by the Commission under subsection (1) is deemed to be a breach of the licence or a frequency authorisation, as the case may be.

### **36. DIRECTIONS BY THE COMMISSION**

- (1) In accordance with the recommendation of ECTEL, for the purpose of ensuring compliance with this Act, the Commission may, by notice in writing, direct a licensee or frequency authorisation holder to take such measures or cease such activities as may be necessary.
- (2) A licensee or frequency authorisation holder who fails to comply with a direction of the Commission is deemed to be in breach of the licence or frequency authorisation.

### **37. DISPUTE RESOLUTION BY COMMISSION**

- (1) The Commission shall have the power to -
  - (a) hear and determine disputes between service providers including disputes relating to unfair competition and dominance;
  - (b) hear and determine disputes between service providers and aggrieved persons involving alleged breaches of the Act or Regulations, licences or frequency authorisations;
  - (c) hear and determine complaints by subscribers relating to rates payable for services;
  - (d) hear and determine claims by a service provider for a change in rates payable for any of its services;
  - (e) hear and determine objections to agreements between service providers;
  - (f) of its own motion or at the instance of the Minister, to review and determine the rate payable for any service;
  - (g) hear and determine complaints made by a person aggrieved by the decisions, actions or omissions of a licensee or frequency authorisation holder;
  - (h) hear and determine complaints made by members of the public against service providers;
  - (i) hear and determine disputes relating to interconnections or sharing of infrastructure between service providers;
  - (j) resolve complaints relating to harmful interference.
- (2) Where, the Commission is presented with a dispute between service providers the Commission shall refer the matter to

ECTEL with a request that ECTEL provide the Commission with an opinion and recommendation, or with the consent of the licensees refer the matter to ECTEL for dispute resolution.

- (3) The Commission shall take account of the opinion and recommendation of ECTEL provided under subsection (2) in resolving the relevant dispute.
- (4) The Commission shall investigate and hear a complaint made under subsection (1)(h) only where that person has first sought redress for the complaint from the licensee or frequency authorisation holder and the complaint has not been amicably resolved.
- (5) The Commission shall for the purposes of this section have powers to—
  - (a) issue summons to compel the attendance of witnesses;
  - (b) examine witnesses on oath, affirmation or otherwise; and
  - (c) compel the production of documents.
- (6) A summons issued by the Commission under this section shall be under the hand of the Chairperson.
- (7) A party to a matter before the Commission under this section, shall be 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 Commission is competent to assist the person in the presentation of the matter.
- (8) The Commission may with respect to a matter brought before it under this section-
  - (a) make provisional or interim orders or awards relating to the matters or part thereof, or give directions under the hearing or determination;
  - (b) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter or part thereof if it appears that the matter or part thereof is trivial or vexatious or that further proceedings are not necessary or desirable in the public interest;
  - (c) order any party to pay costs and expenses, including expenses of witnesses, as are specified in the order;
  - (d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.
- (9) The Commission may review, vary or rescind its decisions or order made by it; and where a hearing is required before that

decision or order is made, the decision or order shall not be suspended or revoked without a further hearing.

- (10) The Commission may in writing delegate its powers under this section to a committee of its members established for that purpose comprising the Chairperson and 2 other Commissioners designated by the Chairperson.
- (11) The decisions of a committee established under subsection (10) shall be binding on the Commission.

### **PART 3 LICENSING**

#### **38. PROHIBITION ON OPERATING NETWORK OR PROVIDING SERVICES WITHOUT A LICENCE**

- (1) Subject to sections 5 and 6, a person shall not -
  - (a) establish or operate a network or provide a service in [Name of Member State];
  - (b) land or operate submarine cables within the Territory of Saint Lucia for the purpose of connecting to a network;unless with a valid licence issued under this Act;
- (2) Where a frequency authorisation is necessary for or in relation to the operation of a network or provision of a service, a person shall not operate that network or provide that service without the 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 period not exceeding 10 years or to both.

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

- (1) Subject to subsection (2) and to section 41, the Minister make by Order published in the [Official] Gazette determine different classes and scope of licences.
- (2) A service provider may provide more than one service under a licence in accordance with the terms of the licence.

