

SAINT LUCIA

No. 27 of 2000

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I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

22nd November, 2000.

SAINT LUCIA

No. 27 of 2000

AN ACT to provide for the regulation of telecommunications, to establish the National Telecommunications Regulatory Commission, and for related or incidental matters.

[On Proclamation]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

PART I
PRELIMINARY

Short title

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

Commencement

2. This Act shall come into force on a date as is fixed by the Governor-General by Proclamation.

Principal object of Act

3.— (1) The principal object of this Act is to give effect to the purposes of the Treaty and to regulate the telecommunications sector in Saint Lucia.

(2) Without limiting the generality of subsection (1) the objects of this Act are to ensure —

- (a) open entry, market liberalisation, and competition in telecommunications;
- (b) policies and practices in relation to the management of telecommunications are in harmony with those of ECTEL;
- (c) the operation of a universal service regime so as to ensure the widest possible access to telecommunications at an affordable rate by the people of Saint Lucia in order to enable them to share in the freedom to communicate over an efficient and modern telecommunications network;
- (d) fair pricing and the use of cost-based pricing methods by telecommunications providers in Saint Lucia;
- (e) fair competition practices by telecommunications providers;
- (f) the introduction of advanced telecommunications technologies and an increased range of services;
- (g) the public interest and national security are preserved;
- (h) the application of appropriate standards in the operation of telecommunications;
- (i) the overall development of telecommunications in the interest of the sustainable development of Saint Lucia.

Interpretation

4.— (1) In this Act, unless the context otherwise requires —

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

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

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

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

“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;

“class licence” means a licence, as distinct from an individual licence, issued on the same terms to each applicant of a category of users in respect of the operation of a type of telecommunications network or telecommunications service specified under section 7;

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

“commissioner” means a commissioner appointed pursuant to section 8;

“document” includes an electronic document;

“diplomatic missions” include international organisations accredited to Saint Lucia;

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

“frequency authorisation” means an authorisation granted by the Minister under section 36 to use radio frequencies in connection with the operation of a network or the provision of services under an individual licence or class licence or otherwise;

“frequency fees” means the prescribed fee payable by a frequency authorisation holder:

- “individual licence” means a licence granted to a particular person in accordance with section 30 on terms specific to that person;
- “infrastructure” includes facilities, submarine cables and landing sites, towers, sites and underground facilities
- “infrastructure sharing” means the joint utilisation of a particular physical structure, segment, element, or feature of the entire infrastructure;
- “inspector” means a person appointed under section 52;
- “interconnection” means the connection of two or more separate telecommunication systems, networks, links, nodes, equipment, circuits and devices involving a physical link or interface.
- “land” includes any land under whatever tenure held and easement, servitude, right or privilege in or over land;
- “licence” means an individual licence or a class licence;
- “licence fees” means the initial, annual and renewal fees payable by an applicant;
- “Minister” means the Minister to whom responsibility for telecommunications is assigned;
- “park” means an enclosed or private space set apart for ornament or to afford the benefit of pleasure and recreation;
- “person” includes any corporation, either aggregate or sole, any partnership or association, and any undertaking, club, society, or other body of one or more persons and any individual;
- “private network” means a system to provide telecommunications service to a person or entity that is for the sole and exclusive use of that person or entity and is not interconnected with the public telecommunications network;
- “public telecommunications network” means a telecommunications network used for the provision of telecommunications services to the public;
- “public voice telephony services” means the commercial provision to the public of the direct transport and switching of voice telephony in real time from and to network termination points;
- “radio communications” means the transmission, emission or reception of signs, signals, text, images and sounds, or other intelligence of any nature by radio;

- “radio equipment” means any equipment or apparatus designed or used for radio communications;
- “records” includes existing licences, frequency authorisations, telecommunications equipment approvals, policy or operational documents, orders and documents relating to decisions;
- “Regulations” means Regulations made pursuant to section 74;
- “road” means any road or street or part thereof and includes all bridges, culverts, embankments, approaches, drains, verges, pavements kerbs, footpaths, parapets and other works or things, forming part of any road or street;
- “site” means land, or a building on land or a structure on land;
- “special licence” means a licence granted pursuant to provisions of section 7 by the Minister in an emergency or other exigent circumstances;
- “telecommunications” means any form of transmission, emission, or reception of signs, text, images and sounds or other intelligence of any nature by wire, radio, optical or other electromagnetic means;
- “telecommunications facilities” means any facility, apparatus or other thing that is used or capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility;
- “telecommunications network” means any wire, radio, optical, or other electromagnetic system used to route, switch, or transmit telecommunications;
- “telecommunications provider” means a person who is licensed under this Act to operate a telecommunications network or to provide telecommunications services;
- “telecommunications services” means services provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise, or such other services as may be prescribed by the Minister from time to time;
- “tender fees” means the fees payable by an applicant for an individual licence in order to participate in an open tender procedure ;

“terminal equipment” means equipment intended to be connected directly or indirectly to the network termination point of a telecommunications network in order to emit, transmit, or receive telecommunications 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 4th of May, 2000 and includes that Treaty as amended from time to time;

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

“Universal Service Fund” means the Fund established for the promotion of universal service by Section 44 of this Act;

“Universal service” includes the provision of —

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

(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 .

Act to bind State

5. This Act binds the State.

Non-application of Act

6.— (1) This Act shall not apply to —

- (a) the program content and scheduling, as opposed to the transmission aspects of broadcasting networks and services;
- (b) telecommunications networks and 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 authorisation;

(c) any terminal equipment used for the purposes of paragraphs (a) or (b).

