

I assent,

CUTHBERT M SEBASTIAN

Governor-General.

28th July, 2000.



SAINT CHRISTOPHER AND NEVIS

No. 12 of 2000

AN ACT to amend the Telecommunications Act, No. 12 of 2000.

(28th July, 2000.)

Commencement.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:-

1. This Act may be cited as the Telecommunications (Amendment) Act, 2000.

Short title.

2. In this Act, unless the context otherwise requires, "Act" means the Telecommunications Act, No. 2 of 2000.

Interpretation.

3. The Act is amended in Section 3 by

Amendment to
Section 3 of the
Act.

- (a) deleting the definitions of "Agreement" and "Authority";
- (b) substituting for the definition of "Board" with the following new definition:

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

- (c) substituting for the definition of "class licence" with the following new definition:

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

- (d) inserting immediately after the definition of "document" the following new definitions:

"diplomatic mission" includes an international organisation accredited to Saint Christopher and Nevis;

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

"frequency authorisation" means an authorisation granted by the Minister under this Act 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 fees" means the prescribed fees payable by a frequency authorisation holder;"

(d) adding immediately after the word "Act" occurring in the definition of "individual licence" the words "on terms specific to that person";

(e) inserting immediately after the definition of "individual licence" the following new definitions:

"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;

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

"land" includes any land under any tenure and easement, servitude, right or privilege in or over land;"

(f) substituting for the word "communications" occurring in the definition of "Minister" with the word "telecommunications";

(g) inserting immediately after the definition of "person" the following new definition:

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

(h) inserting immediately after the definition of "records" the following new definition:

"special licence" means a licence issued in an emergency or other exigent circumstances by the Minister pursuant to Section 9(b) of this Act;"

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- (i) inserting immediately after the definition of "telecommunications" the following new definition:

" "telecommunications facilities" means any

- (a) facility, apparatus, or other thing that is used or capable of being used for telecommunications or for any operation directly connected with telecommunications; and
- (b) transmission facility;"

- (j) inserting immediately after the definition of "terminal equipment" the following new definitions:

" "Treaty" means the Treaty establishing the Eastern Caribbean Telecommunications Authority signed at Saint George's, Grenada on the 4th day of May, 2000;

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

4. The Act is amended in Section 4 by

- (a) substituting for the word "programming" occurring in paragraph (a) of subsection (2) thereof with the words "programme content and scheduling";
- (b) substituting for subsection (3) thereof with the following:

"(3) The Minister may, by Order, exempt

- (a) a diplomatic mission;
- (b) any category of a ship, aircraft, person, type of network or service, on the recommendation of ECTEL;

from the provisions of this Act, and such exemption may be subject to such conditions as the Minister may impose."

5. The Act is amended in Section 5 by

- (a) inserting immediately after subsection (6) thereof the following new subsections:

"(7) No person shall, where a frequency authorisation is necessary for the operation of a telecommunications network or telecommunications service, operate a telecommunications network or telecommunications service without the frequency authorisation.

Amendment to
Section 4 of the
Act.

Amendment to
Section 5 of the
Act.

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(8) No person shall land or operate submarine cables in Saint Christopher and Nevis for the purpose of connecting to a telecommunications network without a licence, and such licence may be in addition to any other approvals, licences, or permits required under the laws of Saint Christopher and Nevis."

(b) renumbering subsection (7) as subsection (9);

(c) substituting for

(i) the expression "or (6)" occurring in the second line of what is now renumbered as subsection (9) with the expression "(6), (7), or (8)";

(ii) the expression "four years or both" occurring in what is now renumbered as subsection (9) with the expression "ten years".

6. The Act is amended by substituting for Section 6 with the following new section:

Amendment to
Section 6 of the
Act.

6. (1) The Minister may, in accordance with this Act, grant

(a) an individual licence;

(b) a class licence;

(c) a frequency authorisation in respect of a licence;

(d) a special licence.

(2) In the event that the Minister refuses to grant a licence or frequency authorisation he shall furnish the applicant with a copy of a document containing the reasons for his refusal.

