

REVISED DRAFT 10/10/15

ELECTRONIC COMMUNICATIONS BILL

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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 Electronic Communications Authority (ECA) Contracting 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 1-7*) provides for preliminary matters including the short title and commencement of the Bill, interpretation, objects of the Bill, the provision to bind the [Crown/State], the non-application of the Bill to broadcasting content, exemptions and the powers and duties 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 objects of the Bill 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 Bill. 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 Bill.
7. By virtue of clause 5 of the Bill, the Bill does not apply to the program content and scheduling aspects of broadcasting networks and services. The Bill however applies to the transmission aspects of broadcasting.
8. Clause 6 of the Bill provides for the Minister, on the recommendation of the Commission, 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 Bill or a part or provision of the Bill, including an exemption from payment of fees.
9. By virtue of clause 7 of the Bill, the Minister in the exercise of his or her powers may adopt the form, document, process of licences and frequency authorisation and draft subsidiary legislation recommended by the Commission and implement the policy and recommendations proposed by the Commission.

10. Part 2 of the Bill (clauses 8-33) provides for the National Electronic Regulatory Commission.
11. The Commission is established or continued as a body corporate so that it has the powers of a body corporate by virtue of the Interpretation Act including the power to sue in its name, to contract, to acquire and dispose of property. 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 are public officers. The Commissioners are required to have recognised standing and experience collectively in various disciplines including finance and accounting, electronic communications, information technology, project management and law. At least one commissioner must have experience and expertise in electronic communications. Provision is also made for eligibility and disqualification criteria including, criminal convictions, bankruptcy and pecuniary interest in a licensee (clause 9). Clause 10 of the Bill provides for the term of appointment of a commissioner to be a period of three years subject to eligibility for re-appointment for a further term, a maximum of two consecutive terms and to staggering of appointments.
13. 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 for signature by the Minister; reviewing proposed interconnection agreements in accordance with the recommendation of ECA; promoting, maintaining and encouraging competition in the electronic communications sector; liaising and consulting with any national authority established for the purposes of regulating anti-competitive practices; and promoting and protecting the welfare and interests of consumers in the electronic communications sector.
14. Clause 12 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.
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 13).
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 14).
17. Clause 15 of the Bill provides for the Commission to appoint a Chief Executive Officer to carry out the day to day affairs of the Commission. The Chief Executive Officer is to perform duties entrusted to him or her under the Bill and is to attend meetings of the Commission unless directed otherwise by the Chairperson but the Chief Executive Officer has no voting rights in the meeting.
18. Pursuant to clause 16 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 17 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. 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 licensees or customers, clients or members of licensees 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*).
21. 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 of the Bill for meetings of the Commission to be duly constituted if at the meeting there is a quorum of a majority of the members of the Commission. Decisions are to be taken by a simple majority of votes of commissioners present and voting, and in cases of equal division the Chairperson has the casting vote. 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.
22. 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 an interest, voting, in a matter in which a commissioner is materially interested and seeking to influence the vote of any other commissioner in relation to such a matter is misconduct which would lead to revocation of appointment of the commissioner. Decisions of the Commission taken at a meeting shall not be invalidated merely because a disqualified person sits at the meeting.

23. 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 Bill. The protection does not extend in cases of personal injury.
24. 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.
25. 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*).
26. 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 the 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.
27. 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.
28. The Fund of the Commission is to comprise annual financial contributions made by ECA to the Commission and chargeable to the general budget of ECA, monies allocated to it by Parliament and monies received by the Commission as grants or loans (*clause 26*).
29. By virtue of clause 27 of the Bill, the financial year of the Commission commences on 1st January and ends on 31st December in each year.
30. Clause 28 of the Bill provides for the Commission to prepare a Budget with the estimates of its income and expenditure and a work plan for the Commission in respect of the ensuing financial year for approval by ECA and submission to the Minister for laying in [Parliament/the National Assembly].
31. 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*).
32. 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 considers necessary and the auditor may require the person holding or accountable for such document

to appear, make a signed statement or provide such information in relation to the document as the auditor considers necessary. The auditor's report is to be submitted to the Commission as soon as is practicable and in any event not later than three months after the end of the financial year.

33. The Commission is required to submit an annual report together with the auditor's report to ECA 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] (*clause 31*).
34. The Commission is exempt from the payment of taxes and fees on income property and documents (*clause 32*).
35. Clause 33 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.
36. Part 3 of the Bill (*clauses 34-50*) provides for licensing of persons operating an electronic communications network or providing an electronic communications service.
37. By virtue of clause 34 of the Bill, a prohibition is placed on operating an electronic communications network or providing an electronic communications service without a licence, landing or operating submarine cables without a licence, or operating a network or providing a service without a frequency authorisation where a frequency authorisation is necessary. A person who contravenes clause 34 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.
38. Provision is made in clause 35 of the Bill for private electronic communications network and in clause 36 of the Bill the scope and class of licences is identified. Clause 36 further provides for a licensee to provide more than one service under a licence.
39. Provision is made in clause 37 of the Bill for the procedure for an application for a licence, the content of a licence and the grant or refusal of a licence. The Commission consults with the ECA before making a recommendation to the Minister for the grant or refusal of a licence.
40. Provisions for the grant of frequency authorisations are contained in clauses 38 and 39 of the Bill. The Commission consults with the ECA prior to making a recommendation for the grant or refusal of a frequency authorisation.
41. Provision is made in clauses 40, 41 and 42 of the Bill for the modification, transfer and change of control of a licence or frequency authorisation. Clauses 43, 44 and 45 of the Bill provide for notification of change of significant interest, termination and renewal of the licence or frequency authorisation.
42. In clauses 46, 47 and 48 of the Bill provision is made for suspension and revocation, special licence and registration of domain name. Type approvals are provided for in clause 50 of the Bill.

43. Part 4 of the Bill provides for the rights and obligations of the licensee or frequency authorisation holder (clauses 51 to 72 of the Bill). The rights include access to towers, cable landing stations and other network elements and the obligations include contribution to the Universal Service and Access Fund, interconnection and number portability.
44. Part 5 of the Bill provides for Competition. Clause 73 of the Bill contains general competition practices. Abuse of significant market power is prohibited by clause 74 of the Bill. Non-discrimination is ensured by clause 75 of the Bill. Market analysis and specific obligations of licensees having significant market power are highlighted in clauses 76 and 77 of the Bill.
45. Clause 79 of the Bill additionally prohibits a licensee from entering in to or giving effect to any agreement, arrangement or understanding including an agreement, arrangement or understanding for 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. Clauses 80, 81 and 82 make provision for reasonable allowances, powers of the Commission under that Part and consultation with any competition body.
46. Part 6 of the Bill provides for the Universal Service and Access Fund through its establishment in clause 83 of the Bill and its purpose in clause 84 of the Bill.
47. Part 7 of the Bill makes provision for other offences. A prohibition is placed on the connection of equipment to a public network without the approval of the Commission and a contravention of that provision is an offence (clause 85). Other offences include unlawful interference, interception or destruction of a network, giving false information, failure to attend and give evidence to the Commission (*clauses 86-89*). Cross-shareholding, harmful interference and failure to comply with directions are provided for in clauses 90 to 92 of the Bill. Clauses 93 and 94 of the Bill make provision for breach of codes of practice and the liability of a body corporate.
48. Part 8 of the Bill provides for investigation and issuing of a warrant for entry and search on suspicion of contravention of clause 34 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 (Clause 95).
49. Clauses 96-99 of the Bill provide for investigation of breaches and determination by the Commission of breaches by licensees or frequency authorisation holders, assistance of police officers and injunction relief.
50. Part 9 of the Bill makes provision for settlement of complaints by the Commission in clauses 100-1110. Upon receipt of a complaint the Commission may request that the parties negotiate, investigate the complaint or refer the complaint to the Tribunal, OECS Competition Commission, Consumer Protection body or any other body. Clauses 111-125 provides for the establishment and operation of an ad hoc Tribunal to hear complaints referred by the Commission. The continuation of an electronic communications service during the complaint process is ensured by clause 126 of the Bill.

51. Part 10 of the Bill (*clauses 127-135*) provides for miscellaneous matters including fees, access to registers and stoppage of communications. Additionally, the Part has requirements relating to copyright, permission under other laws and appeals. There are also provisions for the amendment to the Schedules, the making of Regulations by the Minister and the repeal and savings of the provisions of the Telecommunications Act.
52. The three Schedules attached to the Bill contain the form of the oath of secrecy, sub-classes of licences and conditions of licences and frequency authorisations.

ELECTRONIC COMMUNICATIONS ACT

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ELECTRONIC COMMUNICATIONS ACT

(Act [] of 200[])

AN ACT to provide for the regulation of electronic communication networks and electronic communication 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, 20[].
- (2) This Act shall come into force on a day to be fixed by the Minister by Order published in the [Official] Gazette.

2. INTERPRETATION

In this Act [unless the context otherwise requires]—

“**access**” –

- (a) means the making available of facilities or services to a licensee under defined conditions for the purpose of providing electronic communications services;
- (b) includes admission to network elements and associated facilities which may involve the connection of equipment by fixed or non-fixed means including-
 - (i) entry to physical infrastructure, such as buildings, ducts and mast and dark optical fiber,
 - (ii) shared or fully unbundled rights to local loop,
 - (iii) the right to use mobile networks in particular for roaming and the right to use virtual network services,
 - (iv) access to relevant software systems including building operational support systems, access to number translation systems or systems offering equivalent functionality;

“access contract” means an agreement for the provision of network access, use of an electronic communications network and the relevant facilities to be made available;

“alternative infrastructure” means any installation or a set of installations that allows or contributes to allow the transmission or the transmission and routing of information and communications signals, which is deployed on a utility installation;

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

“application” means a request for a licence or frequency authorization, 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 authorization;

“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;

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

“Chairperson” means —

(a) in relation to the Commission, the person appointed as the Chairperson of the Commission under section 13; or

(b) in relation to the Tribunal, the legal practitioner appointed as the Chairperson of the Tribunal under section 112;

“Chief Executive Officer” means the person appointed as Chief Executive Officer under section 14;

“Commission” means the National Electronic Regulatory Commission established by section 8;

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

“Complaints Register” means the Complaints Register maintained pursuant to section 109(1);

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

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

“complaint” means a complaint submitted to the Commission pursuant to section 100;

“document” includes an electronic document;

“**diplomatic missions**” include international organisations accredited to [Name of ECA Member State];

“**ECA**” means the Electronic Communications 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 an electronic communications network;

“**frequency authorisation**” means permission granted by the Minister under section 39 to use radio frequencies in connection with the operation of an electronic communications network or the provision of an electronic communication services under a licence or otherwise;

“**frequency authorisation holder**” means a person holding a frequency authorisation granted under section 39;

“**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;

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

“**infrastructure**” includes facilities, submarine cables, fiber, landing sites, cable landing stations, 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 15;

“**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—

(a) network licence;

(b) service licence; or

(c) network-service licence;

“licensee” means a person holding a licence;

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

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

“network licence” means an authorization for the deployment of or operation of any form of electronic communications network system or facilities that is used by any person to provide electronic communications services to third parties;

“notice of discontinuance” means a notice of discontinuance pursuant to section 106;

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

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

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

“private electronic communications network” means a system to provide electronic communication 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 electronic communications network;

“public electronic communications network” means an electronic communications network used for the provision of electronic communication services to the public;

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

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

“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;

“**Register**” means the –

- (a) Register kept and maintained pursuant to section 11(1)(o); or
- (b) Complaints Register;

“**Regulations**” means Regulations made under section 134;

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

“**retail customer**” means a consumer, other than a licensee, who is obliged to pay periodically or on demand for an electronic communications service;

“**road**” means any road or street or part of a road 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;

“**road works**” means any activity that involves breaking open a road or public ground, or that removes, alters or affects any utility installation;

“**service licence**” means an authorization for electronic communication providers who intend to lease electronic communications network elements, such as transition and switching services, from network based operators or providers;

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

- (a) to control [25%] or more of the voting rights of that company at a general meeting of the company;
- (b) to a share of [25%] or more in dividends declared and paid by the company;
- (c) to a share of [25%] or more in any distribution of the surplus assets of the company;

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

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

“**special licence**” means a licence granted under section 48 by the Minister;

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

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

“telecommunications” includes the transmission, emission or reception of signals, writing, pulses, images, sounds or other intelligence of any kind by wire, radio, terrestrial or submarine cables, optical or electromagnetic spectrum or by way of any other technology;

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

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

“Treaty” means the Treaty establishing the Electronic Communication Authority as amended;

“Tribunal” means the Electronic Communications Tribunal established under section 111;

“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 and Access Fund” means the Universal Service and Access Fund established under section 83;

“universal service and access” includes the provision of —

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

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

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

- (2) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Treaty (whether or not a particular meaning is assigned to it by the Treaty) has in this Act the same meaning as in the Treaty.