(2) The Minister may, on the recommendation of ECTEL, by Order, exempt any category of ship or aircraft, or person or type of network or service from this Act.

(3) The Minister may by Order exempt a Diplomatic Mission from the requirements of this Act.

(4) Any exemptions under sub-section (2) or (3) may be subject to conditions.

Powers of Minister

7.— (1) The Minister may grant —

- (a) an individual licence;
- (b) a class licence;
- (c) a frequency authorisation in respect of a licence; or
- (d) a special licence.

(2) Where the Minister fails to grant to an applicant a licence or frequency authorisation he or she shall give that applicant his or her reasons for that decision in writing.

(3) The Minister, on receipt of a recommendation from ECTEL shall by notice published in the *Gazette*, specify the telecommunications networks and services that are subject to an individual licence, a class licence or a frequency authorisation.

(4) In the exercise of his or her powers the Minister shall consult with the Commission.

(5) The Minister shall wherever practicable in the exercise of his or her powers —

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

PART II**THE NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION,
ITS FUNCTIONS AND POWERS****Establishment of Commission**

8.— (1) There is established a Commission under the general direction and control of the Minister to be known as the National Telecommunications Regulatory Commission.

(2) The Commission shall consist of not less than three and not more than five commissioners, all of whom shall be appointed by the Minister on such terms and conditions as he or she may specify in their instruments of appointment.

(3) The Minister shall appoint one of the commissioners to be the Chairperson.

Qualifications and tenure of commissioners

9.— (1) The commissioners shall be persons of recognised standing and experience, all of whom may be drawn from the following disciplines —

- (a) finance and accounting;
- (b) telecommunications;
- (c) economics;
- (d) law; or
- (e) other related fields

except that at least one of the commissioners shall be a person of recognised standing and experience in telecommunications.

(2) A commissioner holds office for a period of three years unless he or she resigns or is removed from office in accordance with this Part.

Resignation of commissioners

10.— (1) A Commissioner, other than the Chairperson, may resign his or her office in writing addressed to the Minister through the Chairperson.

(2) The Chairperson of the Commission may, at any time, in writing addressed to the Minister resign from his or her office.

Termination of office

- 11.** The Minister shall remove a Commissioner from office —
- (a) for inability to perform the functions of his or her office;
 - (b) for being absent from three consecutive meetings of the Commission or five meetings in aggregate during any twelve month period of his or her term of appointment;
 - (c) if he or she is declared bankrupt or compounds with his creditors;
 - (d) for misconduct; or
 - (e) for any other conduct inconsistent with his or her function.

Functions of Commission

- 12.—** (1) The functions of the Commission are to —
- (a) advise the Minister on the formulation of national policy on telecommunications matters with a view to ensuring the efficient, economic and harmonised development of the telecommunication and broadcasting services and radio communications of Saint Lucia;
 - (b) ensure compliance with the Government's international obligations on telecommunications;
 - (c) be responsible for technical regulation and the setting of technical standards of telecommunications and ensure compatibility with international standards;
 - (d) plan, supervise, regulate and manage the use of the radio frequency spectrum in conjunction with ECTEL, including the assignment and registration of radio frequencies to be used by all stations operating in Saint Lucia or on any ship, aircraft, vessel, or other floating or airborne contrivance or spacecraft registered in Saint Lucia;
 - (e) regulate prices for telecommunications services;
 - (f) advise the Minister in all matters related to tariffs for telecommunications service;
 - (g) collect all fees prescribed and any other tariffs levied under this Act or Regulations;
 - (h) receive and review applications for licences and advise the Minister accordingly;

- (i) monitor and ensure that licensees comply with the conditions attached to their licences;
- (j) review proposed interconnection agreements by telecommunications providers and recommend to the Minister whether or not he should approve such agreements;
- (k) investigate and resolve any dispute relating to interconnections or sharing of infrastructure between telecommunications providers;
- (l) investigate and resolve complaints related to harmful interference;
- (m) monitor anti-competitive practices in the telecommunications sector and advise the national body responsible for the regulation of anti-competitive practices accordingly;
- (n) maintain a register of licensees and frequency authorisation holders;
- (o) provide the Minister with such information as he may require from time to time;
- (p) undertake in conjunction with other institutions and entities where practicable, training, manpower planning, seminars and conferences in areas of national and regional importance in telecommunications;
- (q) report to and advise the Minister on the legal, technical, financial, economic aspects of telecommunications, and the social impact of telecommunications;
- (r) manage the universal service fund;
- (s) perform such other functions as are prescribed.

(2) In the performance of its functions the Commission shall where necessary, consult and liaise with ECTEL.

Powers of Commission

13.— (1) The Commission shall have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(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 a licence, frequency authorisation or this Act;
- (b) require payment of fees;
- (c) initiate legal proceedings against a licensee or authorised frequency holder for the purposes of compliance;
- (d) hold public hearings pertaining to its functions;
- (e) sit as a tribunal;
- (f) do anything incidental to its powers.

Records

14.— (1) Subject to subsection (2), a record of the Commission shall, upon request, be available for public inspection at the offices of the Commission on payment of the prescribed fee.

