

*Petition**Tuesday, March 13, 2001***SENATE***Tuesday, March 13, 2001*

The Senate met at 1.32 p.m.

**PRAYERS**[MR. PRESIDENT *in the Chair*]**PETITION****Mount Lebanon Independent Spiritual Baptist Church**

**Sen. Dr. The Hon. Daphne Phillips:** Mr. President, I wish to present a petition on behalf of Mount Lebanon Independent Spiritual Baptist Church, the Sacred Choice of Heaven of 49 Mount Pleasant Road, Springvale, Claxton Bay.

The petitioners are desirous of constituting the said organization into a corporate body by a private Bill, so that its aims and objectives can be more efficiently achieved.

I now ask that the Clerk be permitted to read the petition.

*Petition read.*

*Question put and agreed to.* That the petition be granted.

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Arima Corporation for the year ended December 31, 1991. [*The Minister of Finance (Sen. The Hon. Gerald Yetming)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Arima Corporation for the year ended December 31, 1992. [*Hon. G. Yetming*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Arima Corporation for the year ended December 31, 1993. [*Hon. G. Yetming*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Arima Corporation for the year ended December 31, 1994. [*Hon. G. Yetming*]
5. Administrative Report of the Betting Levy Board for the period July 01, 1999 to June 30, 2000. [*Hon. G. Yetming*]

*Papers Laid*

*Tuesday, March 13, 2001*

6. Annual Report of the Trinidad and Tobago Securities and Exchange Commission for the year ended September 30, 2000. [*Hon. G. Yetming*]
7. Annual Report and annual audited statement of accounts of the Central Bank of Trinidad and Tobago for the year ended September 30, 2000. [*Hon. G. Yetming*]
8. The Noise Pollution Control Rules, 2001. [*The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette)*]
9. The Environmentally Sensitive Areas Rules, 2001. [*Hon. L. Gillette*]
10. The Environmentally Sensitive Species Rules, 2001. [*Hon. L. Gillette*]

#### 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

[Second Day]

*Order read for resuming adjourned debate on question [March 06, 2001]:*

*That the Bill be now read a second time.*

*Question again proposed.*

**The Minister in the Ministry of Labour, Manpower Planning and Industrial Relations (Sen. Dr. The Hon. Roodal Moonilal):** Mr. President, it is my honour to speak on the Telecommunications Bill and to lend support to this Bill now before us.

Before I get to the crux of my presentation, I also take the opportunity—as other speakers who, for the first time, spoke in this honourable Senate—to express my pleasure and gratitude for the opportunity afforded me to return on a more regular basis to this honourable Senate.

I also use the opportunity to express my gratitude to Senators on the Independent Benches for the very warm and dignified response to our late entry into this honourable Senate. We have received quite a good welcome, and several Senators ran the risk of incurring the wrath of editors in the daily newspapers. I express my sincere thanks for the welcome. [*Laughter*]

Mr. President, the Bill before us has to be placed within a wider context of updating old and outdated legislation governing broadcasting and communications; in one case, an ordinance dating back to 1936 and legislation from 1968. More than simply updating laws, it is the intention of this piece of legislation to meet the challenges inherent in the new global economy; to enhance our telecommunications infrastructure to meet the challenges of the day; to enhance Trinidad and Tobago's economic role in the region and to present our consumers with a vast array of telecommunications services which can benefit business, as well as uplift our standard of living.

Mr. President, I intend to proceed along the following lines: to briefly examine the requirements of any regulatory structure for the telecommunications sector. Secondly, to give a very brief overview of developments in this sector in several areas across the globe. Thirdly—and this is really the core of my presentation—to dwell on the employment and labour dimension to the telecommunications industry; to locate the Bill before us in the wider context of our economic development and, particularly, employment creation which remains a key national objective. Finally, I would take the opportunity to raise some issues arising out of the contributions of Members of the Opposition on the last occasion when this Bill was debated.

This Bill provides for establishing a structure for regulating the telecommunications industry. It is timely and critical to our economic development. We cannot afford to wait any longer, or else we run the risk of other countries taking off and leaving us behind as we compete to attract investors and create jobs in this growth sector. This sector is considered to be a growth pole in the information and knowledge-based economy.

The policy framework seeks to create a dynamic and competitive market which will deliver economic benefits to consumers to promote competition and to maximize access to a diverse range of communications services; to deliver quality choice and value for money and to ensure consumer protection. The Bill addresses issues of anti-competitive behaviour and broader issues of access to networks.

Mr. President, I start by referring to a very thought-provoking book written by a former United States Secretary of Labour, Mr. Robert Reich, entitled *The Future of Success*. Mr. Reich is a political economist and a distinguished public servant in the United States. He is also a labour scholar and writes on matters concerning employment, work and the future of industry.

*Telecommunications Bill*  
[SEN. DR. THE HON. R. MOONILAL]

*Tuesday, March 13, 2001*

He writes:

“You often hear about technology and globalization as if they are separate trends, but they are becoming one and the same. Global trade and finance depend on technological advances that can move digital symbols instantly; and technologies are advancing because of intensifying competition from all over the world to do all sorts of things better, faster and cheaper.”

**1.45 p.m.**

Mr. President, globalization depends on technology, and the diffusion of technology depends on globalization. We can think of firms that need to communicate faster and more effectively to conduct business across national borders, while the spread of global firms ensures that technology reaches the outskirts of the global village. If Trinidad and Tobago is to take a leading role in economic development and enhance the standard of living of our citizens, we need to move quickly onto the superhighway. We need to get onboard and online with the technological advances. This in turn poses numerous challenges to our traditional framework of regulation.

Mr. President, there are global trends taking place which, on the last occasion, the Minister of Communication and Information Technology addressed. He made a comprehensive presentation and also dubbed that presentation “a work in progress” illustrating his commitment to participation—to including ideas and views of Senators on both sides of the House. The Minister dealt with the global trends taking place and, permit me, briefly, to focus on a couple of these trends.

It is clear that the telecommunications sector across the globe is liberalizing with very few developing countries left out at the moment. The new trend towards liberalization means that we are removing the barriers of entry to new providers. In this context, we need to ensure that as new providers, new firms and new investors enter our economic domain, we create the sort of market rules—we create the industry rules—that would govern their activities. These processes, as I said before, are taking place in several developing regions of the world. A brief scan across the globe—and our literature and our evidence suggest that if you look at Asia—in India the massive investment that has been taking place in the telecommunications sector, the amount of revenue and income earned. India is on a growth path; in several countries in Africa, in Namibia, for example, the telecommunications sector is also quickly being liberalized. In Chile, for example,

the evidence suggests that Chile has a very open system with several providers, a high rate of competition and enormous returns.

Mr. President, in Africa as a whole, there is an ongoing and rapid transformation taking place in the telecommunications sector. Several areas in Africa today are outpacing the global average for growth in the number of Internet host systems. It is worthy to note that from July 1998 to January 1999, the number of Internet hosts grew at a rate of 38 per cent as opposed to the worldwide average growth which was 18 per cent. So, there is a trend across the world and Trinidad and Tobago needs to locate itself within that trend. Having these few introductory remarks, I will now focus on the core theme, which is employment and labour in the telecommunications sector.

Mr. President, there is compelling evidence to suggest that the expansion of the telecommunications sector will be accompanied by enhancement in employment opportunities. It is this human resource dimension to this industry which is critical to us in this country. Not surprisingly, at present, this sector is underdeveloped in Trinidad and Tobago. While the telecommunications sector is often thought of as being capital intensive, it presents opportunities for an increasingly better-educated and higher-trained cadre of workers to seek employment in new grades and classifications of work.

Industry analysis which is very provisional at the moment puts employment at 5,000 employees in Trinidad and Tobago, but this excludes several private sector firms in the business of providing several related services, Internet usage and so forth. There are approximately 162 enterprises, registered and unregistered, involved in a range of services in Trinidad and Tobago such as computer sales; provision of computer support services; training and consultancy services; radio communications; Internet services; software development; Web development and intelligent-engineering solutions.

Several of these firms are small and it is to the small firms that we would look in the future for generating employment. The days of having one large firm employing 10,000 persons are coming to an end. In the future, we are more likely to have 1,000 firms each employing 10 persons. We can expect new service providers to come on-stream and generate new job opportunities, new types of jobs such as several grades of analysts and programmers, sales and marketing staff; electrical and electronic engineers; computer hardware and software specialists and online sales would require wider transportation networks and delivery personnel. In this country, already in several areas, Internet users are shopping online, browsing et cetera. As this development increases, it would give

*Telecommunications Bill*  
[SEN. DR. THE HON. R. MOONILAL]

*Tuesday, March 13, 2001*

rise to a new set of demands on workers to organize themselves within firms to contract for transportation and delivery.

Mr. President, the global telecommunications sector is also responsible for absorbing a higher-than-average percentage of female workers in such areas as data entry operations and administrative positions. Women with technical and commercial skills will increasingly be found in the telecommunications sector and placed in an advantageous position. An analysis undertaken by the International Labour Organization (ILO) in 1998 entitled “Changes in global employment in the postal and telecommunication services, new enterprises and new technologies including the Internet” presents opportunities for long-term growth.

Mr. President, the ILO has been involved in an enormous amount of research and data generation on the telecommunications sector. It projects that employment would increase as it has done in Europe and in several developing countries with the greater emphasis being on female employment and on new areas for work, driven by the requirement for high skill and high education.

Mr. President, there are three further dimensions to employment in this sector which I would like to raise. One, the telecommunications industry is a feedstock sector. Just as minerals and agricultural products have been raw materials used in the production of manufactured goods over the past century, likewise, the telecommunications infrastructure is an essential support and facilitating commodity for the expansion and productivity of every other economic sector—be it health, education, hospitality, commerce, construction or crime fighting.

It is important to note that when you enhance your telecommunications infrastructure, you really enhance several industries at the same time that depend on telecommunications. This is why this Bill is so timely, so appropriate and some may even argue, so late in coming, but of course, we understand the process and the consultations and so on that went before.

The second dimension to employment is that, because of the gains to productivity and competitiveness in the non-telecom sector, we can expect new employment opportunities across several sectors that would benefit from enhanced telecommunications. Therefore, the expansion in the telecom sector will have an impact on indirect employment.

Sometimes we read the business news or technology news from the United States of America or Europe and we look at changing employment trends and shifts in big global telecommunications players and so on, and we may read about downsizing, layoffs and so on. While we reflect upon the direct employment of these firms, we also need to think about indirect employment created when these

firms expand their range of services and business. So, the indirect employment which is always hard to measure is an important outcome of expansion in the telecommunications sector.

Mr. President, the growth of the telecommunications sector is also taking place in tandem with Government's wider national objectives and policy initiatives. When we embark upon a policy programme of education for all, of placing a computer in every school, of enhancing the possibilities for public servants to purchase computers, we are really enhancing the quality of our labour market, improving the human capital base of workers and students. What sense is it to equip our labour force with the technology if there are no opportunities to gain employment deriving from those skills and their education? So, a sector like telecommunications will absorb many of the trained people coming out of the secondary schools, the tertiary education institutions; and I can imagine in the future that several providers of training would tailor their cost content and computer training to meet the requirements of employers and small firms within the telecommunications sector. So we need to see the Telecommunications Bill and this initiative in a wider context of what is taking place in our education system, what is taking place in the training agencies, even the employment and training programme which is now embarking upon a very revolutionary approach of providing different types of training for different levels of unskilled workers.

Mr. President, this is our vision and it is a vision of matching our labour supply with our labour demand and the telecommunications legislation is critical in that forward-looking approach. While, as I said, there is a tendency to cry gloom as we witness employment shifts in traditional sectors, we often do not focus upon trends taking place in new firms that innovate and create jobs and several players in the telecommunications sector are firms that innovate. They innovate, they alter their work arrangements, they alter organization of work and so on, and they require new types of skills, new types of workers.

### **2.00 p.m.**

Indeed, Members may also point to several of the downsides of communications and technology. Anytime we make a big step from one revolution to another—from the agricultural revolution, to the industrial revolution, to the information revolution—it is always accompanied by some type of downside in terms of human interaction; in terms of our personalities; in terms of the organization of our lives and so on. We cannot prevent this development;

*Telecommunications Bill*  
[SEN. DR. THE HON. R. MOONILAL]

*Tuesday, March 13, 2001*

we cannot deny the country and deny the workforce the opportunities which this sector will provide and which the Bill will assist in providing.

On the previous occasion we heard from Members on both the Opposition and Independent Benches. A major concern related to the role of the Minister and his latitude to intervene in the regulatory process. I am sure as we proceed, in due course, the Minister will respond to some of those concerns. Professor Kenny, I think, raised the issue of looking at this problem of ministerial intervention from the historical context, within the context of the evolution of governance in developing countries and in the Caribbean and so on, that places a burden upon the political directorate to answer to a sometimes hostile citizenry. The responsibility lies with the political directorate, in the final analysis, to respond to concerns from the community, particularly from the business community, which depends upon progressive legislation and upon updated laws and so on. So we need to factor in the responsibility of the political directorate in matters of this sort to understand why it is necessary, sometimes, for ministers to have that role to intervene. As I have said, I am sure, in due course, the Minister will deal with these issues.

The Opposition spokespersons also cast aspersions on the performance of the Government and made allegations, suggesting that this Government actively sought to muzzle the press and stifle freedom of expression. May I remind the Senate that it was another party that locked up a House Speaker; it was another party that banned the voices of Opposition leaders in the late 1970s. And we need to remember that it was under another regime that the police entered TTT to seize a tape to prevent the station from televising an unedited version of a car being wrecked in Port of Spain. It was under another regime that a prime minister insisted that TV cameras be switched off and leave a political meeting in Arima. Remember it was under another regime that a Minister of Works, in the 1991–1995 administration, kicked a reporter out of his office. It was under another regime that a Minister of Health, in 1995, did not permit himself to be interviewed by a particular broadcast journalist at the state television house; that journalist was eventually hounded out of the newsroom. We seem to forget these episodes when previous PNM administrations presided over the wanton abuse of journalists and harassed media workers.

The daily and weekly attacks on this Government by newspaper columnists and the venom with which headline writers refer to Government officials suggest



that we do not have any inhibitions today on the freedom of the press. They are free to call us losers, on a daily basis. This they do with sickening frequency. What a paradox that we refer to people as losers, yet seek to develop self-esteem and confidence in our youths and our students. Mine is a career path of a winner, not a loser. The losers are those who wish to sit on this side and cannot and will not.

I thought it relevant to remind this Senate, especially those on the Opposition Benches, as to which party has a track record of abuse of power and which party is constantly being accused of such an abuse.

In conclusion, may I reemphasize the importance of this legislation; how timely it is to our economic development; how important this Bill and the policy framework which it outlines are towards generating employment, creating jobs, and assisting our work force of highly trained and highly skilled young entrants to the labour market in finding job opportunities in a new and dynamic sector which is on an upward path.

Our economy, our business community, our citizens depend on the passage of this type of legislation. There can be no economic growth without growth in the telecommunications sector. Mr. President, I look forward to the contributions of other Members and I thank you.

**Mr. President:** I will not allow the ringing of the cellular phone to go unchallenged. I do not know where it came from. I heard the sound in this direction [*guests' alcove indicated*] If anyone in this area is responsible for it, please ensure that it does not occur again, otherwise you will be escorted out of the Chamber. That goes for every person in the Chamber.