3. OBJECTS OF THIS ACT

- (1) The principal object of this Act is to give effect to the purposes of the Treaty and to regulate electronic communications services and electronic communications networks in [Name of ECA Contracting State].
- (2) Without limiting the generality of subsection (1) the objects of this Act include, to —
 - (a) ensure policies and practices in relation to the management of electronic communications are in harmony with the policies and practices of ECA;
 - (b) ensure that public interest and national security is preserved;
 - (c) ensure consumer protection and meeting the needs of all users, including disabled users, elderly or users with special social needs, in terms of access to services and facilities;
 - (d) ensure the compliance by licensees to the protection of personal data, secrecy of correspondence and to the principle of neutrality that internet service providers should enable access to all content and applications regardless of the source, and without favouring or blocking particular contents or websites;
 - (e) ensure the absence of discrimination, in similar circumstances, in relationships between licensees and communication services providers to the public for traffic routing and access to their services;
 - (f) ensure the ability of end users to access and disseminate information, as well as access applications and services of their choice;
 - (g) ensure the application of appropriate standards in the operation of electronic communication networks and electronic communication services;
 - (h) ensure the overall development of electronic communications in the interest of the sustainable development of [Name of ECA Contracting State];
 - (i) promote and maintain fair and efficient market conduct and sustainable competition between licensees;

- (j) encourage, promote and facilitate and otherwise assist in the development of investment, innovation and competitiveness in the electronic communications sector in [Name of ECA Contracting State];
- (k) establish a licensing system that is responsive to the changes within the electronic communications sector;
- (l) ensure the provision of electronic communications at rates consistent with efficient service;
- (m) allow for the exercise of regulatory functions in respect of the determination and approval of prices, tariffs and charges for the provision of electronic communication;
- (n) improve on the effective and efficient use of spectrum; and
- (o) ensure the possibility of using all types of technologies and all types of electronic communications services in the frequency bands available to these services, subject to technical feasibility.

4. ACT TO BIND [CROWN/STATE]

This Act binds the [Crown/State].

5. NON-APPLICATION OF THIS ACT

Subject to this Act, this Act does not apply to broadcasting content.

6. EXEMPTIONS

- (1) The Minister may, on the recommendation of the Commission, by Order published in the [Official] Gazette, exempt any category of ship or aircraft, or person or class of electronic communications network or electronic communications service from this Act or a part or provision of this Act.
- (2) The Minister may, on the recommendation of the Commission, by Order published in the [Official] Gazette exempt a diplomatic mission from the requirements of this Act, or a part or provision of this Act.
- (3) An Order under subsection (1) or (2) —
 - (a) [shall be subject to the requirement for a frequency 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 include any other conditions; or
 - (c) may include an exemption from the payment of any fees or part of fees payable under this Act.
- (4) The Commission may make a recommendation under this section after consultation with ECA.

7. POWERS AND DUTIES OF THE MINISTER

- (1) The Minister shall, in the exercise of his or her powers, under this Act —
- (a) adopt the form, document, process of licences or frequency authorisation as recommended by the Commission;
 - (b) adopt the form and document of draft subsidiary legislation as recommended by the Commission; and
 - (c) implement policy and recommendations proposed by the Commission.
- (2) The Minister may give directions of policy of a general nature to the Commission and the Commission shall comply with such directions.

PART 2

THE NATIONAL ELECTRONIC REGULATORY COMMISSION

8. ESTABLISHMENT OF THE COMMISSION

- [(1) There is established a body to be known as the National Electronic Regulatory Commission./ There shall continue to be a body to be called the National Electronic Regulatory Commission./ The body constituted under section [] of the Telecommunications Act known as the National Telecommunications Regulatory Commission is preserved and continues in existence for the purposes of this Act but shall be known after the commencement of this Act as the [National Electronic 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 —
- (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 Commission shall establish and maintain an office and principal place of business within [Name of ECA Contracting State].
- (4) The common seal shall be kept by the Chief Executive Officer at the office of the Commission and the affixing of the common seal of the Commission shall be in the presence of and witnessed by —
 - (a) the Chairperson; and
 - (b) the Chief Executive Officer or any person authorised in writing by the Chairperson.
- (5) The service of documents on the Commission is deemed to be effective if delivered at the office of the Commission.

9. COMPOSITION OF THE COMMISSION

- (1) Subject to subsections (2) and (3), the Commission shall comprise not less than 3 or more than 5 commissioners who shall be appointed by the Minister.
- (2) Subject to subsections (3) 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) electronic communications;
 - (d) economics;
 - (e) law;
 - (f) competition;
 - (g) project management;
 - (h) business administration; and
 - (i) regulatory experience and training,except that at least one of the commissioners shall be a person of recognised standing and experience in electronic communications 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 is disqualified from being a commissioner and is not eligible to be appointed as a commissioner, or having been appointed, is not eligible to continue as a commissioner if that person —
 - (a) holds or is beneficially interested in more than [5%] of any stock, share, bond, debenture or other security of, or other interest in, a licensee;

- (b) has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a licensee;
 - (c) is a director, officer, employee, agent or a person providing a service or supplying goods to a licensee 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 the Criminal Rehabilitation of Offenders Act, Cap [] [in any manner];or
 - (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 licensee in respect of which the Commission performs regulatory functions by reason only of the fact that, he or she is a consumer of a licensee in respect of which the Commission performs such regulatory functions.
- (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) the probity, competence and soundness of judgment of the person for fulfilling the responsibilities of a commissioner; and
 - (b) the diligence with which the person is likely to fulfill the responsibilities of a commissioner.
- (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—
- (a) one month before the commissioners are appointed;
 - (b) as the Commission is first constituted; and

- (c) 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

- (1) Unless the commissioner resigns under section 22 or the commissioner's appointment is revoked under section 23, the appointment of a commissioner is for a period of 3 years and the commissioner is eligible for reappointment for a maximum of two consecutive terms.
- (2) Notwithstanding subsection (1), the appointment of a commissioner may be staggered.

11. FUNCTIONS OF THE COMMISSION

- (1) The functions of the Commission are to —
 - (a) advise the Minister on the formulation of the national policy on electronic communications matters with a view to ensuring the efficient, economic and harmonised development of the electronic communications sector in [Name of ECA Contracting 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) establish and manage a national plan for the allocation of numbers or block of numbers among licensees in accordance with the regional plan established by ECA including reallocating and reassigning numbers to the extent reasonably required to implement and administer the national numbering plan,
 - [(e) in order to protect consumers, ensure fairness between consumers and licensees, and ensure public health and safety, establish tariff regulation regimes including the setting, review and approval of tariffs where -
 - (i) electronic communications services are being provided by only one licensee or are being provided with a bundle where at least one service is not in competition,
 - (ii) electronic communication services are being provided within universal service and access,

- (iii) one or a group of licensees has significant market power in a relevant market,
 - (iv) licensees with a significant market power are cross-subsidizing electronic communications services,
 - (v) there is evidence of anti-competitive pricing or conduct, or
 - (vi) such regulation as is necessary in the public interest;
- (f) advise the Minister in all matters related to tariffs for electronic communication services;
 - (g) collect fees under section 127;
 - (h) receive and evaluate applications for licences and advise ECA on network-service licences and frequency authorisations;
 - (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 licences or frequency authorisation;
 - (k) review proposed interconnection agreements by licensees, and, in accordance with the recommendation of ECA, approve or disapprove of such interconnection agreements;
 - (l) promote, maintain and encourage competition in electronic communications;
 - (m) liaise and consult with any national authority established for the purposes of regulating anti-competitive practices;
 - (n) promote and protect the welfare and interests of consumers in the electronic communications sector and advise the national body responsible for consumer protection accordingly;
 - (o) maintain a register in the prescribed form containing records of licensees and frequency authorisation holders;
 - (p) provide the Minister with such information as he or she may require;

- (q) 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;
 - (r) report to and advise the Minister on the legal, technical, financial, economic aspects of electronic communications and the social impact of electronic communications;
 - (s) appoint a Fund Administrator to manage the Universal Service and Access Fund;
 - (t) specify quality of service indicators for electronic communication services and the means to enforce a licensee's compliance with the stated quality of service standards, including measures by which a licensee compensates users who are adversely affected by a failure to provide electronic communication services in accordance with the standards;
 - (u) determine whether terminal equipment or any other equipment fulfils the criteria stipulated in this Act or Regulations in order to certify or approve the terminal equipment or other equipment to be installed or used for the electronic communications network or electronic communications service;
 - (v) hear complaints between consumers and licensees in accordance with Part 9; and
 - (w) perform such other functions as are assigned under this Act or Regulations made under this Act.
- (2) In the performance of its functions the Commission shall, where necessary and in accordance with the Treaty, consult and liaise with ECA.
- (3) In discharging its function pursuant to subsection (1)(e) in relation to determining rates for the provision of broadcasting services, the Commission -
- (a) may consider issues of content; and
 - (b) shall liaise and consult with any national authority established for the purposes of regulating broadcasting content.

12. DELEGATION

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

13. 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 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 and recover outstanding 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 directions in writing to a licensee or frequency authorisation holder to direct the licensee or frequency authorisation holder to take such measures or cease such activities as may be necessary for the purpose of ensuring compliance with this Act;
 - (f) on the recommendation of ECA and by notice published in the [Official Gazette] codes of practice relating to electronic communication services and electronic communication networks and to —
 - (i) make the codes of practice available for public scrutiny at the office of the Commission during business hours or on the websites operated by ECA and the Commission, or
 - (ii) reproduce the code of practice at the request of any member of the public on payment of the prescribed fee;
 - (g) make rules to regulate its own procedure;
 - (h) in managing the national plan for numbering, implement and administer the national plan for numbering to the extent reasonably required;
 - (i) require that equipment be tested in the prescribed manner and in accordance with international standards; or
 - (i) do anything incidental to its powers.

14. 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 has 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.

15. 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 all the functions entrusted to him or her under this Act or the Regulations or by the Commission.
- (3) Subject to subsection (4), the Chief Executive Officer shall attend all meetings of the Commission unless the Chief Executive Officer —
 - (a) is instructed by the Chairperson of a meeting to withdraw; or
 - (b) has obtained leave of absence or is prevented from attending the meeting for good cause.
- (4) The Chief Executive Officer attending a meeting of the Commission in accordance with subsection (3) has no voting rights.

16. SECRETARY, INSPECTORS AND OTHER EMPLOYEES

- (1) The Chief Executive Officer shall appoint, at such remuneration and on such terms and conditions as may be approved from time to time by the Commission, a Secretary to the Commission and such inspectors and other employees as the Commission considers necessary for the performance of the powers, duties and functions of the Commission.
- (2) The Secretary, inspector or other employees appointed under subsection (1) shall perform the duties assigned to him or her by the Chief Executive Officer or pursuant to this Act.

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

17. 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 functions of the Commission as the Commission determines.
- (2) The Commission may appoint persons as members of an advisory committee, whether or not such persons are commissioners or employees of the Commission and such persons shall hold office for such period as the Commission determines.
- (3) The advice given by an advisory committee is not binding on the Commission but may be considered by the Commission in making decisions for the purposes of the discharge of its functions.

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;
 - (c) the business or affairs of a licensee; or
 - (d) the affairs of a customer, member, client of a licensee,that the commissioner, officer, employee, agent or adviser has acquired in the course of his or her duties or in the exercise of the functions of the Commission 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 licensee or of a customer, member, client of a licensee, 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 licensee or any customer, member, client of a licensee, to which the information relates, to be ascertained;
- (e) lawfully made to a person with a view to the institution of, or for the purpose of-
 - (i) 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 licensee;
- (g) for the appointment or duties of a receiver of a licensee; or
- (h) for the purpose of assisting the Competition body in connection with competition.

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 determines.
- (3) The Chairperson may at any time call a special meeting of the Commission and shall cause a special meeting to be held within [7] days of a written request for that purpose addressed to the Chairperson by any commissioner.
- (4) The Chairperson and any other commissioner shall be deemed to be present at a meeting of the Commission if the Chairperson or the commissioner participates by telephone, video link or satellite, and all commissioners participating in the meeting are able to hear and to speak to each other.

- (5) At a meeting of the Commission —
 - (a) the Chairperson shall preside; or
 - (b) if the Chairperson is not present, the Deputy Chairperson shall preside;
 - (c) if 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 a majority of the members of the Commission.
- (7) Decisions of the Commission shall be taken by a simple majority of votes of commissioners present and voting at the meeting.
- (8) The Chairperson has an original vote and in cases of equal division the Chairperson has 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 does not have the right to vote.
- (10) Minutes of each meeting of the Commission shall be recorded and kept by the Secretary.

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 (1), the Commission shall determine whether or not the interest of the commissioner in a matter, is material and where the Commission determines the interest of the commissioner is material, the commissioner shall leave the meeting upon the matter coming up for discussion.
- (3) A declaration and the departure of a commissioner from the meeting in accordance with subsections (1) and (2) shall be noted in the minutes of the meeting.
- (4) A commissioner who —
 - (a) fails to comply with subsections (1) and (2);

- (b) votes in respect of a matter before the Commission in which he or she is materially interested, whether directly or indirectly; or
- (c) seeks to influence the vote of any other commissioner in relation to a matter before the Commission in which he or she is materially interested, whether directly or indirectly;

is guilty of misconduct and section 23 applies.