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

(4) In exercising his powers under this Act the Minister shall consult the Commission, and the Minister shall also, whenever it is practicable, adopt the form, document, process, and draft subsidiary legislation recommended by ECTEL, and implement any policy and recommendations proposed by ECTEL."

7. The Act is amended in Section 8 by substituting for subsection (4) thereof with the following new subsection:

Amendment to
Section 8 of the
Act.

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“(4) The Minister may, in granting an individual licence, attach to that licence any or all of the terms and conditions specified in Part I of the First Schedule to this Act, except that that licence shall be subject to all the terms and conditions specified in Part II of that Schedule.”.

8. The Act is amended in Section 9 by Amendment to
Section 9 of the
Act.
- (a) substituting for subsections (1) and (2) thereof with the following new subsections:
- “(1) A person who wishes to apply for a class licence under this Act shall submit his application, in the prescribed form, to the Commission, and the application shall be accompanied by the prescribed fee.
- (2) The Commission shall, upon receipt of the application determine whether the applicant falls within the definition of a class licence, and if, in the opinion of the Commission, the applicant qualifies for a class licence, then the Commission shall recommend the applicant to the Minister for grant of the class licence.”;
- (b) substituting for subsection (4) thereof with the following new subsection:
- “(4) The Minister may, in granting a class licence, attach to that licence any or all of the terms and conditions specified in Part I of the First Schedule to this Act, except that that licence shall be subject to all the terms and conditions specified in that Schedule.”.
9. The Act is amended in Section 10 by Amendment to
Section 10 of
the Act.
- (a) substituting for subsection (7) thereof with the following new subsection:
- “(7) The Minister may, in granting a frequency authorisation, attach to the frequency authorisation any or all of the terms and conditions specified in Part I of the First Schedule to this Act, except that the frequency authorisation shall be subject to all the terms and conditions specified in that Schedule.
- (b) inserting immediately after Section 10 the following new section:

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^{"Special licence.} 10A. (1) A special licence may be granted by the Minister where an emergency or other exigent circumstance exists.

(2) A special licence shall be valid for a period not exceeding ten days, as the Minister may determine, and shall not be renewable.

(3) A person who wishes to be granted a licence shall apply, in the prescribed form, to the Minister and his application shall be accompanied by the application fee.

(4) The Minister shall, upon granting a special licence, inform the Commission and ECTEL as soon as practicable."

Amendment to
Section 11 of
the Act.

10. The Act is amended by substituting for Section 11 with the following new section:

^{"Prescribed fees.} 11. A licence and a frequency authorisation granted under this Act shall be subject to the payment of the prescribed fees, and the prescribed fees shall be payable in the prescribed manner."

Amendment to
Section 12 of
the Act.

11. The Act is amended in Section 12 by

- (a) adding to the words "Modification of licence" occurring in the marginal note thereof the word "authorisations";
- (b) inserting immediately after subsection (2) thereof the following new subsections:

"(3) The Minister may, after consultation with the members of the relevant class and on the recommendation of ECTEL, modify a class licence.

(4) The Minister may, on the recommendation of ECTEL and where the Minister and the frequency authorisation holder agree in writing, modify the frequency authorisation, except that the Minister may, on the recommendation of ECTEL, modify the frequency authorisation without the agreement of the frequency authorisation holder if the Minister is of the view that the modification is necessary in the public interest or for reasons of national security."

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12. The Act is amended in Section 13 by

Amendment to
Section 13 of
the Act.

- (a) substituting for subsections (3) and (4) thereof with the following new subsections:

"(3) The Minister shall, before suspending any licence under this section,

- (a) give two months notice to the licensee, specifying the grounds on which the Minister intends to suspend the licence;
- (b) give the licensee an opportunity to present his views and to submit to the Minister a written statement containing the licensee's objections to the suspension; and
- (c) take into account the views and objections referred to in paragraph (b) before making a decision.

