

**SENATE***Tuesday, April 10, 2001*

The Senate met at 10.30 a.m.

**PRAYERS**[MR. VICE-PRESIDENT *in the Chair*]**ARRANGEMENT OF BUSINESS**

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

*Agreed to.***TELECOMMUNICATIONS BILL**

[Fifth 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 of Communications and Information Technology (Hon. Ralph Maraj):** Mr. Vice-President, we have much work to do today. We have, depending on how we look at the Bill, a historic opportunity to do good for Trinidad and Tobago. I want first of all to thank all Senators for having contributed to this debate. I have listened well to the views that have been expressed. I have also circulated a list of proposed amendments that will give an idea of the extent to which this debate would influence the Bill and as expected, we have not been able to accommodate all the suggestions. I hope in the course of my contribution to give reasons why we intend to retain our original position.

Almost every speaker on the Opposition side and the Independent Bench focused on what they saw as the great power of the Minister over the independence of the Authority. I have found in my consideration of the Bill that there is some justification for this view. I am, therefore, proposing amendments to clauses 19, 21, 28, 29, 30, 31, 36, 39 and 78, to take into account the views expressed on this matter. I will elaborate on these amendments later on in my contribution.

One of the other issues had to do with the size and composition of the board. Many people felt it could have been larger, to take into account the special

interests, consumer groups, cultural groups and so forth. We did take into consideration the views expressed, and a look at the circulated amendments will show that we have decided, for example, to accept Sen. Dr. McKenzie's suggestion that a Member of the Tobago House of Assembly should be appointed, on the recommendation of the Chief Secretary. We also took into account Sen. Ayoung-Chee's concerns about having not only a person who is an expert in the field but also somebody from the business; so we are also ensuring that we have both people experienced in telecommunications, also someone in the telecommunications sector.

With respect to the size of the board, international experience suggests that regulatory bodies work best with three to five members and in this board we have already gone above the normal limit by having seven. We feel that a very large decision-making body would lead to delays and reduce individual accountability. That is not to say that we have not given this matter very serious consideration. We feel as well that compromised decision in a large body with shifting alliances will make regulatory decision-making more difficult to predict, thereby increasing uncertainty for investors. We feel also that as far as authorities of this kind are concerned, it is common to require as a qualification significant experience or training in economics, finance, law, administration or industry. We did take into account the views expressed that this Bill being so important, this sector being so pivotal, there should be an opportunity for sectoral interests to air their views. We did make an amendment to clause 18, where we said that, "in the performance of its function under subsection (1)(c), (d), (e), (m) and (p); also in the performance of clauses 78 and 79 and any other provision of the Bill the Authority deems appropriate, the Authority shall adopt procedures by which it would afford interested parties and the public opportunities for consultation". So we are making room for consultation with the wider community and we are not saying "may", we are saying "shall". Sen. Prof. Deosaran was the one who brought up that suggestion. It was a very valuable suggestion. We feel, as I said, if we increased this board to about 13 or 14 it becomes unwieldy; the decision-making process becomes unwieldy and we feel that we can take into account what is required by making this opportunity for the public to air their views. The board "shall" adopt procedures by which it would afford the interested parties in the public, opportunities for consultation, and it shall permit affected persons and the public to make appropriate submissions to the Authority. That is how we are dealing with that suggestion.

There was also the declaration of pecuniary interests. In the original Bill, it could be found that only the members of the board were required to declare their

pecuniary interests but we have made an amendment again, as has been suggested by Sens. Montano and Thomas, and we are requiring the Minister to also declare his pecuniary interest, if it so exists. So we have made an amendment to clause 15(1) where we are saying that the Minister and every member of the board shall, on appointment and annually thereafter, submit to the President declarations stating whether or not he has a pecuniary interest in any network or service regulated by the Authority and in any business or in any body corporate, carrying on any business with the Authority in the exercise of its functions. Also, that the Minister and a member of the board whose pecuniary interest is likely to be affected in any way by decisions of the board in any matter specified in subclause (1) shall, as soon as possible after the relevant facts come to his knowledge, disclose the nature of that interest. We also added another subclause. Subclause (3): “In respect of any matter which, pursuant to the provisions of this Act, requires the board to seek the approval of the Minister, a disclosure by the Minister pursuant to subsection (2) shall preclude him from withholding that approval.”

**10.40 a.m.**

In other words, these amendments we have made are in response to that suggestion that the Minister should declare his pecuniary interest and that he would not in any way be in a position to influence the decisions of the Authority along lines that would benefit him or his family, and so on.

Another matter that we need to deal with has to do with cross-subsidization. This was talked about quite a lot, but we want to retain our position that subsidy schemes are notoriously non-transparent and it is difficult to tell who is being cross-subsidized. In other words, we are saying that clause 24(1)(c) will remain, because as we are saying, it is very non-transparent. Sometimes you do not know who is being cross-subsidized, whether it is the customers, the employees, the investors or the equipment manufacturers.

We feel as well—and it is commonly accepted all over the world—that cross-subsidization distorts competition; it creates unfair advantages for a dominant partner. Let me also say that the Bill prohibits the bad kind of subsidies between one monopoly service and a competitive service, and we are allowing the regulator in clause 29(2)(b) where we are saying the Authority:

“may...establish price regulation regimes, which may include setting, reviewing and approving prices, in any case where—

- (b) a sole or dominant concessionaire operating a public telecommunications network or providing a public telecommunications service cross-subsidises another telecommunications service provided by such concessionaire;”

So we are recognizing that that can exist and we are saying where it exists, the Authority will establish a price regulation regime. In this situation it does not completely prohibit the use of international profits to subsidize local service, but the accounting methods to be instituted by the regulator are intended to make such subsidy transparent.

Mr. Vice-President, there was a lot of concern and many Senators dealt with the question of universal service. The view was expressed that it should not only be concessionaires of public telecommunications services that are required to make contributions to universal service. Providers of value-added services, such as the Internet and close-user group, for example, are seldom required to make such contributions, and it was suggested that maybe they could be brought into the net as well of the group of people and companies that could make contributions to universal service; universal service, of course, being a most laudable objective to which we all aspire. We feel that until the precise mechanism is worked out in an open and transparent process, we want to retain the wording of clause 28. We accept that it is a laudable objective; it is possible in the future to widen the net, but we feel that we must work out the precise mechanism.

Sen. Dumas, also on this matter, raised a very good and legitimate question about the funding mechanism for universal service. He was wondering whether it should be a government subsidy or it should be funded by individuals and/or service providers. Again, given the uncertainty in this area, because it is a fledgling sector, essentially, the regulatory process is now being put in place, Providers will come in; we have to look at how the market develops and so on. I am saying, because of all of this, the funding mechanism must be thought out very carefully. It is also a very important public policy question and I am glad it has been identified. I want to thank Sen. Dumas for bringing it up. We feel that it may be necessary for the Authority to be engaged in some studies before we make a final determination in this area.

The point, too, we must remember, is that this whole concept of universal service is a moving target and depending on the situation, depending on the country, depending on the level of its development, and so on, it can be defined

according to all of these variables, because it can mean different things to different people. I do not think the Bill can be more specific than it is.

The Bill places the responsibility for determining the universal service obligations in the hands of the Authority and I want to ask the honourable Senate to trust the expertise of the Authority to explore all the pertinent issues and to determine what is best. I am sure we all agree that at least the minimum definition of “universal service” has to be a public telephone service available to all the people of Trinidad and Tobago. That is an objective to which we all aspire, especially when we consider the fact that in terms of teledensity, we have a penetration rate of about 20 per cent, which is lower, incidentally, than other Caribbean countries.

The pricing regime was also discussed. If I remember clearly, Sen. King focused significantly on that. The Bill, for obvious reasons, makes a general statement on pricing of services and that the Authority would establish the pricing regime only under certain conditions. In other words, we are saying that as far as pricing is concerned, let market forces operate; let market forces dictate what the prices are going to be, but only under certain conditions, for example, where there is a breakdown of market forces or unfair competition or where there is a sole or dominant provider, which could be the case for a number of years after the Bill is passed, because analysts suggest, for example, that the present incumbent in the telephone industry could continue for a while to be the dominant provider.

We are saying that this approach we are taking is in keeping with international norms and practices, as well as for flexibility reasons, since amendments to Acts of Parliament are done very infrequently. So, again, we do not feel the need to be more precise. That is a general approach that we are taking with the Bill. It is an emerging sector; it is a dynamic situation. If we have been accused of being general, it is to satisfy the need to be flexible. I remember, for example, when I was at the university just the other day discussing this matter, one person was suggesting that maybe the Bill needed to be technology specific. I responded by saying that the technology is changing very rapidly in the sector and if we were to be technology specific, of course, we run the risk of certain sections of the Bill becoming obsolete even before the Authority is established.

There were concerns raised on the issue of the price cap and its usefulness and its application. In the Bill, as well, you would recognize that we have deliberately avoided the use of any one methodology for tariff pricing. We are saying leave that to the experts. There are a number of alternative methods, and so on, but we

should also recognize that the most popular and forward alternative proposal so far has been the price-cap regulation.

The very important matter of the spectrum allocation came up. I did say in a speech yesterday at the Chamber that as far as I am concerned, the frequency spectrum is a natural resource of Trinidad and Tobago. Though invisible, in my view it could turn out to be as important as the energy resources of the country, and I termed it part of the national patrimony, to use an ideological term for some people. So we feel that the frequency spectrum must be handled very wisely if we are to ensure that the ordinary citizens of Trinidad and Tobago benefit from the development of what is going to be a very, very lucrative sector.

With regard to the question of the auction, we are saying spectrum auctions are now quite common and they are generally thought to be a good thing, because of the transparency inherent in the process, as well as for the income that it generates. Jamaica is a leading example within the region. The Bill specifically allows for spectrum auctions at clause 41(5)(a) where the Authority considers it appropriate. Again, on this matter, we are not saying that auctioning is going to be the only way in which we are going to be managing the spectrum. Analysis has been done and there are advantages and disadvantages associated with every method of spectrum allocation. Again, we are giving the Authority the freedom and the power to exercise its expertise in this area and to be flexible and to come up with various ways for the management of the spectrum. It may be that you may want to have the use of it as an inducement for encouraging investment; it may be that you would want to auction it. Whatever you do, the fact of the matter is, we must use the spectrum, which is a natural resource, for the development of the sector and for the benefit of the people.

**10.50 a.m.**

Mr. President, with respect to the utilization of funds derived from the allocation of the spectrum, the Bill provides in clause 53(1) for the funds to be deposited into the general account of the Authority along with the budgetary allocation and other sources of revenue. Sen. King, of course, made a very valuable suggestion that maybe the spectrum allocation should be achieved under the universal service and be placed in the Consolidated Fund to achieve this objective.

I find that to be an attractive idea, but we all know that in the budgetary allocations ministries sometimes are not given what they want and the Minister of Finance would, from time to time, have to cut his cloth to suit and make

allocations based on priorities at the time. It could be that the funds that are generated from the spectrum allocation, having gone into the Consolidated Fund could go elsewhere. As attractive as I find the suggestion to be, I, therefore, suggest that we retain that the funds for the spectrum should go to the Authority.

I think Sen. Ayoung-Chee was wondering where the funds would come from with respect to funding the Authority. The Authority is really going to need a lot of money for proper staffing and equipment, for the necessary resources and so on. So, I suggest that we retain it, but we are proposing a compromise position that the Authority be empowered to transfer such funds derived from spectrum allocation to the Universal Service Fund account as it deems appropriate. So that the Authority, in managing the sector, being legally obligated to the achievement of universal service would then be empowered to transfer funds from spectrum allocation to the universal service account. Provision has already been made at clause 53(2)(c) for the Authority to apply some of its revenues to research and development projects, training, certification and other related matters.

Mr. Vice-President, another matter that came up had to do with the tendering procedures, which I think was raised by Sen. Glenda Morean who was concerned about the potential lack of transparency in the tendering procedures that the Authority may develop. Again, we have come up with amendments to clause 54 and I am sure Senators are seeing our willingness to cooperate and make amendments. I just say that as an aside in the midst of all that I am saying.  
[Laughter]

We are making an amendment to clause 54 where we are saying:

“(3) The Authority shall, in the performance of its functions, be subject to the provisions of the Central Tenders Board Ordinance until such time as the Authority develops its own tendering rules, approved by the Minister and subject to negative resolution of Parliament.”

And that the:

“(4) Rules made pursuant to subsection (3) shall govern the award of tenders and related matters.”

And that:

“(5) Every tender shall be opened in public and shall indicate the parties to and the content of each tender.”

We are taking on board the concerns of Sen. Morean and making provision for improved clarity and transparency.

The special majority concern was brought up by Sen. Prof. Deosaran where he was wondering whether clauses 50 and 51 were insufficient to do away with the requirement of a special majority in the Bill. I am reliably informed by the legal experts that the right to enjoyment of property which is enshrined in section 4 of the Constitution is not an absolute right. In fact, section 4 states:

“It is hereby...declared that in Trinidad and Tobago there have existed and shall continue to exist...the following fundamental human rights and freedoms, namely—

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;”

**Sen. Prof. Kenny:** Mr. Vice-President, I think that the subject of the right to enjoyment of property has, in fact, been interpreted by the High Court. I cannot remember the actual number of the particular case, but Justice Deyalsingh made it quite clear that the right must not be limited to just simply acquisition, disposal and holding of property. It must not be limited. My view is that this legislation does, in fact, require a special majority.

**Hon. R. Maraj:** Thank you, Sen. Prof. Kenny. I am proposing another amendment here as well to take in some of the concerns and I hope that the amendment that we are proposing will deal with this need for the special majority. If it does not, of course, when we get to the committee stage we can even discuss it further.

Mr. Vice-President, what I am saying is that it is not an absolute right, as I quoted. I am further advised that the application for a warrant will fulfil the requirements of due process thus negating the need for a special majority of the Senate to pass the Bill. I repeat this for Sen. Prof. Kenny, that the application for a warrant will fulfil the requirements of due process thus negating the need for a special majority of the Senate to pass the Bill.

The draft Bill in its present form requires, in clause 51, a warrant for entry and search situations as set out in clause 50(1)(c), (d) and (e) only. However, upon further consideration it was felt that all the situations contemplated in clause 50 are potentially intrusive and should require a warrant. Therefore, this has been reflected in the list of amendments which reads:



“51(1) Notwithstanding section 50 an Inspector shall not exercise the powers vested in him under that section except upon warrant of a magistrate issued to him for the purpose and, in the execution of the warrant, the Inspector shall be accompanied by a police officer.”

I hope that takes into account the concerns expressed, but, as I said, we even have the opportunity at the committee stage to look at it further.

Another matter, Mr. Vice-President, had to do with technical standards raised by Sen. Ayoung-Chee, who was here filling in for an absent Senator. He found a difficulty in reconciling clause 45(1) and (2) which really has to do with concessionaires, licensees and—

**Sen. Prof. Deosaran:** Thank you for giving way. I would be very brief, I promise. This, to me, is one of the very critical aspects of the Bill. I was wondering whether the Minister would reconsider the position which is, even though due process is allowed in the Bill, and rightly so, the antecedent condition to open that gate to due process still rests on the requirement of a three-fifths majority. In other words, due process, as is proposed in the Bill itself may be a means, but the real fundamental initial point in giving that access of due process must rest, in my respectful view, on this three-fifths majority as it has been obtained in the Customs Act where the right to enter and seize is given through due process. But the trigger condition for allowing such due process, which is a detail, must rest on this fundamental requirement of a three-fifths majority in the Senate. [*Desk thumping*]

**11.00 a.m.**

**Hon. R. Maraj:** Thank you for that enlightenment. As I said, we have made an amendment. We are taking his concerns into account. We have the opportunity at the committee stage to move forward.

Sen. Ayoung-Chee spoke about the standards to be adopted by concessionaires and licensees. The Authority would have the power to intervene and establish the standards, so that no concessionaire or provider can be haphazard, clumsy and irresponsible with different standards to cause confusion in the market. The standards selected may be particularized to the local environment which is highly unlikely in Trinidad and Tobago given its size, or the Authority may select international standards. That is probably the more likely option.

In any case, the underlying thing is that the issue of compatibility among different providers must be operative. Interconnectivity is a fundamental principle of the Bill. There must be a seamless cooperation as it were, among providers to ensure that the sector develops.

We have also made amendments to clause 82 to deal with dispute resolution mechanisms. That matter was brought up. It was found that there was the need for dispute resolution process. In clause 82(1), (2), (3) and (4) we have outlined that dispute resolution process and the role of the Authority, to ensure negotiated settlement among disputants and smooth out any difficulties that arise in the development of the sector.

I have already spoken about greater transparency and clarity which would come about as a result of the amendments to clause 54. I think that the telephone—tapping issue was also raised by Sen. Prof. Deosaran. We would propose an amendment to clause 65(e) to make telephone tapping an offence, except with the expressed permission of the Minister of National Security. That permission would be subject to the requirements of due process of law. We would leave out what was originally in the Bill—that is, “without the authorization of provider or user” and the clause runs as is.

**Sen. Daly:** Is the Minister prepared to say whether this permission for the Minister of National Security to tap telephones reflects current practice in the Government? Is this going on now? Is the Minister of National Security authorizing people to tap phones now? If not, then, why do we need this?

**Hon. R. Maraj:** I am not aware of what the Minister of National Security is doing with respect to that matter. It is a legitimate question and concern. I am aware of the amendments which have been circulated. I have studied them and when we get to the committee stage, we can hammer that one out. I am not prepared to pronounce on the matter at this point in time. I prefer for us to discuss it further and have the benefit of the views of some of my other colleagues, and the excellent team that has been advising me on this matter.

On the question of national security, another concern of Sen. Thomas—who is not with us today—was whether clause 73 could lead to an abuse of power. I beg to disagree with that because we are dealing with the important question of national security. The executive director of the Authority must report to the Minister on these matters, and the Minister would be called upon to account to Parliament and the people. We must treat this question of national security with the seriousness it deserves. We always run a thin line between concerns of

national security and abuse of power. I suppose that that is one of the risks of democracy. It is something with which we have to grapple.

With respect to the concern of the abuse of power, the possibility is inherent in such provision. It should not be forgotten that the process is not initiated by the Minister, but comes from the Authority in the person of the executive director. If the executive director feels that in his assessment a national security concern has arisen, he would activate the process. He must be empowered to report to the Minister of National Security, any concerns of the Authority regarding threats to security of the State in terms of telecommunications. I am sure that we will agree that when this sector is opened, the information flow, rapidity, ease of information and communication could from time to time bring into question concerns of national security. I do not want to go further into that. It is something that we must be concerned about.