**Sen. Christopher R. Thomas:** Mr. President, the Telecommunications Bill before us is a most important one. It is likely, on its passage, to affect the lives of every citizen in Trinidad and Tobago: socially, economically and culturally. It has dimensions of importance in the lives of our children, students, and the way we conduct business and the way we educate. So it is a very all-pervasive Bill, the provisions of which need to be looked at very carefully. I agree that we should move with some precision and speed on this matter, but even then I think we should deal with it with some circumspection.

The hon. Minister in his introduction did say that one of the objectives he hopes that Bill will achieve is the situating of Trinidad and Tobago as the regional

centre for information technology. This is also stated in the Explanatory Note. I think every citizen of Trinidad and Tobago will rally around that objective of the Minister and I certainly do, but the Bill will not do that.

The Bill is neither novel nor revolutionary. The reform process from monopoly to open market has already taken place in a number of countries, beginning as early as the 1970s. In North America, Europe, Asia and even closer home, Jamaica has enacted legislation to this effect; the OECS has also done that, and I am advised that Barbados has recently engaged legislation to that effect. So we are not dealing with a novel or revolutionary Bill, but we are certainly dealing with a Bill that helps us to join a host of progressive nations in an inevitable reform process.

### **2.10 p.m.**

The Bill will help us to modernize our telecommunications sector, help us to become more externally competitive and help us, of course, to comply with our international obligations under the World Trade Organization (WTO). There is every reason, therefore, to support the reform and that reform, in my view, must be based on a well-structured and well administered Bill. If the Bill were structured in such a way that it met some of the problems and experiences of previous governments and regimes that have enacted legislation in the direction of this Bill, then we will certainly have a bill that we can rally around and one that will certainly be useful for the success, economic as well as social, for the entire population. Certainly it will then serve as a backbone or as a framework, as the Minister has said, for Trinidad and Tobago becoming a regional centre for information technology.

The key then, Mr. President, in my view, is the administration and the management of the Bill. I claim no expert experience in telecommunication, but I do have some past relationship at the supervisory and oversight level in relation to telecommunications within Latin America and the Caribbean in the context of the Inter-American Telecommunications Commission. As a result of that, there are certain experiences that I have observed and certain lessons which I believe that a number of these countries and regimes have also learnt.

What are these experiences and lessons? I want to list three as lessons in the successful piloting movement and successful implementation of a bill on telecommunications. One is that there should be a qualified and independent regulator. There should be fairness and transparency in the parameters for dispensation, that is, to concessions in the licences; and there should be significant

flexibility in the process as technology, like all technology in telecommunications, is rapidly changing. To me, these are key issues in the reform process. If we can achieve this through our Bill, we will create a conducive investment climate, we will establish credible regimes, sustain efficiency our in process and we will then be able to position Trinidad and Tobago within the regional centre of technology of which the Minister spoke. This is what the Minister wants; this is what the country needs; this can form the basis of our social transformation; this can form the basis of what I choose to call the new literacy of Trinidad and Tobago and the Caribbean.

What I have sought to do is to establish my own agenda on the basis of which I will then look and evaluate the provisions of the Bill. In other words, how far does the Bill meet the requirements I have just outlined in relation to the independence and qualification of the regulator, in relation to the fairness and transparency of the parameters for dispensation, in relation to flexibility? How far does the Bill go in ensuring this in its implementation?

Let me first start with the qualifications of the regulator. The Bill refers to the regulator as the Authority. The Authority is managed by a board. If you look at clause 6(2), I would, first of all, suggest that the wording there be somewhat changed. We seem to be talking about a very serious matter, and yet when we look at the qualifications that we are suggesting, there seems to be a little, I do not want to say frivolous, but it seems to be very generalized. We talk about people with experience in, I believe, the wording is "in fields relating to telecommunications". I think the concept of "fields relating to telecommunications" is not sufficiently precise or professional to provide for the kind of people that we would want to have.

I would suggest that we look towards amending that by saying: people with advanced training and substantial experience in telecommunication and telecommunications industry. We are dealing with two separate things: Telecommunications in itself; telecommunications technology, because this matter of telecommunications technology is advancing every day.

That would be my first suggestion in relation to the qualifications of the members of the board; that we should tighten that language to ensure that we do not have persons with a passing experience in telecommunications in "a field related to telecommunications". It is not sufficiently precise and professional, in my way of thinking.

I would like to suggest also that in terms of membership, we will ask the drafters of the Bill to ensure that there is a compatibility between clause 6(1)(a), 6(1)(b) and 6(1)(4). On one occasion we talk about the maximum of seven members and then lower when the President goes to appoint, we are talking about more than seven members. Look at this in terms of having a compatibility between the membership, particularly since clause 13(b), I believe, talks about a quorum of four.

Let me turn a little to the independence of the regulator or the Authority. My review of the Authority reveals an Authority with great strength, but with notable potential for interference. [*Desk thumping*] I want to trace this first and then be specific in some of the things I want to say. In part II, the President appoints members of the board. The board has a comprehensive list of administrative competences, yet the board works under the special and direct directions of the Minister. I would like to say a little more on that as we go along.

In Part III, the concessions are granted by the Minister and disapproved by the Minister. The same will hold for licences in Part IV. The authority, in this case, makes some recommendations. In Part III, clause 31(2), second renewals are agreed between the Minister and the concessionaire. The Authority, as regulator, disappears. The same will apply for licences in clause 39(9). In Part IX, the part on offences, clause 72, the Minister may amend penalties, but the role of the Authority is silent, although the Authority is charged with monitoring compliance with all regulations and establishing many regulatory functions.

In Part X, general clause 73, the executive director of the Authority who is appointed by the Authority, reports directly to the Minister on certain compliances without reference to the Authority. Clause 78 establishes conditions and competences of the Minister without reference to the Authority.

These are some of the areas, in my view, of apparent inconsistencies between the management Authority and the ministerial function. The result of this is, beginning with a reasonably independent Authority, we move to a semi-independent Authority, and then to a quasi-independent Authority and then the Authority seems to disappear, totally, in the whole process. The Bill, in my view, therefore, runs the risk of sending mixed signals and inhibiting the reform process that we all would like to see.

In the interest of the independence of the Authority, I would like to make the following observations. It remains unclear whether the members of the board of the Authority will be appointed by the President, *suo moto*, of his own motion, or

in any other form. My suggestion is that the President should be given that discretionary responsibility to appoint the members of the board.

**2.20 p.m.**

The President may do so in consultation or after consultation with the Prime Minister and the Leader of the Opposition. [*Desk thumping*]

Mr. President, I suggest that there is a value in this because telecommunications, as I have stated, is a very wide and comprehensive sector and as Sen. Dr. Moonilal has just indicated, it encompasses so many things. I think it is valuable to ensure that the members of the board have the full confidence of the country and its leadership, and I think that is very important.

It is also important for the Members of Government to be satisfied that unnecessary criticisms cannot be heard their way, in terms of partisanship, if you have what is called “a larger consultative process” in the appointment of Members of the Board, through the President of the Republic. This will establish in my view, *ab initio*, the independence of the Authority. Everything in my view flows from that.

Mr. President, beginning with the Authority’s independent function, the Government would then be able to delineate more clearly, the policy functions of the Minister and the execution functions of the Bill which must lie with the Authority. The President appoints; the Minister is responsible for the policy functions and the Authority executes those functions. I am sure this will meet what the Minister referred to as having an independent authority but not an absolute authority.

I suggest further that in PART II of the Bill, clause 11(6) should be omitted. I failed to understand why in clause 11(6) states:

“Minutes of each meeting shall be kept in the proper form by the Secretary and confirmed at a subsequent meeting of the Board.”

Sure, this should be so but I do not believe in a Bill, the Government should be telling the board that it should have meetings. I think that is a function of the board. The board will decide on its meetings and how it handles its meetings.

I have presided over innumerable bodies and no one tells us that we must have meetings and how they should be kept. I think that is an internal question and my belief is that should be eliminated from the Bill.

*Telecommunications Bill*  
[SEN. C. THOMAS]

*Tuesday, March 13, 2001*

In clause 11(7), “Certified copies of the Minutes...” I also suggest that perhaps, if the Board is going to operate, then I do not see why, at every instance, certified copies of the board’s minutes should be sent to the Minister. I would think that in a Bill of this kind, the Authority, if it is independent, will periodically send reports to the Minister, which may include minutes, but if every minute that the Authority approves must be sent to the Minister that smacks to me as micro management. I would also suggest that clause 11(7) be omitted or amended. I worry a little about clause 18 in terms of the competence of the Minister as opposed to the competence of the Authority and I would want to come back to this just very briefly.

Mr. President, I will now go to clause 19. I read this clause several times and I did not quite understand why there was a need for the board to act in accordance with special or general directions of the Minister and, then I think, I thought I began to understand it. I suspect that what is happening here is that the Government is seeking to do two things at the same time. The Government is seeking to write or update regulations to regulate a policy and at the same time determine rules for the Authority.

What is missing here is that the Government does not have a modernized sector policy against which this Bill or the actions of the Authority should be placed. The Government is seeking at the same time to write a modern policy and establish legislation and that creates confusion and that is probably why the personality of the Minister keeps “popping up” in several areas where, perhaps, it should not. The ideal, of course, would be that there should be legislation within which they should be situated but we do not have that. We do not have modernized policy legislation.

The second ideal, the one I would prefer, is to take this entire document and separate it out stating what are the Minister’s policy functions and what are the Authority’s executing functions. [*Desk thumping*] What we have here is an amalgam. In some clauses you have what the Minister does and in the very clause you have what the Authority does.

Mr. President, I believe this Bill should be sent back to the drafters and what we should see happening here is a section stating what are the policy functions of the Minister and within these policy functions, the Authority will operate in this way, instead of having one clause with one provision or sub-provision for the Minister and five provisions for the Authority, and then another clause with three provisions for the Minister and four provisions for the Authority. The

Government is mixing two things and it very well sense that—to use one of our vernaculars—“we are putting the cart before the horse”. So, I would suggest that be the second ideal, the one I would prefer.

Mr. President, if that were not available or feasible, I would then go on to make some changes in the Bill that I feel might be useful. I would like to say, first of all, my preferred option is to have this Bill sent back to the drafters and to ensure that we could more clearly delineate the policy functions of the Minister in each section against which, the competencies of the Authority would be clearly placed. If that were not the case, then I would take some liberty to make some suggestions. I would give clause 18(1) to the Authority; in clause 19, I would put the word “policy” before “directions”; I would replace clauses 21 and 28 with the Authority; and in clause 15(1), the question of disclosure, I would include the Minister responsible for telecommunications should also have to provide disclosure.

I think this is very important for the transparency and credibility of the regime that the Bill will have in relation to its implementation. We are dealing with institutions and not with individuals. So when I say that the Minister should disclose, I am referring to the institution of Government and institution of the regime.

I would also suggest that the corresponding clauses under PART IV of the Bill and all other clauses with administrative and executive management functions should be treated likewise.

Mr. President, there will still be, in my view, the need to separate the functions of the Minister from the functions of the Authority. I emphasize this point because I did have great difficulty in reading the Bill and trying to understand it. I think the crux of the problem is mixed between the ministerial functions and the Authority’s competencies.

### **2.30 p.m.**

Let us turn to concessions. As I said earlier, the criteria here should be for fairness and transparency. The conditions for the licences and the concessions are very comprehensive and very clear. We must ensure, however, that there is fairness, and fairness is best revealed by transparency. I would think then that in every case, in all the procedures, in all the requirements of the Authority, it should be clear, it should be such that the public can understand and can see them very clearly, that each concessionaire and each licensee can understand what is happening in what you might call his associates, his colleagues, or partners or his rivals as the case may be. I believe this is not so clearly revealed in the Bill, and

*Telecommunications Bill*  
[SEN. C. THOMAS]

*Tuesday, March 13, 2001*

maybe just one provision in the Bill will do this. It is scattered throughout the Bill but we need a provision that would say this specifically. Let me turn to flexibility.

In a field as dynamic as telecommunications, I find that the Bill is lacking in terms of providing the flexibility for the Authority that it would need. There should be provisions somewhere in the Bill which would indicate very clearly that the Authority has the flexibility in terms of changes in technology, evolution of things to make these adjustments, to make these decisions even if subsequently these are reported to the Minister. I think one provision somewhere in the Bill should indicate that flexibility. Let me turn to clauses 31(3) and 31(9). I think they are both very curiously worded. Clause 31(3) says:

“Where the Minister is not satisfied that the concessionaire operated within the terms of the first concession or has engaged in conduct amounting to a material contravention of this Act or regulations made hereunder, the concession shall not be renewed, but the concessionaire shall be permitted to apply for a new concession.”

Why? If the concessionaire has not complied with the regulations, why is the Authority or the Minister suggesting giving him or her a new concession? He should be dismissed particularly where, if you go to the offences clause—clause 65(b) establishes penalties for material breach, cost and imprisonment. Yet we were saying earlier—unless I misunderstand the provision—if the Minister is not satisfied with the concessionaire or the licensee he should be considered for another licence. I think the first thing is he should be imprisoned or charged unless I have misunderstood the provision. Clause 79(4), is one over which I pondered for a long time and I am still very worried about it. If we look at clause 79(1), it talks about establishing a Broadcasting Code. It says:

“The Authority shall, within a year of its establishment, by Order, subject to affirmative resolution of Parliament, promulgate a Broadcasting Code to regulate the practices of concessionaires of broadcasting services.”

Then subclause (4) states:

“To the extent that a Broadcasting Code made under this section is inconsistent with sections 4 or 5 of the Constitution, it shall not take effect...”

Sections 4 and 5 of our Constitution relate to fundamental rights of expression, fundamental rights of citizens, freedom of expression. I believe that where we are dealing with a Bill of this kind, we should not anticipate that a broadcasting code would be inconsistent with our fundamental rights of



expression. If it turns out that code does that, then that is a matter we can take up later on, but to begin by even anticipating that this will happen, to me is making a suggestion. I consider that subclause to be very tendentious.

We have had problems with our press, we have had problems with our radio. There is talk about reforming and amending our Constitution. If we are going to so do—constitutions are not cast in stone, but certainly, if we are going to look at amending our Constitution we should look at it from a holistic point of view. We should not start by suggesting that clauses within the Telecommunications Bill or another bill could so compound that they will, in fact, provide for this. I am suggesting that that be eliminated from the Bill. I think it is tendentious and I do not think it has any part in the Bill as such. We can move towards the Broadcasting Code but I believe that suggestion should be eliminated. If we start to amend our Bills or our Constitution by bills, we may run the risk of alternatively having a constitution of amendments rather than an amended Constitution.

I have not dealt with the technical questions relating to the Bill for two reasons. Firstly, as I have said, I am not an expert on telecommunications and secondly, I am told that there is likely to be a private committee that will look at some of these questions. But I would like to register my disquiet with the question of subsidization. I listened to the Minister on the last occasion and I heard his assurances, but I re-read the Bill and I still believe the question of whether the incumbent provider will be prohibited from continuing the subsidies that we now use for local telephone calls—whether he will be so prohibited. I have not seen anything that tells me directly that he or she, or the incumbent will not. I suggest, therefore, that this matter be reviewed and be taken up in the context of the other related technical questions, that is, connection, bypass operation, universal service access to facilities in, what I would like to see, a transitionary period. I do not believe it is something we could do right away.