(4) If, after complying with subsection (3), the Minister is of the view that the licence should be suspended, the Minister shall not suspend the licence without first giving the licensee an opportunity to remedy the breach."

- (b) inserting immediately after subsection (4) thereof the following new subsection:

"(5) This section shall, *mutatis mutandis*, apply to the suspension of a frequency authorisation."

13. The Act is amended in Section 14 by

Amendment to
Section 14 of
the Act.

- (a) substituting for subsections (3) and (4) thereof with the following new subsections:

"(3) The Minister shall, before revoking any licence under this section,

- (a) give two months written notice to the licensee specifying the grounds on which the Minister intends to suspend the licence;
- (b) give the licensee an opportunity to present his views and to submit a written statement containing his objections to the revocation;

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(c) take into account the views and objections referred to in paragraph (b) before making a decision.

(4) If, after complying with subsection (3), the Minister is of the view that the licence should be revoked, the Minister shall not revoke the licence without first giving the licensee an opportunity to remedy the breach.”;

(b) inserting immediately after subsection (4) thereof the following new subsection:

“(5) This section shall, *mutatis mutandis*, apply to the revocation of a frequency authorisation.”.

14. The Act is amended in Section 15 by substituting for the word “communications” occurring in the second line of subsection (1) thereof the word “telecommunications”.

Amendment to Section 15 of the Act.

15. The Act is amended in Section 16 by deleting the word “reasonable” occurring in the third line of subsection (2) thereof.

Amendment to Section 16 of the Act.

16. The Act is amended by substituting for Section 17 with the following:

Amendment to Section 17 of the Act.

Functions of Commission, etc.

17.(1) The Commission shall perform the following functions, that is to say,

- (a) advise the Minister on the formulation of a national policy on telecommunications matters to ensure efficient economic and harmonised development of the telecommunications and broadcasting services as well as radio communications;
- (b) advise the Minister on whether applicants for class licences fall within the definition of a class licence;
- (c) regulate prices for telecommunications services;
- (d) to set and regulate technical standards of telecommunications, and to ensure that such standards

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are compatible with international technical standards;

- (e) plan, supervise, regulate and manage the use of radio frequency spectrum in conjunction with ECTEL;
- (f) receive and review applications for a class licence and advise the Minister accordingly;
- (g) monitor and ensure that licensees and holders of frequency authorisations comply with the conditions attached to their licences and authorisations respectively;
- (h) review any proposed interconnection agreement by telecommunications providers and recommend to the Minister whether or not the Minister should approve the agreement;
- (i) investigate and resolve any dispute relating to interconnection or infrastructure sharing between telecommunications providers;
- (j) investigate complaints against licensees, either on its own initiative or upon request;
- (k) monitor anti-competitive practices in the telecommunications sector and advise the national body responsible for the regulation of anti-competitive practices accordingly;
- (l) manage the Universal Service Fund;

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- (m) advise the Minister on legal, technical, financial and economic aspects of the telecommunications sector;
- (n) consult and liaise closely with ECTEL;
- (o) keep and maintain a register of licensees and frequency authorisation holders;
- (p) organise, in conjunction with any institution or entity, training, manpower planning, seminars, and conferences in areas of national and regional importance in telecommunications;
- (q) provide the Minister with such information as he may, from time to time, require;
- (r) perform such functions as may be conferred on it by regulations made under this Act or by any other enactment.

(2) In resolving disputes the Commission shall, wherever practicable, apply conciliation, mediation, and alternative dispute resolution techniques.

(3) The Commission shall, when presented with a dispute between licensees requiring an interpretation of licences, frequency authorisations or regulations, either

- (a) refer the matter to ECTEL with a request that ECTEL provide the Commission with an opinion on the matter; or
- (b) with the consent of the parties to the dispute, refer the matter to ECTEL for mediation or arbitration in keeping with the Treaty.

(4) Where the matter is referred to ECTEL under subsection (3)(a) the Commission shall, in resolving the dispute, take into account the opinion and recommendation of ECTEL.”.