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

- (1) The Minister shall at any time, in writing, revoke the appointment of a commissioner if, upon evidence, the Minister is satisfied that the commissioner —
 - (a) is disqualified from being a commissioner under section 9(4);
 - (b) is unable to perform the functions of his or her office;
 - (c) is guilty of misconduct under section 20;
 - (d) has been disqualified or suspended on grounds of misconduct, by a competent authority, from practicing a profession;
 - (e) is disqualified on grounds of national security; or

- (f) [fails to attend 3 consecutive meetings or 5 meetings in the aggregate of the Commission during any 12 month period of his or her term of appointment [without reasonable excuse/without presenting a medical certificate or without being excused, in the case of the Chairperson, by the Minister in writing or in the case of any other commissioner, by the Chairperson in writing.]
- (2) Before the revocation of the appointment of a commissioner under subsection (1), the Minister shall give the commissioner notice in writing of his or her intention to do so, specifying the proposed grounds for the revocation and shall give the commissioner an opportunity-
 - (a) to present his or her views; or
 - (b) to submit to the Minister, within such time as the Minister may specify, a written statement of objections to the revocation.
- (3) Where the Minister revokes the appointment of a commissioner, he or she shall notify the commissioner of the revocation within 90 days and shall give reasons in writing for the revocation.

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 the Minister revokes the appointment of that commissioner under section 23; or
 - (e) if the commissioner's appointment has expired and is not renewed by the Minister.
- (2) A decision of the Commission taken at a meeting is not invalidated merely because there is a vacancy in membership as long as there is a quorum.

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. FUND FOR USE BY COMMISSION

- (1) There is hereby established a fund to be known as the Electronic Communications Fund to be used by the Commission as revenue for the execution of its functions and the discharge of its obligations under this Act.
- (2) The Fund comprises—
 - (a) monies allocated to it by Parliament;
 - (b) annual financial contributions made by ECA to the Commission and chargeable to the General budget of ECA; and
 - (c) monies received by the Commission as grants or loans.
- (3) The Commission may establish a Reserve Fund into which may be paid sums which the Commission with the approval of ECA determines.

27. FINANCIAL YEAR

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

28. BUDGET AND WORK PLAN

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

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 commissioners, the Chief Executive Officer and employees of the Commission shall grant to the auditor appointed under subsection (1), access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor considers necessary, and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor considers necessary.
- (3) A commissioner, Chief Executive Officer or employee of the Commission who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both and to revocation of his or her appointment as a commissioner, Chief Executive Officer, or employee of the Commission in accordance with this Act.
- (4) The auditor shall prepare a report and shall submit the report to the Commission as soon as is reasonably practicable and in any event not later than 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 ECA and to the Minister an annual report on the operations, activities and transactions of the Commission containing —
 - (a) an assessment of the state of electronic communications and its impact and significance for the development of [Name of ECA Contracting State];
 - (b) a description of the activities undertaken by the Commission including recommendations made in respect of licences and frequency authorisations;
 - (c) a description of actions taken to promote the Treaty including the implementation of the recommendations, policies and guidelines of ECA; and
 - (d) a financial statement of the Commission.
- (2) An annual report under subsection (1) shall be accompanied by the auditor's report under section 30.

[32. EXEMPTION FROM TAXES

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

33. PUBLIC ACCESS TO RECORDS OF THE COMMISSION

- (1) Subject to section 128, the Commission shall make a record, including a record contained in the register referred to in section 11(1)(o), available for public inspection at the offices of the Commission.
- (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 the disclosure of which would constitute an invasion of personal privacy;
 - (c) secret records relating to national defence or security;
 - (d) records of intra-governmental communications relating to governmental decision processes;
 - (e) records of information obtained by the Commission in the course of its frequency monitoring activities;
 - (f) records containing information relating to the valuation of the property of the licensees;
 - (g) records of trade secrets or proprietary commercial, financial or technical information which is customarily guarded from competitors;
 - (h) records of information which are subject to judicial privilege; and
 - (i) records which are not open to public inspection by virtue of the provisions of any enactment.
- (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 a fair trial or impartial adjudication;
 - (c) constitutes an unjustified invasion of personal privacy;
 - (d) discloses the identity of a confidential source;
 - (e) discloses investigative techniques or procedures; or
 - (f) endangers the life or physical safety of law enforcement personnel or any other person.

- (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.
- (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) the names and addresses of licensees and frequency authorisation holders and the licences and frequency authorisation issued, modified, renewed, revoked, transferred or surrendered;
 - (b) notice of its intention to impose any authorisation measures that have a significant impact on electronic communication services and shall give interested parties an opportunity to comment with a reasonable period specified in the notice; and
 - (c) enforcement orders of the Commission.

PART 3

LICENSING, FREQUENCY AUTHORISATION, REGISTRATION AND APPROVAL

34. PROHIBITION ON OPERATING NETWORK OR PROVIDING SERVICES WITHOUT A LICENCE

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

accordance with this Act and is subject to the provisions of this Act relating to a frequency authorisation, but is not required to have a licence.

35. PRIVATE ELECTRONIC COMMUNICATIONS NETWORK

- (1) The licence requirement in section 34 applies to the provision or operation of a private electronic communications network and a frequency authorisation required to operate a private electronic communications network providing radio communication services or that utilises the radio frequency spectrum.
- (2) A private electronic communications network shall not be used for resale, except that the owner of a private electronic communications network may resell spare capacity on the owner's facilities, cede or assign the rights to use the facilities, sublet or otherwise give control of the facilities to a licensee.
- (3) Where the operator of a private electronic communications network intends to offer service directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, the operator requires a licence under section 38.
- (4) A private electronic communications network shall not be restricted to the carrying of voice only or data only or to any other such use.

36. CLASS AND SCOPE OF LICENCE

- (1) The classes of licenses are –
 - [(a) network licence;]
 - (b) service licence;
 - (c) network-service licence.
- (2) A licensee who holds a network licence may provide the electronic communications network [and service] in accordance with the licence.
- (3) A licensee who holds a service licence may provide the electronic communication service in accordance with the licence.
- (4) A licensee who holds a network-service licence may provide the electronic communications network and electronic communications service in accordance with the licence.
- (5) The sub-classes and scope of a network licence, service licence or network-service licence are as specified in Schedule 2.

37. PROCEDURE FOR GRANT OF LICENCE

- (1) An applicant shall submit his or her application in the prescribed form to the Minister and shall immediately submit a copy of the application to the Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.
- (3) The Commission may, within [7] days of an application for a licence being made under subsection (1) request additional information from an applicant for the purpose of considering the application.
- (4) Where the Commission makes a request for information pursuant to subsection (3), the applicant shall submit that information to the Commission within [14] days of the request or within a further period of time granted and specified in writing by the Commission.
- (5) The Commission may refuse to grant a further time period pursuant to subsection (4) if it is reasonable to do so.
- (6) In determining whether it is reasonable to refuse to grant a further time period under subsection (5), the Commission may take into account-
 - (a) the type of information being requested;
 - (b) the history of the application;
 - (c) any other matter.
- (7) Upon receipt of an application under subsection (1) or the information requested pursuant to subsection (3), the Commission shall –
 - (a) consider applications for service licences;
 - (b) forward within [7] days, applications for network licences or network-service licences to ECA.
- (8) Within 45 days of –
 - (a) in the case of a service licence, receipt of an application under subsection (1) or information requested pursuant to subsection (3), the Commission shall submit its recommendation for the grant or refusal of the licence to the Minister; or
 - (b) in the case of a network licence or network-service licence, receipt from the Commission, ECA shall submit its recommendation to the Commission and the Commission shall transmit the recommendation of ECA for the grant or refusal of the licence to the Minister.

- (9) In making a recommendation under subsection (8), the Commission or ECA shall have regard to —
- (a) the purposes of the Treaty;
 - (b) the objective of universal service and access that will be promoted including the provision of internet access sufficient to meet reasonable demand at affordable prices;
 - (c) the protection of the interests of subscribers, purchasers and other users of electronic communication services;
 - (d) the promotion of competition among licensees of electronic communication services;
 - (e) the promotion of research, development and introduction of new electronic communication services;
 - (f) the encouragement of foreign and domestic investors to invest in electronic communications;
 - (g) appropriate technical and financial requirements;
 - (h) the safeguard of public interest and national security interests;
 - (i) the specified class within which the particular applicant falls; and
 - (j) such other matters as are determined by the Commission.
- (10) Where an application and prescribed application fee is submitted and the Commission determines that, based on the national numbering plan, an electronic communications number or block of numbers is required for provision of an electronic communications service in the application is available, and upon payment of the prescribed initial fee, the Commission shall assign a number or a block of numbers with or without conditions.
- (11) The Minister may, on the recommendation of the Commission, 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 reasons in writing for a refusal.

- (12) Notwithstanding subsection (11), the Minister shall not grant a network licence or network-service licence unless ECA recommends the grant of such licence.
- (13) Where an application is refused the applicant has the right to appeal pursuant to section 132.
- (14) A licence granted pursuant to subsections (11) and (12) shall be issued on payment of the prescribed initial fee.
- (15) The Minister may, in granting a licence include all or any of the terms and conditions specified in Schedule 3.
- (16) Subject to section 46, a licence is valid for the period specified in the licence.
- (17) The Commission shall publish the grant or refusal of a licence under this section.

38. REQUIREMENT FOR A FREQUENCY AUTHORISATION

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

39. FREQUENCY AUTHORISATION

- (1) An applicant for a frequency authorisation shall submit his or her application in the prescribed form to the Minister and shall immediately submit a copy of the application to the Commission together with the prescribed application fee.
- (2) Upon receipt of the application, the Commission shall, within 7 days, forward the application to ECA.
- (3) ECA 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.
- (4) Where ECA makes a request for information pursuant to subsection (3), the applicant shall submit that information to ECA within [14] days of the request or within a further period of time granted and specified in writing by the ECA.
- (5) ECA may refuse to grant a further time period pursuant to subsection (4) if it is reasonable to do so.

- (6) In determining whether it is reasonable to refuse to grant a further time period under subsection (5), ECA may take into account-
 - (a) the type of information being requested;
 - (b) the history of the application;
 - (c) any other matter.
- (7) ECA shall, within [45] days of receipt of a copy of an application under subsection (1) or receipt of additional information under subsection (3), inform the Commission in writing whether there are any reasons based on the regional spectrum plan or any spectrum policy or regulation for granting or not granting the frequency authorisation.
- (8) The Commission shall, within [7] days of being informed by ECA pursuant to subsection (7), transmit the recommendation of ECA to the Minister whether or not the particular applicant shall be granted a frequency authorisation.
- (9) The Minister may, in accordance with the recommendation of ECA, grant or refuse to grant a frequency authorisation 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) A frequency authorisation granted pursuant to subsection (9) shall be issued on payment of the prescribed initial fee.
- (11) The Minister, in granting a frequency authorization may include all or any of the terms and conditions specified in Schedule 3.
- (12) Subject to section 46, a frequency authorisation is valid for the period specified in the frequency authorisation.
- (13) The Commission shall publish the grant or refusal of frequency authorisation.

40. MODIFICATION OF LICENCE OR FREQUENCY AUTHORISATION

- (1) The Minister may, on the receipt of a recommendation from the Commission, modify a licence or frequency authorization —
 - (a) with the agreement of the licensee or the frequency authorization holder; or
 - (b) without the agreement of the licensee or the frequency authorization holder where the modification is necessary in the public interest or for reasons of national security.

- (2) A licensee or frequency authorization holder who seeks a modification of his or her licence or frequency authorization shall apply in the same manner as he or she did for the initial licence or frequency authorization.
- (3) The Commission shall make recommendations under this section after consultation with ECA.
- (4) Where the modification of a licence or frequency authorization is recommended by ECA or the Commission or where in the opinion of ECA and the Commission modification is necessary to avoid harmful interference, the licensee or frequency authorization holder shall not pay an application fee.

41. TRANSFER OF LICENCE OR FREQUENCY AUTHORIZATION

- (1) A licence or frequency authorization is personal to the licensee or frequency authorization holder and the licence or frequency authorization shall not be operated by, assigned, sub-licensed or transferred to any other person unless the licensee or frequency authorization holder makes an application in the prescribed form to the Minister at least 90 days prior to the proposed date of the operation, assignment, sub-licence or transfer, or such other period as may be determined by the Minister.
- (2) The application for transfer under subsection (1) and a completed application for the licence or frequency authorization by the proposed transferee for a licence or frequency authorization shall be submitted to the Minister.
- (3) Upon receipt of the applications pursuant to subsection (2), the Minister shall, as soon as practicable, forward the application for operation, assignment, sub-licence or transfer and the completed application for the licence or frequency authorization by the proposed transferee to the Commission.
- (4) Upon receipt of the applications pursuant to subsection (2), the Commission shall –
 - (a) in the case of a network licence, network-service licence or frequency authorization, forward the applications to ECA and ECA shall conduct an evaluation of the applications; and
 - (b) in the case of a service licence, conduct an evaluation of the application.
- (5) Without prejudice to the generality of subsection (4), the Commission or ECA shall in conducting an evaluation of an application determine whether the proposed operation, assignment, sub-licence or transfer –
 - (a) is inconsistent with the terms of the licence or frequency authorization;
 - (b) is, or is likely to have, the effect of substantially lessening competition in a market in [Name of ECA Contracting State]; and
 - (c) is, or is likely to have, an effect that is contrary to the public interest.

