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## COMMONWEALTH OF DOMINICA

ACT No. 18 OF 1995

I assent

C. A. SORHAINDO

*President.*

26th April, 1995.

AN ACT TO PROVIDE FOR THE LICENCING AND OPERATION OF THE NATIONAL AND INTERNATIONAL TELECOMMUNICATION SYSTEMS AND SERVICES IN AND IN RESPECT OF THE COMMONWEALTH OF DOMINICA.

(Gazetted 27th April, 1995.)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

## PRELIMINARY

Short title and commencement.

1. This Act may be cited as the -

**TELECOMMUNICATIONS ACT 1995**

and shall be deemed to come into operation on the first day of April, 1995.

Interpretation.

2. In this Act, unless the context otherwise requires -

"Agreement" means the agreement dated 24th September 1985 between the Government and the Licencee named therein for the exclusive provision of national and international telecommunication systems and services together with any additions, amendments and extensions thereto;

"broadcasting" means transmission of or the act of transmitting programmes of sounds and images, whether or not encrypted by radio waves or other means of telecommunication for reception by the public on apparatus suitable for reproduction of audio/visual signals so transmitted, but does not include any transmission or act of transmitting programmes of sounds and images for performance or display in a public place;

"apparatus" includes any appliance used or intended to be used for the purpose of telecommunication;

"Convention" means the International Telecommunication Convention;

"Dominica" means the Commonwealth of Dominica including its territorial waters and airspace;

"group company" - a company is a group company of another company if it is that first company's subsidiary or holding company or the subsidiary company of that first company's holding company and where "holding company" and "subsidiary company" shall have the following meanings:

a company is deemed to be a subsidiary of another if (but only if):

- (1) that other either -
  - (a) is a member of it and controls the composition of its board of directors; or
  - (b) holds more than half in nominal value of its share capital carrying the right to vote;or
- (2) the first-mentioned company is a subsidiary of any company which is that other's subsidiary;

a company is deemed to be another's holding company if (but only if) the other is its subsidiary;

"harmful interference" means any form of emission, reflection, radiation or induction of electromagnetic energy which endangers the functioning of a radio navigation service or other safety services, any radiocommunication service used permanently or temporarily for the safeguarding of human life or property, or which seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operation defined in accordance with this Act;

"highway" means street or road owned or under the control of the Government or any public body, or any public right-of-way, including any bridge forming part thereof, and any land abutting and forming part of a highway;

"licence" means the Agreement or any licence granted under this Act;

"Licencee" means either the person with whom Government has entered into the Agreement or any other person to whom Government grants an exclusive licence pursuant to subsection 7(1) following termination of the Agreement;

"lines" means a structure of wires, cables, coaxial cables or radio facilities, including any post, pole, standard, bracket, stay, strut, insulator, pipe, conduit, covering, support or other aboveground or underground contrivance, for carrying, suspending, supporting or protecting such structures and any appliance, plant, machinery or other apparatus or thing connected therewith for regulating the electric properties of the conductors, for the purpose of telecommunication or in some cases, electric signalling communication or any other telecommunication link;

"message" means any communication transmitted or intended to be transmitted by telecommunication;

"Minister" means the Minister to whom the responsibility for the subject of telecommunication is assigned;

Cap. 261.  
Cap. 252  
Ch. 45:04

"mobile service" means a service of radiocommunication between mobile and fixed stations, or between mobile stations;

the "old Acts" means the Wireless Telegraphy Ordinance, the Production of Telegrams Ordinance, The Public Telephones Act 1967 and the Telecommunication Act 1974;

"person" includes any individual, body corporate, unincorporated entity and any partnership;

"premises" includes any building, vehicle, vessel or aircraft;

"radio" means a general term applied to the use of radio waves;

"radiocommunication" means telecommunication by means of radio waves;

"radio receiver" means any apparatus capable of receiving radiocommunication of any kind;

"radio waves" means electromagnetic waves of frequencies lower than 3,000 Ghz, propagated in space without artificial guide;

"regulations" means regulations made under section 4;

"scheme of control" means a scheme of control which regulates prices to be charged by a Licencee under a licence which is made pursuant to subsection 7(1);

"signal" means information transferred over a telecommunication system by electromagnetic, optical or other means;

"station" means one or more radio transmitters or receivers or a combination of such transmitters and receivers including the accessory equipment necessary at one location for carrying on a radiocommunication service;