Now, I come to the important question of a broadcasting code. My good friend, Sen. Martin Daly, spoke passionately and at length about that. Let me say from the start, that I do share his views and concerns. I hope that what I say today would serve to ameliorate some of those concerns. The question of a broadcasting code is an important issue and we must deal with it in a mature manner. I do not agree with Sen. Daly that the title of the Bill should be changed to Telecommunications and Broadcasting Bill. In this sector there has been convergence among all the sectors such as telecommunications, technology and broadcasting. I think the idea of broadcasting is already part of it. Telecommunications is the term used to describe the whole gamut of activity.

Broadcasting is mentioned in clause 18(2) as one of the telecommunications services that the Authority will classify and regulate as part of its functions. In other words, if we are going to promulgate or develop a broadcast code, there is an obligation to consultation. There must be wide consultation among all the sectors that are involved. As the Authority, they would be obligated to do so. Clause 18 requires and demands consultation.

We should also remember that for a broadcasting code to come into effect, it can only happen through an affirmative resolution of Parliament. That means that a government wishing to have a broadcast code come into effect must bring it to the Lower and Upper House. It must be debated thoroughly. Parliamentarians will have the opportunity to discuss the matter vigorously, analyze it and put it under the microscope.

**11.10 a.m.**

If it is found that the proposed broadcast code in any way violates sections 4 and 5 of the Constitution, a special majority would be required. These are the ameliorating factors that are in the Bill but, having said that, let me say again that I understand the concerns about the promulgation of the broadcast code. It could be a very dangerous weapon against freedom of the press, for example, if it is so crafted and if it is so intended, and I have very strong views on that.

My friend Sen. Daly would remember that in the late 1980s I was in the forefront of those who annihilated what we called then an insidious attempt to bring developmental journalism into Trinidad and Tobago. We knocked it out because we felt it would have hampered freedom of the press, it would have been an obstacle to freedom of the press and freedom of expression, and I maintain the position I took then. So, I can understand the concerns that have been expressed. In fact, I brought a speech I gave then at that time, and I was hoping to read an excerpt from it but I do not want to be accused of being self-indulgent here. The fact of the matter is that I want to express the view that I share the concerns that there are ameliorating mechanisms in place to deal with it, and the question is, while we preserve our freedoms, how do we protect our society from decadence?

We have to take that into consideration. I am sure Sen. Rev. Teelucksingh understands that as well, and we are already being inundated with images and messages of decadence. We have already opened up the sector. We have to debate, should we be our own censors? Is that going to suffice? Do children have the powers of discrimination? Should we allow them to have the powers of discrimination? Are they capable of having that power of discrimination at that early age? Should the home, for example, be the ultimate bastion of organization unit of censorship or should we, as legislators, put things like broadcast codes in place to deal with these influences that would come when the information superhighway is fully with us. I think that is part of the debate. This is so dear to me. Freedom to me is much more important than power, and that is the principle by which I have lived and still live, and will always live, and I do not want to have any broadcast code or any developmental journalism which, in any way, stifles freedom and can be used against the expression of the people while, at the same time—let me say that there are ameliorating mechanisms in place and the issues must be debated further and I have no doubt we will continue at the committee stage.

The cable monopoly was also brought up, and there were concerns about whether the Bill regulates the pricing of services. Questions were raised about the

present cable monopoly and whether the Bill will regulate this service. Let me say that the Bill does regulate cable TV since the service provider would have to apply to the Authority for it, and we hope that as that system develops between providers and the Authority, the whole question of predatory pricing will no longer arise and this will forestall any future undesirable mergers or monopolies and so forth. The Bill, as I said in response to cable monopoly, does deal with that.

Sen. Dr. McKenzie also raised the question about the licence that was granted to the Tobago House of Assembly under the previous administration. I think recent developments would have answered that. I did meet with the Chief Secretary, Orville London, in Tobago this week and we discussed this matter. I had given him all the information on it and as soon as he assumed office he had a chance to look at it. In our discussion we both decided that it is, in fact, illegal and we are now putting it through the process of government. The telecommunications director will now be looking at it, as well as the advisory council, which is now advising the Minister as provided by the Cabinet. The impact on TSTT's revenue was raised by Sen. Montano and let me say—

**Sen. Daly:** Is this an appropriate time for the Minister to tell us about the other licences that have been granted since this Bill has been pending?

**Hon. R. Maraj:** I am not in a position to talk about the other licences that have been granted at this time because I need to get other information to be honest, to be accurate and to be very clear in what I am saying. But let me say, we are in a transition phase from what exists at present to the establishment of an authority, a management and regulatory system of the sector. We have a telecommunications director. When I assumed office, I found that was not sufficient for me as the Minister to operate with. I felt that I needed a wider body of opinion and the telecommunications director has been doing very good work—his department has been doing very good work—but we need to augment that work with the provision of an advisory council which I have now put in place with the cooperation of the Cabinet. We are managing it, as it were, establishing a halfway house towards the eventual establishment of the Authority.

**Sen. Daly:** We must pursue this because it affects goodwill in committee. Is the Minister making an admission that the telecommunications director granted licences during the period when this Bill was pending?

**Hon. R. Maraj:** I will not state categorically that is the case. Whatever action may have been taken, it is something that I am looking at. I am reviewing the entire situation. Now that I have this advisory council, I have asked them to look at

all of it and I am getting legal advice in cases where things have been done, which I am not satisfied with. All of these things are being done and I give the Senate the assurance, my position is this—and it has to do with the frequency spectrum, which is why I talked about a frequency spectrum in that way. It is a natural resource, which belongs to the people of Trinidad and Tobago. It must not be used for the benefit of an elite business class in Trinidad and Tobago. It must be used for the benefit of the people of Trinidad and Tobago. I am ideological in some senses—that is why I call it part of the natural patrimony of Trinidad and Tobago, and I am committed to ensuring that the frequency spectrum and all other opportunities that arise with the liberation of the sector are of benefit to the people and that no single individual or group has any unfair advantage. I am doing a number of things in the ministry which I will make public at the appropriate time.

With respect to TSTT's (the Telecommunications Services of Trinidad and Tobago) revenue, let me say, it is hardly likely, as I said earlier on, that there will be any real competition with TSTT within the first two or three years. It is an entrenched player it is already a dominant provider. That is in response to Sen. Daly's question about TSTT's revenue. We are also saying that it is reasonably anticipated that competition for the incumbent will come from the development of the wireless networks. It is to be noted that mobile services are complementary to fixed services at the termination of mobile traffic on the fixed network, which generally increases the total volume of calling on the fixed network, thereby increasing the revenue for the fixed network operator which is TSTT.

**Mr. Vice-President:** Hon. Senators, the speaking time of the hon. Minister has expired.

*Motion made,* That the speaking time of the hon. Minister be extended by 15 minutes. [*Hon. L. Gillette*].

*Question put and agreed to.*

**11.20 a.m.**

**Hon. R. Maraj:** Mr. Vice-President, I really did not anticipate speaking for this length of time. However, I do not have much to go again.

I think I have answered the question about the impact on TSTT's revenue. Question marks were raised about the transitional arrangements as well. Let me say that clause 85 makes provisions for all holders of licences and concessions under the old legislation to apply within one year, but not more than two years after the commencement of the Act, for new licences and concessions under the new legislation. However, they would retain all the rights and benefits under the

old legislation, including the date of expiry under the previous licence. That is simply to regularize their position. We want to avoid the situation where we have a new Act, but still have several companies operating under licences and concessions from the old legislation.

The Bill—again this is dealing with the transitional arrangements—will be passed in two stages, which are explained in clause 1(2). The first stage would take effect on the date of the assent of this Bill. This would enable the Telecommunications Authority to be established to put into place all its administrative machinery, for example, the location of its offices and the selection and training of its staff.

At stage 2, the remaining parts of the Bill will take effect on dates to be fixed by the President, on proclamation, and the Authority will then be able to invite and process applications for licences and concessions and the conduct of its other functions. During this transition period, applications for licences and concessions will continue to be processed by the Ministry of Communications and Information Technology under the existing legislation, as provided for in the Bill. In other words, we are making every effort to ensure that there is an orderly, transparent and professional transition period.

Mr. Vice-President, I now turn to the momentous matter of the power of the Minister and the independence of the Authority. I indicated to you from the very start that we have amended seven or eight clauses to take into account the views that have been expressed. For example, in the original clause 19, it is stated:

“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.”

I think that caused concern. All Senators found the Authority acting under any special or general direction offensive. I have now changed that to read:

“19. Subject to the provisions of this Act and any other written law, the Minister may give written directions to the Authority on matters of general public policy...”

In other words, there can be no taking up of the telephone and calling and no arbitrariness.

Mr. Vice-President, the way this debate has gone so far, I wonder if we cannot appropriately call clause 21, the “Monster Clause”. I am deleting completely subclauses (3), (4) and (5) of the original clause 21 and substituting the following:

“(3) On its receipt of an application, the Authority shall cause to be published in the *Gazette*...”

So there is transparency there. We are also saying:

“(4) A notice published pursuant to subsection (2) shall state the time, which shall be no less than twenty-eight days from the date of the publication of the notice...”

We are committing the Authority to public scrutiny. We are committing the Authority to transparency and publication of those aspects of its operations, which the public will need to know and we are setting time frames.

“(5) The Authority shall forward its recommendations to the Minister within ninety days of receiving all relevant information pertinent to the application and the Minister shall indicate his approval, modification or rejection of the recommendation within sixty days of receipt of the Authority’s recommendation.”

In other words, neither Authority nor Minister can arbitrarily delay their views. This is important.

“(6) Where the Minister approves the recommendation of the Authority or modifies or rejects it, he shall give his reasons in writing for so doing and the Authority shall arrange for the publication of both the recommendation and the Minister’s position in respect thereof.

(7) On the granting of a concession by the Minister, the Authority shall cause to be published in the *Gazette* and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect.

(8) A concession shall be available for public scrutiny at the office of the Authority and may be reproduced by the Authority at the request of any member of the public on payment of the prescribed fee.”

In other words, a member of the public can go there and ask to see the concession.

“(9) If on the expiration of the period referred to in subsection (5), the Minister has not indicated to the Authority, in writing, his approval,



modification or rejection of the recommendation, it shall be deemed to have been approved.”

You all know the effect of that. Nobody can delay for strategic reasons and so forth.

Mr. Vice-President, that clause really gives an idea of the kind of amendments that we on this side are willing to make to take into account the views expressed.

Clause 28 also sets time limits for the Minister and a legal obligation to air his views.

**Sen. Montano:** I thank the Minister very much for giving way. With respect to his amendment to clause 21, I think we are certainly moving in the right direction, but to be frank, he has not really made a case as to why it is necessary for the Minister to have the power to reject or modify a licence at all.

**Hon. R. Maraj:** Look at clauses 31, 39 and 78. They are saying that the Minister will approve on the recommendation of the Authority. We are establishing this relationship between the Minister and the Authority. It is my view that this is a lucrative sector. It is an emerging sector, which will need a maturing process. Therefore, it needs the political management, the policy prescriptions of the political directorate, as well as the independence, transparency and accountability of the Authority. In other words, the relationship that I envisage between the Authority and the Minister is a dynamic, healthy relationship. It may even be tense at times. So what? However, let it be a healthy relationship, where they almost keep an eye on each other.

Let me make the point that we have made much talk about the independence of the Authority, but it has been proven all over the world that there is no guarantee about the independence of any Authority. There must be some watchdog on them as well, because people are vulnerable to all kinds of blandishments. Should we have a situation where the Authority is a loose cannon, a law unto itself, acts in a way so that we develop a virtual state within a state? Can we allow that? That is the thinking behind these amendments.

**11.30 a.m.**

Let me say, finally, Mr. Vice-President, that there is nothing better to epitomize our willingness to cooperate than the complete elimination of clause 21(3), which many people found—I suppose with some justification—offensive. It says in the original Bill that:

“The Minister shall not be bound to accept the advice or any part thereof rendered by the Authority...”

Now, that clause is with us no more.

Mr. Vice-President, this is my response to all the concerns that have been expressed. Again, let me say thanks to all hon. Senators on both sides of the Senate for their contribution to this debate. Mr. Vice-President, this is our debate; this is our Bill; this is our sector and, really, we must be very interested in it. In my view, in any democracy there is always a bit of tension between the government and the governed. Mr. Vice-President, that is inevitable and that is one of the dynamics of democracy. I would say, however, the enlightened approach is to use this creative tension for the benefit of the people, for the development of ideas and for the development of the society. That is our approach and I think in this Bill—the way we have gone about it—we would have seen that taking place.

I think we have already done well with the Bill. We have gone a long way in coming together and I have no doubt that we will, in fact, reach that point. The work is still in progress and I want to invite the hon. Members of this Senate to come let us put our heads together at the committee stage and work on behalf of the people of Trinidad and Tobago.

Mr. Vice-President, I thank you. I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Mr. Chairman:** Hon. Senators, there are, in fact, some recent amendments that were circulated. First of all, let me advise that Sen. Morean replaced her initial list of amendments and we have so circulated the replaced version. The initial list of amendments that you would have had is to be discarded and we would deal with the last one that was circulated. The two amendments were circulated this morning but we are focusing on the last one. Are Senators clear on that?

We also had some new amendments coming from Sen. Danny Montano this morning, as well as from Sen. Christine Kangaloo. Hon. Senators, based on my assessment we have close to 200 amendments coming from about eight different Senators, including those on the Government side. I would like us, therefore, to recognize that we are going to have a long session and I seek your cooperation as we proceed with the committee stage.

*Clause 1.*

*Question proposed,* That clause 1 stand part of the Bill.

**Mr. Chairman:** Hon. Senators, we have a proposed amendment by Sen. Daly, which reads as follows:

Add after the words “the Telecommunications” and before the word “Act” the words “and Broadcasting”.

**Sen. Daly:** Mr. Chairman, with respect to the proposed amendment, I heard what the Minister said in the debate, that telecommunications is meant to encompass broadcasting but I would respond to that by pointing out that broadcasting and telecommunications are differently defined and require different considerations. Maybe if I could have some latitude and indication as to what is going to be Government’s attitude to my proposed amendment to clause 3(g), we could make some faster progress. I do not see how we could have broadcasting dealt with by exactly the same policy test as telephones, by whatever name it is called. We have a history of them seizing people’s tapes—going into radio stations and taking people’s tapes and that is what I am concerned about.

**Mr. Maraj:** Mr. Chairman, in consonance with what I said about my respect for freedom—and I am looking at the amendment in question—I have no problem with changing.

**Sen. Daly:** Well, I will withdraw my proposed amendment. I thank the Minister and as I said, I withdraw my amendment to clause 1(1).

**Mr. Chairman:** Hon. Senators, for the record, the amendment to clause 1(1), by Sen. Daly, has been withdrawn.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 1 ordered to stand part of the Bill.*

**11.40 a.m.**

*Clause 2.*

*Question proposed,* That clause 2 stand part of the Bill.

**Mr. Chairman:** May I also inform Senators that Sen. Christopher Thomas has asked Sen. Prof. Ramesh Deosaran to speak on his behalf and deal with his amendments; so I would like to inform Senators that he has asked and it has been consented to. So we will now call on Sen. Prof. Deosaran.

**Sen. Prof. Deosaran:** Mr. Chairman, I beg to move that clause 2(1) be amended as follows:

In the definition of the word “facility” substitute the word “thing” with the word “object”.

Sen. Thomas’ preference is for the word “object” as against “thing”. Given the whole clause as it is, I believe the word “object” carries not only a more accurate meaning but a more sophisticated meaning in the context of “facility”; and I think that is about it. It is a matter of language and I think the hon. Minister, who is well versed in the use of proper language and its meaning, would perhaps acquiesce to that minor recommendation.

**Mr. Maraj:** Bearing in mind the last thing you said, I will accept it.

*Question, on amendment, put and agreed to.*

**Sen. Dumas:** Mr. Chairman, in the Bill there is a whole discussion about the concept of access. Nowhere in these definitions do I find a definition for access. I am wondering if we are not leaving it out at some risk.

**Mr. Maraj:** [*Inaudible*]

**Sen. Dumas:** Yes. You have access at different times coming up in the Bill. Mr. Chairman, I have a problem. I am sitting directly across from this young man and every time—his body language is offensive. I am speaking here as a Member of the Senate, as I have seen him do to other Members; when they make a statement there is a body language which suggests to me an insult.

**Mr. Chairman:** Who?

**Sen. Dumas:** That young man there. [*Inaudible*] Yes; you, Sir. [*Interruption*] I am only being very—okay.

**Mr. Chairman:** Could we—at least, if that is the position that is being conveyed, could I ask, for instance, the members who are taking part in these proceedings assisting the hon. Minister—[*Interruption*]

**Sen. Dumas:** He could take his place in the—[*Interruption*]

**Mr. Chairman:** Could you hold, Sen. Dumas? Those members of the public service who are helping the hon. Minister, could you kindly conduct yourselves in a proper and decent and dignified manner? Thank you very much. Let us proceed.

**Mr. Maraj:** You are saying “access”. Could you—[*Interruption*]

**Sen. Dumas:** I am saying that the word “access” comes up quite a number of times in the Bill and I am suggesting there is no definition for it in the discussion. If we feel it is not necessary and we use the ordinary meaning of the word, I have no problem, but I just wonder whether we should not have a specific definition for it in the context of this.

**Mr. Maraj:** Do you have a suggestion, a definition or an amendment?

**Sen. Dumas:** No, Sir.

**Mr. Maraj:** Yes, but access could mean different things at different times.

**Sen. Dumas:** And that is why I am a little—*[Interruption]*

**Mr. Maraj:** So it has to be read within the context.

**Sen. Dumas:** That is right.

**Mr. Maraj:** If you had had an amendment or a definition, it would have helped.

**Mr. Chairman:** Okay, in the meantime, let us proceed. Sen. Daly, you have an amendment?

**Sen. Daly:** Mr. Chairman, I beg to move that clause 2(2) be amended as follows:

Insert after the words “Terms and words” the words “relating to telecommunications used in the Act but...”

My amendment to clause 2(2), Sir, is self-explanatory. The Convention relates to something.

**Mr. Maraj:** Are the words really necessary, bearing in mind that under the definition “the Convention” refers to the International Telecommunications Union Conventions?

**Sen. Daly:** Well I would not like somebody to try to interpret some part of the Act that does not have to do with telecommunications as defined by reference to the Convention.

