HOUSE OF REPRESENTATIVES

Monday, May 21, 2001

The House met at 1.33 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received correspondence from the following Members seeking my leave to be absent from today's sitting, and also in one case, until June 4, 2001: The hon. Member for Tunapuna (Mervyn Assam) from today's sitting; the hon. Member for Point Fortin (Larry Achong) from today's sitting and the hon. Member for Arouca South (Camille Robinson-Regis) for the period May 21—June 04, 2001. Leave has been granted.

PAPERS LAID

1. The Sixtieth Report of the Salaries Review Commission of the Republic of Trinidad and Tobago, March, 27, 2001. *[The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj)*]

2. Privileges and Immunities (Diplomatic, Consular and International Organizations) (Inter-American Institute for Co-operation on Agriculture) Order, 2001. [*Hon. R. L. Maharaj*]

ORAL ANSWER TO QUESTION

The following question stood on the Order Paper in the name of Dr. Keith Rowley *(Diego Martin West):*

Airport Terminal Building

(Maintenance Contract)

7. Could the Hon. Minister of Transport state:

   (a) whether the Government or any of its agencies entered into a maintenance contract with any person or company for the supply of such services to be carried out on the recently constructed airport terminal building?

   (b) If the answer to (a) is in the affirmative, could the Minister:

      i. identify the company which received the contract;

      ii. state the total sum of the contract and the period covered;

iii. explain the process used to select the company or person and the date on which the contract was entered into?

Mr. Valley: Mr. Speaker, I ask that the question be postponed to the next sitting of the Parliament. The Member is not going to be here today.

Mr. Speaker: Is that the wish of the Members of the House?

Assent indicated.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, if the hon. Member for Diego Martin Central wants the question postponed, it is a normal practice that we would not object to it. But I wish to say that on the last occasion there were many requests and representations made for this question to be answered urgently. It was very important for the Opposition.

The Minister of Transport has come specifically to the House to answer the question, and I wonder whether the Member would like to reconsider in light of such an important question. The Minister would make herself available on the next occasion if the Member would want to ask any supplemental questions.

Mr. Valley: Mr. Speaker, I would not put the hon. Minister through that difficulty. The Member who has asked the question is unavoidably absent today, and he may have supplemental questions which I have not seen. In that circumstance, I ask that the question be postponed.

Mr. **Speaker**: Let me also add that if the Member would be unavoidably absent, it would be a point of courtesy if the Speaker could be informed that a Member would be absent from the Sitting. In that case, I could have the Leader of Government Business contact the Minister and inform her that the Member would not be here.

Mr. **Valley:** Mr. Speaker, I am sorry, but as I said, "unavoidably", which meant that he had all intentions of coming but at the last moment he was unable.

Mr. **Speaker**: Should I stand it down then for later?

Mr. **Valley**: I do not think he is coming. I know that he is not coming. It was just before the Parliament that he informed me that he would be unable to attend, and we apologize for this.

Mr. **Speaker**: We have two opposing views and in situations where there is no agreement, what is the wish of the House on this matter?

Mr. Maharaj: Mr. Speaker, I would not want to go against the practice and, therefore, we would agree for a deferral to Thursday, May 24, 2001.

Question, by leave, deferred.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS (AMDT.) BILL

Bill to amend the Mutual Assistance in Criminal Matters Act, [*The Attorney General and Minister of Legal Affairs*]: read the first time.

FINANCE COMMITTEE

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, as provided for in Standing Order 64(7), I beg to move that this House do now resolve itself into Finance Committee for the purpose of considering proposals for matters relating to the 2000 appropriation.

Question proposed.

Question put and agreed to.

Mr. Speaker: Before the House resolves itself into Committee, it is customary on matters like these to ask members in the public gallery to vacate the Chamber until the proceedings have ended, and that is also for Members who are not part of the Finance Committee.

1.40 p.m.: *House resolved itself into Finance Committee.*

2.37 p.m.: *House resumed.*

FINANCE COMMITTEE

The Minister of Finance (Sen. The Hon. Gerald Yetming): Mr. Speaker, I wish to advise that the Finance Committee has met and has considered matters relating to the 2001 appropriation.

The report of the Finance Committee would be prepared for presentation on Thursday, May 24, 2001, at 1.30 p.m.

TELECOMMUNICATIONS BILL

Order for second reading read.

The Minister of Communications and Information Technology (Hon. Ralph Maraj): Mr. Speaker, I beg to move, That a Bill for the regulation of telecommunications in Trinidad and Tobago, be now read a second time.

The Bill establishes a framework for telecommunications for the purpose of encouraging new service providers to enter the market, thereby facilitating

competition in the sector and ultimately providing economic development. By attracting providers of efficient and technologically advanced telecommunication services to Trinidad and Tobago, the Government hopes to promote broader business activity and to make the country a regional centre for the new information economy.

This liberalization thrust will also achieve greater customer satisfaction by providing a wider choice of services at lower prices.

2.40 p.m.

In furtherance of these objectives, the Bill establishes a fair and neutral regulatory authority to create a level playing field for all providers of telecommunication services. Significantly, the Bill acknowledges the important role of Telecommunications Services of Trinidad and Tobago (TSTT) and the rights of Cable and Wireless, a significant shareholder in TSTT. It also replaces the current statutes which are decades old and ill-suited for an era of convergence among telecommunications, broadcasting and new Internet bay services. This is one of the unique features of the present environment.

I would like to explain our objectives in drafting the Bill and why we are introducing it at this time. The legal reform of the telecommunication sector has been under consideration, as you all know, for over a decade. This Bill represents the culmination of a lengthy process of studying global norms for telecommunications laws, consulting widely and applying global practices in Trinidad and Tobago. In our drafting we have made certain policy changes which are consistent with the Government's overall vision for the socio-economic development of the country and which also are in keeping with the general trend of telecommunications legislation worldwide. In other words, we have consulted with other jurisdictions.

Like many other countries around the world, existing laws applicable to the communication sector were drafted over half a century ago. Since early in the 1980s however, countries around the world have been updating and overhauling their laws to take account of developments in technology, the inevitably and desirability of competition and consumer demands. This process is essentially completed in Canada, the United States, United Kingdom, Europe, Asia, Australia and much of Latin America. Many developing countries including those in Africa and the Caribbean have also recognized the benefits of a modernized legal framework for telecommunications as a way of attracting businesses and improving service to consumers. Of course, Trinidad and Tobago should not be left behind in this process.

The Government's vision for Trinidad and Tobago is to become a centre for information technology and knowledge-based industries in the Caribbean and also throughout the hemisphere. Trinidad and Tobago has the advantage of an educated workforce and a highly developed and entrepreneurial class. We can and we should be a leader in e-commerce, e-government, Internet-based businesses and multimedia development. All these businesses and services require new and efficient low cost telecommunication services to reach customers, both locally and abroad.

One of the fundamental policies in driving our reform effort is the introduction of competition in the telecommunications sector. Competition, as we all know, will bring an improved telecommunication system and lower cost services. Consumers will, we hope, increasingly be able to choose among service providers, based on quality of service and price. In a competitive environment, providers would be forced to offer lower prices and improved service in order to survive. We also believe that competition will enhance the responsiveness of the incumbent, TSTT, with the concerns of its customers. As competition develops consumers will increasingly realize its benefits.

Most importantly, the Bill will facilitate the implementation of pro-competitive policies. Today, as we all know, our overseas service is currently priced well above international norms. These current high calling tariffs do not serve the best interest for our population. They artificially depress the number of calls we want to make to friends and to conduct business with relatives and potential overseas partners. High prices are also a barrier to innovation and the development in this country of new regional global telecommunications based industry. If we are able to realize lower costs whilst achieving improvement in telecommunications services, we expect to see an increase in Internet usage which will more broadly stimulate the widespread use of computers and help to build our human capital for a knowledge-based society.

Furthermore, experience worldwide in places such as Singapore, Hong Kong, Malaysia and South Korea, for example, teaches us that businesses are locating where they find efficient, high quality and low cost telecommunications services. We want to attract those businesses in Trinidad and Tobago. Doing so, can and should be our goal. Our policies are driven by the desire to create new and attractive jobs. We believe that competition and growth in telecommunications services will inevitably lead to increased consumer demand and new service providers. We expect a mushrooming of new service providers. These providers will need to fill jobs, many of which will require a highly skilled and technically

advanced labour force. This would be one of the major benefits of the liberalization of the telecommunications sector, creating employment opportunities for our people.