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

- (1) An applicant for a licence shall submit his or her application in the prescribed form to the Commission together with the prescribed application fee.
- (2) The Commission may within [7] days of an application for a licence being made under subsection (1) within [7] days of the closing date for applications, whichever is later, request additional information from an applicant for the purpose of considering the application.
- (3) Where the Commission makes a request for information pursuant to subsection (2), the applicant shall submit that information within [14] days of the request or within a further period of time granted and specified in writing by the Commission.
- (4) The Commission shall not refuse to grant a further time period pursuant to subsection (3) unless it is reasonable to so refuse.
- (5) Where in accordance with the Regulations, the recommendation of ECTEL is required for the grant or refusal of a licence, the Commission shall within [7] days of the application being submitted under subsection (1) or information requested being submitted pursuant to subsection (3), as case may be, submit the application to ECTEL for its review and recommendation.
- (6) ECTEL shall submit its recommendation to the Commission within [30] days of receipt of an application pursuant to subsection (5).
- (7) Within [45] days of an application being made under subsection (1) or information being submitted under subsection (3), the Commission shall submit its recommendation for the grant or refusal of the licence to the Minister having regard to -
  - (a) the purposes of the Treaty;
  - (b) subject to subsection (6), the recommendation of ECTEL, if any;
  - (c) whether the objective of universal service will be promoted including the provision of public telephony services sufficient to meet reasonable demand at affordable prices;
  - (d) whether the interests of subscribers, purchasers and other users of services will be protected;
  - (e) whether competition among service providers of services will be promoted;
  - (f) whether research, development and introduction of new services will be promoted;

- (g) whether foreign and domestic investors will be encouraged to invest in electronic communications;
  - (h) appropriate technical and financial requirements;
  - (i) whether the public interest and national security interests will be safeguarded;
  - (j) whether a particular applicant falls within a specified class;
  - (k) such other matters as are prescribed.
- (8) Notwithstanding subsection (7), where the recommendation of ECTEL is required for the grant or refusal of a licence, the Minister shall not grant a licence unless ECTEL recommends accordingly.
- (9) The Minister may grant or refuse to grant a licence within [14] days of the receipt of the recommendation from the Commission and shall notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.
- (10) Where-
- (a) the application is refused;
  - (b) no recommendation is made by [ECTEL] within the period specified in subsection (5);
  - (c) no recommendation is made by the Commission within the period specified in subsection (6); or
  - (d) no notification is given by the Minister to the applicant within the [14] day period specified in subsection (8),
- the applicant shall have the right to appeal pursuant to section 76.
- (11) A licence granted pursuant to subsection (9) shall be issued on payment of the prescribed fee to the Commission.
- (12) The Minister may, in granting a licence include all or any of the terms and conditions specified in Part 1 of Schedule 2.
- (13) A licence shall be in the form prescribed and shall include the terms and conditions specified in Part 2 of Schedule 2.
- (14) Subject to section 50, a licence shall be valid for the period specified in the licence.

#### **41. GRANT OF SPECIAL LICENCE**

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

- (2) The Minister may after consultation with the Commission and ECTEL grant a special licence when an emergency or other exigent circumstance exists.
- (3) A special licence shall be for a term not exceeding 10 calendar days and shall not be renewable.
- (4) The Minister shall immediately upon issue of a special licence, inform the Commission and ECTEL.

#### **42. GRANT OF FREQUENCY AUTHORISATION**

- (1) An applicant for a frequency authorisation shall submit his or her application to the Commission in the prescribed form together with the prescribed application fee.
- (2) The Commission may within [7] days of an application for a frequency authorisation being made under subsection (1) request additional information from an applicant for the purpose of considering the application.
- (3) Where the Commission makes a request for information pursuant to subsection (2), the applicant shall submit that information within [14] days of the request or within a further period of time granted and specified in writing by the Commission.
- (4) The Commission shall not refuse to grant a further time period pursuant to subsection (3) unless it is reasonable to so refuse.
- (5) The Commission shall, upon receipt of the application and after consultation with ECTEL, recommend to the Minister whether or not the particular applicant shall be granted a frequency authorisation.
- (6) The Minister may grant or refuse grant the frequency authorisation where the Commission recommends accordingly giving reasons for a refusal.
- (7) A frequency authorisation granted pursuant to subsection (6) shall be issued on payment of the prescribed fee to the Commission.
- (8) The Minister, in granting a frequency authorisation, shall include all or any of the terms and conditions specified in Part 1 of Schedule 2.

- (9) A frequency authorisation shall include all the terms and conditions as specified in Part 2 of the Schedule.
- (10) Subject to section 50, a frequency authorisation shall be valid for the period specified in the frequency authorisation.
- (11) The Minister may by Order published in the [Official] Gazette delegate the power to grant or refuse a frequency authorisation to the Commission.

#### **43. PRIVATE NETWORKS**

- (1) The licence requirement in section 37 applies to the provision or operation of a private network and a frequency authorisation is required to operate a private network providing radio-communications services or that utilises the radio frequency spectrum.
- (2) A private network shall not be used for resale, except that the owner of a private 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 service provider;
- (3) Where the operator of a private network intends to offer service directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, the operator is requires a licence under section 40.
- (4) A private network shall not be restricted to the carrying of voice only or data only or to any other such use.

