

GRENADA

STATUTORY RULES AND ORDERS NO. 34 OF 2003

IN EXERCISE OF THE POWERS CONFERRED BY SECTION 73 OF THE TELECOMMUNICATIONS ACT 2000 (ACT NO. 31 OF 2000) THE MINISTER MAKES THE FOLLOWING REGULATIONS.

(Gazetted 14th November, 2003).

1. Short title. These Regulations may be cited as the

TELECOMMUNICATIONS (TARIFF) REGULATIONS, 2003.

PART I

PRELIMINARY

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

3. Interpretation. In these Regulations:

“Act” means the Telecommunications Act 2000, (No. 31 of 2000);

“dominant” means, in respect of a telecommunications provider in a market, the ability to operate without constraints imposed by competitors, or potential competitors of the telecommunications provider or persons to whom, or from whom, the telecommunications provider supplies or acquires goods or services;

“effective date” means, in relation to a licensed operator the commencement date of its licence;

“effective competition” means, in respect of a market for a telecommunications service in Grenada, that no operator possesses significant market

power in that market; “incentive-based regulation” means a scheme included as a condition of a licence that provides incentives to the operator to improve the efficiency of its operations;

“market” means a market in Grenada and when used in relation to a telecommunications service, means a market for those telecommunications services or other services that are substitutable for, or otherwise competitive with, the first-mentioned telecommunications services;

“non-regulated charge” means the charge made by a licensed operator for a non-regulated service;

“predatory” means lower than the long-run incremental cost of the provider;

“regulated tariff” means the tariff set, or proposed to be set, by a telecommunications provider in respect of a regulated service;

“regulated service” means, in respect of a telecommunications provider, any telecommunications service provided by that provider that is specified to be a service in respect of which that operator is dominant or in respect of which incentive-based regulation applies;

“relevant financial year” means in relation to a relevant year, the financial year of the licensed operator ending last before the beginning of the relevant year, being a financial year in respect of which annual costs have been prepared and audited in accordance with the requirements of the Companies Act of Grenada;

“tariff” means, in respect of a telecommunications service, the terms and conditions, including prices to be charged, applying or proposed to apply in the provision of that service.

PART II

TARIFFS

4. Tariff setting. In setting a tariff for a telecommunications service, licensees shall act in accordance with the following principles:

- (a) where there is effective competition in the market for a telecommunications service, licensees may set tariffs for that service;
- (b) where the Commission has determined that one or more operators are dominant in the market for a telecommunications service, licensees shall set their tariffs for that service in accordance with:
 - (i) if applicable, any incentive-based regulations; and
 - (ii) regulation imposed as a condition of that licensee's licence.

PART III

DOMINANT PROVIDERS

5. Designation of provider. (1) The Commission shall, acting on the recommendation of ECTEL, by notice published in the *Gazette*, designate a telecommunications provider as a dominant telecommunications provider in respect of a particular telecommunications market or markets in Grenada where the Commission has determined that, after a public consultation process, with respect to that telecommunications provider:

- (a) there is not effective competition with respect to the market or markets for telecommunications services in Grenada; and
- (b) it is in the long-term interests of consumers of telecommunications services

in Grenada that the service be so designated.

(2) The Commission may designate a telecommunications provider as a dominant telecommunications provider where the provider consents in writing to such designation.

6. Dominant provider obligations. Where the Commission has determined that a telecommunications provider is dominant in the provision of a telecommunications service, that provider shall:

- (a) file its tariffs with the Commission and those tariffs shall be publicly available; and
- (b) not discriminate between similarly situated customers of the relevant services.

7. Declaration of non-dominance. (1) The Commission may, on its own initiative or on application by a telecommunications provider, make a declaration by notice in the *Gazette* that telecommunications provider is not dominant in the provision of a telecommunications service.

(2) A declaration under Paragraph 7 (1) shall be made by the Commission where there is effective competition in the market for the service.

(3) Where a declaration under paragraph 7 (1) is made with respect to the provision of a service by a telecommunications provider, the provider shall:

- (a) not be required to comply with the

obligations under Regulation 6 with respect to that relevant service; and

(b) be removed from any incentive-based regulation scheme that had applied as at the date of the declaration.