"telecommunication" means any transmission, emission or reception, of signs, signals, writing, images, and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic system or by any other system used for any such transmission, emission or reception but excluding broadcasting;

"telecommunication apparatus" means any apparatus, equipment, installation or thing of whatever description maintained, used or intended to be used for the purpose of or in connection with a telecommunication system or telecommunication service, or which is capable of causing harmful interference with telecommunication;

"telecommunication service" means a service consisting of the provision of or access to telecommunication or the conveyance of telecommunication by means of a telecommunication system;

"telecommunication system" means a system or other means for the conveyance of telecommunication either within Dominica or between Dominica and any place outside Dominica;

"works" include any work carried out in order to provide any telecommunication service or system such as the laying of lines or provision of links and also the erection of any building, machinery, mechanical appliance, engines, works, matters or things of whatever description, required to maintain or supply a telecommunication service or provide a telecommunication system or to carry into effect the object of this Act or of any licence.

## PART I

## POWERS OF MINISTER

Functions of Minister.

**3.** The Minister, in the exercise of his responsibility for telecommunication, shall in accordance with this Act -

- (a) regulate all internal and external telecommunication services operating within Dominica;
- (b) grant licences and enter into agreements for telecommunication systems and services.

Minister may make Regulations.

**4.** The Minister may make Regulations for the proper carrying out of the provisions and purposes of this Act and for the implementation of those provisions of the Convention which are applicable to Dominica and in particular, but without prejudice to the generality of the foregoing, may make Regulations -

- (a) amending any schedule to this Act to cure any deficiency which has the effect of defeating the intentions thereof; or
- (b) relating to the operation of telecommunication on ships or on any aircraft while in Dominica.

International obligations.

**5.** (1) The Convention shall form part of this Act insofar as it is applicable to the Government of Dominica.

(2) The Minister shall be responsible for discharging or facilitating the discharge of any obligations in the field of telecommunication which are binding on the Government by reason of Dominica being a member of an international organisation or a party to or subject to an international convention or agreement, duly entered into and/or ratified by the Government of Dominica.

## PART II

## LICENCING PROVISIONS

Prohibition.

**6.** (1) No person shall without first obtaining a licence under this Act

- (a) install, establish, maintain or operate a telecommunication system or telecommunication service;
- (b) import, establish, maintain, operate or use any telecommunication apparatus including any earth station for satellite communications;
- (c) install, establish, maintain or operate a mobile service;
- (d) lay down or maintain any cable for telecommunication purposes upon the foreshore and bed of the sea;
- (e) by way of his trade or business, hire, sell, exchange or deal in any telecommunication apparatus; or

(f) work any telecommunication apparatus installed on -  
 (i) any ship whilst that ship is in the territorial waters of Dominica; or  
 (ii) any aircraft whilst that aircraft is in or over Dominica;  
 except for normal ship to shore communication or aircraft to air traffic control communication or in connection with public safety.

(2) A person shall be deemed to maintain in or upon any premises of which he is in control or is the owner, any telecommunication apparatus found in or upon such premises, whether such apparatus is in working condition or not.

(3) Any person who contravenes this section commits an offence and is liable on conviction to a fine of \$5,000 and six months imprisonment.

Power to grant  
exclusive licence

**7.** (1) The Minister may in accordance with section 3 grant an exclusive licence to an applicant (including the exclusive powers or licences which are granted by the Agreement to any person in succession to the Licencees named in the Agreement).

(2) A licence issued under subsection (1) may grant power to establish, operate or own the international and national telecommunication services and telecommunication systems of Dominica.

(3) Licences may be granted upon the terms and conditions determined by Cabinet on payment of the prescribed fee.

(4) The Minister shall have power to grant any renewal or extension of the Agreement or any licence granted pursuant to subsection (1).

Licences.

**8.** Upon application being made to the Minister, in such form and manner as may be prescribed by regulations or otherwise as the Minister may determine, the Minister may at his discretion issue a licence required by section 6 for such telecommunication systems or services in respect of which no licence has been granted pursuant to section 7(1). A licence may be granted for such period and on such terms and conditions as the Minister may determine and shall be subject to the payment of such fee as may be prescribed by regulations.

Ratification of  
Agreement.

**9.** All of the licences, privileges, powers and authorities expressed to be granted to the Licencee in the Agreement are confirmed and conferred under this Act.