(2) The following records shall not, except in accordance with this section, be made available to the public for inspection:

- (a) records relating to the internal personnel rules and practices of the Commission;
- (b) personnel records, medical records, and other records whose disclosure would constitute an invasion of personal privacy;
- (c) secret records relating to national defence or security;
- (d) records of intra-governmental communications relating to governmental decision processes;
- (e) records of information obtained by the Commission in the course of its frequency monitoring activities;
- (f) records containing information relating to the valuation of the property of the telecommunications providers;
- (g) records of trade secrets or proprietary commercial, financial or technical information which is customarily guarded from competitors;
- (h) records of information which are subject to judicial privilege; and
- (i) records which are not open to public inspection by virtue of the provisions of any enactment .

(3) The Commission shall make available records referred to in paragraphs (d) of subsection (2) through the discovery process in court proceedings.

(4) The Commission shall not disclose an investigative record compiled for enforcement purposes for public inspection if to do so —

- (a) interferes with enforcement proceedings;
- (b) deprives a person of the right to fair trial or impartial adjudication;
- (c) constitutes an unjustified invasion of personal privacy;
- (d) discloses the identity of a confidential source;
- (e) discloses investigative techniques or procedures; or
- (f) endangers the life or physical safety of the law enforcement personnel or any other person.

(5) An application for authorisation of equipment and materials relating to an application for a licence or frequency authorisation is not available for public inspection until the Commission approves the application for a licence or frequency authorisation.

(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 *Gazette*:

- (a) licences issued, modified, renewed or revoked;
- (b) exemptions granted under the Act; and
- (c) enforcement orders of the Commission.

Commission to provide guidelines

15.— (1) The Commission may, on the recommendation of ECTEL, provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined, and on other matters as prescribed.

(2) Guidelines determined by the Commissioner under subsection (1) shall be Available to the public at the office of the Commission during business hours or made available to a person on payment of the prescribed fee.

(3) The Commission may give written directions to a licensee or frequency authorisation holder in connection with the performance of its functions or to implement the guidelines of the Commission.

Commission to investigate complaints

16.— (1) The Commission shall investigate a complaint by a person who is aggrieved by the actions or conduct of a telecommunications provider in respect of a decision against that person.

(2) The Commission shall investigate a complaint only where that person has first sought redress for the complaint from that telecommunications provider and that complaint has not been amicably resolved.

Disputes between licensees

17.— (1) The Commission, when presented with a dispute between licensees requiring an interpretation of licences, frequency authorisations or regulations, shall refer the matter to ECTEL with a request that ECTEL provide the Commission with an opinion, or with the consent of the licensees refer the matter to ECTEL for mediation or arbitration and in keeping with the provisions of the Treaty.

(2) The Commission shall take account of the opinion and recommendation of ECTEL in resolving the relevant dispute.

Dispute resolution

18.— (1) The Commission shall, wherever practicable, apply conciliation, mediation, and alternative dispute resolution techniques in resolving disputes

(2) For the following purposes the Commission is hereby established as a telecommunications tribunal —

- (a) to hear and determine disputes between licensees of telecommunications services;
- (b) to hear and adjudicate disputes between licensees and the public involving alleged breaches of the Act or regulations, or licences or frequency authorisations;
- (c) to hear and determine complaints by subscribers relating to rates payable for telecommunications services;
- (d) to hear and determine claims by a licensee for a change in rates payable for any of its services;

- (e) to hear and determine objections to agreements between licensees;
- (f) of its own motion or at the instance of the Minister, to review and determine the rate payable for any telecommunications service;
- (g) to hear and determine complaints between licensees and members of the public.

(3) The tribunal under subsection (2) shall comprise the chairperson and two other Commissioners nominated for the purpose by the Chairperson.

(4) Where a Commissioner withdraws from any proceedings on a matter before the Commission on account of interest, illness or otherwise, the Commission shall not be disqualified for the transaction of business by reason of such vacancy among its members, save that in the case of an equality of votes the Chairperson shall have a casting vote.

Hearing of matter by Commission

19.— (1) The Commission shall expeditiously hear and inquire into and investigate any matter which is before it, and in particular shall hear, receive and consider statements, arguments and evidence made, presented or tendered —

- (a) by or on behalf of any complainant;
- (b) by or on behalf of the telecommunications licensee or provider;
- (c) on behalf of the Minister.

(2) The Commission shall determine the periods that are reasonably necessary for the fair and adequate presentation of the matter by the respective parties thereto and the Commission may require those matters to be presented within the respective periods so determined.

(3) The Commission may require evidence or arguments to be presented in writing and may decide the matters upon which it will hear oral evidence or arguments.

(4) All matters brought before the Commission shall be determined by a majority of the members thereof.

(5) Any party to a matter brought before the Commission shall be entitled as of right to appeal to the Court of Appeal from any judgement, order or award of the Commission.

Appearance

20. Every party to a matter shall be entitled to appear at the hearing thereon, and may be represented by an attorney or any other person who in the opinion of the tribunal is competent to assist such person in the presentation of the matter.

Powers of Commission when sitting as a tribunal

21.— (1) The Commission shall have powers to:

- (a) issue summons to compel the attendance of witnesses;
- (b) examine witnesses on oath, affirmation or otherwise; and
- (c) compel the production of documents.

(2) Summons issued by the Commission shall be under the hand of the Chairperson.

(3) Sections 64, 65, 66 and 67 shall apply in respect of the commission when sitting as a tribunal.

Awards

22. In addition to the powers conferred on the Commission under section 13, the Commission may, in relation to any matter brought before it —

- (a) make provisional or interim orders or awards relating to the matters or part thereof, or give directions in pursuance of the hearing or determination;
- (b) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter or part thereof if it appears that the matter or part thereof is trivial or vexatious or that further proceedings are not necessary or desirable in the public interest;
- (c) order any party to pay costs and expenses, including expenses of witnesses, as are specified in the order;
- (d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

Review by Commission

23. The commission may review, vary or rescind its decisions or order made by it; and where a hearing is required before that decision or order is made, the decision or order shall not be suspended or revoked without a further hearing.