17. The Act is amended in Section 20 by

- (a) deleting the word “or” occurring in paragraph (b) thereof;

Amendment to
Section 20 of
the Act.

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- (b) replacing the full-stop occurring at the end of paragraph (c) thereof with a semi-colon;
- (c) inserting immediately after paragraph (c) thereof the following new paragraphs:
 - “(d) misconduct;
 - (e) for any other conduct which is inconsistent with his functions.”

Amendment to Section 27 of the Act.

18. The Act is amended in Section 27 by adding immediately after the word “Act” occurring in subsection (1) thereof with the words “or otherwise promote universal service”.

Amendment to Section 28 of the Act.

19. The Act is amended in Section 28 by adding immediately after the word “operates a ” occurring in the second line of subsection (1) thereof with the word “public”.

Amendment to Section 30 of the Act.

20. The Act is amended in Section 30 by inserting immediately after subsection (2) thereof the following:

“(3) Notwithstanding the provisions of subsection (2) the Commission may, on the recommendation of ECTEL, issue guidelines on the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections shall be determined.

(4) The guidelines referred to in subsection (3) shall be available to the public at the office of the Commission during working hours, upon payment of a prescribed fee.

Amendment to Section 31 of the Act.

21. The Act is amended by inserting immediately after Section 31 the following new sections:

*Access to towers, etc.

31A. (1) Where access to a telecommunications tower, site, and underground facility is technically feasible, a telecommunications provider who owns or is in charge of the tower, site or underground facility, as the case may be, shall, upon request, give the requesting telecommunications provider access to his tower, site or underground facility, as the case may be, for the sole purpose of enabling the requesting telecommunications provider to install a facility for use in connection with the supply of telecommunications services.

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

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(3) The provisions of Sections 28, 29 and 30 shall, *mutatis mutandis*, apply to access to towers, sites, and underground facilities.

Private Networks.

31B. (1) The provisions of Section 5 of this Act shall apply to the provision and operation of private telecommunications networks.

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

(3) Where the operator of a private telecommunications networks intends to offer telecommunications services to the public for a fee, or to a class of users so as to be effectively available to the public, the operator of the network shall apply for an individual licence in accordance with this Act.

(4) A person who owns a private telecommunications networks shall not be restricted only to the carrying on of voice or data or any other such use.

22. The Act is amended by substituting for Section 52 with the following:

Amendment to Section 52 of the Act.

"Numbering and Domain names.

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

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

(3) The Commission shall be responsible for the registration and management of internet domain names."

23. The Act is amended by substituting for the words "the Authority" wherever they occur the word "ECTEL".

General amendment to the Act.

24. The First Schedule to the Act is amended by

Amendment to the First Schedule.

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- (a) inserting immediately after the words "(Section 8(5))" the words "Part I"; and
- (b) inserting immediately before the Second Schedule the following:

PART II

**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:

1. Period of licence and procedure for renewal of licence or variation at the behest of the applicant;
2. A condition stipulating that the licences 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.
3. A condition requiring the licensee or authorisation holder to pay annual anniversary fees and renewal fees on specified dates.
4. A condition requiring the licensee or authorisation holder to provide ECTEL with such documents and information as ECTEL shall require and request in order to fulfill its purposes and functions.
5. A condition requiring the licensee or authorisation holder to comply with any direction made by the Commission under Section 30.
6. Provision of information and documents as required by and to the Commission.
7. Non-exclusivity of the licence, and exclusivity or otherwise of the frequency authorisation.
8. Contribution to universal service.
9. Procedure to deal with complaints of customers or subscribers.
10. Compliance with the recommendations of ECTEL.
11. Payment of moneys owed to the Government.
12. Submission to the Commission of a complete audited financial report.

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13. Specification of the fees depending on the divergent or convergent* nature of the services provided.

- Convergent nature means the process of multiple telecommunications services provided over a single medium.

MARCELLA LIBURD
Deputy Speaker

Passed the National Assembly this 26th day of October, 2000.

JOSÉ LLOYD
Clerk of the National Assembly