

**REVISED DRAFT 23/06/16**

**ELECTRONIC COMMUNICATIONS BILL**

## **ELECTRONIC COMMUNICATIONS BILL**

### **EXPLANATORY NOTE**

1. The Bill for consideration is the Electronic Communications Bill.
2. The purpose of the Bill is to reform the legislation relating to telecommunications in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States by repealing and replacing the Telecommunications Acts with legislation which 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 networks and services, exemptions and 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 put the aim of the legislation in context and indicate 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.
8. Clause 6 of the Bill provides for the Minister, on the recommendation of ECTEL, to exempt any person or category of person, any category of ship or aircraft, any type of electronic communications network or electronic communications service, or a diplomatic mission from the Bill or a part or provision of the Bill, including an exemption from payment of fees.
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 authorization and draft subsidiary legislation recommended by ECTEL and implement the policy set by ECTEL.
10. Part 2 of the Bill (*clauses 8-33*) provides for the National Telecommunications 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 authorizations and preparation of licences and frequency authorizations for signature by the Minister; reviewing proposed interconnection or access agreements or both in accordance with the recommendation of ECTEL; 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 codes of practice and the institution of legal proceedings against a licensee or a frequency authorization holder, recording and investigation of disputes and the power to regulate its own procedure (*clause 13*).
16. The Minister is required to designate one commissioner as the Chairperson and another Commissioner as 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 ECTEL to the Commission and chargeable to the general budget of ECTEL, monies allocated to it by Parliament and monies received by the Commission as grants or loans and application fees (*clause 26*).
29. By virtue of clause 27 of the Bill, the financial year of the Commission commences on [1<sup>st</sup> October and ends on 30<sup>th</sup> September] 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 submission to ECTEL 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 four 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 ECTEL and to the Minister for transmission to the [Parliament/ National Assembly] not later than four months after the end of each financial year. The annual report and the auditor's report are to be laid in [Parliament/National Assembly] within twenty-eight days of receipt by the Minister or if [Parliament/National Assembly] is not in Session within twenty-eight days of the commencement of the next Session of [Parliament/National Assembly] (*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 an electronic communications service without a frequency authorization where a frequency authorization 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 class and scope of licences is identified. Clause 36 further provides for a licensee to provide more than one electronic communications 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.
40. Provisions for the grant of frequency authorizations are contained in clauses 38 and 39 of the Bill.
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 authorization. Clauses 43 and 44 of the Bill provide for notification of change of significant interest and renewal of licence and frequency authorization.
42. In clauses 45, 46 and 47 of the Bill provision is made for suspension and revocation of the licence or frequency authorization, surrender of the licence or frequency authorization and special licences. Internet domain name registration and type approvals are provided for in clauses 48 and 49 of the Bill.
43. Part 4 of the Bill provides for the rights and obligations of the licensee or frequency authorization holder (*clauses 50 to 69*). 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 70 of the Bill contains general competition practices. Abuse of significant market power is prohibited by clause 71 of the Bill. Non-discrimination is ensured by clause 72 of the Bill but reasonable allowances are permitted by clause 73 of the Bill. The obligations of licensees having significant market power are highlighted in clause 74 of the Bill and the provisions on market analysis and significant market power are highlighted in clauses 75, 76 and 77 of the Bill.
45. Clause 78 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 electronic communication services or of any product used in connection with electronic communication services, or has or is likely to have the effect of fixing, controlling or maintaining the prices for, or allowance, credit or rebate for, any electronic communications service or any product used in connection with electronic communication services. Clauses 79 and 80 make provision for the 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 81 of the Bill and its purpose in clause 82 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 83*). Other offences include interception or destruction of a network, disclosure of personal information, giving false information, failure to attend before the Commission (*clauses 84-87*). Cross-shareholding, harmful interference and failure to comply with directions are provided for in clauses 88, 89 and 90 of the Bill. Clauses 91 and 92 of the Bill make provision for admissibility 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 the contravention of the Bill which places a prohibition on operating a network or providing an electronic communications service without a licence, landing or operating submarine cables without a licence and operating a network or providing an electronic communications service without a frequency authorization where a frequency authorization is necessary (*Clause 93*).
49. Clauses 94-96 of the Bill provide for investigation of breaches, obtaining or preserving evidence and forfeiture and injunctive relief.
50. Part 9 of the Bill makes provision for investigation of complaints by the Commission in clauses 97-107. 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 108-122 provides for the establishment and operation of an ad hoc Tribunal to hear complaints and resolve disputes referred by the Commission. The continuation of an electronic

communications service or electronic communications network during the dispute resolution is ensured by clause 123 of the Bill.

51. Part 10 of the Bill (*clauses 124-134*) provides for miscellaneous matters including fees, access to registers and stoppage of communications. Additionally, the Part has requirements relating to exchange of information, copyright and permission under other laws. A generally penalty and appeals are provided for as well. 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 authorizations.

# 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**

- (1) In this Act [unless the context otherwise requires]—  
“**access**” means the making available of facilities or electronic communication services to another licensee under defined conditions on an exclusive or non-exclusive basis, for the purpose of providing electronic communication services, including when they are used for the delivery of information society services or broadcast content services, such as—
  - (a) access to electronic communications network elements and associated facilities which may involve the connection of equipment by fixed or non-fixed means, in particular including access to the local loop and to facilities and electronic communication services necessary to provide electronic communication services over the local loop;
  - (b) access to physical infrastructure including buildings, ducts and masts;
  - (c) access to relevant software systems including operational support systems;
  - (d) access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;
  - (e) access to number translation or systems offering equivalent functionality;
  - (f) access to fixed and mobile networks, in particular for roaming;

(g) access to conditional access systems for digital television services and access to virtual network services;

**“access contract”** means an agreement for the provision of electronic communications 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 the transmission or routing of information and communication signals;

**“annual gross revenue”** means the gross revenue earned in the provision of electronic communication services for the reporting year, received by, or due to the licensee and its affiliates, from whatever source derived before any deductions for expenses, discounts, returns or offsets of any kind except domestic access and interconnection payments and taxes and charges collected for or on behalf of the Government of [ECTEL Contracting State];

**“applicant”** means a person applying for a licence 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 applying for a licence, frequency authorization, type approval or numbering or other application;

**“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;

**“cable landing station”** includes a submarine cable landing station;

**“Chairperson”** means —

(a) in relation to the Commission, the person appointed as the Chairperson of the Commission under section 14; or

(b) in relation to the Tribunal, the legal practitioner appointed as the Chairperson of the Tribunal under section 109;

**“Chief Executive Officer”** means the person appointed as Chief Executive Officer under section 15;

**“class licence”** means a licence, other than an individual licence, issued on the same terms to each applicant of a category of users in respect to a class of electronic communication networks, electronic communication services or both;

**“Commission”** means the National Telecommunications 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 106(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 97;

“**document**” includes an electronic document;

“**diplomatic missions**” include international organizations accredited to [Name of ECTEL Contracting State];

“**ECTEL**” means the Eastern Caribbean Telecommunications Authority established by Article 2 of the Treaty;

“**electronic**” means relating to technology having electrical, digital, magnetic, optical, biometric, electrochemical, wireless, electromagnetic or similar capabilities;

“**electronic communications**” —

(a) 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;

(b) includes telecommunications;

“**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;

“**exclusionary vertical restrictions**” mean contractual arrangements or informal business relationships between vertical related firms that impair the competitiveness of the upstream or downstream market;

“**frequency authorization**” 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 authorization holder**” means a person holding a frequency authorization 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 an electronic communications service;

**“individual licence”** means an electronic communications licence issued to a particular person on terms specific to that person;

**“infrastructure”** includes facilities, submarine cables, fiber, landing sites, cable landing stations, towers, sites and underground facilities;

**“infrastructure sharing”** means the joint utilization of a particular physical structure, segment, element, or feature of the entire infrastructure;

**“initial fee”** means a onetime payment on the grant of a licence or frequency authorization;

**“inspector”** means a person appointed as such under section 16;

**“intercept”** means to acquire, block, view, capture, monitor or copy the contents or a portion of the contents of any communication during transmission through the use of any device or method;

**“intercepted communication”** means any communication intercepted in the course of its transmission;

**“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) individual licence;

(b) class licence; or

(c) special 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];

**“net neutrality”** means the principle that electronic communications network and electronic communications licensees treat all data on the internet the same, not intercepting, interrupting, blocking, degrading, or discriminating by user, content, site, platform, application, type of attached equipment, mode of electronic communication or source or destination of electronic communication;

**“notice of discontinuance”** means a notice of discontinuance under section 104;

**“over the top”** means applications and electronic communication services provided to users over an internet connection independent of the licensee that provides the internet connection, and includes audio, text, chat and video applications and other content;

**“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 dispute 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];

**“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 licenses, frequency authorizations, 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)(q); or

(b) Complaints Register;

**“Regulations”** means Regulations made under section 133;

**“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 –

(a) is obliged to pay periodically or on demand for an electronic communications service; or

(b) has entered into an agreement for the provision of an electronic communications service;

**“road”** means any road or street or part of a road and includes a bridge, culvert, embankment, approach, drain, verge, pavement, kerb, footpath, parapet and other work or thing, forming part of any road or street;