Directions by the Minister

24. The Minister may give directions to the Commission of a policy nature, and the Commission shall comply with those directions.

Meetings of Commission

25. Meetings of the Commission shall be conducted in accordance with the First Schedule.

Remuneration of Commissioners

26.— (1) Commissioners shall be paid such remuneration as the Minister may determine and specify in their instruments of appointment.

(2) The Commissioner and any other persons whose services the commission deems necessary to engage shall be entitled to receive and shall be paid remuneration for their attendance at an inquiry at such rates as may be approved by the Minister

Staff of Commission

27. The Commission shall have such staff and the services of such specialist persons as is necessary for the performance of its functions.

Annual Report

28.— (1) The Commission shall submit annually to the Minister at the end of each calendar year a report which includes —

- (a) an assessment of the state of telecommunications and its impact and significance for the development of Saint Lucia;
- (b) a description of the activities undertaken by the Commission including recommendations made in respect of licences and frequency authorisations;
- (c) actions taken to promote the Treaty including the implementation of the recommendations, policies and guidelines of ECTEL;

- (d) a financial report of the Commission;
- (e) such other matters as are prescribed.

(2) The Minister shall cause a copy of a report submitted under subsection (1) to be laid before Parliament within twenty-eight days of its receipt by the Minister, or if Parliament is not in session, within twenty-eight days of the commencement of its next session.

PART III

LICENSING OF TELECOMMUNICATIONS PROVIDERS

Prohibition on engaging in services without a licence

29. — (1) A person shall not establish or operate a telecommunications network or provide a telecommunications service without a licence.

(2) Where a frequency authorisation is necessary for or in relation to the operation of a telecommunications network or a telecommunications service, a person shall not operate that network or service without that authorisation.

(3) A person who wishes to land or operate submarine cables within the territory of Saint Lucia for the purpose of connecting to a telecommunications network shall first obtain a licence, in addition to any other approvals, licences or permits required under the law in force in Saint Lucia.

(4) A person who contravenes subsection (1) or (2) or (3) commits an offence and shall be liable on indictment to a fine not exceeding one million dollars or to imprisonment for a period not exceeding ten years.

Procedure of grant of individual licence

30.— (1) An applicant for an individual licence shall submit his application in the prescribed form to the Commission for consideration by ECTEL, together with the prescribed fee.

(2) The Commission shall immediately transmit the application to ECTEL, for its review and recommendation.

(3) On receipt of the recommendation from ECTEL, the Commission shall transmit the application together with ECTEL's

recommendation to the Minister for consideration of the grant of an individual licence.

(2) Where in the absence of an invitation to tender in respect of telecommunications network or service there is only one applicant the Commission shall submit the application to ECTEL for its review and recommendation;

Content of individual licence

31.— (1) The Minister may, in granting the individual licence, include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

(2) An individual licence shall include the terms and conditions specified in Part 2 of the Second Schedule.

Grant of individual licence

32.— (1) The Minister shall, before granting an individual licence, take into account —

- (a) the purposes of the Treaty ;
- (b) the recommendation of ECTEL;
- (c) whether the objective of universal service will be promoted including the provision of public telephony services sufficient to meet reasonable demand at affordable prices;
- (d) whether the interests of subscribers, purchasers and other users of telecommunications services will be protected;
- (e) whether competition among telecommunications providers of telecommunications services will be promoted;
- (f) whether research, development and introduction of new telecommunications services will be promoted;
- (g) whether foreign and domestic investors will be encouraged to invest in telecommunications;
- (h) appropriate technical and financial requirements;
- (i) whether the public interest and national security interests will be safeguarded;
- (j) such other matters as are prescribed.

(2) The Minister shall not grant an individual licence unless ECTEL recommends accordingly.

Procedure for grant of class licence

33.— (1) An applicant shall submit his or her application for a class licence to the Commission in the prescribed form together with the prescribed application fee.

(2) The Commission shall upon receipt of the application determine, whether the particular applicant falls within the definition of a class licence.

Content of class licence

34.— (1) The Minister may, in granting a class licence include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

(2) A class licence shall include the terms and conditions specified in Part 2 of the Second Schedule.

Grant of special licence

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

(2) The Minister may grant a special licence when an emergency or other exigent circumstance exists.

(3) A special licence shall be for a term not to exceed 10 calendar days and shall not be renewable.

(4) The Minister shall immediately upon issue of a special licence, inform the Commission and ECTEL.

Grant of frequency authorisation

36.— (1) An applicant for a frequency authorisation shall submit his application to the Commission in accordance with the prescribed form together with the prescribed application fee.

(2) The Commission shall, upon receipt of the application and after consultation with ECTEL, recommend to the Minister whether or not the particular applicant shall be granted a frequency authorisation.

(3) The Minister may grant the frequency authorisation where the Commission recommends accordingly.

Content of frequency authorisation

37.— (1) The Minister may, in granting a frequency authorisation, include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

(2) A frequency authorisation shall include all the terms and conditions as specified in Part II of the schedule.

Amendment of Second Schedule

38. The Minister may, on the recommendation of ECTEL, amend the Second Schedule by Order published in the *Gazette*.

Licence and authorisation fee

39. The Commission shall receive from the applicant the prescribed fee for or in relation to a licence or a frequency authorisation in the manner prescribed.