#### **44. MODIFICATION OF A LICENCE OR FREQUENCY AUTHORISATION**

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

#### **45. SALE OR TRANSFER A LICENCE OR FREQUENCY AUTHORISATION**

- (1) A licensee or frequency authorisation holder shall not transfer or assign a licence or frequency authorisation to any other person.
- (2) Notwithstanding subsection (1), a person owning or holding a significant interest in a licensee or frequency authorisation holder may sell, transfer, charge or otherwise dispose of his or her interest in the licensee or frequency authorisation holder, or any part of his or her interest, with the written consent of the Minister first had and obtained.
- (3) A licensee or frequency authorisation holder shall not, unless the prior written approval of the Minister has been obtained -
  - (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2); or
  - (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in -
    - (i) a person acquiring a significant interest in the licensee or frequency authorisation holder; or
    - (ii) 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.
- (4) Subject to subsection (7), the Minister, on the recommendation of the Commission may, in respect of a licensee or frequency authorisation holder whose shares are publicly traded on the [Eastern Caribbean Stock Exchange] or other stock exchange approved in writing by the Minister responsible for Finance, waive the obligation to obtain approval under subsection (1) and any such waiver shall be subject to a condition that the licensee or frequency authorisation holder shall, as soon as reasonably practicable, notify the Minister through the Commission of any sale, transfer, charge or other disposition referred to in subsection (2).
- (5) The approval of the Minister required under subsections (2) or (3), or a waiver under subsection (4) shall not be unreasonably withheld.
- (6) Notwithstanding anything in this section, where a sale, transfer, charge or other disposition referred to in this section

is a result of an internal reorganization of a body corporate that constitutes ultimate transfer of control of a licensee or frequency authorisation holder, a new licence or frequency authorisation will be required in addition to the prior written approval of the Minister.

- (7) The Commission shall, in making a recommendation under this section, act in accordance with the recommendation of ECTEL.
- (8) [For the purposes of this section “significant interest”, in respect of a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly -
  - (a) to control [10% ]or more of the voting rights of that company at a general meeting of the company;
  - (b) to a share of [10%] or more in dividends declared and paid by the company; or
  - (c) to a share of [10% ]or more in any distribution of the surplus assets of the company.]

#### **46. INVESTIGATION AND WARRANT ON SUSPICION OF CONTRAVENING SECTION 38**

- (1) For the purpose of discharging its functions and duties under this Act, the Commission shall, as it reasonably requires, be entitled to request any information, matter or thing from any person the Commission has reasonable grounds to believe is contravening section 37.
- (2) Where the Commission reasonably suspects that a person is contravening section 38, a police officer may lay before a Magistrate, an information on oath setting out the grounds for the suspicion and apply for the issue of a warrant to search the vehicle, ship, vessel aircraft or premises where the service is believed to be provided or the network is believed to be operated.
- (3) Where an application is made under subsection (2) for a warrant, the Magistrate may issue a warrant authorizing a police officer, whether named in the warrant or not, with such assistance, including assistance from an inspector and by such force as is necessary and reasonable, to enter upon the premises, search and inspect the premises and-

- (a) examine, inspect, make copies of, seize or remove any document or record; and
  - (b) seize any equipment or other property; found on the premises in the course of the search that the police officer has reasonable grounds to believe is being used in the commission of the offence.
- (4) A person who -
- (a) fails to comply with a request of the Commission made under subsection (1) or (2); or
  - (b) destroys or alters, or causes to be destroyed or altered, any document record or thing required to be produced subsection (1) or (2); or
  - (c) hinders, obstructs, prevents or interferes with a police officer, a Commissioner, the Chief Executive Officer or an employee of the Commission in the exercise of a power under this section
- commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 3 years or to both.
- (5) Any document, apparatus or other thing seized under a search warrant shall where legal proceedings -
- (a) are not commenced within a period of 30 days from the date of seizure of the document, apparatus or thing be returned to the owner; or
  - (b) are commenced before the expiry of the 30 days, be kept until the conclusion of those proceedings.
- (6) Where a person is convicted of an offence under this Act in respect of any document, apparatus or thing seized under this Part, the court may order the forfeiture of that document, apparatus or thing seized.

#### **47. INVESTIGATION OF BREACHES**

- (1) Where the Commission reasonably suspects that a licensee or a frequency authorisation holder is in breach of this Act, the Regulations or a licence or a frequency authorisation as the case may be or where an allegation of breach is made to the Commission against a licensee or frequency authorisation holder, an inspector may conduct any investigation it considers necessary in relation to the licensee or frequency authorisation holder and an inspector may subject to subsections (2) (3), (4), and (5) perform any of 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 the appearance of an officer or employee of the licensee or frequency authorisation holder, or any other person for the purpose of ascertaining compliance with this Act, the Regulations or the relevant licence or frequency authorisation;
  - (c) inspect, examine or make copies of any document or record in the possession of the 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 service, the licence or the frequency authorisation;
  - (e) enter and inspect any vehicle, ship, 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, the licence or the frequency authorisation;
  - (f) seize, remove or impound any document or relating to the licence or frequency authorisation for the purpose of examination and inspection;
    - (g) seize any apparatus relating to the licence or frequency authorisation for the purpose of examination and inspection.
- (2) An inspector shall not enter any vehicle, ship, vessel, aircraft, or premises in exercise of the powers conferred on him or her by subsection (1); unless the occupier or the person in charge of the vehicle, ship, vessel, aircraft or premises consents to the entry or, where he or she does not, the inspector first obtains a search warrant.
  - (3) An inspector shall not seize any apparatus in exercise of the powers conferred on him or her by subsection (1) without a court order.
  - (4) An inspector shall, on entering the vehicle, ship, vessel, aircraft, or premises identify himself or herself to the person in charge of the vehicle, ship, vessel, aircraft or premises, at the time of entry, by showing the person the search warrant together with his or her official identity card.
  - (5) An inspector shall, on completing the search, leave with the person in charge of the vehicle, ship, vessel, aircraft, or