- (6) Upon completion of the evaluation of the applications –
 - (a) under subsection (4)(a) and (5), ECA, shall forward its recommendation to the Commission and the Commission shall transmit the recommendation to the Minister;
 - (b) under subsection (4)(b) and (5), the Commission shall make the recommendation to the Minister.
- (7) Within 21 days of receipt of the recommendation of the Commission, the Minister may, grant or refuse the application for the operation, assignment, sub-licence or transfer of the licence or frequency authorization.
- (8) The grant or refusal of the Minister under subsection (7) shall not be unreasonably withheld.
- (9) Where the application is refused the Minister, shall in his or her notification to the applicant, state in writing the reasons for his or her refusal.
- (10) Where an application for operation, assignment, sub-licence or transfer is granted, the licence or frequency authorization is valid for the remaining period of the licence or frequency authorization.
- (11) In this section, “transfer” includes passing the licence or frequency authorization to a person other than the initial licensee or frequency authorization holder, whether or not that person has a business activity or has significant assets.
- (12) A licensee or frequency authorization holder who contravenes this section is liable to the revocation of his or her licence under section 46.

42. CHANGE OF CONTROL OF THE LICENSEE OR FREQUENCY AUTHORIZATION HOLDER

- (1) A licensee or frequency authorization holder shall not cause, permit or acquiesce in any change of control unless the licensee or frequency authorization holder makes a written application to the Minister at least 90 days prior to such change of control.
- (2) A licensee or frequency authorization holder who contravenes subsection (1) is liable to the revocation of his or her licence or frequency authorization pursuant to section 46.
- (3) Upon receipt of the application pursuant to subsection (1), the Minister shall, as soon as practicable, forward the application to the Commission.
- (4) Upon receipt of the application under subsection (1), the Commission shall –
 - (a) in the case of a network licence, network-service licence or frequency authorization, forward the application to ECA and ECA shall conduct an evaluation of the application; and
 - (b) in the case of a service licence, conduct an evaluation of the application.

- (5) Without prejudice to subsection (4), ECA or the Commission shall, in conducting an evaluation of an application, take into account –
- (a) whether the change of control would be inconsistent with the terms of the licence or frequency authorization;
 - (b) whether the change of control would have, or be likely to have, the effect of substantially lessening competition in a market in [Name of ECA Contracting State];
 - (c) whether the change of control would have an effect, or would be likely to have an effect contrary to the public interest including the need for the availability throughout [Name of ECA Contracting State] of a wide range of content services, which, taken as a whole are high quality and calculated to appeal to a wide variety of tastes and interests and which give due consideration to the free expression of opinion in the media;
 - (d) the promotion of sustainable competition including in view of, the structure of all the relevant markets and the actual or potential competition from undertakings located in [Name of ECA Contracting State] or outside [Name of ECA Contracting State]; and
 - (e) the market position of the licensee and the economic and financial power of the licensee, the alternatives available to suppliers and users, access of the licensee to suppliers or markets, any legal or other barriers to entry, supply and demand trends for the electronic communication services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided by competition.
- (6) Upon completion of the evaluation of the applications –
- (a) under subsection (4)(a) and (5), ECA, shall forward its recommendation to the Commission and the Commission shall transmit the recommendation to the Minister;
 - (b) under subsection (4)(b) and (5), the Commission shall make the recommendation to the Minister.
- (7) Before making a recommendation under subsection (6), the Commission or ECA shall –
- (a) give the acquirer, the licensee or frequency authorization holder and any interested persons a reasonable opportunity to make representations; and
 - (b) consider the representations, if any, made under paragraph (a).
- (8) Within 21 days of receipt of the recommendation of the Commission or ECA, the Minister may, acting on the recommendation of the Commission or ECA, grant or refuse the application for change of control.

- (9) Where the application is refused the Minister, shall in his or her notification to the applicant, state in writing the reasons for his or her refusal.
- (10) The Commission, on the recommendation of ECA, may in respect of a licensee or frequency authorization 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 an application under this section and any such waiver is subject to a condition that the licensee or frequency authorization holder shall, as soon as reasonably practicable, notify the Minister through the Commission of any sale, transfer, charge or other disposition.
- (11) In this section -
- “change of control”, in relation to a licensee, means when a person, alone or with other persons, takes charge of the licensee or frequency authorization holder by acquiring directly or indirectly including by merger –
- (a) 50% or more of the licensee’s voting share;
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of organs of the licensee or frequency authorization holder;
- (c) while not holding the rights or entitled to the rights under a contract under paragraph (b), has the power to exercise the rights deriving from such right or contract;
- (d) through the licensee or frequency authorization holder divesting its shares;
- “merger” means the cessation of two or more persons, at least one of which is or controls a licensee or frequency authorization holder from being distinct, whether by purchase or lease of share, amalgamation, combination, joint venture or any other method through which influence over the policy of another licensee or frequency authorization is acquired.

43. NOTIFICATION OF CHANGE OF SIGNIFICANT INTEREST

- (1) A licensee or a frequency authorization holder shall not issue or allot any shares or cause, permit or acquiesce in any other reorganization of its share capital that results in –
- (a) a person acquiring a significant interest in the licensee; or
- (b) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his or her interest,

unless the licensee or frequency authorization holder notifies the Commission in writing of the issue, allotment or other reorganization.

- (2) A notification under subsection (1) must include evidence of the acquisition of the significant interest in the licensee or the increase or decrease in the size of the significant interest.
- (3) Upon receipt of a notification under subsection (1), the Commission shall submit a copy of the notification to ECA.

44. TERMINATION BEFORE OR ON THE EXPIRY OF A LICENCE OR FREQUENCY AUTHORISATION

- (1) A licensee or a frequency authorisation holder may terminate a licence or frequency authorisation prior to its expiry and shall —
 - (a) act in accordance with any guidelines issued by the Commission, after consultation with the ECA, for that purpose; and
 - (b) make an application in writing to the Minister; and
 - (c) immediately submit a copy of the application to ECA and the Commission for the early termination at least 12 months prior to the expiry of the licence or frequency authorisation.
- (2) Subject to subsection (3), the Minister may, on the recommendation of the Commission, in accordance with the guidelines referred to in subsection (1) and within 6 months, give the licensee or frequency authorisation holder permission or refuse to give permission to terminate the licence or frequency authorisation prior to its expiry and shall give reasons for a refusal.
- (3) The Minister shall not unreasonably withhold permission to terminate a licence or frequency authorisation prior to its expiry.
- (4) At least one year prior to the expiration of the licence or frequency authorisation, a licensee or frequency authorisation holder shall provide written notice of such expiration to the Minister, ECA and the Commission.
- (5) The Commission shall, within 6 months of receipt of an application under subsection (1) or a notice under subsection (4), publish the termination of a licence or frequency authorization under this section.

45. RENEWAL OF LICENCE AND FREQUENCY AUTHORISATION

- (1) A licensee or frequency authorization holder may renew the licence or frequency authorization by applying 12 months before the expiration of the licence or frequency authorization in the same manner as he or she did for the initial licence or frequency authorization.
- (2) The Minister, on the recommendation of the Commission, may renew a licence or frequency authorization granted under this Act for a period equivalent to the first licence or the first frequency authorization granted unless—

- (a) the licensee or the frequency authorization holder failed to operate within the terms of the first licence or the first frequency authorization;
 - (b) the licensee or the frequency authorization holder failed to comply materially with any of the provisions of this Act, Regulations or the terms and conditions of the licence or the frequency authorization;
 - (c) the licensee or the frequency authorization holder failed to comply materially with any direction of ECA or the Commission; or
 - (d) the Minister, on the recommendation of ECA, has determined that it is not in the public interest to renew the licence.
- (3) Before determining not to renew a licence or a frequency authorization pursuant to subsection (1), the Minister, on the recommendation of the Commission, shall give the licensee or the frequency authorization holder, within 60 days, notice in writing of its intention not to renew such licence or frequency authorization, specifying the grounds on which it proposes not renew the licence or frequency authorization, and shall give the licensee or the frequency authorization holder the opportunity—
- (a) to present his or her views; and
 - (b) to submit to the Commission within such time as the Commission may specify a written statement of objections to the decision not to renew the licence or the frequency authorization,
- which the Commission shall take into account before reaching a decision on renewal.
- (4) The Commission shall make recommendations under this section after consultation with ECA.
- (5) The Commission shall publish the renewal of a licence and frequency authorization.

46. SUSPENSION AND REVOCATION OF LICENCE OR FREQUENCY AUTHORISATION

- (1) The Minister may, on the recommendation of the Commission, suspend, or revoke 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 comply with a 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) the suspension or revocation is necessary for reasons of national security or the public interest;
 - (f) the licensee or frequency authorisation holder is bankrupt, dissolved or liquidated;
 - (g) the licensee or frequency authorisation holder fails to operate under the licence one year from the date the licence or frequency authorisation was granted;
 - (h) any other prescribed circumstances exists.
- (2) Before suspension or revocation of a licence or frequency authorisation under subsection (1), the Minister 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 holder an opportunity to —
- (a) present his or her views;
 - (b) remedy the breach of the licence or frequency authorisation or a term and condition of the licence or frequency authorisation; or
 - (c) submit to the Minister within such time as the Minister may specify, a written statement of objections to the suspension or revocation of the licence or frequency authorisation.
- (3) Where a licensee or frequency authorisation holder presents his or her views or submits a written statement of objections under subsection (2), the Commission shall review its recommendation to the Minister taking into account the views presented or the statement and may change its recommendation to the Minister.
- (4) Where the Minister, on the recommendation of the Commission, suspends or revokes a licence or frequency authorisation under this section, the Minister shall notify the licensee or frequency authorisation holder of the suspension or revocation and shall give reasons in writing for the suspension or revocation.
- (5) The Commission shall publish the suspension or revocation of a licence or frequency authorisation.
- (6) Where a licence or frequency authorisation is suspended, the licensee or frequency authorisation holder shall not provide an electronic communications service or operate an electronic communications network unless the Commission is satisfied that the grounds for suspension have been rectified.
- (7) Suspension of a licence or frequency authorisation does not relieve a licensee or frequency authorisation holder of the duty to pay fees under this Act.
- (8) Where a licence or frequency authorization is suspended or revoked and the electronic communications network is partially or totally disconnected, the Commission shall recommend and instruct the measures to be applied so as to minimize any negative effects on the users of the electronic communications network.

47. SURRENDER OF LICENCE OR FREQUENCY AUTHORISATION ON REVOCATION

- (1) Where a licence or frequency authorisation has been revoked under section 46, the licensee or frequency authorisation holder shall surrender the licence or frequency authorisation to the Minister.
- (2) Notwithstanding subsection (1), a licensee or frequency authorisation holder may surrender his or her licence or frequency authorisation at any time.
- (3) A licensee or frequency authorization holder may surrender the licence or frequency authorization under subsections (1) and (2) by making an application in the prescribed form to the Minister.
- (4) An application under subsection (3) must be accompanied by the licence or frequency authorization or, if that is not practicable, by a statement of the reasons for the failure to do so.
- (5) Upon receipt of an application under subsection (3), the Minister shall as soon as practicable forward the application to the Commission.
- (6) Upon receipt of the application, the Commission shall —
 - (a) in the case of a network licence, network-service licence or frequency authorization, within 7 days submit the application to ECA and ECA shall make its recommendation to the Commission and the Commission shall transmit the recommendation of ECA to the Minister;
 - (b) in the case of a service licence, make a recommendation to the Minister of the grant or refusal of the application.
- (7) The Minister, on the recommendation of the Commission or ECA, shall not unreasonably refuse an application under subsection (2).
- (8) Where the Minister, on the recommendation of the Commission, refuses to grant an application, the Minister shall give reasons for his or her refusal.
- (9) A licensee or frequency authorization holder shall be afforded an opportunity to –
 - (a) present his or her views;
 - (b) submit to the Minister, within such time as the Minister specifies, a written statement of the objects to the refusal of the surrender of the licence or frequency authorization.
- (10) Where a licensee or frequency authorisation holder presents his or her views or submits a written statement of objections under subsection (9), the Commission or ECA shall review its recommendation to the Minister taking into account the views presented or the statement and may change its recommendation to the Minister.
- (11) Where the Minister, on the recommendation of the Commission or ECA, refuses to grant an application for surrender of a licence or frequency authorization after the licensee or frequency authorization holder is afforded an opportunity under subsection (9) or the Commission changes its recommendation, the licensee or frequency authorization holder may appeal under section 132.

- (12) Where the Minister, on the recommendation of the Commission or ECA, refuses to grant an application for surrender and the licensee or frequency authorization holder agrees, the Minister shall return the licence or frequency authorization to the licensee or frequency authorization holder.
- (13) Subsections (5) to (12) do not apply to an application for surrender under subsection (1).
- (14) Where an application for surrender is granted pursuant to this section, the licence or frequency authorization lapses on the grant of the application of surrender by the Commission.
- (15) Where a licence or frequency authorization is surrendered under this section, the licensee or frequency authorization holder who is default of payment of any licence or frequency authorization fee shall pay such fees to the Government or the Commission, as the case may be.
- (16) The Commission shall publish the surrender of a licence or frequency authorization.