**Mr. Maraj:** Okay, we will accept that.

**Sen. Daly:** Thank you, Minister. You are most gracious.

**Sen. Dumas:** If you do not mind—*[Interruption]*

**Mr. Chairman:** We are on clause 2(2). Are you on that one?

**Sen. Dumas:** No, I was hoping—[*Interruption*]

**Mr. Chairman:** Well let us settle that one first.

*Question, on amendment, put and agreed to.*

**Mr. Chairman:** Let us proceed. I think Sen. Dumas had something else he wanted to ask.

**Sen. Dumas:** I wanted to ask for some time on this one, the access, particularly in reference to universal service access.

**Mr. Chairman:** Yes.

**Sen. Dumas:** I am sure that we will go beyond lunch on this and then that would give me the opportunity later to come back.

**Mr. Maraj:** No problem.

**Sen. Morean:** Mr. Chairman, I am sure we will all agree that this Bill is one of some importance, and the very fact that it has taken us quite some time to go through it and to propose these amendments, and even to go to committee stage, underlies that importance. So that if there are to be any amendments to any part of the Bill, in relation to clause 2(3), I believe that such amendments should be by affirmative and not negative resolution. In other words, we should debate it first and then vote on it before it comes into operation. This is why I am suggesting that it should be by affirmative and not negative resolution.

**Mr. Maraj:** But is that not taking it a bit too far? I mean, we are seeking here to deal with definitions and so on. If you are going to change a definition, you want to have a debate about it in both Houses and so on? I am just asking the question.

**Sen. Morean:** You see, it is based on what the change is. The change may be of some significance. You may be slipping something in there which you may not see the importance of at the time, but having discussion on it would mean that something would not slip in by the way. This is the reason for it.

**Mr. Maraj:** I would have been amenable to a suggestion, had it to do with something more fundamental in the Bill, like a change of a clause or something, but here we are talking about definitions and I am having a little difficulty in accepting the fact that we are going to be enacting legislation where, if you have to change a definition or something, you have to come and carry on a long debate on it.

**Sen. Morean:** Well if it is harmless then there will be no long debate.

**Mr. Maraj:** And that opportunity exists by way of negative resolution.

**Sen. Morean:** But it comes into effect first. That is the problem. There is a different treatment for negative resolution.

**Mr. Maraj:** I would like to hear other views.

**Sen. Daly:** Well, Mr. Chairman, if I may, while generally as a matter—I speak always subject to correction of the experts—one would not ask for a change in definitions to be subject to an affirmative resolution, one can pick out in these definitions certain things that—for example, “public telecommunications network” on page 3, “private telecommunications service” on page 3, to take two examples, there are some on page 4 as well, “public telephone service”—I would not like to know that concepts as fundamental as what constitutes a public telecommunications network or a private telecommunications service could be altered by negative resolution.

Suppose some Minister—not you, of course—wanted to manipulate the system. You could take something that was a public telecommunications network and make it private to suit some applicant, simply by a negative resolution. You know, you could shift a service between public and private just by a negative resolution. These definitions are fairly fundamental things. Some are quite harmless but there are others where—you could extend a closed user group to be something more than we agree to what it is now. So these definitions are a little more fundamental than what is normal.

**Mr. Maraj:** You have got to remember too that this sector in a way is linked to what is going on internationally. We can do nothing, really, that is not in consonance with the World Trade Organization (WTO) obligations with respect to this sector. If we are to make any fundamental change in the concept and definitions and so on, we have to bear in mind our international obligations. We have got to also remember that this is a sector that needs fairly quick decision-making and so on and we do not need to hamstring the operations of the Authority by too much bureaucracy and—well “bureaucracy” is the wrong word but too much oversensitivity and so on. I hear what people are saying but I just want to express that view.

**Sen. Daly:** Well, I would not like to know that the WTO could issue a *dictum* and we just do it without any debate. That makes me more concerned. I mean, I accept the supranational sovereignty of the WTO but, I mean, it must at least give us “a lil’ chance” to—*[Interruption]*

**Mr. Maraj:** I wish the Senator would not be so cynical about what I am saying.

**Sen. Daly:** What about you and the WTO?

**Mr. Maraj:** I am not saying that we are going to be supine to the WTO. I am asking us to be practical.

**Sen. Daly:** Well, “dey wipe out bananas”, you know, and “dey never tell us anything”. “Dey jus” woke up one morning and “leh go” bananas. So it is not a question of being supine, it is that even if we have to accept it reluctantly, we can at least debate it and express our fears. We are just asking for “a lil’ place” in the sun, you know, otherwise, I mean, let us amend—I would be more cynical but let us amend the Constitution and say a law is what the WTO says it is. We must have an opportunity to debate these things. So while normally I would accept that we would not insist on definitions being subject to affirmative resolution, this is a bit of a special case. I would not say anything more by expressing—[*Inaudible*]

**Sen. Morean:** I would just like to add, Mr. Chairman, that by his initial remarks the Minister has acknowledged the importance and the width of this Bill. So that, because of the technicality of the language and the concepts, it is conceivable that a fundamental change can be implemented by a mere change in definition in this section.

**Mr. Maraj:** All right, we will accept it.

**Sen. Daly:** It is a wonderful precedent, Mr. Chairman, accepting something from the Opposition.

*Question, on amendment, put and agreed to.*

**Mr. Chairman:** Sen. Dumas, would you like to come back now? Otherwise, we would have to defer clause 2, having regard to the commitment given by the hon. Minister.

**11.55 a.m.**

**Sen. Dumas:** Can I share my difficulty with you, Mr. Chairman?

**Mr. Chairman:** Yes.

**Sen. Dumas:** I am reading where the concessionaire is required to provide access to a user.

**Mr. Chairman:** Which clause is that?



**Sen. Dumas:** This is clause 24(1)(b) which states:

- “(1) In addition to the conditions stipulated...to conditions requiring the concessionaire to—
- (b) provide users, under conditions which are published or are otherwise filed with the Authority, with access to and the opportunity to use such network or service on a fair and reasonable basis...”

To me, if there is a difference between “access to” and “the opportunity to use such network or service”, then there is a distinction that we need to understand. I just do not understand the distinction.

**Mr. Maraj:** Mr. Chairman, let us go back to the method that we decided to use on this matter. The hon. Senator should bring us an amendment, properly worded, and we will consider it. That is all we are asking. Maybe we need to move on from this clause.

**Sen. Dumas:** That is what I asked.

**Mr. Chairman:** We will defer clause 2 until you have brought an appropriate amendment. Let us proceed.

*Clause 2 deferred.*

*Clause 3.*

*Question proposed,* That clause 3 stand part of the Bill.

**Mr. Chairman:** There is an amendment to clause 3 from Sen. Martin Daly.

**Sen. Daly:** Mr. Chairman, the Minister has been gracious enough to indicate that it is acceptable.

**Mr. Maraj:** That position still stands.

**Sen. Daly:** Oh, I did not think it would change. Mr. Chairman, I propose the following amendment to clause 3:

Add a new subclause (g) as follows:

- “(g) to regulate broadcasting services consistently with the existing Constitutional rights and freedoms contained in sections 4 and 5 of the Constitution of the Republic of Trinidad and Tobago.”

**Mr. Maraj:** It is accepted.

*Question put and agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clauses 4 and 5 ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed, That clause 6 stand part of the Bill.*

**Mr. Chairman:** There are a few amendments to clause 6, as you would have noted.

**Mr. Maraj:** Mr. Chairman, we have circulated amendments and Senators would have had a chance to look at them.

**Mr. Chairman:** We have amendments from Sen. Prof. Deosaran.

**Mr. Maraj:** There is an amendment to one of the amendments which I would like to indicate now.

**Sen. Morean:** Mr. Chairman, before we get to subclause (2), there are proposed amendments to subclause (1).

**Mr. Chairman:** There are amendments to subclause (1), but the Minister was just clarifying a particular aspect of his amendment. Could we go to Prof. Deosaran?

**Sen. Prof. Deosaran:** Mr. Chairman, I think this clause is one of those very important embracing matters to the technical and technological aspects of the Bill. In other words, I was impressed with the Minister's closing remarks when he said that this Bill belongs to all of us, it is the people's Bill and by implication, all sides of this Senate should join together and recognize that imperative.

He did indicate that there is a thin line between certain tensions on one side and the other side, between the Minister and the authority of the board. There is a tension here as well between the required efficiency from the board and the other imperative of governance on the other side, especially with a new initiative as this one, embracing the entire country, both in economic and in terms of its social rural development, as he has said.

I thought the Minister, with due respect, Mr. Chairman, would have been more anxious to accommodate, if not all, but some of the representations, the representativeness that is being proposed. For example, if one wants rural development, as the Minister enthusiastically advocated through this Bill, and the promotion of art and culture development and so forth, as well as the protection and the involvement of consumerism in its rightful place—not just as clients and

at the behest of international treaties and so forth, but in terms of more direct ownership of this Bill which is such a powerful economic and technological instrument—I think people would feel affected.

Related to that is a message this Government is giving all the time. It is a people-oriented Government. It wants to boost the confidence of non-Governmental Organizations (NGOs) so as to join with the Government in creating a civil society. That language has been used very profusely. Now is the occasion to put our money where our mouths have been, in this respect. I know it may not be convenient to have negotiations from art and culture representatives or from the National Trade Union Centre (NATUC). In fact, I am surprised that the the National Trade Union Centre (NATUC) representative did not see the value in this amendment, and I am sure he will be agreeable even though he is silent on the point, as well as the Chamber of Commerce.

What we will do here, Mr. Chairman, through you to the Minister, is to give this Bill a higher level of legitimacy and public acceptance by not diminishing the technical competence already within the board. In other words, it is value added. Without making a big song and dance about it, I think with these few cryptic words, the Minister should be convinced. I think if he does not accept all, accept at least the representative from art and culture. That is a sector that needs boosting not only in painting and singing, but it needs to feel part of the establishment as an economic being, and now that technology has come to promote such adventurism, I see no reason agencies like these should be left out.

With respect to the Chamber of Commerce, Mr. Chairman, I know there is a tension between efficiency and transparency. Transparency is not a convenient element. It comes with some tussling and giving up of space, but I thought we were at the stage of governance in this country, especially with this people-oriented Government, which would likely concede, if not all, but some of the recommendations made here.

**Mr. Maraj:** That is the problem. We genuinely looked at your suggestion and naturally, I had an inclination towards art and culture, as would be expected. Where do you stop? Whom do you include and whom do you exclude, because we do not want to take it to the point where we have 13 or 14 members of the Authority.

**Sen. Prof. Deosaran:** That is a red herring because we could do the same with the board of the Water and Sewerage Authority (WASA).

**Mr. Maraj:** What we are saying is that we have amended clause 18(1) to make it a legal obligation on the part of the Authority to hold consultations.

**Sen. Prof. Deosaran:** It is your Bill, but I think there will be reverberations from this decision today, I can tell you. It may not concern you, but it is a Government Bill. I think I have tried my best to reflect public opinion and expectation.

**Mr. Maraj:** The point is: Where do you stop? Whom do you include and whom do you exclude?

**Sen. Prof. Deosaran:** With due respect, I think we have enough and that is a red herring. I have made an amendment for the Tobago House of Assembly in the same spirit. I see you have accepted that, and to say “where do you stop” does not really answer the case for art and culture or for a NATUC representative. These are legitimate organizations with durability, administrative viability; the Chamber of Commerce has its own building; it has a predictability about it, and that is why I would recommend the Trinidad and Tobago Chamber of Commerce.

**Mr. Maraj:** Which Chamber of Commerce? Which art and culture group?

**Sen. Prof. Deosaran:** That is the point I am making. This Trinidad and Tobago Chamber of Commerce, whatever the ideology is, you see—

**Mr. Maraj:** We have the South Chamber, the Chaguanas Chamber.

**Sen. Prof. Deosaran:** No. You do not have the durability and the administrative institutionalization as this one has. The others meet in restaurants and—

**Mr. Maraj:** No, no. The South Chamber is legitimate! It does not meet in a restaurant!

**Sen. Prof. Deosaran:** I am talking about the viability of the organization.

**Mr. Maraj:** I am very seriously trying to understand and trying to accept. I am not being offhandish at all on this matter and in no aspect of this Bill have I been offhandish. The real difficulty is, which group would you choose to represent the sector when you are talking about consumer groups, for example?

**Sen. Prof. Deosaran:** In the same way we have “field in human resource management” we could also have other fields as well, but you did make a stop. It is a viable stop. You did not continue into all the disciplines that may be pertinent to this. You have economics, finance, business and you stopped. I am making a stop here, as well, to bring in the NGOs. I believe that this would be a tremendously welcome initiative. As I say, it is your Bill, but I do not feel I want to beat a dead horse.

**Mr. Maraj:** I feel satisfied that we have included a provision in clause 18(1) where the views of the public—

**Sen. Prof. Deosaran:** I think it is a lost opportunity, I must tell you with due respect to the Government. I really believe it looks at what I call in my own presentation—

**12.10 p.m.**

Mr. Chairman, could I make one more point to see if I can tilt the Minister's mind a bit? If you have a broadcasting code under the aegis of this Authority, I think the management of that broadcasting code would, naturally, need a wider range of expertise than what the Minister originally proposed. This is another instance where I think you would need a broader board composition, so to speak, because you are speaking about freedom, governance and censorship. I think that the representation we are asking for would certainly be more helpful in monitoring or implementing the broadcasting code, which would come later on.

**Mr. Maraj:** I am finding difficulty expanding the board to include the number of people that you have suggested; it would take us to about 10 or 12 people.

**Sen. Prof. Deosaran:** You could make it nine or less if you want.

**Sen. Daly:** With due respect, Mr. Chairman, we started discussing clause 6(2), we are now discussing 6(1). The position I would take in relation to 6(2) may be affected by 6(1), and, I suspect, others too. If we have a flunky chairman, you could put 25 people, it is still a flunky board. I think we should really look at clause 6(1) before we look at 6(2). It is just a respectful suggestion. There is a high degree of unanimity about clause 6(1).

**Mr. Chairman:** You are correct on that Sen. Daly. We have allowed some leeway so we went into clause 6(2), but I think we could go back to clause 6(1). I think that Sen. Deosaran has fully ventilated his position. Sen. Morean you were on clause 6(1) as well?

**Sen. Morean:** Mr. Chairman, my suggestion is with a view to ensuring that the appointments of the chairman, deputy chairman and other members of the board are independent and not beholden to the political directorate. If it is left as it is, appointment by the President, and we do not add the words "after consultation with the Prime Minister and the Leader of the Opposition", what you would have, really, is the President appointing on the direction of Cabinet, so that it could turn out to be a board that is not so independent. This is my reason for suggesting this amendment.

**Mr. Maraj:** Mr. Chairman, I suspect that this is one of the issues on which we would not be able to agree. I want to say that from the very start, because we are very firm on our position that it must remain the way it is. I have sought, in the amendments that I have made, to effect a relationship between the Authority and the Minister which would create transparency, accountability and so on.

Is it not a fallacy to suggest that because a board is appointed by the President, acting in his own capacity or acting after consultation, that that is a guarantee of independence, especially in a small society like ours? [*Interruption*] I am just asking these questions; ruminating with you upon these issues.

**Sen. Morean:** There is no guarantee, but it is the best chance that we would have of having an independent board, because when you start off by appointing persons who may have some sort of political affiliation, then you are courting trouble. However, we are expecting that if the persons are appointed without that sort of linkage, then you have a better chance. We have no guarantees on anything.

**Mr. Maraj:** What about accountability? To whom will such a board be accountable? Are the politicians not the ones who, eventually, are accountable and held responsible by the public? Who is such a board that is appointed by the President, acting in his sole discretion, accountable to? What checks and balances do we have on its members? Who says that they cannot be a loose cannon and that a chairman, for example, cannot end up taking positions that are inimical to the interest of the country? Who says that they cannot act arbitrarily, that they do not develop the attitude of a state within a state?

**Sen. Prof. Deosaran:** Mr. Chairman, I think, with all respect, that the Minister is overstating his case. I know you are in a dilemma; I am not disputing that. I know on your side you would really have a dilemma, but I am tending to weigh on the other side. That is the reason the checks and balances could occur internally, by having the kind of representation I am speaking about.

The closer the group and the smaller the number, the greater the likelihood of getting the kind of collusion and corruptibility you are speaking about. Coming back to the representativeness of the board, I see this as another internal check and balance. You could not behave roughshod with the Chamber of Commerce, the National Trade Union Centre and a consumer group there, or the three or four I have added on. The benefits from this recommendation would far outweigh the disadvantages, and it speaks to Sen. Morean's amendments as well. I am quite sure there is no guarantee, but you have a better guarantee, Mr. Minister; if that is your concern.

In fact, you have to take into account the realistic situation in the country. People have lost a lot of confidence in the politicians, and that is what is giving us some of these problems. I think this is an opportunity to refurbish that confidence and gain wider public support. That is why I said that we are losing an opportunity here.

**Mr. Maraj:** You seem to be relating clause 6(1) with (2). I get the impression that you would be prepared to move one way if we move a certain way.

**Sen. Prof. Kenny:** Mr. Chairman, before we move on, I would just like to point out that there are two other laws; one which is, in fact, already law and one other which is before the Senate that covers regulatory bodies. For example, in the Environmental Management Act, 2000, the board consists of a chairman and nine persons.

Secondly, the Planning and Development of Land Bill is before this Senate, and the board in Schedule V consists of the chairman and 10 members, so it would not be inconsistent for the Senate to enlarge the board in accordance with the suggestions.

**Mr. Maraj:** I am prepared to reconsider our position on subclause 2, but we would find it really difficult to change where we are on subclause 1.

**Sen. Daly:** Let us not take any hard and fast positions yet. The Minister has repeatedly said—in fact, he said it this morning, I wrote it down—that we need the independence of the Authority; we need these healthy tensions, we need people to keep an eye on each other. Philosophically, I have no problem with the Government having, if you like, majority control of the Authority. So since we are being fairly candid about it, if the Government has the majority control of the Authority, then you cannot have an authority acting as a state within a state.

I think it is important to have the chairman, at least, of this Authority, appointed by the President after consultation. It is a very, very important authority. It would take me a little time to explain this. So, really, once the Government has majority control of the authority of the Authority what harm does it do to accountability to have a chairman, who is independently appointed and to have some watchdogs from the wider community, as long as the Government has majority control.