Injunction

**10.** (1) On the application of the Attorney General, the High Court may, without regard to whether or not proceedings have been or may be taken against any person for an offence contrary to section 6 or section 18, grant an injunction -

(a) restraining a person from doing or causing or permitting to be done any thing that constitutes or would constitute a contravention of, or an attempt to contravene, section 6 or section 18; or

(b) requiring a person to take or cause to be taken such reasonable steps as the High Court considers necessary to prevent the doing of any thing that constitutes or would constitute a contravention of, or attempt to contravene, section 6 or section 18.

(2) Nothing in this section limits any right of the Attorney General or the Licencee that would exist but for this section to apply for an injunction, and the grant, refusal, variation, rescission or expiry of an injunction granted under this section shall not affect the taking of proceedings against any person for an offence against section 6 or section 18 nor the making of an order under either such section.



Sale by private persons.

**11.** Any person who, except by way of his ordinary trade or Sale by private business, sells, exchanges or otherwise disposes of any telecommunication persons apparatus the establishment, maintenance or use of which requires a licence, shall within 14 days of such sale, exchange or other disposal give notice of the transaction to the person authorised by the Minister for the purpose, providing such particulars as may be required by such person.

**12.** Nothing contained in this Act shall -

Permitted Acts.

- (1) prohibit or prevent any person from erecting, maintaining or operating telephone lines entirely on and within his or its own property (and without crossing any boundary), without fee or reward, for private use or the use of business, or both of such person. In this paragraph "telephone lines" means wire, poles, posts, cables, co-axial cables, installations, pipes, conduits and coverings or related plant, machinery, appliances and apparatus, capable of transmitting telecommunication signals. For the purpose of this sub-section only "apparatus" means any apparatus in respect of which no licence is required or which is licenced for on shore use in Dominica;
- (2) affect or preclude the right of Government to authorise any person to establish, extend, maintain, or work any telecommunication apparatus or station for -
  - (a) any Government or inter-governmental purpose;
  - (b) emergency, scientific or experimental purposes;
  - (c) the broadcasting service;
  - (d) the amateur radio service;
  - (e) aeronautical services;
  - (f) purposes associated with the navigation of ships or the safety of shipping;
  - (g) private vehicular telecommunication having no connection to any telecommunication system; or
  - (h) normal ship to shore communication or aircraft to air traffic control communication or in connection with public safety.

Provided that such apparatus or station is not used in commercial competition with any Licencee or with a telecommunication service or telecommunication system of a kind provided by the Licencee which for these purposes includes any telecommunication service or telecommunication system as any Licencee is authorised to provide under any licence.

Licencee may execute works.

**13.** The rules under which a Licencee may from time to time place, maintain, alter, replace or remove lines over or under highways land or property, as well as the rules governing the cutting and trimming of trees which are interfering with telecommunication services or systems are contained in the First Schedule.

First Schedule.

## PART III

PROVISIONS REGARDING  
TELECOMMUNICATION SERVICES AND SYSTEMS

Priority of communications.

**14.** (1) The telecommunication service shall accord priority to telecommunication concerning safety of life at sea, on land, in the air and in outer space and to telecommunications of an epidemiological nature sent by the World Health Organisation or any similar body and which are exceptionally urgent.

(2) Stations shall be required to give priority to distress calls and messages regardless of their origin and to reply promptly to such calls or messages and to take such action as may reasonably be required.

(3) Subject to the provisions of subsections (1) and (2) of this section Government telecommunications shall enjoy priority over other telecommunications when priority is requested by the sender and to the extent that it is practicable to do so.

Secrecy.

**15.** Any person who without prior authority in writing from the Minister pursuant to a court order intercepts any telecommunication not intended for the general public or discloses the contents to a person other than the intended recipient commits an offence and is liable on conviction to a fine of \$5,000 and six months imprisonment.

## PART IV

## RATES AND THE REGULATORY REGIME

Scheme of control.

**16.** (1) The Minister may by Regulation under this Act make a scheme of control regulating the prices to be charged by any Licencee under a licence granted pursuant to this Act and any such scheme of control shall have the force of law.

(2) Where a scheme of control is in force in respect of any licence, the Licencee under that licence shall be entitled to make such charges in relation to the telecommunication systems and telecommunication services that it provides as are set out in such scheme of control.

Annual Financial Statements.

(3) A copy of the audited annual Financial Statements of any Licencee and a copy of the auditor's report thereon shall be submitted to the Minister and any Regulatory Authority within one month after the annual general meeting.