PART IV

TARIFF FILING AND APPROVAL FOR REGULATED SERVICES

8. Application for approval of tariff for regulated services. (1) A telecommunications provider providing a regulated service shall file with the Commission an application for approval of a tariff for each regulated service not later than 30 days prior to the scheduled effective date of such tariff.

(2) An application under this regulation shall include a description and justification of the tariff and such other information as is required by the Commission and ECTEL to render their review and recommendations.

(3) The Commission shall upon receipt of the application for approval of the tariff, forward the request to ECTEL for its review and recommendations.

9. Factors to be considered by ECTEL. In determining an application under this Part ECTEL shall consider inter alia:

(c) the extent to which the proposed regulated charges are based on an incentive pricing regime;

(d) the extent to which the proposed regulated charges represent a competitive

response to market forces;

(e) the extent to which the proposed regulated charges are based on or oriented towards costs; and

(f) the extent to which the proposed regulated charges serve the public interest by improving service quality and availability, enhancing universal service, fostering investment and innovation, or promoting competition.

10. Decision of Commission. (1) The Commission may, on the recommendation of ECTEL:

(a) approve or disapprove a regulated tariff or a relevant term and condition contained therein; or

(b) approve a regulated tariff subject to conditions or charges; or

(c) suspend approval of a regulated tariff, pending additional information or investigation; or

(d) reject the application.

(2) The Commission may disapprove the proposed regulated charges only where:

(a) ECTEL has so recommended that the tariff be disapproved;

(b) the calculation of such charge contains mathematical errors; or

(c) the regulated charge violates the Act.

11. Disapproval of proposed tariff. An order of the Commission disapproving a proposed tariff shall:

- (a) be sent to the telecommunications provider within 5 days of being issued;
- (b) be in writing;
- (c) state the reasons for the disapproval; and
- (d) specify the time frame in which the telecommunications provider may submit a revised application.

12. Provider to inform public of new tariff. (1) Where the Commission approves a tariff, the communications provider shall, upon notification of such approval, inform the public of the new tariff, not less than five days prior to the effective date of that charge.

(2) The provider shall notify the public of the new tariff by way of publication in:

- (a) the *Official Gazette*;
- (b) a local newspaper with a widespread circulation; or
- (c) such other publications as the commission may designate; and
- (d) such other publications that the tele-communications provider deems appropriate.

(3) A provider shall file any modifications

of an existing tariff with the Commission in the same manner as that required for a proposed regulated tariff.

13. Notification of proposed non-regulated tariff. (1) A telecommunications provider who is not dominant shall notify the Commission of its proposed tariff including the relevant standard terms and conditions thereof, no later than 21 days prior to the scheduled effective date of such tariff.

(2) A telecommunications provider shall file any modifications of tariff in respect of an existing non-regulated tariff with the Commission in the same manner as that required for a proposed tariff.

PART V

AVAILABILITY OF INFORMATION

14. Access to information. (1) The telecommunications provider shall ensure that all applications and schedules filed with the Commission in respect of tariffs, are printed and made available for public review and inspection.

(2) Where tariffs are kept on file as required by this regulation, the person in charge of that office shall, on request:

(a) produce any tariff on file for inspection; and

(b) arrange to provide copies of tariff pages at a reasonable price.

15. Compliance with request for information. A telecommunications provider shall comply with a request for information from the Commission, including a request for information in respect of an audit.

16. Commission may consult with ECTEL to design forms and minimize costs. The Commission may consult with ECTEL from time to time in order to:

- (a) design appropriate form to facilitate the obtaining of vital information, having regard to its function and duties under the Act;
- (b) minimize the costs likely to be incurred by the telecommunications provider in relation to the compilation and provision of information to the Commission.

17. Compliance report. (1) A holder of an individual licence shall submit an Annual Compliance Report and a Gross Annual Revenue Report to the Commission. The truthfulness, completeness and accuracy of each Report shall be duly certified by an appropriate officer of the licensee in the First Schedule and Second Schedule to these Regulations.

(2) Reports required under this regulation shall be in the form prescribed in the 1st and 2nd Schedules.

18. Appointment of independent auditor. The Commission may appoint an independent auditor to conduct audits into the accounts and information provided by a telecommunications provider who is the holder of an individual licence, in order to verify the accuracy of the accounts and information so provided by such provider.

19. Auditor to submit report. An auditor who is appointed pursuant to Paragraph 18 shall provide the Commission and the provider with a report containing the conclusions and reasons for its findings.