premises, a receipt in which it is recorded a list of documents or extracts taken by the inspector.

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

#### **48. BREACHES BY LICENSEES OR FREQUENCY AUTHORISATION HOLDER**

- (1) Where after an investigation under section 47, the Commission finds that a licensee or frequency authorisation holder is in breach this Act, the Regulations, the licence or the frequency authorisation, the Commission 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 subscribers for foreseeable damage caused to the subscriber within a specific time period;
  - (c) recommend the suspension or revocation of the licence or frequency authorisation by the Minister.
- (2) Notwithstanding the Commission's power to recommend the suspension or suspend or revoke the licence or frequency authorization of a licensee or frequency authorization holder for breach, a licensee or frequency authorisation holder that fails to comply with a direction given by the Commission under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or to a term of imprisonment not exceeding 5 years or to both.

#### **49. INJUNCTION RELIEF**

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

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

## **50. SUSPENSION AND REVOCATION OF LICENCE OR FREQUENCY AUTHORISATION**

- (1) The Minister may subject to subsection (2), suspend or revoke a licence or a frequency authorisation, by a notice in writing served on the licensee or frequency authorisation holder.
- (2) The Minister may by notice in writing served on a licensee or frequency authorisation holder, on the recommendation of the of Commission suspend, vary, revoke or refuse to renew a licence or frequency authorisation, where -
  - (a) the radio apparatus or station in respect of which the licence or frequency authorisation was granted interferes with a service provided by a person to whom a licence or frequency authorisation is already granted for that purpose;
  - (b) the licensee or frequency authorisation holder contravenes this Act;
  - (c) the licensee or frequency authorisation holder fails to observe a term or condition specified in his or her licence or frequency authorisation;
  - (d) the licensee or frequency authorisation holder is in default of payment of the licence fee, frequency authorisation fee or any other money owed to the Government;
  - (e) ECTEL recommends the suspension or revocation; or
  - (f) the suspension or revocation is necessary for reasons of national security or the public interest.
- (3) Before making a recommendation for suspension or revocation of a licence or frequency authorisation or licensee under subsection (2), the Commission shall give the licensee or frequency authorisation holder one month notice in writing of his or her intention to do so, specifying the proposed grounds for the suspension or revocation of the licence or frequency authorisation, and shall give the licensee or frequency authorisation an opportunity -
  - (a) to present his or her views;
  - (b) to remedy the breach of the licence or frequency authorisation or a term and condition of the licence or frequency authorisation; or
  - (c) to submit to the Commission within such time as the Commission may specify, a written statement of objections to the suspension or revocation of the licence or frequency authorisation, which the Commission shall take into account before making the recommendation.

## **51. SURRENDER OF LICENCE OR FREQUENCY AUTHORISATION ON REVOCATION**

Where a licence or frequency authorisation has been revoked, the Minister may require a licensee, frequency authorisation holder or any other person in whose possession or under whose control the licence or frequency authorisation may be, to surrender the licence or frequency authorisation to the Commission.

## **52. VOLUNTARY SURRENDER OF LICENCE**

A licensee who wishes to voluntarily surrender a licence or frequency authorisation shall act in accordance with any guidelines issued by the Commission for that purpose and shall give 3 months notice in writing of the surrender to the Commission

## **53. COMPETITION AND DOMINANCE**

- (1) A service provider shall not take advantage of its power in a market for the supply of a service with a view to -
  - (a) eliminating or substantially damaging another service provider in that market or in any other market;
  - (b) preventing the entry of any other person into that market or any other market;
  - (c) deterring any other service provider from providing service in that or any other market.
- (2) Subject to subsection (5), a service provider shall not discriminate between persons who acquire or make use of a service in the market in which the service provider operates in relation to -
  - (a) any fee or charge for the service provided;
  - (b) the performance characteristics of the service provided;
  - (c) any other term or condition on which the service is provided.
- (3) Subject to subsection (5), a service provider shall not enter into or give effect to any agreement, arrangement or understanding including an agreement, arrangement or understanding for a merger or an acquisition which has the purpose or has, or is likely to have, the effect of significantly lessening competition in any market for the supply of services or of any product used in connection with services.
- (4) Subject to subsection (5), a service provider shall not enter into or give effect to any agreement, arrangement or

understanding 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, any service or any product used in connection with services.