Finally, telecommunications, broadcasting and information-based services are converging worldwide. Our existing laws were drafted long before this new development of convergence started. The merger of different communications services and infrastructures has required that we carefully examine our legal framework and approach the sector with a comprehensive and futuristic vision, as well as a new set of policy objectives.

Achieving these objectives depends on implementation of a suitable legal and regulatory framework. A key element of such a framework is that it be open and transparent, and that there be an impartial, specialized regulatory authority for the telecommunications sector. One of the most important objectives of this Bill is to set up this impartial regulatory authority. At the same time, our laws must enshrine the bedrock principle of fair play in the promotion of widespread and high quality telecommunications service throughout the country. With these objectives in mind, we found it absolutely necessary to draft new telecommunications legislation.

This obligation is reinforced by our commitments to the World Trade Organization. The General Agreement on Trade in Services committed all signatories, including Trinidad and Tobago, to a set of competitive principles for telecommunications services. Among these commitments is the opening up of the telecommunications sector to competition establishing openness and transparency in our regulatory processes and monitoring and preventing any anti-competitive conduct by dominant suppliers.

I have already made reference to the antiquated state of our laws which make adoption of a modern telecommunication legislative framework an imperative. All providers other than Telecommunications Services of Trinidad and Tobago are governed by the Wireless Telegraphy Ordinance 1936, a holdover from colonial times. Needless to say, that legislation which has not yet been updated, fails to take account of developments in the sector in the last 60-plus years. As a result, the ability to regulate certain services such as wireline-based content services is uncertain. Moreover, there is no solid basis or clear set of principles on which telecommunications services other than those provided by Telecommunications Services of Trinidad and Tobago might be authorized or regulated. A somewhat more comprehensive law that regulates TSTT is the Trinidad and Tobago Telephone Act 1968 which is also decades old. That law was drafted to authorize Trinidad and Tobago Telephone Company Limited to provide domestic services.

That Act fails to take account of more recent developments. Moreover, on its own terms, it would not apply to new providers of telecommunications services.

In 1991 the domestic operations of the Trinidad and Tobago Telephone Company were integrated, as we all know, with the external operations of Textel to form TSTT. On December 20, 1989, the government and Cable and Wireless entered into a shareholders' agreement in which Cable and Wireless acquired 49 per cent of TSTT. That shareholders' agreement also has certain provisions which are relevant to TSTT's participation in the telecommunications sector.

After the execution of the shareholders' agreement, the government prepared the Telecommunications Authority Act of 1991. A great deal of work went into preparing that Act which was assented to on November 18, 1991. We found and assessed that that Act was woefully inadequate. Although it would have established a new authority and repealed the Wireless Telegraphy Ordinance of 1936, it would not have established a framework for the introduction of competition.

In June 1997, under this administration, Cabinet established a working group under the chairmanship of Central Bank Governor, Winston Dookeran, to prepare a draft national policy on telecommunications. That working group had a far-reaching membership of academics, officers of the Government, a broad range of stakeholders, representatives of the industry, new providers, labour, business, users and TSTT. The working group reviewed a wide range of policy documents on telecommunications, examined the national environment and compared the telecommunication situation in Trinidad and Tobago with what was existing elsewhere. Its principal conclusions and entire report were presented to the Government. I think it is noteworthy that we should look at the principal conclusions in that debate.

2.50 p.m.

1. It found that Trinidad and Tobago cannot be isolated from global developments such as the evolution of technology, prices and industry structures.

2. Subject to the shareholders' agreement, new entrants and/or incumbents should be invited and/or encouraged into all market subsectors.

3. The need for an updated policy in the sector is urgent.

4. An amendment to the 1991 Act is necessary.

5. A new regulatory body must be created as soon as possible, and

6. The Government should adopt a new set of policies including those relating to competition, universal service, licensing and interconnection among service providers.

This whole question of universal service and interconnection and so on is further elaborated upon in the Bill.

The report of that working group provided the policy framework for this piece of legislation which we are presenting to the House today. Mr. Speaker, it should also be noted that during the early part of last year, we engaged in intensive consultations with Cable and Wireless on our overall policy and legislative framework. We found it necessary to involve Cable and Wireless in this process for two reasons. Firstly, Cable and Wireless is a principal shareholder of TSTT, the incumbent provider and a most important player in the sector. Secondly, the company has valuable and substantial experience in legislative and regulatory reform.

May I make the point that even though there was consultation, Cable and Wireless did not influence this piece of legislation. In other words, there was no dictation by Cable and Wireless on this piece of legislation. We simply consulted with them. They have valuable experience and legislative and regulatory reform of international telecommunications worldwide, where they have taken on the roles of both incumbent and aggressive new entrant.

Cable and Wireless also provided detailed comments on issues both general and specific, and sent an expert team to meet with our drafting group on several occasions during the ensuing months. It is also important to mention that we also held extensive discussions with TSTT, which has been very helpful in providing comments and suggestions on the Bill. These have also been taken into account to the extent possible, bearing in mind our differing objectives.

Government must take a national holistic approach to the sector whereas TSTT, of course, is obliged to protect itself in a competitive arena. Before turning to specific provisions of the Bill, let me describe certain fundamental policy principles that we took into account in drafting the legislation.

There were two overriding principles which guided us in drafting the Bill. Firstly, given the convergence—this question of convergence among media and communications—the Bill would have to take into account the entire communications sector. Accordingly, the Bill applies to all types of communications services. It applies to content services whether they are delivered by traditional over-the-air terrestrial broadcasting stations; it applies to cable television systems; wireline

telephone systems; the Internet or satellite. It also applies to all types of telecommunications services including public telephone and other public services, whether delivered by conventional wireline means over the Internet or using the radio spectrum. Shortly I will turn to these different types of services to see how the Bill applies to them.

The second matter on this issue is that the Bill provides a neutral framework in which future policy developments of the Government can be implemented [*Interruption*] In other words, certain fundamental policies such as whether, when and to what extent there would be competition for TSTT's public telephone services remain for the Government to decide in the first instance.

Such policies are not prescribed in the Bill nor are they left to the regulator. Instead, the Bill establishes conditions that are applicable to the granting of concessions and licences and it sets out provisions, which would be contained in them. The Bill contains policies for establishing and maintaining a level playing field among all providers and for ensuring that the regulatory processes will be fair and open.

Mr. Speaker, the Bill relies on a series of critical definitions that distinguish different types of services. In this respect the Bill is no different from telecommunications legislation in virtually all other jurisdictions. In fact, we have been guided by the definitions used by the International Telecommunications Union.

The structure of the Bill can, of course, be quickly discerned from the explanatory notes. The centrepiece of the Bill is the establishment of a specialized and fair regulatory institution. Part II establishes and empowers the Authority, and is consistent with the broader principles of the Bill which I have already described.

The Authority would be managed by a board which will have a chairman, a deputy chairman, five to nine additional members and the Authority's executive director. Given the specialized nature of the Authority's functions, the Bill establishes qualifications criteria for board members. In other words, if it is going to be a specialized kind of board and Authority and so, special qualifications criteria are necessary. To ensure continuity among the membership, their terms are staggered and are for three years. The board members other than the executive director are appointed by the President of the Republic of Trinidad and Tobago. Board members can be terminated only in certain circumstances—and these are outlined in clause 6 (8). In addition, they, along with the Minister must declare any actual or contingent pecuniary interest which they may hold in an enterprise

within the jurisdiction of the Authority, and violation of the Authority by a board member and acceptance of bribes are subject to stiff penalties because they are offences against the integrity of the Authority and the credibility of its regulatory processes.

It is expected that the day-to-day operations of the Authority will be the responsibility of the executive director—that is very important—the board would not be handling the day-to-day operations of the Authority; the executive director would be doing so. This executive director would be appointed for a period not exceeding five years. The Bill also contains provisions regarding the meetings, the procedure and the quorum requirements of the board.