Modification licences and authorisations

40.— (1) The Minister may, on the receipt of a recommendation from ECTEL:

- (a) modify an individual licence where the Minister and the licensee agree in writing;
- (b) modify a class licence following appropriate consultation with members of the relevant class.
- (c) modify a frequency authorisation where the Minister and the licensee agree in writing.
- (d) modify any licence or frequency authorisation without the agreement of the licensee if the Minister is of the view that the modification is necessary in the public interest or for reasons of national security.

(2) A licensee who seeks a modification of a licence shall apply in the same manner as he or she did for the initial licence.

Suspension and revocation of licences and authorisation

41.— (1) The Minister may suspend or revoke a licence, or vary a term and condition of that licence if it is not a statutory term or condition by a notice in writing served on the licensee.

(2) The Minister may suspend, revoke or refuse to renew a licence where —

- (a) the radio apparatus or station in respect of which the licence was granted interferes with a telecommunication service provided by a person to whom a licence is already granted for that purpose;
- (b) the licensee contravenes this Act;
- (c) the licensee fails to observe a term or condition specified in his or her licence;
- (d) the licensee is in default of payment of the licence or renewal fee or any other money owed to the Government;
- (e) ECTEL recommends the suspension or revocation;
- (f) the suspension or revocation is necessary for reasons of national security or the public interest.

(3) Before suspending or revoking a licence under subsection (2), the Minister shall give the licensee one month notice in writing of his or her intention to do so, specifying the grounds on which it proposes to suspend or revoke the licence, and shall give the licensee an opportunity —

- (a) to present his or her views;
- (b) to remedy the breach of the licence or term and condition; or
- (c) to 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,

which the Minister shall take into account before reaching a decision.

(4) This section also applies with any necessary modification to a frequency authorisation holder.

Surrender of licence

42. Where a licence or authorisation has been revoked, every licensee and every other person in whose possession or under whose control the licence or authorisation may be, shall surrender the licence or authorisation to the Commission if required by the Minister.

PART IV
UNIVERSAL SERVICE, INTERCONNECTION, INFRASTRUCTURE,
SHARING, NUMBERING

Provision of universal service

43.— (1) The Minister may, on the recommendation of ECTEL, include as a condition in the licence of a telecommunications provider a requirement to provide universal service, except that such requirement shall be carried out in a transparent, non-discriminatory and competitively neutral manner.

(2) A telecommunications provider who is required by its licence to provide universal service to any person shall do so at such price and with the quality of service specified in the licence.

Universal Service Fund

44.— (1) There shall be established a Fund to be known as the Universal Service Fund, which Fund shall be managed by the Commission in accordance with regulations made by the Minister on the recommendation of ECTEL.

(2) Every telecommunication provider shall contribute to the Universal Service Fund.

(3) The Minister shall, by Order, on the recommendation of ECTEL, specify the percentage of the gross revenue which a telecommunications provider referred to in subsection (2) shall contribute to the Universal Service Fund, except that the percentage to be contributed shall be the same for all providers.

(4) The Minister shall, on the recommendation of ECTEL, by Order published in the Gazette specify which telecommunications provider in Saint Lucia is entitled to receive payments from the Universal Service Fund.

Purpose of the Fund

45.— (1) The Fund shall be used by the Commission, to compensate any telecommunications provider who is required to provide universal service by virtue of section 43 of this Act or to otherwise promote universal service.

(2) The amount of compensation payable by virtue of subsection (1) of this section shall be computed in accordance with the regulations made by the Minister on the recommendation of ECTEL, and the conditions attached to the licence of the telecommunications provider and shall be paid to the relevant telecommunications providers by the Commission.

(3) In making the regulations referred to in sub-section (2) of this section the Minister shall also be guided by the actual cost that is incurred in making available the required universal service.

Interconnection and infrastructure sharing

46.— (1) Subject to subsection (5), a telecommunications provider who operates a public telecommunications network shall not refuse, obstruct, or in any way impede another telecommunications provider from making an interconnection with his or her telecommunications network.

(2) A telecommunications provider who wishes to interconnect with the telecommunications network of another telecommunications provider shall make a request to that other telecommunications provider in writing.

(3) A telecommunications provider to whom a request for interconnection is made, shall, in writing, respond to the request within a period of four weeks from the date of the request.

(4) A telecommunications provider in granting a request pursuant to subsection (3) shall agree, with the person making the request, the date the interconnection shall be effected.

(5) A telecommunications provider to whom a request for interconnection is made may in his response refuse that request in writing on reasonable technical grounds only.

(6) A telecommunications provider on receipt of a refusal for interconnection may refer that refusal to the Commission for review and possible dispute resolution.

(7) A telecommunications provider providing an interconnection service in accordance with this section shall impose reasonable cost based rates, and such other reasonable terms and conditions as the Commission may, on the recommendation of ECTEL, determine.

(8) Any interconnection service provided by a telecommunications provider pursuant to the provisions of subsection (7) above shall be on terms which are not less favourable than:

- (a) those of the provider of the interconnection service;
- (b) the services of non-affiliated suppliers; or
- (c) the services of the subsidiaries or affiliates of the provider of the interconnection service.

(9) No telecommunications provider shall, in respect to any rates charged for interconnection services provided to another telecommunications provider, vary the rates on the basis of the type of customers to be served, or on the type of services that the telecommunications provider requesting the interconnection services intends to provide.