- (5) Subsections (2), (3) and (4) do not apply to any agreement, arrangement or understanding which contributes to -
  - (a) contributes improving the production or distribution of any service or any product used in connection with services; or
  - (b) promoting technical or economic progress, and is beneficial to consumers, and does not impose on restrictions which are not indispensable to the attainment of these objectives and does not afford the service provider the possibility of eliminating competition in respect of a substantial part of any service or any product used in connection with services.
  
- (6) Nothing in subsections (1), (2), (3) or (4) shall prevent a service provider from making a reasonable allowance, subject to the approval by the Commission, for the cost of providing a service where the difference results from -
  - (a) different quantities in which the service is supplied;
  - (b) different transmission capacities needed for the supply of the service;
  - (c) different places from or to which the service is provided;
  - (d) different periods for which the service is provided;
  - (e) different performance characteristics of the service provided; or
  - (f) doing an act in good faith to meet a price or benefit offered by a competitor.
  
- (7) [For the purposes of this Act, the Commission may determine that a service provider is dominant where the service provider is in breach of subsections (1) to (6), or individually or jointly with others, enjoys a position of economic strength affording the service provider the power to behave to an appreciable extent independently of competitors and users, and for such determination, the Commission shall take into account the following factors -
  - (a) the relevant market;
  - (b) technology and market trends;
  - (c) the market share of the service provider;

- (d) the power of the service provider to introduce and sustain a material price increase independently of competitors;
  - (e) the degree of differentiation among networks and services in the market;
  - (f) any other matters that the Commission deems relevant.
- (8) In determining that a service provider is a dominant service provider or has lost its dominance, with respect to a network or a service, the Commission shall act in accordance with the Regulations made for that purpose.]
- (9) Notwithstanding the Commission's powers under section 48, where the Commission finds after investigation under section 47 that a service provider is in breach of this section, the Commission may do any of the following -
- (a) declare the service provider to be a dominant service provider;
  - (b) issue an enforcement order against the dominant service provider;
  - (c) order the cessation of abusive conduct or to prescribe specific changes in its conduct to limit the abusive aspects;
  - (d) recommend the suspension or revocation of the licence of the dominant service provider;
  - (e) order compensation to be paid to subscribers or competitors injured by the abusive conduct;
  - (f) order the restructuring of the dominant service provider;
  - (g) facilitate and approve settlement with the aggrieved service provider through dispute resolution.
- (10) Where a service provider deemed dominant by the Commission under subsection (7) considers that it has lost its dominance with respect to a network or a service, it may apply to the Commission to be classified as non-dominant in a particular market.
- (11) A dominant service provider shall -
- (a) disaggregate its network or its service and, on a cost-oriented basis as the Commission may specify, establish prices for its individual elements and offer the elements at the established prices to other service providers;
  - (b) publish, in such manner as the Commission may specify, the prices, technical, commercial and other terms and conditions pertaining to its reference offer for elements of interconnection; and

- (c) permit other service providers to have equal access to telephone numbers, operator services, directory assistance and directory listing without unreasonable delay, in accordance with requirements specified by the Commission.
- (12) Where a dominant service provider fails to comply with its obligations under this section, the Commission may seek an order from the Court requiring compliance.
- (13) For the purpose of this section “merger” means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.

#### **PART 4**

### **UNIVERSAL SERVICE INTERCONNECTION, INFRASTRUCTRE, SHARING, NUMBERING**

#### **54. PROVISION OF UNIVERSAL SERVICE**

- (1) The Minister may, on the recommendation of ECTEL, include as a condition in a licence, a requirement for a service provider to provide universal service in a transparent, non-discriminatory and competitively neutral manner.
- (2) A service provider who is required by its licence to provide universal service to any person shall do so at such price and with the quality of service specified in the licence.

#### **55. UNIVERSAL SERVICE FUND**

- (1) There shall be established a fund to be known as the Universal Service Fund, which fund shall be managed by the Commission in accordance with the Regulations.
- (2) A service provider shall contribute to the Universal Service Fund.
- (3) The Minister shall, by Order published in the [Official] Gazette, on the recommendation of ECTEL, specify the percentage of the gross revenue which a service provider referred to in subsection (2) shall contribute to the Universal Service Fund, except that the percentage to be contributed shall be the same for all service providers.

## **56. PURPOSE OF UNIVERSAL SERVICE FUND**

- (1) The Universal Service Fund shall be used by the Commission, to compensate a person who is required to provide universal service or to otherwise promote universal service.
- (2) The amount of compensation payable under subsection (1) shall be computed in accordance with the Regulations and the conditions attached to the licence and shall be paid to the relevant person by the Commission.
- (3) In making the Regulations referred to in subsection (2), the Minister shall also be guided by the actual cost that is incurred in making available the required universal service.