## PART V

## RETRO-ORIGINATION CALL SERVICE

Interpretation of Part V and the Second Schedule.

**17.** In this Part and the Second Schedule, unless the context otherwise requires -

"call" includes any communication between two users by means of a telecommunication system and the completion of a call attempt and use of the associated telecommunication service;

"call attempt" means any one or more actions taken by a user of a telecommunication system in an attempt to obtain the desired user or service;

"retro-origination call service" means -

- (a) any means which enables calls to be made from Dominica to a destination in a foreign territory, without such calls being recorded on any exchange in Dominica as outgoing calls from Dominica; or
- (b) any means for the making of calls from Dominica to a destination in a foreign territory through a toll free number but excluding a call or a call attempt which concludes with either -
  - (i) that toll free number, or
  - (ii) any number that terminates on the same private telecommunication system as that toll free number; and

in the case of subparagraphs (a) and (b) of this definition includes those means specified in Part I of the Second Schedule, but not those specified in Part II of the Second Schedule;

"call details" means any details of a call to be made on any telecommunication system;

"carrier" means a person who either alone or in-conjunction with others owns or operates a telecommunication system or provides a telecommunication service;

"exchange" means any facility which controls telecommunication;

"foreign service operator" means a carrier -

- (a) whether or not incorporated in Dominica having its principal or any place of business in a foreign territory; or
- (b) providing any telecommunication service from a foreign territory;

but excluding the Licencee;

"foreign territory" means any territory outside Dominica;

"gives" when used in conjunction with "call details" or "user details" means giving such details by means of facsimile, voice or data transmission or by any other method;

"inputs" means entering information into a telecommunication system whether by means of tone, keypad, dialling, voice, facsimile or otherwise;

"number" means any telephone number and includes any method of identifying the origin or destination of a call;

"outgoing call" means a call from a point in Dominica to a destination in a foreign territory, the destination being selected by a person in Dominica;

"toll free number" includes (but is not limited to) any number commencing with digits 0-800, 1-800 or 800;

"user" includes any user of a telecommunication service and any person sending or receiving message signals on a telecommunication system;

"user details" means any details relating to a user or a number from which a user makes or intends to make a call attempt and includes the identification of that user and the location of that number.

Prohibition.

**18.** (1) No person shall use or permit or suffer to be used any telecommunication system or telecommunication apparatus in connection with the provision of a retro-origination call service or do anything so as to facilitate the use of any telecommunication system or telecommunication apparatus in connection with the provision, operation or use of such a service.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and six months imprisonment.

(3) Subsection (1) shall not apply to any act of a Licencee permitted by or in accordance with the Agreement or any licence or any regulations.

Powers of the Licencee.

**19.** (1) Whenever a Licencee has reasonable cause to believe that any person is contravening section 18 the Licencee may do the following:

- (a) apply by information for a warrant in accordance with section 30;
- (b) suspend the provision of telecommunication services to users;
- (c) modify its terms and conditions of service to users; and
- (d) block the transmission of calls or call attempts which contravene section 18.

(2) If any Licencee reasonably believes that the telecommunication system is being used to transmit voice or data services from a point in Dominica to a destination in a foreign territory by a route other than that established by the Licencee for such transmission, that Licencee may take any and all steps it considers necessary to block transmission over that other route.

(3) Any Licencee who takes any action authorised under this section shall inform the Minister as soon as is reasonably practicable and shall within seven days of taking such action submit a written report to the Minister of the action so taken.

## PART VI

### MISCELLANEOUS PROVISIONS

Licencee to comply with International Treaties, etc.

**20.** Nothing in this Act shall exempt and Licencee under a licence from complying with the provisions of any enactment, whether passed before or after the commencement of this Act, giving effect to or arising out of any international treaty, convention or agreement concerning telecommunication.

Power of entry.

**21.** The Licencee, its agents and employees authorised in writing may on the production of such authority and on giving reasonable notice to the occupier or owner of any premises enter the premises at which the licencee's telecommunication apparatus is located at a reasonable hour to -

- (a) repair, replace, inspect or install any apparatus, equipment, instrument and lines;
- (b) make collection from any coin box; or
- (c) recover any equipment, instrument and lines upon the cancellation or termination of telecommunication service.

Attachments to facilities provided by Licencee.

**22.** Only equipment, apparatus, circuits or devices approved by the Licensee, and such approval shall not unreasonably be withheld, shall be attached to or connected whether physically, by induction, acoustically or otherwise, to the facilities provided by any Licencee.

powers of Licencee in relation to customers and others.