20. Notification of reports. Where the Commission is in receipt of an audit report which discloses that certain information provided by the provider is inaccurate or incomplete, the Commission shall notify such provider in writing:

- (a) setting out the findings of the auditor and the reasons for those findings;
- (b) specifying the action which the licensed operator must take to remedy the inaccuracy or incompleteness;
- (c) specifying any action that the Commission intends to take; and
- (d) giving the telecommunications provider the opportunity to respond to the notice and the required time frame for such response.

PART V

PETITIONS IN RELATION TO REGULATED CHARGES

21. Filing of petition. (1) Any person may file a petition with the Commission for the purpose of initiating an investigation, suspension or denial of a regulated charge or a proposed regulated charge.

(2) A petition filed pursuant to Paragraph 1 above shall:

- (a) be in writing;
- (b) state the interest of the petition;
- (c) specify the name of the licensed operator, any details of the regulated charge or proposed regulated charge; and
- (d) specify the reasons for instituting the investigation of, or the suspension or denial of the regulated charge or proposed regulated charge.

(3) The Commission may publish a notice in the *Official Gazette* and in the local newspapers having wide circulation, that a petition has been filed in respect of the regulated charge.

22. Suspension of existing regulated charge. (1) Where a petition filed in accordance with Paragraph 21 relates to an existing regulated charge, the Commission may decide to investigate or suspend such regulated charge and shall notify the telecommunications provider of any action it intends to take.

(2) The Commission shall also give the telecommunications provider an opportunity to respond to the proposed investigation, suspension or denial of the regulated charge.

23. Notification of inquiry. Where ECTEL has initiated an inquiry into an existing regulated charge, the Commission shall delay any action on the matter pending the outcome of the ECTEL inquiry, and shall notify all interested parties that such an inquiry is taking place.

24. Steps prior to issuing order. The Commission before issuing an order suspending an existing regulated charge, shall:

- (a) seek the recommendation of ECTEL;
- (b) notify the relevant telecommunications provider of the intended order setting out the reasons for the pending suspension; and
- (c) provide the licensed operator with an opportunity to respond to the order, and specifying the time frame within which to do so.

25. Additional information. The Commission may request additional information from the telecommunications provider within 20 days of receiving a response to its order, and shall allow the telecommunications provider a further 20 days in which to respond to the request of the Commission for additional information.

PART VI

MISCELLANEOUS

26. Functions of Commission. The Commission shall:

- (a) publish all tariffs required to be submitted under the Act;
- (b) monitor the operations of telecommunications providers to ascertain the manner in which tariffs are derived by them;
- (c) advise the Minister in all matters related to tariffs for telecommunications services; and

(d) do such other things as the Commission may deem desirable for the purpose of establishing and maintaining an acceptable regime of tariffs.

Part VII

INTERIM PRICING MECHANISM

27. Interim pricing. (1) The Commission on the recommendation of ECTEL may adopt an interim pricing mechanism applicable to telecommunications providers subject to incentive-based regulations where that incentive-based regulation has not been fully defined.

(2) A telecommunications provider may submit tariffs for services to be regulated under that incentive-based regulation to the Commission for approval under any such interim pricing mechanism.

(3) This Regulation 27 shall cease to apply after the date on which the incentive-based regulation becomes fully defined.

28. Repeal. The Telecommunications (Tariff) Regulations 2003 (SRO No 3 of 2003) are repealed.

SCHEDULE 1

ANNUAL COMPLIANCE REPORT FORM

THE UNDERSIGNED HEREBY CERTIFY THAT:

We are the duly appointed [Title] and [Title] of [Licensee name] (“Licensee”);

We have reviewed the terms of the Licence for Operation of a Telecommunications System Providing Telecommunications Services in Grenada dated as of, 20....., as amended, supplemented or otherwise modified to the dates hereof (said Licence, as so amended, supplemented or otherwise modified, being the "Licence", the terms defined therein and not otherwise defined in this Certificate being used in this Certificate as therein defined) by the Commission of Grenada; and

We have made, or have caused to be made under our supervision, a review in reasonable detail of the operations of the Licensee and we hereby certify the following information is true, correct and complete:

SUBSCRIBER LINE EXPANSION REQUIREMENTS

Information regarding the actual number of Additional Operational Subscriber's Lines and Public Pay Telephones installed by the Licensee as of the most recent Due Date. (List number of Operational Subscriber's Lines and Public Pay Telephones for each Region and District);