48. SPECIAL LICENCE

- (1) Where a licence is necessary in an exigent circumstance a person shall make an application for a special licence.
- (2) An applicant for a special licence shall submit the application in the prescribed form to the Minister and shall immediately submit a copy of the application to the Commission together with the prescribed application fee.
- (3) The Commission may, upon receipt of an application for a special licence being made under subsection (1), request additional information from an applicant for the purpose of considering the application.
- (4) Where the Commission makes a request for information pursuant to subsection (3), the applicant shall immediately submit the information to the Commission.
- (5) Where a frequency authorization is required under the special licence, the Commission shall forward the application for the special licence to ECA for its recommendation before the Commission makes a recommendation pursuant to subsection (6).
- (6) The Commission shall submit its recommendation to the Minister within [12] hours of receipt of an application pursuant to subsection (2) or information being submitted pursuant to subsection (3).
- (7) The Minister may, on the recommendation of the Commission, grant a special licence within [12] hours of the receipt of the recommendation from the Commission.

- (8) Where the Minister, on the recommendation of the Commission, refuses to grant a special licence he or she shall notify the applicant of the refusal and shall give reasons in writing for the refusal.
- (9) Where an application is refused the applicant has the right to appeal pursuant to section 132.
- (10) A special licence granted pursuant to subsection (7) shall be issued on payment of the prescribed fee.
- (11) A special licence shall be for a term not exceeding [10] calendar days and is not renewable.
- (12) The Commission shall publish the grant or refusal of a special licence.
- (13) In this section “exigent circumstance” means –
 - (a) a distinct and organized event of major sporting, cultural or national significance to be held for not more than 7 days;
 - (b) an emergency including a disaster, an act of God or national security.

49. INTERNET DOMAIN NAME REGISTRATION

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

50. TYPE APPROVALS

- (1) A licensee or frequency authorisation holder shall not install, sell for use or use any item of equipment in [Name of ECA Contracting State], unless the Commission grants a certificate of type approval in respect of that type of equipment.
- (2) Items of equipment that require type approval include —
 - (a) cellular telephones;
 - (b) cordless telephones;
 - (c) fax machines;
 - (d) GSM telephones;
 - (e) mobile radios;

- (f) modems;
 - (g) wireless remote devices;
 - (h) PABXs (including Small Business Systems and Key Systems);
 - (i) pagers;
 - (j) radio receivers;
 - (k) radio transmitters;
 - (l) satellite earth stations;
 - (m) telecommunications switching equipment;
 - (n) telephone instruments;
 - (o) telex equipment;
 - (p) other equipment emitting a radio signal; and
 - (q) any other customer premises equipment to be attached to any part of a licensed telecommunications network.
- (3) A licensee or frequency authorisation holder who is granted a certificate of type approval by the Commission for use of any of the items specified in subsection (2) shall not be required to apply to the Commission for further approval, if that person uses the same model of equipment subsequently.
 - (4) An application to the Commission for type approval of equipment shall be signed by—
 - (a) an authorised representative of the applicant; or
 - (b) the applicant personally.
 - (5) A licensee or frequency authorisation holder who applies for type approval in respect of any equipment shall forward to the Commission—
 - (a) a sample of the equipment if requested;
 - (b) completed application forms;
 - (c) the prescribed fee;
 - (d) the relevant literature; and
 - (e) the technical specifications specified by the Commission after consultation with ECA.
 - (6) Copies of the application forms, the related documentation and samples referred to in subsection (5) may be forwarded by the Commission to ECA for recommendations and review.
 - (7) The Commission may require a maximum period of 6 weeks for—
 - (a) testing the samples of equipment;
 - (b) purpose of reviewing the application; and
 - (c) granting of type approval for customer premises equipment.
 - (8) The Commission may require a maximum period of 3 months for the purpose of reviewing the applications, for testing any samples of equipment and for granting

type approval for switches over 1000 points and high capacity microwave equipment.

- (9) Where changes have occurred in the models, designs or the technical specifications in respect of equipment which has been the subject of approval by Commission to an applicant, that applicant shall apply for fresh approval in respect of that equipment.
- (10) The Commission shall upon receipt of an application compute the applicable fee and forward an invoice to the applicant within 30 days of the receipt of the application.
- (11) Where the applicant fails to remit the invoiced fee within 30 days of its receipt, the Commission may terminate any provisional approval it may have granted by written notice to the applicant.
- (12) The Commission may recognize type approvals granted by other Contracting States, and shall consult and liaise with ECA, in respect of such matters where necessary.
- (13) The Commission may, upon the recommendation of ECA, determine the technical regulations that should be recognized in Saint Lucia and other approved States for the purposes of giving effect to the recognition of, or exemption from, type approval procedures.
- (14) The Commission shall recognise the prescribed type approvals.
- (15) The Commission shall ensure that appropriate manuals containing the legal requirements of type approval by Contracting States which it recognizes, is printed and made readily available to telecommunications providers and other interested parties.

PART 4

RIGHTS AND OBLIGATIONS OF LICENSEE AND FREQUENCY AUTHORISATION HOLDER

51. ACCESS TO TOWERS, SITES AND UNDERGROUND FACILITIES

- (1) Where access to towers, sites and underground facilities is technically feasible, a licensee shall, upon request, give another licensee access to —
 - (a) tower owned or operated by the first mentioned licensee;
 - (b) a site owned, occupied or controlled by the first mentioned licensee; or
 - (c) an underground facility owned or operated by the first mentioned licensee, for the sole purpose of enabling the second mentioned licensee to install a facility for use in connection with the supply of a service.
- (2) A licensee, in planning the provision of future services, shall co-operate with other licensees to share sites and underground facilities.
- (3) A licensee who fails to comply with this section is deemed to be in breach of the licence.

52. ACCESS TO CABLE LANDING STATION

- (1) Any owner or person operating a cable landing station in [Name of ECA Contracting State] shall —
 - (a) provide to any licensee in [Name of Contracting State] that makes the request, the access to its landing station of submarine cable or co-location services including virtual co-location;
 - (b) provide to any licensee in [Name of ECA Contracting State] that makes the request, access to international capacity that it holds on a submarine cable connected to its landing station and with the capacity hold by third persons on all submarine cables connected to the cable landing station; or
 - (c) publish a reference interconnection and access in the time and manner prescribed on access to international submarine capacity.
- (2) The cost of the services referred to in subsection (1) must 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 electronic communication network components that are not required for the interconnection service to be provided.
- (3) In the case where the owner or operator of a cable landing station in [Name of ECA Contracting State] does not provide the Commission with sufficient financial information to determine whether or not its rates are cost oriented, the Commission on the recommendation of ECA shall require the owner or operator to offer rates based on benchmarking.
- (4) The owner or operator of a cable landing station in [Name of ECA Contracting State] shall not enter into any interconnection and access agreement to implement or provide access to its cable landing station unless the interconnection and access agreement is entered into under section 61.
- (5) Disputes relating to the conclusion or execution of an interconnection and access agreement with international capabilities available on cable landing stations in [Name of ECA Contracting State] shall be submitted to ECA in accordance with section 100.

53. ACCESS TO OTHER NETWORK ELEMENTS

- (1) Where a licensee owning or operating a public electronic communications network or facilities that are associated by reference to an electronic communications network is designated as having significant market power, the Commission may, on the recommendation of ECA impose conditions for —
 - (a) the provision of access on the network including access to dark fiber and broadband capacities available on terrestrial electronic communication networks;

- (b) the use of its electronic communications network; and
 - (c) the availability of relevant facilities on the licensee.
- (2) In determining the conditions of access on the network of a licensee having significant market power, ECA and the Commission shall take into account the following factors -
- (a) the technical and economic viability of installing and using facilities that would make the proposed network access unnecessary;
 - (b) the feasibility of the provision of network access;
 - (c) the investment made by the person initially providing or making available the electronic communications network or other facility in respect to which access is being proposed;
 - (d) the need to secure effective competition in the long term;
 - (e) any rights to intellectual property that may be relevant;
 - (f) the desirability of securing electronic communication services throughout [Name of ECA Contracting State].
- (3) The Commission may, on the recommendation of ECA, and after having conducted the market analysis pursuant to PART 5, set conditions relating to network access pricing where the setting of the access network price is appropriate to promote efficiency, promote sustainable competition and will be of benefit to consumers of electronic communication services.
- (4) The conditions imposed under this section may be amended or withdrawn by the Commission, on the recommendation of ECA.

54. ACCESS TO ROAD WORKS

- (1) In connection with its operation of a public electronic communications network, a licensee may install or maintain a facility in or over a road or public ground, or on the shore and bed of the sea, or remove the facility in accordance with the [Physical Planning and Development Act] and, for that purpose, may, in accordance with the development plan for the area and the provisions of the [Roads Act] and any other written law, carry out road works.
- (2) Before carrying out any road works for the purposes specified in subsection (1), a licensee shall—

- (a) obtain from the [Planning Department] plans showing all utility installations that might be affected;
 - (b) submit detailed plans of the intended road works to each utility installation owner likely to be affected;
 - (c) not commence any road works that might affect a utility installation without first having requested and obtained written permission from the affected utility installation owner; and
 - (d) notify the Commission of any intended road works.
- (3) Pursuant to the notification received by the Commission under subsection (2)(d), the Commission shall notify other licensees of a public electronic communications network or public utilities of the intended road works and inquire of them whether they have any intention of undertaking similar type road works.
- (4) Where permission is obtained under subsection (2)(d) road works shall not commence until the expiration of 14 days from the date of the receipt of the permission.
- (5) In the event of an emergency, the licensee of the public electronic communications network may dispense with the requirement set out in subsection (2)(c) or (d) where the Commission certifies in writing that the intended road works are necessitated by an emergency.
- (6) The removal or alteration of any utility installation shall be undertaken by the affected utility installation owner, and the cost shall be borne by the licensee.
- (7) A licensee of a public electronic communications network notified under subsection (3) shall not carry out road works within 3 months of the receipt of such notification except where such licensee proves to the satisfaction of the Commission the necessity of carrying out emergency works.
- (8) Prior to carrying out road works, a licensee shall publish a description in at least one newspaper in [Name of ECA Contracting State] and shall otherwise inform affected persons by such other means as the Commission may specify.

55. ACCESS TO LANDS FOR INSPECTION AND MAINTENANCE

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

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

56. EQUAL AND INDIRECT ACCESS

A licensee shall grant equal and indirect access to his or her electronic communications network, electronic communications service and infrastructure to another licensee.

57. LEASE OF EXCESS CAPACITY ELECTRONIC COMMUNICATIONS NETWORK, INFRASTRUCTURE OR FACILITY

- (1) A licensee may lease any excess capacity of an electronic communications network, infrastructure or facility available on a utility installation.
- (2) The technical and financial offers for the lease of excess capacity under subsection (1) shall be published after the approval of the Commission and the Commission shall consult ECA before giving its approval.
- (3) The lease of excess capacity available on a utility installation is subject to an agreement which determines the technical and financial condition of the exploitation of the resources by the licensee.
- (4) A licensee shall forward a copy of the agreement under subsection (3) to the Commission for information.

58. INSTALLATION OF FACILITIES ON PRIVATE LAND OR BUILDINGS

- (1) Subject to this section, a licensee may install and maintain facilities along, on or over any land or building and may enter upon any land and place to maintain facilities and repair or renew any facilities.
- (2) Where a licensee wishes to install facilities on private land or buildings the licensee shall first obtain the written permission of the landowner, occupier or agent and the landowner, occupier or agent is entitled to compensation.
- (3) Subsection (2) does not apply where the facilities are used to provide an electronic communications service to the landowner, occupier, agent or tenant.
- (4) In connection with the exercise of its powers under subsection (1), a licensee —
 - (a) may lop or trim any tree that, in its opinion, is likely to damage or obstruct its facilities;
 - (b) shall cause as little damage as possible and shall pay full compensation to all persons for any damage sustained by reason of or in consequence of the exercise by such licensee of such powers; and
 - (c) is subject to the following restrictions—
 - (i) it shall not place any facilities on any private land or building in such manner so as to cause interference with or obstruction of the occupier of any lands in any business or cultivation carried on upon such land or building,
 - (ii) it shall not place any facilities, lop or trim any trees on any private land or building, until it has given at least 14 days notice in writing to the landowner, occupier or agent of the land or building of its intention to do so, specifying the work to be done and notifying such person of his rights to give notice of an objection to the Commission pursuant to subparagraph (iii),
 - (iii) on receipt of the notice under subparagraph (ii), the landowner, occupier or agent may, within 14 days thereafter, give notice in writing of his or her objection to the Commission, whereupon the licensee shall not proceed with the work or such part as is objected to until authorized by the Commission to do so.
- (5) In the event of disagreement over the quantum of any compensation to which a landowner is entitled pursuant to subsection (2) or of any other dispute relating to the

installation or maintenance of facilities on or over private land or buildings, the matter shall be referred to the Commission.

- (6) To minimize disruption to landowners, a licensee shall, to the extent feasible, provide other licensees with access to its facilities and shall coordinate its installation or maintenance of facilities on or over private land or buildings.

59. CONTRIBUTION TO UNIVERSAL SERVICE AND ACCESS FUND

A licensee who is required to provide universal service and access in accordance with its licence shall contribute to the Universal Service and Access Fund.