**“road works”** means any activity, whether or not the activity involves breaking open a road or public ground, or that removes, alters or affects any utility installation;

**“scarce electronic communications”** includes numbers or spectrum required for the provision of an electronic communications service as determined by ECTEL;

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

- (a) to control [20%] or more of the voting rights of that company at a general meeting of the company;
- (b) to a share of [20%] or more in dividends declared and paid by the company;
- (c) to a share of [20%] or more in any distribution of the surplus assets of the company;

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

**“site”** means land, or a building 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 electronic communications;

**“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 Eastern Caribbean Telecommunications Authority signed at St. George’s, Grenada on 4<sup>th</sup> May, 2000 and includes that Treaty as amended from time to time;

**“Tribunal”** means the Electronic Communications Tribunal established under section 109;

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

**“under-served”** means any area —

- (a) where the penetration rate for broadband subscribers in [Name of ECTEL Contracting State] is below the national penetration rate because electronic communications service coverage is insufficient;
- (b) with a population density of eighty persons per square kilometer or less, and where public cellular services are not available;

**“Universal Service and Access Fund”** means the Universal Service and Access Fund established under section 82;

**“universal service and access”** includes the provision of —

- (a) public voice telephony;
  - (b) internet access;
  - (c) electronic communication services to schools, hospitals and similar institutions, police stations, the disabled and physically and mentally challenged;
  - (d) devices that provide electronic access to users, and ancillary electronic communication services and infrastructure equipment that are relevant to the Universal Service and Access Fund project; or
  - (e) any other electronic communications service or device by which people access efficient, affordable and modern electronic communications;
- to the under-served;

**“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 ECTEL 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 ECTEL;
- (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 electronic communication services and facilities;
- (d) subject to section 125, ensure the compliance by licensees to the protection of personal data, secrecy of correspondence and to the principle of net neutrality that internet service providers should enable access to all content and applications regardless of the source, and without favouring source or destination or blocking or degrading particular contents or websites;
- (e) ensure the absence of discrimination, in similar circumstances, in relationships between licensees and between licensees and over the top providers for traffic routing and access to their electronic communication services;
- (f) ensure the ability of end users to access and disseminate information, as well as access applications and electronic communication 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 ECTEL 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 ECTEL 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 electronic communication 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) ensure 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**

This Act does not apply to –

- (a) the program content and scheduling, as opposed to the transmission aspects of broadcasting networks and services;
- (b) electronic communication networks and electronic communication services operated or provided exclusively by the armed forces, police force, public security, and civil aviation authorities except in relation to the requirement to have a frequency authorization;
- (c) terminal equipment used for program, content and scheduling.

## **6. EXEMPTIONS**

- (1) The Minister may, on the recommendation of ECTEL, 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 ECTEL, 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 authorization where the use of frequency is necessary and shall be subject to the provisions of this Act relating to a frequency authorization; 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.

## **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 authorization as recommended by ECTEL;
  - (b) adopt the form and document of draft subsidiary legislation as recommended by ECTEL; and
  - (c) set policy on the electronic communications sector after consultation with ECTEL.
- (2) The Minister may give directions of policy of a general nature on the electronic communications sector to the Commission and the Commission shall comply with such directions.

## PART 2

### THE NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION

#### 8. ESTABLISHMENT OF THE COMMISSION

- [(1) There is established a body to be known as the National Telecommunications Regulatory Commission./ 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 Telecommunications Regulatory Commission.]
- (2) The Commission shall be a body corporate to which [section [-] of the Interpretation Act, Cap.[-] applies] and shall have a common seal and —
- (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 ECTEL Contracting State].
- (4) The common seal shall be kept by the Chief Executive Officer at the office of the Commission and the affixing of the common seal of the Commission shall be in the presence of and witnessed by —
- (a) the Chairperson; and
  - (b) the Chief Executive Officer or any person 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 an electronic communications service or supplying goods to a licensee under a contract;
  - (d) is an undischarged 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 ECTEL Contracting State];
  - (b) ensure that [Name of ECTEL Contracting State] complies with international obligations relating to electronic communications;
  - (c) be responsible for technical regulation and the setting of technical standards of electronic communications and ensure compatibility with international standards;

- (d) establish and manage a national plan for the allocation of numbers or block of numbers among licensees in accordance with the regional plan established by ECTEL including reallocating and reassigning numbers to the extent reasonably required to implement and administer the national numbering plan and to pay all international fees and obligations in relation to numbering;
- (e) in order to protect consumers, ensure fairness between consumers and licensees, establish retail tariff regulation regimes including the setting, review and approval of retail tariffs where –
  - (i) electronic communications services are being provided by only one licensee or are being provided with a bundle where at least one electronic communications 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 124;
- (h) receive and evaluate applications for class licences and forward applications for individual licences and frequency authorizations to ECTEL;
- (i) where the Minister decides to grant a licence or frequency authorization, prepare the licence or frequency authorizations and other relevant documents for signature by the Minister;
- (j) monitor and ensure that licensees or frequency authorization holders comply with the conditions attached to licences or frequency authorization;

- (k) review proposed interconnection or access agreements or both by licensees, and, in accordance with the recommendation of ECTEL, approve or disapprove of such interconnection or access agreements including access to international and national capacities, local loop unbundling, dark fiber, underground facilities, co-location and infrastructure sharing in accordance with this Act;
- (l) monitor compliance with the terms of interconnection and access;
- (m) promote, maintain and encourage competition in electronic communications in accordance with Part 5;
- (n) investigate and resolve complaints related to harmful interference;
- (o) liaise and consult with any national and regional authority established for the purposes of regulating anti-competitive practices;
- (p) promote and protect the welfare and interests of consumers in the electronic communications sector and advise the national body responsible for consumer protection accordingly;
- (q) maintain a register containing records of licensees and frequency authorization holders;
- (r) provide the Minister with such information as he or she may require;
- (s) 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;
- (t) report to and advise the Minister on the legal, technical, financial, economic aspects of electronic communications and the social impact of electronic communications in conjunction with ECTEL and upon the recommendation of ECTEL;
- (u) appoint a Fund Administrator to manage the Universal Service and Access Fund;
- (v) on the recommendation of ECTEL, specify quality of electronic communications service indicators for electronic communication services and the means to enforce a licensee's compliance with the stated quality of electronic communications 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;

- (w) 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;
  - (x) hear complaints between consumers and licensees in accordance with Part 9;
  - (y) receive and investigate complaints between licensees;
  - (z) prepare a list of licensees declared to enjoy significant market power on the electronic communications market and fix their obligations in accordance with this Act;
  - (aa) 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 –
- (a) may hold public consultations;
  - (b) shall, in accordance with the Treaty, consult and liaise with ECTEL.
- (3) In discharging its function under subsection (1) (e) in relation to determining rates for the provision of electronic communication services, the Commission may consider cost of content to the licensee.

## **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 authorization 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 authorization holder for the purposes of compliance;
- (d) hold public hearings pertaining to its functions;
- (e) issue directions in writing to a licensee or frequency authorization holder to direct the licensee or frequency authorization holder to take such measures or cease such activities as may be necessary for the purpose of ensuring compliance with this Act;
- (f) on the recommendation of ECTEL and by publication in the [Official Gazette] issue codes of practice relating to electronic communication services and electronic communication networks and —
  - (i) make the codes of practice available for public scrutiny at the office of the Commission during business hours or on the websites operated by ECTEL and the Commission, or
  - (ii) reproduce the 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) manage the national plan for numbering and internet domain name registration, implement and administer the national plan for numbering and internet domain name registration to the extent reasonably required;
- (i) require that equipment be tested in the prescribed manner and in accordance with international standards;
- (j) control the tariff of electronic communication services and establish, where appropriate, tariff regulation regimes, including the establishment, review and approval of tariffs in accordance with this Act; or
- (k) refer an issue, complaint or dispute matter of competition to the Tribunal;
  - (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 Minister shall designate one of the other commissioners who is not designated as Chairperson 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 person of recognized standing and experience who possesses expertise in —
  - (a) finance and accounting;
  - (b) information and communications technology;
  - (c) electronic communications;
  - (d) economics;
  - (e) law;
  - (f) competition;
  - (g) project management;
  - (h) business administration; or
  - (i) regulatory experience and training,as the Chief Executive Officer.
- (2) The functions of the Chief Executive Officer include, to —
  - (a) manage the day-to-day affairs of the Commission on such terms and conditions as the Commission determines;
  - (b) subject to subsections (3) and (4), attend meetings of the Commission; and
  - (c) perform any other function assigned to the Chief Executive Officer by the Commission.
- (3) The Chief Executive Officer shall attend all meetings of the Commission unless the Chief Executive Officer —
  - (a) is instructed by the Chairperson of a meeting to withdraw; or
  - (b) has obtained leave of absence or is prevented from attending the meeting for good cause.
- (4) The Chief Executive Officer attending a meeting of the Commission 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 *ad hoc* advisory committees to give advice to the Commission on such matters relating to the functions of the Commission as the Commission determines.
- (2) The Commission may appoint persons as members of an advisory committee, whether or not such persons are commissioners or employees of the Commission and such persons shall hold office for such period as the Commission determines.
- (3) The advice given by an advisory committee is not binding on the Commission but may be considered by the Commission in making decisions for the purposes of the discharge of its functions.