Mr. President, I would like to end by making four observations. The first relates to technology and data analysis. I am disappointed that this Bill says nothing about research and analysis. It does not provide the board or the Authority with some means to do this. There are some indications throughout the Bill that this is to be done but nowhere it says explicitly that the board can or cannot or the Authority cannot. This is very fundamental if we are going to move forward in terms of telecommunications. On the whole question of research and analysis in an industry and in a technology that is advancing and changing every day, there should be built in that kind of provision for research and analysis. I am equally disquieted by the absence of industry linkages.

*Telecommunications Bill*  
[SEN. C. THOMAS]

*Tuesday, March 13, 2001*

Informed and enlightened national policies today do provide for the inclusion or the involvement in some form of private sector particularly in specific areas like technology. This is now a standard practice among a number of national regimes. The Bill does not avail itself of what you might call the insights of industry, the insights of private sector and I would have thought even *ex officio*, there should have been some type of involvement of the private sector. It may be that this is suggestive but it is not explicitly mentioned.

I want to just turn to page 2. I hope the drafters will forgive me if I say that the word “thing” in the context of Trinidad and Tobago has been used disrespectfully for people. It is used affectionately for things, objects, for a number of areas but it is a colloquial expression and I would think a Bill of this kind, where we talk about facilities, objects or other equipment or “thing” connected therewith, the word “thing” might be removed and we might find a more appropriate term. Let us remove this “thing” and let us find something that is a little more professional in terms of our drafting.

I am disturbed by clause 33. Clause 33 is one of those clauses that talks about procedures through which things might be regulated. If the Minister or the Authority can, in fact, cause to be observed clause 33 in its entirety, then the Minister, in my view, will have contributed to establishing that Trinidad and Tobago is not a shortcut country. Thank you, Mr. President.

**2.40 p.m.**

**Sen. Prof. Ramesh Deosaran:** Mr. President, I thank you very much. Before I start, since I was absent from the last sitting, I take this opportunity to welcome formally the newly appointed Senators.

Given the importance of the Bill and its implications as underlined by the previous speakers, I made it my business to get a copy of the Minister's presentation. I was very impressed with his straightforward manner and his command of the situation. He did make reference to establishing this country as the regional information centre. He took into account the new liberalization thrust and the different international obligations that go with that particular thrust, also making reference to the broadcasting industry. He still sees this Bill as part of ongoing work.

I am very pleased that this is the Minister who is piloting this Bill because of the recognized sensitivity that he has had on the question of communication, which includes matters of art and culture. I am very pleased about that because some of the points I will make are designed to touch such sensitivities. While we

are dealing with hardcore technology and the new information era, I think we should still strive to maintain a human face on such developments and, especially after hearing the last speaker, my colleague Sen. Thomas, a democratic character in this Bill rather than remaining mesmerized with the fascination of the new technology and implicitly allowing ourselves to be bonded by what can eventually turn out to be an era of technological elitism or electronic technocracy, for want of a better word.

I am very pleased that this is the Minister because he made reference to the need for consensus on this matter implying, as I think he did, that all sides of the Senate should have a common understanding and an appreciation for the common needs in the field of technology, widened employment and customer satisfaction. Mr. President, in the context of trying to engage his sensitivity and his accommodation, I will take a slightly different perspective: relevant, but departing from the hardcore technological content of the Bill.

I believe that in trying to arrive at products, we sometimes ignore the processes, especially the democratic processes required to arrive at that product. We bypass people. While I commend Sen. Moonilal on his maiden presentation, I become a little anxious to hear him dismissing the dislocation and the bewilderment that the technological thrust might cause people. I do not know if it came out as he meant it but I am worried when people are disempowered. I am worried when consumers get unhappy with new products such as this one. That is why I will try to put into our deliberations upon the Bill more of a human face and a fuller democratic character.

Let us not be overly enthusiastic about the matter because of the experiences of Europe, France, Italy, the United Kingdom and even the United States. Some of the promises held out by e-commerce, the new technological development in business, in addition to stock market calamities, are not holding as firm as we initially thought. One example is in the case of e-commerce, which was supposed to replace substantially the personal banking experiences that we had. However, inter-personal preferences still remain strong because people feel more comfortable going to banks and meeting the clerks and their bankers face to face, rather than channeling these transactions through e-commerce. The other problems are fraud, misplacement of funds and so on. So, let us not be overly enthusiastic and lose democratic control over the new technology that we are so excited about. In other words, I submit, Mr. President, that we use this Bill and the opportunities it will create to strengthen our democracy and, as the Minister rightly said, to empower our people.

There was reference to the broadcasting code. I share Sen. Thomas' concerns, but that is an anticipation of things to come. As far as the broadcasting code is concerned and matters related to it—the Minister did make reference to Trinidad and Tobago Television and the parent company—my own view is that the entire television station should be privatized in this era for many reasons. Indeed, when the broadcasting code does appear, I, myself, might wish to say something more about this.

Mr. President, there was the question of the need for transparency both in the preamble to the Bill and underlined by the Minister's own view, and I congratulate his commitment to this aspect of the process. Transparency can come in many different ways. I make reference to the composition of the board. With respect to the composition of the board, as stated in clause 6, I understand the need for expertise, specialization and competence and we do have, to some extent, those elements satisfied in the requirements for people in telecommunications, accounting, economics, management and human resources.

I think that is fairly appropriate, but when I said I would take a slightly different perspective, this is where I wish to intervene with a modified proposal in addition to what we already have. I think we should have a greater civic presence in the composition of the board, especially if the Minister intends to have matters like rural development, art and culture properly satisfied. We should broaden the board by having an increased civic presence. Apart from selecting individuals on the basis of individual competencies, we should have a fairer measure of representativeness on the board. That means we will have a better mix of both expertise and civic presence. What do I mean by civic presence? I mean, for example, moving the maximum number from nine members to 13 to allow us to have that wider representation. By having one representative from our established organizations: one from the Chamber of Industry and Commerce; another from our labour movement; another from our established art and culture associations and even one from our established engineering associations.

**2.50 p.m.**

Mr. President, this is not a matter of simply arithmetic, by moving from nine to 13. It strikes at the very fundamental issue of transparency. I think with this widened composition and inferential accountability which these representatives would have to their parent bodies, apart from the obligations to the board itself, it would create a wider stream of transparency and accountability. It would also

demonstrate to the national community, something that we have been saying repeatedly over the years, that is, to ask our non-governmental organizations to be more responsible; to get more involved in the mainstream of national life; to provide support to the Government in its poverty programmes and its anti-crime programmes. We now have a Telecommunications Bill in which, I believe, those requirements and appeals could be properly met by having the representations to which I have just alluded.

The board will, therefore, serve this other civic purpose, by getting the consensus you search for at the very top, rather than having only a very narrow specialized body of people with their competencies admittedly good. All in all we would be serving, in addition, a civic purpose and there would be a greater satisfaction in the issue of transparency and even in accountability.

Related to this, Mr. President, is really the question of trust. I think implicit in this widening of the board in its composition is the question of trust—trust among business partners, trust between the Government and its citizens, trust among citizens in the various communities. This element of trust and the reciprocity of civic norms among people, especially in this country, are what could amount to, social capital. It is demonstrated repeatedly that social capital is a direct contributor to economic development.

I believe by broadening the board in this respect, Mr. President, if I will submit to the Minister, you will also achieve this other object—not only building the morale and increasing the confidence of your NGOs, but you will also be establishing a fair measure of trust in such bodies for this particular function.

It is time we make a start. It makes no sense. For my own self, I am always disenchanted to hear so many speeches made by Government officials about the role of NGOs and about what they could and should do. Whenever an important occasion arises to have them properly configured into the mission—in this case, the telecommunication industry, which is not only for profit, it is for national development—I find that we ignore the role and potential of our NGOs. That is why I am making the recommendation, with respect, through you, Mr. President, for the hon. Minister's consideration, and that is why I feel comfortable in making it to this particular Minister.

I would also suggest, the way things are in the country today, and the need for partnerships, collaboration and, indeed, consensus on this very critical Bill, that a representative from the Tobago House of Assembly (THA) also be included on the

board. I need not repeat the reasons. I have already, I believe, outlined the major premise for this addition. I understand the dilemma—you want to fast-track the decisions, you want sharpened focus through competent people who understand common languages, and certainly you have a human resource person, an accountant, an economist and you have an attorney-at-law, but still, let us have a broader opportunity for negotiating, by having these other people on that same board. I believe it would be a richer experience and a more humane structure and, I think, in the interest of the country, for some better outcomes, for the particular reasons as the Minister himself mentioned; matters of art, culture, rural development and so on.

With that kind of imperative for transparency, it will help put us on our guard so that we will not experience what is happening in the smaller islands of the Caribbean. The Organization of the Eastern Caribbean States, itself, is in quite a turmoil over the telecommunications industry. Governments have been put under threat and they are quite vulnerable to economic downturns by the power of the telecommunication industry in those particular areas. We should be on guard and one way we can do so, apart from the other provision in the legislation, is by price control, negotiations, price cap and so on.

The question is both transparency and integrity? I am making this point in relation to an item on the *Newsday* of Saturday, March 10, 2001, page 15, headlined: “Personal interest driving free tele market”. It states that one of the prominent labour leaders in that country has said that there is a personal interest behind moves to free up the telecommunications market in the Organization of Eastern Caribbean States. It makes certain allegations, which I do not think necessary to read out. I merely wish to use this item as a guide, as a cautionary note, for increasing the imperative of transparency as much as we could and to stay away from such possibilities of apparent collusion and corruption in implementing the provisions of the Bill when it is passed.

Mr. President, in going through the provisions of this Bill, I took the opportunity to review one of the Bills that our own expects to replace, that was Act No. 40 of 1991. Permit me to refer to it, Mr. President. It was assented to on November 15, 1991 and this Bill also established a telecommunications authority. Naturally, though I know the objectives have been broadened in the passage of time to suit the Bill under present consideration, I wanted to see what changes have been made and to see if there is any justification for such changes.

I was, indeed, filled with some disquiet when, looking at section 4(1) in that Act; I saw the board of nine, as Act No. 40 of 1991 stated:

“The board of nine is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.”

I do take my colleague's point seriously, and I do agree with him in the spirit of the criticism that he implied.

**3.00 p.m.**

Does it imply that the Cabinet submits the names of the board members to the President and he acts accordingly? If the latter is true, I think I would be grateful if the Minister takes the opportunity to clarify, even if I believe the latter may be true, because this could produce unexpected difficulties. Even if it is quite clear to the legal professionals, I think an Act is a matter of public property and it should be as clear as possible to the rest of the population.

I would prefer for my part, Mr. President, and with respect, that the board be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. I say so, not to diminish anybody's power or anybody's authority. I say so because we need a demonstrable amount of consensus, balance and confidence in the Bill when it becomes an Act. This is one feature which can help us arrive at that condition of great confidence in the instruments that may govern the new telecommunications industry.

I do not think that should be a bothersome point. It has been there already. Why change it, especially if there is no justification in the preamble? Because of time, I believe the Minister did not, himself, elaborate on such changes. I believe what we have done—this is what I mean by enhancing the democratic character of the Bill, this is one feature—I think the democratic character of the Bill will certainly be enhanced by allowing the provision to remain in this respect as it was in Act No. 40 of 1991. That is that the board should be appointed by the President after consultation with the Prime Minister and Leader of the Opposition. Through you, I submit this very respectfully for the Minister's consideration.

Mr. President, as you know, I have been in this Senate before and I have seen many Bills which were passed as if the particular Minister would have remained there all the time. [*Laughter*] I am not saying if things change by June or whenever might be the imminent time, but as a matter of principle, I would wish to see the long-term circumstances also taken into account. Whilst I would have faith and confidence in the present Minister—it might be invidious for me to keep saying it, but I really believe this—I think he should take time and care to put in the provision so that any other Minister who enters this terrain will be constrained to maintain the democratic character of the Bill. [*Desk thumping*]

*Telecommunications Bill*  
[SEN. PROF. DEOSARAN]

*Tuesday, March 13, 2001*

There are two aspects with respect to the functions of the Telecommunications Authority which bothered me a bit, and perhaps the Minister can clarify or explain. I will be happy with that, but for my own part I am bothered about the impression being given that this much celebrated Telecommunications Authority which, as the preamble states, is supposed to be an independent authority—and whose independence the Minister, to me, appreciates—as was previously mentioned. But there is much ambiguity, both in the concept and in the manifestation of such independence through the provisions.

It seems to me that this Authority is constructed to be a working servant to the Minister, whoever he or she is. It seems to be a sort of domesticated animal that must be kept in place with the very heavy hand of the Minister, the Minister breathing down its neck even in its day-to-day functions. It is as if the Telecommunications Authority—this is the impression we get from reading the provisions carefully—is intended to be, in effect, a secretariat rather than an independent Authority to the Government. [*Desk thumping*]

I do not say this with any subversive or malicious intent. I think this Authority is going to be an instrument which will be looked at by international agencies, potential investors, and if I am correct, as I think I am, the World Trade Organization in the spirit of its expectations. By having such a heavy hand over the Telecommunications Authority, I think there is, at least implicitly, a violation of what the World Trade Organization expects with respect to the independence of such an authority. So, I submit to the Minister through you, Mr. President, to give some consideration to this, because clauses 18(1), 19 and 21(3) all expose this heavy hand of the Minister upon the shoulders of the Telecommunications Authority and its board.

With respect to clause 19, I think at page 14 of the Bill, if you will allow me to make reference, Mr. President, Sen. Thomas did allude to the way it is framed:

“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.”

That is pretty heavy handed and it distracts from what I believe should be the major purpose of the Minister, that is in transferring policy from the Executive to the Authority and let the Authority itself implement that policy in its different configurations and other provisions.



I would suggest, even at this stage, that we should delete—and this might arise in more detail at the committee stage—“special or general directions” and just put “with any policy directions”. The rest of clauses will follow that umbrella consideration which, in one hand, will retain the executive control and at the same time, give the Authority the confidence and the space to operate as a telecommunications authority should.

In fact, even in the preamble to the Bill—which is why I believe Sen. Thomas is worried with his own scrutiny—it states that the Authority is supposed to be independent. It did not go further than that, but that is, to me, the intention and so, the mixed signals are certainly there but they need to be removed, especially with respect to some of the clauses I just quoted and, in particular, clause 19.

We know the Authority cannot be absolutely independent, we know that, but we are speaking about a pragmatic approach to satisfy various objectives at the same time, and we do not wish, certainly on my part, for the Government or the Minister to feel that we want to take away the power and give it to this renegade group which will embark on all sorts of vigilantism all over the place, especially with an industry as the telecommunications industry. Not at all. There are enough checks and balances.

I am tempted, though bit reluctant, but the Minister has a taste for democracy. He said so a few weeks ago with respect to—the voter padding issue; and he certainly recognizes the imperatives of having a democratic society—the sacrifices people must make, especially those in power, to create balance and fairness and to maintain equity.

I recall a statement on page 3 of the *Trinidad Guardian* of Wednesday, March 22, 1989 when the Minister was discussing a document on the media put out by the National Planning Commission. These are the things that trigger my sentiments about him, as I have mentioned before, and give me the encouragement to speak as I do without feeling that I will be ostracized or that I will not be left unscathed. [*Laughter*]

The news report says:

“Document poses a threat to democracy”

And he was indeed referring to the National Planning Commission’s views on the media and restrictions and obligations that they have. I am certain that he will be of that same view, that any document that seems to pose a threat to democracy—and I am certainly not speaking about any creeping dictatorship. I am speaking about the particular measure at hand.

