SENATE

Tuesday, March 06, 2001

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from sittings of the Senate has been approved to Sen. Prof. Ramesh Deosaran during the period March 04—March 09, 2001.

Leave of absence from today's sitting has also been granted to Sen. The Hon. Gerald Yetming.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received the following communication from His Excellency, the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief ofthe Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

TO: MR. VINCENT CABRERA

WHEREAS Senator Gerald Yetming is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with effect from 6th March, 2001 and continuing during the absence from Trinidad and Tobago of the said Senator Gerald Yetming.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 5th day of March, 2001."

PUBLIC ACCOUNTS COMMITTEE AND PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE

(Appointment of Members)

Mr. President: I have received the following correspondence from the hon. Speaker of the House of Representatives:

"March 06, 2001

Sen. The Hon. Ganace Ramdial

President of the Senate

Parliament

The Red House

Abercromby Street

PORT OF SPAIN

Dear Mr. President,

Appointment of Members of the Public Accounts Committee and Public Accounts (Enterprises) Committee.

At a sitting of the House of Representatives held on Friday March 02, 2001, the House of Representatives acting in accordance with Section 119 of the Constitution appointed the following Members to serve with equal number from the Senate on the Public Accounts Committee and Public Accounts (Enterprises) Committee.

Public Accounts Committee

Mr. Kenneth Valley

Mr. Eric Williams

Mr. Chandresh Sharma

Mr. Winston Peters

Mr. William Chaitan

Public Accounts (Enterprises) Committee

Mr. Carlos John

Dr. Fuad Khan

Mr. Subhas Panday

Mr. Lawrence Achong

Mr. John Rahael

In accordance with Standing Order 79(4) of the House of Representatives Standing Orders, I have great pleasure in requesting you to have this matter sent before the Senate at the earliest convenience.

Yours sincerely,
Dr. Rupert T. Griffith, MP
Speaker of the House of Representatives"

Hon. Senators, the following Members have been appointed to the following committees relative to section 119 of the Constitution:

Public Accounts Committee

Dr. Tim Gopeesingh

Mr. James Lambert

Mrs. Raziah Ahmed

Miss Christine Kangaloo

Mr. Christopher Thomas

Public Accounts (Enterprises) Committee

Miss Jearlean John

Miss Gillian Lucky

Mr. Wade Mark

Mr. Danny Montano

Prof. Kenneth Ramchand

OATH OF ALLEGIANCE

Sen. Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Tabaquite/Talparo Regional Corporation for the period October 01, 1991 to December 31, 1991 [*The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette)*]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Tabaquite/Talparo Regional Corporation for the year ended December 31, 1992. [*Sen. The Hon. L. Gillette*]

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Couva Regional Corporation for the period October 01, 1991 to December 31, 1991. [*Sen. The Hon. L. Gillette*]

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Couva Regional Corporation for the year ended December 31, 1992. [*Sen. The Hon. L. Gillette*]

5. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Public Library of Trinidad and Tobago for the period January 01, 1998 to September 09, 1998. [*Sen. The Hon. L. Gillette*]

6. The Diego Martin Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

7. The Princes Town Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

8. The Siparia Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

9. The Penal/Debe Regional Corporation Vesting Order, 2000. [*Sen. The L. Gillette*]

10. The San Juan/Laventille Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

11. The Sangre Grande Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

12. The Mayaro/Rio Claro Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

13. The Chaguanas Borough Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

14. The Point Fortin Borough Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

15. The Couva/Tabaquite/Talparo Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

16. The Tunapuna/Piarco Regional Corporation Vesting Order, 2000. [*Sen. The Hon. L. Gillette*]

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Sen. Prof. Julian Kenny:

Town and Country Planning Act

(Enforcement Notices)

4. A. Could the hon. Minister of Integrated Planning and Development inform the Senate whether enforcement notices under section 16 of the Town and Country Planning Act have been issued in each of the years 1998, 1999 and 2000?

B. If the answer is in the affirmative, could the hon. Minister state the number issued in each year, the general nature including the localities of the breaches of planning control and the status of these enforcement notices.

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, I beg to move that the answer to question No. 4 be deferred for a period of two weeks.

Question, by leave, deferred.

ARRANGEMENT OF BUSINESS

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, I seek leave of the Senate to deal with "Bills Second Reading" at this stage of the proceedings.

Agreed to.

TELECOMMUNICATIONS BILL

Order for second reading read.

The Minister of Communications and Information Technology (Hon. Ralph Maraj): Mr. President, I beg to move,

That a Bill for the regulation of telecommunications in Trinidad and Tobago be now read a second time.

Mr. President, as I start my contribution today, may I say that I am of the view that what we are about to embark upon with the debate on this particular piece of legislation is really a giant step into the future for the modernization of the economy of Trinidad and Tobago. I think, not only the economy of Trinidad and Tobago, but as well, the social and cultural life, because I have no doubt that when the effects of this Bill do take root, there will be positive impact on the social and cultural life of Trinidad and Tobago.

May I also say that my approach in dealing with this matter would be to develop a consensus as much as possible. It is a piece of legislation that is wide-ranging, it has very strong implications for the way we develop our society, and I would like to have the agreement of all Members of our Parliament.

I view the work that I am presenting as a work in progress and I look forward in the debate to hearing the views of Senators on both sides as we seek to develop this piece of legislation which has so many important implications to our future.

Mr. President, this Bill establishes the legislative framework for telecommunications for the purpose of encouraging new service providers to enter the market, thereby facilitating competition in the sector and ultimately promoting economic development. By attracting providers of efficient and technologically advanced telecommunications service in 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.

In furtherance of these objectives, the Bill establishes a regulatory authority to create a level playing field for all providers of telecommunication services. Significantly, the Bill acknowledges the role of the Telecommunications Services of Trinidad and Tobago (TSTT) and the rights of Cable & Wireless, a significant shareholder in TSTT. It also replaces the current statutes that are decades old and ill-suited for an era of convergence among telecommunications, broadcasting and new Internet-based services.

Mr. President, I would give an idea why we are introducing this Bill at this time. The legal reform of the telecommunications sector has been under consideration for over a decade. The Bill represents the culmination of a lengthy process of studying global norms for telecommunications laws, consulting widely and applying global practices to Trinidad and Tobago.

1.45 p.m.

In our drafting we have made certain policy choices that are consistent with Government's overall vision for the socio-economic development of the country, which are also in keeping with the general trend of telecommunications legislation worldwide.

Like many other countries around the world, existing laws applicable to the communications sector were drafted several years ago. Since the early 1980s, however, countries around the world have been updating and overhauling their laws to take account of developments in technology, the inevitability and desirability of competition, and consumer demands. This process is essentially completed in many countries in Europe, Latin America and elsewhere.

Many developing countries, including Africa and the Caribbean have also recognized the benefits of a modernized legal framework for telecommunications as a way of attracting business and improving service to consumers. Trinidad and Tobago should not be left behind. Already when we look around our immediate neighbourhood we see many countries having moved ahead in this process and Trinidad and Tobago must really be a part of this movement forward.

The Government's vision for Trinidad and Tobago is to become a centre for information technology and knowledge-based industries in the Caribbean and throughout the hemisphere. Trinidad and Tobago has the advantage of an educated workforce and highly developed entrepreneurial skills. We can and should be a leader in e-commerce, e-government, internet-based businesses and multimedia development. All these businesses and services, however, require new, efficient and low-cost telecommunications services to reach customers, both locally and abroad. One of the fundamental policies driving our reform effort is the introduction of competition in the telecommunications sector. Competition will bring improved telecommunications systems 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 will be forced to offer lower prices and improved services in order to survive. We also believe that competition will enhance the responsiveness of the incumbent, TSTT, to the concerns of its customers. As competition develops, consumers will increasingly realize its benefits.

Most important**,** Mr. President, the Bill will facilitate the implementation of pro-competitive policies. Today, as we all know, our overseas services are currently priced well above international norms. These current high calling tariffs do not serve the best interest of our population; and the artificially depressed number of calls we would make to friends and relatives and to potential business partners overseas.

High prices are also a barrier to innovation and to the development, in this country, of new regional and global telecommunications-based industries. If we are able to realize lower costs while achieving improvements 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 our knowledge-based society. This is the path of modernization and diversification upon which we are embarked.

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. Of course, we want to attract those businesses to Trinidad and Tobago. Doing so can and should be our goal.

Our policies are also 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. These providers will need to fill jobs, many of which will require a highly skilled and technologically advanced labour force. So this will 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; and convergence is an important phenomenon which we deal with in this Bill. Our existing laws were drafted long before these developments occurred. 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. At the same time, our laws must enshrine the bedrock

principle of fair play in the promotion of widespread and high quality telecommunications services throughout the country. With these objectives in mind we found it absolutely necessary to draft new telecommunications legislation.

This obligation is reinforced by our commitment to the World Trade Organization. The General Agreement on Trade and Services committed all signatories, including Trinidad and Tobago, to a set of competitive principles for telecommunications services. Among these commitment are 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.

Mr. President, I have already made reference to the antiquated state of our laws, which makes adoption of a more modern telecommunications legislative framework an imperative. All providers, other than TSTT, are governed by the Wireless Telegraphy Ordinance 1936, a holdover from colonial times. Needless to say that legislation which has not 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 base or clear set of principles on which the telecommunications services, other than those provided by TSTT, might be authorized or regulated.

The 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 the Trinidad and Tobago Telephone Company Limited to provide domestic services. That Act, of course, 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 with the external operations of Textel into what became known as TSTT. On December 20, 1989, the Government and Cable and Wireless entered into a shareholders' agreement in which Cable and Wireless acquired a 49 per cent stake in TSTT. That shareholders' agreement also has certain provisions that are relevant to TSTT's participation in the telecommunications sector.

After the execution of the shareholders' agreement, the Government prepared the Telecommunications Authority Act in 1991. A great deal of work went into

preparing that Act, which was assented to on November 18, 1991. That 1991 Act, I must say, was woefully inadequate. Although it would have established a new authority and would have repealed the 1936 Wireless Telegraphy Ordinance, it did not establish the framework for the introduction of competition.