**23.** Where a person -

- (a) abandons the telecommunication service to him;
- (b) fails, neglects or refuses on demand to pay the amount of any rate or other sum due from him to any Licencee;
- (c) uses the telecommunication service supplied to him in such a way as to impair or interfere with the telecommunication service supplied to another person;
- (d) in any message uses or knowingly permits to be used profane, obscene or abusive language or, after reasonable notice, fails, neglects or refuses to prevent the use of such language in any message by others under his control;
- (e) sends or knowingly permits to be sent a message calculated or likely to cause annoyance to another person, or the family or domestic staff or business employees of such other persons;
- (f) damages or misuses any equipment, apparatus, circuits or devices furnished by any Licencee; or
- (g) fails, neglects or refuses to observe any obligation or condition binding on him and contained in a contract with any Licencee,

the Licencee may direct that the telecommunication service supplied to such person be suspended and may, if the reason for the suspension is not corrected within a reasonable period, cause such telecommunication service to be disconnected and may make such arrangements as the Licencee may consider necessary or desirable for the removal of equipment, instruments, lines, links or telecommunication apparatus from the premises of the person.

Telephone, etc., call numbers.

**24.** A Licencee may re-assign or redistribute any telephone or other call number or series of telephone or other call numbers to a person -

- (a) at the request of that person;
- (b) where in the Licencee's opinion the retention of a particular number would embarrass or cause unusual inconvenience to the person; or
- (c) if satisfied that it is expedient so to do.

Force majeure.

**25.** The Licencee shall not be in default of any of its obligations under this Act by reason of a failure resulting directly or indirectly from force majeure which for the purposes of this section includes but is not limited to any law, order, regulation or direction of any Government, or any strike, lock-out or other labour difficulty, or any civil insurrection, riot, natural emergency, war (whether declared or not), fire, flood, act of God or any other catastrophe, or any cause not reasonably within the control of the Licencee.

Liability of Licencee.

**26.** No Licencee or any of its servants or agents shall be liable to any person in respect of claims arising directly or indirectly from the failure of any telecommunication system or any telecommunication service save in respect of any liability arising directly or indirectly from the negligent or other tortious acts or omissions of the Licencee, its servants or agents in which case, the general provisions of law shall apply.

Exemption from taxes.

- 27.** (1) The provisions of this section shall apply to -
- (a) the Licencee under the Agreement and any person to whom a licence is granted pursuant to section 7(1) in succession to that Licencee (together being the Relevant Licencees);
  - (b) any group company of any Relevant Licencee at any time and for the purposes of this section "Relevant Licencee" shall be deemed to include any such group company from time to time;
  - (c) any person who at any time has been a Relevant Licencee (who for the purposes of this section shall also be deemed to be a Relevant Licencee).

(2) Notwithstanding anything contained in any enactment passed before or after commencement of this Act and save as provided in subsection (4), no Relevant Licencee or former Relevant Licencee shall be liable to any tax or charge specified in subsection (3) nor to any withholding tax or other similar impost in relation to, arising out of or as a result of -

- (a) the setting up of any Relevant Licencee including setting up of any branch of any Relevant Licencee and the incorporation of any Relevant Licencee, or the transfer of any business or assets by any Relevant Licencee to any other Relevant Licencee;
- (b) the issuing of shares or loan stock by any Relevant Licencee or any subsequent increase, decrease, transfer, sale or disposal thereof in all cases whether before or after the commencement of this Act;
- (c) any increase in authorised share capital or loan stock of any Relevant Licencee whether before or within five years of the commencement of this Act;
- (d) the remission or transmission of any funds from Dominica in respect of dividends, interest or fees for corporate, financial or technical services;
- (e) the payment of any principal or interest to any Relevant Licencee in respect of any sums advanced to any other Relevant Licencee; or
- (f) any other matter directly or indirectly connected with or arising from any of the aforementioned;

and such rights (if any) as Government may have to collect the taxes and imposts set out in this subsection from the Relevant Licencees are waived by Government.

(3) Subsection (2) shall apply to all taxes and charges under the (withholding tax provisions of the Income Tax Act,) Stamp Duty Act, Aliens Land holding Regulation Act 1995, the Companies Act and Title by Registration Act (including any balancing charge) save as provided in subsection (4).

(4) A Relevant Licencee shall pay the fee under section 18 of the Title by Registration Act.

