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SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 3 of 2002

The Minister responsible for telecommunications, in exercise of the powers conferred under section 54 of the Telecommunications Act 2000, makes these Regulations.

1. SHORT TITLE. These Regulations may be cited as the **TELECOMMUNICATIONS (PRIVATE NETWORK LICENSING) REGULATIONS, 2002.**

2. COMMENCEMENT. These Regulations shall come into force on such day as the Minister by Order published in the Gazette appoints.

3. INTERPRETATION. In these Regulations:

"affiliate" means a relationship between two entities, in which one of them directly or indirectly owns more than fifty percent of the capital stock of, or controls the other entity;

"by pass" means conduct comprising

(a) the passing of an international voice service (including a reconstructable voice service as part of a data or mixed voice/data service) without passing through the international voice network operator; or

(b) the termination of international voice services over the domestic public switched telecommunications network by a person who does not originate the call or possess a valid interconnection agreement with that domestic network operator with respect to international voices services;

"capital stock" includes all forms of equity ownership and partnership interests;

"control" means control in whatever form exercised and is not limited to majority stock ownership, and includes direct or indirect control through intervening subsidiaries;

"licensee group" means the licensee, its parent or subsidiaries, and any affiliate comprising the users of the private telecommunications network;

"private leased circuit" means a telecommunications facility which is provided by means of one or more public telecommunications networks for the conveyance of messages between points, all of which are points of connection between those telecommunications systems. Such a communications facility is made available to persons whereby messages

transmitted at any of the points of connection, are received at every such point, and are fixed by the manner in which the communications facility is installed, and cannot otherwise be selected by a person or a telecommunications apparatus sending messages by means of the facility.

4. OBLIGATION TO GIVE INFORMATION. In any application for a licence to establish or operate a private telecommunications network, the applicant shall include with that application the information specified in **Schedule 1.**

5. SIGNING OF APPLICATIONS. (1) The applicant shall submit a statement to the Commission in writing specifying the date on which it desires to put the private telecommunications network into operation which shall be at least 30 days after the date of that application.

(2) The information referred to in sub-regulation (1) shall be signed by:

(a) an office if the licensee is a member of an unincorporated Association;

(b) an officer or duly authorized employee if the licensee is a company or other business entity;

(c) one of the partners if the licensee is a partnership; and

(d) the licensee personally if an individual.

6. PROCEDURE FOR DEALING WITH AMENDED INFORMATION. A licensee shall forward updated information to the Commission within thirty days from effecting any major change in information originally submitted by submitting a statement with the additional information and a declaration on the anniversary date of the submission of the original statement, specifying the truth and accuracy of the information.

7. LIMITS TO DISCLOSURE OF INFORMATION. (1) The Commission shall maintain a list of persons or entities licensed to establish and operate a private telecommunications network under these Regulations, and shall make that list and any information referred to in **Regulations 5 and 6** available for public inspection at its principal office.

(2) Notwithstanding sub-regulation (1) confidential information shall not be disclosed to members of the public.

8. PROHIBITION. (1) A private telecommunications network shall only be established or operated by means of:

(a) telecommunications facilities provided by a person licensed to operate a public switched telecommunications network; or

(b) telecommunications facilities in respect of which a licensee is licensed to operate;

(2) A private telecommunications network operator who uses facilities under **sub regulation (1)** shall not be interconnected to the public switched telecommunications network or have switched telecommunications services.

(3) A licence to establish and operate a private telecommunications network shall not as a condition of that licence, restrict the services provided to the licensee by itself to voice traffic or data traffic, or similar limited use.

9. RESALE OF EXCESS CAPACITY ON PTN. (1) A licensee of a private telecommunications network shall be entitled to:

(a) cede or assign the rights to use excess capacity on private telecommunications network facilities;

(b) resell excess capacity on private telecommunications network facilities; or

(c) sublet or surrender control of the private telecommunications network facilities on a long-term basis.