In June 1997, Cabinet established a working group under the Chairmanship of Central Bank Governor, Winston Dookeran, to prepare a draft national policy on telecommunications. The working group had a far-reaching membership of academics, officers of the Government, and a broad range of stakeholder representatives; industry, new providers, labour, business, users and TSTT. This working group reviewed a wide range of policy documents on telecommunications, examined the international environment, and compared the telecommunications situation in Trinidad and Tobago with that existing elsewhere. Its principal conclusions are worth mentioning briefly:

1. 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 sub sectors.

1.55 p.m.

3. The need for an updated policy in the sector is urgent.
4. Amendment to the 1991 Act is necessary.
5. A new regulatory body must be created as soon as possible.
6. The Government should adopt a new set of policies, including those relating to competition, universal service, licensing and interconnection among service providers.

The report of this working group forms the basis of this Bill before you today. So you see, there was significant consultation, in addition to other types of consultation that took place previous to the Bill being drafted.

It should be noted also that during the early part of last year, we engaged in intensive consultations with Cable and Wireless on our overall policy in legislative approach. We thought it was important to involve Cable and Wireless in this process for two reasons. First, Cable and Wireless is the principal shareholder in TSTT, the incumbent provider and the most important player in the

sector. Second, the company has valuable substantial experience in legislative and regulatory reform of national telecommunications sectors worldwide, where it has taken on the roles of both incumbent and aggressive new entrant. Cable and Wireless provided detailed comments on issues, both general and specific and sent an expert to meet with our drafting group on several occasions during the ensuing months.

Mr. President, I did ask for some room temperature water. I do not drink ice water, and I would need the water, so if I can have it, I would not mind.

It is important to mention that we also held extensive discussions with TSTT which have 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 nationalistic, holistic approach to the sector, whereas TSTT is obliged to protect itself in a competitive arena.

I would like to look at the fundamental philosophical principles underpinning the Bill. There were two overriding principles which guided us in the drafting of this Bill. First, given the convergence among media and communications, the Bill would have to take account of the entire telecommunications 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, cable television systems, wireline telephone services, 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 and how the Bill applies to them.

Secondly, the Bill provides a neutral framework in which future policy developments of the Government can be implemented. In other words, certain fundamental principles 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 the conditions that are applicable to the granting of concessions and licences and sets out provisions that would be contained in them. The Bill contains policies for establishing and maintaining a level playing field among all providers and for ensuring that all the regulatory processes will be fair and open.

Mr. President, 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 is very simple to discern. Part I deals with preliminary matters. Because precision in regulating or refraining from regulation in the telecommunications sector is of great importance, there are many definitions, some of which are technical in nature and all of which are described in Part I of the Bill.

Part II establishes the Trinidad and Tobago Telecommunications Authority, including its composition and functions.

Part III addresses concessions which are the documents by which certain types of providers will be authorized by the Authority to provide telecommunications services.

Part IV deals with licences for the use of the spectrum by radio communication services, as well as with spectrum management in numbering issues.

Part V addresses technical standards for the sector.

Part VI deals with testing and inspection.

Part VII deals with the financial provisions applicable to the operation of the Authority, including the fees applicable to concessionaires and licence holders.

Part VIII deals with the staffing of the Authority.

Part IX sets out a comprehensive set of offences for violations of the Act, regulations, concessions and licences.

Part X contains provisions relating to interference, regulations, confidentiality of information, dispute resolution and appeals. This part also contains important repeal and transitional provisions.

Perhaps the centrepiece of the Bill is the establishment of a specialized and fair regulatory institution. Part II, which establishes and empowers the Authority, is consistent with the broader principles of the Bill which I have described.

Let us look at the Authority's institutional structure. The Authority would be managed by a board which would have a chairman, deputy chairman and five to seven additional members and the Authority's executive director. Given the specialized nature of the Authority's functions, the Bill establishes qualification criteria for board members. To ensure continuity among the membership, their terms are staggered and last 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. In addition, they must declare any interest which they may hold in an enterprise within the jurisdiction of the Authority. Violations of the Act 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 who shall be appointed for a five-year term. The Bill also contains provisions regarding meetings and procedures and quorum requirements and so on.

The functions and powers of the Authority—Mr. President, among the most important of the clauses of the Bill is the one that sets out in detail the various functions of the Authority—clause 18. This clause is intended to empower the Authority to carry out the tasks described 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. The Authority, on the one hand, advises the Minister on policies on technical standards, while 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 general policy directions to the Authority. The Authority must follow such directions, but otherwise is free to make recommendations as it sees fit, subject, of course, to 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 are to be commensurate with the cost of operating the Authority and administering the concessions of licences. In other words, fees would be set 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.

Part VIII addresses staffing of the Authority and related matters. It authorizes the Authority to employ staff, including by means of secondment and transfer. 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 by the Authority.

The concession requirement—certain types of communications services are sufficiently important to the country that persons providing them must do so only by first obtaining a concession. 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.

2.05 p.m.

Concessions are recommended by the Authority, for approval of the Minister. This process contemplates an appropriate balancing of expertise and policy interests. Although the Authority, as a 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 to deny an application for a concession must be justified in writing.

The importance of public telecommunications services and broadcasting services warrants requiring applicants to obtain a concession. For other kinds of services, such as public 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.

Mr. President, concessions may be terminated, suspended or amended by the Minister, after consultation with the Authority. From a concessionaire's point of view, of course, such action can have a significant adverse effect on his business. For this reason, the circumstances in which the Minister may take such action are strictly limited as set out in clause 30(4). Decisions of the Minister—this is very important—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, in consultation with the Authority, may 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 would be subject to negotiation between the concessionaire and the Authority, subject to the approval of the Minister.

Mr. President, I would now deal with the types of concessions. This, of course, is very important because it governs not only the rights of service providers, but of their users, the 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, term, penalties, amendments, assignment, transfer of control and dispute resolution. 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. Finally, concessions may contain such 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.

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.

The holder of a concession for a public telecommunications network or service must submit plans to the Authority regarding the development of the network, service quality and other matters. Given the significant public responsibilities of such providers, they are also obligated to provide services on a fair and reasonable basis, and without unreasonable discrimination. Included in this obligation is the requirement that the concessionaire refrain from prohibiting the resale of its services.

Mr. President, the Bill considers transparency an essential element in ensuring meaningful choice by users among service providers. For this reason, the concessionaire must publish the conditions by which its network or services can be used. The terms of its user agreements must be filed with the Authority. The concessionaire also must keep books and accounts in order that the Authority can determine whether the concessionaire is engaging in unlawful cross-subsidies of one service by another.

Concessionaires also have various statutory rights to install or maintain facilities in streets or public grounds, and carry out road works in connection with installation and maintenance. These rights to carry out road works are subject to detailed procedures, including the submission of plans and notification to the Authority. The concessionaire is responsible for repair and restoration of the site where the road works are effected. The Bill also provides that the concessionaire must obtain the consent of persons owning trees prior to cutting down, pruning or trimming them. I am sure Sen. Prof. Kenny would approve of that.

Mr. President, the Bill also contains a clause that applies specifically to a dominant provider of public telecommunications service. This is important because we already have a potential dominant provider. I should explain that the telecommunications laws and regulations worldwide usually treat the incumbent provider, given its marketplace power and entrenched position, differently from new entrants or smaller companies with no market power. This principle, which is 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.

Mr. President, we would now look at pricing; how various kinds of telecommunication services are priced which is, of course, a central issue to this entire legislation. Consistent with the philosophy I have described above, 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 as delineated in clause 29(1). There are, however, circumstances where regulation of prices is appropriate, and the Bill 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 Parliament only as provided in the Bill. Where, for example, there is only one or a dominant provider of a 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 as pointed out in clause 29(2).

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, 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 services 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 by which TSTT is currently regulated under the 1968 Act and the Shareholders' Agreement. As we move to a more competitive environment, however, the Authority is likely to replace this rate-of-return approach methodology for TSTT with a price cap regime.

Concessionaires of public telecommunications services, of course, will be obligated to publish their prices. The Authority has the power to determine when and how they shall do so.

2.15 p.m.

We now turn to universal service which is also a very important and fundamental principle in this piece of legislation. From the standpoint of the people of Trinidad and Tobago and the Government, there is no issue more critical than the expansion of affordable and efficient telecommunications services around the country including the rural areas. Although great strides have been made over the last 20 years, our national teledensity—that is telephones per population—still lags quite a bit, hovering just over 20 per cent, that is 20 telephones per 100 persons. That is much less than half of most of the countries in the developed world. Clearly, that is not a satisfactory situation if we are to modernize Trinidad and Tobago.

Today, Telecommunications Services of Trinidad and Tobago (TSTT) is the provider of public telecommunications services and is responsible for network expansion. Furthermore, the Act of 1968 requires that it installs a public coin telephone in every community where it maintains a telephone line. Undoubtedly, there are some parts of the country in some populations for which the price of telecommunications services is less than that of the costs of TSTT providing the service. Whether by cross-subsidies or other means, however, TSTT has been able to expand our network gradually.

Once competition is introduced, it may neither be economically or legally possible for TSTT to use cross-subsidies or other funds for expansion in unprofitable areas, nor would it be fair or appropriate for TSTT to be solely responsible for carrying out this universal obligation. Instead, the Government believes that the Authority must put a mechanism in place by providing a new entrance as well as contributing to the funding of the so-called universal service.

In Trinidad and Tobago as elsewhere in the world, we have been confronted with three fundamental policy questions. Firstly, what is universal service? Secondly, who is obligated to provide the service? Thirdly, how will that obligation be funded?

In the Bill we have taken our first step towards providing a framework for these questions, given the need to obtain all relevant facts and the views of all industry players before resolving these issues. However, the Bill does not and ought not to provide a complete set of answers. A work is in progress, as I indicated earlier on.

With respect to which service should be considered universal, the Bill provides that at a minimum, that term should include the public telephone service. As technology evolves and the needs of the population change, other services could be included. These are already being included elsewhere in the world. For example, as we modernize the Internet service, we fall under universal service.

The Authority would be empowered to determine how such services would be provided and the method by which they would be funded. With respect to the provision of universal service, the Authority can, through its review of a concessionaire's development plan, work with the concessionaire with respect to its network build-out commitments. In this way, which concessionaire would be responsible for which areas may be determined. The draft TSTT concession already contains provision along these lines.