Interconnection agreements

47.— (1) No person shall enter into any interconnection agreement, implement or provide interconnection service without first submitting the proposed agreement to the Commission for its approval, which approval shall be in writing.

(2) Interconnection agreements between telecommunications providers shall be in writing, and copies of the agreements shall be kept in a public registry maintained by the Commission for that purpose and open to public inspection during normal working hours.

(3) The Commission shall, after consulting ECTEL, prepare, publish, and make available copies of the procedures to be followed by the telecommunications providers when negotiating interconnection agreements.

Cost of interconnection

48.— (1) The cost of establishing any interconnection to the telecommunications network of another telecommunications provider shall be borne by the telecommunications provider requesting the interconnection.

(2) The cost referred to in subsection (1) shall be based on cost-oriented rates that are —

- (a) reasonable and arrived at in a transparent manner having regard to economic feasibility; and

- (b) sufficiently unbundled such that the provider requesting the interconnection service does not have to pay for network components that are not required for the interconnection service to be provided.

Infrastructure sharing

49. Sections 46, 47 and 48 shall apply to infrastructure sharing, *mutatis mutandis*.

Access to towers sites and underground facilities

50.— (1) Where access to telecommunications towers, sites and underground facilities is technically feasible, a telecommunications provider (in this section referred to as the first provider) must, upon request, give another telecommunications provider (in this section referred to as the second provide) access to —

- (a) a telecommunications tower owned or operated by the first provider; or
- (b) a site owned, occupied or controlled by the first provider;
- (c) an eligible underground facility owned or operated by the first carrier;

for the sole purpose of enabling the second provider to install a facility for use in connection with the supply of a telecommunications service.

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

(3) Access to sites, towers or eligible underground facilities shall, *mutatis mutandis*, be on such terms as set out in sections 46 to 48 above; and —

- (a) on such terms and conditions as are agreed between providers; or
- (b) failing agreement as determined by the Commission.

Private Networks

51.— (1) The licence requirement in section 29 of the Act applies to the provision or operation of private telecommunications networks and a frequency authorisation is required to operate a private telecommunications network providing radio-communications services or that utilises the radio frequency spectrum.

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

(3) Where the operator of a private network intends to offer telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, such an operator requires to apply for an individual a licence under section 30 of the Act.

(4) A private telecommunication network shall not be restricted to the carrying of voice only or data only or to any other such use

Numbering

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

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

Domain name registration

53. The Commission shall assume responsibility for the registration and management of Internet domain names.

PART V **COMPLIANCE AND MANAGEMENT**

Appointment of inspectors

54.— (1) The Commission may by instrument in writing appoint inspectors for the purposes of this Act.

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

(3) An inspector may investigate any complaint or conduct concerning an allegation of a breach of the Act, licence or frequency authorisation.

Right of entry

55.— (1) Subject to subsections (2),(3) & (4), an inspector, on reasonable suspicion that a licensee or frequency authorisation holder is engaged in conduct that is contrary to this Act, the relevant licence or authorisation, may enter any vehicle, ship, vessel, aircraft, or premises and search the vehicle, ship, vessel, aircraft, or premises, and in that process —

- (a) remove any document or extracts of the document; or
- (b) seize any telecommunications apparatus, from the person with the custody or possession of the document or apparatus.

(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 telecommunications apparatus in exercise of the powers conferred on him or her by subsection (1) without a court order.

(4) An inspector shall, on entering the vehicle, ship, vessel, aircraft, or premises identify himself or herself to the person in charge of the vehicle, ship, vessel, aircraft, or premises, at the time of entry, by showing the person the search warrant together with his or her official identity card.

(5) An inspector shall, on completing the search, leave with the person in charge of the vehicle, ship, vessel, aircraft, or premises, a receipt in which it is recorded a list of documents or extracts taken by the inspector.

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

Search and seizure

56.— (1) Where a magistrate is satisfied by information on oath that —

- (a) there is reasonable ground for suspecting that an offence under this Act has been committed or is about to be committed; and

- (b) evidence of the commission of that offence is to be found on any premises, vehicles, vessel or aircraft specified in the information,

the magistrate may issue a search warrant authorising the inspector named in the warrant, with or without a Police Officer, to enter and search the premises, vehicles, vessel or aircraft specified in the information and examine, test or seize any apparatus and equipment.

(2) Any document, telecommunications apparatus or other thing seized pursuant to a search warrant shall —

- (a) where legal proceedings are not commenced within a period of thirty days from the date of seizure of the document, telecommunications apparatus or thing be returned to the owner; or
- (b) where legal proceedings are commenced before the expiry of the thirty days, be kept until the conclusion of those proceedings.

(3) Where a licensee is convicted of an offence under this Act in respect of any document, telecommunications apparatus or thing seized under this Part the Court may order the forfeiture of that document, telecommunications apparatus or thing seized.

Inspection

57. Any person who holds a valid licence or frequency authorisation shall exhibit his licence for inspection on demand to an inspector.

Parties eligible to seek orders for forfeiture or injunction relief

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

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

PART VI **OFFENCES**

Connection of terminal equipment

59.— (1) A person shall not connect any terminal equipment to a public telecommunications network without the written approval of the Commission.

(2) The Commission shall, before giving the approval, take into account the recommendations of ECTEL relating to equipment approval.

(3) Notwithstanding sub-sections (1) and (2), the Minister may, on the recommendation of ECTEL, exempt by Order, any person from the requirements of this section.

(4) A person who connects any terminal equipment contrary to this section commits an offence and is liable, on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding two years.