At the end of the day, they cannot act as a loose cannon or a state within a state if the Government has majority control. So there is a link between clause 6(1) and (2). Speaking purely for myself, I have no difficulty with the

Government having ultimate control of the Authority in the way that one has ultimate control of anything else, by having a majority. The question is whether we ought not to introduce some of this independence and healthy tension that you talked about, by having a chairman who is independently appointed and having some watchdogs from outside. We can discuss how many.

Sen. Prof. Deosaran has made his position clear that he is flexible about that. So you do have accountability and there is no way this Authority could run away, because, ultimately, the Government's majority can control the proceedings. It is really very important in an Authority like this. We have been told that it is the gateway to everything that is going to happen in the economy. It is the gateway to the future. It is going to put a computer in every school. It is going to tell us what sex scenes we could watch. It is really very important not to have a flunky.

They are going to take away people's tapes from radio stations. It is very important to have someone of high status at the top, subject to the Government having majority control. So if the chairman cannot get along with the Government members, then he would find himself in the minority. Ultimately, he would have to consider his position because he would be outvoted. But the ability or the reticence of a majority exercising majority control, in the face of an independent President, is a good thing. Ultimately, if there is some serious issue about which the Government feels strongly, they could outvote the chairman. Why do we not try to work clause 6(1) and (2) together so that we have a chairman who is independently appointed, but who is in a minority, ultimately, with a few members from outside? I see that as a very healthy compromise.

It is unarguable that if the chairman is in a minority position, vis-à-vis the other members, he cannot be a runaway horse, loose cannon or whatever. In other words, I would easily, speaking for myself, concede that not all the members should be independently appointed, just the chairman. Give the Government a majority and have a few watchdogs from outside, because you have told us how important this Bill is and how much of our life it is going to affect. Status-wise we need to have an independent chairman. I am sorry to stay so long, but I really think that the two things go together, and we should be able to work it out.

**Mr. Chairman:** Sen. Morean, could I ask you to just elaborate on clause 6(1), paragraph 2 seeing that they are connected here?

**Sen. Morean:** Yes, I share the view also that the board should be representative of the major relevant sectors, and in order to do that the numbers would have to be increased to have a truly representative board. That is why I



suggested not less than seven persons or more than nine. In that way you can accommodate a representative specifically from the trade union movement and also from the Chamber of Commerce.

While it is true that we have in the general definitions: the fields of economics, finance, business, human resource management and so on—that is not enough to capture an appointment from these relevant organizations.

**Mr. Chairman:** I am trying to see if we can focus on 6(1)(a). Let us leave out clause 6(2) for the time being, because we are confusing both things.

**12.25 p.m.**

**Mr. Maraj:** Mr. Chairman, there seems to be a nexus between both, and we have established the connection. Let me go back to what Sen. Prof. Deosaran was saying. He is saying he is prepared to be flexible in the number of persons he is recommending to be a part of it. Let us hear what is the outcome of his flexibility.

**Sen. Daly:** What is wrong with the principle of the Government having a majority control? If we accept the principle that the Government would be satisfied with a majority control, then the question you put to him becomes easier to answer.

**Sen. Prof. Deosaran:** Minister, in the flexibility and the narrowness that you seem to prefer—and still carrying the message of which I speak—I would say the National Trade Union Centre (NATUC) and the Chamber of Commerce.

**Mr. Maraj:** You are leaving out art and culture?

**Sen. Prof. Deosaran:** No. I am coming to that too, since you are so enthusiastic, I will add art and culture, but that is the best I can do if only to come to some measure of representativeness.

**Mr. Maraj:** If you look at our amendment to clause 6(d)—it says:

“the remainder shall be qualified, by reason of training and experience in the fields of economics, finance or business.”

So business is already represented. We do not need the Chamber of Commerce.

**Sen. Prof. Deosaran:** It is not a representative you see, which is a wider governance issue. This is the problem, I am hearing people speak about NGOs, involvement and when the challenge comes they boil down to—

**Mr. Maraj:** No, no, please, let us not go down that road. If we are to use that argument that you are using now to have, in addition to somebody who qualifies in the field of business, a representative NGO, then you can use the same for human resource management and the same for everybody else so that we would have a whole umbrella over the matter.

**Sen. Prof. Deosaran:** You are choosing an individual from finance; we are speaking about a representative from a non-governmental organization which carries different and serious implications.

**Sen. Ahmed:** Mr. Chairman, may I question the cost-effectiveness of extending membership of this board to larger and larger numbers? It appears to me that extending the number of persons on a board leads to higher overheads and it is ultimately the consumers who bear them, and since one of the primary objectives is to reduce the cost to the consumer, I think we need to look at cost-effectiveness as a principle.

**Sen. Gillette:** Sen. Prof. Deosaran, in clause 6(d) it says for example:

“the remainder shall be qualified, by reason of training and experience in the fields of economics, finance or business.”

I suppose that when you are in business you come from one or two of the chambers. The problem I am having is when you say Chamber of Commerce, I do not know whether you are going to say North Chamber or South Chamber, or whether you are going to include someone from the Trinidad and Tobago Manufacturers' Association (TTMA). It gets very big and I think it is ambiguous. However, with respect to the field of NATUC or even arts and culture we cannot choose someone from there because it already covers this in terms of business and we have to be careful that we do not expand the board where we actually dilute it in terms of its ability to act.

**Sen. Montano:** Mr. Chairman, if we go back to clause 6(1) and look at the structure of the board and follow the recommendation by Sen. Daly, and if we stay with clause 7 that is what we are wedded to, and have the chairman and two others appointed by a specific organization, say one from Tobago and one from the Chamber of Industry and Commerce, and the remaining set out as you have it but nominated by the Government, then the Government has the control that Sen. Daly is talking about, yet still meeting some of the objectives of the other members. If we take it to nine members, then we could add another representative from education or some other organization and give the Government another member as well. But the point of the matter is, I think we can resolve clause 6(2)

if we address the structure of clause 6(1) and I rather like the suggestion by Sen. Daly. So we can focus on that.

**Mr. Maraj:** I am prepared to include a representative from art and culture as part of the Authority. I still am not persuaded by the argument that I should change clause 6(1).

**Sen. Daly:** Not even the chairman?

**Mr. Maraj:** Not even the chairman.

**Sen. Daly:** Then we are wasting time. Why can you not have a chairman subject to majority control? What is wrong with that? How does that become a state within a state? What is wrong with having an independent chairman subject to majority control?

**Mr. Chairman:** May we go to Sen. Thomas' amendment to clause 6(1)?

**Sen. Prof. Deosaran:** Sen. Thomas did advocate that the President should consult with the Prime Minister and Leader of the Opposition in making these appointments and this is different from what the Bill contains. It seems as if the President will very well have to act on the recommendations of the Cabinet as it states, and in order to enhance the independence of the Authority not only in substance, but in form. Sen. Thomas is advocating, like in other amendments including my own, that the President act after consultation with the Prime Minister and the Leader of the Opposition. I think no more needs to be said on that, the implication is rather clear I hope.

**Sen. Daly:** What I am trying to advocate is to accept the principle of majority rule. That is how the country is run. I have not received an answer to my question yet. I am making it plain that I would not go necessarily as far as the other amendments proposed, but I have not heard a single argument against an independently elected chairman subject to majority control.

**Sen. Gillette:** What is wrong with the reverse?

**Sen. Daly:** It is a flunky, that is the answer—f-l-u-n-k-y—that is a short answer. I want someone who is independent of the Cabinet as the head, subject to majority control, and if the Government has a good argument, its majority of members can persuade the chairman. If he is obstinate or acts in an aberrant fashion he would be outvoted. It is a simple matter, it happens all the time. I am sure it happens in Cabinet. You have a majority rule in Cabinet and a first among equals in Cabinet, the whole country is run like that. So have a chairman who is a

first among equals. What is wrong with that? I am sorry not to provide more spirited support to the more elaborate position that all the members be appointed by—this is a very serious matter, this is a free-speech matter. I do not give a—let me find the right word—banana about the telephones. This is a free-speech matter and the Minister says that he prefers freedom to power. This would be just like the Cabinet. There would be a boss who is a first among equals and if you have a good argument, you would persuade the boss and he would go along with it, but it is majority rule. I cannot see how a flunky of the Cabinet can go into someone's radio station and take the tapes, and I thought the Minister agreed with me on that. Let me get very basic now.

**Mr. Maraj:** I also pointed out when we were talking about the broadcast code that there are ameliorating mechanisms in place to deal with it and I pointed them out in my speech. I also made it very clear that it is our view that this sector needs to have the kind of relationship between the Minister and the Authority that would further its advance. You do not want a situation where the chairman of an organization, the chairman of the Authority—feels no obligation to support the accountability requirements of the political directorate as well.

**Sen. Daly:** You and I have served on a very sensitive state enterprise and we know what these tensions are, but why assume a chairman is going to be a maverick, particularly if he is subject to majority control?

**Mr. Maraj:** He could be.

**Sen. Daly:** Not if he is subject to majority control he could be outvoted.

**Mr. Chairman:** Before I ask the Minister for a final position insofar as clause 6(1)(a) and (b), are concerned, I think I would like Sen. King to make an intervention here because I am seeing where she is proposing a new subclause to 6(1). So would you like to clear the air on that?

**Sen. King:** Mr. Chairman, I really assumed that we were having independence on the appointment of the board, and I also assumed that we were going to have a larger board than was envisaged in the Bill that we got and we would look at the NGOs and probably have somebody from the university on the board because of their research capabilities. I also thought that to add to that independence, the President would invite nominations for those positions on the board from the relevant associations so that we would be guarded and have total independence. That was my impression and that is why I submitted this subclause (c).

**Sen. Daly:** [*Inaudible*] If the Government has majority control of the Authority, and I have not heard a single argument against it—it is what happens in the country, the Parliament and the Cabinet. You have a boss and the possibility of a majority persuades him, and I do not see how it is, consistent with freedom, as opposed to power, to have an independent chairman subject to majority control.

**Mr. Chairman:** Senators, you would agree that we have ventilated this one very long—do you want something clarified, Sen. Dumas?

**Sen. Dumas:** Yes, Mr. Chairman. The Minister did agree that this is a learning phase and a learning curve that we are trying to develop with telecommunications. I think the proposal that we have an independent chairman, or a chairman who is appointed after consultation with both the Leader of the Opposition and the Prime Minister, gives us the opportunity that when there is a change of government that person can be retained so there is the possibility that that person and the skills of that person can be maintained. It is possible that if the person were appointed in the first case after collaboration or consultation, then that person could be retained and the skills, knowledge et cetera that that person would have obtained in the first stint may be retained in the second stint. I think that is a real case to follow the Minister's own words—to allow the learning curve within the Authority to develop—is therefore provided by that facility.

**Mr. Maraj:** In response to what Sen. Dumas said, I do not know that the whole board would ever resign. If one looks at clause 6(4), one sees that it provides for the kind of continuity about which he is concerned. Our position remains unchanged. The show of accountability is one that drives our position and—

**Mr. Chairman:** Senators, we will have to deal with these proposed amendments as submitted by Sen. Prof. Deosaran, Sen. Morean, Sen. Thomas and Sen. King separately. We will have to put those clauses separately to the committee and vote. Or if Senators would want to withdraw, or put to a vote because it seems to me from what I have picked up from the Government side, the Minister is not prepared to bend on clause 6(1) at this time.

**Sen. Daly:** It is clear that all the Senators who have proposed amendments are willing to bend to the suggestion of majority rule; they may not have said so expressly, but really it is not our Bill. All of this does not mean anything; it is not our Bill; it is not work in progress; it is not getting it right; it is not majority rule; it is not—

**Mr. Maraj:** That is really an unfair position, Sen. Daly—

**Sen. Daly:** May I be allowed to finish?

**12.40 p.m.**

**Mr. Maraj:** After all of the amendments we have accepted, the spirit of compromise and negotiation that we have been engaged upon, to make a comment like that, I think is unfair.

**Sen. Daly:** All the amendments that have been proposed would be meaningless if we have a flunky Authority. They will make sure they write up their recommendations in a certain way; it would be wonderful when it is finished.

**Mr. Maraj:** There are checks and balances in the legislation to deal with that concern. I have already pointed to them in my presentation.

**Sen. Morean:** Mr. Chairman, before we go to the next step, I ask the Minister to look at the scenario where this Bill is being proposed—and I stated this in my contribution—for posterity, not necessarily for the present Government or the next Government. If the Minister would sit back and reflect on what his objections are to the suggested amendment and see whether really they are objections that he would hold to if he were on the other side.

**Mr. Chairman:** I am going to put all the proposed amendments by the respective Members and we will vote on each amendment on clause 6(1) before we proceed to clause 6(2). So we will start off with Sen. Prof. Ramesh Deosaran's amendment.

**Sen. Daly:** Mr. Chairman, I understand what you are saying, but Sen. Prof. Deosaran has two amendments under clause 6(1). Surely we should vote on those separately.

**Sen. Prof. Deosaran:** Mr. Chairman, I withdraw part (a) of my amendment in deference to Sen. Morean's amendment on the same clause. She recommends nine and I had recommended 12, so I am withdrawing part 1 of my amendment.

*Amendment withdrawn.*

**Mr. Chairman:** The second amendment of Sen. Prof. Deosaran is as follows:

Delete the entire clause and insert:

“Of the members appointed under subsection 1(a), at least three members shall be qualified by reason of training and experience, in

telecommunications, one member shall be an attorney-at-law within the meaning of the Legal Profession Act, three members trained and experienced in the fields of economics, finance or business, and human resource management respectively, one representative from the Trinidad and Tobago Chamber of Industry and Commerce, one representative from the National Trade Unions' Congress, one representative from the field of art and culture, one member representing consumer organisations and one representative of the Tobago House of Assembly.”

*Question, on amendment, put.*

*The committee divided:*                      Ayes 13                      Noes 15

**AYES**

Montano, D.

Yuille-Williams, Mrs. J.

Dumas, R.

Morean, Ms. G.

Kangaloo, Ms. C.

London, J.

McKenzie, Dr. E.

Daly, M.

Teelucksingh, Rev. D.

Kenny, Prof. J.

Deosaran, Prof. R.

King, Mrs. M.

Quamina, Dr. D.

**NOES**

Gillette, Hon. L.

Yetming, Hon. G.

John, Hon. J.

Lucky, Hon. G.

Phillips, Dr. The Hon. D.

Moonilal, Dr. The Hon. R.

Gopeesingh, Dr. T.

Lasse, Dr. V.

Ahmed, Mrs. R.

Lambert, J.

Als, M.

Augustus, R.

Jones-Kernahan, Dr. J.

Ryan, S.

Cabrera, V.

*Amendment negatived.*

**12.50 p.m.**

**Mr. Chairman:** We proceed to the amendments as proposed by Sen. Glenda Morean. There are two parts. The first part reads as follows:

In line 1 thereof replace the word “five” with the word “seven” and in line 2 replace the word “seven” with the word “nine”.

May I appeal, with the leave of Senators on all sides, for your attention to the proceedings? May I re-propose so that Senators can follow what is happening? We have amendments by Sen. Glenda Morean. I am proposing that Part 1 as circulated be accepted.

Part 11 of Sen. Morean’s amendment reads as follows:

Insert after the word “President” at the beginning of line 3 the words “after” consultation with the Prime Minister and the Leader of the Opposition”.

*Question, on amendment, put.*

*The committee divided:*

Ayes 13

Noes 14

**AYES**

Gillette, Hon. L.

Yetming, Hon. G.

John, Hon. J.

Lucky, Hon. G.



Phillips, Dr. The Hon. D.

Moonilal, Dr. The Hon. R.

Gopeesingh, Dr. T.

Ahmed, Mrs. R.

Lambert, J.

Als, M.

Augustus, R.

Jones-Kernahan, Dr. J.

Ryan, S.

Cabrera, V.

**NOES**

Montano, D.

Yuille-Williams, Mrs. J.

Dumas, R.

Morean, Ms. G.

Kangaloo, Ms. C.

London, J.

McKenzie, Dr. E.

Daly, M.

Teelucksingh, Rev. D.

Kenny, Prof. K.

Deosaran, Prof. R.

King, Mrs. M.

Quamina, Dr. D.

*Amendment negatived.*

**Mr. Chairman:** We now go to the last amendment in the name of Sen. Christopher Thomas which reads as follows:

Insert the words “after consultation with the Prime Minister and the Leader of the Opposition” after the word “President”.

*Question, on amendment, put.*

*The committee divided:*

Ayes 13

Noes 14

**AYES**

Gillette, Hon. L.

Yetming, Hon. G.

John, Hon. J.

Lucky, Hon. G.

Phillips, Dr. The Hon. D.

Moonilal, Dr. The Hon. R.

Gopeesingh, Dr. T.

Ahmed, Mrs. R.

Lambert, J.

Als, M.

Augustus, R.

Jones-Kernahan, Dr. J.

Ryan, S.

Cabrera, V.

**NOES**

Montano, D.

Yuille-Williams, Mrs. J.

Dumas, R.

Morean, Ms. G.

Kangaloo, Ms. C.

London, J.

McKenzie, Dr. E.

Daly, M.

Teelucksingh, Rev. D.

Kenny, Prof. K.

Deosaran, Prof. R.

King, Mrs. M.

Quamina, Dr. D.

*Amendment negatived.*

**Mr. Chairman:** We go on to Sen. Mary King's amendment which reads as follows:

Introduce a new subclause as follows:

- (c) The President may invite nominations for the Board from the relevant associations of this country.

Is this particular list of amendments in the possession of Senators?

**Sen. Prof. Kenny:** No. I also do not have Sen. Thomas' amendments.

**Mr. Chairman:** I understand from the Clerk that they were circulated. Maybe some of the Senators did not walk with theirs.

**Sen. Prof. Kenny:** I received the Minister's amendments at home and I received the rest here.

**Mr. Chairman:** These amendments were circulated quite early last week, so it could be that some Senators could have lost their amendments, or left them at home. Just for the record and to ensure that people understand where we are and what we are doing—Sen. Mary King is proposing a new subclause (c) to clause 6(1).

*Question, on amendment, put and negatived.*

**Mr. Maraj:** Mr. Chairman, because I have decided to accept Sen. Prof. Deosaran's suggestion about including other representatives, I need then to change the maximum number from seven to nine.

**1.00 p.m.**

**Sen. Daly:** Mr. Chairman, are you accepting oral amendments? I just want a ruling.

**Mr. Chairman:** Based on what transpired earlier, may I ask the hon. Minister to prepare something in writing? We just asked Sen. Dumas to do the same. [Interruption]

**Mr. Maraj:** It is a simple thing and all we are saying is that it is not necessary. I think we are just being a little difficult. [*Interruption*] I am not challenging, I am part of a discussion.