As to the funding mechanism, the Bill contemplates that concessionaires will contribute to such funding. In addition, other providers of telecommunications services and users may be asked to contribute as well. Various funding methodologies have been used around the world. These include levies or taxes, or access charges paid by other providers for interconnection to the incumbent's network. The Bill contemplates that the Authority, with the approval of the Minister, will prescribe the approach that is most appropriate for Trinidad and Tobago. Any requirements to fund or provide universal service must be imposed on a nondiscriminatory basis so that no one enterprise or person bears a disproportionate share of these responsibilities.

I turn now to access to facilities. For competition to develop, concessionaires must have access to the facilities of other concessionaires. The whole business of interconnectivity and interconnection is also a very important principle. An incumbent such as TSTT has conduits, ducts, towers and other facilities which may be ideally or uniquely suited for the provision of services. Similarly, a broadcast enterprise or provider of cellular telephone service may own a tower location that is only available to serve a community. If a concessionaire is able to deny access to these facilities, then it has the effective ability to thwart competition and derail the entire process of liberalization and modernization. That is what this Bill envisages.

The Bill provides that it is a condition of every concession for a broadcast service or public telecommunications network, that the concessionaire provides access to its 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 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. Charging principles and the procedures for facilitating the resolution of disputes among concessionaires may be laid out by the Authority. A related provision is that concessionaires of public telecommunications networks shall permit Government to replace certain equipment on their poles for essential governmental purposes, such as fire alarm and police services. Although concessionaires are unable to charge the Government for this rental, Government is responsible for paying all damages to the property of the concessionaire. In other words, Government must be able to use the infrastructure which was laid down for security purposes.

This provision has applied solely to TSTT under the Act of 1968, but now has been carried forward in this Bill to apply on an even-handed basis to all operators of public telecommunications networks. As I indicated earlier, interconnection obligation is a very crucial area of the Bill. New providers of public telecommunications services, whether wireline or wireless, must be able to interconnect their networks and services of other providers—incumbents and new entrants alike—otherwise, subscribers of such new services would be able to communicate only with other subscribers to the same service. Clearly, this would stymie competition and make an absurdity of communication in a modern-day Trinidad and Tobago.

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. This is a very complicated matter and the Authority would play a critical role in it. Experience teaches us that incumbents and dominant providers prolong the timetable for affording interconnection and do so only at very high prices. 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 that reflect detailed provisions on interconnection. These provisions require all such concessionaires to offer up direct and 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, at least in the first instance.

2.25 p.m.

The substantive provisions of interconnection are as follows:

Firstly, the offerer of interconnection must make the interconnection available through a published interconnection offer.

Secondly, if a provider seeking interconnection wants to interconnect at points other than as set out in the offer or at other prices it is free to negotiate these arrangements.

Thirdly, and most fundamentally, interconnection arrangements may not be discriminatory.

In other words, the offer made to one provider with respect to the technical quality in rates of interconnection must be extended to any other party seeking interconnection—there must be no discrimination. From a procedural standpoint, the Bill requires the parties seeking and offering interconnection to negotiate and endeavour to conclude an interconnection agreement. Such an agreement must be submitted to the Authority to ensure that it complies with the Authority's guideline so that in the light of the non-discrimination requirement, it can be made available to others. In other words, there can be no private agreement between an incumbent and a new entrant because the Bill provides for other new entrants to the market, who would also require interconnection. In addition, the Authority may adopt procedures for resolving disputes or in cases where the parties fail to reach an agreement, the parties would be bound to adhere to any decision of the Authority or such other body to which the Authority may delegate its responsibility regarding the terms of interconnection arrangements and dispute resolution.

Mr. President, the dominant provider of a public telecommunications service also has other interconnection-related obligations that are intended to facilitate consumer choice in competition.

1. It must, to the extent, be technically feasible to permit number portability, another important dimension of the Bill. In this way, consumers can keep the same telephone number when they change providers.

2. They must provide dialing priority to other concessionaires. In other words, the subscribers to a new service will not have to dial extra numbers that they did not have to dial previously to get service.

3. They must permit concessionaires to have equal access to critical but costly elements of providing any telecommunications service. These include access to telephone numbers, operator services, directory assistance and directory listing.

Finally, and perhaps most importantly, under this section of the Bill, 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 would be able to purchase service from an incumbent or other network operator only on those lines, switches or other functions that it determines that it requires to provide its service. In the absence of such obligation an incumbent provider could bundle and offer up to new entrants an expensive package of both wanted and unwanted service. They may not want that particular service. To avoid this result it is widely recognized—and the Bill reflects that network unbundling is essential to the efficient development of competition—very, very critical to competition.

We will now look at the competition issues and our attempts in this legislation to ensure a level playing field. Mr. President, this 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 that is, given the historical circumstances, as level as possible. The Authority itself is empowered to investigate whether providers are acting in an anti-competitive fashion in violation of the Bill and their concessions. In this respect, the Government believes that principal responsibility for applying competition law principled to the telecommunication 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 in jurisdictional power—and may I just add that, while we consider this to be a regulatory authority, we would put in place what one of my advisors prefers to describe as a facilitative body rather than a regulatory authority. I just want to throw that into the debate to demonstrate the spirit upon which the legislation is based.

As indicated previously, the Bill also empowers the Authority to impose price control mechanisms to prevent or remedy anti-competitive conduct. In addition, the Bill sets out three other provisions that are intended to prohibit anti-competitive behaviour.

Firstly, the Bill contains a powerful and important provision that prohibits cross-subsidies from such dominant service to other networks or services without the approval of the Authority. A concessionaire cannot, for example, take revenues from its monopoly wire-line telephone service and use them to undercut the competition in Internet access services. But of course, a dominant provider would be in a position to do so.

Secondly, a dominant provider of public telecommunications service like an operator of a public telecommunications network must, as provided by the Authority, share technical information including planned deployment of equipment with other providers that would 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 its technology or network that would unfairly advantage it as compared with other providers, who would then be left to scramble to catch up. So one sees the spirit of fair play that we are trying to engender in the Bill. We are ensuring, especially with new entrants, that they have the opportunity also to benefit from investment in the market.

Thirdly, the concessionaire must maintain the confidentiality of proprietary 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 to provide a service or for such other purposes as the Bill shows. 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 advantage some other business of the concessionaire, a business which might actually compete with a company providing that information or giving the information to anyone else without giving the provider an opportunity to approve.

We turn now to the customer bill of rights. The Bill recognizes that the end users' own interest must be safeguarded.

1. Consistent with the provision that I have just described, under the terms of its concession, the concessionaire must maintain privacy of all data collected from users. Such data may not be used for any purpose other

than for billing, detection of fraud, protecting the rights of the concessionaire or other enumerated purposes. In the absence of other legal protection to protect users' privacy, this is a meaningful consumer provision.

2. Concessionaires are specifically prohibited from impairing or terminating a user service during the course of a dispute without the prior approval of the Authority. This provision responds directly to many consumer complaints that there are justifiable refusals to pay erroneous bills that have led to a shut-off in service. In other words, a provider cannot just turn off your service willy-nilly or arbitrarily. A condition in the concessionaire's concession will end this practice. Any such prohibition, of course, will not relieve the user from having to pay for any amounts that he or she legitimately owes, and which are not in dispute.

3. All customers will now have a right to elect on a competitive basis to purchase and to attach to a provider's network such equipment as they wish. There will be no monopoly on telephones, modems, facsimile personal computers, routers, switches and other devices that connect to a network. Nor will the provider have the right to approve such equipment before it is connected. This right of attachment will benefit individual consumers and businesses alike, and will signal further that Trinidad and Tobago is a hospitable place to do business. This right of attachment is not without limits, of course. Before attaching any equipment the Authority must certify it as meeting the criteria set out in the Bill. Those criteria, however, are neutral and are intended to ensure that the equipment is neither harmful to persons nor to the network. These provisions are among the most user-friendly and competitively oriented in the Bill.

Spectrum Management and Licensing—as I have indicated previously, the radio frequency spectrum is one of the valuable national resources of Trinidad and Tobago. It must be managed carefully and used efficiently.

Part IV of the Bill contains a series of interrelated provisions relating to the licensing and management of the spectrum. The Bill mandates the Authority to 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, with the approval of the Minister, is required to develop a spectrum plan. The spectrum plan development under the Bill will be based on the existing spectrum plan. The spectrum plan shall also include procedures by which

frequency bands will be licensed. These methods will include licensing by auction, and we have been hearing much about that these days—tender on the basis of fixed price or based on stated criteria. In carrying out its functions in managing its spectrum, the Authority must take into account certain statutory criteria, including the objects of the Bill and international obligation.

2.35 p.m.

The Bill requires that a separate licence be issued to authorize the use of the spectrum or radio communication service or in connection with radio communication equipment. To be clear, if a concessionaire uses spectrum to deliver a telecommunication service such as the provider of a cellular telephone or satellite-based service, then, in addition to the required concession, the concessionaire must also obtain a spectrum licence. Of course, it is likely that the concessionaire will be issued a licence at the same time as the Authority grants a 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 provides that no person may establish, operate or use a radio communication 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 to termination, suspension, amendment and renewal of licences are essentially identical to those applicable to concessions and licences which contain certain standard concessions that are also comparable to standard conditions for concessions.

As far as numbering goes, Mr. President, this is a very, very valuable resource as well. Although we are fortunate in that numbers are not a secure 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 the Telecommunications Services of Trinidad and Tobago. 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—

Mr. President: Just let me remind you that you have eight minutes left.

Hon. R. Maraj: I thank you, Mr. President.

Until now, responsibility for numbering, as I said, has to a certain extent been vested in TSTT. 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. To ensure that there is consistency with our current practices and that there is no undue duplication of effort, the Authority must preserve and build upon the current numbering plan.

Mr. President, the Bill balances two core concepts with respect to the adoption of appropriate technical standards in Trinidad and Tobago. Firstly, it is important that the providers be allowed to select the most appropriate technology for the services they wish to provide. Differentiation among technologies is one way in which competitors may distinguish their services and compete for customers. Secondly, however, there should, where necessary, be compatibility and uniformity among certain technical standards.