## **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) court 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.
- (4) A commissioner who breaches the oath of secrecy is guilty of misconduct and section 23 applies.

## **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 numbers 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 initial 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 ECTEL to the Commission and chargeable to the General budget of ECTEL;
  - (c) monies received by the Commission as grants or loans; and
  - (d) application fees in respect of licenses and fees in respect of numbering resources.
- (3) The Commission may establish a Reserve Fund into which may be paid sums which the Commission with the approval of ECTEL determines.

## **27. FINANCIAL YEAR**

The financial year of the Commission commences on [1<sup>st</sup> October and ends on 30<sup>th</sup> September in each year.]

## **28. BUDGET AND WORK PLAN**

- (1) The Commission shall cause to be prepared and shall adopt and submit to ECTEL—
  - (a) a budget with the estimates of its income and expenditure; and
  - (b) a work plan,for the Commission in respect of the financial year.
- (2) The Commission shall, within one month after the approval by ECTEL 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 4 months after each financial year, have its accounts audited annually by an independent auditor appointed by the Commission who shall conduct the audit in accordance with generally accepted international auditing standards.
- (2) The commissioners, the Chief Executive Officer and employees of the Commission shall grant to the auditor appointed under subsection (1), access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor considers necessary, and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor considers necessary.
- (3) A commissioner, 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 4 months after the end of the financial year.

## **31. ANNUAL REPORT**

- (1) Subject to subsection (2) and not later than 4 months after the end of each financial year, the Commission shall submit to ECTEL and to the Minister an annual report on the operations, activities and transactions of the Commission containing —
  - (a) an assessment of the state of electronic communications and its impact and significance for the development of [Name of ECTEL Contracting State];
  - (b) a description of the activities undertaken by the Commission including recommendations made in respect of licences and frequency authorizations;

- (c) a description of actions taken to promote the Treaty including the implementation of the recommendations, policies and guidelines of ECTEL; and
  - (d) a financial statement of the Commission.
- (2) An annual report under subsection (1) shall be accompanied by the auditor's report under section 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 125, the Commission shall make a record, including a record contained in the register referred to in section 11(1)(q), 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 a licence or frequency authorization is not available for public inspection until the application for the licence or frequency authorization 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 name and address of the licensee and the type of licence issued, modified, renewed, revoked or surrendered;
  - (b) the name and address of the frequency authorization holder and any modification, renewal or surrender of the frequency authorization;
  - (c) notice of its intention to impose any authorization measures that have a significant impact on electronic communication services and shall give interested parties an opportunity to comment within a reasonable period specified in the notice; and
  - (d) enforcement orders of the Commission.

### **PART 3**

## **LICENSING, FREQUENCY AUTHORIZATION, 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 ECTEL Contracting State]; or
  - (b) land or operate submarine cables within [Name of ECTEL Contracting State] for the purpose of connecting to an electronic communications network,
- without a valid licence.
- (2) Notwithstanding section 6, where a frequency authorization 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 authorization.

- (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 authorization in accordance with this Act and is subject to the provisions of this Act relating to a frequency authorization, 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 authorization 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 an electronic communications service directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, the operator requires a licence under section 37.
- (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) individual licence;
  - (b) class licence;
  - (c) special licence.
- (2) A licensee who holds an individual licence is authorized to deploy or operate any facilities based electronic communications network and provide any electronic communications services in accordance with the individual licence.
- (3) A licensee who holds a class licence is authorized to offer the electronic communication services included in the class licence.

- (4) A licensee who holds a special licence is authorized to provide the electronic communications service as specified in the special licence.
- (5) The sub-classes of licences are 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 Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.
- (3) The Commission may, within [14] 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 class licences;
  - (b) forward within [7] days, applications for individual licences to ECTEL.
- (8) Within 45 days of –
  - (a) receipt of an application for a class licence under subsection (1) or information requested pursuant to subsection (3), the Commission shall submit its recommendation for the grant or refusal of the class licence and a copy of the application to the Minister; or
  - (b) Receipt of an application for an individual licence from the Commission, ECTEL shall submit its recommendation to the Commission and the

Commission shall transmit the recommendation of ECTEL for the grant or refusal to grant of the licence and a copy of the application to the Minister.

- (9) In making a recommendation under subsection (8), the Commission or ECTEL shall have regard to —
- (a) the purposes of the Treaty;
  - (b) the objective of universal service and access that will be promoted including the provision of internet access sufficient to meet reasonable 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 or ECTEL.
- (10) The Minister may grant or refuse to grant a licence within [28] days of the receipt of the recommendation from ECTEL or the Commission and shall notify the applicant of the grant or the refusal and shall give reasons in writing for a refusal.
- (11) Notwithstanding subsection (10), the Minister shall not grant an individual licence unless ECTEL recommends the grant of such licence.
- (12) Where an application is refused the applicant has the right to appeal pursuant to section 131.
- (13) The Minister may, in granting a licence include all or any of the terms and conditions specified in Schedule 3.
- (14) A licence granted pursuant to subsection (10) shall be issued on payment of the prescribed initial fee.
- (15) Where 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.

- (16) Subject to section 45, 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.
- (18) Where a licensee is granted an individual licence in an ECTEL Contracting State, the licensee may seek an individual licence in [ECTEL Member State] by submitting his or her application in the prescribed form to the Commission together with the prescribed application fee and a copy of the licence, within 3 years of obtaining the licence unless —
  - (a) the licence has elapsed due to the failure of the licensee to commence operations within the 12 month period commencing from the date of the grant of the licence;
  - (b) the bankruptcy or insolvency of the licensee; or
  - (c) any other circumstances existing at the time that reverses the decision of ECTEL.
- (19) The Commission shall verify that ECTEL is not aware of any significant change that affects the previous decision of ECTEL to recommend the grant of the licence but where there is a change ECTEL may request further information from the applicant or give reasons for its refusal to recommend a grant.
- (20) Upon receipt of a recommendation from ECTEL, the Commission shall transmit the recommendation and a copy of the application to the Minister who shall proceed to grant or refuse the licence.

**38. REQUIREMENT FOR A FREQUENCY AUTHORIZATION**

- (1) Notwithstanding section 6, a person shall not use spectrum for an electronic communications service without a valid frequency authorization.
- (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 AUTHORIZATION**

- (1) An applicant for a frequency authorization shall submit his or her application in the prescribed form to the Commission together with the prescribed application fee.
- (2) An application under subsection (1) may be made electronically.
- (3) Upon receipt of the application, the Commission shall, within 7 days, forward the application to ECTEL.

- (4) ECTEL may within [7] days of an application for a frequency authorization being made under subsection (1) request additional information from an applicant for the purpose of considering the application.
- (5) Where ECTEL makes a request for information pursuant to subsection (4), the applicant shall submit that information to ECTEL within [14] days of the request or within a further period of time granted and specified in writing by the ECTEL.
- (6) ECTEL may refuse to grant a further time period under subsection (5) if it is reasonable to do so.
- (7) In determining whether it is reasonable to refuse to grant a further time period under subsection (6), ECTEL may take into account —
  - (a) the type of information being requested;
  - (b) the history of the application;
  - (c) any other matter.
- (8) ECTEL shall, within [45] days of receipt of an application under subsection (3) or receipt of additional information under subsection (4), 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 authorization;
- (9) Without prejudice to subsection (8) ECTEL shall submit its recommendation to the Commission and the Commission shall transmit the recommendation of ECTEL for the grant or refusal to grant of the frequency authorization and a copy of the application to the Minister.
- (10) The Minister may, in accordance with the recommendation of ECTEL, grant or refuse to grant a frequency authorization within [14] days of the receipt of the recommendation and shall notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.
- (11) A frequency authorization granted pursuant to subsection (9) shall be issued on payment of the prescribed initial fee.
- (12) The Minister, in granting a frequency authorization may include all or any of the terms and conditions specified in Schedule 3.
- (13) Subject to section 45, a frequency authorization is valid for the period specified in the frequency authorization.
- (14) The Commission shall publish the grant or refusal of frequency authorization.

#### **40. MODIFICATION OF LICENCE OR FREQUENCY AUTHORIZATION**

- (1) The Minister may, on the receipt of a recommendation from ECTEL or 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 ECTEL.
- (4) Where the modification of a licence or frequency authorization is recommended by ECTEL or the Commission or where in the opinion of ECTEL 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.
- (2) In this section, “transfer” includes any passing of 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, significant assets or interest.
- (3) A licensee or frequency authorization holder who contravenes this section is liable to the revocation of his or her licence under section 45.