## **57. INTERCONNECTION**

- (1) Subject to subsection (5), a service provider who operates a public network shall not refuse, obstruct, or in any way impede another service provider from making an interconnection with his or her network.
- (2) A service provider who wishes to interconnect with the network of another service provider shall make a request to that other service provider in writing.
- (3) A service provider to whom a request for interconnection is made, shall, in writing, respond to the request within a period of 28 days from the date of the request.
- (4) A service provider in granting a request under subsection (3) shall agree, with the person making the request, the date the interconnection shall be effected.
- (5) A service provider to whom a request for interconnection is made may in his or her response refuse that request in writing on reasonable technical grounds only.
- (6) A service provider on receipt of a refusal for interconnection may refer that refusal to the Commission for a review, possible dispute resolution or determination in accordance with section 36.
- (7) A service provider providing an interconnection service in accordance with this section in setting rates for interconnection shall comply with guidelines and standards to facilitate interconnection established by the Commission on the recommendation of ECTEL.

- (8) Any interconnection service provided by a service provider under the provisions of subsection (7) above shall be on terms which are not less favourable than -
  - (a) those of the provider of the interconnection service;
  - (b) the services of non-affiliated suppliers; or
  - (c) the services of the subsidiaries or affiliates of the service provider of the interconnection service.
- (9) A service provider shall not, in respect to any rates charged for interconnection services provided to another service provider, vary the rates on the basis of the type of customers to be served, or on the type of services that the service provider requesting the interconnection services intends to provide.

## **58. INTERCONNECTION AGREEMENTS**

- (1) A service provider shall not enter into any interconnection agreement, implement or provide interconnection service unless the interconnection agreement is approved in writing by the Commission acting in accordance with the advice of ECTEL.
- (2) Interconnection agreements between service providers shall be in writing, and copies of the agreements shall be kept in a public registry maintained by the Commission for that purpose and open to public inspection during normal working hours.
- (3) The Commission shall, after consulting ECTEL, prepare, publish, and make available copies of the procedures to be followed by the service providers when negotiating interconnection agreements.

## **59. COST OF INTERCONNECTION**

- (1) The cost of establishing any interconnection to the network of another service provider shall be borne by [both parties to the interconnection agreement/the service provider requesting the interconnection].
- (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 provider requesting the interconnection service does not have to pay for network

components that are not required for the interconnection service to be provided.

## **60. INFRASTRUCTURE SHARING**

Sections 57, 58 and 59 shall apply to infrastructure sharing, with the necessary modifications.

## **61. ACCESS TO TOWERS, SITES AND UNDERGROUND FACILITIES**

- (1) Where access to towers, sites and underground facilities is technically feasible, a service provider shall, upon request, give another service provider access to—
  - (a) tower owned or operated by the first mentioned service provider; or
  - (b) a site owned, occupied or controlled by the first mentioned service provider;
  - (c) an eligible underground facility owned or operated by the first mentioned service provider,for the sole purpose of enabling the second mentioned service provider to install a facility for use in connection with the supply of a service.
- (2) A service provider, in planning the provision of future services, shall co-operate with other service providers to share sites and eligible underground facilities.
- (3) Access to sites, towers or eligible underground facilities shall, with the necessary modifications, be on such terms as set out in sections 57, 58 and 59; and -
  - (a) on such terms and conditions as are agreed between service providers; or
  - (b) failing agreement under paragraph (a) as determined by the Commission.
- (4) A service provider who fails to comply with this section is deemed to be in breach the service provider's licence.

## **62. SPECTRUM MANAGEMENT**

- (1) The Commission shall establish and manage a national plan for spectrum management in accordance with the regional plan established by ECTEL.
- (2) The Commission shall, in managing the national plan for spectrum management, have the power to the extent

reasonably required to implement and administer the national plan for spectrum management.

### **63 NUMBERING**

- (1) The Commission shall establish and manage a national plan for the allocation of numbers among service providers in accordance with the regional plan established by ECTEL.
- (2) The Commission shall, in managing the national plan for the allocation of numbers among service providers, have the power to reallocate and reassign numbers to the extent reasonably required to implement and administer the national numbering plan.

### **64. DOMAIN REGISTRATION**

- (1) The Commission shall establish and manage a national plan for internet domain registration in accordance with the regional plan established by ECTEL.
- (2) The Commission shall, in managing the national plan for internet domain registration, have the power to the extent reasonably required to implement and administer the national plan for domain registration.
- (3) The Commission be responsible for the registration and management of internet domain names.
- (4) The Commission may, with the approval of ECTEL, delegate its responsibility under subsection (3) to another body corporate.

## **PART 5 OFFENCES**

### **65. CONNECTION OF EQUIPMENT**

- [(1) A person shall not connect any equipment to a public network without the written approval of the Commission.
- (2) The Commission shall, before giving the approval, take into account the recommendations of ECTEL relating to equipment approval.
- (3) Notwithstanding section 6 or subsections (1) or (2), the Minister may, on the recommendation of ECTEL or the

Commission, exempt by Order published in the [Official Gazette, any person from the requirements of this section.