The Bill also provides for testing and inspection. The Authority must be able to monitor the development among competitors in the telecommunications sector to determine whether and to what extent others are complying with the Act and applicable regulations. The Authority may designate officers as inspectors for these and other purposes and the Bill contains procedures by which inspectors can enter and search premises, which are consistent with due process and existing legal norms.

Of course, Mr. President, the Bill must also provide for contraventions of the Act and it enumerates a comprehensive new set of offences which are built on international norms and which are appropriate for today's telecommunications environment.

Importantly, the Bill prohibits the operation of services for which a concession or licence is required without first obtaining such a concession or licence. We cannot have chaos out there. In this way, those who provide unauthorized services, over the Internet or otherwise, run afoul of the law.

Among the new violations are prohibitions on the unlawful interception of, or access to, any telecommunications; the use of any such telecommunications and the manufacture and sale of any such equipment, cards or other items for the purpose of fraudulent use or of access to any telecommunications service. These offences are addressed to such practices as the cloning of cellular telephone numbers, the fraudulent use of telephone credit cards and the interception of private communications.

There are other more traditional offences, which I am sure Senators can easily digest and, of course, any questions relating to them can be easily discussed.

We must also deal with the powers of the Minister and other rights of the Authority. In this Bill, the Minister is given specific powers. Where there is an emergency situation such as the operation of a telecommunications network, the provision of a telecommunications service which is dangerous to the security of the state or 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 the licence and, although the offending person may appeal to the High Court, the High Court must presume that the Minister acted reasonably where he so certifies to the court.

The Bill specifically empowers the Authority to carry out certain necessary functions to fulfil its responsibilities. Among these are the operating of the frequency monitoring situations. The Authority also is authorized to take steps to cease harmful interference. Again, aggrieved persons may appeal to the Minister and from him to the High Court.

The Bill also deals with the rights and responsibilities of the Authority. Mr. President, as is universally acknowledged, no legislation can or should prescribe every single policy dealing with the telecommunications sector. Telecommunications technology and services are changing constantly and it is very possible that we will have to return from time to time to our honourable Parliament to make amendments, suggestions and additions as this very dynamic sector evolves.

As I said, we have a situation of constant change and the introduction and evolution of competition requires a continual re-examination and redefinition of the sector. For this reason the Bill specifically authorizes the Minister to issue such regulations as may be required to implement the provisions of the Act and to ensure substantive and procedural regularity. The decisions of the Minister or the Authority may be appealed to the High Court. I will repeat this: The High Court stands as a court of appeal in this legislation. Aggrieved persons may also request that the Minister reconsider any decision based on information not previously considered.

In carrying out its responsibilities, the Authority, including its board and other persons concerned with the administration of the Act, must treat documents and information confidentially. Only certain disclosures made pursuant to the Act or the Authority's regulations or otherwise considered necessary by the Authority will be permitted. Persons submitting information to the Authority will have the right to request that it remains secret and confidential.

The Bill also deals with repeal and transitional provisions. All of the existing pieces of legislation that we have in place are outdated. We need to repeal them. The Bill sets out in a very clear way the repeal of these pieces of legislation and the transitional arrangements that have been put in place. These transitional arrangements have been carefully outlined because this is not a new situation. We have an existing incumbent: we have new entrants coming in and we expect that they would come in at an incremental rate and so we have this transitional arrangement from the new gradually into the old.

Finally, Mr. President, with the passage of this Bill we continue 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. At the same time, a working committee is soon to be appointed to assist in the transition process, and as I have mentioned earlier, critical policies such as determining the pace of liberalization, including when and how many competitive entrants will be authorized, is fundamentally a question for the Government. We do not want a chaotic situation and we will be examining how to improve our in-house policy development function whilst not duplicating the function that the Authority is charged with performing under the Act.

We will also continue to discuss the new concession agreement between Cable and Wireless and TSTT and our hope is that we would be able to conclude those discussions shortly after the passage of this Bill. Beyond TSTT, however, there are many existing licensees in Trinidad and Tobago and we need to prepare ourselves for processing their applications for new concessions and licences in accordance with the transitional provisions of the Act.

2.45 p.m.

In conclusion, Mr. President, we obviously have a substantial task ahead of us. We have waited a long time to bring the benefits of this modern telecommunications age to Trinidad and Tobago. As I indicated to you, Mr. President, and to hon. Senators, we really cannot wait much longer because so many countries are moving ahead. This is a dynamic sector of the new century. This is the path to modernization. In my view, it is the path to genuine diversification of the economy of Trinidad and Tobago. A number of our Caricom partners have already forged ahead. This is a Bill that is going to be pivotal to the modernization of our economy and the modernization of our society, generally.

As I indicated at the start, Mr. President, my approach would be to try and develop consensus on this Bill. It is something that is pivotal and important to all of us. As I said, it is a work in progress. I look forward to the comments and contributions from all Members of this Senate.

I thank you, Mr. President.

Question proposed.

Sen. Danny Montano: Mr. President, my first word is, wow! I have never, in the past five years, heard so much said in one hour. It would have been useful if the Minister had given us a copy of what he was saying, like he has done with some other members in the gallery because to follow it and to respond immediately, is difficult. As the Minister well knows this is a complex piece of legislation. It is not so much that the legislation itself is that complex, it is that the industry itself is extremely complex and because it is moving so fast, it is difficult for a layman like myself to try to understand what the Minister is talking about. Quite frankly, I had to read this on several occasions and talk to many persons before I even began to understand what it is about.

Mr. President, up until a few hours ago I was not really sure that this, in fact, applied to the Internet. I am still not sure it applies to something called the voice over the Internet protocol. It does not deal with that. I got some information from TSTT and they do not seem to be clear on that issue. There are bypass mechanisms and so on. There is VSAT and I am still not sure that it, in fact, applies to all of the forms of technology that now exist. I understand that it is the intention of the legislation that it should do so and that being said, fine, we could press on.

Mr. President, before I get into the heart of my contribution, I would like to say that, we, on this side—recognizing the complexity of the legislation—feel very strongly that it should go to a committee of the Senate, whether formal or informal. This is to allow us to deal with some of these issues and to make certain suggestions and amendments.

The Minister has indicated that he is looking for consensus. I think it would be good if, in fact, we could achieve that. As the Bill now stands, however, there is no way we would get that because we have some major reservations with the Bill as it is.

One of the things that surprised me, Mr. President, is that the Minister spoke a lot about the spirit of fair play and that things must be fairly and equitably done. In fact, there are provisions in the Bill that the concessionaires be dealt with

equitably. Of course, that is assuming you have a concession and a licence. The question as to who gets the concession and who gets the licence whether they, in fact, would be fairly dealt with in the application and the award process, the Bill fails on that premise to begin with. That is the basic difficulty that we, on this side, have with the legislation. I will show you exactly how and why.

In the original 1991 Act to which the Minister referred, the Authority that was set up to regulate the industry was to be appointed by the President, but after he consulted with the Prime Minister and the Leader of the Opposition. That was to ensure that the members of the authority themselves would be independent of the political institution, being the Government itself. It was intended, as a matter of policy, that it continue up to this day.

I have a book called: *Caribbean Telecommunications Operators' & Policy Makers' HAND BOOK*, published by CANTO; Caribbean Association of National Telecommunication Organisations. What it says here, and I quote:

> "The existence of a strong and independent regulator is of crucial importance for the rapid and orderly development of the sector with particular attention to the provision of basic telephone services...
>
> The regulatory entity must operate independently from the executive branch and political party influence…"

Mr. President, that is the bottom line and that is from where we should be starting. This is international. This is not just for Trinidad and Tobago. This is what pertains internationally and yet we begin—the very foundation of this Bill sets up in section 6, where the members of the Authority are appointed by the President. The reality is, for those new Members of the Senate, when you see that in legislation, that is, in fact, on the recommendation of the Cabinet. What we will now have is an Authority of members that have, in fact, been appointed, *de facto*, by the Cabinet and not independently selected by the President, himself. Mr. President, that is where, to begin with, it fails.

Mr. President, to go on further, what we are talking about here, as the Minister said, is an attempt to control every aspect of the industry. What you are looking at is this. In clause 19, in contravention of the CANTO document, the Authority is to act on the directions of the Minister. Why is that so? If, in fact, we are seeking to have an independent Authority which would go a long way to ensuring that there

be free and fair play in the industry, why is it that the Authority must act on the specific instructions of the Minister? With the greatest respect to the Minister, he has made no case whatsoever as to why that should be so. He has made no effort to justify why that must be so, from any point of view, whether it is national security or politics or whatever, as to why it is that the Minister, the politician, should have the authority to dictate directly to the Authority what they should do.

2.55 p.m.

It goes on in clause 21 to say that the Minister who issues the licences and the concessions is not bound to accept the advice of the Authority. So after an applicant has made an application, and the Authority has screened it and made a recommendation that a licence be granted, the Minister can sit back and say, "No, I am not going to grant the concession or the licence." Under the terms of the legislation as it now stands, he has to provide a reason. He can give a reason but it could be any reason. He does not have to retract it and nobody can force his hand. As I indicated, it is the Minister who grants the licence and the concession.

In clause 30 it is the Minister who has the authority to suspend or terminate a concession. The Minister can act in his own right, again without necessarily acting on the advice of the Authority. Now, what is the point of doing that? What we are trying to do is liberalize the whole regime. We are trying to encourage free and fair play. Now, Mr. President, it is not an academic argument by any stretch of the imagination. We have already seen a situation, as has happened recently, where, prior to the advent of this piece of legislation, there were certain applications for cellular licences and the political arm unilaterally took a decision to exclude one applicant in favour of another. Well, we know that the courts have ruled on that and there is certain continuing legal action on that, so I would not go into it but, Mr. President, the fact is there. This administration has shown its willingness to interfere directly in the award of licences, contrary to the advice of the experts.