#### **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 submits a written application for written approval to ECTEL and the Commission at least 90 days prior to such change of control.
- (2) A licensee or frequency authorization holder who contravenes subsection (1) is liable to the revocation of his or her licence or frequency authorization pursuant to section 45.
- (3) Upon receipt of the application under subsection (1) –
  - (a) in the case of an individual licence or frequency authorization, ECTEL shall conduct an evaluation of the application; and

- (b) in the case of a class licence, the Commission shall conduct an evaluation of the application.
- (4) Without prejudice to subsection (3), ECTEL and the Commission shall, in conducting an evaluation of an application, take into account –
- (a) whether the change of control would be inconsistent with the terms of the licence or frequency 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 ECTEL Contracting State];
  - (c) whether the change of control would have an effect contrary to public interest or for reasons of national security; and
  - (d) 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.
- (5) Upon completion of the evaluation of the applications –
- (a) under subsections (3)(a) and (4), ECTEL, shall forward its recommendation to the Commission and the Commission shall transmit the recommendation to the Minister, with a copy of the application.
  - (b) under subsections (3)(b) and (4), the Commission shall forward its recommendation to the Minister, with a copy of the application.
- (6) Before making a recommendation under subsection (5), the Commission or ECTEL shall –
- (a) give the acquirer, the licensee or frequency authorization holder and any interested persons a reasonable opportunity to make representations; and
  - (b) consider the representations, if any, made under paragraph (a).
- (7) Within 21 days of receipt of the recommendation from ECTEL or the Commission, the Minister may, acting on the recommendation inform the applicant in writing —
- (a) of the grant of approval of the change of control; or
  - (b) of the grant of approval of the change of control subject to the conditions that the acquirer or the licensee takes the actions that ECTEL or the Commission considers necessary to eliminate or avoid the adverse effects;
- or

(c) of the refusal to grant approval for the change of control giving reason for his refusal.

(8) 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

- (a) by acquiring directly or indirectly including by merger –
  - (i) 50% or more of the licensee’s voting share;
  - (ii) rights or contracts which confer decisive influence on the composition, voting or decisions of organs of the licensee or frequency authorization holder;
  - (iii) while not holding the rights or entitled to the rights under a contract under subparagraph (ii), has the power to exercise the rights deriving from such right or contract;
  - (iv) through the licensee or frequency authorization holder divesting its shares;
- (b) by any direct or indirect sale or transfer of substantially all of the assets of the licensee;
- (c) by an approved and completed plan of liquidation of the licensee or an agreement for the sale on liquidation of the licensee;
- (d) by the licensee determining and declaring that a change of control has occurred;

“**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 ECTEL.
- (4) A licensee or frequency authorization holder whose shares are publicly traded on the [Eastern Caribbean Securities Exchange] or other stock exchange approved in writing by the Minister responsible for finance, may submit a written application to the Commission to waive a notification of an issue, allotment or other reorganization of shares.
- (5) The Commission, on the recommendation of ECTEL, may grant the application under subsection (4) and in granting the waiver include a condition that the licensee or frequency authorization holder shall, as soon as reasonably practicable, notify the Minister through the Commission of any change in significant interest.
- (6) A licensee or frequency authorization holder who fails to comply subsection (1) commits an offence and is liable on conviction on indictment to a fine of 3% of its annual gross revenue for the previous year or revocation of its licence.

#### **44. RENEWAL OF LICENCE AND FREQUENCY AUTHORIZATION**

- (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.
- (3) The Minister, on the recommendation of ECTEL, 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 ECTEL or the Commission; or
  - (d) the Minister, on the recommendation of ECTEL, has determined that it is not in the public interest to renew the licence.
- (3) Before determining not to renew a licence or a frequency authorization pursuant to subsection (1), the Minister, on the recommendation of ECTEL, shall give the licensee or the frequency authorization holder, within 6 months, notice in writing of its intention not to renew such licence or frequency authorization, specifying the grounds on which it proposes not to 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 or ECTEL 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 ECTEL.
- (5) The Commission shall publish the renewal of a licence and frequency authorization.

#### **45. SUSPENSION AND REVOCATION OF LICENCE OR FREQUENCY AUTHORIZATION**

- (1) The Minister may, on the recommendation of ECTEL, suspend, or revoke a licence or frequency authorization, where —
- (a) the radio apparatus or station in respect of which the licence or frequency authorization was granted interferes with an electronic communications service provided by a person to whom a licence or frequency authorization is already granted for that purpose;
  - (b) the licensee or frequency authorization holder contravenes this Act or any other law;
  - (c) the licensee or frequency authorization holder fails to comply with a condition specified in the class licence or individual licence or frequency authorization;
  - (d) the licensee or frequency authorization holder is in default of payment of the class licence or individual licence fee, frequency authorization fee or any other money owed under this Act;

- (e) the suspension or revocation is necessary for reasons of national security or the public interest;
  - (f) the licensee or frequency authorization holder is bankrupt, dissolved or liquidated;
  - (g) the licensee or frequency authorization holder fails to operate under the class licence or individual licence one year from the date the licence or frequency authorization was granted;
  - (h) any other prescribed circumstances exist.
- (2) Before suspension or revocation of a licence or frequency authorization under subsection (1), the Minister shall give the licensee or frequency authorization 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 authorization, and shall give the licensee or frequency authorization holder an opportunity to —
- (a) present his or her views;
  - (b) remedy the breach of the licence or frequency authorization or a term and condition of the licence or frequency authorization; 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 authorization.
- (3) Where a licensee or frequency authorization holder presents his or her views or submits a written statement of objections under subsection (2), ECTEL or 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 ECTEL or the Commission, suspends or revokes a licence or frequency authorization under this section, the Minister shall notify the licensee or frequency authorization holder of the suspension or revocation and shall give reasons in writing for the suspension or revocation.
- (5) Where a licence or frequency authorization is suspended, the licensee or frequency authorization holder shall not provide an electronic communications service or operate an electronic communications network unless ECTEL or the Commission is satisfied that the grounds for suspension have been rectified.
- (6) Suspension or revocation of a licence or frequency authorization does not relieve a licensee or frequency authorization holder of the duty to pay fees that are due and owing prior to suspension or revocation under this Act.
- (7) The Commission shall publish the suspension or revocation of a licence or frequency authorization.
- (8) Where a licence or frequency authorization is suspended or revoked and the electronic communications network is partially or totally disconnected, ECTEL or 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.

- (9) Where a licence or frequency authorization has been revoked under this section, the licensee or frequency authorization holder shall surrender the licence or frequency authorization to the Commission.

#### **46. SURRENDER OF LICENCE OR FREQUENCY AUTHORIZATION BEFORE EXPIRY**

- (1) A licensee or a frequency authorization holder may surrender a licence or frequency authorization prior to its expiry, by making an application in the prescribed form to the Commission at least one year prior to the desired date of surrender.
- (2) An application under subsection (1) 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.
- (3) Upon receipt of an application under subsection (1) the Commission shall –
  - (a) consider applications for surrender of class licences;
  - (b) forward within [7] days, applications for surrender of individual licences to ECTEL.
- (4) Within 45 days of –
  - (a) receipt of an application for surrender of a class licence under subsection (1) the Commission shall submit its recommendation for the grant or refusal of surrender of the class licence and a copy of the application to the Minister; or
  - (b) receipt of an application for the surrender of an individual licence from the Commission, ECTEL shall submit its recommendation to the Commission and the Commission shall transmit the recommendation of ECTEL for the grant or refusal of surrender of the individual licence and a copy of the application to the Minister.
- (5) Before making a recommendation under subsection (4), the Commission or ECTEL shall –
  - (a) give 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).

- (6) The Minister, on the recommendation of ECTEL, or the Commission, shall not unreasonably refuse the application under subsection (1).
- (7) The Minister, on the recommendation of ECTEL, or the Commission may grant the application for surrender, subject to conditions that the licensee takes the actions that ECTEL or the Commission considers necessary.
- (8) The Minister, on the recommendation of ECTEL, or the Commission may refuse to grant the application for surrender; where the Minister refuses an application for surrender he shall give reasons for his refusal in writing.
- (9) Where the Minister on the recommendation of ECTEL or the Commission, refuses to grant the application for surrender of the licensee or frequency authorisation, the licensee shall in such circumstances have a right to appeal under section 131.
- (10) Where the Minister, on the recommendation of ECTEL, or the Commission refuses to grant an application for surrender and the licensee or frequency authorization holder agrees to such refusal, the Minister shall return the licence or frequency authorisation to the licensee or frequency authorisation holder.
- (11) 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 Minister.
- (12) Surrender of a licence or frequency authorisation does not relieve the licensee or frequency authorization holder of the duty to pay fees that are due and owing prior to the coming into effect of the date of surrender.
- (13) The Commission shall publish the surrender of a licence or frequency authorization in the official Gazette.

#### **47. SPECIAL LICENCE**

- (1) Where a licence is necessary in an emergency or other exigent circumstance a person shall make an application for a special licence.
- (2) An applicant for a special licence shall submit the application in the prescribed form to the Minister and shall immediately submit a copy of the application to the Commission together with the prescribed application fee.

- (3) The Commission may, upon receipt of an application for a special licence 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 ECTEL 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] business 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 under section 131.
- (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 [21] calendar days and is not renewable.
- (12) The Commission shall publish the grant or refusal of a special licence.
- (13) In this section –
  - “**emergency**” includes a disaster, an act of God or threat to national security;
  - “**exigent circumstance**” means a distinct and organized event of major sporting, cultural or national significance to be held for not more than 7 days.