Among the most important clauses of the Bill is the one which sets out in detail the various functions of the Authority. This clause is intended to empower the Authority to carry out the tasks prescribed elsewhere in the Bill, among the most important of which is the classification and determination of the appropriate regulatory requirements for new services.

This provision of the Bill also demarcates carefully the lines of authority between the Authority and the Minister and is a very important dimension of the Bill—the relationship between the Authority and the Minister.

The Authority, on the one hand, advises the Minister on policies and technical standards whilst, on the other hand, it is responsible for implementing those policies through the issuance of regulations monitoring the sector and recommending the grant of concessions and licences for ministerial approval. The Bill also empowers the Minister to give to the Authority written direction on matters of general public policy. The Authority must follow such directions but otherwise is free to make recommendations as it sees fit, subject, of course, to the other provisions of the Bill.

Part VII of the Bill sets forth detailed financial provisions. Among the most important of these, from the standpoint of providers of service, is that the Authority may charge fees for concessions and licences, such fees to be commensurate with the cost of operating the Authority and administering the concessions or licences.

In other words, fees will be set out at a level that is intended to assist in recovering the cost of operating the Authority, not at a level so high that entry would be artificially discouraged. Other provisions of the Bill describe the funds of the Authority, the preparation of an expenditure budget, the keeping of books and accounts and the conduct of an annual audit. With regard to staff and other

related matters, part IV addresses staffing of the Authority and these issues. It authorizes the Authority to employ staff including by means of secondment and transfer. In other words, other people in the public service can be seconded to the Authority. The Authority shall also establish a pension fund plan.

Finally, due to the specialized and technical nature of its many and varied responsibilities, the Authority must be able to employ persons to carry out specific tasks. The Bill provides for this power to be given to the Authority.

Mr. Speaker, I would now like to turn to a more detailed discussion of the main provisions of the Bill. I want to remind hon. Members that in our drafting we were guided by the maxim that no legislative or regulatory intervention should be prescribed by the Bill unless necessary or otherwise justified.

3.00 p.m.

Let us look now at the concession requirement. Certain types of telecommunications services are sufficiently important to the country that persons providing them must do so only by first obtaining a concession. That is an important part of the Bill. The two most important services in this respect are public telecommunications services and broadcasting services. No one can provide such services or operate a public telecommunications network without obtaining a concession. Part III of the Bill describes the different types of concessions that may be granted and the various conditions that must be included in each type of concession.

Concessions are recommended by the Authority for the approval of the Minister. This process contemplates an appropriate balancing of expertise and policy interests. As I said before, the Cabinet, through the Minister, decides on the policy. The Authority carries out that policy. This process contemplates an appropriate balancing of these two areas. Although the Authority, as the specialized body, has the power to recommend the grant of a concession in the first instance, the exercise of that power rests with the Minister. Concessions will be granted for a term fixed by the Authority, and then set out in the concession itself. To ensure procedural regularity and fairness, any decision regarding an application for a concession must be justified in writing and the reasons published. This is an important dimension of the Bill as well, to ensure openness and transparency.

For other kinds of services, such as private telecommunications, closed user group and value-added services, there is no justification to impose a concession requirement. Businesses should be free to set up these types of services, subject to

the provisions of the Act. Nevertheless, because it is important that the Authority keep track of new businesses and developments in the sector, the Bill provides that providers of such services must notify the Authority, within 30 days after beginning their operations.

Concessions may be terminated, suspended or amended by the Minister, on the recommendation of the Authority. From a concessionaire's point of view, of course, such action can have a significant adverse effect on his business, so the circumstances under which the Minister may take such action are strictly limited. Decisions of the Minister may be appealed by the concessionaire to the High Court.

Concessionaires also have an interest in knowing when, and for how long a concession will be renewed. The Bill provides that the Minister, on the recommendation of the Authority, shall renew the concession for another term equal in length to the original term, where the concessionaire has operated within the terms of the concession and has not contravened the Bill or the regulations.

In this way, the concessionaire's legitimate expectation of having the concession renewed is recognized. At the same time, for subsequent renewal terms, which may be decades after the date of the original grant, circumstances may have changed. For that reason, the Bill provides that renewals beyond the first renewal term will be subject to negotiation between the concessionaire and the Minister, acting upon the recommendation of the Authority.

Again, we see, constantly, a relationship between the Authority and the Minister, all making for openness and transparency in what is going to develop into a very lucrative sector in Trinidad and Tobago.

I now turn to the types of concessions. This section is very important and it governs, not only the rights of service providers, but of their users—our citizens of Trinidad and Tobago.

The Bill describes in detail different types of concessions for different types of services and operations. All concessions will contain, *inter alia*, standard provisions relating to fees, terms, penalties, amendments, assignments, transfers of control and dispute resolutions. In addition, concessions will prohibit anti-competitive pricing and other related practices. In this way, the Authority will be able to investigate and take appropriate action should a concessionaire act in a way that harms competition. This particularly relates to an entrenched provider or a dominant provider. Finally, concessions may contain other conditions as provided by regulations.

Concessions for broadcasting services, in addition to the provisions I have just described, will also include conditions obligating the concessionaire to adhere to the broadcasting code. The broadcasting code has not yet been developed, but the Bill requires that it be promulgated by the Authority within one year after enactment, subject to affirmative resolution of Parliament. This will allow the entire Parliament to discuss this very important issue of a broadcasting code and the code will not be developed by the Authority, in isolation, but only after wide consultation with all of the players in the field, including the media houses.

The Bill then sets out a detailed set of requirements for concessions for public telecommunications networks and services. These requirements would be applicable to companies such as TSTT, as well as providers of other cellular or data services that are offered generally to the public. It is necessary for detailed provisions on certain technical subjects to be included in the concession, given its importance as a regulatory tool.

Mr. Speaker, the Bill also contains a clause that applies specifically to a dominant provider of a public telecommunications service. This is particularly important since there is already a situation where certain companies are providing certain services. They would have become entrenched and would be easily categorized as the dominant provider. That is an important dimension of the Bill.

The telecommunications laws and regulations worldwide usually treat differently from new entrants or smaller companies with no market power, the incumbent provider, given its marketplace power and entrenched position. This principle, which is also called asymmetric regulation, is viewed as essential to jump-starting competition and ensuring that there is a true level playing field.

The Bill empowers the Authority to determine whether an operator or provider is dominant in a particular market or for a particular service based on criteria rooted in international best practices. These criteria apply to specific services, such as public telephone service or broadcasting services, and not necessarily to all of the operations or services of the provider.

In the short term, TSTT is likely to be regarded as dominant in many of the services that it provides but, over time, when many other providers are in the market, the Authority could eventually conclude that TSTT has lost its status as a dominant player and it would be subject, perhaps, to less stringent conditions. Indeed, the Bill specifically provides for a procedure by which a concessionaire can seek to be classified as non-dominant. In other words, the categorization of a player as dominant is not a permanent issue, but as market forces develop, it can be changed.

Mr. Speaker, I would like to turn to this whole question of pricing, which, of course, is a very central issue. Consistent with the philosophy I have described, the Bill embraces and specifically adopts the fundamental principle that the marketplace, not the Government or the Authority, should control prices, except where price control is required. There are, however, circumstances where regulation of prices is appropriate, and the Bill also addresses those situations.

Price regulation regimes can be established by the Authority, with the approval of the Minister and subject to the negative resolution of the Parliament, only as provided in the Bill. Where, for example, there is only one or a dominant provider of service, the marketplace will not operate to constrain prices. In addition, where there are cross-subsidies that are not approved, the Authority may wish to impose price regulation, to ensure that the concessionaire is not pricing in a predatory fashion, to drive out its competition. Finally, where the Authority detects other sorts of anti-competitive pricing behaviour or acts of unfair competition, price control mechanisms may be used to limit such behaviour.

For all public telecommunications services, the Authority may establish pricing rules. These include such widely accepted principles that prices are just and reasonable and shall not permit unjust discrimination or unreasonable preference towards any person. In other words, Mr. Speaker, the concessionaire can neither advantage itself, its affiliates or any person, as compared to other, similarly situated persons.

The Bill also describes two particular options for a price regulation scheme. First, it is expected that the "price cap" approach, which is now widely recognized as international best practice, will be adopted by the Authority for public telecommunications service for which there is competition. This method has already been fleshed out in the draft concession prepared for TSTT.