Reduction of electrical interference

60. No person shall use or cause to be used any thing that is capable of causing electrical interference with the normal functioning, or use of a licensed telecommunications network or operation of telecommunications 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.

Unlawful interception

61. Any message transmitted over a public telecommunications network, shall be confidential and shall not be intercepted or interrupted without the consent of the sender, or except as provided under this Act or any other enactment.

Secrecy of personal information

62. Any personal information relating to a subscriber shall be confidential and shall not be disclosed by any telecommunications provider without the consent of the subscriber or pursuant to a court order under this Act or any other enactment.

Malicious damage to apparatus

63.— (1) No person shall remove, injure, or destroy any telecommunication network, or telecommunications apparatus, except in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence.

(3) Where a person who has no previous convictions commits an offence under this section that person is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

(4) Where a person who has a previous conviction commits an offence under this section that person is liable on conviction on indictment to a fine not exceeding thirty thousand dollars or to imprisonment for a period not exceeding four years.

Unlawful interception and disclosure of personal information

64.— (1) A person who —

- (a) contravenes section 60; or
- (b) knowingly discloses any personal information contrary to section 61;

commits an offence and is liable, on conviction on indictment, to a fine not exceeding fifteen thousand dollars or to imprisonment for a period not exceeding two years.

(2) Subsection (1) shall not apply to a disclosure made to the Customs department, the Income Tax department or the Police.

Obstruction of investigation

65. A person who, in any manner, impedes, prevents, or obstructs any investigation being carried out by the Commission under this Act commits an offence and is liable, on conviction on indictment to a fine of ten thousand dollars or to imprisonment for a period not exceeding one year.

Refusal

66. A person who —

- (a) refuses to produce any document, record, thing, or any information required by the Commission under this Act; or
- (b) destroys or alters, or causes to be destroyed or altered, any document, record or thing required to be produced under this Act;

commits an offence and is liable, on conviction on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding one year.

Giving false information

67. A person who knowingly gives false or misleading information to the Commission commits an offence and is liable, on conviction on

indictment, to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding one year.

Failure to attend to give evidence to the Commission

68. A person who —

- (a) refuses or fails, without reasonable excuse, to appear before the Commission, having been required to do so; or
- (b) refuses to take an oath or make an affirmation having appeared before the Commission as a witness;

commits an offence, and is liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding six months.

PART VII
MISCELLANEOUS

Stoppage of telecommunications

69. No communication which appears dangerous to the security of Saint Lucia 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 shall immediately inform the Commission which shall take the necessary appropriate action.

Access to lands and road works

70.— (1) A person nominated by a public telecommunications provider and duly authorised in writing by the Minister or relevant authority may, at any reasonable time, enter upon and survey any land, other than land covered by buildings or used as a park, for the purpose of ascertaining whether the land would be suitable for use by the provider for, or in connection with, the establishment or running of the provider's system.

(2) For the purpose of providing a telecommunications service, telecommunications provider may lay or maintain or remove, any line or cable, in or over a street or a public ground and shall repair and restore the street and public ground to the satisfaction of the Minister.

(3) Where telecommunications provider fails to comply with subsection (2) within [] days of the laying maintenance or removal, the Minister may cause the repairs to restoration to be done and the telecommunications provider shall be liable to the cost for such repairs or restorations.

(4) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the telecommunications provider shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the provider shall pay to that person compensation in respect of the disturbance.

(5) In engaging in the inspection of land, installation of facilities, or maintenance of facilities, a telecommunications provider must take all reasonable steps to act in accordance with good engineering practice, to protect the environment, to protect the safety of persons and property, and to ensure that the activity interferes as little as practicable with the operations of a public utility, public roads and paths, the movement of traffic, and the use of land.

(6) A telecommunications provider who engages in any activity covered in subsection (1) or (2) must ensure that a facility installed over a road, bridge, path or navigable water is installed in a way that will allow reasonable passage by persons, vehicles and vessels.

(7) Where a telecommunications provider fails to comply with the provision of this section the Minister may suspend or revoke the telecommunications provider's licence in accordance with section 41.

Copyright

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

Liability of public and private officials

72. Where a breach of this Act or licence has been committed by a person other than an individual any individual including a public officer who at the time of the breach was director, manager, supervisor, partner or other similarly responsible individual, may be found individually liable for that breach if,

(a) having regard to the nature of his or her functions;

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

Installation and operation of telecommunications by diplomatic mission

73.— (1) Notwithstanding this Act a diplomatic mission established in Saint Lucia may establish and operate telecommunication including radio apparatus, with the permission of the Minister.

(2) A diplomatic mission shall make proper arrangements for the use of its telecommunications permitted under subsection (1) in accordance with this Act.

Regulations

74.— (1) The Minister may make Regulations to give effect to this Act.