#### **48. 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 ECTEL.

- (2) The Commission shall be responsible for the registration and management of internet domain names.
- (3) The Commission may, with the approval of ECTEL, delegate its responsibility under subsection (2) to another body corporate.
- (4) A person who conducts registration and management of internet domain names without being delegated the responsibility under subsection (3) commits an offence and is liable on indictment to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding 10 years or to both fine and imprisonment.

#### **49. TYPE APPROVALS**

- (1) A licensee, frequency authorization holder, manufacturer or retailer shall not install, sell for use or use any item of equipment in [Name of ECTEL Contracting State], unless the Commission grants a certificate of type approval in respect of that type of equipment.
- (2) Items of equipment that require a certificate of type approval include —
  - (a) wireless devices including
    - (i) cellular telephones,
    - (ii) cordless telephones,
    - (iii) fax machines, and
    - (iv) GSM telephones;
  - (b) mobile radios;
  - (c) modems;
  - (d) wireless remote devices;
  - (e) PABXs (including Small Business Systems and Key Systems);
  - (f) radio receivers;
  - (g) radio transmitters;
  - (h) satellite earth stations;
  - (i) telecommunications switching equipment;
  - (j) telephone instruments;
  - (k) other equipment emitting a radio signal; and
  - (l) any other customer premises equipment to be attached to any part of a licensed electronic communications network.
- (3) A licensee, frequency authorization holder, manufacturer or retailer 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 subsequently uses the same model of equipment.
- (4) An application to the Commission for type approval of equipment shall be signed by—

- (a) an authorized representative of the applicant; or
  - (b) the applicant personally.
- (5) A licensee or frequency authorization 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 ECTEL.
- (6) Copies of the application forms, the related documentation and samples referred to in subsection (5) may be forwarded by the Commission to ECTEL for recommendations and review.
- (7) The Commission may recognize type approvals granted by other Contracting States, and shall consult and liaise with ECTEL, in respect of such matters where necessary.
- (8) The Commission may, upon the recommendation of ECTEL, determine the technical regulations that should be recognized in [Name of ECTEL Contracting State] and other approved Contracting States for the purposes of giving effect to the recognition of, or exemption from, type approval procedures.
- (9) The Commission shall recognize type approvals granted by internationally recognized type approval agencies.
- (10) The Commission shall ensure that appropriate manuals containing the legal requirements of type approval by Contracting States which it recognizes is made available to electronic communication providers and other interested parties.

## **PART 4**

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

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

- (1) Where access to a tower, site and underground facility is technically feasible, a licensee shall, upon request, give another licensee access to —
- (a) the tower owned or operated by the first mentioned licensee;
  - (b) the site owned, occupied or controlled by the first mentioned licensee; or
  - (c) the 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 an electronic communications service.

- (2) A licensee, in planning the deployment of future infrastructure, shall co-operate with other licensees to share sites and underground facilities.
- (3) A licensee who fails to comply with this section commits an offence and is liable on indictment to a fine of 3% of its annual gross revenue for the previous year.

## **51. ACCESS TO CABLE LANDING STATION**

- (1) Any licensee owning or operating a cable landing station in [Name of ECTEL Contracting State] shall —
  - (a) provide to any licensee in [Name of ECTEL Contracting State] that makes the request, the access to its submarine cable landing station or co-location electronic communication services including virtual co-location;
  - (b) provide to any licensee in [Name of ECTEL 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 held by third persons on all submarine cables connected to the cable landing station; or
  - (c) publish a reference interconnection and access offer in the time and manner prescribed for access to international submarine capacity.
- (2) The cost of the electronic communication 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 licensee requesting the interconnection and access electronic communications service does not have to pay for electronic communication network components that are not required for the interconnection and access electronic communications service to be provided.
- (3) In the case where the licensee owning or operating a cable landing station to offer rates based on benchmarking in [Name of ECTEL Contracting State] does not provide the Commission with sufficient financial information to determine whether or not its rates are cost oriented, the Commission, on the recommendation of ECTEL, shall require the owner or operator to offer rates based on benchmarking.
- (4) The licensee owning or operation a cable landing station in [Name of ECTEL 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 in accordance with section 60.
- (5) Disputes relating to the conclusion or execution of an interconnection and access agreement with international capacity available on cable landing stations in

[Name of ECTEL Contracting State] shall be submitted to ECTEL in accordance with Article 13 of the Treaty.

- (6) A licensee who fails to comply with this section commits an offence and is liable on conviction on indictment to a fine of 3% of its annual gross revenue for the previous year.

## **52. 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 ECTEL, impose conditions including conditions for –
  - (a) the provision of access on the electronic communications network including access to local loop and broadband capacities available on terrestrial electronic communication networks, backhaul facilities, ducts and dark fiber;
  - (b) the use of its electronic communications network; and
  - (c) the availability of relevant facilities.
- (2) In determining the conditions of access on the network of a licensee having significant market power, ECTEL 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 ECTEL Contracting State].
- (3) The Commission may, on the recommendation of ECTEL, 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 ECTEL.
- (5) A licensee who fails to comply with the conditions set by the Commission under subsections (1) and (3) commits an offence and is liable on conviction on indictment to a fine of 3% of its annual gross revenue for the previous year.

### **53. 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) 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.
- (4) In the event of an emergency, the licensee of the public electronic communications network may dispense with the requirement set out in subsection (2)(c) or (d) where the Commission certifies in writing that the intended road works are necessitated by an emergency.
- (5) The removal or alteration of any utility installation shall be undertaken by the affected utility installation owner, and the cost shall be borne by the licensee.

- (6) 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.
- (7) A licensee of a public electronic communications network notified under subsection (6) shall not carry out road works within 3 months of the receipt of such notification except where such licensee proves to the satisfaction of the Commission the necessity of carrying out emergency works.
- (8) Where two or more licensees intend on carrying out road works, the licensees shall co-operate and agree on the sharing of costs and in the case of dispute the matter shall be referred to ECTEL.
- (9) Prior to performing road works, a licensee shall publish a description of the road works in at least one newspaper in [Name of ECTEL Contracting State] and shall otherwise inform affected persons by such other means as the Commission specifies.

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

- (1) A licensee authorized in writing by the [Planning Department] may, with the permission of the landowner, 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.

#### **55. ACCESS TO ALTERNATIVE INFRASTRUCTURE**

- (1) A licensee may lease from a utility installation owner any capacity of electronic communications infrastructure or facility available on a utility installation.
- (2) The technical and financial offers for the lease of capacity under subsection (1) shall be published on the website of the Commission after the approval of the Commission and the Commission shall consult with ECTEL before giving its approval.
- (3) Any agreement for the lease of capacity must be in accordance with the technical and financial offers under subsection (2).
- (4) A licensee shall forward a copy of the agreement under subsection (3) to the Commission for information.

#### **56. 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.

#### **57. CONTRIBUTION TO UNIVERSAL SERVICE AND ACCESS FUND**

A licensee shall contribute to the Universal Service and Access Fund.

#### **58. INTERCONNECTION AND ACCESS**

- (1) Subject to subsection (5), a licensee who operates a public electronic communications network shall provide interconnection or access or both on his or her electronic communications network to another licensee.
- (2) A licensee who wishes to interconnect with or access 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 or access 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 or access shall be effected.
- (5) A licensee to whom a request for interconnection or access is made may in his or her response refuse that request in writing on reasonable technical grounds only.
- (6) A licensee on receipt of a refusal for interconnection or access may make a complaint to the Commission under this Act.
- (7) A licensee providing an interconnection or access electronic communications service in accordance with this section in setting rates for interconnection or access shall comply with guidelines and standards to facilitate interconnection or access established by the Commission, on the recommendation of ECTEL.
- (8) Any interconnection or access electronic communications 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 providing the interconnection or access electronic communications service;
  - (b) the electronic communication services of non-affiliated suppliers; or
  - (c) the electronic communication services of the subsidiaries or affiliates of the licensee of the interconnection or access electronic communications service.
- (9) A licensee shall not, in respect of any rates charged for interconnection or access electronic communication services provided to another licensee, vary the rates on the basis of the type of customers to be served, or on the type of electronic communication services that the licensee requesting the interconnection or access electronic communication services intends to provide.

## **59. INTERCONNECTION AND ACCESS AGREEMENTS**

- (1) A licensee shall not enter into any interconnection or access agreement or both to implement or provide interconnection or access electronic communications service unless the interconnection or access agreement is approved in writing by the Commission acting on the recommendation of ECTEL.
- (2) Interconnection or access agreements or both, 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 ECTEL, prepare, publish, and make available copies of the procedures to be followed by the licensees when negotiating interconnection or access agreements.

**60. COST OF INTERCONNECTION AND ACCESS**

- (1) The cost of establishing any interconnection or access or both to the electronic communications network of another licensee shall be borne by the licensee requesting the interconnection or access.
- (2) The cost referred to in subsection (1) shall be based on cost-oriented rates that are —
  - (a) reasonable and arrived at in a transparent manner having regard to economic feasibility; and
  - (b) sufficiently unbundled such that the provider requesting the interconnection or access electronic communications service does not have to pay for electronic communications network components that are not required for the interconnection or access electronic communications service or both to be provided.