60. INTERCONNECTION

- (1) Subject to subsection (5), a licensee who operates a public electronic communications network shall grant or assist another licensee in making an interconnection with his or her electronic communications network.
- (2) A licensee who wishes to interconnect with the electronic communications network of another licensee shall make a request to that other licensee in writing.
- (3) A licensee 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 licensee in granting a request under subsection (3) shall agree, with the person making the request, the date the interconnection shall be effected.
- (5) A licensee 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 licensee on receipt of a refusal for interconnection may make a complaint to the Commission under this Act.
- (7) A licensee 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 ECA.
- (8) Any interconnection service provided by a licensee under the provisions of subsection (7) shall be on terms which are not less favourable than—
 - (a) those of the licensee of the interconnection service;
 - (b) the services of non-affiliated suppliers; or
 - (c) the services of the subsidiaries or affiliates of the licensee of the interconnection service.
- (9) A licensee shall not, in respect of any rates charged for interconnection services provided to another licensee, vary the rates on the basis of the type of customers to be served, or on the type of services that the licensee requesting the interconnection services intends to provide.

61. INTERCONNECTION AGREEMENTS

- (1) A licensee shall not enter into any interconnection agreement to implement or provide interconnection service unless the interconnection agreement is approved in writing by the Commission acting in accordance with the advice of ECA.
- (2) Interconnection agreements between licensees 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 consultation with ECA, prepare, publish, and make available copies of the procedures to be followed by the licensees when negotiating interconnection agreements.

62. COST OF INTERCONNECTION

- (1) The cost of establishing any interconnection to the electronic communications network of another licensee shall be borne by [both parties to the interconnection agreement or the licensee 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 electronic communications network components that are not required for the interconnection service to be provided.

63. REPAIR AND RESTORATION

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

64. NUMBER PORTABILITY

A licensee who is required to provide number portability shall configure the electronic communications network to facilitate number portability between similar electronic communication networks.

65. SPECTRUM

A licensee or frequency authorisation holder shall use the radio frequency spectrum in accordance with the spectrum management plan established by ECA.

66. ROAMING

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

67. NUMBERING

A licensee shall —

- (a) pay the annual fee on November 1 of each year for each number or block of numbers allocated to the licensee;
- (b) offer at a reasonable price the possibility to subscribers to retain geographical numbers when licensees are changed without changing geographical location and to retain non-geographic numbers when licensees change while remaining in [Name of ECA Contracting State].

68. TARIFFS

- (1) Notwithstanding section 11(1)(e), tariffs for electronic communication services, shall be determined by licensees in accordance with principles of supply and demand.
- (2) A licensee shall provide tariffs that are fair and reasonable and shall not discriminate among similarly situated persons.
- (3) A licensee shall publish the tariffs for its electronic communications service by –
 - (a) publishing the tariffs for electronic communication services that it provides at the time of publication, in a directory, if any;
 - (b) publishing current tariffs on his or her website;
 - (c) sending or providing a copy the tariffs or any part of the tariffs to any customer or group of customers who requests such a copy; or
 - (d) placing a copy of the tariffs in every registered office and place of business owned or controlled by the licensees.

- (4) A licensee shall ensure that tariffs published under subsection (3) include information relating to –
 - (a) the name and address of the registered office of the licensee;
 - (b) a clear description of the electronic communications service offered;
 - (c) where any subscription or periodic rental charge is applicable, details of which electronic communication services are included within such charges;
 - (d) standard rates;
 - (e) details of standard discounts and special and targeted tariff schemes in respect of –
 - (i) access,
 - (ii) all types of usage charges, and
 - (iii) any maintenance service;
 - (f) details on any compensation or refund policy;
 - (g) any type of maintenance offered;
 - (h) standard contract conditions offered, including any relevant minimum contractual period;
 - (i) the methods of dispute settlement.

69. CUSTOMER CONTRACTS

- (1) A licensee shall ensure that a contract between himself or herself and a customer for electronic communication services includes –
 - (a) the name and address of the licensee;
 - (b) details of the electronic communication services provided, the quality of service levels offered and the time for initial connection;
 - (c) details of maintenance services offered;
 - (d) particulars of tariffs, and the means by which up-to-date information on applicable tariffs and maintenance charges are obtained;
 - (e) the duration of the contract, the conditions of renewal and termination of electronic communication services and of the contract;
 - (f) any applicable compensation or refund arrangements applicable where quality of service levels are not met; and
 - (g) the method for initiating procedures for dispute settlement under the contract.
- (2) Where a licensee intends to modify a condition in a contract with a customer which in the opinion of the Commission is likely to be of material detriment to the customer, the licensee shall –

- (a) provide the customer with at least 30 days' notice of intention to modify detailing the proposed modification; and
- (b) inform the customer of the right to terminate the contract without breaching the contract if the proposed modification is not acceptable to the customer.

70. PRIVACY AND CONFIDENTIALITY

- (1) Subject to this Act and any other law, a licensee or frequency authorization holder and employees of the licensee or frequency authorization holder shall respect the secrecy of correspondence by way of electronic communications and the conditions of the protection of private life and of nominative data of users.
- (2) A user of an electronic communications network may, except for reasons related to the operation of emergency services, use simple means to oppose the identification of its number by its correspondence.
- (3) A user has the right, by simple means, of stopping automatic call forwarding which he or she has asked the licensee or frequency authorization holder to implement.
- (4) A user of automated calling and messaging faxes or e-mails for direct marketing purposes may be authorized in respect of subscribers who have given prior consent.
- (5) Notwithstanding subsection (4), the direct marketing by e-mail is permitted when a licensee or frequency authorization holder, as part of a sale of the electronic communications service or electronic communications network has obtained directly from his or her customers electronic contact details where customers are given the opportunity to refuse such use of electronic contact detail when such detail is collected and to oppose such detail every time that the customer receives prospecting e-mail that concerns similar electronic communication services provided by the same licensee or frequency authorization holder.
- (6) Subject to subsections (7) to (11), a licensee or frequency authorization holder may delete or make anonymous any technical data.
- (7) Subject to this Act and any other law, where a licensee or frequency authorization holder deletes or makes anonymous any technical data, the licensee or frequency authorization holder may defer for a specified period for the purposes of research, finding and prosecuting criminal offences and for the purposes of public order, national security and public safety.
- (8) For the purposes of billing and payment of electronic communication services, a licensee may in order to obtain payment, use, maintain, and where applicable, transmit certain categories of technical data to third parties directly affected by the billing, until the end of the period during with the bill may lawfully be challenged or be subject to prosecution.

- (9) A licensee may –
- (a) perform processing of technical data in order to market his or her own electronic communications service or providing value-added service, if his or her customers have expressly consented for a fixed period that exceeds the period necessary for the provision or the marketing of the electronic communications service; and
 - (b) retain certain data to ensure the security of the electronic communications network.
- (10) Notwithstanding this section, data for locating terminal equipment of the user of the electronic communications service shall not be used except for –
- (a) performing delivery;
 - (b) storing or processing after completion except with the consent of the user who must be informed of the categories of data involved, the duration of treatment, its purposes and that the data will be transmitted to suppliers of third-party services and the user may withdraw consent at any time except with regard to the costs relating to the withdrawal; and
 - (c) any call to an emergency service to benefit the user except with the consent of the user until the completion of the rescue operation and to allow its realization.
- (11) The data stored and processed under subsections (6) to (10) –
- (a) relate exclusively to –
 - (i) the identification of users,
 - (ii) persons who offer the public a connection to a communication line through access to an electronic communications network, whether for a fee or not,
 - (iii) technical aspects of the electronic communications,
 - (iv) location of the terminal equipment;
 - (b) does not relate to content of information exchanged or consulted in any form whatsoever, in the course of communication and the licensee takes all measures to prevent the use of the data for purposes other than the purposes under this section.

71. BILLING

- (1) A licensee shall establish price based on the electronic communications services requested by the customer so that the customer does not pay for supplementary

electronic communication services that are not necessary and that the customer has not requested.

- (2) A licensee shall, upon the request of the customer, provide a customer with a detailed bill.
- (3) A licensee may take measures to recover payment of electronic communications service bills including the application of charges, interruption or disconnection of the electronic communications service, that are proportionate and non-discriminatory.
- (4) Where a licensee interrupts or disconnects an electronic communications service under subsection (3), the licensee shall ensure that the customer receives a notice in writing informing the customer of the reasons for the intended interruption or disconnection.

72. COMMUNICATIONS DURING AN EMERGENCY

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

PART 5 COMPETITION

73. GENERAL COMPETITION PRACTICES

- (1) Notwithstanding the provisions of any other written law, the Commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws whether of a general or specific nature, as it relates to [Name of ECA Contracting State] electronic communications market.
- (2) A licensee shall not engage in any conduct which has the purpose or effect of substantially lessening competition in any aspect of [Name of ECA Contracting State] electronic communications market.
- (3) The Commission, on the recommendation of ECA, may from time to time publish guidelines which clarify the meanings of substantial lessening of competition in [Name of ECA Contracting State] electronic communications market and such guidelines may include reference to the following —
 - (a) agreements between licensees, decisions by associations of licensees and concerted practices by licensees which have as their object or effect the prevention, restriction or distortion of competition within [Name of ECA Contracting State];
 - (b) actions by which a licensee abuses its significant market power within [Name of ECA Contracting State]; or
 - (c) any other like conduct by licensees whose object or effect is to frustrate the benefits expected from the establishment of the CARICOM Single Market and Economy or the OECS Economic Union and of ECA.
- (4) The clauses, agreements and commitments generally having the object or effect of restricting, limiting or affecting competition are void.
- (5) Any exclusive right for the provision of electronic communications networks or electronic communication services is prohibited.
- (6) A licensee shall not be treated as engaging in anti-competitive business conduct if it establishes that the activity complained of —
 - (a) contributes to —
 - (i) the improvement of production or distribution of goods and services, or
 - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;

- (b) imposes on another licensee affected only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a) and does not afford the licensee engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services.
- (7) A licensee shall not –
- (a) refuse to make available in a timely manner to other licensees, technical information about essential facilities and commercially relevant information necessary for the exercise of their activity;
 - (b) use information obtained from competitors with anti-competitive purposes;
 - (c) subsidize a service in competition with a service which is not in competition;
 - (d) impose the bundling of a service in competition with a service not in competition.
- (8) In this section -
- “anti-competitive business conduct”** includes –
- (a) the direct or indirect fixing of purchase or selling prices;
 - (b) the limitation or control of production, markets, investment or technical development;
 - (c) the artificial dividing up of markets or restriction of supply sources;
 - (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;
 - (e) making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by nature or according to commercial practice, have no connection with the subject matter of the contract;
 - (f) unauthorized denial of access to networks or essential infrastructure;
 - (g) predatory pricing;
 - (h) price discrimination;
 - (i) **[loyalty discounts]** or concessions;
 - (j) exclusionary vertical restrictions; and

- (k) bid-rigging;

“anti-competitive merger” means a merger which restricts or distorts competition in a market.

74. ABUSE OF SIGNIFICANT MARKET POWER

- (1) Pursuant to section 73(3)(b), a licensee shall not take advantage of its significant market power in a market for the supply of a service with a view to preventing, restricting or distorting competition in the market.
- (2) In determining whether a licensee has abused its significant market power, the Commission shall take into account the provisions of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and economy and its further amendments or the OECS Economic Union.

75. NON-DISCRIMINATION

Pursuant to section 73(5), a licensee shall not discriminate between persons who acquire or make use of an electronic communication service in the market in which the licensee operates in relation to -

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

76. OBLIGATIONS ON LICENSEES HAVING SIGNIFICANT MARKET POWER

- (1) The Commission shall perform regular market analysis in order to determine if one or more operators have significant market power in the relevant market concerned.
- (2) Where, following a market analysis, an operator is designated as having significant market power in a given market, the Commission may impose, as applicable, the following obligations:
 - (a) additional transparency obligations for interconnection or access such as publication of the terms and conditions on which licensee having significant market power proposes to enter into an agreement to provide access to

- network elements including price information, technical specifications or network characteristics;
- (b) non-discrimination obligations so that licensees apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services they provide to other licensees services and information under the same conditions and with the same quality as those that they provide for their own services or those of their subsidiaries or partners;
 - (c) accounting separation obligations in relation to specified activities related to interconnection or access;
 - (d) carrier selection under the form call per call;
 - (e) in the case of obligations relating to access to specific network resources and their use, a licensee may be required to -
 - (i) give third parties access to the elements or specific network resources, including broadband capabilities enabled in the form of rent, irrevocable rights to use optical fiber not active or unbundled access to the local loop,
 - (ii) negotiate in good faith with undertakings requesting access,
 - (iii) not to withdraw access to facilities already granted,
 - (iv) grant open access to technical interfaces, protocols or other technologies that have a vital importance for the interoperability of services,
 - (v) provide a possibility of co-location or other forms of associated facilities sharing,
 - (vi) provide access to associated services such as identity, localisation and occupation of the user;
 - (f) in the case of obligations relating to price controls, including obligations for cost-oriented prices or rates, in order to support price controls, a determination of the cost accounting methods is made publicly available [by the Commission upon the ECA recommendation], showing at least the main categories under which costs are grouped and the rules used for the allocation of costs; and
 - (g) any other terms that the Commission on the recommendation of ECA determines;
 - (h) in case of market, failures persist despite the implementation of these obligations, the Commission upon the recommendation if ECA may impose on a licensee to -
 - (i) transfer its wholesale supply business to an independent economic entity, distinct of the economic entity operating retail services or;

- (ii) divest specified assets under the conditions set out by the Commission and the Commission shall approve the company interested in acquiring the divested assets before divestment occurs.
- (3) Where a licensee that has a significant market power fails to comply with subsection (2), the Commission may apply for injunction relief pursuant to section 98.
- (4) In assessing the proportionality of the obligations it is likely to impose on a licensee having significant market power, the Commission shall take into account the following criteria:
 - (a) the technical and economic viability of using or setting up competing facilities, given the pace of market development and the nature and type of interconnection and access involved;
 - (b) the feasibility of providing the access proposed, in view of the available capacity and technical conditions;
 - (c) the investment made by the licensee and the licensee allow reasonable rate of return on capital employed efficiently, in view of the risks involved;
 - (d) the need to preserve long-term competition;
 - (e) any relevant intellectual property rights;
 - (f) the available offers and prices in available markets;
 - (g) the real impact of the provision of access competition.
- (5) The obligations imposed on licensees having significant market power on one or more markets pursuant to subsection (4) is subject to a public decision of the Commission, accessible to all interested parties but confidential information including trade secrets is excluded.
- (6) Where a licensee that has a significant market power fails to comply with subsection (5), the Commission may apply for injunction relief pursuant to section 98.