Things become more complicated because the Minister has the power to refuse the advice of the Telecommunications Authority. All right, but then the Minister is also empowered to require that same Authority whose advice it has rejected to communicate to the applicant such rejection; and things become even more complicated. The Minister is not bound to give any reason.

Really, how does this reflect on the professional pride or on the integrity of a body like the Telecommunications Authority in which international agencies and high financiers and potential investors would wish to have confidence? It is as if they never know what will happen next. That kind of insecurity, perhaps unwittingly placed in the Bill by the consultants or whoever, the Ministry staff and so forth, requires a second look, because really, what all this amounts to is that we seem to be making a pappy-show of the Telecommunications Authority if these provisions remain. It is either we come and say that the Minister would have these executive functions and he has a secretariat to carry out his desires and wishes or we give the Authority some of the powers it needs.

The other aspect that concerns me with equal, if not more, importance is the rights and the place of our consumers in this country. This is a highflying industry. Even some of us here cannot understand some of the language used, far more some of the technologies that are becoming available, but the users, the ordinary citizens, should not be put or kept at risk as consumers. Of course, clause 18(1)(m) in particular, and also clause 18(3), do raise concerns that the Government rightly has over consumers. It did state so.

It states for example, as part of 18(1)(m) that among the functions of the Authority will be to investigate complaints by users, and so forth. At clause 18(3) it states that in the performance of its functions, the Authority shall have regard to the interests of consumers and, in particular, that services are reliable and of quality service. All of that is well and good, but we cannot treat it as a passing issue by keeping the promise of vigilance here without having what should be a more structured, firm and clear provision to deal with consumer interests, concerns and especially complaints.

### **3.15 p.m.**

Mr. President, I believe it is important enough. If it is important to put the keeping of minutes and the passing of minutes to the Minister, I think this is of even more fundamental importance, because it is on the backs of the consumers and users and their capacity to respond financially, and, in terms of demand, that

will drive the industry in large measure, apart from what the more commercialized interest groups will require.

We have had some very dark days in this country over consumer rights and complaints. For one thing, we really do not know where and who to complain to, and this should gain the sympathy of Senators on all sides of the Senate. We all do have telephones. We do have things that go wrong, and it is a problem to get the repairman; when he comes, he keeps coming over and over, especially in the matter of electronics.

The Telephone Company of Trinidad and Tobago (Telco) gave us some dark days; those were the darkest days. There was such darkness that the calypsonian, Penguin, I believe, immortalized our distress in the calypso "Telco Poops". The dark clouds have still remained, to some extent, by the Telecommunications Services of Trinidad and Tobago (TSTT), in terms of service, rate fixation and so on. Today, the cable company is knocking us all around. I believe that the days for such shabby, insensitive treatment should really come to an end; enough is enough. I believe this is the hope of the general citizenry, and it is my hope.

Imagine that you granted six licences for cable television, then, suddenly, "all of them is one", so to speak; suddenly, with rate adjustments fixed arbitrarily, to the point where, today, you are telling us, with an increase of over 20 per cent, "We raising this to 20 per cent, but yuh have four connections you can make." Many people who use cable television are citizens who have only one or two rooms, so where will they put the other two, in their bathroom, other facilities, outside, or on the mango tree? It is really a deceptive form of rate negotiation, if you ask me. It borders on trickery—[*Laughter*—]—and it should be condemned, because it looks like a monopolistic exploitation of those who may rightly feel, in their hour of need, that the Government has deserted them. I hope this Bill picks up such concerns in a more tangible form.

I have heard it said, for example, that we should expect lower TSTT rates; I am not too sure about that. The Minister might wish it; I think he is responsible enough and sensitive, but I do not know. With the rate structures and the provision for price—I almost said price fixing, but that is what it might amount to. There is the price cap. I do not know how high the cap will be for TSTT as the dominant provider. These things are not clear.

I have a feeling that the consumer, the user, will be at sea when these prices start coming out with little or no proper protection or avenue to express his or her concern. That is why I said at the beginning—and I wish to maintain throughout my contribution—there is the need to put a human face on this kind of

*Telecommunications Bill*  
[SEN. PROF. DEOSARAN]

*Tuesday, March 13, 2001*

technological development. We have had too many rip-offs in this country in the realm of electronics, television use, computer hardware and software and Internet services. There are too many rip-offs.

You cannot get an electric gate fixed properly. It has to be revisited time and time again. Your house security system goes off all hours of the day and night, and when you call the company they tell you, “You have to take out a contract for one year with us.” Is that not craziness? Why, as a genuine and bonafide customer, to get proper service for these electrical devices—especially for matters of home security—I have to sign a contract for one or two years, paying up front a bulk of money, before you come and service the appliance or the equipment I bought from you? This is anti-consumerism! This is bureaucratic terrorism; that is what it is, but then we expect as citizens of this new era, some relief, Mr. Minister, through you, Mr. President.

Such equipment is on the fringe, they are not really at the centre of what we are talking about, but they do contribute to the wide concerns that we have about technology. If people had a more economical way of keeping their home security intact, they would not be prepared to set up cutlasses as traps by windows—which are cheaper. These other equipment are so expensive that ordinary people have to be innovative—and sometimes with very adverse consequences: chopping off people's fingers, hands and so on—because they have to protect themselves. Perhaps the time has come for Government to take a look at security systems in homes at a cheaper or subsidized rate, or at a cost rate. To me, that is now a civic obligation of Government, to look after the security arrangements; not for free, but at the most economical cost, because home security is now a crisis. It is not a matter of having it privatized any more. It is a matter of ensuring proper home security by making such equipment more affordable.

If consumer satisfaction means as much as I think it does to the Government, we should have a more structured form enclosed in the Bill to accommodate consumer complaints. More than that, there should be annual reports: How have these complaints in the particular industry or concession changed over time? What has been the range of complaints with regard to quality? How has the picture changed? So you could hold these concessionaires and suppliers accountable by some time-series analysis.

I think my colleague is quite right on research and analysis. The Bill does make mention of research, but as we know, this country has a deep aversion against research. Everything is quick policy and action plan, but the basis on which these policies rest and the implementation of such plans are very flimsy, and that is a bad habit. It is almost cultural trait.

If you want to modernize, you have got to have a research and development unit firmly entrenched and well supported in your telecommunications industry, especially with respect to the Telecommunications Authority, and, in particular, a consumer complaints bureau, given the reasons I just outlined.

Mr. President, it is true that we are going into a free market concept, and we are going into a realm of fascinating technology. We do not need to be convinced of these requirements, but in a free market economy there must also be some accountability and the consumers cannot be left at bay. They have to be protected in some way. I would submit that one way is to establish firmly in this Bill a customers' complaint bureau and have each concessionaire or provider establish a similar unit, smaller in magnitude, which will operate as a feeder system to the bureau established by the Telecommunications Authority. This will give credence to our concerns about consumer complaints and rights.

I also suggest that we consider the matter of public hearings, especially for applications for radio, broadcasting, telephone and cable. If not in the first instance, but, at least, after the concession is granted on certain conditions, after a period of about seven years, I think there should be a public hearing on each concession, or if there is a request for an increase in price, hold the hearing at that time. That would be transparency. I need not refer to the Federal Communications Commission of the United States, the United Kingdom Telecommunications Authority, or the other instruments of such openness. Even Jamaica had public hearings a couple weeks ago.

I would invite the Government to consider this as a high priority area for transparency and consumer satisfaction, because when these concessionaires come to the open hearings with the media present—you can edit some of the confidential documents, there will be a hearing for public consensus. There will be an opportunity for customers, and users, to come and explain what their hardships are, and they would be better guaranteed a response. I believe that this would certainly please the population.

The other matter I wish to raise is the question of a special majority.  
[*Interruption*]

**Mr. President:** The speaking time of the hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

*Question put and agreed to.*

**Sen. Prof. R. Deosaran:** Thank you, Mr. President. I am a bit uncomfortable as to whether this Bill, as it is, requires a special majority. Clause 50(1) allows an inspector to enter any place where a telecommunications network is operated to test equipment, examine records, search, question and seize; duly so. I agree with that, given the nature of the industry and the implications, but to do so the inspector would have to require a warrant and be accompanied by a police officer. That, too, is all right, but is this not connected to sections 4 and 5 of the Constitution, and, quite possibly, is, in fact, inconsistent, specifically, with sections 4(a) and (b) of the Constitution where the rights to property and privacy are enshrined?

It would be helpful to me to hear what the Government has to say, because I am strengthened in my modest view by the fact that, for similar provision, in Act No. 40 of 1991, the Bill was passed in the Senate by a special majority. We are not speaking about the broadcasting code. I want to know: if this Bill with similar provisions had to be passed then with a three-fifths majority, what is the justification for it not being so in this case? I would be grateful if the Minister would explain. Perhaps, in my own naivete I am too freedom conscious or too defensive about such matters, but I think the right to property and privacy is very fundamental. If there is any doubt, as there is in my mind at the present moment, I would certainly be grateful for the Minister's clarification.

Regarding the question of the courts, just a passing remark. For the last 10 years or so there have been hundreds of new offences being created. We have had, almost as a factory, the production of new offences with penalties and so on. Has anybody ever stopped to consider the impact such new offences will have on the police, in terms of the need for new forms of training and expertise, and the increase loads that this will put on the court system, especially on the backs of an already depleted Office of the Director of Public Prosecutions—[*Laughter*]—which, I believe, has less than 50 per cent of its full complement? People are leaving, drifting away, and yet we have these new requirements for prosecution, investigation and adjudication heavily coming up.

Mr. President, in all fairness, no matter which side you are on in the Senate, this is a matter of serious importance. It strikes at the manpower issue. It strikes at the sense of responsibility by a Government that keeps bringing in all this legislation, and I am not speaking only about the last five or six years, but also for the last 10 years when you recount the number of pieces of legislation and the hundreds of new offences. In fact, it is a miracle that the crime rate has remained so stable in the last 10 years, because every time you make a new offence, you potentially create a new crime; but that is another matter for now.

Mr. President, in clauses 30(7), 39(7), 73(4), 76(3) and so on, it tells you that you can go to a judge if you are dissatisfied or aggrieved. This looks really good on paper: I have a judge to look after my interest, and perhaps, I will get equity and justice there, but the path to justice in this country is well known to be very expensive and cumbersome, even in civil matters.

**3.30 p.m.**

I wish to suggest an alternative and in the same sense in which I invited the Minister through you, to take a bold look at this Bill and see if he can put in clauses that would seek to enhance governance and a greater civic presence in respect of the board, so too, I believe the time has come for us to inspire a new culture against litigation and even if litigation is required, in clear matters of law.

I believe the procedures should be such that we should not overburden the courts unduly, but there should be other mechanisms even within the Telecommunications Authority to assist in resolution. There is a provision in clause 82 which speaks to it, but I think it should be more fundamental than this and also having the power, that is, having an Appeal tribunal as part of the authority to look after dispute resolutions and headed by a small group of appropriately trained and experienced personnel for quick, inexpensive and final dispatch. This propensity of appealing everything right up to the Privy Council, while it is a right, I believe it is sometimes unbalanced, it is overdone, and whilst I do not want to deny anybody their rights and privileges, overall I believe we need to create a new culture of reconciliation especially in civil matters.

This Government should take pride in enacting legislation for mediation at the community level. That is a message it has sent out to the community for certain crimes, and with first offenders. Keep the consistency going here and take the bold step and let us debate it even if we do not accept it finally. Make the provisions such that the resolution and reconciliation can take place within the Telecommunications Authority. For serious matters of law I am quite sure the tribunal will send up such exceptional cases to the court.

The second to last question that bothers me is the possibility of telephone tapping. Again, I say I may be overly sensitive, but it is important that the Minister give an assurance—or somebody from the other side—that it is not so. Because it seems to me we have made telephone tapping legal in this Bill. If one looks at clause 65(e), it leaves the issue ambiguous. On page 41 it starts up in a certain way. It says:

“A person who knowingly—

- (e) intercepts, attempts to intercept or procures another person to intercept, without the authorisation of the provider...”

Now, at that point I get a bit nervous. It goes on, but what goes after does not correct what is said initially. I know the Minister would naturally have certain powers to intervene, or does it mean that the provider could also authorize anybody to intercept, not merely for repair purposes, or is intercept a sort of euphemism for tapping in certain cases? I wish that could be clarified. Perhaps it might have been there unwittingly, but I believe it ought to be re-examined and I willingly stand corrected. Even so, does it mean in the other provision that the Minister of National Security will have the right to tap people's telephones when there is a suspicion of wrongdoing? If so, it means that we are making telephone tapping legal and I am not pronouncing a judgment on it at this time, but I am merely stating if this is part of the provision, or expectations outside state of emergencies in the Bill—I know the Minister spoke of offences and penalties, but I do not know if he is aware of this possibility.

With this new era of technology, I would also hope that our intelligence services be not only more vigilant, but appear more intelligent in the areas of arms smuggling, illegal immigration and drug trafficking. Over the years we have had a very bad record of surveillance in this respect to the point where a global report on “Crime and Justice” published by the Centre for International Crime Prevention in 1999, ranked us on page 160, as relatively high in the frequency of illegal arms smuggling in this country. We ranked high in the frequency of the importation of illegal arms in this country. How could they know that and we here know little except by way of rumour? We seem to have no authentic information, we have had no arrests, we have had no charges, and yet we hear illegal arms had been brought into the country. I hope with the new technology our intelligence services become more intelligent and effective.

There is a Telecommunications Division I believe in the Prime Minister's Office and I know the Minister has established, or is establishing his own advisory group. I think that is necessary, but I would like to make a plea once again to keep a human face in this exercise. I do not know whether the Telecommunications Division as exists at present would be completely demolished. I do not know what sins, perhaps Mr. Winston Ragbir or his team might have committed so as to be made redundant, or whatever the case might be. I think, having had the experience of the Public Utilities Commission where there



was such sudden and severe dislocation of working people with families, I urge the Minister, through you, Mr. President, and with respect, that he be a bit compassionate, which I think he has the capability of being, in seeing in this transition stage, that the people who are in the Telecommunications Division at present be treated as gently as possible. All these are instances of what I mean by putting a human face on the legislation and enhancing its democratic character.

Thank you very much.

**Sen. Dr. Tim Goopeesingh:** Mr. President, it is gratifying to see demonstrated at the last day's sitting and today's sitting the greater appreciation and the wider acceptability in principle of the Telecommunications Bill, 2001 and, of course, we are cognizant of certain reservations that have been discussed on a number of issues.

Emanating from the debate on this Bill over the last day and a half, there seems to be a number of issues occupying the minds of our hon. Senators from both the Opposition and Independent Benches on the issue of broader and wider consultation and stakeholder participation that is one. Minister's power is another; the auction spectrum; cross subsidies; universal service; voice over Internet; call-back issues; consultations with the Tobago House of Assembly—these are just some of the issues which had been raised at the last sitting and some more today.