Secondly, in the unusual and unforeseen circumstance where a concessionaire has the exclusive right to provide telecommunications services, the Authority shall establish a method that relies on rate-of-return. This is the approach with which TSTT is currently regulated under the 1968 Act and the Shareholders' Agreement.

I now turn to the very important question of universal service. It is a very important issue for us here in Trinidad and Tobago because, as we expand the entire telecommunications sector, we must ensure an affordable and efficient telecommunications service throughout the country.

Whilst great strides have already been made over the last 20 years, our national teledensity—telephones per population—is not as high as in other

countries and is not as high as we would like it to be. In fact, it still lags a bit, hovering over just 20 per cent, which really means it is 20 telephones per 100 persons. We need to improve that and we hope that with the liberalization of the sector, this universal service will be provided.

Today, TSTT is the provider of public telecommunications services and is responsible for network expansion. Furthermore, the 1968 Act requires that it install a public coin telephone in every community where it maintains a telephone line. Undoubtedly, there are some parts of the country and some populations for which the prices of telecommunications services are less than TSTT's cost of providing the service. Whether by cross-subsidies or other means, however, TSTT has been able to expand the network gradually.

Of course, it is not yet up to the level that we would like and we feel that once competition is introduced, it may not be economically or even legally possible for TSTT to use its present system of cross subsidies or other funds to expand into unprofitable areas. Nor would it be fair or appropriate for TSTT to be solely responsible for carrying out this universal service obligation. Instead, Government believes that the Authority must put in place a mechanism by which providers which enter the service ought to contribute to the achievement, eventually, of so-called universal service. In other words, the Authority will be putting in place a funding mechanism so that all new entrants into the market will contribute to this very laudable and necessary goal of universal service.

In Trinidad and Tobago, as elsewhere, we have been confronted with three fundamental policy questions. First, what is universal service? Second, who is obligated to provide that service? We feel all entrants must contribute to that. In our view as well, the minimum definition of universal service has to be the accessibility and availability of a public telephone service.

The Authority is empowered to determine how such services shall be provided and the method by which they shall be funded. As to the funding mechanism, the Bill contemplates concessionaires will contribute to such funding. Various funding methodologies have been used around the world. These include levies or taxes, access charges paid by other providers for interconnection to the incumbent's network. The Bill contemplates that the Authority, in accordance with set policy guidelines, will prescribe the approach which will be the most appropriate for Trinidad and Tobago.

I would now like to turn to the important question of access to facilities. For competition to develop, concessionaires must have access to the facilities of other

concessionaires. Of course, we are dealing here with the important question of interconnection. An incumbent such as TSTT has conduits, ducts, towers and other facilities that may be ideally or uniquely suited for the provision of services. Similarly, a broadcast enterprise or a provider of a cellular telephone service may own a tower location, which is the only one able to serve a community. If a concessionaire is able to deny access to these facilities, then it has the ability to effectively thwart competition.

3.15 p.m.

The Bill, therefore, provides that it is a condition of every concession for a broadcast service or for a public telecommunications network that the concessionaire provides access to facilities on a nondiscriminatory and equitable basis. Of course, there may be circumstances where access should or must be denied, such as for reasons relating to the technical capacity, safety and security. The Bill provides that the concessionaire may do so in such situations. In addition, to ensure that the concessionaire's property is not taken from him, the concessionaire may charge reasonable and appropriate rates for such access. The charging principles and the procedures for facilitating the resolution of disputes among concessionaires may be laid out by the Authority.

Mr. Speaker, I will go into further details about the interconnection obligations, which is one of the most crucial areas of the Bill. New providers of telecommunications services, whether wireline or wireless, must be able to interconnect their networks and services with the networks and services of other providers, incumbents and new entrants alike, otherwise, the subscribers of such new services would only be able to communicate with other subscribers to the same service making a total nonsense, of course, of this entire effort that we have embarked on to introduce competition and to liberalize and develop the sector.

Accordingly, in every jurisdiction worldwide, where governments seek to promote viable competition, the principles and methodologies for the interconnection of networks are elaborated in some detail. History teaches that incumbents and dominant providers will prolong the timetable for affording interconnection and will only do so at higher prices, naturally. Mr. Speaker, conversely, new entrants want interconnection immediately and at the lowest possible price. For this reason virtually all telecommunications laws and regulations worldwide, like our own Bill, contain provisions that address both the substance of interconnection arrangements and the procedures for resolving disputes between enterprises that seek and are required to offer up interconnection.

The Bill requires that concessions for public telecommunications networks and services contain conditions which reflect detailed provisions on interconnections. These provisions require all such concessionaires to offer up direct or indirect interconnection arrangements to all other such concessionaires. Although the Authority will establish basic standards and guidelines for interconnection, the Bill proceeds on the premise that it is better for the two entities involved to agree on a negotiated interconnection arrangement than for the Authority to be required to intervene in any way.

The substantive provisions of interconnection are as follows: Firstly, the company offering interconnection must make interconnection available through a published interconnection offer. Secondly, if a provider seeking interconnection wants to interconnect at points other than that set out in the offer, or at other prices, it is free to negotiate those arrangements. Thirdly, and most fundamentally, interconnection arrangements may not be discriminatory. In other words, you must make your infrastructure available to all entrants who may wish to make use of them. In other words, the offers made to one provider with respect to the technical quality and so on must be made to all others.

From a procedural standpoint, the Bill requires that the parties seeking and offering interconnection must negotiate and endeavour to conclude an interconnection agreement. In other words, the Authority is not going to step in right away; it is going to allow providers to come to their own agreement. Of course, if they cannot come to an agreement the Authority would then step in, based on procedures for resolving disputes which would have already been agreed upon.

Mr. Speaker, the dominant provider of a public telecommunications service also has other interconnection-related obligations, which are intended to facilitate consumer choice and competition. First, it must, to the extent technically feasible, permit number portability, which is very important in this sector, and in this way, of course, consumers will keep the same telephone number to which they are accustomed even if they change providers in the open market.

3.20 p.m.

Secondly, they must provide dialing parity to other concessionaires. In other words, subscribers to a new service will not be disadvantaged in any way if they decide to change from one service to another. Thirdly, those who are offering interconnection must permit concessionaires to have equal access to critical but costly elements of providing any public telecommunications service and these include access to telephone numbers and so on. Finally, and perhaps most

importantly, Mr. Speaker, these concessionaires will have to unbundle their network elements and permit competitors to purchase these elements on a cost-oriented basis as prescribed by the Authority.

In this way, a new entrant will be able to purchase service from an incumbent or other network operator only on those lines, switches or other functions which it determines it requires to provide its service. In the absence of such an obligation, an incumbent provider could bundle and offer up to new entrants an expensive package of both wanted and unwanted services and to avoid this result it is widely recognized, and the Bill reflects this, that network unbundling is essential to the effective development of competition.

On the competition issues, Mr. Speaker, as we said, the intention is to ensure a level playing field and the Bill contains a series of provisions relating to the protection of competition to ensure that all providers are able to operate on a playing field which is as level as possible, given the historical circumstances. The Authority, Mr. Speaker, is empowered to investigate whether providers are acting in an anticompetitive fashion in violation of the Bill and their concessions. In this respect, the Government believes that principal responsibility for applying competition law principles to the telecommunications sector will be vested in the Authority and not in those who are or may be responsible for competition law and fair trading generally. We believe that it is important to clarify that there ought not to be unnecessary, wasteful and inefficient overlap. As you know, we already have other systems to deal with unfair competition but in this particular sector we feel that it is the Authority that will determine the fairness of competition in the marketplace.

As indicated previously, the Bill also empowers the Authority to impose price control mechanisms to prevent or remedy anticompetitive conduct. In addition, the Bill sets out three other provisions that are intended to prohibit anticompetitive behaviour. In clause 24, firstly, the Bill contains a powerful and important provision which prohibits cross-subsidies from such a dominant service to other networks or services without the approval of the Authority. So the Bill is, of course, frowning on cross-subsidization. In other words, a concessionaire cannot, for example, take revenues from its monopoly wireline telephone service and use them to undercut the competition in Internet access services.