Now, clearly, there are political objectives in that kind of decision but the Minister, recognizing that this is exactly what is being set up here—what we are going to do here is to institutionalize that. Are we going to say that it is right that the Government—this administration or any other administration—has that right to do that in a liberalized economy? Mr. President, that is not a step forward; that is a major step backward. While I would concede to the Minister that there are many parts of the legislation here that certainly address the technologies of the future and attempt to carry us forward, the administration of the legislation as it is

envisaged here is a major step backward and cannot work this way. If that is left inside there, Mr. President, he will never get the agreement of the Members on this Bench. [*Desk thumping*] We cannot agree to that; we cannot.

Leave it the way that it was originally intended. Leave the Authority to be independent of the political body and allow them to do what they have been hired for, to do their jobs independently and impartially, freely and fairly. That is the issue; and, Mr. President, it is a serious issue. One of the things that will stifle investment in any economy, especially an economy like ours, is where you have the demonstrated willingness on the part of the politicians to interfere directly in the decisions of the economy; in the machinations of so-called free enterprise. Once they do that, you no longer have free enterprise. It is not free any more; it is engineered. It becomes engineered for the benefit of a select few. If you are in favour, you benefit tremendously; and, Mr. President, what we are talking about here are operations and businesses that are potentially extremely profitable.

As we all know, this is an industry that is growing by leaps and bounds all over the world and it is growing because it is profitable. It is profitable because of the technology that is being used. It no longer requires tremendous labour inputs. It uses equipment that is advanced, it is sophisticated, it is inexpensive to use and operate and it becomes extremely profitable. Mr. President, I am advised that one of the favoured operators or applicants for a cellular licence, who was to be awarded his licence, had had a back-to-back sale agreement with a US counterpart for US $22 million and he was not asked to pay for his licence.

So in terms of the management of the spectrum, which is something that the Minister referred to, as one of our great national resources, the management or the use and disposal of the spectrum, I agree. Mr. President, when the spectrum was auctioned in the United Kingdom, they realized over US $30 billion. In Jamaica, when the spectrum was auctioned there they realized US $92 million. What are we doing here? We are passing it out to friends and yet, what we are putting in the legislation here is that those who want to go at it independently and impartially from the Government will not be treated impartially. That is what we are looking at here.

We cannot pass that, Mr. President. How can we pass that when, on the last occasion—to which I hope you would allow me to refer, Mr. President—the present Minister of Energy and Energy Industries who presented this Bill did so without declaring that he had a financial interest in businesses that would be directly affected by this Bill? He was the Minister in this Bill. Mr. President, how can you do that? This Bill, I think it is in clause 15, requires that members of the

board of the Authority declare their interest in contracts, but the Minister does not have to declare his interest?

Mr. President: I think you have dwelt on that sufficiently.

Sen. D. Montano: Mr. President, the point is this. I would hope that the present Minister—and I believe that the present Minister is cut from a different bolt than the rest of the Members on that Bench and will see the wisdom of what I am saying, that what is in here is fundamentally wrong. It is fundamentally flawed. It does not serve the national interest. It may serve the interest of a precious few but it does not serve the national interest and, if it does serve the national interest, he has failed to say so.

In my discussions—and, Mr. President, I am certain that the Minister has heard all the arguments as they relate to this piece of legislation. I know from discussions that I had with individuals with whom he spoke, so I know that he has had discussions with and has listened to everybody who went to speak with him. So I know that he knows what the problems are and I know that he knows that at the top of the list is what I am speaking about. So when he says very nicely and very gently he is looking for consensus, I would like to think that I believe that he will agree with us and will change the offensive clauses in this Bill. I look forward to his agreement that we will change that and make the Authority completely and truly independent.

Mr. President, he talked also about the question of cross-subsidies and the fact that the Bill has outlawed cross-subsidies. Now, just to make sure that everybody understands what we are talking about, what happens is this. As the Minister indicated, our existing telephone rates for international phone calls are very high. Now, rates for local calls are very low. So what happens is that the profits from the international side subsidize the losses on the local side. According to this legislation, that is now going to be illegal. It will no longer be allowed. So what you can expect to happen is that the international rates will fall but the local rates are going to go up and will do so fairly substantially.

Let me just give you a little idea of what it might look like. Of course, Mr. President, it is tied up with the universal service and so on. This is where I had difficulty with this Bill because the whole thing is so interlinked that you have to know what you are talking about in order to talk about anything and then, of course, I am not all that familiar with the subject. However, Mr. President, TSTT, over the next four years, has a business plan to lay down 196,000 new phone

lines. If they are not allowed to cross-subsidize, you can well imagine what is going to happen with the cost of local phone calls. In some areas, according to—[*Interruption*]

Mr. Maraj: Will you give way?

Sen. D. Montano: Sure.

Mr. Maraj: I thank the hon. Senator for giving way. When I was talking about the matter of the cross-subsidies, I was talking about one service subsidizing another service; for example, your telephone service subsidizing your Internet service; but when you talk about local calls and international calls, you are talking about two aspects of one system. So it does not affect the subsidization of any one of those. In other words, this law against cross-subsidization does not refer to the situation that you referred to with TSTT.

Sen. Yuille-Williams: Could I just ask the hon. Minister, as you are on cross-subsidies, because I was thinking similarly to my colleague, I was wondering even within the industry, from one industry—for example, I am into the telecom industry and I also have another industry, say, in manufacturing, could I not use my subsidy from that into the telecom industry?

Mr. Maraj: Mr. President, what the Bill envisages is that there be a situation of fair play and this question of cross-subsidy refers essentially—and the points made—to the emergence of the dominant player where you have the incumbent. For example, the incumbent is in an entrenched position. He is a dominant player and you do not want him to use one profitable part of his operation to cross-subsidize another part of his operations and then compete with a new entrant into the market. That really is the principle upon which the legislation is based. So that really is where we are coming from.

Sen. D. Montano: Mr. President, I accept what the Minister is saying, however, I am not really sure that he is right because my advice is that that is not so because my understanding is, in fact, that what is understood in the industry is that they are talking about within one service. I mean, when you look at clause 29(2)(b), it talks about two services by the same concessionaire, so that it seems to be one concession.

So if there is confusion around that, all the more reason for it to go to a committee so that we can get these things sorted out.

Mr. Maraj: Telephone calls—one service; whether it is local or international, it is one service.

3.10 p.m.

Sen. D. Montano: Anyway, Mr. President, what I was saying is that I know this is a concern of the dominant provider as we now have it, and I was saying that in some parts of Trinidad the cost of providing a residential line is as high as $16,000. To move on to the point that immediately follows from that is the question of universal service. In terms of the requirement, they are the dominant provider and, of course, they will be for the foreseeable future, the dominant provider. They have the network, they have the grid and all of the infrastructure necessary, and it is going to be difficult to compete with them for some time.

Of course, the question of universal service is a political objective that it reach the widest elements of the population at the smallest cost, and it is right that it be so. There is no difficulty with that. The problem with that is that in clause 28—and the Minister made some weather of this—there are requirements that some of the concessionaires and licensees would have to make contributions towards the universal service. I should say that the concern that has been expressed at this point is that the use of the word "may" in the legislation does not require a concessionaire to make a contribution to the universal service. That is where the problem lies.

The feeling is that everybody who gets involved in this must make some kind of a contribution, no matter how small it is. It should not be left to the discretion of the Authority. That is where things will get out of hand where it is no longer fair and equitable. It must be fair and equitable.

In terms of things being fair and equitable, while there are some parts of the Bill that require that one's business dealings be transparent and that one's arrangements be public knowledge, the original terms of the concession or licence, as granted, are not in the public domain at this point. I think they should be. I think all of the concessions and licences that are granted under this Act should be a matter for public scrutiny so that any entrant into the system can simply look and see what he is being offered as opposed to what somebody else is being offered. If it is a closed shop arrangement, particularly where the Minister has everything under his thumb, we do not really know if things are being dealt with fairly. Once the concession is offered, it says it must be fair, but who is to know that it is fair or not? Who can verify that? There is no mechanism to verify

that fact. The only way it can be verified is if the terms are in the public domain. One can go and check it and say, "Yes, he has a licence, and basically the terms are the same as mine," within the circumstances of where we are in the country and so forth.

Mr. President, also, the Minister made reference to Sen. Prof. Kenny when he was talking about the trimming of the trees and I know that there was a similar provision in the 1991 Act, but I think that is a little bit problematic because they simply had the authority to go and cut a person's branch, or whatever it was that was causing interference with the lines. What they have said now is that one now has to get the permission of the owner, but somebody was in my office this morning and said, "Well, that is great, but what happens if the owner says, 'No! I do not care if it mixes up with your apparatus. You are not going to cut my tree.'?"

Mr. President, I do not know the answer to that question. All the more reason I think they need to go to a committee to try to sort out little issues like these, and there are many. I have another 15-page document that I could have read out as my contribution, because there is a myriad of issues which I will not deal with in my contribution.

Clause 42 spoke about the allocation and reallocation of frequencies when everyone has applied under the Act. What about the reallocation? That is causing concern in the industry because operators are saying, "Well, if I am already using a frequency and I have got everything set up on that frequency and you are going to come and reallocate a band, I will have to start all over again". There is serious concern as to how this thing is actually going to run.

Mr. President, the other thing I was concerned about too was that I managed to get some information from TSTT and they have serious concerns as to what will happen to their revenue stream once everything comes on board and there are terms that come around, their flash cut implementation and all sorts of things like that. They had serious concerns that their revenue stream would be seriously disrupted, particularly on the international traffic route basis. What we are talking about is hundreds of millions of dollars. I see numbers such as $369.3 million in loss of revenues over a four-year period.

Mr. President, I will tell you what my concern is about that. It is that TSTT has been transferred into a company called the National Enterprises Limited (NEL) of which a portion of those shares has been floated on the stock exchange and the

prospectus really did not take into account the kind of impact this legislation could have on the revenue stream of TSTT. I am deeply concerned, and the Minister said nothing about the pace at which the legislation would be implemented and how it would be implemented and how the rates would be restructured, and so forth. Not the least of which, of course, is that the Government could, in fact, according to TSTT, lose hundreds of millions of dollars in taxes, VAT and dividends. I had very serious concerns about that, Mr. President.