**Mr. Chairman:** Listen, the Standing Orders are very clear that anyone who is proposing an amendment should submit it in writing. That is in the Standing Orders. If we agree here to suspend the Standing Orders, we can do so for purposes of our debate. The Senate, as a committee, could decide that, but if we have decided on written amendments, I think we should proceed accordingly.

**Sen. Gillette:** Mr. Chairman, is that not making it a bit cumbersome in the process of debating on both sides? That amendment only just occurred because of what Sen. Prof. Deosaran just said. Now, to go back and write it and bring it back is really a bit tedious at this point in time.

**Sen. Morean:** Mr. Chairman, he can write it now.

**Mr. Maraj:** We have just written it.

**Mr. Chairman:** We have asked that it be written. Now, the problem is that Senators would not be in possession of it, but it is written before me and signed by the Minister and I would share it with you. The Minister is proposing that clause 6(1) be amended as follows:

In paragraph (a) delete the word “seven” and substitute it with the word “nine”.

*Question, on amendment, put and agreed to.*

*Senate resumed.*

**Mr. Vice-President:** It is now 1.05 p.m. so we would break for lunch and resume at 2.05 p.m. at which time the committee stage of the Bill will resume.

**1.05 p.m.:** *Sitting suspended.*

**2.05 p.m.:** *Sitting resumed.*

*Committee resumed.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 6(2) be amended by deleting subclause (2) and substituting as follows:

(2) Of the members appointed under subsection (1)(a)—

- (a) one member shall be a member of the Tobago House of Assembly appointed on the recommendation of the Chief Secretary;

- (b) at least three shall be qualified, by reason of training and experience, in fields relating to telecommunications or the telecommunications sector;
- (c) one member shall be an attorney-at-law within the meaning of the Legal Profession Act; and
- (d) the remainder shall be qualified, by reason of training and experience, in the fields of economics, finance or business.

I have given you in writing the amendment that we would like to make to subclause (2). It is as follows:

- 6(2) Of the members appointed under (1)(a)—
- (a) one member shall be a person appointed on the recommendation of the Chief Secretary of the Tobago House of Assembly;
  - (b) at least three shall be qualified, by reason of training and experience, in telecommunications or the telecommunications sector;
  - (c) one member shall be an attorney-at-law within the meaning of the Legal Profession Act;
  - (d) one member shall be a representative of art and culture;
  - (e) one member shall be a representative of the non-governmental organization movement; and
  - (f) the remainder shall be qualified, by reason of training and experience, in the fields of economics, finance and business.

**Sen. Montano:** Mr. Chairman, with your leave, I will withdraw my amendment in favour of Sen. Morean's, so we do not have to deal with that.

*Amendment withdrawn.*

**Mr. Maraj:** Our amendment is essentially the same that we circulated, except that as a result of the discussions, we are having two more persons: one from the world of art and culture and another from the non-governmental organizations.

**Mr. Chairman:** Senators, if you go to the amendments that were circulated by the Minister, he has substituted the original before you, and has now submitted a new amendment.

**Mr. Maraj:** Mr. Chairman, the amendments as circulated remain essentially the same. In (a) we are saying that one member shall be a person appointed on the recommendation of the Chief Secretary of the Tobago House of Assembly. Subclauses (b), (c), and (d) remain the same. We are now adding (d) and (e) as I indicated to you.

Subclause (d) would be that one member shall be a representative of art and culture and (e) one member shall be representative of the non-governmental organizations.

**Mr. Chairman:** Could I ask Sen. Prof. Deosaran.

**Sen. Prof. Deosaran:** I know that Sen. Morean has a similar amendment. I have fairly made up my mind as to what I will do with mine. I do not know if you will allow her to speak first and I will follow after her.

**Sen. Morean:** Mr. Chairman, I beg to move that clause 6(2) be amended by replacing the word “three” in line 2 with the word “two” and insert after the word “Act” in line 4 the words “one member shall be a representative nominated by the National Trade Unions’ Congress, one member shall be nominated by the Chamber of Industry and Commerce, one member shall be nominated by the Tobago House of Assembly.”

My suggestion is that if you want this Authority to be representative of the major organizations, as far as possible, and while you have the constraints of size, nevertheless, there are certain organizations that should be represented on an authority of this nature. We see that labour plays a most important part in any industry. In the telecommunications industry it should be given no lesser place. This is why I suggested NATUC because for want of a—I would not say “better”, but I should say another terminology for an organization representative of labour in the country. I do not think just saying “a member appointed by labour” would make sense. This is why I have selected NATUC.

With respect to the question of business being represented, there is a very vibrant Chamber of Commerce. I do not know about the other bodies. I believe that anybody appointed by the Chamber should be representative of the business community. This is why I have suggested such a person be nominated to be appointed by the President.

In relation to the other members in the other fields of expertise, that is left open for appointment or selection by the President in accordance with subsection (1)(a). Basically this is the rationale for my suggestion for these changes.

**Sen. Prof. Deosaran:** Mr. Chairman, I beg to move that clause 6(2) be amended by deleting the entire clause and inserting the following:

Of the members appointed under subsection (1)(a), at least three members shall be qualified by reason of training and experience, in telecommunications, one member shall be an attorney-at-law within the meaning of the Legal Profession Act, three members trained and experienced in the fields of economics, finance or business, and human resource management respectively, one representative from the Trinidad and Tobago Chamber of Industry and Commerce, one representative from the National Trade Unions' Congress, one representative from the field of art and culture, one member representing consumer organizations and one representative of the Tobago House of Assembly.

I had recommended five more in addition to what the Minister recommended. He has agreed to the Tobago House of Assembly, like Dr. McKenzie, to include a representative from art and culture and another representative from non-governmental organizations. In effect, I would have had three out of five. In this tight bargaining season, I am content with that. So, I therefore withdraw my amendment.

*Amendment withdrawn.*

**Sen. Morean:** I omitted to mention a member nominated by the Tobago House of Assembly. I did not do that because I think we have agreement on all sides on that.

**Sen. Dumas:** Mr. Chairman, I spent years examining a clause in a law that entrenched a particular institution in the law. I hate to be party to the enactment of law that entrenches an institution. I suggest we talk about a representative of labour and a representative of the business community. NATUC is an entity of indeterminate status, and the extent to which it excludes or includes other trade unions can be questioned, similarly, the business community or any Chamber of Commerce in Trinidad and Tobago.

**2.15 p.m.**

**Sen. Lambert:** Mr. Chairman, on a point of correction. I just want to state quite categorically, that the board of NATUC has never and will never exclude any trade unions as is being said. [*Desk thumping*]

**Sen. Dumas:** Mr. Chairman, may I continue?

**Mr. Chairman:** Yes.

**Sen. Dumas:** NATUC may have its intention as well as its intent, but the actuality is that NATUC does not represent all trade unions or all members of the labour fraternity. That is the reality. The Trinidad and Tobago Chamber of Industry and Commerce does not represent every business institution in Trinidad and Tobago.

I know of a time in which Parliament entrenched certain trade unions in certain positions in the law, and many years were spent fighting to get that removed and fixed. Therefore, I am just making the observation that maybe you want to place in the law—the intent of a representative of labour and a representative of business, rather than a nominee of any business or labour institution.

**Mr. Chairman:** Are you suggesting to Sen. Morean, that she withdraw her amendment?

**Sen. Dumas:** I am suggesting that the amendment be made.

**Mr. Chairman:** There is an amendment that has been circulated by the Government. It is to remove the earlier amendment and to substitute that which was circulated. Do Members have in their possession the substituted amendment that is being proposed?

Sen. Morean, are you prepared to accept what the Government has proposed or are you insisting that we put it to a vote now?

**Sen. Morean:** I just want to have a look at it again.

**Mr. Chairman:** Okay. Sen. Prof. Deosaran, in the case of Sen. Christopher Thomas—

**Sen. Prof. Deosaran:** What Sen. Thomas is saying, is really a matter of language precision by adding the word “advanced” in one case, and the word “substantial” in another case, and also extending the clause to read “and telecommunications technology”. So it is really to add some precision that we will know what kind of competence we are requiring without narrowing the field unnecessarily.

**Mr. Chairman:** Hon. Minister, do you have any objection to clause 6(2) as submitted by Sen. Christopher Thomas? Any comments on that one?

**Sen. Prof. Deosaran:** Mr. Chairman, it does not do any damage to the original provision except that it specifies and enhances.

**Sen. Yuille-Williams:** Mr. Chairman, I myself would like to go closer to the field of the expertise.



**Mr. Maraj:** What does “advanced training” mean? Suppose somebody has experience in the field? Does it mean a PhD? Does it mean certification—certificates? I think that might be narrowing it.

**Sen. Prof. Deosaran:** What you are saying is that if you leave it as just training, it could include PhD and advanced training, as well as other. That is a good point. I will defer. What about “and telecommunications technology”?

**Mr. Maraj:** We have already included that. We said in the field of telecommunications and also the telecommunications sector, so that is included there.

**Mr. Chairman:** Are you withdrawing, Senator?

**Sen. Prof. Deosaran:** No, I want to hear what Sen. Daly has to say.

**Sen. Daly:** I have not been briefed, but one of the points in the amendment was that “fields relating to” was rather nebulous, that we really want to say experience in telecommunications or the telecommunications sector. What is a field relating to a telephone operator? That is equally vague as advanced.

**Mr. Maraj:** We will eliminate that.

**Sen. Daly:** Thank you.

**Mr. Chairman:** What are you eliminating?

**Mr. Maraj:** We are eliminating in our amendment at 2(b), “fields relating to” on very astute advice of Sen. Daly.

**Mr. Chairman:** Prof. Deosaran, now that you have heard, are you withdrawing on behalf of Sen. Christopher Thomas?

Sen. Morean, are you withdrawing?

**Sen. Morean:** In light of the modifications, I withdraw my amendment.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. King, I see you have amendments here.

**Sen. King:** I wanted to include the fact that the Bill is inclusive of broadcasting and context, that we delete the words “and fields relating to telecommunications” and substitute with “in fields relating to telecommunications broadcasting and context”.

**Mr. Maraj:** As I said earlier in my contribution, because of developments in the sector, telecommunications is an all-inclusive term which includes

broadcasting as well, because of the conversion that is taking place. I do not know if there is really the need to even break it down further.

**Mr. Chairman:** Sen. King, would you like to pursue your amendment or do you want to withdraw?

**Sen. King:** I do not really see where we have defined communications, which includes broadcasting and context, and that is why I had asked for this amendment.

**Mr. Maraj:** If one looks at the definition on page four, telecommunications includes transmission, emission or reception of signal. Is that not broadcasting? Images and sounds or other intelligence, or any kind of wire, radio, cable and so forth, reception of signals—would you be satisfied that includes broadcasting?

**Mr. Chairman:** Sen. King, are you withdrawing?

*Amendment withdrawn.*

**Sen. Yuille-Williams:** I am one of those persons who are interested in the opinions of the experts. I am wondering if it is necessary to continue all the telecommunications sector now that you are quite clean. At least three persons qualified by reason of training and experience in telecommunications.

**Mr. Maraj:** The point that Sen. Ayoung-Chee was making is that there is a difference between the expertise that could come from telecommunications, but you also need somebody from the world of business telecommunications, and so we decided to take that into account and include the telecommunications sector to marry it.

**2.25 p.m.**

**Sen. Morean:** Mr. Chairman, I beg to move that clause 6(4) be amended as follows:

Replace the word “two” in line 2 with the word “three”.

Mr. Chairman, in the light of the preceding amendments, I will withdraw this one.

*Amendment withdrawn.*

**Sen. Morean:** Mr. Chairman, I beg to move that clause 6(10) be amended to read:

Remove the words “The President...so appointed” and replace them with the words “Any person appointed pursuant to subsection (9)” and insert after the

last word the words “and the remuneration of the person so appointed shall be fixed by the Board”.

Nowhere in this Bill was there a specific provision for the remuneration of board members to be fixed by the President. In the normal course of things, the board itself, in accordance with established practices and precedent, would fix the remuneration of board members. This is not just established practice, but also existing law. I did not see the need for the President to fix the remuneration for a temporary appointee.

**Mr. Maraj:** Mr. Chairman, in clause 6(1)(a), it is clear that the President must determine the terms and conditions of members of the board. I find it a little difficult to understand why that should not apply to what is essentially a temporary board member. Should not the same terms and conditions apply?

**Sen. Morean:** That is so, whatever applies to the board member will necessarily apply to any person substituted, so there was no need to have that provision. It appears to make a distinction here.

**Mr. Maraj:** Is it not just a clarification of what happens in one?

**Sen. Morean:** Why was it necessary?

**Mr. Maraj:** You are suggesting that it was unnecessary?

**Sen. Morean:** Yes. We should have nothing at all about remuneration there.

**Mr. Maraj:** What about if we take out “the President may fix the remuneration of” and say “a person appointed pursuant to subsection (9)”; and take out also “and any person so appointed”? It would read like this:

A person appointed pursuant to subsection (9) may complete any unfinished business of the Authority in which he has taken part notwithstanding the resumption of duty of the Board member in whose place he is appointed under the section.

Is that okay?

**Sen. Morean:** That would be satisfactory.

**Mr. Maraj:** We now propose that subsection (10) be amended as follows:

Remove “The President may fix the remuneration of” in the first line; and, in the second line, remove “and any person so appointed”.

The subclause will now read as follows:

“A person appointed pursuant to subsection (9), and any person so appointed may complete any unfinished business of the Authority in which he has taken

part, notwithstanding the resumption of duty of the Board member in whose place he was appointed under this section.”

**Sen. Morean:** I will go along with the amended proposal.

*Amendment withdrawn.*

*Question, on amendment, put and agreed to.*

*Clause 6, as amended, ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed, That clause 7 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 7 be amended as follows:

A. In subclause 3 insert the words “or other electronic means” after the word “facsimile”.

B. Delete subclause (4) and substitute as follows:

“(4) Service upon the Authority of any document, by facsimile or other electronic means, shall be supported by hard copy as soon as possible thereafter.”

**Mr. Chairman:** Sen Morean, would you like to pursue your amendment or would you like to go along with what is proposed by the Government?

**Sen. Morean:** I have no problem with the amendment as circulated. I will withdraw my amendment.

*Amendment withdrawn.*

**Sen. King:** I totally agree with the proposed amendments of the Government.

*Amendment withdrawn.*

*Question, on original amendment, put and agreed to.*

*Clause 7, as amended, ordered to stand part of the Bill.*

**2.35 p.m.**

*Clauses 8 to 10 ordered to stand part of the Bill.*

*Clause 11.*

*Question proposed, That clause 11 stand part of the Bill.*

**Mr. Chairman:** Hon. Senators, we have some amendments to clause 11 from Sens. Christopher Thomas, Danny Montano and Christine Kangaloo.

**Sen. Montano:** Mr. Chairman, I wish to withdraw my amendment to clause 11 in favour of Sen. Kangaloo's.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Montano has withdrawn his amendment to clause 11 so we are going to focus on Sen. Christopher Thomas, and Sen. Christine Kangaloo's amendments.

We will have Sen. Prof. Deosaran for Sen. Thomas, first.

**Sen. Deosaran:** Mr. Chairman, once more, on behalf of Sen. Thomas, I beg to move the following amendment:

11(6) Delete and renumber the subsequent subclauses.

11(7) Delete and substitute as follows:

Quarterly reports on the performance of the Authority's work will be forwarded to the Minister.

I think this will replace 11(6) and 11(7), presumably. I think it is self-explanatory. I do not need to elaborate.

**Mr. Chairman:** Sen. Christine Kangaloo.

**Sen. Kangaloo:** I beg to move the following amendment:

Delete subclause (7) and substitute the following subclause: "The Authority shall submit to the Minister at half-yearly intervals a report on the functioning of the Authority."

The reasoning behind this is that, first of all, there is the necessity to have certified copies of the minutes and that places a sort of bureaucracy on the Authority. Furthermore, it leads also to a sort of policing of the Authority by the Minister, in terms of the meetings. It is not something that should be encouraged in terms of the freedom of expression that could take place at these meetings. The half-yearly-interval reports, therefore, was seen as the better way to deal with this.

**Sen. Gillette:** Mr. Chairman, does it not also, if you look at clause 11(6) and (7), make the Authority more accountable, where you are able to, at least, document what is happening in the Authority?

**Sen. Kangaloo:** Well, the fact that you can have your minutes, nothing is wrong with that, but why is there the need to have the certified copies of the minutes? There are enough things in place to have the Authority accountable as it is.

**Mr. Maraj:** I do not want to sound, in any way, disparaging but are we now quibbling over minor matters here. We are establishing that there must be a relationship between the Authority and the Minister based on transparency and accountability. One would expect that frequency of communication between these two would ensure accountability and transparency. The point was made a while ago: why should the Minister want to see all the minutes, and he should be given a quarterly report or a half-yearly report, Surely, however, even if he should be given a half-yearly report, should it not be that if the Minister wants to see a copy of the minutes of a meeting that he should be allowed to see it? Why should it be kept a secret? I do not know what is the argument.

**Sen. Daly:** Could I say something, Mr. Chairman? I continue to worry about this independence of the Authority. Is that not just a question of signal? Of course they have the working relationship, the Minister could ask for the minutes and I have no doubt they would provide it. It is just the signal you are sending. You have to send the minutes. For what? To see if there is anything he did not agree with. What is the purpose of it? It feels kind of “big brotherish” and it is supposed to be independent. It is a feel thing.

**Sen. Prof. Deosaran:** Mr. Chairman, I would like to withdraw the amendment on behalf of Sen. Thomas.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Kangaloo, are you holding on?

**Sen. Kangaloo:** Yes, I am holding on, Mr. Chairman.

**Mr. Maraj:** I think we should also recognize it is part of the tradition, too, that these minutes are sent to the Minister. Is that not true?

**Sen. Montano:** Mr. Chairman, it seems to me what we are doing here is micromanaging. What you have put through here already is that the members of the Authority are nominees of the State—of the political directorate—and now you want to micromanage them. This is what we are trying to get away from and this is sort of putting a cap on the bottle saying, we are going to control this no matter what. It does not really look right at all.

**Mr. Maraj:** Mr. Chairman, before we go down the road of “big brother” control and so on, could I propose a compromise? Would you accept if you say that the minutes of the meetings and so on should be made available to the Minister if he so wishes? Would you accept that? All right, we will then include that.