(2) Without limiting the generality of sub-section (1), the Minister may make Regulations providing, in particular, for or in relation to —

- (a) forms and procedures in respect of the grant of a licence or a frequency authorisation;
- (b) matters relating to the provision of universal service and the management of the Universal Service Fund;
- (c) the type of terminal equipment to be connected to a public telecommunications network;
- (d) interconnection between telecommunications providers, and the sharing of infrastructure by telecommunications providers;
- (e) interconnection agreements;
- (f) matters relating to the allocation of numbers among the telecommunications providers;
- (g) stoppage or interception of telecommunications;
- (h) management of the spectrum;
- (i) adopting industry codes of practice, with or without amendment;
- (j) the procedure and standards relating to the submission, review and approval by the Commission of telecommunications tariffs;
- (k) the control, measurement and suppression of electrical interference in relation to the working of telecommunications apparatus;

- (l) matters of confidentiality including on the part of all persons employed in or in anyway connected with the maintenance and working of any telecommunications network or telecommunications apparatus;
- (m) public inspection of records of the Commission;
- (n) procedures for the treatment of complaints;
- (o) procedures for dispute resolution;
- (p) matters for which guidelines are to be issued by the Commission;
- (q) matters relating to the quality of telecommunications services;
- (r) technical regulation and setting of technical standards;
- (s) fees, including the amount and circumstances in which they are payable;
- (t) conduct of public hearings;
- (u) private networks and VSATS;
- (v) cost studies and pricing models.
- (w) submarine cables and landing rights;
- (x) registration and management of Domain Names

(3) Where ECTEL recommends regulations for adoption for the purpose of the Agreement the Minister shall take all reasonable steps to ensure their promulgation.

Repeal and savings

75.— (1) The Acts specified in the Third Schedule to this Act are hereby repealed.

(2) Notwithstanding the repeal of the Acts specified in the Third Schedule, and until such time as Regulations are made under this Act, any Regulations made under the repealed Acts shall continue into force with such modifications as are necessary to bring them in conformity with this Act.

(3) A person authorised to operate a telecommunications network or provide a telecommunications service or use radio frequencies as at the date of the entry into force of this Act shall be deemed to be operating such network or providing such service or using such radio frequencies pursuant to a licence issued under this Act for six months from the entry into force of this Act. Thereafter, any such telecommunications provider shall require a licence under this Act.

FIRST SCHEDULE*Section 25***CONDUCT OF MEETINGS OF THE COMMISSION**

1. The Commission shall meet at such times and at such places as the Commission considers necessary or expedient for the transaction of the business of the Commission.
2. The Chairperson may at any time call a special meeting of the Commission, and shall call a special meeting of the Commission within fourteen days of receipt of a request for that purpose addressed to him in writing and signed by any two commissioners.
3. The quorum of the Commission at any meeting shall be three commissioners.
4. In the absence of the Chairperson, the commissioners present shall elect from their number a commissioner to preside at the meeting of the Commission.
5. Decisions of the Commission shall be by majority of votes of members present and voting.
- 6.(a) Minutes of each meeting of the Commission shall be recorded and kept by the Secretary to the Commission.
(b) A certified copy of the minutes of each meeting confirmed by the Commission shall be forwarded to the Minister within fourteen days after the meeting at which they were confirmed.
7. The Commission may invite any person to attend any meeting of the Commission where the Commission considers it necessary to do so, but that person shall not vote on matters before the Commission.
8. Subject to this Schedule, the Commission may regulate its own procedure, and may delegate to any commissioner power and authority to carry out on behalf of the Commission such duties as the Commission may determine.
9. Where a commissioner has an interest, directly or indirectly, in any matter before the Commission in which his or her private capacity conflicts with his or her duties as a commissioner and which matter is a subject of consideration by the Commission, commissioner shall, as soon as practicable after becoming aware of the interest in the matter, disclose his or her interest to the Chairperson.
10. The commissioner referred to in paragraph 9 of this Schedule shall not, unless otherwise decided by the Commission, take part in the consideration of the matter, and if allowed to take part in the consideration of the matter he or she shall not vote on the matter.

SECONDSCHEDULE*(Sections 31, 34, 37)***PART 1****CONDITIONS THAT MAY BE INCLUDED IN LICENCES
AND FREQUENCY AUTHORISATIONS**

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

PART 2**CONDITIONS THAT MUST BE INCLUDED IN LICENCES
AND FREQUENCY AUTHORISATIONS**

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

- (a) period of licence and procedure for renewal or variation at behest of the applicant;
- (b) a condition stipulating that the licence or frequency authorisation shall only enter into force upon payment by the licensee or authorisation holder to ECTEL or the Commission of the prescribed fee;
- (c) a condition requiring the licensee or authorisation holder to pay annual anniversary fees and renewal fees on specified dates;
- (d) a condition requiring the licensee or frequency authorisation holder to provide ECTEL with such documents and information as ECTEL shall require and request in order to fulfil its purposes and functions;
- (e) a condition requiring the licensee or frequency authorisation holder to comply with any direction made by the Commission under section 15 (1);
- (f) provision of information and documents as required by and to the Commission and ECTEL;
- (g) non-exclusivity of the licence, and exclusivity or otherwise of the frequency authorisation;
- (h) contribution to universal service;
- (i) procedure to deal with complaints of customers, or subscribers;
- (j) compliance with the recommendations of ECTEL;
- (k) payment of moneys owed to the Government;
- (l) the submission to the Commission of a complete audited financial report;
- (m) specification of the fees depending on the divergent or convergent* nature of the services provided.

* *Convergent nature means the process of multiple telecommunication services provided over a single medium.*

THIRDSCHEDULE*Section 74*

LIST OF ENACTMENTS THAT ARE REPEALED

Wireless and Telegraph Ordinance, CAP. 146

Production of Telegrams Act, CAP 147

Cable and Wireless (West Indies) Limited Order 1960, No. 7

Public Telephones Ordinance 1966, No. 23.

Passed in the House of Assembly this 26th day of September, 2000.

FERGUSON JOHN,
Deputy Speaker of the House of Assembly.

Passed in the Senate this 25th day of August, 2000.

HILFORD DETERVILLE,
President of the Senate.