I bring to the attention of the Senate the report of the working group appointed by Cabinet to prepare a national policy on telecommunications for Trinidad and Tobago out of which this Bill was drafted, based on the recommendations of that working group. On June 12, 1997, Cabinet asked for a working group to prepare a draft national policy on telecommunications with the following terms of reference. I am referring to the question raised by the Opposition about the need for greater stakeholder participation and wider consultation which they want to promulgate in the future. We are seeing that that stakeholder participation and wider consultation have already taken place from 1997—2000 and the terms of reference under which that Cabinet appointed committee brought about its deliberations and recommendations were based on the following:

- a. To review and consider existing policy documents and other pertinent literature on communications.
- b. To liaise with the critical stakeholders, that is, groups, institutions and individuals in the industry in order to solicit inputs that could inform the formulation of a draft policy.

*Telecommunications Bill*  
[SEN. DR. GOPEESINGH]

*Tuesday, March 13, 2001*

- c. To co-opt additional expertise as need be to assist with the conceptualization and preparation of the policy document.
- d. To liaise with the Caribbean Telecommunications Union (CTU) and the World Telecommunications Organization (WTO) as necessary in the preparation of this document.

Mr. President, such broad consultation and participation in the wider section, both nationally and internationally had taken place by this working group appointed by Cabinet so as to be the forerunner for this draft Telecommunications Bill, 2001 which the hon. Minister has alluded to as a Bill as work in progress. So we are cognizant of the views that have emanated from both the Independent and Opposition Benches and to this end, a working group reviewed and considered existing and other policy documents on telecommunications. The working group liaised with critical stakeholders in the industry and co-opted additional expertise to assist with the conceptualization and preparation of the policy document.

Mr. President, the working group took due note that the draft *Seven-Year Planning Framework for Trinidad and Tobago 1998—2004* identifies a high quality information-based economy as the cornerstone for the future development and growth of Trinidad and Tobago. In view of the working group, the adequate management of the evolution of an information-based economy would offer significant export opportunities and earnings, create new and challenging employment opportunities, as Sen. Dr. The Hon. Moonilal has said, diversify the economy which we have been doing over the last five years and want to continue to do, and contribute significantly to rural growth.

Realization of this potential, however, depends on the majority of the citizenry having access to a modern telecommunications infrastructure which can offer the whole range of basic and emerging telecommunications services at excellent quality.

**Sen. Prof. Deosaran:** I am sorry to interrupt my good friend, but is the Senator aware that the working group to which he referred published a 1988 report which was not signed by about 25 per cent of its 30-member composition? The reasons are—I would not go into the reasons given, but that report should not be seen as the divine mantra; it should still be subject to deliberations, I believe.

Thank you. I am sorry to disturb you, but I thought that is of significance.

**Sen. Dr. T. Gopeesingh:** Thank you, Sen. Prof. Deosaran. Yes, we are aware that out of the 10 members there are about two, three, or four who did not

sign it, but the wider consultation did take place and we must be aware that this consultation and broader based participation did take place in the formulation of it. They might have disagreed on certain parts and they may continue to still disagree on certain parts of these recommendations, but we must not lose sight of the fact that this draft policy paper and the group appointed formulated a number of issues and policies with a number of substantial recommendations.

I am not saying that this is the Bible and mantra on which the Telecommunications Bill was made, but in the drafting of any legislation and any Bill, it must incorporate a wide diversity of views, proposals and recommendations, and some of the proposals and recommendations emanated from this working Cabinet committee. This working committee, obviously, was of the view that the evolution of technology, prices and industry structures around the world where countries are becoming more and more interdependent are having a profound impact on telecommunications in Trinidad and Tobago. For this reason, Trinidad and Tobago cannot remain isolated from such global development and hence the reason Mr. President, and hon. Senators of this House, for the urgent implementation of our Telecommunications Authority and Telecommunications Bill.

### **3.45 p.m.**

We must not be left behind by years so that we have catching up to do as far as information technology and information infrastructure are concerned. We must acknowledge the rapid evolution of international telecommunications towards a new order in which international operators compete to carry traffic between and among countries. This has given rise to two problems: the illegal use of the global communications network—and this is taking place now throughout the world and we must not find ourselves in that by trying to defer and postpone the Bill for any period of time—and the likely change in the accounting rate system.

In respect of the telecommunications network, it is generally acknowledged that increasing volumes of international traffic are being routed illegally through the lowest cost points in the global network. Where traditional agreed-upon bilateral routings are not always respected, there are increasing incidents of this practice resulting in network distortions and wastage of capital. We cannot continue in Trinidad and Tobago to have wastage of capital.

Although other value-added information technology services, including Internet and radio communications, such as paging, trunking and mobile data transmission, are being provided in a competitive environment, we must be aware

and cognizant that there is only one cellular mobile telephone service provider in Trinidad and Tobago. We cannot continue this way. This was confirmed by Trinidad and Tobago at the World Trade Organization meeting in February 1997—that was more than four years ago—within the context of commitments by 69 countries to open their telecommunications markets. How long are we going to take to open up our markets? In the domestic broadcasting sector, the existing policy framework is inadequate and licence conditions are weak, hence the necessity for the urgent approval of this Telecommunications Bill. Therefore, the need for an updated policy in this sector is urgent given the growing convergence of the broadcasting telecommunications and IT sectors.

This Telecommunications Bill has been drafted in the context of about 15 general principles for the formulation of this telecommunications policy, and it incorporated a number of areas: pricing and economic efficiencies; universal service, which has been discussed previously; interconnections and interconnectivity; tele-density, as has been alluded to by Sen. Moonilal; spectrum usage; human resource development, which is the cornerstone of any civilized society; confidentiality—very important, because we are aware of the illegal tapping of telephones by certain groups and when the Prime Minister speaks about this, the Prime Minister is referred to as being alarmist. But you know what has gone on. How long can we continue to have illegal tapping of telephones by extreme groups in our society? The time is near that we must bring this Telecommunications Bill to fruition.

I continue with the general principles: regulations for the Authority and the right of appeal. Anyone who feels wronged by the decision of the regulator or the Authority would have the right to utilize the judicial process for redress in the event that the regulator erred in the process. The Opposition knows about that, and this is what they have been doing over the last few months—trying to stymie the economic development and the business development of Trinidad and Tobago, by sending every matter to the courts. It is spreading throughout the Caribbean. A new trend is emanating in Trinidad and Tobago and the wider Caribbean. You will see it in Guyana, and in Trinidad and Tobago. The Opposition has learnt it from Guyana, and Mr. Hoyte is now re-learning it from the Opposition in Trinidad and Tobago.

The important thing is that the time has come when we have to look at the draft Bill where there is right of appeal within the Bill. The Bill brings forward recommendations in 14 areas. One is the amendment of the Telecommunications Authority, Act 40 of 1991; the creation of a new regulatory body to be called the Telecommunications Authority, which is being spoken about; the establishment of an appropriate telecommunications regulatory framework, and with discussions, a

regulatory framework will be drafted; the policy of divestment which is not unique to Trinidad and Tobago but which must come aboard; the maintenance of international competitiveness and the role of competition policy; the requirements for optimum network expansion. We cannot be left behind. Singapore in a PricewaterhouseCoopers document for the year 2000, showed how all that country's government business is now linked by a wider broad-based band—95 per cent of the private businesses and the government businesses are linked together by this wide broad-based band. Even the private community, the households, more than 90 per cent is now utilizing that principle. How far away we in Trinidad and Tobago are from this reality. Can we continue to be left behind where our economic development will stagnate and we will never be able to do anything unless we cross this burden of a strong information technology infrastructure? We must have maintenance of an international competitiveness and the provision of a universal service; the design of an interconnection policy; the leasing of circuit capacity, and so on.

This afternoon Sen. Thomas raised a number of points and we would like to congratulate him on the points that he brought. I thank him for supporting the wider acceptability of this draft Telecommunications Bill on a number of areas. He spoke about the excellent speed that is needed on this matter, but he has circumspections on a number of areas. He agreed with us on positioning Trinidad and Tobago as a regional centre for information technology, and he indicated that every citizen must rally around the Minister. He mentioned that the Bill is neither novel nor revolutionary, because he indicated that Jamaica has done this, the Organization of Eastern Caribbean States (OECS) countries have done it and Barbados has done it, and we know that countries around the world, all the developed countries have moved on, and even developing countries. So we must not be left behind if we are to consider Trinidad and Tobago as a First World country in the future. We must not be considered as a developing country or as a Third World country.

He indicated that the Bill will help us to join a host of other nations in our telecommunications revolutionary process. This is what we want, to ensure that Trinidad and Tobago is in the forefront of the development of information systems and information technology which will build our economic platform for sustainable development.

There must be every reason to support the reform by a well-structured and administrative Bill, and we bear that in mind and I am sure the hon. Minister will look at the question of structuring of the Bill. He spoke about what is key, the administration and the management of the Bill. I am sure that the

*Telecommunications Bill*  
[SEN. DR. GOPEESINGH]

*Tuesday, March 13, 2001*

Telecommunications Authority will have a lot of work to do in the administration and management of the Bill.

He indicated that he was unclear whether members of the board would be appointed by the President and he indicated, as well, that this must be done in consultation with the Prime Minister and the Leader of the Opposition. He mentioned, as well, the discussion and the policy function of the Minister.

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

I would like to draw to the attention of this honourable House, one of the Acts that was brought about by the Opposition, which was the Government in 1994—the Regional Health Authorities Act, 1994, on the functions, powers and responsibilities of the Minister. It was in 1994 that the then Government, now the Opposition in our House today, had this 1994 Regional Health Authorities Act. It states:

"Subject to subsection (2) a board shall exercise its powers and functions in accordance with such specific or general directions as may be given to it by the Minister." [*Desk thumping*]

Mr. Vice-President, this is the Regional Health Authorities Act by the Government in 1994, now the Opposition, and it is very alarming to hear that the same functions, powers and responsibilities that they enacted in 1994 for their Minister of Health at that time, they are feeling a bit disturbed and frightened about the powers and functions of the Minister in this Act.

### **3.55 p.m.**

I draw this illustration as there seems to be wide inconsistencies in their thinking. They are moving from one position to another and it leaves room for questions. [*Desk thumping*]

Mr. Vice-President, there was a question of research and analysis and flexibility brought on by Sen. Thomas. I draw to his attention, "Staff and Related Matters", clause 60(1) which deals with the question of research and analysis which he discussed earlier. It states:

"The Authority may employ on such terms and conditions as it thinks fit such persons as it considers necessary for the due and efficient performance of its functions and exercise of its powers under this Act on such terms and conditions as are agreed between the Authority and the person and subject to such maximum limit of remuneration as the Board, in consultation with the Minister, determines."

An Authority would have the flexibility. Therefore, as in any organization throughout any country, there are about seven important areas: finance, human resource, research and new development and a number of other areas. The Authority would have that flexibility to incorporate research and analysis in its work over the period of time. I think that would allay some of the anxieties that Sen. Thomas has on the question of research and analysis.

On the question of flexibility, the Bill has the ability to revisit itself when there is changing technology. The Bill is not cast in stone. As technology changes, we would have the ability to revisit the Bill from time to time.

Mr. Vice-President, I come to a very important part of the discussions and deliberations—some of which were raised by Sen. Prof. Deosaran—on using the Bill to strengthen our democracy and empower our people. I would allude to that shortly. With respect to empowering our people, there is need for greater civic response in the rural development, particularly in art and culture, and wanting to expand the board membership from nine to 13 to incorporate the Chamber of Commerce, labour, engineering and so forth. This would widen the composition of the board.

Sen. Prof. Deosaran also brought out the trust among business partners and reciprocity of civic norms resulting in a strong social capital and contributing to economic development, building morale and confidence of NGOs in our national development; the need for partnership and consensus, the broader opportunity for negotiations and a representation from the Tobago House of Assembly on the board.

Mr. Vice-President, we are quite aware and cognizant of these views that have emanated from the Independent Benches. I want to allude to the importance of this new information technology and information infrastructure in moving Trinidad and Tobago forward. There is a strategic importance for this information infrastructure, and we view knowledge as the axis of human progress. That is a cornerstone of this Government for our economic development in the future; the social capital, the human capital, the human skills bill, the dollar for dollar plan and so forth. These are some of the things we have spoken about and that we would continue to work hard for over the next five years.

We recognize that there is a greater awareness of the extent to which information drives our new economic paradigm. Information will drive our new economic paradigm and we cannot afford to wait two and a half to three years down the line before we begin to bring this economic transformation by utilizing

information technology and information infrastructure. As a consequence, we are of the view that it is important for the country to develop the capability to quickly access and efficiently analyse information in order to secure a more competitive, global position. If we are moving forward, we have to move rapidly in a global economy with this information technology paradigm. In the western hemisphere communication and information play important roles in Nafta and the proposed free association.

Mr. Vice-President, we have to position our infrastructure for our new economy over the next five to 15 years. Our Government is fully aware of the economic change in the world today and the implications for a country like ours. It is for this reason we have taken the bold steps of developing a national human resource information system providing computers to all schools, supporting civil servants to acquire and train themselves to use computers, creating the College of Science, Technology and Applied Arts of Trinidad and Tobago and training and developing our students and workers in the use of computer and Internet technologies. Barbados is moving far ahead and is stealing our thunder. They are stealing the human capital from Trinidad and Tobago and utilizing them in their industries. They are right on our doorstep and we are being left behind. We need to open up our telecommunications market to new state-of-the-art and competitive technologies amongst a range of other technology-related activities.

Mr. Vice-President, we know that these are not enough and our pace of change today is not adequate to keep Trinidad and Tobago growing, learning, staying competitive and becoming the First World and quality nation which we strive to be. It is essential, therefore, that we develop a state-of-the-art technology infrastructure which will not only be a platform for our economic development, but also another foundation block to pave the way for upliftment from low paying, unstable jobs to better paying jobs and more job opportunities. As has been alluded to by Sen. Moonilal, a more secure and successful future, the eradication of poverty and sustainable development for our twin-island state.

There is now, undoubtedly, an extricable link between our country's economic prosperity and social development. Effective application and the advancement of modern technology will impact the lives of everyone: children, workers, leaders, the elderly, the challenged, the youths and our training partners. It will also position Trinidad and Tobago in the world of tomorrow. Our Government encourages citizens, individuals, groups, organizations and businesses to take proactive steps in developing a connected Trinidad and Tobago society internally and with the wider world.

We support the connecting of Trinidad and Tobago by opening up and improving the communications infrastructure and making it more competitive.



We are ensuring that there is sufficient bandwidth with high speed, universal access to the Internet and robustness of our infrastructure to efficiently facilitate voice, data and video traffic in order to be seen as a country with the best of global communication technologies. We have to continue to mobilize our resources and capabilities from some of the major multi-nationals, based in Trinidad and Tobago, to work in partnership with us. As we indicated in our manifesto, we will encourage the nation to access and use the best international methods, practices and technologies in all that we do.

Mr. Vice-President, leverage of the technology infrastructure will enhance national competitiveness in every sector of life, for example, energy, tourism, agriculture, health, education, manufacturing, financial services, ports and airports, the utilities, global trading and communication, the provision of information and government services and in professional services. The strategic importance of this information infrastructure will create a knowledge and information-enabling society and it would have tremendous total societal impact on the lives of everyone in Trinidad and Tobago and even in the wider Caribbean.