Secondly, a dominant provider of a public telecommunications service, like the operator, for example, of a public telecommunications network, must, as provided by the Authority, share certain technical information, including planned deployment of equipment, with other providers which will be necessary for them

to provide their own services. Without such an obligation, a dominant provider or network operator would be able to make late or last-minute changes in the technology or network which would unfairly advantage it as compared with its other providers who would then be left, you know, at a disadvantage.

Thirdly, Mr. Speaker, a concessionaire must maintain the confidentiality or propriety information of any operator of any telecommunications network or other provider of a telecommunications service. The concessionaire must also not use that information for any purpose other than to operate its own network or provide a service or for such other purposes as the Bill allows. The purpose of this provision is to ensure that the concessionaire does not take information that it obtains in connection with providing a telecommunications service and use that information to its advantage in any other sector.

Mr. Speaker, I would now like to turn to the whole question of the spectrum management and licensing, which, of course, is also very important. We all know that the radio frequency spectrum is a valuable natural resource of Trinidad and Tobago. I have already described it as part of the national patrimony. Part IV of the Bill seeks to manage this spectrum carefully and efficiently and it contains a series of interrelated provisions relating to the licensing and management of the spectrum. The Bill mandates that the Authority regulate the use of the spectrum in an economic and orderly way and recover the cost of management. Cost recovery will be accomplished through licensing fees.

The Authority is required to develop a spectrum plan. The spectrum plan developed under the Bill will be based on the existing spectrum plan and already at the level of the Ministry we are doing an assessment of the entire spectrum plan which will, of course, be presented to the Authority when it comes into being. The spectrum plan also shall include procedures by which frequency bands will be licensed. These methods may include licensings by auction, tender on the basis of a fixed price or based on stated criteria; and there is a big argument going on in the region and in other places as to what you do with the spectrum. Do you auction it? Do you use it as a bargaining tool? We feel that we must maintain a measure of flexibility, Mr. Speaker, with respect to how we handle the spectrum and we are going to be leaving that up to the Authority in the final analysis.

The Authority will have to take into account the statutory criteria, of course, including the objectives of the Bill and our international obligations. The Bill requires that a separate licence be issued to authorize use of the spectrum for a radio communications service or in connection with radio communication equipment and, to be clear, if a concessionaire uses the spectrum to deliver a

telecommunications service, such as the provider of a cellular telephone or a satellite-based service, for example, then, in addition to the required concession, the concessionaire must also obtain a spectrum licence. Of course, it is likely that the concessionaire will issue the licence at the same time as the Authority grants it the concession and conversely certain kinds of radio communication services which are not provided to the public generally may require spectrum licences but not concessions.

The Bill also provides that no person may establish, operate or use a radio communications service or radio transmitting equipment in Trinidad and Tobago without obtaining a licence. The provisions relating to the application and issuance of a licence and determination and suspension and so on are all contained in clause 39.

Mr. Speaker, let us look at the issue now of numbering. Another valuable telecommunications resource, of course, is numbers. Although we are fortunate in Trinidad and Tobago in that numbers are not a scarce resource in our country, how they are allocated to new providers is an important issue. Until now, responsibility for numbering has, to a certain extent, been vested in TSTT and, with the introduction of competition, it is appropriate that this function no longer be delegated to one of the competitive players. For this reason, the Bill charges the Authority with the development of a numbering plan and with establishing procedures for the assignment of telephone numbers and, to ensure that there is consistency with our current practices and that there is no undue duplication of effort, the Authority is to preserve and build upon the current numbering plan.

Mr. Speaker, with respect to technical standards, the Bill balances two core concepts with respect to the adoption of appropriate technical standards in Trinidad and Tobago. First, it is important that providers be allowed to select the most appropriate technology for the services that they wish to provide. Differentiation among technologies is one way in which competitors may distinguish their services and compete for customers. In other words, the Authority is not going to dictate the kind of technology. The second advantage of that, however, is that, where necessary, there be compatibility and uniformity among certain technical standards. So that the Authority, whilst not deliberately saying what is the appropriate technology to be used, must be able to approve and set the technical standards to ensure compatibility and uniformity. The Bill harmonizes, in other words, these two objectives by providing that concessionaires and licensees may implement the technical standards that they deem appropriate but the Authority is empowered to establish the standards, as I just said.

There is also the question of testing and inspection. The Authority must be able to monitor development among competitors in the telecommunications sector and to determine whether and to what extent providers and others are complying with the Act and applicable regulations. In other words, there must be real constant monitoring and vigilance. The Authority may designate officers as inspectors for these and other purposes. The Authority is also authorized to carry out the certification of terminal equipment which, as I said earlier—and for purposes of compliance with established technical standards, health and safety reasons, to test other equipment used by public telecommunications networks or services or by broadcasters in Trinidad and Tobago.

The Bill contains procedures by which inspectors can enter and search premises that are consistent with due process and our existing legal norms. The Bill also deals with offences. Mr. Speaker, I do not need to go into the detail. You know, you must have offences when you are dealing with legislation and the Bill, in detail, sets out the fines and the penalties and so on with respect to these offences.

Now, there is the whole important question of the power of the Minister and the rights of the Authority. May I say very plainly again, the Minister is given certain specific powers under the Bill. In addition to policy, where there is an emergency situation such as the operation of a telecommunications network, or the provision of a telecommunications service which is dangerous to the security of the State and which disrupts other communications or causes harmful interference, or where the operator or provider has failed to obtain the requisite concession or licence, the Minister may direct that person to cease operating that network or providing that service. In such circumstances, the Minister may issue a direction to the Authority to suspend the concession or licence but, of course, the Minister cannot act arbitrarily. The Minister, of course, will be advised by the executive director of the Authority who is responsible for the day-to-day operations of the Authority. Although the offending person may appeal to the High Court, the High Court must presume that the Minister acted reasonably where he so satisfies the court.

The Bill also specifically empowers the Authority to carry out certain necessary functions to fulfil its responsibilities. Among these are the opening of frequency monitoring stations, and the Authority also is authorized to take steps to cease harmful interference and aggrieved persons again may appeal to the Minister and, from him, to the High Court. So wherever people feel unfairly

treated, unjustly treated and so on, the Bill provides for appeal—dispute resolution in the first instance, appeal to the Minister, appeal to the High Court, appeal to the Authority, appeal to the courts of the land.

Mr. Speaker, as is universally acknowledged, no legislation should prescribe every single policy for the telecommunications sector. The fact is that telecommunications technology is an emerging sector, it is changing every day, newer and newer forms are entering the market and we really cannot be technology specific, for example, in the Bill. We simply have to ensure that we introduce the competition and, of course, the Bill and all its regulations would require continual examination as we find the need to constantly re-examine and redefine the sector. For this reason, the Bill specifically authorizes the Minister, on the recommendation of the Authority, to issue such regulations which may be required to implement the provisions of the Act. To ensure substantive and procedural regularity, decisions of the Minister or the Authority may be appealed to the High Court, as I said.

May I also bring to your attention, Mr. Speaker, one other highly important provision of the Bill. Now, given the rapid change in the sector, the Bill adopts the principle of forbearance, a concept that is now commonplace elsewhere, and this is outlined in clause 81. This principle, Mr. Speaker, permits the Authority to refrain from exercising its power or performing its duty where the Authority finds that to do so would be inconsistent with the nation's telecommunications policy objectives. The Authority might, for example, conclude that a particular regulatory obligation is no longer necessary with respect to a particular class of service providers and that competition will be enhanced if it chooses to forbear from imposing such an obligation and the Bill provides for this characteristic of forbearance.

Of course, Mr. Speaker, we must deal, as we introduce this new legislation, with the repeal and the transitional provisions. As I said, all of the existing pieces of legislation at this point are quite updated and, as we seek to enact this legislation, we must get into the business of repealing those pieces of legislation which are on the books. At clause 85, for example, we propose to repeal the Wireless Telegraphy Ordinance 1936; the Cable and Wireless (West Indies) Limited Ordinance; the Trinidad and Tobago Telephone Act of 1968 and the Telecommunications Authority Act of 1961. The important thing about all of this, however, Mr. Speaker, is that we are going to ensure a smooth transition.