- (4) A person who connects any equipment contrary to this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding 2 years or to both.]

## **66. INTERFERENCE, INTERCEPTION OR DESTRUCTION ETC. OF NETWORK**

- (1) A person shall not -
  - (a) use or cause to be used any thing that is capable of causing electromagnetic interference with the normal functioning, or use of a licensed network or operation of apparatus, unless such a thing is equipped with filters, suppressors or other devices, or is otherwise modified to minimise the interference to a prescribed level;
  - (b) intercept or interrupt any message transmitted over a public network without the consent of the sender except as provided under this Act or any other enactment;
  - (c) remove, injure, or destroy any network, or apparatus, except in accordance with this Act.
- (2) A person who contravenes subsections (1) commits an offence and is liable on summary conviction -
  - (a) in the case of a first offence, to a fine not exceeding \$15,000;
  - (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.
- (3) A service provider shall not disclose personal information relating to a subscriber except -
  - (a) with the consent of the subscriber;
  - (b) the a disclosure made to the [Customs Department, the Inland Revenue] or the police; or
  - (c) under a court order under this Act or any other enactment.
- (4) A service provider who contravenes subsection (3) 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.

## **67. GIVING FALSE INFORMATION**

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

## **68. FAILURE TO ATTEND TO GIVE EVIDENCE TO THE COMMISSION**

- (1) A person shall not -
  - (a) refuse or fail, without reasonable excuse, to appear before the Commission, having been required to do so; or
  - (b) refuse to take an oath or make an affirmation having appeared before the Commission as a witness.
- (2) A person who contravenes subsection (1) 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.

## **69. LIABILITY OF DIRECTORS, MANAGERS, SUPERVISORS AND PARTNERS**

Where breach or offence under this Act or licence has been committed by a person other than an individual, any individual including a public officer who at the time of the breach or commission of the offence was director, manager, supervisor, partner or other similarly responsible individual, may be found individually liable for that breach or offence and liable to the same penalty if having regard to -

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

**PART 6**  
**MISCELLANEOUS**

**70. FEES**

- (1) The fees payable under this Act are as prescribed.
- (2) Subject to subsection (3), the fees payable under this Act or the Regulations shall be paid to the Consolidated Fund
- (3) The fees payable under this Act or the Regulations with respect to spectrum shall be payable to ECTEL and shall form part of the Revenue of ECTEL.

**[71. STOPPAGE OF ELECTRONIC COMMUNICATIONS**

Electronic communication via a service or network which appears dangerous to the security of [the Member State or other Member States] or contrary to public order or decency shall not be accepted for transmission, and if, in the opinion of the person receiving the electronic communications for transmission, the message contains elements that constitute an offence, he or she shall immediately inform the Commission which shall take the necessary appropriate action. ]

**72. ACCESS TO LANDS AND ROAD WORKS**

- (1) A person nominated by a public service provider and duly authorised in writing by the relevant authority may, at any reasonable time, enter upon and survey any land, other than land covered by buildings or used as a park, for the purpose of ascertaining whether the land would be suitable for use by the service provider for, or in connection with, the establishment or running of the service provider's system.
- (2) For the purpose of providing a service, a public service provider may lay or maintain or remove, any line or cable, in or over a street or a public ground and shall repair and restore the street and public ground to the satisfaction of the Minister.
- (3) Where a public service provider fails to comply with subsection (2) within 14 days of the laying maintenance or removal, the Minister may cause the repairs to restoration to be done and

the service provider is liable to the cost for such repairs or restorations.

- (4) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, a service provider shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his or her enjoyment of any land or chattels, the licensee or frequency authorisation holder provider shall pay to that person compensation in respect of the disturbance.
- (5) In engaging in the inspection of land, installation of facilities, or maintenance of facilities, a service provider must take all reasonable steps to act in accordance with good engineering practice, to protect the environment, to protect the safety of persons and property, and to ensure that the activity interferes as little as practicable with the operations of a public utility, public roads and paths, the movement of traffic, and the use of land.
- (6) A service provider who engages in any activity covered in subsection (1) or (2) must ensure that a facility installed over a road, bridge, path or navigable water is installed in a way that will allow reasonable passage by persons, vehicles and vessels.
- (7) Where a service provider fails to comply with the provision of this section the Commission may suspend or revoke the licence in accordance with section 40.

### **73. COPYRIGHT**

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 authorisation.

### **74. ESTABLISHMENT AND OPERATION OF NETWORK BY DIPLOMATIC MISSION**

- (1) Despite this Act a diplomatic mission established in [Name of Member State] may establish and operate a network including radio apparatus, with the permission of the Minister.
- (2) A diplomatic mission shall make proper arrangements for the use of its network permitted under subsection (1) in accordance with this Act.

## **75. PERMISSION UNDER OTHER LAWS**

A licence or a frequency authorisation issued under this Act shall not have the effect of dispensing with the necessity of obtaining permission where such permission is required under any other law in force in [Name of Member State].