**61. REPAIR AND RESTORATION**

- (1) Where a licensee causes damage to any utility installation in carrying out road works, it shall immediately notify the utility installation owner and may request the utility installation owner to repair the damage to the utility installation.
- (2) The licensee shall compensate the utility installation owner for the full cost of repair.
- (3) A licensee shall, as speedily as possible, complete all road works and restore the road and public grounds, including the removal of any debris, to the satisfaction of the [Planning Department] and the [Minister responsible for infrastructure]; such satisfaction to be expressed in writing.
- (4) Where a licensee fails to comply with subsection (3), the licensee is liable for any expenditure that the [Planning Department/utility installation owner] incurs 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/utility installation owner] expresses satisfaction in writing pursuant to subsection (3).

**62. REPORTING OBLIGATIONS**

- (1) A licensee shall comply with the following data reporting obligations of the Commission and ECTEL —
  - (a) quarterly on the 14<sup>th</sup> day provide rates of mobile voice and broadband, fixed voice broadband services, fixed voice and subscriber television services;

- (b) annually provide market share and geographical penetration rates of mobile voice and broadband services, fixed voice and broadband services and subscriber television services;
  - (c) annually on March 30 in each year, provide copies of standard consumer contracts in relation to mobile voice and broadband services, fixed voice and broadband services;
  - (d) annually on March 30 in each year, provide the terms and conditions of wholesale and standard non-residential consumer contracts including wholesale contracts with other licensees;
  - (e) annually within [120] days of the end of its reporting year, its annual report including audited financial statements;
  - (f) provide any other information as may be requested by ECTEL and the Commission.
- (2) The Commission and ECTEL shall keep confidential commercially sensitive information received under subsection (1) except with the prior written consent of the licensee.
- (3) The reporting obligations imposed under subsection (1) may be amended by the Minister by order published in the [Official Gazette].

### **63. NUMBER PORTABILITY**

- (1) A licensee shall offer number portability in accordance with the prescribed requirements.
- (2) The Minister may, by notice published in the [Official Gazette] specify the applicable deadline for all licensees to ensure that they possess the capabilities necessary to enable them to –
  - (a) export a number to another licensee; and
  - (b) import a number from another licensee.
- (3) Where a licensee provides an electronic communications service by means of an electronic communications network of another licensee, the first licensee and the licensee who owns the public electronic communications network shall cooperate, to the extent necessary in order to offer number portability, as if the public electronic communications network and the licensee were a single public electronic communications network.

- (4) A clearing house must be licensed and all licensees shall co-operate with the clearing house.
- (5) A person who fails to licence a clearing house commits an offence.
- (6) A licensee who fails to co-operate with a clearing house commits an offence and is liable on conviction on indictment to a fine not exceeding 3% of the gross annual income of the previous year.

#### **64. SPECTRUM**

A licensee or frequency authorization holder shall use the radio frequency spectrum in accordance with the frequency authorization.

#### **65. ROAMING**

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

#### **66. NUMBERING**

A licensee shall —

- (a) pay the annual fee on or before November 1 of each year for each number or block of numbers allocated to the licensee;
- (b) use numbers in accordance with the National Numbering Plan established and managed by the Commission.

#### **67. 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 electronic communications service by –
  - (a) publishing in a directory, if appropriate;
  - (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; or

- (e) any other means which the Commission determines.
- (4) A licensee shall ensure that tariffs published under subsection (3) include information relating to –
- (a) the name and address of the registered office of the licensee;
  - (b) a clear description of the electronic communications service offered;
  - (c) 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.

## **68. CONSUMER ISSUES**

- (1) A licensee shall promote and protect the welfare and interest of consumers in the electronic communications sector in accordance with the Regulations.
- (2) In making the Regulations referred to in subsection (1), the Minister shall prescribe –
  - (a) the type of information to be provided by a licensee to consumers;
  - (b) consumer contract requirements including billing and cancellation of such contracts;
  - (c) terms and conditions for electronic communications calling service;
  - (d) requirements for advertising and promotion;
  - (e) the complaints handling procedure to be adopted by a licensee;
  - (f) any other matter required to promote and protect the welfare and interest of consumers in the electronic communications sector.

## **69. 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 electronic communication 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 licensee to give priority to communications of the Government, the communications shall have priority over all other communications but be in accordance with international standards.
- (4) 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.
- (5) The Head of State may assume direct control of the electronic communications services and issue operating regulations.

## **PART 5 COMPETITION**

### **70. GENERAL COMPETITION PRACTICES**

- (1) Without prejudice to the competence of any court or the National Competition Authority or the Competition body in accordance with the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM single market and economy, the Commission shall have competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws whether of a general or specific nature, as it relates to [Name of ECTEL Contracting State] electronic communications market.
- (2) Subject to subsection (6), a licensee shall not engage in any anti-competitive business conduct which has the purpose or effect of substantially lessening competition in any aspect of [Name of ECTEL Contracting State] electronic communications market.

- (3) The Commission, on the recommendation of ECTEL, may from time to time publish guidelines which clarify the meanings of substantial lessening of competition in [Name of ECTEL 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 ECTEL Contracting State];
  - (b) actions by which a licensee abuses its significant market power within [Name of ECTEL Contracting State]; or
  - (c) any other like conduct by licensees whose object or effect is to frustrate the benefits expected from the establishment of the CARICOM Single Market and Economy and the OECS Economic Union and of ECTEL.
- (4) Subject to subsection (6), 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 communication 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 electronic communication 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 electronic communication services.
- (7) A licensee shall not —
- (a) refuse to make available in a timely manner to other licensees, technical information about facilities and commercially relevant information necessary for the exercise of their activity;
  - (b) use information obtained from competitors with anti-competitive purposes;

- (c) subsidize an electronic communications service in competition with an electronic communications service which is not in competition;
  - (d) commercialize a bundle of services in competition with an electronic communications 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;
  - (g) predatory pricing;
  - (h) price discrimination;
  - (i) exclusionary vertical restrictions; and
  - (j) bid-rigging.

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

- (1) Pursuant to section 70(3) (b), a licensee shall not take advantage of its significant market power in a market for the supply of an electronic communications service with a view to preventing, restricting or distorting competition in the market.
- (2) Without prejudice to subsection (1), in determining whether a licensee has abused its significant market power, ECTEL in consultation with the Commission, shall take into account the provisions of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market

and economy and its further amendments or the Revised Treaty of Basseterre establishing the OECS Economic Union.

## **72. NON-DISCRIMINATION**

A licensee shall not discriminate between persons who are in an equivalent situation and who acquire or make use of an electronic communications service in the market in which the licensee operates in relation to -

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

## **73. REASONABLE ALLOWANCE**

Nothing in section 72 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.

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

- (1) Subject to section 77, the Commission shall perform regular market analysis in order to determine if one or more licensees have significant market power in the relevant market concerned.

- (2) Where, following a market analysis, a licensee is designated as having significant market power in a given market, the Commission on the recommendation of ECTEL 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 electronic communication services they provide to other licensees and information under the same conditions and with the same quality as those that they provide for their own electronic communication 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) conditions relating to access to specific network resources and their use, in which case, 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) maintain 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 electronic communication services;
    - (v) provide a possibility of co-location or other forms of associated facilities sharing;
    - (vi) provide access to associated electronic communication services such as identity, localisation and occupation of the user;
  - (f) price controls, including obligations for cost-oriented prices or rates. In order to support price controls, a determination of the cost accounting methods should be made publicly available [by the Commission on the recommendation of ECTEL], showing at least the main categories under which costs are grouped and the rules used for the allocation of costs; and
  - (g) any other terms that the Commission, on the recommendation of ECTEL determines.
- (3) Where market failures persist despite the implementation of these obligations, the Commission, on the recommendation of ECTEL, may direct a licensee to –

- (a) transfer its wholesale supply business to an independent economic entity, distinct of the economic entity operating retail electronic communication services or;
  - (b) divest specified assets under the conditions set out by the Commission and the Commission shall approve the company interested in acquiring the divested assets before divestment occurs.
- (4) Where a licensee that has a significant market power fails to comply with subsections (2) and (3), the Commission may apply for injunctive relief pursuant to section 96.
- (5) 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 competition.
- (6) The obligations imposed on licensees having significant market power on one or more markets pursuant to subsections (2) and (3) is subject to a public decision of the Commission, accessible to all interested parties but confidential information including trade secrets is excluded.

## **75. MARKET ANALYSIS**

- (1) Before making a determination that a licensee has significant market power, the Commission, on the recommendation of ECTEL, shall identify the relevant market according to its competitive or non-competitive situation.
- (2) The Commission, on the recommendation of ECTEL, shall regularly perform market analyses and review them at least every 3 years in order to take into account the evolution of the markets in terms of competition.
- (3) The obligations under section 74 are implemented, or removed, to reflect the results of the analysis of the relevant market concerned.

- (4) Prior to conducting the market analysis, the Commission shall publish the objectives and methodology to be used and after publish the results.