**Mr. Chairman:** Hon. Senators, could we pause for a few minutes while the drafting is taking place, so I could see it in writing? [*Pause*]

**2.45 p.m.**

Senators, the proposed amendment reads as follows:

Copies of the confirmed minutes referred to in subsection (6) shall be made available to the Minister upon his request.

Sen. Kangaloo, would you want to withdraw or are you pursuing your matter?

**Sen. Kangaloo:** Well, I would still want to pursue the half-yearly reports because the minutes are only to be available upon request. We are not assuming that these requests will be made every time a meeting is held.

**Mr. Maraj:** There is an annual reporting provision. Are you satisfied with that? In clause 56 there is an annual reporting provision. Does that satisfy you?

**Sen. Kangaloo:** Yes.

**Mr. Chairman:** So your amendment to clause 11(7) is withdrawn?

**Sen. Kangaloo:** [*Assent indicated*]

*Amendment withdrawn.*

**Mr. Chairman:** Okay, that has been withdrawn. Clause 11(7) is amended as follows:

Copies of the confirmed minutes referred to in subsection (6) shall be made available to the Minister upon his request.

*Question, on amendment, put and agreed to.*

*Question put and agreed to.*

*Clause 11, as amended, ordered to stand part of the Bill.*

*Clause 12 ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed, That clause 13 stand part of the Bill.*

**Mr. Chairman:** We have three sets of amendments. We have amendments by Sen. Prof. Deosaran, Sen. Morean and Sen. Montano.

**Sen. Morean:** Mr. Chairman, I beg to move that clause 13 be amended as follows:

Replace the word “four” with the word “five”.

**Mr. Maraj:** Essentially it is that the quorum be increased to five?

**Sen. King:** Yes.

**Mr. Maraj:** We are prepared to accept that.

**Mr. Chairman:** Which one are you prepared to accept? There are three, you know.

**Sen. Montano:** I will withdraw mine.

**Mr. Chairman:** So Sen. Danny Montano has withdrawn his amendment.

*Amendment withdrawn.*

**Sen. Prof. Deosaran:** I will withdraw mine.

**Mr. Chairman:** Okay, Sen. Prof. Deosaran, leave is granted to withdraw your proposed amendment.

*Amendment withdrawn.*

*Question, on amendment, put and agreed to.*

*Question put and agreed to.*

*Clause 13, as amended, ordered to stand part of the Bill.*

*Clause 14 ordered to stand part of the Bill.*

*Clause 15.*

*Question proposed, That clause 15 stand part of the Bill.*

**Mr. Chairman:** There are, in fact, two amendments, a Government amendment and one by Sen. Christopher Thomas to 15(1). Sen. Prof. Deosaran, can you put forward the amendment in favour of Sen. Thomas?

**Sen. Prof. Deosaran:** Mr. Chairman, I beg to move that clause 15(1) be amended as follows:

At the beginning of the clause, insert the words “The Minister shall disclose to Parliament and”.



Well, continuing in my dual role, Mr. Chairman, what Sen. Thomas had in mind, really, as he explained to me before his departure, is an inclusion of the words, “The Minister shall disclose to Parliament and”, those words coming at the beginning of clause 15(1). So that, by implication, it requires that the Minister disclose to Parliament what members of the board would have to disclose to the President.

**Mr. Maraj:** Mr. Chairman, if the hon. Senator takes into consideration the amendments that we made—because we have made that amendment to take that into account—he may want to consider withdrawing Sen. Thomas’ in absentia.

**Sen. Prof. Deosaran:** Where is your amendment?

**Mr. Maraj:** It has been circulated since Friday.

**Sen. Prof. Deosaran:** I would withdraw.

**Mr. Chairman:** Okay, Sen. Prof. Deosaran has withdrawn the amendment that has been proposed by Sen. Christopher Thomas.

*Amendment withdrawn.*

**Sen. Montano:** If we are going to deal with the Government’s proposed amendment, I have something to say about that. Mr. Chairman, in essence I am in agreement with what the Minister has proposed. However, I would just like to point out that government members, for some time, have been using the device of what is called a blind trust to hold their assets while they are in Government. The feeling is that, as long as they have done that, they are not holding an interest in the organizations, businesses, whatever it might be, that they have placed in the blind trust.

However, Mr. Chairman, that really is not so because the reality is that there is a reversionary interest in the trust and when the minister is no longer a minister the assets usually revert to him. Therefore, he has a residual beneficial interest in assets. Therefore, decisions that he makes while he is a minister in government may impact the businesses that he has an interest in or had an interest in via the blind trust. Of course, the accretion in value of those assets will be taking place while he is a minister, as a result of the decisions that he is making. He can hide under the ruse—and it really is a ruse—that he does not own the assets, when we know that the reality is that the assets are going to revert to him with the enhanced values as a result of the decisions that he would have taken.

Therefore, what I would like to see in here—and again I am not sufficiently skilled in legal drafting to get at what I am trying to say. However, I think that

what we want to say here is that if a Minister has—and the words that I would use are—a residual beneficial interest, then he must disclose that as well, even though he does not have a direct immediate interest.

**Mr. Maraj:** This is something worth considering. We are trying to work out an amendment.

**Sen. Morean:** Mr. Chairman, this may be relevant to the Minister's deliberations. In clause 15(1), I think following upon Sen. Montano's points, that the words "or other" could be included after "pecuniary" in the third line.

**Sen. Daly:** Could we say "actual or contingent", "whether or not he has a pecuniary interest whether actual or contingent"? He might have a contingent interest that when he comes out of politics everything goes back to him. So what about "actual or contingent"?

**Mr. Maraj:** Okay, I think we can take that. I am advised by my learned counsel. Thank you very much, Sen. Montano. So 15(1) would now read:

"The Minister and every member of the Board shall, on appointment and annually thereafter, submit to the President a declaration stating whether or not he has an actual or contingent pecuniary interest—"

**Mr. Chairman:** Do you want to take them jointly or separately?

**Mr. Maraj:** Jointly. [*Crosstalk*] Well, we did circulate these amendments, Mr. Chairman.

**Mr. Chairman:** Yes, but if you could just explain them briefly.

**Mr. Maraj:** Well, they are intended really to take into account the need for the Minister to declare his pecuniary interest and that really is the foundation of all the amendments.

**Sen. Montano:** Mr. Chairman, would that not also be in subclause (2) as it has been amended?

**Mr. Maraj:** Yes.

**Mr. Chairman:** Where are you going to put this exactly?

**Mr. Maraj:** In subclause (2). Subclause (2) should therefore read:

"The Minister and a member of the Board whose actual or contingent pecuniary interest..."

Subclause (5) should now read in the penultimate line—are you there with me?

**Mr. Chairman:** Yes.

**Mr. Maraj:**...an employee thereof, shall be treated as having an actual or pecuniary interest. It is the penultimate line in subclause (5). Sorry, it is “actual or contingent pecuniary interest”.

**3.00 p.m.**

**Sen. Morean:** Mr. Chairman, in subclause (2), at the last line, after “disclose”, for the sake of completeness we should include the words “to the President”.

**Mr. Maraj:** Mr. Chairman, I am proposing, as follows, the amendments to clause 15:

In subclause (1) delete the word “every” and substitute the words “The Minister and every”.

It should then read:

“The Minister and every member of the Board shall, on appointment and annually thereafter, submit to the President a declaration stating whether or not he has an actual or contingent pecuniary interest—

(a) in any network or service regulated by the Authority; and

(b) in any business or any body corporate carrying on any business with the Authority in the exercise of its functions.”

Then:

In subclause (2) delete the words “A member of the Board whose interest” and substitute the words, “The Minister and a member of the Board whose actual or contingent pecuniary interest... is likely to be affected in any way by a decision of the Board on any matter specified in subsection (1) shall, as soon as possible after the relevant facts come to his knowledge, disclose to the President the nature of that interest.”

Then, the next amendment is:

Insert a new subclause (3) as follows, renumbering the subsequent subclauses accordingly:

(3) In respect of any matter which, pursuant to the provisions of this Act, requires the Board to seek the approval of the Minister, a disclosure by the Minister, pursuant to subsection (2) shall preclude him from withholding that approval.

- (4) A disclosure under subsection (2) shall be recorded in the Minutes of a meeting of the Board and the member shall—
- (a) not take part after disclosure in any deliberation or decision of the Board with respect to that matter; and
  - (b) be disregarded for the purpose of constituting a quorum of the Board.
- (5) For the purposes of this section, a person who, or a nominee or relative of whom, is a shareholder who owns shares in excess of five per cent, or is a partner in a company or other body of persons other than a statutory authority or who is an employee thereof, shall be treated as having an actual or contingent pecuniary interest.
- (6) In this section, “relative” means spouse, cohabitation within the meaning of the Cohabitation Relationships Act, father, mother, brother, sister, son or daughter of a person.
- (7) Any person to whom this section applies who fails to comply with the provisions of this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars unless he proves, to the satisfaction of the Court, that he did not know that—
- (a) the matter in which he had an interest was the subject of consideration at the meeting; or
  - (b) he had an interest in the matter under consideration at the meeting.

That is it, Mr. Chairman.

**Mr. Chairman:** Senators, do you understand what has been advanced?

*Question, on amendment, put and agreed to.*

*Question put and agreed to.*

*Clause 15, as amended, ordered to stand part of the Bill.*

**Sen. Morean:** Mr. Chairman, I am just trying to get together all these subclauses and their renaming before you put it to the vote, because I do not think I have it quite clear as to all the insertions.

**Mr. Maraj:** We included everything, all that you said, Senator.

**Sen. Morean:** But I want to be satisfied. That will be blind trust here. I have a little problem.

**Mr. Maraj:** What is it?

**Sen. Dumas:** Two issues on (3).

**Mr. Chairman:** The question having been put, I would suggest that unless the committee—

**Sen. Dumas:** Maybe if I am allowed to say what the problem is, then you would know, Mr. Chairman. We are seeing an argument that says where a member of the board has an interest, he should not participate in the discussion or decisions, but then we are seeing a piece that says that the Minister may continue to act, but the disclosure shall preclude him from withholding the approval.

I am not so sure that what we want to say is that despite the fact that the Minister has, in fact, pointed out his interest, he should continue to make a decision. Whether he withholds or does not withhold the approval, the decision could go on one side or the other. It is as if I ask you to give me some water and you say no.

**Mr. Maraj:** Who then will act for the Minister?

**Mr. Chairman:** May I intervene? I am saying that the question having been put and a decision taken, to reopen this debate the whole Senate has to determine whether it is going to revisit that, otherwise we are going to get ourselves stuck. I hear what you are saying Sen. Dumas, but all I am saying is that the Minister is now going to respond to you and that is going to create a new discussion. I am trying to get some guidance here in terms of whether, for instance, the question having been put and a decision taken, we should reopen it at this time. If, for instance, Sen. Morean would like, maybe somebody could get the document to her and she would see, for instance—

**Sen. Morean:** The difficulty here is that we were trying to amend and we deleted and inserted, so I was trying to make sense of it and here I am reading along and a vote is going on. I did not take part in it at all. That may be my hard luck, but it is not a question of my hard luck. We are dealing with a very serious piece of legislation here and, as the Minister and the acting Attorney General said, we want to get it right. So, my thing here is not being obstructive or obstreperous, but I want to ensure that if at the end of the day I say yes or no to this legislation, I am doing so on an informed basis.

**Mr. Chairman:** Procedurally, I think I will have to put it to the Senate whether we should revisit clause 15. I have to get the clearance of the Senate to allow this debate to continue. A decision has been taken. If we want to revisit that particular clause because of what Sen. Morean has said, the Senate has to direct the Chair. We have to get the clearance of the Senate as to whether it wants to revisit it. That is what I am trying to get.

*Question put and negatived,* That clause 15 be revisited.

**Sen. Morean:** Mr. Chairman, before you go to clause 16, what I would say on this is that I abide by the ruling of the court, but as a practising lawyer, you leave me a lot of work because when we have defective legislation, I am going to be able to go to court and thereby increase my revenue. [*Laughter*]

**Mr. Chairman:** We are now proceeding to clause 16.

*Clause 16.*

*Question proposed,* That clause 16 stand part of the Bill.

**Sen. Yuille-Williams:** Mr. Chairman, just on a matter of clarification, “where a member of the board or an employee of the Authority”—I wondered whether “employee of the Authority” includes the CEO, the Corporate Secretary, as well as the contract employees? This is my concern.

**Mr. Chairman:** Where are we, Senator?

**Sen. Yuille-Williams:** Who is included under the term “employee of the Authority”? That is at clause 16. I am just asking whether that includes the CEO, the Corporate Secretary or is it just the contract employees?

**Mr. Maraj:** Yes. An employee of the Authority who accepts bribes and so forth.

**Mr. Chairman:** Any further question or clarification?

*Question put and agreed to.*

*Clause 16 ordered to stand part of the Bill.*

*Clause 17 ordered to stand part of the Bill.*

*Clause 18.*

*Question proposed,* That clause 18 stand part of the Bill.

**Mr. Chairman:** We have a few amendments by Sen. Prof. Deosaran, Sen. Christopher Thomas, Sen. Mary King, Sen. Christine Kangaloo and the Government. Sen. Prof. Deosaran, please.

**Sen. Prof. Deosaran:** Mr. Chairman, when I compare my amendment with that submitted by Sen. Thomas, on whose behalf I also speak, I would like to withdraw my amendment to clause 18(1)(a) in favour of Sen. Thomas amendment.

*Amendment withdrawn.*

**Sen. Prof. Deosaran:** This amendment follows the basis enunciated by Sen. Thomas in strengthening the independence of the Authority, and in this particular instance, the granting of concessions and licences within the policy framework. I also understand that the Minister himself is advocating an amendment in that regard, so I need not elaborate. I leave the amendment to speak for itself and wait until the Minister's amendment comes forward.

**Mr. Chairman:** Sen. Kangaloo?

**Sen. Kangaloo:** Mr. Chairman, my amendment leads to clause 18(2).

**Sen. King:** Mr. Chairman, my amendment was merely to point out that those value added services being defined in the Bill are not really considered today as being value added services. They are more run-of-the-mill and, therefore, we should delete those three words. That is clause 18(1)(b).

**3.15 p.m.**

**Mr. Chairman:** Minister Maraj, do you want to look at what has been proposed?

**Mr. Maraj:** Yes, we are taking them one by one. What is the first one that we are dealing with?

**Mr. Chairman:** Clause 18(1)(a).

**Mr. Maraj:** A proposal by?

**Mr. Chairman:** We have an amendment by Sen. Thomas.

**Sen. Prof. Deosaran:** Mr. Chairman, I beg to move that clause 18(1)(a) be amended as follows:

In line one delete the words "make recommendations to the Minister on the granting of concessions and licences" and substitute the words "grant concessions and licences in accordance with the policy framework established by the Minister".

**Mr. Maraj:** We would not be able to accept that, Mr. Chairman, because, as I indicated, the policy that we have adopted is that the Minister would grant these concessions and licences based on the recommendation of the Authority.

**Mr. Chairman:** Sen. Prof. Deosaran, do you want to withdraw this amendment or pursue it, because the Minister apparently is not going to allow it.

**Sen. Prof. Deosaran:** I understand that point; so I will have to withdraw it.

*Amendment withdrawn.*

**Mr. Chairman:** There is an amendment by Sen. King.

**Sen. King:** Mr. Chairman, I beg to move that clause 18(1)(b) be amended as follows:

Delete the words “value added services”. [*Crosstalk*]

**Sen. Gillette:** Sen. King, with respect to clause 18(1)(b), I do not understand why you would want to omit “value added services”, because the Authority can classify in the public telecommunications network, which could include private telecom services, closed users groups, value added services or broadcasting services. The Authority has the ability to classify it.

**Sen. King:** I did not quite get your point.

**Sen. Gillette:** I do not understand why you want to omit the words “value added services”, because value added services come out of the realm of telecommunications services, private telecommunications services and closed users groups. It could be any other inhibiting technology or content-based applications that they may want to classify as a value added service.

**Sen. King:** Your definition of value added service here is a redundant term now, because those are run-of-the-mill; that was my only point. To bring us into the new age, take it out; that is irrelevant.

**Sen. Gillette:** If you look at the description it states:

“‘value added service’ means a service, other than a public telecommunications service, that, using a telecommunications service, modifies the form, content, code, protocol or other similar aspect of the communication, restructures, adds or supplies information or permits user interaction with information.”

I am saying, if it is none other than the above, then the Authority will be able to classify it as a value added service, and that takes care of the other



technologies, if they so desire. Then, of course, if it is a service that is public, it could be classified as a public communication service.

**Sen. King:** That does not explain my point, but the way it is now we may as well withdraw it.

**Mr. Chairman:** So you have withdrawn the amendment, Sen. King? Okay.

*Amendment withdrawn.*

**Mr. Chairman:** Minister Maraj, you have an amendment to clause 18(1). Do you want to deal with clause 18(1)?

**Mr. Maraj:** Maybe you would want to deal with all of clause 18.

**Mr. Chairman:** Yes.

**Mr. Maraj:** Do you want me to read it as I did before?

**Mr. Chairman:** No I just want it as per circulated amendments. Sen. Kangaloo, do you want to deal with your amendment to clause 18(2)? We want to deal with the whole of clause 18, and you have an amendment to clause 18(2).

**Sen. Kangaloo:** Mr. Chairman, I beg to move that clause 18(2) be amended as follows:

In subclause (2) insert the words “and the Authority shall establish a Register of all such persons and services” after the word “accordingly”.

This amendment is being proposed so that there can be a rigorous system of registration which would ultimately assist the Authority in assuming any sort of regulatory control over the services and persons under the Bill.

**Mr. Maraj:** Mr. Chairman, there is nothing wrong with the suggestion. One would expect that the Authority would, in fact, develop that register. It is really not necessary, but, of course, in the spirit of cooperation I am willing to yield if the Senator insists. One expects that a responsible Authority would develop that register; it goes without saying. But if you insist, Sen. Kangaloo— Do you insist?