I did ask a question earlier which was the voice over the Internet protocol. While the technology is not quite yet ready, as far as I am concerned, and it is being done on a small-time basis, I do not know how the Authority would regulate that, because once one is on the Internet, one does not know what a user is going to be doing. So, the fact that he plugs in a telephone device and starts going, how does one stop him from doing that? I would like to hear from the Minister how he does that, because the technology for that could be brought up to scratch within the next 18 months or so, and it could devastate the existing telephone system.

I would like to know how the Authority could actually go about regulating. How would they stop it? It is one thing to say that one cannot do it, but how do they actually stop it? If someone is on the Internet, one does not know what he is doing, so how does one actually stop it? Mr. President, that may be a technical question, but I think it is an important issue that we should all understand. There is also the question of the position of callback services. At the moment it is not illegal. Is it going to be illegal under this system? Exactly what would the position be?

Mr. President, I spoke about the spectrum of management and the auctioning of the spectrum, and I feel it is very important in terms of the management of the spectrum that certainly for cellular use, there is no way, in my opinion, that spectrum should be allocated for cellular use unless it has been auctioned. That is the practice worldwide and it is a tremendous revenue earner. If Jamaica, with an economy half the size of ours, could generate US $92 million, that is TT $650 million, does one know how many free houses we could build with $650 million? Mr. President, I rest my case.

What we are talking about is free and fair play in the best interest of the people. In the public interest! I think I want to wind up at this point, but I want Senators to know that they should not take my words lightly. We have seen this administration interfere directly in the flow of business, of so-called free business.

We have seen what appears to be the arbitrary selection of an award of contracts and we cannot be party to legislation that literally institutionalizes that and legalizes it. We must not be party to that at all.

I would implore all Senators in this Senate, on both sides, as some are new here, to take the interest of the people to heart and do what is in the best interest of the people—not in the best interest of their leader or in the best interest of their friend or associate, but do what they know in their hearts is in the best interest of the people. I know that based on the words of the Minister we will have a very fruitful discussion and I am confident that he will take seriously the recommendations I have made.

I thank you very much, Sir.

Sen. Kenneth Ayoung-Chee: Mr. President, I welcome this Bill today. The telecommunications industry, as we are all aware, is fast-paced, high-revenue generating, multifaceted, dynamic, impacts on society, and impacts on everybody with huge numbers of customers. I think it is right that we should have a separate independent authority and a separate Act to regulate that industry.

I have some concerns and queries on a number of clauses in the Bill presented this afternoon. First, I would like to turn to clause 6. The way the board is to be constituted there would be a minimum of eight members and a maximum of 10—that is clause 6(1) and (2).

It is emphasized in 6(2) that at least three members shall be qualified in the field of telecommunications with an emphasis on the number of people qualified in that field. Therefore, at 6(4), my suggestion is that there should be provision to have at least one person who is qualified in the field of telecommunications in each separate period of appointment so there is that kind of continuity.

If one looks at subclause (4):

> "The first Board shall consist of a Chairman, Deputy Chairman and two members appointed for a term of three years, three members appointed for a term of two years and any other members that may be appointed for a term of one year each."

My suggestion is that there should be at least in each period of appointment a member who is qualified in the field of telecommunications. Just to keep the continuity and the emphasis on people who are qualified in telecommunications sitting on that board.

3.25 p.m.

In Part III clause 21(3) under "Concessions" it states:

"The Minister shall not be bound to accept the advice or any part thereof rendered by the Authority in accordance with this section."

This section refers to the granting of concessions and licences. There are other sections where, perhaps, we are comfortable with the Minister reserving powers to go against the advice of the Authority, but in this particular section his power is confined to this granting of concessions. Sen. Montano referred to the situation where the Minister may intervene, use his reserve power and not grant a licence, but it is also conceivable that he may grant a licence against the advice of the Authority. That is a possibility.

We hope, if that were to be done, that there would be compelling reasons: in the public interest, for the sake of competition or whatever. However, the challenge is how to craft in the legislation some requirement for the Minister to conform to the goal of openness and transparency, and to give reasons that would suggest that he has not used his powers injudiciously, capriciously and without the public interest at heart. I think it is really a very important point, that if he has the power to do other than what the Authority recommends, there could be a situation where the Authority says, "We are declining this application for a concessionaire's licence," and the Minister says, "Well, I am using my reserve power and granting a concessionaire's licence to the particular applicant."

While I agree in certain circumstances that the Minister must reserve unto himself certain powers, given the intent of the Bill there should be some crafting in the legislation of a requirement for him to provide satisfactory and adequate explanations when such a situation occurs.

On the matter of the Minister's authority, I am also a little concerned with the reserve powers of the Minister to act in the other sections of the Bill against the advice of the Authority which, from its composition, is to be very independent, would have a minimum of three people qualified in telecommunications and have a legal person on the board. My own feeling is that I would rather not see that power reserved for the Minister; if it is, there should be some safety mechanism put in there so that the public at large would be satisfied that he is acting judiciously and in the best interest of the public.

I now move to clause 28(5) which has to do with contributing to the universal service. It reads:

"The obligations to provide and contribute to the funding of the services referred to in subsection (1) shall be applied on a nondiscriminatory basis..."

I heard the Minister talk about an equitable basis. I have not consulted the dictionary, but I am not so sure that nondiscriminatory would necessarily be equitable. Does it mean that you are going to have equal contribution from all the people who make up the industry? Are they to contribute equally or equitably according to some particular structure? I think the Minister needs to clear that up in this particular clause.

"The Minister may, and subject to negative resolution of Parliament, establish price regulation regimes…"

which would affect the approving of prices in respect of a concessionaire who has a dominant position in the relevant market.

I heard the Minister refer to cable television. If, in fact, cable television is to be included and fall under the ambit of this particular legislation, is there going to be a cap on what is going to be charged? Are there going to be regulations soon? The Minister should say in his reply whether it falls within the ambit or whether it will come under the ambit and be subject to price regulation in accordance with the Act.

Of course, I do not have enough information about the call back service, but there are obviously a few things hanging somewhere in the whole process. In the course of time, as the Minister has indicated, these things will be brought to the picture and be dealt with.

I would now like to refer to clause 42(1). It is just a typographical error; I think there are two subclauses (1).

I now move to Part IV "Technical Standards", clause 45(1) where it states:

> "…concessionaires and licensees may implement such technical standards as they deem appropriate and which are in conformity with accepted international standards."

My question is—and I am not a technical person in this field—why is there the need for subclause (2) which says:

"Notwithstanding subsection (1), the Authority may establish technical standards."

If you are allowing the concessionaires to use some appropriate standard which is in conformity with accepted international standards, then why do you need to do

your own technical standards, unless, of course, you want to set up your own local technical standards in the absence of an accepted international standard? If that is the intention, I suggest, Minister, that there should be an appropriate amendment to that clause.

It just does not make too much sense to me, that you are prepared to accept the concessionaires who now adopt this international standard, but you want to set up your own local standard. Is it going to be better or higher than the international standards? It cannot be, because it is an interconnected service situation where all the players globally have to have some common standards. There might be some reason, but it is not apparent to me from the legislation or from what is proposed.

I want to move to clause 56(2). It has to do with the audited accounts and the accounts of the Authority. I notice in clause 56(2) that within three months after each financial year, the Authority must report and submit statements to the Minister. But the statements referred to here are not audited statements; they are just financial statements prepared by the in-house staff, which has its use. I was wondering why it should not be stipulated, as they have done in the Regulated Industries Commission Act of 1998, I think it is, where they stipulate a time limit for submitting the audited accounts of six months.

I suggest, given the nature of the industry and the role of the Authority, that it be stipulated that a time limit be set by which the audited accounts must be submitted to the Minister. It is in the Regulated Industries Commission Act of 1998. It would just sort of tidy up the whole process of accounting for the expenditure and income of the Authority.

Mr. President, before ending I want to raise some final questions and issues. This is a tall order for the Authority; it is a very challenging job. My question is: Will the Authority be properly staffed? Will it be able to retain the staff? Will it have access and the resources to deal effectively and efficiently with what is required of it in this Bill?

Thank you.

Sen. Glenda Morean: Mr. President, from the Explanatory Note given on the front page of this Bill, we see that the general purport is to establish:

> "…a legislative framework for telecommunications and broadcasting services in Trinidad and Tobago, for the purpose of encouraging new providers to enter the market, thereby facilitating competition in the sector."

This is all well and good. However, this piece of legislation is designed to liberalize the sector and, perhaps, make Trinidad and Tobago a regional centre for the information economy. We have to ensure that in establishing this legal framework, the ultimate beneficiaries, that is, the consumers, are not shortchanged.

By that I mean that the Government must ensure that in its effort to—I would use the term—"rush through" this bit of legislation through all its stages in Parliament, it does not overlook the two most salient objectives of any bit of legislation, especially legislation of this nature, namely, that the law is being enacted for the good of the country as a whole, not for individuals, or personal or sectoral interests, as such, but for the country as a whole and, more importantly, for the little people who will be the ultimate persons who really utilize the benefits of the liberalization of the sector.

In so doing, the Government must also ensure that this legislation will stand the test of time, because what we are doing here is enacting law for posterity, not for ourselves; not for the immediate interest. While it is true that legislation can be repealed, action taken under the law is not always easily reversible. For these reasons, it is my humble opinion that the Government should give all interest groups some more time to enable more informed contributions to be made by such groups, in order to ensure, as far as possible, that the finished product would be acceptable to all concerned.

I join with my colleague on this side in calling for the Bill to go to a select committee. I think we need to have some more discussion especially in light of the fact that a lot of the concepts are very technical. In order to really appreciate what we are agreeing to, we ought to properly understand what all these terms are saying. I think that the necessary time should be spent on ensuring that we all have a firm grasp of what we are about to bring into law before we agree to do so.

Certain clauses have been pointed out by the previous speakers, which would need some re-engineering, so to speak. I, too, would like to repeat some of those clauses, for instance, clause 19, which is a very serious provision especially in light of the fact that the thread running through the Bill is one of transparency. The Minister, himself, said that we want to operate in an area where everything is done transparently.

3.40 p.m.

Clause 19 says:

> "In the exercise and performance of its function, powers and duties under this Act or any other written law, the Authority shall act in accordance with any special or general directions of the Government given to the Authority by the Minister."