Ch. 67:01.  
Ch. 68:01.  
Act No. 21  
of 1994  
Cap. 3I8.  
Ch. 56:50.  
Ch. 56:50.  
Minister may  
make Rules.

- 28.** The Minister after consultation with the Licencees may make Rules -
- (a) fixing the limits within and the conditions under which the telecommunication system or telecommunication service may be installed and supplied;
  - (b) for securing the safety of the public from personal injury;
  - (c) regulating and prescribing the duties of officers, operators and other persons employed in connection with the telecommunication system and telecommunication service operated or maintained by the Licencee;

- (d) for the inspection of telecommunication apparatus constructed and placed on any public land or private premises;
- (e) regulating the erection, control, extension, protection, use and working of the telecommunication system or telecommunication service operated or maintained by the Licencee;
- (f) prescribing the rates and charges to be levied in respect of any telecommunication system and telecommunication service save where a scheme of control is attached to the licence regulating such service;
- (g) introducing terms and conditions on which telecommunication service is to be supplied by such Licencee; and
- (h) generally in respect of any matter in connection with the telecommunication system or telecommunication service not otherwise provided for.

Appointment of Inspectors.

**29.** The Minister may from time to time appoint a fit and proper person to be an Inspector for the purposes of this Act.

Powers of search and seizure.

**30.** (1) Where a Magistrate is satisfied by an information on oath that there is reasonable ground for suspecting that an offence under the Act or Regulations has been or is being committed and that evidence of the commission of the offence is to be found on any premises in Dominica, specified in the information, he may grant a search warrant authorising an Inspector and an agent of the Licencee named in the warrant, with or without a constable, to enter, at any time within one month from the date of the warrant, the premises specified in the information, and to search such premises, and to examine, test, seal or take possession of any telecommunication apparatus found on the premises and suspected to have been used for the perpetration of the offense.

(2) The owner or person in charge of any premises entered by an Inspector pursuant to subsection (1) and every person found on the premises shall give the Inspector all reasonable assistance in their power and furnish him with such information as he may reasonably require, and any person who obstructs the Inspector or any constable in the exercise of the powers conferred by this section commits an offence and is liable on conviction to a fine of \$5,000 and six months imprisonment.

(3) The Inspector shall release any apparatus seized by him pursuant to subsection (1) of this section when all provisions of this Act and Regulations with respect thereto have been complied with.

Emergency powers.

**31.** (1) The Minister may, if it appears expedient to do so by reason of the existence of a state of emergency, assume control of, use, or prohibit the use of, any telecommunication apparatus or documents, including messages whether transmitted, received or in course of transmission or reception, in such manner and for such time as the Minister may direct.

(2) The person owning or controlling any telecommunication apparatus of which control has been assumed pursuant to subsection (1) shall give up possession thereof, and the operators and other persons employed by such person shall diligently and faithfully obey all orders, and transmit and receive all signals, calls and telegrams which they are required to transmit and receive, by any person authorised by the Minister during the time of such possession.

Compensation  
and arbitration.

Ch. 4:50.

(3) The Minister shall compensate reasonably the person owning or controlling any telecommunication apparatus of which control is assumed and use made pursuant to this section and where the parties cannot agree the amount of compensation the matter shall be referred by the Minister to arbitration in accordance with the Arbitration Act.

## PART VII

### OFFENCES AND PENALTIES

Obstructing  
conveyance of  
message.

**32.** Any person, in the employment of a telecommunication service in whatsoever relation who -

(a) wilfully and maliciously omits or delays to transmit or deliver in its proper order any message, telegram or telephone call entrusted to or to be transmitted by the service or

(b) by any wilful or malicious act or omission, prevents or delays the transmission or delivery of any message, telegram or telephone call in its proper order;

commits an offence and is liable on conviction to a fine of \$5,000 and six months imprisonment.

Injury to  
apparatus, etc.,  
obstruction.

**33.** (1) Any person who unlawfully and maliciously -

(a) injures, damages, removes or destroys any telecommunication apparatus, line apparatus, installation or other work relating to a telecommunication service commits an offence and is liable on trial by indictment to a fine of \$20,000 and five years imprisonment;

(b) obstructs or prevents in any manner whatsoever the sending or conveyance of any message, signal, telegram, telephone call or other communication entrusted to or to be transmitted by a telecommunication service commits an offence and is liable on conviction to a fine of \$5,000 and six months imprisonment.