(2) Where a licensee resells its excess capacity on or sublets or surrenders control of, its private telecommunications network facilities ("resale"), that resale must:

(a) be incidental to the purposes of the private telecommunications network;

(b) offered only to licensed operators; and

(c) not prevent the rightful and proper use of the private telecommunications network by any member of the licensee group.

10. BYPASS PROHIBITION. A person shall not engage in bypass.

11. MESSAGES TO CEASE. Where a private telecommunications network is used for the purpose of advertising the sale of goods, services or any other thing by sending messages to the number of an end-user a licensee who receives a request from that end-user to cease sending such messages shall cease forthwith.

12. SAFEGUARD FOR CONFIDENTIALITY. A licensee shall take all reasonable steps to:

(a) ensure the accuracy and reliability of any metering system used in connection with a private telecommunications network;

(b) keep records of all metering which shall be made available to the Commission, upon request;

(c) safeguard information acquired by the licensee in relation to the conveyances of communications; and

(d) safeguard the privacy and confidentiality of any communications conveyed relating to the private telecommunications network.

13. RESTRICTION ON UNFAIR PRACTICES. (1) A licensee shall not, whether by any act or omission, do anything which results in or is intended to have, or is likely to have the effect of distorting, preventing or restricting competition in the course of, or as a result of, or in connection with the establishment or operation of a private telecommunications network licensed under these Regulations.

(2) No public telecommunications operator shall disconnect or suspend service to any operator of a private telecommunications network for any reason other than:

(a) as required by law or pursuant to any order issued by the Commission; or

(b) in accordance with the terms of any contract for the provision of that service; or

(c) if the operator believes on reasonable grounds that the private operator is engaging in bypass.

14. NOTICE OF VIOLATION. (1) Where there are reasonable grounds to suspect that a licensee holding a private telecommunications network licence violates any provision of the Act or Regulations, the licensee shall be served with a written notice by the Commission requesting an explanation of the alleged violation.

(2) The licensee shall submit a written answer in duplicate to the Commission within 7 days from receipt of the notice, or during such other period as may be specified in the notice.

(3) Where an answer cannot be furnished within the specified period due to unavoidable circumstances, the licensee shall acknowledge the notice and request extension of time setting forth in the letter of acknowledgement, a satisfactory explanation for the delay and the reasons for the extension.

15. NOTIFICATION OF REVOCATION. (1) Before revoking a license, the Commission shall give the licensee written notice of its intention to do so, and provide the licensee a period of not less than 28 days from the date of the notice in which to make representations in relation to such proposed revocation.

16. REVOCATION OF LICENCE. (1) The Minister may on the advice of the Commission revoke a licence held by a licensee which relates to all or any part of a private telecommunications network established or operated by that licensee in the following circumstances where:

(a) the Licensee has repeatedly or willfully engaged in bypass;

(b) the Commission has given the licensee not less than 30 days notice in writing that failure by the licensee to comply with a directive within that period would result in the revocation of the licence in respect of that licensee or of all or any part of the PTN operated by that licensee;

(c) the Licensee fails to secure the required frequency authorization in respect of radio communications equipment which is part of the private telecommunications network;

(d) the Licensee has failed to comply with a final order of the Commission;

(e) the Licensee is convicted of committing an offence under the Act; or

(f) the Minister determines that revocation of the licence is required in respect of the licensee in the interests of national security.

17. REPORTING OBLIGATIONS. A licensee shall keep, maintain and provide to the Commission annual traffic reports relating to the utilization and disposal of any excess capacity on a private telecommunications network that has been sold pursuant to **Regulation 9.**

SCHEDULE 1

INFORMATION REQUIRED FOR SUBMISSION BEFORE ESTABLISHING A PRIVATE TELECOMMUNICATIONS NETWORK

The licensee shall submit the following information:

(a) A description of the nature and purpose of the service to be provided by the proposed private telecommunications network, including:

(i) a description of terminal equipment comprising the private telecommunications network including the equipment to be used and to be provided by the licensee;