Licences, for example, issued under the Wireless Telegraphy Ordinance will remain in force for at least one year or such longer time as the Minister shall

determine. This is the transition process and, during that period, existing licensees will have an opportunity to apply for a concession or a licence as the case may be, and the Minister shall grant an application for a concession or licence and the term of such a concession or licence will terminate on the day that the term of the original licence would have terminated. In this way, no existing licensee shall be disadvantaged for falling under the new Act.

3.35 p.m.

A similar approach has been taken with respect to the rights of the Telecommunications Services of Trinidad and Tobago (TSTT) which are also derived from the 1968 Act. Mr. Speaker, TSTT will also be entitled to maintain all its rights and obligations under that Act for at least one year, but for no more than two years, as the Minister may determine. However, if TSTT obtains a concession in accordance with Part III of the new Act, then any rights and obligations under the 1968 Act will be replaced by the terms and conditions of the concession.

Naturally, we will want to avoid a circumstance in which TSTT maintains its operations under the old law, lest we fail to realize many of the benefits of the Act. This approach reflected in the Bill, creates significant incentives for TSTT to file an application for concession. In this way the various provisions of the Bill can become effective, as soon as possible.

Mr. Speaker, after Parliament considers and, I am sure, passes this Bill, we will continue with the steps we have been taking for the Authority to become fully operational, as soon as possible. To this end, draft regulations have already been formulated and will be put out for public consultation. At the same time, we have already put a working committee together to assist in the transition process.

As I have mentioned, critical policies, such as determining the pace of the liberalization including when and how many competitive entrants will be authorized, is fundamentally a discretion of the Government, but we want to assure this honourable House that in liberalizing the sector we want to avoid any kind of chaotic emergence of this sector and will seek, in the first instance, at least, to manage the transition in an orderly fashion.

Finally, we will continue to discuss the new TSTT concession agreement between Cable and Wireless and TSTT, and our hope is to conclude those discussions shortly after this Bill. Mr. Speaker, I have taken the trouble to prepare a very comprehensive and detailed presentation here today, because I think it necessary to put on the record our thinking behind this piece of legislation. This is a highly technical piece of legislation; it is dealing with a highly technical sector.

I sought, in my presentation, to present our rationale so that the House can get the impression, that they can see that we have a very clear understanding of what we are doing with this very highly technical sector.

We must remember as well that it is an emerging sector; it is a new sector constantly evolving, and that we cannot afford to be technology specific; we cannot afford to be as detailed as possible. It is my feeling that after this legislation is passed it will spawn other pieces of legislation. We will need to come back to the Parliament, from time to time, to update the legislation as we go forward.

The important thing is that we cannot wait anymore; we must go forward with this piece of legislation. It has been drafted after wide consultation. As you know, as well, it had a very interesting passage in the other place, which would have also contributed to its evolution. I have no doubt that the debate in this House will see us crafting a piece of legislation which will find unanimity in this House; which will work for the benefit of all of Trinidad and Tobago for the emergence of a sector which, in my view, is the new sector that deals with the new patrimony of Trinidad and Tobago; a sector which, in my view, will be as lucrative, as important and as pivotal as the energy sector for the people of Trinidad and Tobago.

Mr. Speaker, I beg to move. [*Crosstalk*]

Mr. Bereaux: You are talking like when you proposed Ramesh.

Question proposed.

Mr. Eric Williams (*Port of Spain South*): Thank you, Mr. Speaker, for recognizing me. I want to thank the hon. Minister for his comprehensive discourse on the Telecommunications Bill before us. Indeed, given the heavy weather that was made of this legislation in the other place, we have to say thank God for the Senate, because this legislation that has now come before us, really, is a significant improvement on the original documents which came before us. Indeed, we understand that there were in excess of some 80 odd amendments made in the other place. In fact, this is, indeed, a new Bill. So, in this instance, we say thank God for the other place. [*Desk thumping*]

We have to thank the hon. Minister for his discourse today. As he ended he made the point in his discourse that he took the time to prepare a comprehensive discourse, so that we would understand that he knows what he is doing and that the Government knows where it is going. It is unfortunate though that we could not have had a policy document before us for some time, which would have taken into consideration all the things that the hon. Minister has spoken about today,

and would have pointed the philosophical direction so that we could be debating this legislation within that context.

I say it is unfortunate because one of the things we are seeking to do is to become a global player, a leader, particularly, in this region of the world, if not worldwide. Here I am able to obtain a copy of the policy document from our neighbour Barbados, our Caricom partner, which is placed on the Internet. Here it is we are serious about becoming a global player, about taking our telecommunications industry into this century and, indeed, to be a leader, yet we are still behind in many ways.

If we read from the Barbados Green Paper, their telecommunication sector policy, their Minister, the Member's counterpart, presenting his philosophy:

> "The Government has a vision of Barbados being the centre of excellence for information technology and telecommunications in the Caribbean."

This is the policy of Barbados; that is the same policy we are enunciating as Trinidad and Tobago. But the point is—

Mr. Speaker: Hon. Member, could you just give us the page, for the record, please. We have the document but not the page.

Mr. E. Williams: Certainly, Mr. Speaker. This is page one, which is the foreword to the actual policy document. Here it is, Mr. Speaker, that one of our potential competitors, albeit a friendly competitor, in the global marketplace is able to promulgate a policy. It is not only able to bring forward a policy that clearly states where it plans to go, it is doing so in the context of the technological world that we live in today: it has placed it on the Internet, so that it is now open to international scrutiny. It can get comments from here, there and everywhere else, and, indeed, is demonstrating that it is able to deliver on its policy directives.

We really have to thank the Minister for his generosity today, for coming forward and finally delivering to this honourable House the policy of the Government. We have been wanting it; we have been asking for it. Indeed, I must thank those who are involved with assimilating and understanding the report, from the working group appointed by Cabinet. I must thank them for providing me with a copy, because it was not laid in the House, but in the end I have to say that we are able to understand where the working group came from and now, finally, we are able for the Minister to give us his policy. Again, I would have to

repeat, thank God for the Senate because without the intervention of the other place we would have been in some problems today.

Today we have what is, essentially, Minister, a very much-improved document.

Mr. Maraj: Thank you very much.

Mr. E. Williams: There are a few issues that I would want to raise with regard to the document, but it is a significantly improved document.

Mr. Speaker, with those few words and that introduction, the Minister spoke today about convergence of technology. What does that mean? Convergence, in today's world means, for the uninitiated, that the technology of different sectors is improved to such an extent that you could, in essence, deliver a service that is traditionally delivered in one particular way, by other media, because the technology in those areas has improved to equate itself to the one.

In other words, traditionally, to get voice communication we had to use telephone wires, but as it stands today, we have other technologies in the sense that you can have voice over the Internet protocol, that is to say, over the Internet we can have telephone systems and, indeed, over cable television, cable optical or wired, a hard wire.

The Bill seeks to regulate telecommunications in its broadest sense, but with the advent of convergence, we believe that we need to put some language into the Bill that speaks to the issue of convergence in a little more detail. When we describe, for instance, public telecommunications network—let me go into some of these definitions:

> "'a public telecommunications network' means a telecommunications network used to provide a public telecommunications service."

Fine.

> "'a public telecommunications service' means a telecommunications service, including a public telephone service, offered to members of the general public..."

As is the Telecommunications Services of Trinidad and Tobago (TSTT) now.

> "…whereby one user can communicate with any other user in real time..."

That is to say, as we speak, you hear.

> "…regardless of the technology used to provide such service;"

That, to my understanding, from my reading of the Bill, seeks to encapsulate other technologies that may provide real time voice service or telecommunications services.

The fact of the matter is, today, we are already aware that we have in our current national system and, indeed, worldwide, the advent of Internet service providers who are, themselves, not regulated at this time. We also have cable television operators who are also not regulated. In fact, our situation here and our experience in Trinidad and Tobago is that the cable television system has now become a monopoly and the price is going up, much to the dismay of the subscribers out there. [*Desk thumping*]

Interestingly, one would consider that since we know that these technologies exist today, and at the same time we are trying to capture technologies which may come up in the future, one would suspect that it would be prudent to specify, at least in the definition, somewhere in there, the concept or a recognition of convergence, and also that we have these technologies which we can name today, which are able to deliver this type of service.