## **76. ASSESSMENT OF SIGNIFICANT MARKET POWER**

- (1) Subject to section 77, ECTEL and the Commission shall make an assessment of the ability of a person to behave to an appreciable extent independently of competitors, customers and consumers using published criteria in the Regulations.
- (2) In assessing the significant market power of a licensee, ECTEL and 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 significant market power of the licensee 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 ability of the licensee to influence market conditions.
- (3) Notwithstanding subsection (1), a licensee may apply to the Commission to have its status as having significant market power reviewed, on such terms and according to such procedures as the Commission may determine, acting on a recommendation from ECTEL.

## **77. SPECIFIC FUNCTIONS AND POWERS OF ECTEL WITH REGARD TO MARKET ANALYSIS**

- (1) Pursuant to its powers under Article 5 of the Treaty, ECTEL -
  - (a) shall adopt a recommendation which identifies relevant product and electronic communications service markets within the electronic communications sector in [Name of ECTEL Contracting State], whose characteristics may justify the imposition of specific regulatory obligations set out in this Act;
  - (b) on behalf of the Commission and in consultation with it, shall –
    - (i) perform regular market analysis in [Name of ECTEL Contracting State],
    - (ii) determine if one or more licensees have significant market power in the relevant market in [Name of ECTEL Contracting State].

- (2) In determining the existence of significant market power under subsection (1), the Commission shall -
  - (a) provide ECTEL with all required information;
  - (b) adopt decisions relating to market analysis and determination of licensees that have significant market power in the relevant market in compliance with the findings of ECTEL.

## **78. 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 electronic communication 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 electronic communication services concerned.

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

- (1) Without prejudice to its powers to regulate the tariff of interconnection and access offers, the Commission may –

- (a) carry out tests of non-discrimination on the tariffs of the on-net and off-net offers of the licensees on the retail market to ensure that the price differential between on-net and off-net offers, including promotional offers, do not unduly strengthen its market share at the expense of its competitors;
  - (b) carry out tests to ensure that the structure and level of prices, including promotional offers, of a licensee that is vertically integrated or has significant market power, on the retail market, does not prevent its competitors from providing a competitive offer in reasonably profitable conditions;
  - (c) regulate the maximum difference between the prices of on-net and off-net offers of licensees on the retail market;
  - (d) regulate the abuse of promotional offers in terms of duration and frequency and require the submission of appropriate information to the Commission;
  - (e) request the modification and where appropriate, immediately suspend the commercialization of a licensee's offer on the retail market, in the case of serious and immediate damage to competition in the electronic communications market.
- (2) In the exercise of its powers under subsection (1), the Commission shall consult with ECTEL.

## **80. CONSULTATION WITH THE COMPETITION BODY**

- (1) Where an investigation by the Commission involves anti-competitive business conduct which has the effect of lessening competition in a relevant market in [Name of ECTEL Contracting State], the Commission may consult the Competition body established for [Name of ECTEL Contracting State].
- (2) In consulting with the Competition body, the Commission shall send all documents relevant to the investigation to the Competition body, subject to the Competition body applying the same confidentiality obligations regarding trade secrets as the Commission.
- (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.
- (4) The Commission may share information with other competition bodies.

## PART 6

### UNIVERSAL SERVICE AND ACCESS FUND

#### 81. UNIVERSAL SERVICE AND ACCESS FUND

- [(1) There shall be established a fund to be known as the Universal Service and Access Fund/There shall continue to be a fund to be called the Universal Service and Access Fund/The fund established under section [ ] if the Telecommunications Act known as the universal service fund is preserved and continues in existence for the purposes of this Act but shall be known after the commencement of this Act as the Universal Service and Access Fund.]
- (2) The Minister shall, by Order published in the [Official] Gazette, on the recommendation of ECTEL, specify the percentage of the gross annual 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.

## **82. 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 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 be guided by the actual cost that is incurred in making available the required universal service and access.

## **PART 7**

### **OTHER OFFENCES**

#### **83. 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 ECTEL relating to equipment approval.
- (3) Notwithstanding section 6 or subsections (1) or (2), the Minister may, on the recommendation of ECTEL, 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.]

#### **84. 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.

**85. DISCLOSURE OF PERSONAL INFORMATION**

- (1) A licensee shall not disclose personal information relating to a subscriber except –
  - (a) with the consent of the subscriber; or
  - (b) under a court order under this Act or any other enactment.
- (2) A person 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.

**86. 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.

**87. FAILURE TO APPEAR BEFORE THE COMMISSION**

- (1) A person shall not refuse or fail, without reasonable excuse, to appear before the Commission, having been required to do so under section 94(1) (b).
- (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.

**88. CROSS-SHAREHOLDING**

- (1) A licensee shall not directly or indirectly hold share capital or voting rights of another licensee in any ECTEL Contracting State.
- (2) A licensee who contravenes subsection (1) is liable on summary conviction to a fine of \$50,000 or if the offence is a continuing offence, the licensee is liable to a further fine not exceeding \$5,000 for every day that the offence continues after conviction and in addition to revocation of the licence.

**89. 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, 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 (1) and (2) commits an offence and is liable on summary conviction to a fine not exceeding \$1000 or if the offence is a continuing offence, the licensee or frequency authorization holder is liable to a further fine not exceeding \$5,000 for every day that the offence continues after conviction.

#### **90. FAILURE TO COMPLY WITH DIRECTIONS**

- (1) A licensee or frequency authorization holder shall comply with a direction of the Commission under section 13(2)(e).
- (2) A licensee or frequency authorization holder 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. ADMISSIBILITY OF CODE OF PRACTICE**

- (1) A licensee or frequency authorization holder shall at all times follow the codes of practice issued by the Commission under section 13(2)(f).
- (2) In all proceedings under this Act, the codes of practice issued by the Commission is admissible in evidence, and if any provision of a code of practice appears to the court or body conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

#### **92. 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, 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**

### **93. INVESTIGATION AND WARRANT ON SUSPICION OF CONTRAVENING THIS ACT**

- (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 any provision under this Act.
- (2) Where the Commission reasonably suspects that a person is contravening a provision under this Act, an inspector may lay before a Magistrate, an information on oath setting out the grounds for the suspicion and apply for 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 [180] 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 [180] 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.

#### **94. INVESTIGATION OF BREACHES**

- (1) Where the Commission reasonably suspects that a licensee or a frequency authorization holder is in breach of this Act, the Regulations or a licence or a frequency authorization as the case may be or where an allegation of breach is made to the Commission against a licensee or frequency authorization holder, an inspector may conduct any investigation it considers necessary in relation to the licensee or frequency authorization 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 authorization holder;
  - (b) request the appearance of an officer or employee of the licensee or frequency authorization holder, or any other person for the purpose of ascertaining compliance with this Act, the Regulations or the licence or frequency authorization;
  - (c) inspect, examine or make copies of any document or record in the possession of the licensee or frequency authorization holder relevant to the licence or frequency authorization;
  - (d) require the verification of income and all other matters pertinent to the electronic communications service, the licence or the frequency authorization;
  - (e) enter and inspect any vehicle, ship, vessel, aircraft or premises occupied or owned by the licensee or the frequency authorization holder for the purpose of ascertaining compliance with this Act, the Regulations, the licence or the frequency authorization;
  - (f) seize, remove or impound any document relating to the licence or frequency authorization for the purpose of examination and inspection; or
  - (g) seize any apparatus relating to the licence or frequency authorization 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.

**95. OBTAINING OR PRESERVING EVIDENCE**

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.

**96. FORFEITURE AND INJUNCTIVE RELIEF**

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

- (a) make an order for forfeiture of any equipment used 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**

**97. COMPLAINTS**

- (1) Subject to subsection (2), where a complaint has been made to a licensee under section 68 and the dispute has not been resolved by the licensee, a complaint may be made to the Commission by —
  - (a) subscribers or other members of the public against a licensee;
  - (b) a licensee against another licensee;
  - (c) persons using frequency authorizations;
  - (d) a retail customer against a licensee or against 2 or more licensees;
  - (e) a landowner against a licensee.

- (2) Where a complaint is made under subsection (1)(b), the Commission shall refer the complaint to ECTEL in accordance with Article 13 of the Treaty.
- (3) A complaint pursuant to subsection (1) shall be in the prescribed form.
- (4) Where the Commission receives a complaint under subsection (1) or ECTEL receives a complaint under subsection (2), the Commission or ECTEL shall give a certified copy of the complaint to the complainant.

**98. REQUEST FOR FURTHER INFORMATION**

- (1) Upon receipt of a complaint pursuant to section 97, 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.

**99. NOTIFICATION OF LICENSEE**

Immediately after receipt of a complaint under section 97, 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.

**100. RESPONSE BY LICENSEE**

Where a licensee is notified pursuant to section 99, the licensee may, within 10 days submit a response to the complaint to the Commission.

**101. DISPOSITION OF COMPLAINT**

- (1) The Commission shall assess the complaint and the response if provided 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 ECTEL for consideration and advice concerning impact on regional policy issues;
  - (d) wherever practicable and in the prescribed manner apply mediation or arbitration to resolve the dispute;
  - (e) refer the complaint to the Competition body;
  - (f) refer the complaint to the [Consumer Protection Board];

- (g) refer the complaint to the Tribunal; or
  - (h) 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.