So the Authority is acting under the directions of the Minister.

However, when we look at clause 21(3) we see that there could be a lack of transparency because it is quite conceivable—and especially in the present climate in which we operate—that the Minister can easily say, I am not going by what the Authority says, I will act on my own in accordance with clause 21(3) which says:

> "The Minister shall not be bound to accept the advice or any part thereof rendered by the Authority in accordance with this section."

We see there have been elaborate provisions for establishing this Authority and all these provisions go towards providing for transparency. At the end of it all, you have a provision whereby you are saying the Minister could just put that aside and determine that he does not want to act on the advice of the Authority. I think this is a very bad provision and it should be removed. Unfortunately, I am new here, so I did not get the previous Bill, but from what the previous speaker said, this provision was not included, so this is stuck in by the way, and we must put it out by the same way. That is a major aspect that needs to be corrected especially in light of the fact that what we want here is transparency.

I go to clause 54, and I am still on the question of transparency. Clause 54(3) deals with the tendering procedures. It says:

> "The Authority, in the performance of its functions, shall not be subject to the provisions of the Central Tenders Board Ordinance, but until such time as the Authority makes its own tendering rules, approved by the Minister and subject to negative resolution of Parliament, the Authority shall observe the provisions of the Central Tenders Board Ordinance."

We have a lot of difficulty already with our present procedures of awarding contracts and we have those difficulties even in the face of a system whereby we do have a Central Tenders Board and regulations. I am saying that in the face of

that, we ought not to make it easy or to facilitate any authority or any body in its ability to bypass certain established procedures. So that this is another clause in the Bill that would need to—to use the modern term—be re-engineered so that we can ensure transparency in the grant of contracts under the proposed legislation.

I have looked at clause 73(1)(a) of the Bill. This is a provision that I am sure should be of some discomfort to persons who are involved in the media industry. It says:

> "Where the Executive Director has reasonable grounds for believing that any person is operating a telecommunications network or providing a telecommunications or radiocommunication service—
>
> (a) that is dangerous to the security of the State;"

We have had some very recent experiences, in particular, with a certain radio station where certain of its top executives were—what is the new term—discreetly disposed of? Now, when you put such power in the hands of anyone, that can—especially as I said, in the present climate—easily lead to abuse. So this really is a clause that either has to be removed or rearranged so that you do not put that sort of power, because who is to say what is dangerous to the security of the State? Somebody may say something and the next thing you know, you are being accused of overthrowing the Government, or a person might be expressing legitimate dissent on any point and he may be accused of trying to destabilize the country or trying to overthrow the Government. So in these times we really ought not to have this sort of legislation, this type of power being put into the hands of a single person. Here again is an area where we need to sit and look carefully at the provisions in this Bill.

Overall, I would think it is a good thing we have moved into the technological age and we have to keep up, but in so doing we have to ensure that we do it in the way that is best suited to our needs and our climate, and by climate I mean our political climate.

Mr. President, I join with my colleagues in stating that we need, first of all, more time to deal with this legislation. The Minister has stressed that he is welcoming contribution and to have informed contribution, we must spend some time on this Bill and not just rush it through.

Thank you.

Mr. President: Congratulations to the Senator on her maiden contribution.

Sen. Prof. Julian Kenny: Mr. President, this subject area is way beyond me, the technology, but there is an issue that arises which I think bears further examination and this is the issue raised by Sen. Montano and Sen. Morean, and

this is ministerial powers. This is a common feature of many of the West Indian States and the way in which we have evolved it is felt that the Minister must have power to make a decision and, in fact, it is reflected in a statement made which I heard in the election campaign where one Minister proudly boasted that Cabinet took 22,000 decisions or Cabinet Notes in the past five years.

There is a tendency in our system for Cabinet micromanagement of everything, and I know this from experience in trying to work on different projects that I am forced to have to go back to Cabinet to have a modification on something that is quite simple. I mention this because clause 19 is the one that gives some concern here. It says:

> "In the exercise and performance of its function, powers and duties under this Act or any other written law, the Authority shall act in accordance with any special or general directions of the Government given to the Authority by the Minister."

Mr. President, this sort of thing appears in other legislation, for example, it appears in the Environmental Management Act and it appears in the Planning and Development of Land Bill which is to come to Parliament some time, and it is the practice of ministerial intervention in the decision process. In fact, it appears in our Town and Country Planning Act. I think that perhaps we are not expanding on this provision of ministerial specific and general direction.

In one of the Acts of the United Kingdom Parliament on the environment—I have actually read it out here before—this clause is almost as written, but then it goes on to a sub-clause which limits the specific or general direction which the Minister may give. In the case of the United Kingdom Environment Act, it is on a matter of policy, not on the specifics. For example, on the specifics if the country has a treaty with say, the European Union, or through the Organization of American States, or any other international grouping, then the Minister may direct to the Authority—whether it is this particular authority, or whether it is Town and Country Planning Division, or the Environmental Management Authority—the Government has the authority and the responsibility to direct policies on treaties to those particular bodies.

Here is my fear because in the past, we have had examples of ministerial decisions being taken under the Town and Country Planning Act which are perfectly above board and legal because the existing law permits the Minister to make that decision which may be contrary to the technical advice of the technical people in the Town and Country Planning Division; it may be contrary to the technical advice given by the Maritime Services Division; it may be contrary to

advice given by the Institute of Marine Affairs, and the Minister in his judgment then decides it is his responsibility under law and he approves of this particular project. For example, the Toco Ferry Port—and this became unstuck because all the technical persons I have spoken to said they were totally opposed to this.

My point is, here we have a situation where we are going to give similar powers to a Minister to override an authority, and my view is we are not dealing with a body which is going to provide administrative services. What we are doing is giving authority to a regulatory body which is quite different from another organization of government that might provide services. It is a regulatory body and this is why all the rules and regulations under this Authority would have to come back to Parliament, and my suggestion is that these rules should be for affirmative resolution, not negative resolution. I think just laying them in Parliament is totally unsatisfactory.

3.55 p.m.

When we set up an authority of this kind, it is a regulatory body and it has to work according to the regulations that the Parliament has approved, not by laying them on the Table, but by having a full debate. I think this is the essence of what Sen. Montano was talking about. I think we are dealing with a broad issue here when we are dealing with reserved ministerial powers. Any government of Trinidad and Tobago—I am not blaming this particular administration because this is something that goes back in our culture. It goes back to colonial days; and it goes back a few decades of a particular administration. It is part of our culture and it is part of the West Indian culture. We have not grown to the point where we are prepared to set up authorities and delegate powers to those authorities, with very clearly framed rules which are approved by the Parliament of the country. My appeal is to let us re-examine this issue.

Many people feel that we are going too far by allowing ministerial overruling of decisions that are taken in accordance with rules approved by Parliament. I think in doing this we will develop a certain maturity; and that we will protect our ministers, to a considerable degree, from falling afoul of the intents of Parliament. This is my major contribution. The other contribution is, in a sense, minor, but it is something that has been a source of intense irritation to me for a long time, and that is the utilities.

These utilities provide services, they put poles down—and I appreciate the Minister's comments about saving the trees and so on—but we are a very strange country. Do you know as the law stands now, a utility like TSTT or T&TEC can enter my property, and if I am not there, they can climb over the fence? And they have done this. Not only that, they have climbed over the fence and they have taken my produce. This is praedial larceny. I have had correspondence from TSTT apologizing.

They can use your property for their facilities. For example, on my little postage stamp property at Blanchisseuse, I have one magnificent pole that carries high tension wires, and besides that I have the remains of another T&TEC pole that was removed because it had rusted. They just cut it down and removed it but they left this unsightly stump on my property.

The other issue is that TSTT has to anchor its poles, so they enter my property and put down their anchorage. It is very inconvenient to me since I mow my grass to get a little exercise and I have to go around this thing. It is improperly placed and I have asked to have it removed. My point is that with all this legislation about telecommunications and so on, the simple things like the rights of the citizen to enjoyment of property are infringed. I have written to them telling them if they wish to enter my property, I will open the gates for them. The main point I want to make about this is that there are many people in this position who are providing free space.

In developed societies, if you want to use people's land for transmission lines, or distribution poles, you pay rent. In Barbados, if the telecommunications company or the electricity distribution company put a pole on private land, according to their law, they pay a rent. I noticed that T&TEC can collect charges from other users but they are using people’s property. I am not suggesting that one needs to include this, I thought that I would just lighten the proceedings somewhat by suggesting that little people, including Senators, sometimes have their fundamental rights to enjoyment of property infringed.

Sen. Rennie Dumas: The Bill before us, as everyone who has gone before has made it clear, is not the mere passing of a piece of legislation, but a critical piece of change that we are trying to bring into our society. We are saying that the way in which we handle our communications between individuals; communities within the nation; individual communities and enterprises; and across the international borders, needs to be managed. Given the role that information technology plays now—because that is what we are trying to manage with the Telecommunications Bill, we are really saying that we are laying a foundation that would be quite critical to what is happening to our families, to our

communities, and to our enterprises, as we move forward. Therefore, I approach this debate, not as some jokey, debating contest—no admonishment to anybody who has spoken before, nor anyone who is preparing to speak, but it is a suggestion—and I follow the words of Sen. Montano, that we take the advice of the Minister and try to make sure we are worth our hire to the nation.

The Bill seeks to be a major mechanism for information management. We know it will impact on individual development because we plan to use the provisions for education. We know that it will impact on our communities because we plan to use it for social and community development, as the Minister said. We know it will be the means by which our cultural interchange and our development, as a people, is going to be managed. It will impact on how the culture of this country develops. We know it will have a massive economic impact on cash, jobs, location of homes and the kind of homes in which we live. We know it will impact on the management of enterprises because we are developing enterprises, according to the Bill; and we know that it is to control organizations that already exist and to facilitate organizations that are being contemplated.

4.05 p.m.

We know it will impact on governance, because we are suggesting relationships between institutions that we plan to create, institutions that already exist in Government and how they are going to be managed. It is a significant piece of work when we look at what type of infrastructure will develop in the country, and certainly it ties us into the rest of the world, because we make bold to say that we want to be the centre, in this part of the world, for how information is managed with regard to this region and the rest of the world. That means that we want to impact on how we relate to our brothers in the southern part of the world and how we relate to those people who have been managing us from the north of the world. You cannot joke with that.