3.50 p.m.

In other words, we should put in the legislation, a recognition that Internet service providers and cable television operators can, indeed, provide a public telephoning system. The language we use in the legislation could be open to interpretation, depending on how the legal arguments are made. Indeed, we believe that since we know of some of these technologies today, we should regulate them in this legislation so that there will be no doubt that cable television systems, such as the monopoly that currently exists in Trinidad and Tobago—of course, you realize the political mileage that a Member on this side can make with that particular situation; and indeed, the perception that may exist to the public—and Internet service providers should be defined in this legislation for the avoidance of doubt. We believe that it will safeguard us in the future, notwithstanding the fact that that there are terms in the Bill that suggest there may be technologies to come. Let us define the technology that exists today so that we do not have any doubts in the future.

There is an interesting rumour going around that the Minister in his attempt to present this Bill in the best possible way—which he has, by the way—sought to get expert advice and that, maybe, other persons may not have wanted him to have that kind of additional advice. That notwithstanding, we feel that we have a nice piece of legislation that we can work with. So let us remove any shadow of a

doubt as to what are some of the technologies that come under telecommunications. I think it would be prudent to do that.

I want to turn our attention to clause 18(1)(o). Indeed, clause 18 deals with functions and powers of the Authority and 18(1)(o) deals with the testing and certification of telecommunications equipment, subject to clause 48(3) which, of course, means that we will have international standards, environment health and "ehs" types of issues. Again, we do not have a policy document and I did not pick that up in the Minister's discourse. But the fact is that Trinidad and Tobago is in region 2 of the telecommunications world. I am sure you are aware of this. As is the United States and Canada. We utilize the same current and frequency of current, that is 110-120 volts at 60 hertz. So rather than reinventing the wheel and since we buy most of our telecommunications equipment from Canada and North America, could we not simply adopt the standards that are established in those jurisdictions? One of the functions of the Authority would be to test and to certify which means they will have to take the human resource, and other resources to develop such a regulation. That is my suggestion, since those regulations already exist in the places where we traditionally acquire our telecommunications equipment, so that it would allow us to be more efficient.

I want to draw attention to clause 28(4) that speaks of the very important and central issue of universal service. In essence and as the Minister quite rightly points out, we want to have a minimum desirable level of service in our society. We on this side, as you are well aware, accept the fact, and indeed we aspire to Trinidad and Tobago becoming a developed nation. We have set a particular time frame. We notice that this Government has picked up that particular story, of course, after the election. They did not have it in their manifesto, but that notwithstanding, we also see that happening within the context of an integrated Caribbean, the entire Caribbean, not just the southern half.

So the whole concept of universal service requires that there be some sort of funding mechanism that is derived from the telecommunications industry and I believe that the Minister is proposing a fund to do that. The money for that fund would come primarily, and in fact the Bill says, "shall come" from public telecommunication systems and services. Clause 28(4) as it reads now:

> "The Authority may, with the approval of the Minister, require that closed user group services, private telecommunications services and value added services as well as the users of such services and all telecommunications services generally, contribute to the funding of universal service."

In other words, there is discretion.

There exists a dilemma in this regard. As we understand it, there are indeed certain closed, private systems which operate in various business enterprises and which somehow, interconnect into the national telecommunications grid. These do not now contribute their fair share to the use of this particular network as it exists today. The legislation leaves it open. We wonder if this wording should not be changed from "may" to "shall". These enterprises are deriving an economic benefit from using the national telecommunications system and they have been doing so for some time. There has been a considerable amount of discussion and argument about it and about what the actual charges ought to be for the use of the particular services today.

In the legislation, one of the critical issues, apart from the universal service, is the issue of something known as "billed out" in that we now have to provide telecommunications services in our rural areas and there is a cost to that. Indeed, that cost today will be unattractive economically to any new entrant into the system. In fact, it will devolve on the dominant provider, which is still TSTT, and will be designated so initially, to provide services in Matelot, Guayaguayare, Cedros, Brazil Village, all our rural areas. What the legislation seeks to do, and the philosophy is, if you are providing a public system which you must interconnect into the dominant provider's system, you must somehow provide some money to assist the nation, through that dominant provider, to have that service provided at the very extremities.

That is fine for public telecommunication systems. We have a situation where some large enterprises may have their internal closed systems but they use the national telecommunications grid to get their business done, and they are not paying for that service that has to be provided by the dominant provider. So I humbly suggest that we should give consideration to changing "may" to "shall" in clause 28(4).

4.00 p.m.

Mr. Maraj: I thank you for giving way. The reason it is "may" instead of "shall" is because one must take into account the size of the closed user group. There may be some small operations. If you legislate "shall" you could be stymying their operation. That is why we have left it up to the discretion of the Authority. Depending on the size of the closed user group operation, they may be asked to contribute to universal services.

Mr. E. Williams: Thanks for the intervention of the Minister. He has come to the next point.

One can find a way to prorate that usage and charge appropriately for small enterprises. We do not want the small enterprises to fail, but at the same time, they must pay their way. We could find a formula which would allow some sort of prorated cost depending on the type of enterprise or revenue which will allow that to be taken into consideration. In fact, it will still be a discretion, but one that would be exercised. Therefore, we can capture all the users into the national system to make sure that our citizenry will get a proper service in those areas. Indeed, we think that would be a desirable thing to happen.

Clause 29(3) of the legislation states that the Authority shall regulate prices for public telecommunications services and international incoming and outgoing settlement tariffs by publishing pricing rules and principles. The Minister did not enlighten us, but it is our understanding that significant assistance in drafting the legislation was provided by legal authorities from other jurisdictions at some considerable cost. These people came, as I am advised, from a large developed nation. They brought with them the philosophy that would obtain from that particular jurisdiction. I am also advised that they were then assisted by a local attorney who brought to the table considerations of the OECS and the Jamaica situation, as drafts from the Caricom area.

A developed nation or country such as Britain, the United States or Canada has the clout to set its international rates. However, I am also being advised and I am coming to understand that because of our size per capita, we may not be in the best or strongest of positions to negotiate these settlements which are referred to in this particular clause. In the United States, the Federal Communications Commission (FCC), that is the equivalent organization that looks at these issues, issued a unilateral Notice of Policy Rule Making. They call it NPRM. In 1997, this reduced the levels on international settlements. The United States found that they were paying in excess of US $5.5 billion to other countries simply to connect to their telephone system.

Let me explain how that works. When a call is placed from Trinidad and Tobago to the United States, there is a cost for using the system in Trinidad and Tobago and the one in the United States. The local telephone carrier (TSTT) has to pay to the United States' carrier to whom it is connected for the use of their system to complete that call. The reverse also obtains. Many of us have relatives all over the world. When a call is placed from that country to this country, there is a cost for using the phone systems there and a cost for here. Both of the carriers would then pay each other that difference or cost to make that happen. That is commerce.

In terms of our size and the fact that Trinis have ranged all over the place, more calls were being placed from the United States to our country, than were being placed from our country to the United States. There was a net outflow of payment for these services in excess of US $5.5 billion from the United States. They took a position that in the case of Trinidad and Tobago and the Caribbean as a whole, that they would reduce the amount they would allow their carriers to pay to carriers over on this side of the pond, from an average of somewhere between US 80 cents and in some cases US 40 cents per unit to 19 cents per unit. This is another insignificant thing. That money in part which used to help subsidize the local service in part was also the actual rate that was set. The fact is that a country the size of the United States can do that.

My understanding is that we would not be able—unless there is something in the World Trade Organization or the international telecommunications union that we are not aware of, that will allow us, as a country to negotiate those settlements. My understanding is that that was unilaterally determined by the United States. It is causing countries that now have to interconnect to the system of the United States to improve their efficiency. They have to decrease the actual cost of their services in that regard, by different means. We will come to some of those in a short while, if it is how you change the domestic formula.

It is possible that this part of the law that is being proposed at 29(3) may actually not be something that we can do. You may want to take another look at that.

4.10 p.m.

In reality, these rates are going to be—in fact, in my understanding of the World Trade Organization, all these other protocols have taken us to the different carriers who are now going to have to negotiate within the context of the ruling set down by the United States. The economy of the United States, as we know, is the engine for the world at this current time.