## **102. 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.

## **103. TRACKING BY LICENSEE**

- (1) Where a licensee is notified of a complaint pursuant to section 99, 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 Record Tracking System for the purpose of tracking the status of resolution of complaints between itself and the complainant.

## **104. 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.

#### **105. 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 dispute.
- (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.

#### **106. 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 Register Tracking System for the purpose of tracking the status of resolution of complaints.

#### **107. REPORTING BY COMMISSION**

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

#### **108. ESTABLISHMENT OF TRIBUNAL**

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

#### **109. CONSTITUTION OF TRIBUNAL**

- (1) Subject to subsection (2), the Tribunal consists of 3 members appointed by the [Chief Justice/Judicial and Legal Services Commission] as follows –
  - (a) a Chairperson who is a legal practitioner of not less than 10 years standing; and

- (b) other members who have training or experience in one or more of the following areas –
  - (i) finance and accounting,
  - (ii) information and communications technology,
  - (iii) the type of electronic communications to be considered in the dispute,
  - (iv) economics,
  - (v) competition,
  - (vi) project management,
  - (vii) business administration, or
  - (viii) regulatory experience and training.
  
- (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 an electronic communications service or supplying goods to a licensee under a contract;
  - (d) is an undischarged 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.

#### **110. FUNCTION OF TRIBUNAL**

The function of the Tribunal is to hear complaints and resolve disputes including breaches of licenses, matters of competition and other breaches referred to it by the Commission.

#### **111. POWERS OF TRIBUNAL**

- (1) The powers of the Tribunal are 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 subsection (1) 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 [\$1500].
- (4) A party to a matter before the Tribunal is entitled to appear at the hearing and may be represented by an [attorney-at-law] or any other person who in the opinion of the Tribunal is competent to assist the person in the presentation of the matter.
- (5) The Tribunal may with respect to a matter brought before it —
  - (a) make provisional or interim orders or awards relating to the matters or part of the matter, or give directions 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 decision;
  - (d) where a licensee is in breach of the competition provisions in Part 5 –
    - (i) issue an enforcement order against the licensee having significant market power;
    - (ii) order the cessation of abusive conduct or specify changes in the conduct of a licensee to limit the abusive aspects;
    - (iii) recommend the suspension or revocation of the licence,
    - (iv) order compensation to be paid to subscribers or competitors injured by the abusive conduct;
    - (v) order the restructuring of the licensee, or

- (vi) facilitate and approve settlement with the aggrieved licensee;
- (e) where after an investigation under section 94, the Tribunal finds that a licensee or frequency authorization holder is in breach of this Act, the Regulations, the licence or the frequency authorization, the Tribunal may -
  - (i) direct that the licensee or frequency authorization holder take remedial action and stipulate a time period within which such remedial action is to be completed,
  - (ii) direct the licensee or frequency authorization holder to compensate one or more of its subscribers for foreseeable damage caused to the subscriber within a specific time period,
  - (iii) recommend the suspension or revocation of the licence or frequency authorization by the Minister; or
  - (iv) 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.
- (6) Notwithstanding the power of the Tribunal to recommend the suspension or revocation of the licence or frequency authorization for breach, a licensee or frequency authorization holder that fails to comply with a direction given by the Tribunal under subsection (5)(e)(ii) the Commission may enforce the decision of the Tribunal by taking the matter to the High Court.

#### **112. 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.

#### **113. 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.

#### **114. 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].

#### **115. 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.

#### **116. 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 [Official Gazette].

#### **117. 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.

#### **118. REMUNERATION AND ALLOWANCES**

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

#### **119. 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.

#### **120. 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.

#### **121. 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.

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

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

#### **123. CONTINUATION OF SERVICE OR NETWORK DURING COMPLAINT PROCESS**

- (1) Notwithstanding any provision of a customer agreement, a licensee which is a party to a dispute shall not during the period of the dispute terminate the electronic communications service or electronic communications network to —
  - (a) a subscriber; or

- (b) any member of the public,  
for breach of contract or non-payment, unless specifically approved by the Tribunal after notice of the termination in writing to the 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 dispute between parties shall not cause the partial or total disconnection of an electronic communications network or electronic communications service, unless the Tribunal determines that such partial or total disconnection is necessary and so advise in the decision.

## **PART 10**

### **MISCELLANEOUS**

#### **124. FEES**

- (1) The Commission shall receive fees payable under this Act.
- (2) Application fees and other fees are payable to the Commission and shall form part of the revenue of the Commission.
- (3) Fees with respect to spectrum are payable to ECTEL and shall form part of the revenue of ECTEL.
- (4) Initial fees and annual licence fees shall be paid to the Consolidated Fund.

#### **125. 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.

**126. STOPPAGE OF COMMUNICATIONS**

No communication which appears dangerous to the security of [Name of ECTEL Contracting State] or contrary to public order or decency shall be accepted for transmission, and if, in the opinion of the person receiving it, the message contains elements that constitute an offence, he or she shall immediately inform the Commission and the Commission shall take the necessary appropriate action.

**127. EXCHANGE OF INFORMATION**

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

**128. COPYRIGHT**

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

**129. PERMISSION UNDER OTHER LAWS**

If a licensee or frequency authorization holder requires permission from an authority other than the Commission or ECTEL in order to provide an electronic communications service, this Act does not prevent the licensee or frequency authorization holder from obtaining that permission.

**130. GENERAL PENALTY**

A person who contravenes or fails to comply with any of the provisions of this Act or Regulations made under this Act for which no penalty is specifically provided is liable on summary conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a fine not exceeding \$1,000 for each day that the offence continues after conviction.

**131. APPEAL**

- (1) A person may appeal to the Tribunal against any investigation or disposition of a complaint by the Commission within 28 days of the investigation or disposition of the complaint.
- (2) A person may appeal to the High Court against –
  - (a) any decision of the Minister;
  - (b) any decision of ECTEL;

- (c) any decision other than a decision under subsection (1); or
- (d) any decision of the Tribunal,

made under this Act within 28 days of the decision or order being made.

### **132. AMENDMENT OF SCHEDULES**

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

### **133. REGULATIONS**

- (1) The Minister may, on the recommendation of ECTEL, make Regulations to give effect to the objects and provisions of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may, on the recommendation of ECTEL, make Regulations providing, in particular, for or in relation to —
  - (a) forms, procedures and time frames in respect of the grant of a licence or a frequency authorization;
  - (b) matters relating to the provision of universal service and access and the management of the Universal Service and Access Fund;
  - (c) the type of terminal equipment to be connected to a public electronic communications network;
  - (d) public safety standards relevant to electronic communications;
  - (e) interconnection between licensees, and the sharing of infrastructure by licensees;
  - (f) interconnection agreements;
  - (g) matters relating to the allocation of numbers among the licensees;
  - (h) stoppage or interception or disruption of information and communications;
  - (i) management of the spectrum;
  - (j) adopting codes of practice relevant to the electronic communications sector with or without amendment;
  - (k) the procedure and standards relating to the submission, review and approval by the Commission of tariffs;
  - (l) the control, measurement and suppression of electromagnetic interference in relation to the working of apparatus;
  - (m) matters of confidentiality including on the part of all persons employed in or in any way connected with the maintenance and working of any electronic communications network or apparatus;
  - (n) public inspection of records of the Commission;
  - (o) procedures for the treatment of complaints;

- (p) procedures for dispute resolution;
  - (q) matters for which guidelines are to be issued by the Commission;
  - (r) matters relating to the quality of electronic communication 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) consumer electronic communications service agreements;
  - (bb) confidentiality of customer information;
  - (cc) emergencies;
  - (dd) guidelines on market analysis and assessment of significant market power;
  - (ee) access to network infrastructure;
  - (ff) wholesale access or electronic communication services; or
  - (gg) retail pricing;
  - (hh) reasonable traffic management by licensees.
- (3) Without limiting the generality of subsection (1), the Minister may, on the recommendation of ECTEL, make Regulations creating offences for breach of any provision of the Regulations and for a penalty not exceeding \$5000 for any such offence.
- (4) ECTEL 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.

#### **134. 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 authorized 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 subsequently, the person shall require a licence or frequency authorization under this Act.
- (4) A declaration of dominance or determination of significant market power at the date of the entry into force of this Act is deemed to be a declaration of dominance or determination of significant market power under this Act.

# 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

(Section 36)

### LICENCE SUB-CLASSES

<b>Licence</b>	<b>Sub-class</b>
Class	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
Individual	Fixed Electronic Communications Network Internet Electronic Communications Network Public Mobile Electronic Communications Network Public Radio Paging Submarine Cable Landing Subscriber Television Number Portability Administration Services
Special	Emergency Exigency

## SCHEDULE 3

(Sections 37 and 39)

### CONDITIONS FOR LICENCES AND FREQUENCY AUTHORIZATIONS

Licences and frequency authorizations 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 authorization 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 authorization 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;
- (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 authorization and period for renewal, modification or surrender;
- (n) a condition stipulating that the licence enters into force upon payment by the licensee to ECTEL 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 authorization;
- (s) technical and accounting information to be provided to ECTEL and the Commission;