77. MARKET ANALYSIS

- (1) Before making a determination that a licensee has significant market power, the Commission shall identify the relevant market according to its competitive or not competitive situation.
- (2) The Commission regularly performs market analyses and review them at least every 3 years in order to take into account for the evolution of the markets in terms of competition.
- (3) The obligations under section 76 are implemented, or removed, to reflect the revision of the analysis of the relevant market concerned.

- (4) Prior to reviewing the analysis of a relevant market, the Commission publishes a report on actual results, given the objectives pursued, of the measures implemented under the previous analysis.
- (5) The Commission shall develop and revise guidelines on the manner in which a relevant market will be identified and how a determination of significant market power will be made.

78. ASSESSMENT OF DOMINANCE

- (1) The assessment of the ability of a person to behave to an appreciable extent independently of competitors, customers and consumers must be made using published criteria into the Commission's guidelines under section 77.
- (2) In assessing the dominance of a licensee, the Commission shall take into account particular elements such as:
 - (a) the market share of the licensee or the traffic volume of the licensee with respect to the size of the relevant market;
 - (b) the possible dominance of the operator on an upstream market strengthening its leading position on a downstream market;
 - (c) control of the means of access to the end user;
 - (d) access to financial resources and experience in providing products and electronic communications services;
 - (e) more generally, the the ability of the licensee to influence market conditions.
- (3) Notwithstanding subsection (1), a licensee may make an application in the prescribed form for a declaration of non-dominance.

79. ANTI-COMPETITIVE AGREEMENT, ARRANGEMENT OR UNDERSTANDING

- (1) Subject to subsection (2), a licensee shall not enter into or give effect to any agreement, arrangement or understanding -
 - (a) including an agreement, arrangement or understanding for an acquisition which has the purpose or has, or is likely to have, the effect of significantly lessening competition in any market for the supply of any electronic communication services or of any product used in connection with the electronic communication services;
 - (b) with another licensee which has the purpose or has, or is likely to have, the effect of fixing, controlling or maintaining the prices for, or any discount, allowance, credit or rebate for, any electronic communications service or any product used in connection with electronic communication services.

- (2) Subsection (1) does not apply to any agreement, arrangement or understanding which -
- (a) contributes to –
 - (i) the improvement of production or distribution of goods and services, or
 - (ii) the promotion of technical or economic progress;
 - (b) imposes on the licensees affected only such restrictions as are indispensable to the attainment of the objectives under paragraph (a) and does not afford the licensee engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.

80. REASONABLE ALLOWANCE

Nothing in section 79 prevents a licensee from making a reasonable allowance, subject to the approval by the Commission, for the cost of providing an electronic communications service where the difference results from –

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

81. POWERS OF COMMISSION UNDER THIS PART

- (1) Notwithstanding the Commission's powers under section 13, where the Commission finds after investigation under section 96 that a licensee is in breach of this Part, the Commission may do any of the following –

- (a) issue an enforcement order against the licensee having significant market power;
 - (b) order the cessation of abusive conduct or specify changes in its conduct to limit the abusive aspects;
 - (c) recommend the suspension or revocation of the licence of the licensee having significant market power;
 - (d) order compensation to be paid to subscribers or competitors injured by the abusive conduct;
 - (e) order the restructuring of the licensee; or
 - (f) facilitate and approve settlement with the aggrieved licensee.
- (2) Without prejudice to its powers in controlling tariff of interconnection and access offers, the Commission may –
- (a) carry out tests of non-discrimination on the tariffs of the offers on-net and off-net of the licensees on the retail market to ensure that the price differential on-net or off-net, including promotional offers, do not unduly strengthen its market share at the expense of its competitors;
 - (b) carry out tests to ensure that the structure and level of prices of a licensee having significant market power operator, vertically integrated, on the retail market, including promotional offers, do not prevent its competitors from providing a competitive offer in reasonable profitability conditions;
 - (c) regulate the maximum difference between the prices of offers on-net and off-net licensees on the retail market;
 - (d) regulate the abuse of promotional offers in terms of duration and frequency and require the submission of appropriate information to the Commission;
 - (e) request the modification and where appropriate, suspend immediately the commercialization of a licensee offer on the retail market up to its appropriate modification, in case of serious and immediate damage to the rules governing the electronic communications sector and in accordance with the guidelines.

82. CONSULTATION WITH THE COMPETITION BODY

- (1) Where an investigation by the Commission involves anti-competitive business conduct in an OECS or CARICOM Member State, which has the effect of lessening competition in a relevant market in [Name of ECA Contracting State], the Commission may consult the Competition body established in [Name of ECA Contracting State].
- (2) In consulting with the Competition body, the Commission shall send all documents relevant to the investigation.
- (3) A decision of the Competition body under this section is binding on the Commission and is enforceable in accordance with Rules made by the Supreme Court under the Supreme Court Judicature Act, as though it were a judgement of the High Court.

PART 6

UNIVERSAL SERVICE AND ACCESS FUND

83. UNIVERSAL SERVICE AND ACCESS FUND

- (1) There shall be established a fund to be known as the Universal Service and Access Fund.
- (2) The Minister shall, by Order published in the [Official] Gazette, on the recommendation of the Commission, specify the percentage of the gross revenue which a licensee shall contribute to the Universal Service and Access Fund, except that the percentage to be contributed shall be the same for all licensees.
- (3) The Fund consists of —
 - (a) contributions by licensees as specified under subsection (2);
 - (b) any funds that may be directly appropriated by Parliament for purposes of the Fund; and
 - (c) official grants, donations, bequests or other contributions, or transfers granted by an individual or other legal entity.
- (4) The Universal Service and Access Fund shall be managed by a Fund Administrator who shall be, subject to subsection (5), appointed by the Commission.
- (5) The Commission may appoint as Fund Administrator, a person who —
 - (a) is a graduate of an accredited university, or a chartered or certified institute;
 - (b) has knowledge and experience in one or more of the following:
 - (i) management,
 - (ii) finance,

- (iii) accounting,
 - (iv) electronic communications,
 - (v) or any other related field to ensure adequate performance of the requirements of the position; and
- (c) does not have a conflict of interest with regard to the principal functions of the Universal Service and Access Fund.
- (6) A person who fails to disclose a conflict of interest to the Commission is liable to have his or her appointment as Fund Administrator summarily terminated without compensation.
- (7) Subject to subsection (8) the Fund Administrator shall be appointed on such terms and conditions as shall be set out in the contract of employment.
- (8) The Fund Administrator shall report to the Chief Executive Officer for all personnel and administrative matters, but shall submit his or her recommendations for Fund Project decisions both to the Chief Executive Officer and to the Chairperson.
- (9) Subject to the direction of the Commission, the Fund Administrator shall do all things necessary for and incidental to the proper functioning of the Fund.
- (10) The functions of the Fund Administrator include, to —
 - (a) assist the Commission in identifying potential projects for Fund support;
 - (b) define, prepare and distribute bidding documents and other documentation for projects approved for Fund financing and implementation;
 - (c) supervise and monitor Fund projects;
 - (d) participate in the selection of consultants to support Fund project implementation;
 - (e) sensitize the public of Universal Service and Access Fund matters;
 - (f) supervise the preparation and monitoring of the Fund's Operating budget;
 - (g) prepare progress reports on Fund Projects and overall Fund operations, and prepare or cause to be prepared the financial statements of the Fund for the approval of the Commission;
 - (h) request and receive project proposals;
 - (i) prepare bid evaluation reports; and
 - (j) any other function assigned to the Fund Administrator by the Commission.
- (11) The Fund's income shall be kept in accounts, separate and independent from the other operating accounts of the Commission.
- (12) The Fund's income shall be initially deposited in a designated Fund bank account and shall be disbursed upon authorization of the Commission for specific Fund related activities in accordance with the guidelines.

84. PURPOSE OF UNIVERSAL SERVICE AND ACCESS FUND

- (1) The Universal Service and Access Fund shall be used by the Commission, to compensate a licensee or other authorized person who is required to provide universal service and access or to otherwise promote universal service and access.
- (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 licensee or other authorized 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 and access.

**PART 7
OTHER OFFENCES**

85. CONNECTION OF EQUIPMENT

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

86. INTERFERENCE, [INTERCEPTION] OR DESTRUCTION OF NETWORK

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

- (a) in the case of a first offence, to a fine not exceeding \$15,000; or
- (b) in the case of a subsequent offence, on indictment to a fine not exceeding \$30,000 or to imprisonment for a period not exceeding 4 years or to both.

87. DISCLOSURE OF PERSONAL INFORMATION

- (1) A licensee shall not disclose personal information relating to a subscriber except —
 - (a) with the consent of the subscriber;
 - (b) 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.
- (2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 4 years or to both.

88. 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.

89. 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.

90. CROSS-SHAREHOLDING

- (1) A licensee shall not directly or indirectly hold share capital or voting rights of another licensee in [Name of ECA Contracting State].

- (2) A licensee who contravenes subsection (1) is liable on summary conviction to a fine of \$50,000 or if the offence is a continuing offence, the licensee is liable to a further fine not exceeding \$5,000 for every day that the offence continues after conviction.

91. HARMFUL INTERFERENCE TO FACILITY OR TERMINAL EQUIPMENT

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

92. FAILURE TO COMPLY WITH DIRECTIONS

- (1) A licensee or frequency authorization holder shall comply with a direction of the Commission.
- (2) A licensee or frequency authorization holder who contravenes subsection (1) is deemed to be in breach of the licence or frequency authorisation.

93. BREACH OF CODE OF PRACTICE

- (1) A licensee or frequency authorization holder shall not breach any codes of practice issued by the Commission.
- (2) A licensee or frequency authorization holder who contravenes subsection (1) is liable to a fine not exceeding 3% of its total annual net revenue for the previous year.

94. LIABILITY OF BODY CORPORATE

Where a breach of a licence or offence has been committed under this Act by a body corporate the person who at the time of the breach or commission of the offence was director, manager, supervisor, partner or other officer, is liable for that breach or offence and liable to the same penalty if having regard to —

- (a) the nature of his or her functions; and

- (b) his or her reasonable ability to prevent that breach or offence, the breach or offence was committed with his or her consent or connivance, or he or she failed to exercise reasonable diligence to prevent the breach.]

PART 8 INVESTIGATION

95. INVESTIGATION AND WARRANT ON SUSPICION OF CONTRAVENING SECTION 34

- (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 34.
- (2) Where the Commission reasonably suspects that a person is contravening section 34, an inspector may lay before a Magistrate, an information on oath setting out the grounds for the suspicion and apply for the issue of a warrant to search the vehicle, ship, vessel aircraft or premises where the electronic communications service is believed to be provided or the electronic communications network is believed to be operated.
- (3) Where an application is made under subsection (2) for a warrant, the Magistrate may issue a warrant authorizing an inspector, whether named in the warrant or not, with such assistance, including assistance from an inspector and by such force as is necessary and reasonable, to enter upon the premises, to search and inspect the premises and-
 - (a) examine, inspect, make copies of, seize or remove any document or record; and
 - (b) seize any equipment or other property;found on the premises in the course of the search that the inspector has reasonable grounds to believe is being used in the 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 under subsection (1) or (2); or
 - (c) hinders, obstructs, prevents or interferes with an inspector, 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 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 the 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.

96. 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),(5) and (6) 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 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 electronic communications 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 relating to the licence or frequency authorisation for the purpose of examination and inspection; or
 - (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 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.

97. BREACHES BY LICENSEES OR FREQUENCY AUTHORISATION HOLDER

- (1) Where after an investigation under section 96, the Commission finds that a licensee or frequency authorisation holder is in breach of 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 revocation of the licence or frequency authorisation 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 3% of the total annual net revenue for the previous year of the licensee or frequency authorisation holder or to a term of imprisonment not exceeding 5 years or to both.