#### **4.05 p.m.**

We will be a hub made reality. We will be a preferred location for multinationals and regional organizations. We will improve our non-oil development. We will expand our service industry development, create a high technology industry, create a high skills and human resource upgrade and so on. So the word is for our economic development for improvement of our social and human capital, and for increasing our Gross Domestic Product and for increasing our per capita income. We must move with this new information technology. We cannot and must not be left behind. We must ensure that the debate here continues and very quickly to bring about success in the implementation of this Telecommunications Bill, 2001. Before I close, I would like to draw to the attention of Members of this Senate, two articles in the newspaper. One is on Saturday, March 10 in the *Trinidad Guardian* and I will quote:

“Shumaker, delivering his final speech to the American Chamber of Commerce at its Annual General Meeting, ... said he hopes to visit again after retirement and not pay ‘almost one US dollar a minute to call my sons back home.

He described the cost of domestic telecommunications services as ‘way too high’, with the virtual monopoly of the sector putting exporters at a disadvantage and hindering competitiveness.

He said the introduction of the Bill in Parliament last week was just the first step in this process: ‘The challenge now is to pass it quickly...there is no room

*Telecommunications Bill*  
[SEN. DR. GOPEESINGH]

*Tuesday, March 13, 2001*

for complacency in this era of global competition and the time to make the ‘tough decisions’ was now.”

We must heed the words of people who are here only for a short while and have tremendous objectivity and who have been looking introspectively into the development of our country. We have also moved—and this is quoting from the Trinidad and Tobago Chamber of Industry and Commerce. They will be holding a breakfast meeting on Wednesday, March 21 on Progress Towards the implementation of the Recommendation of National e-Commerce Policy Committee. This is how far Trinidad and Tobago is moving and how fast we are moving. The Cabinet appointed National Electronic Commerce Policy Committee has identified inadequate high bandwidth and high telecommunication cost as two major obstacles to Trinidad and Tobago transforming itself into e-commerce. It has recommended that the telecommunication industry be liberalized, that Government becomes a role model for e-commerce by transforming itself into an e-government. This is what Singapore has done and it is also to move quickly to appoint a national e-commerce coordinator and supporting secretariat, and there are a number of presenters. They are inviting persons to come into the discussions on Wednesday, March 21, 2001.

This Bill, therefore, is in the context of discussion and working progress and it is important for us to understand the necessity for expediency in the passing of this legislation. We are aware there are a number of issues that have been brought about by both the Opposition and the Independent Benches, and I am sure the Minister in his reply will speak on a number of the issues we have not touched on. I want to make one point before closing on the question of ministerial power which eluded me earlier on. You would see that over the last two years, in the midst of what I have been in, the health sector, the Minister of Health has had to take the tremendous responsibility in all the accusations that are being made in the nursing and medical professions by the doctors. The Minister of Health is the one who has to account to the nation, he has to account to Cabinet and to the population. So I want hon. Senators on the other side to bear cognizance of that and also of the legislation of which I spoke earlier on. In closing, we very much appreciate the contributions from both sides. We are cognizant of some of the major issues that have been discussed in this draft Telecommunications Bill. It is really work in progress, and I am sure that at the end of the day—we must not procrastinate and carry on for too long—that we will be there together to carry the country of Trinidad and Tobago forward.

Thank you very much, Mr. Vice-President.

**Sen. Christine Kangaloo:** Mr. Vice-President, we are all aware that we must move forward into the age of technology, but passing this Bill with speed would have little or no benefit to us if we have to revisit time and time again to make all the necessary amendments. That is why all the discussions on this Bill must be encouraged so that we can point out the relevant deficiencies in the Bill. [*Desk thumping*]

Mr. Vice-President, in the Explanatory Note to this Bill, it is stated that the commitments made by Trinidad and Tobago to the World Trade Organization include adherence to the principles of openness and transparency in regulating the sector. Safeguards must be put in place to ensure that new entrants are able to compete effectively, and, therefore, to ensure the Authority appointed under this Bill must operate independently from any political interference from any executive branch and should certainly operate separately from any influence of the providers of the services.

Clause 19 of the Bill effectively does away with this requirement. Clause 19 sets out that “the Authority shall act in accordance with any special or general directions of the Government given to the Authority by the Minister”. It is suggested that, maybe, the Minister's directions should be confined to policy matters. Clauses 21(3) and 36(3) dealing with the granting of concessions and licences should also be struck out in my view as they render the Authority irrelevant in the scheme of things if the Minister is not bound to accept the advice of the Authority in granting concessions and licences.

Mr. Vice-President, no Senator on the Government side has as yet given an explanation as to why the Minister is to be given such powers over the Authority. And in giving such powers to the Minister, it foreshadows the policing of the Authority by the Minister, which we feel, should be avoided. Reference was made to the Regional Health Authorities but, I wish to point out that the Authority is an administrative body. [*Desk thumping*] The Authority being set up under this Bill is regulatory. Clause 21(1) of the Bill sets out that: no person shall operate the network “without a concession granted by the Minister”. Once again we want to point out that a concession should be granted by the Authority and not by the Minister. There are other sections which prohibit the doing of certain acts without the prior approval of the Authority. These are clauses 21(1) and clause 22(c) and (d). The clause further sets out that the approval shall not be unreasonably withheld yet there is nothing about the recourse available to the concessionaire who feels that the consent has been so unreasonably withheld. This section seems to be very silent on that.

Clause 24(1)(c) of the Bill is, in our respectful view, quite misleading. It prohibits cross-subsidizing without the prior written approval of the Authority and this leads us to ask, if a provider is allocating funds from a more lucrative source such as overseas calls, can that provider be prohibited from funding the less lucrative and more expensive process of installing phone lines and other infrastructure in more rural areas? Is there any mechanism to be put in place to assist this provider? If there is none, then we will see a situation where the far-flung areas are being denied access to basic telecommunications and, therefore, I wish to remind the Minister through you, Mr. Vice-President, that one of the objectives of the Act as set out is to strengthen the social and cultural well-being of the people.

**4.15 p.m.**

I move on to universal service. In general, the definition of universal service includes the provision of standard telephonic services to unprofitable customers and/or geographic areas. Different governments have taken different policy steps in order to ensure adequate provision of services. Can we glean the policy of this Government with respect to the universal service obligations in this Bill?

Clause 28(4) sets out that the Authority, with the approval of the Minister, may require certain groups to contribute to the funding of universal service. It is suggested that this should be mandatory, because this, once again, may affect the operations of the dominant provider. We ask: Why should the dominant provider be saddled with all these costs? We point out that clause 28, which deals with universal service, can only be described as past.

We have heard that this Bill will provide employment. With the coming into the market of new providers to facilitate competition in the sector, has any thought been given to the current workforce of the incumbent? It seems that the incumbent is envisaged as having certain advantages in the marketplace and consequently bears greater responsibility, but we must be careful that in the zeal to engender competition, we do not lose sight of our responsibilities to the current workforce.

Sen. Prof. Deosaran has already made this point but I must echo it. Clause 82 of the Bill provides for dispute settlement in regard only to clause 25(2)(h). We

suggest that dispute settlement procedures be set up in the courts as the first step before litigation and should not be restricted to this one clause. The time frame for these procedures must also be clearly set out.

Certain clauses in the Bill provide for certain decisions of the Minister to be subject to judicial review. I believe that the hon. Minister indicated that these provisions are safeguards. I must point out that if one goes about publicly and viciously undermining the integrity of these safeguards, then these legislative provisions are rendered useless and I am afraid that investor confidence may be shaken.

In concluding, while the objectives of the Bill may be noble, a great deal of work must be done and more policy guidelines are required to be implemented. It seems that this Bill has been drafted and policy will follow. It is our view that they must go hand in hand. Certain questions have to be raised. Has a market survey been done? How many concessions can be granted? What makes a saturated market? All of these considerations must go into the planning with effect to liberalizing a market. May I just say there is no blueprint for success. The starting point is this Bill and we should approach it with caution and should not, in our haste to move forward, overlook things that are very glaring.

**Sen. Mary King:** Mr. Vice-President, if you had called earlier, I did not quite pick up my name.

It is also an honour for me to speak on this particular Bill because of its seriousness and how it is going to transform our economy. I would like to say though, before I forget to say it, that I was quite shocked at Sen. Dr. Gopeesingh who said: "Look what this foreigner has said about us." It is time we start looking at our local experts and what they have to say about us. Then we will be developing Trinidad and Tobago by Trinidadians.

The telecommunications industry, as we all know from listening to all the other speakers, is a very complex one. It is complex because it is very technical. It is driving new approaches in the new economies. It is amalgamated, as we have heard, with the entertainment and the content sectors, and of course it makes a lot of money so it is very important to the country. The legal draftsmen are having a field day in drafting legislation worldwide and in conducting the ensuing litigation which, in a new industry like this, is obvious. This is one of the reasons we should go a little slowly in making sure that we get what we want in the Bill. We also have to ensure we allow our publics to have access, to be able to

communicate and that they are also part of the activities of the business in the new information technologies. So it does relate to education as well as exposure.

The mission statement is actually very specific in what it wants to do in Trinidad and Tobago. It is encouraging new providers to enter the market thereby bringing about more competition. It is going to make this country one of the leading information centres in the region and we applaud that. We are sure we are going to do that. We will guide, through this Bill, the transitions from the monopoly that now exists not to one of totally free competition, but to one of constrained competition.

The policy statement keeps repeating liberalized competition as opposed to the monopolistic practices that we have been experiencing over the last 30 or 40 years. The strategy appears to be that we will create a new telecommunications authority which will oversee the whole industry and create its rules and regulations in order to guide the sector to the competitive scenario for which we are looking. We have also agreed to, and we have signed with the World Trade Organization, certain agreements to liberalize our sector to create competition. We keep hearing liberalization; we keep hearing competition.

I do not see competition as an end in itself and should not be an end in itself. I think the end ought to be what is good for both the providers of the service and for us the consumers in Trinidad and Tobago. Also, we know that competition will give us much more competitive pricing than we have had in the past. When we are looking at the pricing structure, we have to get away from the concept of cost-based because that could be historical costs, which could be based on our history and what we have done up to now.

**4.25 p.m.**

We have to be more forward looking and to base those costs on the creation of new industry and new facilities, using the new technologies. We also have to ensure that those costs will include the cost of capital and profits. I am looking at cost of capital being interest rates and profits and if that is not included, then you would be driving your industry into the ground.

We understand that regulation has and does bring about competitive prices. We understand that TSTT, in the past, was not well regulated, just like WASA and T&TEC; we know what happened to those companies. In the past, we know that the strategy was that monopoly should do all of these things and should provide at best-cost and in some cases, subsidized cost. With the changes in the technologies today, however, monopolies cannot get involved in all the activities within the

sector and, therefore, it is now wisdom in hindsight that we should have more entries and more providers of telecommunications because of the numbers and types of different technologies.

We want to look at what kind of competition we are going to have in Trinidad and Tobago. It is quite obvious we not going to end up with roti- shop-type competition, where everybody on the corners could set up a stall and do their thing. This has to be very constrained and it is so, because we have constraints on right of way; on the spectrum; we have capital constraints and, of course, we will have our own constraints because we have a very small market size. Mr. Vice-President, we have constraints and we know that regulation is a must, because even in the United States, the Federal Communications Commission ((FCC), and the United Kingdom, Office of Communications (OFTEL), are regulating and are constraining competition, allowing just sufficient but not too many entries.

We also know that we have two types of competition. We have facilities competition where TSTT is a facility provider because it owns its networks and we have the services-type competition where people could now purchase services from TSTT and on-sell, or create products on top of that; that is, like the Internet providers, the call back service and so on. Of course, facilities-type services are the ones which will be most regulated and most constrained.

If we think that competition is the be-all and end-all without all the other things that must come with it, then we do not really have to do too much. We could allow the offshore companies like MCI and Sprint to use their satellites to be provide all the telecommunication services we need in an area like Point Lisas.

We do not want that kind of entry into the market. We want to ensure that as many of our own businesses as possible get involve; that is what we call cream-skimming and cherry-picking; when you choose a part of a market which is very lucrative and latch on to it. We must make sure that is not allowed to happen in Trinidad and Tobago.

I would say the real objectives of the Bill; the Minister has stated the ones that are most important. I would like, however, to also include the creation of employment. I would like to have detailed information as to how we are going to drive this to competitive prices and how we are going to do our costing. I would like him to include in the Bill, that, yes, we are going to encourage local innovation in the sector. We are not buying everything from outside and, yes, we must have universal service to prevent what we know as the digital divide,

meaning that some people in the population are not involved and they are cut off from facilities. We must avoid that at all cost.

We have to proceed from where we are today and I have just provided information on that environment. We do have, as we know, a monopoly in the provision of local and international telephone calls. We have competition in radio and in the provision of Internet services. We have no competition in cable television or direct television. We have some competition in broadcast radio and broadcast television.

**Mr. Vice-President:** Sen. King, sorry to interrupt you. I know that you are obviously flowing but at this time I think it is appropriate for us to break for tea.

The sitting is suspended at this time. We will resume at 5.00 p.m.

**4.30 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

**Sen. M. King:** Mr. President, I think when we stopped to be refreshed I was just looking at the status quo as far as the competition and monopolistic status of some of the companies in Trinidad and Tobago, so I would like to move on to looking at the pricing problems that we will have and which I feel we have to seek an amendment or two on as far as the pricing structure as laid out in this Bill.

Traditionally, TSTT has been regulated and allowed to have a rate of return on their investment. Rate of return on investment is now an outdated system of regulating monopolies and oligopolies. Therefore, I would like to suggest that we will be looking at a different option for regulating in the future. We must look at more forward-looking types of systems for regulating pricing.

Also, traditionally, TSTT uses the international accounting rates which means that the countries among themselves decide on the rate at which they will charge each other for their international calling systems. In this way, it is not really based on a competitive pricing structure but it is more based on what can the market bear in each country. Also, it has allowed us, however, to be able to subsidize the local telephone rates even though the international rates have been above; but that is one of the re-balancing problems that must come into play when the new entrants enter the international market.

We know that the United States is one of our major markets. The FCC has already instructed countries in the Caribbean that their rates must come down. Some of the countries have already agreed and have started to bring down their rates—Jamaica being one that comes immediately to mind—but we are going to have a problem with how we are going to introduce the competition so that those



rates can come down and, therefore, we will have an increase in local rates so that we are all earning our potential and our customers are totally satisfied looking at the utility function, as we call it, in economics.

Do we go for the shock treatment where we immediately open the markets and allow international calls to take place, therefore, creating immediate upswings in local prices? It is not politically expedient to do this and, therefore, we are probably going to go the route of Jamaica and the other countries who have agreed and have negotiated with Cable and Wireless that the rates will be re-balanced in a sliding scale fashion and that new entrants will not be allowed to enter the market for international calls until we have done some re-balancing on those rates. It is shock treatment or delay.

We in Trinidad and Tobago, and with the Caribbean and Latin American region, have got groups working on what we call the TAL accounting rates restructuring of the regime. It is a group set up under the International Telecommunications Union (ITU) and they have already developed the model for the re-balancing and restructuring of the international accounting rates. Those countries which have members on that group which include Jamaica and the OECS have also agreed that they will go with the phased introduction and lowering of accounting rates. Therefore, we are assuming that as Trinidad and Tobago, as a member of that TAL group, working under the auspices of the ITU, will also be one of those countries that will go for the sliding delayed introduction, at least for overseas telephone calls.

In the whole scenario of introducing competition, we have got two major problems with which we have got to deal. The two problems are mentioned in the Bill. I do not think they have gone into the detail we will need if the Authority is going to be able to operate as soon as it is brought into law. These two things, these two particular areas, are interconnection and access to universal service.