## **76. APPEAL**

A person may appeal to the High Court against any decision, order, or award of the Minister or the Commission made under this Act within 28 days of the decision, order or award being made.

## **77. AMENDMENT OF SCHEDULES**

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

## **78. REGULATIONS**

- (1) The Minister may, after consultation with the Commission and on the recommendation of ECTEL, make Regulations to give effect to this Act.
- (2) Without limiting the generality of subsection (1), the Minister may, after consultation with the Commission and on the recommendation of ECTEL, make Regulations providing, in particular, for or in relation to—
  - (a) forms, procedures and [timeframes] in respect of the grant of a licence or a frequency authorisation;
  - (b) matters relating to the provision of universal service and the management of the Universal Service Fund;
  - (c) the type of terminal equipment to be connected to a public network;
  - (d) public safety standards relevant to telecommunications;
  - (e) interconnection between service providers, and the sharing of infrastructure by service providers;
  - (f) interconnection agreements;
  - (g) matters relating to the allocation of numbers among the service providers;
  - (h) [stoppage or interception 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 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 services;
  - (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 networks and VSATS;
  - (w) cost studies and pricing models;
  - (x) submarine cables and landing rights;
  - (y) registration and management of domain names.
- (3) Without limiting the generality of subsection (1), the Minister may, after consultation with the Commission and on the recommendation of ECTEL, make Regulations creating offences for breach of any provision of the Regulations and for a penalty not exceeding \$5000 for any such an offence.
- (4) Where ECTEL recommends Regulations for adoption for the purpose of the Agreement, the Minister shall take all reasonable steps to ensure their enactment.

## **79. REPEAL AND SAVINGS**

- (1) The Telecommunications Act [ ] is repealed.
- (2) Notwithstanding subsection (1) -
  - (a) any Regulations, Order or other subsidiary legislation made pursuant to the repealed Act, shall, if in force at the commencement of this Act, continue in force until replaced

by any Regulation, Order or other subsidiary legislation made under this Act; and

- (b) any act, decision or other matter carried out pursuant to the repealed Act shall be deemed to have been carried out under this Act
- (3) A person authorised to operate a network or provide a service or use radio frequencies as at the date of the entry into force of this Act shall be deemed to be operating the network or providing the service or using such radio frequencies under a licence issued under this Act for six months from the entry into force of this Act and thereafter, the person shall require a licence or frequency authorisation under this Act.

## **SCHEDULE 1**

(Sections 18 and 77)

### **Oath of Secrecy**

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

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

[ ]



## **SCHEDULE 2**

(Sections 40, 42 and 77)

### **PART 1**

#### **CONDITIONS THAT MAY BE INCLUDED IN LICENCES AND FREQUENCY AUTHORISATIONS**

1. Licences and frequency authorisations granted under this Act may contain any or all of the following conditions -
  - (a) the networks and services which the licensee or authorisation holder is and is not entitled to operate and provide, and the networks to which the network of the licensee or authorisation holder can be connected;
  - (b) the build-out of the network and geographical and subscriber targets for the provision of the relevant services;
  - (d) the use of radio spectrum;
  - (e) the provision of services to rural or sparsely populated areas or other specified areas in which it would otherwise be uneconomical to provide services;
  - (f) the provision of services to the blind, deaf, physically and medically handicapped and other disadvantaged persons;
  - (g) the interconnection of the licensee's network with those of other operators;
  - (h) the sharing of infrastructure;
  - (i) prohibitions of anti-competitive conduct;
  - (j) the allocation and use by the licensee of numbers; and
  - (k) provision of universal service.

### **PART 2**

#### **CONDITIONS THAT MUST BE INCLUDED IN LICENCES AND FREQUENCY AUTHORISATIONS**

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

- (a) period of licence and procedure for renewal or variation at behest of the applicant;
- (b) a condition stipulating that the licence or frequency authorisation shall only enter into force upon payment by the licensee or authorisation holder to ECTEL or the Commission of the prescribed fee;

- (c) a condition requiring the licensee or authorisation holder to pay annual anniversary fees and renewal fees on specified dates;
- (d) a condition requiring the licensee or frequency authorisation holder to provide ECTEL with such documents and information as ECTEL shall require and request in order to fulfil its purposes and functions;
- (e) a condition requiring the licensee or frequency authorisation holder to comply with any direction made by the Commission under section 36;
- (f) provision of information and documents as required by and to the Commission and ECTEL;
- (g) non-exclusivity of the licence, and exclusivity or otherwise of the frequency authorisation;
- (h) contribution to universal service;
- (i) procedure to deal with complaints of customers, or subscribers;
- (j) compliance with the recommendations of ECTEL;
- (k) payment of moneys owed to the Government;
- (l) the submission to the Commission of a complete audited financial report;
- (m) specification of the fees depending on the divergent or convergent nature of the services provided.