98. ASSISTANCE OF POLICE OFFICER

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

99. 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 an offence under this Act; and
- (b) grant an order restraining a person from engaging in activities contrary to this Act.

PART 9

COMPLAINTS

100. COMPLAINTS

- (1) A complaint may be made to a licensee pursuant to the complaint procedure of the licensee.
- (2) Where a complaint has not been resolved by a licensee, a complaint may be made to the Commission by —
 - (a) subscribers or other members of the public against a licensee;
 - (b) persons using frequencies authorization;
 - (c) a retail customer against a licensee or against 2 or more licensees;
 - (d) a landowner against a licensee.
- (3) A complaint pursuant to subsection (1) shall be in the prescribed form.
- (4) For the purpose of subsection (1), a licensee shall make available to its retail customers the prescribed form.
- (5) Where the Commission receives a complaint under subsection (2), the Commission shall give a certified copy of the complaint to the complainant.

101. REQUEST FOR FURTHER INFORMATION

- (1) Upon receipt of a complaint pursuant to section 100, the Commission shall enter the complaint in the Complaints Register and shall review the complaint and request such additional information from a party as may be required.
- (2) Where in respect of a complaint the Commission requires information in writing, the Commission may specify the format for presentation of such information.

102. NOTIFICATION OF LICENSEE

Immediately after receipt of a complaint under section 100, the Commission shall, in writing, notify the licensee of the substance of the complaint unless in the Commission's opinion, to do so might adversely affect or hinder any investigation that is being or may be carried out in respect of the complaint.

103. RESPONSE BY LICENSEE

Where a licensee is notified pursuant to section 102, the licensee may, within 10 days submit a response to the complaint to the Commission.

104. DISPOSITION OF COMPLAINT

- (1) The Commission shall assess the complaint and the response of the licensee and may –
 - (a) where appropriate, require the complainant to negotiate with the licensee;
 - (b) investigate the complaint;
 - (c) where the complaint indicates that a serious issue has arisen or a sufficient number of complaints indicate that a policy issue has arisen, forward such issue and documentation to ECA for consideration and advice concerning impact on regional policy issues;
 - (d) refer the complaint to the Competition body;
 - (e) refer the complaint to the [Consumer Protection Board];
 - (f) refer the complaint to the Tribunal; or
 - (g) refer the complaint to any other body.
- (2) The Commission shall give notice in writing to the complainant and the licensee of the decision under subsection (1), giving reasons for such decision.
- (3) Notwithstanding subsection (1), the Commission may prior to making a decision, require further information to be furnished by the complainant or licensee or any other person.

105. FRIVOLOUS COMPLAINTS

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

106. TRACKING BY LICENSEE

- (1) Where a complaint is referred to a licensee pursuant to section 102(1), the licensee shall keep and maintain in the prescribed form a Complaints Record for the purpose of registering such complaints.
- (2) A licensee shall keep and maintain in the prescribed form a Complaints Tracking System for the purpose of tracking the status of resolution of complaints between itself and the complainant.

107. NOTICE OF DISCONTINUANCE AND LIABILITY FOR COSTS

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

108. REDUCTION OR EXTENSION OF TIME

- (1) Notwithstanding the provisions of this Act, the Commission may, on the application of the complainant or licensee or on its own motion, and if the Commission determines it necessary to a fair resolution and in the best interests of the public, reduce or extend the time limit for the resolution of a complaint.
- (2) The Commission shall set out —
 - (a) the reasons for reducing or extending any time limit as well as the new time limit;

- (b) the actions to be taken during any reduced or extended time limit so as to encourage efficiency;
- (c) the steps to be taken if agreement is not reached within the extended time limit.

109. REGISTER AND TRACKING SYSTEM

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

110. REPORTING BY COMMISSION

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

111. ESTABLISHMENT OF TRIBUNAL

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

112. CONSTITUTION OF TRIBUNAL

- (1) Subject to subsection (2), the Tribunal consists of 3 members appointed by the [Chief Justice/Judicial and Legal Services Commission] of whom the Chairperson shall be a legal practitioner of not less than 10 years standing and the other members shall have training or experience in the type of electronic communications to be considered in the complaint.
- (2) A person is disqualified from being a member of the Tribunal and is not eligible to be appointed as a member of the Tribunal, or having been appointed, is not eligible to continue as a member if that person —
 - (a) holds or is beneficially interested in more than [5%] of any stock, share, bond, debenture or other security of, or other interest in, a licensee;

- (b) has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a licensee;
 - (c) is a director, officer, employee, agent or a person providing a service or supplying goods to a licensee 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 the Criminal Rehabilitation of Offenders Act, Cap [] [in any manner];or
 - (g) is a member of [Parliament/the National Assembly].
- (3) For the purposes of subsection (1), the Commission shall compile a list of persons who are eligible to be appointed as members of the Tribunal and shall publish the list annually.

113. FUNCTION OF TRIBUNAL

The function of the Tribunal is to hear and determine complaints referred to it by the Commission.

114. POWERS OF TRIBUNAL

- (1) The Tribunal 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.
- (2) A summons issued by the Tribunal under this section shall be under the hand of the Chairperson.
- (3) A person who refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons served on him or her is liable to a fine not exceeding [\$120].
- (4) A party to a matter before the Tribunal 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 Tribunal is competent to assist the person in the presentation of the matter.

- (5) The Tribunal may with respect to a matter brought before it 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; or
 - (d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

115. DURATION OF APPOINTMENT

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

116. TEMPORARY APPOINTMENTS

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

117. RESIGNATION

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

118. REVOCATION

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

119. PUBLICATION

The appointment of any member of the Tribunal and the termination of office of any person as a member, whether by death, resignation, removal, effluxion of time or otherwise, shall be published in the Gazette.

120. SECRETARY

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

121. REMUNERATION AND ALLOWANCES

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

122. HEARINGS

- (1) The Tribunal shall convene at such time, at such places and on such days as may be necessary or expedient for the discharge of its functions.
- (2) The quorum for hearings of the Tribunal shall comprise a majority of the members, but where a member is disqualified from taking part in the proceedings of the Tribunal in respect of any matter, that member shall be disregarded for the purpose of constituting a quorum for hearing, deliberating on and deciding that matter.
- (3) The decisions of the Tribunal is by a majority of votes of those members present and voting and, in addition to an original vote, the Chairperson has a second or casting vote in any case in which the voting is equal.
- (4) A member of the Tribunal shall, as soon as is practicable inform, the Chairperson of any matter in which he or she has, either directly or indirectly, personally or by his or her spouse, partner, business associate or company, any pecuniary or business interest and that member shall take no part, directly or indirectly, in any hearing, deliberation or decision by the Tribunal on that matter.
- (5) The decisions of the Tribunal are authenticated by the signature of the Chairperson and the Secretary.
- (6) Subject to the provisions of this section, the Tribunal has the power to regulate their own proceedings.

123. COMMUNICATION OF INFORMATION

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

124. VALIDITY

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

125. ISSUANCE OF ORDER UPON DETERMINATION BY TRIBUNAL

- (1) Where the Tribunal determines a complaint pursuant to this Act, the Tribunal may issue an order —
 - (a) dismissing the complaint;
 - (b) approving the relief sought; or
 - (c) approving the relief sought with such amendment or variation as it considers fit.
- (2) An order made pursuant to subsection (1) shall —
 - (a) specify the date within which it must be complied with; and
 - (b) be binding on the parties to the complaint.
- (3) The Tribunal shall —
 - (a) serve the order on the parties to the complaint; and
 - (b) within 10 days of service of the order, subsequent to service of the order pursuant to paragraph (a) make the order available to the public by notice published in the Gazette and by such other means as the Tribunal may consider appropriate.
- (4) The Tribunal shall, subsequent to the issue of the order, take such action so as to verify that the proper action is taken by the appropriate party as of the date ordered by the Tribunal.
- (5) A person who fails to comply with an order is liable —
 - (a) in the case of a licensee, to suspension or revocation of its licence in accordance with this Act; and
 - (b) in the case of a retail customer, to termination of its electronic communications service.

126. CONTINUATION OF SERVICE DURING COMPLAINT PROCESS

- (1) Notwithstanding any provision of a customer agreement, a licensee which is a party to a complaint shall not terminate its service to a subscriber or any member of the public for breach of contract or non-payment during the period of the complaint, unless specifically approved by the Tribunal after notice of the termination in writing to the subscriber or member of the public of not less than 7 days and an opportunity for the subscriber to be heard by the Tribunal.
- (2) Save as may be provided in any contractual arrangement between licensees, a complaint between parties shall not cause the partial or total disconnection of an

electronic communications network or electronic communications service, unless the Tribunal determines that such partial or total disconnection is necessary and so advise in the order.

PART 10 MISCELLANEOUS

127. FEES

- (1) The Commission shall receive fees and fees payable under this Act from the applicant or licensee.
- (2) Application fees in respect of licences under this Act are payable to the Commission and shall form part of the revenue of the Commission.
- (3) Fees payable under this Act with respect to spectrum and numbering resources are payable to ECA and shall form part of the revenue of ECA.
- (4) Initial fees and annual licence fees shall be paid to the Consolidated Fund.

128. ACCESS TO RECORDS AND REGISTERS

- (1) Any Records or Register kept and maintained under this Act is open for inspection by the public on payment of the prescribed fee and on the fulfillment of any other conditions as the Commission may consider just.
- (2) A person seeking inspection of a Record or Register shall apply to the officer designated by the Commission who shall —
 - (a) allow inspection; and
 - (b) on payment of the fee referred to in subsection (1), make available extracts of the relevant portions of the Register.
- (3) Notwithstanding subsections (1) and (2), the Commission may, through the website maintained by it, allow access to the Record or Register.

[129. STOPPAGE OF ELECTRONIC COMMUNICATIONS

The Commission may stop or cut off the transmission of any private electronic communication which may appear dangerous to the national security of [Name of Contracting State] or contrary to the laws on public order or decency and shall notify the licensee of such electronic communication unless to do so appears dangerous to the national security of [Name of Contracting State].]

130. COPYRIGHT

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

131. PERMISSION UNDER OTHER LAWS

A licensee or frequency authorisation holder is not prevented by this Act from obtaining permission where such permission is required under any other law in force in [Name of ECA Contracting State].

132. APPEAL

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

133. AMENDMENT OF SCHEDULES

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

134. REGULATIONS

- (1) The Minister may, after consultation with the Commission and on the recommendation of ECA, make Regulations to give effect to objects and provisions of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may, on the recommendation of ECA, make Regulations providing, in particular, for or in relation to —
 - (a) forms, procedures and [time frames] in respect of the grant of a licence or a frequency authorisation;
 - (b) matters relating to the provision of universal service and the management of the Universal Service Fund;
 - (c) the type of terminal equipment to be connected to a public electronic communications network;
 - (d) public safety standards relevant to electronic communications;
 - (e) interconnection between licensees, and the sharing of infrastructure by licensees;
 - (f) interconnection agreements;
 - (g) matters relating to the allocation of numbers among the licensees;
 - (h) [stoppage or interception of information and communications];

- (i) management of the spectrum;
 - (j) adopting codes of practice relevant to the electronic communications sector with or without amendment;
 - (k) the procedure and standards relating to the submission, review and approval by the Commission of tariffs;
 - (l) the control, measurement and suppression of electromagnetic interference in relation to the working of apparatus;
 - (m) matters of confidentiality including on the part of all persons employed in or in any way connected with the maintenance and working of any electronic communications network or apparatus;
 - (n) public inspection of records of the Commission;
 - (o) procedures for the treatment of complaints;
 - (p) procedures for dispute resolution;
 - (q) matters for which guidelines are to be issued by the Commission;
 - (r) matters relating to the quality of 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 electronic communications networks and Very Small Aperture Terminal;
 - (w) cost studies and pricing models;
 - (x) submarine cables and landing rights;
 - (y) registration and management of domain names;
 - (z) monitoring and investigating, preventing and punishing or ensuring the punishment of anti-competitive practices in the electronic communications sector;
 - (aa) promoting and protecting the welfare and interests of consumers in the electronic communications sector;
 - (bb) consumer service agreements;
 - (cc) confidentiality of customer information; or
 - (dd) emergencies.
- (3) Without limiting the generality of subsection (1), the Minister may, on the recommendation of ECA, make Regulations creating offences for breach of any provision of the Regulations and for a penalty not exceeding \$5000 for any such offence.
- (4) ECA shall make recommendations under this section after consultation with the Commission.

- (5) Regulations made under this section are subject to an affirmative resolution of Parliament.

135. 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 telecommunications network or provide a telecommunications service or use radio frequencies as at the date of the entry into force of this Act is deemed to be operating an electronic communications network or providing an electronic communications service or using such radio frequencies under a licence issued under this Act for one year from the entry into force of this Act and thereafter, the person shall require a licence or frequency authorisation under this Act.
- (4) A reference in any Regulations, Order or other subsidiary legislation made pursuant to the repealed Act to dominance is a reference to significant market power.

SCHEDULE 1

(Section 18)

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 36(5))

LICENCE SUB-CLASSES

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

SCHEDULE 3

(Sections 37(13) and 39(10))

CONDITIONS FOR LICENCES AND FREQUENCY AUTHORISATIONS

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

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