(2) Any person who negligently injures, damages, removes or destroys any line, apparatus, installation or other work, belonging to a telecommunication service, commits an offence and is liable on conviction to a fine of \$500 and three months imprisonment.

Trespass.

**34.** Any person found at any time on telecommunication service premises not having some reasonable cause or excuse for being therein commits an offence and is liable on conviction to a fine of \$250 and one month imprisonment.

Wilfull  
obstruction of  
inspectors.

**35.** Any person who wilfully obstructs any Inspector, officer or person acting in the execution of his duties under this Act or under any regulation, order or award, made or issued thereunder, commits an offence and is liable on conviction to a fine of \$250 and one month imprisonment.

Suppressors or  
other devices  
required to be  
used for reducing  
electrical  
interference.

**36.** Any person who wilfully and maliciously uses or causes to be used any vehicle, apparatus, motor, machinery, installation or appliance which is capable of causing electrical interference with the lawful and normal operation or use of any duly licenced telecommunication station, telecommunication receiving set or telecommunication apparatus commits an offence and is liable on conviction to a fine of \$250 and one month imprisonment.



- Penalties. **37.** Where no other penalty has been prescribed for any contravention of or neglect to comply with the provisions of this Act or any offence under this Act any such contravention or neglect or offence shall make the offender liable to a fine of \$500.00 and six months imprisonment.
- Transitional.  
Cap. 261. **38.** Regulations made under the Wireless Telegraphy Ordinance, shall remain in force until repealed.
- Exclusions. **39.** This Act does not apply to any foreign warship or service aircraft, or to any telecommunication apparatus thereon except in respect of telecommunication traffic which ought more properly to be the subject of any licence granted pursuant to this Act.
- Previous licences not to be affected. **40.** Save as otherwise expressly provided herein nothing in this Act shall in any way affect or restrict the operation of any licence granted to any person under the provisions of any law in force in Dominica on the coming into operation of this Act.
- Public Utilities Commission Act.  
Ch. 43:01. **41.** The Public Utilities Commission Act shall not apply to any Licencee.
- Repeals.  
Ch. 45:04.  
Cap. 251.  
Act No. 25 of 1974.  
Cap.261. **42.** The Public Telephones Act, Production of Telegrams Ordinance, Telecommunications Act 1974 and the Wireless Telegraph Ordinance are hereby repealed.

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FIRST SCHEDULE

(Section 13).

- 1.** (1) Subject to the restrictions and provisions hereinafter contained, any Licencee may from time to time -
- (a) place and/or maintain a line or lines, in, under or over or along a highway or land or other property and may alter, replace or remove the same and for such purposes may open or break up any highway or land or other property and alter the position thereunder of any pipe, wire, cable or conduit other than a main, for the supply of water, gas or electricity or any other means;
- (b) temporarily close a highway or a section thereof for the purpose of laying or maintaining any line.

(2) The provisions of subparagraph (1) shall apply to all lines or works including those connecting inland of flees or stations to each other or to foreign offices or stations and passing in, under, or over public or other grounds: provided that before executing any works referred to in subparagraph (1) in, under or over private property and the enclosed gardens forming part of them, the Licencee shall first obtain the consent of the owner or occupier, and where such consent is unreasonably withheld, the said works may proceed after fourteen days' notice, and subject-to the payment of reasonable compensation to be determined in default of agreement by arbitration in accordance with the provisions of the Arbitration Act.

Ch. 4:50.

(3) The works referred to in this paragraph shall not be deemed to confer any right other than that of user only, in, under, on or over public or other grounds. In addition where in the exercise of the powers aforesaid, the Licencee has placed works in, under or over premises or other land the property of third parties, for the purpose of supplying any system or service under the provisions of this Act or any other enactment, and of any regulations made thereunder, such works shall not be subject to distress or to the landlord's remedy for rent of the premises or other land, where the same may be, nor shall the same be liable to be taken in execution under any process of the High Court or under any proceedings in bankruptcy or insolvency against the person in whose possession the same may be.

(4) Prior to the execution of the works referred to in paragraph 1, the Minister may order the preparation, circulation and publication of a scheme with a description of the works to be established.

(5) The provisions of this paragraph shall apply to any Ministry or Department of Government charged with or responsible for the operation or the use of a telecommunication service or telecommunication system.