In interconnection it means that TSTT will give up its right to refuse to connect a competitor to its own network. We know that this is in the interest of consumers and that this is in the interest of creating and allowing new entrants into the market. Therefore, it is the norm across the world. So, we have to look at how and where TSTT will allow the interconnection, and at what prices will we allow that interconnection. It is advisable and it has already been determined by obviously other countries, as we are not the first to introduce new players into the market, that we connect at any feasible point in the network.

The Bill is deficient in saying that the interconnection will reflect the costs of capital for the dominant provider who is the monopoly, who will have to construct additional facilities, perhaps, in order to allow interconnection. Therefore, we need to be more specific in the Bill and we must also ensure that in this part of the pricing regime we also include the cost of capital which is profits and interest on loans, as I mentioned before, and we must also include, I would say, opportunity cost, because that provider will be expending capital to expand its network under duress because this is what the Minister and the Authority will want. Therefore, that opportunity cost has to be taken account of because he may have wanted to spend that capital in more lucrative areas of his business, perhaps, providing voice-over Internet protocol. So, we have to allow the opportunity cost function to come into play when we are looking at his pricing.

Clause 25 of the Bill allows the Authority to establish standard guidelines for interconnection, but then we read on and we get to clause 78 which has been mentioned today already, it calls for the Minister, subject to a negative resolution of Parliament, to establish the regulations. Therefore, I feel we also need some clarification on who is doing what. I will come to that also a little later.

There is also a clause in the Bill which allows for the dominant provider to share other facilities. It is hard to envisage which would be these other facilities that he must share besides his network and connecting at feasible points, because that is like asking a broadcaster to please share his fibre optic cable to his transmitter with his competitor. I think there is a little muddled thinking in the Bill and we need to clarify what exactly are those facilities we are asking the dominant provider to share.

In the international scenario to date, and especially countries like the United Kingdom and the European Union, they have already put in place—and it is now international practice—calls for the unbundling of the dominant providers network so that they can connect at technically feasible points. For example, if we want to provide connection from A to B, they may need something more general than just general interconnection. They may want to do some other things.

The FCC has identified seven particular network elements which allow new entrants to interconnect at, and I would like to just possibly go to that part of this paper and identify those seven particular points or areas that quite freely should be allowed interconnection.

We are looking at the network interface devices to allow immediate access to the network; the local loops which are connections to our households and

businesses, of course; local and tandem switches which allows one to switch traffic between exchanges; interoffice transmission facilities; also connections between other exchanges; signalled and call-related databases to set up call connections—some of us are familiar with that; operating support systems and operator services and directory assistance. Those are the seven agreed international areas, agreed internationally among players, that are definitely feasible where we can connect and allow the sharing of facilities. I think the Minister should really elucidate on that point for us so we could see what exactly he means.

Universal access is a big issue and something we must all support if we are going to develop our systems and our peoples. International universal access means, I think it has been mentioned already, that a person, wherever he lives, will have some access to the facilities at some distance. Universal service, obviously, can be more condensed into, perhaps, every home will have a telephone or a computer, which is the thinking of our Government at the moment, and that is why the public service computer loans are so very important to Trinidad and Tobago.

Then, of course, we have the national network coverage where we extend the actual facilities in order to ensure we reach the whole country. Those are three areas we have to look at when we are looking at universal access.

The Bill says that the Authority should define what they mean and what they want as universal service. I think that the Authority should consult not only with the Government on what it wants for universal service, but it should also consult with other telecommunication providers in the system. It should consult with customers and customer organizations and other groups that make up provider user systems. We have to make universal service affordable, as already agreed by the Minister. The way they envisage funding universal service is by a fund that will be set up to which there will be contributions by the providers.

### **5.15 p.m.**

We have a little issue here to solve, in that, we are at two ends of the spectrum: we have businesses that are here to make money and we have a Government and people who want to have access to communications, even in areas where it may not be economical to so provide. Therefore, we have to come to some agreed situation.

We know it is the Government's business to provide the universal service. There are many, many ways to fund such a service, but whatever way we fund it, it all reduces to a tax on people, or we still allow cross-subsidization of the

service. Whatever way, the customer always pays, because even in cross-subsidization the provider will get it back on some other service which he is selling to the consumer. So we have to, again, go back to look at your suggestion that there be no cross-subsidizations. We have to decide how it is going to be funded.

We all feel that the playing field should be levelled in the contributions to this fund. It means that those who are currently in the system and those who are going to enter the system, that is, all providers—for example, even those people who are now involved in voice-over-IP or call-back services—they should also be contributors to this fund; then we would have equity, a level playing field and we will ensure that our people get universal service. Universal service is going to turn out to be a cost to the provider. We know that that cost is not going to come out of his profits, and, therefore, we have to be able to have a proper restructuring of this aspect of the Bill to look at cross-subsidization.

Clause 24 of the Bill also provides for the Minister to be able to impose build-out requirements on a concessionaire. This could be for universal service, so we also have to know who pays for the build-out requirements. The Minister can also not agree with the plans provided to the Authority for the build-out requirements and insist that it go according to the Authority's plan. We, again, have to ask, "Who pays for this?" Is the Minister or the Treasury going to fund this, or are we going to allow some other pricing scenario in order that the provider can cover all of these costs?

Mr. President, let me turn to prices, which should not take too much time. Prices are set by competition, except in those areas where we have regulation or constrained competition, like we would have in the provision of some of the services in telecommunications. In the Bill we look at things that say "fair and reasonable pricing", and we see cost-based pricing. That means absolutely nothing in economics. I would like us to look at what exactly we mean by cost-based pricing.

We also have stated that we will regulate by means of a price cap. Price cap is not the most efficient way. I think what we must introduce is price cap minus an "x" factor, but that "x" factor is related to the inflation rate within the country, and it creates the opportunities for the providers to really be technically and economically efficient. It will make them be as efficient as possible in order to increase their profits. Of course we know that the price cap will be the ceiling. The minus "x" bit will give them some leeway to operate, but we also must have a

floor price, because if we do not then we can have entry of someone with a lot of money being able to under price/undercut the other providers in price, and, therefore, run them out of business. We have to be sure that we look at a ceiling and a floor price to prevent predatory pricing.

I go back to the idea that rate of return is obsolete and that we must take that out of our vocabulary. That is not used across the world anymore for providers of monopoly.

I agree with other Senators who have said that the analysis of the data must be done within the Authority. I think all our analyses should start being forward-looking, and let us stop looking at historical cost. We are moving on, let us be up there with everybody else. The most appropriate pricing mechanism and cost which is being used across the world in areas like telecommunications is the long run average incremental cost. That is standard and is being used by the most efficient providers of telecommunications and some other services as well.

We have an issue here, the spectrum, that concerns a lot of us: How are we going to deal with the spectrum? The Minister has said that it is a very valuable resource. My heart jumped and I said, "Thank God, somebody understands." It has an economic cost, and, therefore, we have to ensure that it is rented, leased, whatever, at an economic rent. Clause 41 talks about techniques that might be used to award the spectrum. It talks about tender, option, fixed price and any other rent. I think we should discard that "any other rent", because we are allowing too many options in there. I think we should ensure that we get the most economic cost for our spectrum. If you look at some countries, they have got from US \$90 million to \$200 million. The European Union has gone way above that at the moment by auctioning optioning. We have to be sure that we get the best for what we have here.

We also feel that if the Minister, for any reason, has to subsidize any provider in the lease or rent of the spectrum, then he must be able to tell us why he had to give that special concession. We want this to be a two-way street: "You have to do this, but we want the best, so why did we not get the best?"

Mr. President, clause 53 also says that the Authority will collect licence fees and universal service funds, and that the universal service funds will go into a special separate account for the use of the Authority. I would like us to be very sure that we are setting up another separate account for the spectrum and that the funds from the spectrum are not for the use of the Authority to live, but ought to be used in the provision of universal service and access to the country, where it is

*Telecommunications Bill*  
[SEN. KING]

*Tuesday, March 13, 2001*

needed: Internet in every school or something that is going to develop the country, and not just into the Authority's administration. It cannot be spent on administration; that would be very, very bad politics.

Let us just look quickly at the independence of the regulator. Actually, if you look at the Bill, the only quantitative item that has come out of it is that we are establishing an authority. Everything else is very qualitative; we have not gone to figures and quantities; I am disappointed in that, but we are establishing an authority. We have had many comments on its independence already from last week and this week.

The Bill says that the Authority will regulate the monopolies and the dominant providers, of course, and that the Authority will recommend the award of licence concessions. The award of a licence concession is a very, very special privilege. I am one of those people who feel that the award of the licence concession has to be on the authority of the Minister and the Executive. This is nothing new; we did it before when we created the monopoly that is TSTT. We awarded Cable and Wireless a monopolistic position, with ourselves, of course, as shareholders. We awarded that through the Ministry and the Executive. I think that should be the power of the Minister.

I also feel that there should be accountability among the people, the Executive and the Authority, and that reasons for decisions have got to be asked for, and should be given. Under that process I would like us to look at an appeal/review process within the Authority itself. I think I am coming also to the view that besides the internal process—which can help start the process in a cheap fashion rather than going to the courts—we should set up an independent tribunal. The Authority would do its initial investigations in responding to any queries or appeals, and then it should go to an independent tribunal. Courts are a very expensive route of settling arguments, so we should have those two interim processes before anything should have to hit the courts.

I agree with some of my friends around who have said that the Bill is setting up a semi-autonomous regulator. There is ultimate power both on licence and policy within the Minister's jurisdiction. I think this is where we have to be clear. What is the Minister going to do? What is the Authority going to do?

Mr. President, clause 78(1) of the Bill actually states:

“The Minister may make such regulations, subject to negative resolution of Parliament...”

Listen to all these things:

- (a) application procedures in relation to concessions and licences;
- (b) fees payable to the Authority for or in relation to applications...
- (c) procedures for the management of the spectrum;
- (d) approvals and certification of terminal equipment;
- (e) price regulation;
- (f) interconnection;
- (g) universal service;
- (h) numbering;
- (i) procedures for investigating and resolving complaints...and
- (j) procedures for investigating alleged breaches of any term... of a concession or licence..."

We have to be very serious. The Authority, obviously, has certain powers, but we have to have a division of powers, in this case, among the Minister, the Authority and the people; who relates to who.

Mr. President, clause 19 also states:

“the Authority shall act in accordance with any special or general direction...by the Minister.”

I would also like to include there, the words “special and general policy directions of the Minister”, so that the Authority has got certain powers and duties to perform.

I would end by looking at the board of the Authority. I think a lot of mention has been made of it already. The way the board is set up is very collegiate. It is a set of professionals who will be independent, because the Bill says that they will be appointed by the President. If the Bill means anything else, they should put it in the Bill. As far as I am concerned, I also feel that the board should include members from the commercial sector, consumers, consumer organizations and non-governmental organizations, so that we get the independence, the mix of views. Perhaps, they may think of things that the general public would want, but at which the professionals would not look.

I think the Authority needs powers to make its own regulations, which, of course, may revert for approvals, but it should be able to make up their own rules and regulations. It should do that, of course, after consultation with the players in the industry and all the other groups that we talked about. Even there, there should be a review process of some of these rules. We have to look now at where we are and where we want to go and how do we get the transition going. What do we do first?

The Bill in its explanatory section states that it provides a mechanism by which TSTT continues to provide service during the transition periods. When the Bill is passed we must admit that only the Authority is established. We have not got anything else in place. In order to be able to put it into force, until probably later, when the President will say when he will sign. But then how does the President know? There are lots of things we still have to do to get this going.

The Bill completely ignores the methodology to adopt to implement the transition from the monopoly to competition. It must give us some kind of implementation plan. I would like to suggest some of the things that I would like to know. I ask the Minister to tell us, in talking to us later on or, perhaps, next week, how he plans to get us from "A" to "B". Let me outline just some of the questions I think have to be answered so that we will know the implementation plan to go forward.

Will competition be allowed immediately in this international sector or will there be a phasing in of competition? Will re-balancing be allowed to take place in the local arena before any other line competition is allowed either local or international? Will the competition in the services, as opposed to the facilities sector of the industry, also be regulated, in particular, with respect to universal service provisions? What are the exact entry requirements for new players in the industry? Will there be a development on an initial definition of universal service, and the detailing of those methods that I talked about, for contributing to the fund before liberalization takes place? Will there be a development of systems for obtaining the economic cost of the spectrum? Will there be a consideration of how to handle bypass, if the international competition is not opened up immediately?

We are talking here about the voice-over Internet providers. Will there be a renewal of TSTT's licence? What will be the new conditions for this concession? Besides that, what will be the conditions for all the proposed new concessionaires?



**5.30 p.m.**

The Bill assures TSTT of this new and continuing concession subject to performance, but let us look at the problem. The problem with TSTT is that it had developed its business under certain conditions laid out in the heads of agreement which is supposed to go to the year 2010, these agreements obviously have been overruled by this new legislation. By law TSTT can claim compensation for any legitimate losses it incurs because of this particular change. So are we allowing that TSTT would recoup this depreciation deficit reserve—because that is what it is—of this change by a special pricing policy? Are we going to say, okay you will have price cap minus “x” plus or minus “A” or “B” or something, so that you can make up for all the time they have taken from you, given our break in heads of agreement conditions?

Also TSTT has, under the existing rules and regulations certain numbering systems. Would these also continue to be vested in TSTT? The Bill goes so far to say only if it is feasible. I do not think that is good enough. We must know what they are doing and how they are going to do it. Also, very important to us in a small country like this, what are the exit requirements for concessionaires who decide to leave the system, and on top of that who will be the provider of last resort since we are in an area of national disasters? Who brings us up if all falls down? We have no arrangements across the world for these kinds of services. We do not see it happening in this Bill and we want to know who is the provider of last resort, because other people can come in, make a buck and run and we have to be very careful that our country is still protected and that we still have our telecommunications system.

Before closing, there are two very important items in the Bill which are of particular interest to me as I am a member of Transparency International. Clause 65(f) conflicts with the recognition of the role of whistle blowers in the fight against corruption. It is now accepted that if, in obtaining evidence on corruption, a whistle blower were to commit a crime that he could be prosecuted for it. We know that, but this does not mean that the evidence he collected is debarred from being used in a court of law. So we must relook at that clause because it would contravene what the Attorney General is developing as far as whistle blower legislation is concerned.

This clause deems that it is an offence if such information—

*Telecommunications Bill*  
[SEN. KING]

*Tuesday, March 13, 2001*

“(f) uses, or attempts to use, the content of any communication, knowing or having reason to believe that such content was obtained through interception or access in contravention of paragraph (e);”

So we have to relook at that clause and ensure that it does not contradict the whistle-blower protection laws.

Clause 80(1), the Authority is a public body which can affect the life of all the people of Trinidad and Tobago and hence I feel that it has to fall under the dictates of the Freedom of Information Act. It is totally wrong to have in clause 80(1) the order that these documents are secret. We cannot accept that. So when we get to committee stage, I have proposed a list of amendments which I think we need to go through in great detail.

As this is still a working document—and I am very pleased that the Minister started his discourse with that information—then perhaps it is not too late to go for more general public comment, and naturally we want it to go to a special committee of the Senate.

Thank you.

**Sen. Dr. David Quamina:** Mr. President, I never thought that speaking in this Senate would have been such an awful task as it seems to be today. I wonder whether it is awful because I am speaking to distinguished Senators here, or whether it is awful because of the subject that I am asked to present today.