We cannot take it easy and say, “Pass the Bill, use the power of majority and let us go home.” We have got our work to do. The suggestion of committee, the suggestion of deeper consultation should go very clear to the heart of how we develop the work on this Bill. We cannot just glibly say, the requirements of globalization mean that we must have the Bill in its present form, because it is a critical piece of the software of governance that we are going to put in place. We cannot just take the dictates of the globalization activity going on around us to say, this is required.

We cannot glibly talk about competition and not recognize that competition is about power, conflict-resolution and allocation of rights and responsibilities. We have to take our time and make sure that this country does the right thing. We cannot just talk about competition for the provider, because, you see, when we are talking about competition, we are talking about space; space for the Minister; space for the Authority; space for the person who is going to assure us of quality; space for the provider of services, but massively, space for the consumer, those little people about whom Sen. Glenda Morean spoke; those little people who have sent all of us here, who are in the majority, for whom we are trying our best to provide.

A critical statement is being made about transparency, because I have a belief that guides me that says: I do not know how tall the next little fellow that is nine pounds at birth is going to be; I do not know how powerful he is going to be; I do not know how aggressive he is going to be, so please, let me treat his mother properly, because if I do not do that, I do not know what he is going to do with me as I grow older. Let us be careful that the objectives we set are right.

I want to address a few things in the law. The Minister spoke about the antiquity of the laws that we are going to change, and we have easy agreement with a number of them. But the Minister passed over some laws which are not so old that we are planning to change. I happen to be from a little piece of this big nation, and some people sat here and they passed a law in 1996 that said: Telecommunications and telecommunications policy and practices will be managed by the Tobago House of Assembly, and that there is some regard to licensing. As far as I know, there has been no communication with the Tobago House of Assembly on the structure of this Bill, the repeal of that provision in that Bill, nor how that is going to be replaced and how the Authority is going to work in the context of the Tobago House of Assembly. [*Applause*]

I humbly submit, we cannot do that. I am very clear that the Minister told us that you had the Dookeran working group. Mr. Dookeran, of course, is a big name to all of us and it should be well used. We are told that we had this working group prior to the drafting of the Bill. We are not told whether that working group examined the Bill and ensured that it fit closely or loosely with the recommendations of the working group. We are not told whether the people who were consulted by the working group think that way either. We are not told about

the extent of the consultations with these people, but we are carefully told about the consultation with Cable and Wireless; we are carefully told about the consultation with TSTT.

I remember two or three sessions ago, the Minister of Integrated Planning was careful to identify that some things went wrong because there was a significant policy drift between what the Government intended and what people executing Government policy did. I would think that we would take a lesson from that situation and try our best to make sure that there is a closer fit between intentions and what ends up being the implementation. I think in this instance we have that opportunity if we just take a little time, because I am going to put it in the context as I see it.

As careful as we were to ensure in earlier times of the development of this nation, that use of money as a medium of exchange and development, as a means of measuring transactions, recording transactions, knowing what transactions we have, we set up a close watch on those flows; who manages them and how. I want to suggest that telecommunications today and the management of information are very much the same thing. From that context you have to take it and make sure that the independence of the Authority, the quality of the management, the independence and the integrity of the system, are of similar quality, because if you do not do that you are setting up the worst economic and social disaster if the Central Bank crashes tomorrow. We have to be careful and ensure that the principles we said we based the Act upon, are the principles we make sure we legislate.

I like the concept of a neutral framework for the Bill, where the policy develops in the hands of the experts, influenced by those policies of the Government. But there is a concept that says there are some things in the nation that we have to remove from the day-to-day political activity of partisan interest. I want to suggest that telecommunications and information management that result, is one of those areas. I know the Minister agrees, because he made it a particular point to suggest that there is a neutral framework for this Bill. If that is so, maybe we need to revisit a few things and make sure that that is what comes out, that the intent and the end are the same thing—the Authority. Wiser and older people than me have suggested what we should do. Suppose we had a criminal minister rather than this Minister as the person with the responsibility for telecommunications, what would be our situation?

4.15 p.m.

[MR. VICE-PRESIDENT *in the Chair*]

I want to suggest, also, that we have to be careful with the law in one other instance. Does the law, in fact, recognize the nature of the technology it seeks to manage? When we talk about a meeting of the Authority, and the quorum, is that still relevant for people who we are going to put in charge of telecommunications? They are required to come to a meeting and have a quorum? That, to me, does not recognize the technology and maybe we need to go back in there and make sure that in all other areas the technology is recognized in its management. We need to do that. The technology, and the system for managing the technology, should recognize the capacities that are in the technology. I suggest to the hon. Minister that this is not the case in this situation.

With respect to pricing, I do not want to be rude, but I think I do not understand it; it is not because of absence of training. There cannot be a mix of asymmetric and price regulations and price cap regulations. That mix cannot exist. You have to be careful to delineate them if you are going to try to have them as parallel systems. They have to be carefully delineated from the very beginning in terms of definition of services. I am sure that from the earlier discussions we have ended up knowing that we are not clear on how these things are defined.

Mr. Vice-President, what exactly does "access" mean? I looked for the definition and did not see it. What are the definitions relevant to each service and subsections of those services? I think this is one area in which we would want to err on the side of longer rather than shorter, because if it is not in there then we would not know what you are trying to regulate. Even on the question of cross-subsidy, it may be that that little discussion brought it out and we need to look at that.

Universal service is an issue that arose which is desirable; because of the intentions of the impact of the Bill, it is desirable. However, with universal service, is it the consumer who would pay for all of it, or are we agreeing that some of this may well be a State responsibility? If we are in a situation where we have 20 per cent of the rate at which we have telephones in households and users, then how much of the increase should be paid for by the individuals, and by the State, since we want to use this system for State purposes? Then, when we claim that competition in this area is the driving force for making sure that we have 100 per cent accessibility, maybe we need to look at whether it is not the requirement for some level of government subsidy.

One may ask, which brings us to the point: Are we consciously saying that the assets of the people of Trinidad and Tobago that are tied up in the present dominant provider are consciously being handed over to potential users so that they could access this level of fixed assets to provide accessibility for everyone? If we are saying so, then let us say that. If that is what we mean we are to be clear because, other than that, we are saying to the people that we are giving up assets which would deliver a certain flow of profitability and income to the State—that is, TSTT of which they have a share. We are going to hand it over to people who we hope to get money from. We need to know for sure and have some means of rating that. I do not think that was well covered either in the Bill or in the explanation given by the hon. Minister.

There are three other concepts that I had some problems with. I do not like being policed and I was wondering whether it was not possible to change the concept of "inspector" to an officer responsible for quality. The inspector comes and inspects equipment and so forth, but is there another way in which that could be put to make sure that we are guaranteeing the quality of the service and the appropriateness of the equipment without turning this person into another kind of policeman able to break down our doors and so forth? Should we not look at some other way of doing that?

Mr. Vice-President, the general drift of updating the law to ensure that we do the right thing in telecommunications should be supported, but I think I would like to end by saying it is dangerous if we do it wrong. Therefore, maybe we should take the option to look at three things: firstly, wider consultation in this matter, and even wider consultation than in this Chamber; secondly, a committee of the Senate should be established to look at this activity, and thirdly, looking at areas where the drafting of this Bill could not reduce the extent of the exercise of authority and search more for the exercise of leadership that is based on knowledge and in the best interest of the country.

Thank you, Mr. Vice-President.

Sen. Raziah Ahmed: Mr. Vice-President, let me begin by saying what an absolute pleasure it is to be here as a Member of this honourable Senate. I come here with one purpose, and one purpose only, that is, to add value to the people of Trinidad and Tobago.

With respect to this Bill and the debate that has been proceeding for the last few minutes—I say minutes because time is relative—I am a little amused because it appears, from where I stand, that the debate on the other side appears to

lack any real understanding of what is happening in the telecommunications industry. Change in the telecommunications industry is occurring at a rate so fast that even as we sit here and talk, many things have changed. The fact of the matter is that the Bill, as it stands, is extremely wide and generalized. It takes into consideration a lot of unknowns including a number of things that are not particularly or specifically identified, but it does take into consideration the general objective and tone of what it is supposed to serve. Given the fact that there were some good observations from Sen. Ayoung-Chee, I think that the need to regulate what is happening in the industry is extremely important. The need for us to sit and try to understand what is happening in the industry may not be necessary because the parameters that govern telecommunications are changing so very fast. When Yahoo.com came on the market, the techies did not understand what Yahoo.com was offering to the world and we are sitting here listening to the other side telling us, "Let us sit down and try to figure out what is happening in the telecommunications world."

4.25 p.m.

The rule in the telecommunications industry is to ship the product and then try to fix the software. If they do not, the product will never be sold. It happened to Apple and Macintosh. Let us understand what telecommunications is all about. It is not a piece of wood. It is something happening in a spectrum that we do not fully understand and by brains that are working faster than ours, it appears.

While we get into all kinds of committees and lengthy discussions, the consumers have no protection from pricing. This Bill seeks to reduce or depress the pricing of the product. We know that we are paying more than we should according to global standards. We do not know all the parameters and we will never know all. We will never have all the definitions because the technology and terminology are changing so fast.

Five years ago, I could not access a message on my pager from the Internet. I can do it now. Do you want to say that we can sit here and decide what will happen next month, so, let us put a law in place to fix it? As it stands, the Bill is very generalized and takes into consideration much of the unknown which will happen in the telecommunications industry and seeks to protect the consumer. In the industry in Trinidad and Tobago, pricing is not competitive. This is one of the main objectives of the Bill. We should not sit and wait and go into all kinds of lengthy debates because by the time we get to the end of it, the spectrum would have changed.

Thank you.

Mr. Vice-President: Hon. Members, before adjourning the Senate, may I take this opportunity to congratulate Sen. Raziah Ahmed and Sen. Glenda Morean on their maiden contributions.

Motion made and question proposed, That the Senate do now adjourn to Tuesday, March 13, 2001 at 1.30 p.m. [*Hon. L. Gillette*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.30 p.m.