**2.** (1) If in the exercise of the powers referred to in paragraph 1, any of the lines or other works carried through in, under or over any private land become a nuisance or the cause of loss to the owner or occupier of such land, the Licencee shall at his own expense remove or alter such work, and shall subject to eventual arbitration in accordance with the provisions of the Arbitration Act, give reasonable compensation to the owner or occupiers.

Ch. 4:50.

(2) Where any person desires to use land for the construction or alteration of a building or any other object that makes it necessary to remove a line or other work undertaken or maintained by a Licencee, in, under or over such land, or to alter such work in any way, he may by notice in writing served upon the Licencee require the removal or alteration of the work and the Licencee aforesaid shall within fourteen days from the receipt of the notice cause at his own expense such work to be removed or altered accordingly provided that if within three months from the date of such removal or alteration of any work the owner or occupier in giving notice shall not proceed with the project of which he has given notice, the Licencee may if he thinks fit, replace such work subject to subparagraph (4) as regards both the cost of removal or alteration and the cost of any such replacement.

(3) Subject to subparagraph (4) the Minister may upon the requirement of the owner or occupier of any private land, in, under or over which a line or other work referred to in paragraph 1 has been placed, order the removal or alteration of the same for any other reason than aforesaid.

(4) Any expense incurred by a Licencee in complying with the requirement under subparagraph (3) or under circumstances referred to in the last part of subparagraph (2), may be recovered summarily as a civil debt from the person who made the requirement or gave the notice.

**3.** (1) The owner of trees overhanging or interfering with any telecommunication service or telecommunication system referred to in subparagraph (5) of paragraph 1, shall cut, prune or trim the same and in default such tree may be cut, pruned or trimmed by the Licencee or by the Government without incurring any liability to the owner of the tree.

(2) The consent of the owner of trees overhanging or interfering with the telecommunication system or telecommunication service, situated over private property shall be sought prior to the cutting, pruning or trimming of said trees and where such consent is refused or delayed, the cutting, pruning or trimming may proceed on or after the 15th day of the consent being sought subject to the payment of reasonable compensation for any damage or loss incurred, to be determined in default of agreement by arbitration in accordance with the Arbitration Act:

Ch. 4:50.

Provided however that where the owner of the private property is not known or cannot be located the consent of the person in occupation or possession of the private property shall be obtained.

(3) In cases of urgent public necessity, safety or security, no consent shall be necessary to cut, prune or trim any tree overhanging or interfering with telecommunication systems or telecommunication services over private property subject to the payment of reasonable compensation in accordance with subparagraph (2).

4. The execution of works, in, under or above private property shall not be stayed or halted in any manner pending the determination and award of compensation as provided for in this Act.

5. (1) An officer authorised in that capacity by the Minister may, at all reasonable times and on production of his authority, enter any premises to which a line or link has been supplied or is intended to be supplied and may install, inspect, test, remove or replace the link, lines, transmitters or receivers, apparatus or other instruments or fittings placed in, under, on or over such premises and belonging to the service concerned.

(2) Any damage caused by such entry, inspection, removal or replacement shall be repaired.

(Section 17).

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## SECOND SCHEDULE

### PART I

Means which are included within the definition of retro-origination call service in section 17 -

1. Any sequence of actions which include the following:

- (a) a call is made from a number in Dominica to a foreign service operator which remains unanswered;
- (b) the foreign service operator makes a call to a number in Dominica or causes such a call to be made following which a user inputs call details.

2. Any sequence of actions which include the following:

- (a) a user makes a call from a number in Dominica to a foreign service operator and gives user details;
- (b) the foreign service operator makes a call to a number in Dominica following which the user inputs call details.

3. Any sequence of actions which include the following:

- (a) a call is made from a number in Dominica to a foreign service operator and a user gives user details and call details;
- (b) the foreign service operator makes a call or a call attempt to a destination in a foreign territory in accordance with the call details provided by the user before connecting that call with a number in Dominica or causes the aforesaid acts; and

4. Any sequence of actions which include the following:

- (a) a foreign service operator makes or causes to be made more than one call or call attempt to a number in Dominica which may or may not be answered;
- (b) a user answers any such call and inputs call details.

## PART II

### PERMITTED ACTIVITIES

"Country Direct" service as defined in the recommendations of the International Telegraph and Telephone Consultative Committee as authorised by any Licencee from time to time.

Passed in the House of Assembly this 13th day of April, 1995.

ALEX F. PHILLIP (MRS.)

*Acting Clerk of the House of Assembly.*

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau

(Price \$6.20)