We say in our law that we are going to regulate international settlement tariffs, but it may be something that we are not able to do. We may wish to take a look at that particular clause and drop the reference to international pricing.

I want to take us to clause 29(5) and (6). This, again, has to do with pricing. The most important aspect of this section is that it intrudes on an entity's commercial operations and profit maximizing right as a statement. Let me read the subclauses.

"(5) In respect of any telecommunications services provided on an exclusive basis by a concessionaire, the Authority shall establish the maximum rate-of-return that the concessionaire may receive on its investment."

Now, anybody going into business will find a way to maximize his or her rate-of-return. Let me read (6) as well.

> "(6) For any public telecommunications service in which there is competition, the Authority may introduce a method for regulating the prices of a dominant provider of such telecommunications service by establishing caps on such prices, or by such other methods as it may deem appropriate."

That is fine. The objective, as I understand this, Mr. Speaker—and I will be guided if I am incorrect—is that we need to provide a service to our citizens, corporate or private, that is affordable; that will encourage trade; that will encourage entrepreneurship; that will encourage communication, generally speaking. We do not want our carriers coming into the market when we liberalize it, and, indeed, the dominant one that is already here, engaging in price gouging. That is the objective. We want to be able to control it, so that things are affordable.

I am not so certain that by telling an investor whom we are wooing, that we will maximize his or her rate-of-return, is the way to go. An individual may come in with some new cutting edge technology that significantly reduces his cost of operating expenses and, at the same time, may provide that same service at the same price as a competitor and, therefore, may get a higher rate-of-return. What will we do? Penalize that incoming person for using newer technology? I do not think that is what we want. In fact, we want the best technology; we want the most leading edge technologies that bring cost down. That is where efficiencies are coming into the telecommunications system today.

Within the modern tariff schemes, some services fall into baskets, which are subject to a price cap. We talk about price cap in subclause (6). The remaining services are subject to value pricing. These are the prices that the marketplace will be willing to pay, given the consumers' perceived value of the service and the amount of competition in the sector. For instance, we might want to say that there is a certain basket of services on which we will fix a price—we cannot go beyond or below that, so that there will be no predatory competition between service providers.

4.15 p.m.

We can put into that basket some essential services. Now we could also have another basket, as it were, to use that metaphor, of value added services. What could those be, for instance, call waiting, call forwarding, voicemail, and those kinds of things? Mr. Speaker, voicemail. We could define it any which way, depending on what our national objectives are. Of course, with the policy position

I have already plugged that, but we could decide: in this basket we put a cap on things but in this one we let competition prevail and let market forces rule.

We can have a situation, therefore, where providers, instead of limiting their maximum rate of return, we could provide a system in which we could better manage that so that clause 5 could be brought more in line. With respect to clauses 5 and 6, there is that disparity between the two types and maybe I am missing something there, but I do not know that we want to be maximizing the rate of return. In essence, the price cap will push the dominant player towards providing services in a more efficient manner. Mr. Speaker, because of the quality of service standards that would be in the dominant carrier's licence, the consumer would be protected as the dominant carrier then increases the efficiency of its network. This is best done by the introduction—I cannot repeat this enough—of the modern technologies for which substantial efficiency gains could be derived. I suspect, Mr. Minister, through you, Mr. Speaker, that you may want to take another look at this question of whether or not we should be engaging in restricting investors maximum rate of return. I am not so certain, and maybe the Attorney General could guide us on whether or not that may have implications to the constitutionality of some of the things that this legislation will contemplate. I am not a lawyer in that sense so maybe I would be guided.

The effective management, however, of these two pricing platforms, as it were, would allow the dominant to manage its returns. Mr. Speaker, please note that under the price cap systems if any entity’s profit margins are excessive, the regulator—who would be a creature of this legislation and then the regulations, who would be the administrator of that—has a right to adjust the cap. This action, therefore, is taken from time to time by regulators in the major industrial countries and, apparently, there is nothing unique about it. Mr. Speaker, rather than say in the law that we want to limit somebody's rate of return, there are other mechanisms which exist in international practice today, which achieve the same thing but do not appear to infringe on what an investor would consider to be his legitimate right. There may be other ways of approaching that.

Mr. Speaker, all of this is really speaking to something known as re-balancing. Re-balancing is where we get to situations where we adjust the prices to the real cost of the service today. The suggestion for pricing as appeared in the press recently and which caused a fair amount of discussion is where we take the historical intra and inter-exchange formulae that exist today. What does that

mean? Today, as we all understand it, if you call within your exchange area you pay one flat rate. If you call into another exchange then there is a rate that is charged per minute and it depends on the distance to that exchange, in essence.

There was a suggestion that came into the public domain from the current dominant carrier that we go to a situation where there would be per minute charge within an exchange but there would be a reduced charge into an exchange. I am not sure where we are with that. My experience, however, in metropolitan countries is that somehow they are able to manage their systems so that you pay one flat rate and once you are in an exchange area that is the rate. It is all put into your monthly rental. For instance, in a city that I am familiar with, let us say New York, or Miami, Dallas, Texas or San Francisco which has a population and, indeed, has an infrastructure that is significantly larger than Trinidad and Tobago, somehow they are able to manage their systems to do that. We are talking about pricing things in a way that would retard the usage of the telecommunication systems. That is not the objective of this legislation. The objective is to get us talking to each other and using the system more. The whole question of re-balancing, therefore, may be a combination of the price cap on the basket of agreed service with some sort of rate of change mechanism—like one of those that is internationally acceptable, where it is tied say to the consumer price index or the retail price index minus some factor—could be a way of managing the rate of change of that price cap and then also have this other basket of things that we could allow the market forces to work with.

Mr. Speaker, that then takes us to the crux of the matter. We really need to understand what is the real cost to providers for using this system. What, in fact, we need and I may have missed it in the legislation, is the provision of a long-run incremental cost study where we are going to tell people what they have to do—like particularly the dominant supplier and the other people that come into it—and insist that we have a long-run incremental cost study so that we properly understand and establish the real cost of running the service with benchmark new technologies. Mr. Speaker, particularly, in a situation like ours where, in terms of economies of scale, we have 70 to 80 telephone lines per employee in the telecommunications companies here in the Caribbean, as opposed to metropolitan countries which have 200 to 300 lines per employee, you understand from that the economies of scale and the implications for cost in running the organization. Of course, we are in that situation here. If we try to go, using only this particular part of formula or a possible formula, it means that we are going to have to redeploy jobs which would have a very real price to it but at the same time we are trying to introduce a more—

Mr. Speaker: Hon. Member, your speaking time has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Mr. K. Valley*]

Question put and agreed to.

SPECIAL SELECT COMMITTEE

Occupational Safety and Health (No. 2) Bill

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawerence Maharaj): Mr. Speaker, I thank the hon. Member for Port of Spain South for giving way. Before I move the adjournment, with agreement of the Opposition, there is a motion for the appointment of a committee.

I beg to nominate the following six Members to serve on the Special Select Committee of the House of Representatives to consider and report on the Occupational Safety and Health (No. 2) Bill, 2001. The Members are:

Mr. Harry Partap

Dr. Hamza Rafeeq

Mr. Mervyn Assam

Mr. Subhas Panday

Mr. Colm Imbert

Mr. Hedwige Bereaux

Question put and agreed to.

ADJOURNMENT

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House do now adjourn to Thursday, May 24, 2001 at 1.30 p.m.

On Thursday we shall be debating the report of the Finance Committee and we will, at the same time, debate the relevant Appropriation Bill in respect of that report.

Mr. Speaker: Hon. Members before I put the Motion for the Adjournment, I noted on our record we had two matters from the Member for Laventille East/Morvant but he is not here. What is the position on that, Chief Whip? [*Inaudible*] Okay, the two Motions?

Hon. R. L. Maharaj: Mr. Speaker, since I did not see the hon. Member for Laventille East/Morvant here I assumed that we would put it for Friday, by consent.

Mr. Speaker: On Friday or Thursday?

Hon. R. L. Maharaj: On Thursday.

Mr. Speaker: All right, if there is agreement the two Motions on the Adjournment will be deferred until Thursday at the next sitting.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 4.27 p.m.