I know very little about telecommunications, and I read and reread the document that was presented to me, and today to my pleasure, the speakers that preceded me seem to have covered most of the grounds that I would have liked to mention and that has saved me a tremendous amount of problems treading on grounds that I know very little about.

There is one aspect of this that I think needs to be repeated and I think most of the previous speakers have touched on it, and that is, the independence of the Authority, and if I were to say this correctly, I would raise my voice at the end of that to indicate that it is a question that is being asked.

I read here that the new Authority established in this Bill is vested with the authority to regulate and monitor the telecommunications sector—to regulate and monitor. Then I read further, that the Authority shall be managed by a board for the purpose of exercising and performing such duties as are conferred by this Act and by any other written law. That seems reasonable enough, that seems to me what an Authority is supposed to do.

In clause 11 I read that the Authority submits to the Minister not only copies, but certified copies of every Minute and there I see that some of the authority that seems to have been given in the first two paragraphs are being taken away by this. I would have thought that having appointed a board, it would be necessary for the board to report periodically, say every three or six months, but to submit certified copies of each Minute would indicate to me some measure of lack of confidence in the board that you have appointed. This goes on throughout the Bill.

It says that in the exercise and performance of his functions, powers and duties under this Act or any written law, the Authority shall act in accordance with any special or general directions of the Government given to the Authority by the Minister. This has been mentioned before and I mention it again because I think it needs emphasis. Any special or general directions—why not policy directions?

I would have thought if you appointed a board and it consists of fields qualified in telecommunications or fields related to it, an attorney, someone in economics, finance and someone in business, et cetera, these seem to me to be honourable, competent citizens and people able to manage a board. Why then should their everyday adventure be controlled by a Minister? I would suggest that what really is meant here is that general policy directions are what should come from the Minister.

It seems further, that no person shall operate a public telecommunication network, provide a public telecommunications service, or broadcasting service without a concession granted—not by the board—but by the Minister. The Minister seems to be everywhere in this Bill and I do not think that this should be so. I think that having established an Authority you should give the Authority the liberty of dealing with its day-to-day management as it thinks appropriate.

This goes on further and this is what I can say is probably adding insult to injury because it is said that the Minister shall not be bound to accept the advice or any part thereof rendered by the Authority in accordance with this clause. What is the purpose of the board? What is the purpose of the Authority, if, when it advises the Minister, the Minister is not bound to accept it and may disregard it completely? When the Minister does this, the board should probably resign. The Minister does not seem to have any confidence whatever in the board that has been appointed to assist him.

It goes on further to say where the Minister grants a concession, the Authority shall put it into play. Where it is refused, the Authority shall inform the concessionaire that it has been refused, but it is the Minister who refuses it.

Further, under licences in numbering, it repeats the same thing, but while these might be the functions of the Authority, the Minister shall not be bound to accept the advice or any part thereof rendered to the Authority in accordance with this section. It says in clause 30(1):

“Subject to this section, the Minister, after consultation with the Authority, may suspend or terminate a licence...”

This sentence seems to me to be in accord with what I understand to be the functions of a board and the relationship with the Minister. The Minister, after consultation with the board, has come to a decision, he has been advised by the board which was set up.

This concept of the function of the board is not maintained because in clause 78(1) it says:

“The Minister may make such regulations...for the purposes of this Act.”

Again why does not the board, appointed by the Minister, make these regulations? I am at a loss to know whether you set up a board to run telecommunications and at every instance in the existence of this board, there is interference from the Minister.

The next paragraph I would like to mention is the one where if a dispute occurs, the Authority shall correctly seek resolution through consultation and negotiation. That is correct, but I would think if a conclusion is not arrived at, there should be created some arbitration council or body within the Authority which might deal with this and try to prevent it from going into the already overcrowded court.

**5.45 p.m.**

Now, Mr. President, this is the only aspect of this Bill that is not covered or not emphasized by previous speakers and I thought I would like to underline them, as the power of the Minister within these boards seems to be extraordinarily frequent and descriptive.

I do not think, before I sit, even though it is very late in the day, that I have had the opportunity to extend to you congratulations for being returned as President here. [*Desk thumping*] The fact that you were unopposed clearly indicates the high esteem in which the Members in this honourable House place you. [*Desk thumping*] The fact that it was unanimous means that your reputation for fairness and evenhandedness has extended beyond the walls of this House,

because those of us who are neophytes and were here only for the election, did join with others so that we could have you as President. We are very grateful that you are there. I wish you will remember the term, neophyte, and be not too harsh on those of us who have just joined you.

Thank you very much, Mr. President. [*Desk thumping*]

**Mr. President:** Congratulations to the Member on his maiden contribution. I thought what he was saying did have a little sting in the tail. [*Laughter*]

**Sen. Dr. Eastlyn McKenzie:** Mr. President, today I have been exposed to a level of debate that has been very enlightening, very educational and very sober. I want to say thanks to all Members who have made a contribution to this Bill today. No one has said that the intention of this Bill is a bad one. Everyone who has spoken has said that the objectives of the Bill, what the Bill intends to do, and all these things, are very laudable. I also would like to say that in the Bill there is much good. We have the freeing up of the industry; the wider choice consumers will have; the worldwide interconnection; the competition; the modernization; the new career paths that many of our nationals could follow, but like many of the speakers before me, I also have some concerns.

I want to ask about the relinquishing of the powers from the Tobago House of Assembly, Schedule 5, Item 17 and also Government's Schedule 7, Item 10. I am sure the Members here would recall that very late last year, and in fact, very early this year in Tobago, there was this dispute over the Tobago House of Assembly assuming its responsibility under Schedule 5 of Act 4 of 1996, and actually issuing a contract for telecommunications services in Tobago. Whether right or wrong, I do not know, but I would like to find out from the hon. Minister, and I want him to answer me directly when he winds up—I do not want to leave it fuzzy; I want a direct answer from him because I am going to get up and ask him when I see him winding up and he is not responding—what will be the situation now, seeing that the Assembly used its powers under the old Act and apparently this has not taken effect yet, whether that will be null and void. I would very well like to know.

I noted that there seems to be no separation—I am not saying that the Minister should not have any powers; the Minister ought to have powers, but the Authority also must have its powers and it must confine itself to the preamble where we talk about the independence of the Authority. What I would like to see is a demarcation of the duties of the Authority and the duties of the Minister. I think that we have a lot of overlapping, duplication, erasing and things that do not make the Bill very, very precise and detailed as to what each section must do. I ask the

question, especially when I heard my colleague, Sen. Prof. Deosaran say, what if we have a change of Minister and we do not have one who is as sober-thinking as the one we have now?

I bring these questions to the fore because of my experience right here. I remember, I think it was in 1996, that the former Senator, Orville London, brought a case from Tobago and we had permission being granted by one minister over the same issue, the same circumstances, the same situation in which a former minister had refused to grant permission. One just went on leave and the other one who took over just changed what the former had done. So I would just like to see us have rules, regulations and procedures that will stand the test of time and will stand the scrutiny of whoever the Minister may be.

One of my concerns is the selection of the Authority. I ask the question—and I would like the hon. Minister when he winds up to answer me directly. My question is: Does “appointed by the President on such terms and conditions as the President may determine” mean, in the President’s own discretion? I would like him to answer me that. I am not asking anything further; I would like him to answer me that question.

I have heard of the consultations of all the things that we have done; the number of people, the committees, what have you, and I am recommending, Sir, that now that we have put together all the ideas gleaned from all consultations and the discussions et cetera, and we have come up with this Bill, that we take this Bill for a short consultation, even if it just among members of a committee. I will tell you why I am saying this. Mr. President, I remember very vividly how we sat here in 1996 and Sen. Prof. Spence begged and beseeched this Senate to let us have seven days to complete the consultation on the Tobago House of Assembly Bill and we were refused. Never have we passed such an ambiguous, flawed, terrible document because of the fact that we—

**Mr. President:** Senator, I do not think you are permitted to criticize the action of the Parliament.

**Sen. Dr. E. McKenzie:** I am sorry, Mr. President. But I want to say that that lack of consultation put us in a position where everybody, even Members of the Government side, are regretting that we passed it in the stage in which we passed it.

**5.55 p.m.**

There is a proverb which says “safety lies in many advisors” and I think that we should heed this and ensure that this Bill is taken to a committee with a short deadline within which to report. I would say that.

Mr. President, I am also concerned about whether other concessionaires or providers would piggyback on TSTT. I do not know what the provisions would be in that; whether they would be able to piggyback on TSTT's infrastructure and at what price. I am getting scared that my minister, who is in charge of our 51 per cent of TSTT, may not be very careful as to how he is seen by the people of TSTT, the public at large, and even investors who are coming in. I think we would have to look at that very carefully.

I would tell you why I am a bit concerned about some of the powers of the Minister. We are all here, we listen and we read, and when I hear one person comment that, "If I had the power, I would close down this station", it gets me scared. [*Desk thumping*] That is why I think that to put the power in one person's hands could be very dangerous. Let us have a board that functions as a board.

Mr. President, I have just one or two questions. When we look at the clause which deals with anything controversial, we seem to want to go straight to court. Could there not be an arbitration or appeals body within the Authority or somewhere else, that could at least have things softened rather than go to court? I can tell you, from our experience, that going to court takes a very long time to have some matters decided. I think that we can do much better than that and have an interim body between the complainant and the court.

Mr. President, I would like to just briefly go through some of the clauses in the Bill and, in my humble way, speak about them. I looked at one of the matters raised by Sen. Thomas about the certified copies of the minutes. If I were on the board, I would not worry with them at all because they did not give me a time limit within which to give them the minutes. I would give them every half year or at the end of every year. [*Laughter*] I would not bother with that at all. We have all talked about the Minister overriding the Authority's decision on the granting of licences and so on. That has been spoken about.

I was a bit confused about clause 18(2). I do not know whether anyone could enlighten me on that. It states:

"In the performance of its functions under subsection (1)(b), the Authority shall require that all persons operating or intending to operate any of the services listed in subsection (1)(b)..."

and there are a number of services,

"...notify the Authority accordingly."

Do you just have to notify the Authority and go ahead, or is it that you just notify if you do not need a concession? In other words, if you need a concession you notify and do the other things that are mentioned, but if you do not need a concession, do you just notify and go ahead? I do not know if anyone could help me with this.

Mr. President, clause 21(4) states:

“Where the Minister grants a concession, the Authority shall cause to be published in the *Gazette* and at least one daily newspaper circulating...a notice to that effect.”

It further states at clause (5):

“Where application for a concession is refused, the Authority shall notify the applicant, in writing, giving the reasons...”

I ask: What time frame? How long do I take to notify you? It does not say this here. Is it within so many days, weeks or months? I think that we should spell it out clearly saying within so and so time it should be done.

Mr. President, I looked at clause 24(c) for which I need some enlightenment. It states:

“refrain from using revenues or resources, from a telecommunications network or service...without...approval of the Authority;”

I thought of what we spoke about earlier with respect to rural sections. What is being said is that if I have a company and I am making plenty money on cellular, and I want to say, “Okay, let me put a service in Castara, L’Anse Mitan, Bloody Bay. That would not bring me a profit, but I am making so much money on cellular that I can expand it to these areas.” It is saying here that we must get the approval of the Authority before we do this. Again, I think we need time frames so that people could plan well. I do not think that we have any time frames.

I looked at clause 25(1) which states:

“...concessions for...”

this and that and the telecommunication concessionaire must provide for these. I ask the question: Do I have to provide to the extent of providing a new facility? Or, if I have a facility, I must allow somebody to tap into it? Do I just have to accommodate them? Or, do I accommodate them up to a certain level? In other words, am I to cut my nose to spoil my face? I do not think we have any clear-cut ideas on that.



Mr. President, in clause 34(1) which deals with repair and restoration, states:

“Where a concessionaire damages any utility installation...”

You have to repair. What about if they damage anything for the telecommunication sector? I do not see any vice versa. I think that it should go both ways, because I think we are assuming that only the telecommunication service people could damage other people’s utilities and it could not happen the other way around.

Already, mention has been made of the Minister not being bound by the Authority’s decision and not having to accept it. Under the regulations, on page 45, I see that we have no time frame, the appeal procedure is not set out nor does it say whether the decisions made by the Authority will be legally binding. In other words, could the Minister, or whoever, just overturn them? As mentioned by Sen. Thomas, I think we should have the procedures, the plan and the processes outlined to everybody so that we all know what the rules and regulations are and that we do not feel that somebody could change them or differ, depending on who is asking for a concession. I think they should be made public and that the procedures should be consistent with what the Authority or the Minister would publish.

Mr. President, as I said before, I think that the intention of the Bill is very good. I think we have a lot of good in the Bill, but the processes are not as clear cut and not giving us the type of confidence to make us feel that the Authority is going to be an independent body. I suggest that the hon. Minister have a committee appointed, with a short time frame within which to report to the Senate. It does not have to be long. Some people are feeling that it would be so long. It does not have to be long, because a number of interest groups, and a number of people have already begun to think about it. I know a number of people already have their ideas on the Bill, and I think that the Government must not give the impression that it is railroading people into accepting this piece of legislation as it is.

**6.05 p.m.**

I think that it should give as much latitude as possible in the Senate where Senators can make their contributions. You have all the opinions. Many of us have had ideas given to us by other people, some of us might have expressed them. Some of us may not have expressed all of them and there are other people out there who would have ideas that they would probably like to submit to the Government. I am suggesting that we set up a committee with a short time frame

*Telecommunications Bill*  
[SEN. DR. MCKENZIE]

*Tuesday, March 13, 2001*

taking into consideration the comments coming from Members of this Senate and from other interest groups around. Looking at how others have managed in circumstances like these, the transition, the experiences of others, and let us make sure that this is a world class bit of legislation that we are passing, that when the world looks at it they would know that the Government of Trinidad and Tobago has used the intelligent resources at its disposal to come up with a Bill that is suited to the era, that is suited to the people, that is suited to the industry and that we are not rushing something through because we want to be in vogue with everybody else. We want to ensure that we have a sound bit of legislation.

I read in the newspapers somebody commenting on certain aspects of the Bill that contradict what we have signed in the World Trade Organization. We need to look at that. We may need to defend it but I think that we need to give it a short time frame. Let us not go the way of Bills that we have passed very hurriedly and then they cannot stand the scrutiny of people who are looking at us. Finally, I commend those persons who have tried to put it together because, at least, we have a starting point from which we can target our comments. We can express ideas, we can point out what we see as flaws. I commend the technical people and the Government for bringing it. It may be flawed but there is some good in it, and all of us know that the intention is good. We are not against the Government, we are not against the Telecommunications Bill, we are not against opening up. What we are against is our names as Senators in this session going down, passing a Bill that is flawed. Let us make it better, and this is what we want to do. [*Desk thumping*] We want to ensure that we make this Bill at this time the best possible Telecommunications Bill that could come out of this Senate.

Thank you, Mr. President, and congratulations. I hope that my suggestion of a small committee within a short time frame would not do us any harm, and that we could have a Bill that is really, really world class. Thank you very much.

**ADJOURNMENT**

**The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette):** Mr. President, I beg to move that this Senate do now adjourn to Tuesday, March 20, 2001 at 1.30 p.m. We will continue with the Telecommunications Bill, but I have also informed the Opposition and Independent Benches to prepare also for debate on an Act relating to the Planning and Development of Land and also the Radio Entertainment Bill.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.10 p.m.*