(ii) a detailed description of technical aspects of proposed private telecommunications network including but not limited to a descriptive configuration of the proposed private telecommunications network;

(iii) a statement certifying that the equipment complies with type approval requirements in Saint Christopher and Nevis including a statement of compliance from a recognized approval agency;

(iv) full details of the premises where the elements of the proposed private telecommunications network will be located;

(v) the area of operation of the proposed private telecommunications network; and

(vi) the public telecommunication system or private leased circuit to which the private telecommunications network is to be connected;

(b) A description of the members of the licensee group;

(c) A list of any other countries that are signatories to the Eastern Caribbean Telecommunications Authority Agreement, where the applicant intends to apply for or has applied for, or has been granted an individual licence, a class licence, a frequency authorization or a cable landing licence;

(d) Any information deemed relevant by the applicant;

(e) A statement that the licensee intends to establish and operate a private telecommunications network;

(f) A statement whether any individual or class licence to provide facilities or services in Saint Christopher and Nevis or a frequency authorization to utilize frequencies in Saint Christopher and Nevis has previously been granted to the licensee under the Act, and if so a general description of the categories of facilities, services or frequency so authorised;

(g) The E-Mail address, name, post office address, telephone number and title of the licensed registered office;

(h) The E-Mail address, name, post office address, telephone number and the title of the officer and any other contact person to whom correspondence concerning the licence is to be addressed.

(i) The following details where the private telecommunications network is to be connected to any private leased circuit provided by a satellite system using a very small aperture terminal (also known as VSAT):

(i) the antenna, facility site, identification numbers, antenna identification number, manufacturer and model number of the antenna, number of antenna to be used by the private telecommunications network, antenna size in meters, antenna gain both transmit and/or gain receive expressed in C _____ d Bi at – GHz with respect to the VSAT earth statium antenna to be used by the private telecommunications network;

(ii) the destination points in Saint Christopher and Nevis and any foreign country for the private telecommunications network communications using the satellite;

(iii) the frequency coordination limits of the VSAT;

(iv) the maximum antenna height and maximum power limit for each antenna;

(v) the particulars of operation for each RF. carrier for each antenna;

(vi) the satellite name and orbit location; and

(vii) a statement that the licensee will cooperate with any other licensee whose VSAT operation is potentially or adversely affected by the first mentioned licensee's operation, in order to reach an agreement in good faith, for modification of power density levels in either or both systems, and to facilitate operations without harmful interference;

(j) The particulars of the International simple resale bearer circuit and other telecommunication system where the private telecommunications network is to be connected to that international simple resale bearer circuit;

(k) The state or territory where the corporation, partnership or other business enterprise is incorporated; and

(l) Whether the licensee is a partnership, corporation or other business enterprise.

For the purpose of paragraph (i) subparagraph (iii) the frequency coordination limits of the VSAT includes:

(a) antenna elevation angles;

(b) earth station azimuth angles;

(c) frequency limits in MHz;

(d) satellite arc ranges; and

(e) the maximum EIRP density toward the horizon (d BW/4kHz).

For the purpose of paragraph (i) subparagraph (iv) the maximum antenna height and the maximum power limit for each antenna includes the:

(a) building height above ground level in meters;

(b) maximum antenna height above roof-top in meters;

(c) maximum antenna height in meters above ground level and above mean sea level;

(d) total EIRP for all carriers, expressed in d B W; and

(e) total input power at antenna flange, expressed in watts.

For the purposes of paragraph (i) subparagraph (v) the particulars operation for each RF. carrier for each antenna includes:

(a) a description of the modulation techniques and services provided;

(b) antenna polarization (H,V,L,R);

(c) emission designator;

(d) the frequency bands used (MHz);

(e) maximum EIRP density per-carrier (dBW/4kHz);

(f) maximum EIRP per-carrier (dBW); and

(g) transmit/receive mode.

Made this 22nd day of January 2002.

SAM TERENCE CONDOR
Minister responsible for Telecommunications

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