**Sen. Kangaloo:** Let us insist.

**Mr. Maraj:** We will accept the suggestion.

*Question, on amendment, put and agreed to.*

**Mr. Chairman:** Minister Maraj do you want to deal with the other amendments to clause 18?

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 18 be amended as follows:

- A. Marginal Note—insert the words “and powers” after the word “Functions”.
- B. In subclause (1) delete the words “Subject to the provisions of this Act, the functions of the Authority are to— “and substitute the words “Subject to the provisions of this Act, the Authority may exercise such functions and powers as are imposed on it by this Act and in particular—”.
- C. Delete subclause (3)(a) and substitute as follows:

“(a) to reliability of service provided at the lowest possible cost;”;

Insert the following subclauses:

- “(4) In the performance of its functions under subsection (1)(c), (d), (e), (m) and (p), sections 78 and 79 and any other provision of the Act, as it deems appropriate, the Authority shall adopt procedures by which it will—
  - (a) afford interested parties and the public opportunities for consultation; and
  - (b) permit affected persons and the public to make appropriate submissions to the Authority.
- (5) We have circulated these amendments since Friday. One would expect that Senators would have had a chance to study them, so really there is no further comment.

**Mr. Chairman:** The question is that the amendments, as circulated by Minister Maraj, be accepted. [*Interruption*] Senators, I just want to pause. Do you want to comment on the proposed amendments anyone? I just wanted to ensure that I am not stifling anyone. I want to make sure that Senators have a chance to comment, if they have any views on clause 18. [*Crosstalk*]

Could we entertain any comments or clarification on clause 18 as proposed by the Minister?

**Sen. Prof. Deosaran:** Mr. Chairman, I do not know if you are aware that I have an amendment standing for clause 18(2).

**Mr. Chairman:** Am I wrong? I thought that you had withdrawn it.

**Sen. Prof. Deosaran:** No, I withdrew clause 18(1)(a) in favour of Sen. Thomas, but not clause 18(2).

**Mr. Chairman:** Okay.

**Sen. Prof. Deosaran:** Mr. Chairman, I beg to move that clause 18(2) be amended as follows:

Delete “or intending to operate any of the services listed in Subsection (1)(b)” and insert “any of the services listed in Subsection (1)(b) and which do not require a concession or licence.”

Could I elaborate?

**Mr. Chairman:** Yes.

**Sen. Prof. Deosaran:** If you read the provision in clause 18(2) it states:

“In the performance of its functions under subsection (1)(b), the Authority shall require that all persons operating or intending to operate...”

It is at that point, I think, if the Minister and his advisors would reflect, there should be a more precise application of what this provision intends to achieve. I am, therefore, recommending instead to delete from the words “or intending to operate any of the services listed in subsection (1)(b)” and then insert instead “any of the services listed in subsection (1)(b) and which do not require a concession or licence”.

I am, therefore, submitting that that might give the Authority, and even the Minister, greater control, rather than having the words “intending to operate” in the provision.

**Mr. Maraj:** Some of the things in (1)(b) will require concessions. We find difficulty in accepting that. I know that you are looking for precision.

**Sen. Prof. Deosaran:** I would leave it to you, but I was just trying to be a bit careful, in that, if this comes up in a case, especially one in which Sen. Morean is taking an active part, that the defect would not cost the State any unnecessary moneys.

To interpret this part about “intending to operate”, if it is violated I think you might have a difficulty establishing the standard of proof required, but, Mr. Chairman, I leave it to the Minister and his advisors’ judgment.

**Mr. Maraj:** For reasons which I just gave, we cannot accept it. Maybe Sen. Prof. Deosaran could pursue a law degree as well. [*Laughter*]

**Sen. Prof. Deosaran:** I have refused steadfastly.

**Mr. Chairman:** Sen. Prof. Deosaran, do you want to withdraw or do you want to pursue the matter?

**Sen. Prof. Deosaran:** Let us put it to the vote for the record. [*Crosstalk*]

*Question, on amendment, put and negatived.*

**Mr. Chairman:** Prof. Deosaran could we go on to clause 18(3) and get your justification and reasons.

**Sen. Prof. Deosaran:** Mr. Chairman, I beg to move that clause 18(1) be amended as follows:

Add a new section, (r), that is, with the words—

(r) produce an annual report to the Minister for presentation soon after to Parliament.

I would quickly withdraw it. Maybe I have missed it, but if the Minister would tell us whether the report of the Authority would be laid before Parliament. [*Interruption*] The Authority's report to the Minister, would that be laid before Parliament at any time? If not, I would submit the amendment as listed here.

**Mr. Maraj:** All reports of statutory authorities and so on are laid in Parliament, so I expect that this one will be as well.

**Sen. Prof. Deosaran:** That is the question. Is it a tradition or is it a statutory requirement? I would want it to be a statutory requirement as far as this Bill is concerned.

**Mr. Maraj:** I have no problem with that.

**Sen. Prof. Deosaran:** So we add a new section?

**3.30 p.m.**

**Mr. Maraj:** Could we then amend clause 56 to make that clear?

**Sen. Prof. Deosaran:** Yes, I wanted to refer to clause 56 as well, but I know you have some provisions for reporting, and it would make it wholesome.

**Mr. Chairman:** Would you like to withdraw now, Sir?

**Sen. Prof. Deosaran:** No, I am not withdrawing. I am putting it on record, I think the Minister is agreeable to it.

**Mr. Maraj:** Yes.

**Mr. Chairman:** You are saying clause 56, we are on clause 18 now.

**Sen. Prof. Deosaran:** As you said we need a piece of paper to make a decision.

**Mr. Maraj:** Can we deal with it when we get to clause 56?

**Sen. Prof. Deosaran:** All right, on that basis I would withdraw.

**Mr. Chairman:** Sen. Prof. Deosaran's amendment to clause 18(2) has been withdrawn.

*Amendment withdrawn.*

*Question, on amendment, put and agreed to.*

**Sen. Prof. Deosaran:** Mr. Chairman, I have an amendment to clause 18(3).

**Mr. Chairman:** Sen. Prof. Deosaran, I got the impression that you had taken the Minister's word that when he goes to clause 56—

**Sen. Prof. Deosaran:** If you examine the amendments, with respect, Mr. Chairman, they are substantively quite different.

**Mr. Chairman:** Well, in that case we would have to leave clause 18 open and go on to clause 19.

**Sen. Prof. Deosaran:** I beg your pardon?

**Mr. Chairman:** We would leave clause 18 open.

**Sen. Prof. Deosaran:** I do not know why such little emphasis would be put on the consumers' rights and the consumers' complaints in this matter which is what clause 18(3) of my amendment involves. I think it is a very important aspect, and I have duly circularized these amendments, so I do not see why I should be put at a disadvantage, unless I am missing something. We dealt with clause 18(1), 18(2), and I agreed to withdraw on something in clause 18(2). Now we come to clause 18(3), which deals with a fresh matter, but it is on the same clause 18.

**Mr. Chairman:** I am awaiting the Minister's response.

**Mr. Maraj:** There is a potential, positive response here. [*Laughter*] We are suggesting that instead of adding the new subclause, we can put it under the functions of the Authority and put (q) after (p) and clause 18(1)(p) would now be 18(1)(q) which reads as follows:

- “(q) establish a Consumer Complaints Committee to collect, decide on, and report on consumer complaints, such reports to be included in the Authority's annual report.”

**Sen. Prof. Deosaran:** I was speaking about something more analytical than merely collecting. What we lack in this country—

**Mr. Maraj:** Before you go on, Sir, I am keeping your words, the only thing I have changed are the words: “as part of the Authority”.

**Sen. Prof. Deosaran:** Which would have a functioning unit at its behest?

**Mr. Maraj:** Yes.

**Sen. Prof. Deosaran:** Well, on that basis I would withdraw my amendment and give way to the Minister’s. Thank you very much, this is a very important aspect.

**Mr. Maraj:** We agree. So we are adding 18(1)(q) and (q) now becomes (r).

**Mr. Chairman:** Sen. Prof. Deosaran is withdrawing his amendment to clause 18(3) and there will be a new insertion to clause 18(1).

*Amendment withdrawn.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 18(1)(p) be renumbered 18(1)(q) and clause 18(1)(q) will now be 18(1)(r).

**Sen. Morean:** Clause 18(3)(e) as proposed by Sen. Prof. Deosaran in that subclause 18(3) is dealing with consumers in the performance of its functions; the Authority should have regard to the interest of consumers in particular and there is where I think that should be slotted.

**Sen. Lucky:** In response to Sen. Morean, whereas I agree that subclause 18(3) deals with the consumer, it really looks at the interest of the consumer and what the Authority should take into consideration in terms of the specifics of the interest that would concern consumers, but I think the point Sen. Prof. Deosaran made—

**Sen. Morean:** I take your point, you do not have to go any further.

**Sen. Lucky:** You pre-empt me?

**Sen. Morean:** Yes.

**Sen. Lucky:** Thank you very much.

**Mr. Chairman:** Sen. Prof. Deosaran, you have withdrawn and we have a new subclause (q):

“establish a Consumer Complaints Committee to collect, decide on, and report on consumer complaints, such reports to be included in the Authority’s annual report.”

This is consistent with your amendments.

*Question, on amendment, put and agreed to.*

*Question put and agreed to.*

*Clause 18, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** We have some marginal notes from Mr. Maraj and, as you know, marginal notes do not form part of the Bill. What has been proposed here is that we insert the words “and powers” after the word “functions” in the marginal note.

*Clause 19.*

*Question proposed, That clause 19 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I suggest that in light of the very positive reception that my amendment received when I was giving my response, maybe you could ask hon. Senators if they would accept that and move on just for the sake of efficiency.

**Mr. Chairman:** Sen. King, you have heard the hon. Minister; Sen. Prof. Deosaran, who is also speaking on behalf of Sen. Thomas—the Minister has asked if you would want to withdraw and proceed to adopt his amended clauses.

**Sen. King:** Yes, we graciously do, because the Minister has taken account of all our concerns.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Prof. Deosaran, are you happy with clause 19? Are you going to withdraw?

**Sen. Prof. Deosaran:** Yes.

*Amendment withdrawn.*

**Mr. Chairman:** What about Sen. Thomas’?

**Sen. Prof. Deosaran:** Yes, I withdraw.

*Amendment withdrawn.*

**Sen. Prof. Kenny:** Mr. Chairman, there is just one minor concern here. The wording of this is very similar to a lot of the United Kingdom legislation for regulatory bodies, and my concern here is that with the United Kingdom, legislation there is always a requirement for gazetting the written instructions

from the Minister so it becomes a very public thing, and I wonder whether the Minister might not consider very minor changes there requiring the gazetting of these directions. When a direction comes from a Minister to a regulatory body in the UK type of legislation, there is always a subclause requiring its gazetting so it becomes quite public.

**3.45 p.m.**

**Mr. Maraj:** Creating unnecessary bureaucracy before any action can take place on the policy and so on, you would have to gazette it, is that what you are saying?

**Sen. Prof. Kenny:** I will not insist on it but I have read enough of the UK legislation on which we pattern our legislation, and the wording that “the Minister may give general or specific directions” is always followed by the limitation as to what he can do and the requirement for gazetting, but I will not make an issue of it.

**Mr. Maraj:** Thank you very much, Senator.

**Mr. Chairman:** Seeing that we have had the withdrawal of all the amendments—Sen. Morean, do you have an amendment to clause 19?

**Sen. Morean:** I do.

**Mr. Chairman:** Would you proceed.

**Sen. Morean:** I will read the amendment:

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 policy direction...

So that what is being inserted there is the word “policy”, and after the word “Minister” add the following words:

“...but subject to this section, the Authority shall, when exercising and performing its functions, powers and duties, be subject to the control or direction of no other person or authority.”

The reason for this is that we want to establish an independent authority that will not be subject to the whims and fancies of anyone.



The Authority is there to carry out the policy directions of the Government, whether it is a special direction or general direction, but other than that the Authority will be acting independently. To my mind, this provision is even more necessary in light of the fact that the Minister has stated throughout that we want a transparent body established.

**Mr. Maraj:** Mr. Chairman, we have made an amendment that has taken into consideration all of the views expressed on this very important matter. We have circulated the amendment that now requires the Minister to give written directions to the Authority on matters of general public policy. In other words, avoiding arbitrariness, ensuring transparency and clarity. We have also ensured, in clause 21, that the Minister, if he disagrees with or modifies anything that the Authority recommends or decides upon, has the legal obligation to put it in writing and the Authority must also make it public. So I do not see the need to go this route as suggested by the hon. Senator. I think it is all taken into account already. I have a difficulty in accepting.

**Sen. Morean:** I respectfully beg to disagree with the Minister. Clause 19 is amending what was there before but it is not stating specifically that whatever decision the Authority arrives at is arrived at independently. It is not really providing for that. What you are saying here is the Authority shall give effect to that policy, whatever that means...

**Mr. Maraj:** May I ask, hon. Senator, who then in your view should determine the policy?

**Sen. Morean:** I am not saying the Minister should not determine the policy. That is exactly what I have said here. When I inserted the word "policy" after the word "general" that is acknowledging that is what the Authority is there to do, to act on the general policy directives of the Minister, but in so acting, I am saying that the Authority should act independently without coercion or interference. That is basically what my provision is seeking to provide for.

**Mr. Maraj:** We have no problem with the Authority acting independently, we have said that over and over, but we feel that is provided for in this amendment and in the other provisions that we have made elsewhere.

**Sen. Morean:** Which other provisions Mr. Minister?

**Mr. Maraj:** Clause 21, for example, all the amendments deal with that.

**Sen. Morean:** Which specifically?

**Mr. Maraj:** The obligation for making known any deviation or modification of the Authority's decision or any different points of view. In other words, that has to be written. The Authority then also is free to make these views known. All of these things create the environment within which there is the opportunity and the freedom for the Authority to act independently.

**Sen. Morean:** Are you referring specifically to 21(6)?

**Mr. Maraj:** Yes. And where the Minister is acting on the recommendations of the Authority. I think the environment is there. We cannot avoid the nexus, the relationship that must exist, in my view, between the Authority and the Minister. It cannot be totally separate. One has policy directives to execute; and there is that relationship. I think it is taken care of in clause 19 and to go in the direction that you are suggesting is not really necessary at this time.

**Sen. Morean:** I agree that there must be a link. In fact, the Authority is carrying out the general directives of the Minister. However, my problem is not with that, but with how the Authority now functions once it gets the directives from the Minister.

**3.55 p.m.**

**Mr. Chairman:** Sen. Morean, would you like me to put the question?

**Sen. Morean:** I prefer to continue.

**Mr. Maraj:** I am satisfied that the concerns of the goodly Senator are taken into account in clauses 19, 21, and other parts of the Bill which delineate the relationship between the Authority and the Minister.

**Mr. Chairman:** Senator, do you want me to put the question or do you want to withdraw?

**Sen. Morean:** No, I do not want to withdraw at all. For the record, you put the question.

*Question, on amendment, put and negatived.*

**Mr. Chairman:** The Minister has an amendment to clause 19 which reads as follows:

Delete the clause and substitute as follows:

19. Subject to the provisions of this Act and any other written law, the Minister may give written directions to the Authority on matters of general public policy and the Authority shall give effect to that policy.

*Question put and agreed to.*

*Clause 19, as amended, ordered to stand part of the Bill.*

*Clause 20 ordered to stand part of the Bill.*

*Clause 21.*

*Question proposed, That clause 21 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I propose an amendment to clause 21 which reads as follows:

Delete subclauses (3), (4) and (5) and substitute the following:

(3) On its receipt of an application, the Authority shall cause to be published in the *Gazette* and in at least one daily newspaper circulating in Trinidad and Tobago, a notice to the effect that it has received and is reviewing the application.

(4) A notice published pursuant to subsection (2) shall state the time, which shall not be less than twenty-eight days from the date of publication of the notice, within which any comment on or objection to the application may be submitted to the Authority and the Authority shall consider the comments and objections prior to making its recommendations to the Minister.

(5) The Authority shall forward its recommendations to the Minister within ninety days of receiving all relevant information pertinent to the application and the Minister shall indicate his approval, modification or rejection of the recommendation within sixty days of receipt of the Authority's recommendation.

(6) Where the Minister approves the recommendation of the Authority or modifies or rejects it, he shall give his reasons in writing for so doing and the Authority shall arrange for the publication of both the recommendation and the Minister's position in respect thereof.

(7) On the granting of a concession by the Minister, the Authority shall cause to be published in the *Gazette* and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect.

(8) A concession shall be available for public scrutiny at the office of the Authority and may be reproduced by the Authority at the request of any member of the public on payment of the prescribed fee.

(9) If on the expiration of the period referred to in subsection (5), the Minister has not indicated to the Authority, in writing, his approval, modification or rejection of the recommendation, it shall be deemed to have been approved.

Mr. Chairman, I want to suggest that in light of the fact that as the Minister, I have taken into account so many of the views that have been expressed—and I am only suggesting this for the sake of the efficient use of time and so on—and we have made elaborate amendments; it may be possible for us to consider those amendments which may have taken into account all of the views that have been expressed by Senators opposite.

**Mr. Chairman:** You would recall in the Minister's presentation, he did, in fact, make some reference to some compromises and this is recorded in his circulated amendments. I think what he is suggesting is whether, for instance, those proposed amendments coming from Sen. Thomas, Sen. Prof. Deosaran, Sen. Morean, Sen. Montano and Sen. Daly, could be withdrawn in favour of the proposed amendment by the Minister. May I have the views of the Senators who have proposed the amendments? Do I have your support?

**Sen. Morean:** You have my support with respect to my proposed amendment to clause 21(3).

**Sen. Yuille-Williams:** Mr. Chairman, while they are looking at that, could I ask the hon. Minister, Sen. Gillette, whether "public telecommunications network" includes "public telephone network"?

**Sen. Gillette:** Yes.

**Mr. Chairman:** Sen. Morean, you are holding on to clause 21(1)?

**Sen. Morean:** For the time being.

**Mr. Chairman:** Sen. Montano?

**Sen. Montano:** I am happy to withdraw my proposed amendment, Mr. Chairman.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Prof. Deosaran, you speak on behalf of two persons today.

**Sen. Prof. Deosaran:** Yes, both on behalf of Sen. Thomas and myself. I think we ought to be clear what the Minister's and his advisers and the Government's

position is. I do not think it makes good sense to be haggling over—I think it is clear what kind of Bill the Minister intends this one to become, especially with respect to the relationship between the Authority and the Minister and the jurisdictional line as to control and accountability. So given that, and also as I re-read his amendment, I think I would happily withdraw mine, because I think he has come some way and I think it is still in the best of spirit so far for the afternoon.

*Amendments withdrawn.*

**Sen. Daly:** I am happy to withdraw mine on this occasion.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Morean, would you like to elaborate on your particular clause 21(1)?

**Sen. Morean:** I have looked at the new subclause (6) and that opens the way for all sorts of challenges, so that I am happy to withdraw clause 21(1) also.