Region	District	Number of New Operational Subscriber's Lines	Number of New Public Pay Telephones	Total Number of Operational Subscriber's Lines Installed Since the Effective Date	Total Number of Public Pay Telephones Installed Since the Effective Date
#	#	#	#	#	#

SERVICE QUALITY REQUIREMENTS

Actual Local Call Completion Rate as of the most recent Due Date pursuant to **Annex E** of the Fixed Licence:

Actual Local Call Completion Rate	Target Local Call Completion Rate listed on Annex 3
_%	_%

Actual International Call Completion Rate as of the most recent Due Date pursuant to **Annex E** of the Fixed Licence:

Actual International Call Completion Rate	Target International Call Completion Rate listed on Annex 3
_%	_%

Actual Fault Recovery Rate as of the most recent Due Date pursuant to **Annex E** of the Fixed Licence:

Actual Fault Recovery Rate	Target Fault Recovery Rate listed on Annex 3
_%	_%

Actual percentage of the total Subscriber's Lines of the Licensee served by digital telephone central offices as of the most recent Due Date pursuant to **Annex E** of the Fixed Licence:

Actual Percentage	Target Percentage listed on Annex 3
_%	_%

Actual maximum connection time for [urban areas] as of the most recent Due Date

pursuant to **Annex E** of the Fixed Licence:

Actual Maximum Connection Time	Target Maximum Connection Time (see Annex 3)
_%	_%

SERVICES AND OPERATIONS OF LICENSEE

Attached hereto and forming a part hereof is a true, correct and complete detailed report on the operations and services of the Licensee.

OWNERSHIP OF LICENSEE

Set forth below is a list of each Shareholder's (i) name, jurisdiction and date of registration and principal place of business, (ii) capitalization, (iii) number and class of shares of capital stock of Licensee owned by such Shareholder and (iv) percentage ownership in Licence:

Set forth below is a list of each Consortium Participant's (i) name, jurisdiction and date of organization and principal place of business, (ii) capitalization, (iii) ownership interest, whether direct or indirect, in each Shareholder and, in the case of any such indirect interest, each intermediary, including, without limitation, the number, class and par value of shares of capital stock, the percentage interest and the names of each Shareholder or intermediary, as applicable:

Certified and delivered this ----- day of -----, ----- pursuant to Section --- of the Licence.

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SRO.

[LICENSEE/OPERATOR]

By:-----

By. -----

Title:-----

Title:-----

SCHEDULE 2

GROSS ANNUAL REVENUE REPORT FORM

THE UNDERSIGNED HEREBY CERTIFY THAT:

We are the duly appointed [Title] and [Title] of [Licensee name] (“Licensee”). We have reviewed the terms of the Licence, dated as of -----, 20----, as amended, supplemented or otherwise modified to the date hereof (said Licence, as so amended, supplemented or otherwise modified, being the “Licence”) by the Licensee [and the Communications Commission] of Grenada Pursuant to the Telecommunications Act 2000, No. 31 of 2000 and the Telecommunications Regulations of Grenada, we have made, or have caused to be made under our supervision, a review in reasonable detail of the financial operations of the Licensee and calculated, or caused to be calculated, the Gross Annual Revenue fee due and payable for calendar year -----[insert applicable year].

Further, we have attached, or caused to be attached hereto copies of the certified audited financial statements of the Licensee. We hereby certify that the following information, and the information contained in the attachments hereto, is true, correct, and complete.

GROSS ANNUAL REVENUE

Information regarding the gross income for the reporting year received by, or due to, the Licensee and its affiliates, from whatever source derived, before any deductions for expenses, discounts, returns, or offsets of any kind.

ATTACHMENTS

[Attach certified copies of quarterly and annual reports required by the Ministry of Finance.]

Attached hereto are certified copies of the quarterly and annually financial reports and reports of operations required to be filed by the Licensee pursuant to the [Companies Laws]

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CERTIFICATION

Certified and delivered this ----- day of -----, ----- pursuant to Section ---- of
the Licence.

[LICENSEE / OPERATOR]

By: -----

By: -----

Title: -----

Title: -----

Made this 10th day of November, 2003.

GREGORY BOWEN
*Minister of Communications, Works
and Public Utilities.*

GRENADA

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