*Amendment withdrawn.*

**Sen. Daly:** I have one little quibble, Sir, on clause 21(6). I am very happy that the work will be published, but why do we have “shall arrange for the publication” as opposed to “shall publish”?

**Mr. Maraj:** Okay. We will make that change. Instead of “arrange for the publication, it would read, “shall publish”. But wait a minute. Does the Authority publish?

**Sen. Daly:** Everybody publishes what it does.

**Mr. Chairman:** So that is amended.

**Sen. Daly:** You publish in the *Gazette*. You do not do it yourselves.

**Sen. Rev. Teelucksingh:** Mr. Chairman, I wonder if I am right in seeing that in the original clause 21(3): “The Minister shall not be bound to accept advice.” I mean, during the debate, that was very offensive, but the new clause 21(6) is saying the same thing. It is really pure semantics: “The Minister shall not be bound”, and then you are saying, “or he rejects”. That means he can accept and he can reject?

**Mr. Maraj:** Yes.

**Sen. Rev. Teelucksingh:** Does that significantly change what we had in the original clause 21(3)?

**Mr. Maraj:** Absolutely.

**Sen. Rev. Teelucksingh:** At what point?

**Mr. Maraj:** I think it is obvious—

**Sen. Rev. Teelucksingh:** Giving reasons, and so on and publishing the reasons. Would he still have the authority to reject?

**Mr. Maraj:** Yes, he must have the authority to reject.

**Sen. Daly:** But he is doing it openly.

**Mr. Maraj:** Yes, doing it openly.

**Sen. Daly:** No cellular case—cost the taxpayer \$15 million.

**Sen. Rev. Teelucksingh:** That makes the difference.

**Mr. Maraj:** That is the power of disclosure, transparency and public opinion. That is the power and democracy of public opinion. [*Desk thumping*]

**Sen. Rev. Teelucksingh:** The important element there is, you are really making sure that the Minister keeps an eye on things and he puts his hand in that pie. No matter what, he still has the power to accept or reject.

**Mr. Maraj:** Yes, because the Minister must have a mind of his own. The Minister is responsible for policy. The Minister does not have to accept everything that the Authority tells him, neither must the Authority accept everything that the Minister tells it. That is the kind of relationship that we see, a healthy relationship.

**Sen. Rev. Teelucksingh:** And not that of a policeman.

**4.05 p.m.**

**Sen. Yuille-Williams:** Mr. Chairman, before you put the question, in the spirit it exists now, I want some clarification from the Minister about the public telephone network. I am looking at concessions—is it the private telephone network which is operated by the closed user group?

**Sen. Gillette:** Yes.

**Sen. Yuille-Williams:** When does a closed user group become a telephone company?

**Sen. Gillette:** When it begins to sell services to people. In other words, if you have the banks that communicate from one automated teller machine to another

automated teller machine it is not selling a service. It is really for the efficiency of the transfer of information, money transfers. That is a closed user group. When you actually sell it to the public, then it becomes a telecommunications network. In following your line, when you said “public telecommunications”, it means a telecommunications network used to provide the public telecommunications service. When you read the definition of “public telecommunications services”, it covers public telephone service, which is what you asked just now. Then it goes on to describe what a public telephone service means, “the commercial provision to the public of the direct transport and switching of voice in real time from and to points at which users are connected” and it goes on. So, it goes from one to the other.

**Sen. Dumas:** When I use an ATM, for each transaction, am I not paying? They charge me for each time I use it.

**Mr. Maraj:** Is that related to the Bill? [*Laughter*]

**Sen. Dumas:** Yes, he is defining “public telephone service” by saying—

**Sen. Gillette:** I used it as an example of a closed user group, that it is when you sell an actual service.

**Sen. Dumas:** So, when they are charging me it is not a service?

**Mr. Chairman:** Could we get back to the Bill? Sen. King, are you withdrawing your amendment?

**Sen. King:** Are you referring to my proposed amendment to clause 21(5)?

**Mr. Chairman:** Yes, Senator.

**Sen. King:** Yes, certainly, under the proposed amendments by the Minister.

*Amendment withdrawn.*

**Mr. Maraj:** Mr. Chairman, before you put the question, I just have an addition to make to subclause (6), just to ensure further transparency and clarity. We want to insert after the words “in respect thereof” the words “in the Gazette and at least one daily newspaper circulated in Trinidad and Tobago.” You do not publish it and put it in a drawer somewhere.

*Question, on amendment, put and agreed to.*

*Question put and agreed to.*

*Clause 21, as amended, ordered to stand part of the Bill.*

*Clause 22.*

*Question proposed,* That clause 22 stand part of the Bill.

**Mr. Chairman:** Sen. Mary King.

**Sen. King:** Mr. Chairman, I withdraw the amendment.

*Amendment withdrawn.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 22 be amended as circulated.

In subclause (3)(g) delete the word “Authority” and substitute the word “Minister”.

*Question put and agreed to.*

*Clause 22, as amended, ordered to stand part of the Bill.*

*Clause 23.*

*Question proposed,* That clause 23 stand part of the Bill.

**Mr. Chairman:** We have two amendments to clause 23, one by Sen. Martin Daly and the other by Sen. Danny Montano. Sen. Montano, are you withdrawing or pursuing?

**Sen. Montano:** I would like to pursue it, Mr. Chairman. We are talking about something that does not exist at this point. We do not know what the broadcasting code is and while I heard the Minister make certain comments, we do have a censor in this country, and as far as I know he still has responsibilities in certain areas. I think that ought to cover the concerns of the Minister who he was talking about specifically. I have heard no other concerns that seem to warrant this kind of control over broadcasting. I just have not heard arguments to persuade me that a code, which I have not seen and could be potentially very damaging to the country, is really necessary at this point.

**Mr. Chairman:** Sen. Martin Daly.

**Sen. Daly:** I am not withdrawing, Sir.

**Mr. Chairman:** I am not asking you to withdraw, Sen. Daly. I just want you to explain or advance your position.

**Sen. Daly:** I said why I do not want a broadcast code. That is for the ego of politicians because you cannot control the flood of material that is available way beyond the control of the State, even beyond the control of the World Trade



Organization (WTO) to have some “peewat” censorship going on. It does not make any sense. It is just tilting at windmills. The material that you might bona fide want to censor is freely available so the broadcast code is completely irrelevant in the new age of technology. It is just a “peewat” move.

**Mr. Maraj:** As indicated in my contribution, I share the concerns, but I did point to certain ameliorating mechanisms that do exist: the requirement for consultation in clause 18(1) of the Bill, as well as the fact that such a code, when it does come into being, would pass only through affirmative resolution, and that if the code offends sections 4 and 5 of the Constitution, a special majority would be required.

**Sen. Daly:** What would happen is the Government would formulate a code, the matter would go to court, we would spend another \$60 million and meanwhile you are getting the material “from foreign”, the same material you are trying to censor. I know you may have a fax about this, but this is a waste of time for us to have some little “peewat” broadcast code in Trinidad and Tobago when all of this material is freely available all over the world in this electronic age. It is really Ludditism. It is absolute Ludditism and we all know it.

**4.15 p.m.**

**Sen. Yuille-Williams:** Mr. Chairman, I too share concern about the broadcasting code. It is intended that provisions are being made to bind concessionaires to a code which is not yet established. I do not know if there is some other way in which it could be done. The very nature of the code can result in concessionaires going out of business, simply based on compliance with the code. It is very difficult to move into this area at this time. We are hearing what some people are asking in terms of a broadcasting code. Probably, some concessionaires will have to go out of business just based on compliance of code.

**Mr. Maraj:** I am listening.

**Sen. Daly:** I express no view on it because it is a difficult question. This Government very carefully excluded gender equality and non-heterosexual relationships from the Equal Opportunity Bill. It did so very carefully in the teeth of international opinion. That is one of the things which will come up in the broadcast code. We have a local newspaper that is running “gay-mail”. I am not saying whether I agree with it or not. I will tell you privately what my views are. You will never get agreement about whether a newspaper in Trinidad and Tobago should run “gay-mail”. I am just using that by way of example. The same thing will happen in the electronic media. You will not get agreement on it. We are

wasting time; meanwhile, the same type of material would be freely available from the gay capitals of the world.

**Sen. Als:** Sen. Daly, France is an example of the inclusion of a code. They insist by law that 70 per cent of what is broadcast on French airwaves must be in French. In Chile it is 55 per cent.

**Sen. Daly:** But we do not need a code for that.

**Sen. Als:** I am saying that it is established in a code in terms of the cultural capacity of the country and the identity. It is precisely because of the argument of the flood of information, which you raised. They have insisted that the identity of the country be established in the context of a code. If you say, no code at all, how do we handle the protection of the country's cultural identity?

**Sen. Daly:** You do not need a censorship code to deal with the policy question.

**Sen. Als:** A code does not necessarily mean censorship. It may mean direction, influence or several things. You are suggesting that it only means censorship. I do not think that you are correct on that.

**Sen. Daly:** That was the argument of the Minister.

**Sen. Als:** We have noted 27 concessions on the other side. This Bill is a people's Bill. This is no longer a government Bill and you must identify that. I think all of us must see that.

**Sen. Daly:** Why did we submit to the WTO and not put in something about local—?

**Sen. Als:** The WTO is part of an international arrangement by which we are all influenced.

**Sen. Dumas:** The code, on the other hand, could be restricted. My position is that if it is contentious and no one knows the intention of the code, then maybe, when there is a code, make an amendment to this Bill. At this point in time to ask people to agree to a code that is unnamed and unspecified should limit feedback or should influence concession. With this type of contention, it does not serve any purpose.

I take the point that cinematographic regulations may provide the opportunity to tell us how many plays of what radio we should have and what language to use. There are other means of managing that broadcast and telecommunications and not necessarily this one. It serves no purpose except to create confusion. Take it

out and when you have a policy that the code would enforce, amend this. Bring something that we can see and feel.

**Mr. Maraj:** There is the consideration as well. I am just reminded that the code will have to be in place before this part of the Bill is proclaimed. Remember we would be proclaiming the Bill in various stages. This part of the Bill will not come into effect until the public is aware of what the code involves.

**Sen. Daly:** You said we need quick decision. This is the concession part. You would not be giving out any telephone licences until you have a broadcast code. You are being misled. That cannot make sense. You have said that we need this to go into the 21st Century technology and take advantage of all these opportunities but, all of a sudden, you are not going to take advantage of these economic opportunities while you wait on a broadcast code. Giselle Laronde's husband cannot say something on T.V. That does not make sense. It makes absolutely no sense. Tell me that you are tying the telephone licences to a broadcast code.

**Mr. Maraj:** Give me some time to think about this as we go through. Let us pass over this and let us go on.

*Clause 23 deferred.*

*Clause 24.*

*Question proposed, That clause 24 stand part of the Bill.*

**Sen. Montano:** Mr. Chairman, I beg to move that clause 24 be amended by deleting clause 24(1)(c).

In light of my present understanding about what the Minister was explaining, I will withdraw my amendment.

*Amendment withdrawn.*

**Sen. King:** Mr. Chairman, I beg to move that clause 24(1) be amended by deleting the words "without the prior written approval of the Authority" and substituting the words "without the written approval or direction of the Authority".

**4.25 p.m.**

**Mr. Maraj:** Mr. Chairman, I think we will accept Sen. King's amendment.

**Sen. King:** Thank you very much.

**Mr. Maraj:** Sen. King, we have considered this, but when you say, "without the written approval or direction", are you suggesting then, that the action can

take place without the written approval or it can be oral or whatever? This is a concern, so we want to suggest that you consider that.

**Sen. King:** Yes, I was considering that, but it may not be written, it may be a direction given by the Authority.

**Mr. Maraj:** That is not transparent enough.

**Sen. King:** Perusal or direction in writing; without the written approval or direction. You may approve or you may direct.

**Mr. Maraj:** Let us keep it as “without the written approval of the Authority”.

**Sen. King:** Okay.

**Mr. Maraj:** We have now amended it as follows: “without the prior approval of the Authority”. We are not accepting Sen. King’s amendment. Sen. King has agreed to withdraw.

**Mr. Chairman:** Sen. King, have you agreed to withdraw 24(c)? What is your position? Clause 24(1)(a)(iii) has been accepted.

**Sen. King:** We agree that the second amendment be withdrawn.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 24, as amended, ordered to stand part of the Bill.*

**Sen. Dumas:** Mr. Chairman, I want to propose an amendment that we delete the words “with access to and”.

**Mr. Chairman:** Let me see if the proposed amendment has the approval of the Senate. Mr. Maraj, what is being proposed is that in clause 24(1)(b) we delete the words “with access to and”. Do you want to amplify?

**Sen. Dumas:** I would not need the definition of “access” if I delete this. I was trying to find out what is the difference between the word “access” and “the opportunity to use such network or service on a fair and reasonable basis”. Without a definition for “access”, then it seems to me that one needs to provide users under conditions which are published or otherwise filed with the Authority, the opportunity to use such network or service. And, therefore, the concept of “access” would fall within “the opportunity to use”. If that is not what “access” means and it means something else, then somebody ought to tell us why we want to leave it in the Bill.

**Sen. Daly:** Mr. Chairman, can we get help with the difference between the word, “access” and the word “use”? The drafting books tell us not to use several words for one, unless there is some technical difference between the word “access” and the word “use”. Maybe the word “access” was just slipped in there because we misuse the word all the time.

**Sen. Gillette:** Generally, in the world of telecommunications we use the word “access” which encompasses “use” also. Maybe you may want to say “filed with the Authority, with access of such networks or services on a fair and reasonable basis”.

**Sen. Daly:** So take out the word “use”.

**Sen. Gillette:** Take out the word “use” because one usually uses the word “access”.

**Sen. Dumas:** The word “access” is used a number of times.

**Mr. Maraj:** What about after the word “Authority” if we use the words, “opportunity to use”?

**Hon. Senators:** That is what the hon. Senator is proposing.

**4.35 p.m.**

**Mr. Gillette:** There is a distinction between “access” and “use”. The base will hopefully resolve it. If, for example, someone requests TSTT to put in a line and, after putting in the line, he also called to put in his own switching equipment to use that line, that is called “access” to the line. Whereas, if he puts the line in and TSTT provides the line and the switch, that is “use” of the line. That is the technical difference between “access to” and “use” of the line.

In the world of telecommunications, for example, an operator wanting to interconnect may decide not to put a switch in. He has “use” of the line. If he wants to put a switch in to reduce his cost, he can ask TSTT or any other operator to put the line in; he will put the gear in. He then has “access” to the facility. Therein lies that little technical difference between “access to” and “use”. It basically says the same thing, but there is a fine technical difference. In all of the regulatory bodies, whether it be Office of Telecommunications or the Federal Communications Commission, they use the word “access to” and “use of”. It is not different at all.

**Mr. Dumas:** Why not give us the definition for the front?

**Mr. Daly:** Is access defined in the [*Inaudible*]?

**Mr. Gillette:** Essentially one costs more and one costs less, because it depends on whether you have access to the facility or whether you have asked them to use the facility. One is “access of” the facility and the other “use of” the facility.

**Sen. Morean:** Mr. Chairman, I believe that if there is a technical meaning, it should be contained in the definition section. When the Act has to be interpreted by the court—and I am sure it is going to be at some point—we must understand the particular terms. Very often when one is interpreting legislation, it has to be done within a context. If these words have specialized meaning outside their everyday meanings, then they should be defined specifically. It appears that this has been a problem for Sen. Dumas. We, in our ignorance, may not have seen it, but obviously Sen. Gillette knows it has a special meaning. It should be made clear.

**Mr. Maraj:** It is clear in my mind that there is a difference in the meaning of “access to” and “use of”. It is an emerging sector whose terminology is being defined. It may not have been defined in the IPU, but it is now commonly used. There is clearly a difference between the two. I have no doubt the definition will emerge.

**Sen. Gillette:** A person may also use two networks: one may be a redundant network and the other may actually be used. When one network goes down, then he has access to the other network to provide the redundancy link. It is like the use of two. He is giving me a definition:

Access—the ability of a user/provider to utilize the network of another provider or user.

Maybe you can come up with something different.

**Sen. Morean:** The very fact that we have a problem with the word means it will crop up later. It is better to have it properly defined.

**Mr. Maraj:** I think we need to deal with clause 24(1)(b). It seems that we must leave it as it is.

**Sen. Morean:** What about the consequential amendment to the definition section?

**Sen. Gillette:** Sen. Dumas, we did not approve clause 2.

**Mr. Maraj:** We have the opportunity to come back to clause 2 so we will deal with that there.

**Sen. Montano:** He has a suggested definition of “access”, which I have asked him to discuss with you at the tea break. You all might work it out.

**Sen. Yuille-Williams:** Mr. Chairman, could I make an observation on clause 24(c)?

**Mr. Chairman:** Yes.

**Sen. Yuille-Williams:** In clause 24(c), where we have cross-subsidization between the networks, with prior approval of the Authority, can there be cross-subsidization within the industry itself—from one industry to another, without approval?

**Mr. Maraj:** Where there is a dominant provider, the Authority will regulate the situation.

**Sen. Yuille-Williams:** I do not believe the Minister is getting the point. He said that from a network or a service there cannot be cross-subsidization. I am talking about one industry cross-subsidizing another without prior approval.

**Sen. Gillette:** Are you saying within the dominant supplier? That is what it refers to. When you cross-subsidize, you create a barrier to the business. For example, if you cross-subsidize your cellular network, so much so that the cost of another supplier coming in to the local network is above the cost of what you provide the service for, that is cross-subsidizing. You have to write to the Authority and they will look at the cost structure and say whether you can or cannot cross-subsidize. In that case, in theory you have to debundle the services so that you know what it is costing. It is saying, then, that whatever you charge yourself as a dominant supplier, you must charge the other people. That is for public knowledge. You can then write the Authority and say whether you want to capitalize and the Authority can say whether you can go ahead. You know what you are charging the company on the cross-subsidy. Is that clear?

**Sen. Dr. McKenzie:** Mr. Chairman, I want to find out, let us say TSTT is making plenty money on cellular and it wants to use some of that profit to put a service in Toco. Can they do that without permission?

**Sen. Gillette:** That is what is called the universal service obligation. That area in Toco is less dense than the areas down here and they are trying to route capital expenditure to an area that is less. That is also the responsibility of all suppliers coming in on an equitable basis, depending on the size of the operator coming in. That is what is called the universal service obligation and the universal service fund. It will be allowed but you must apply to the Authority. That is also true of

all other suppliers, not only the dominant service provider. What happens first is that the dominant provider or the other operators would try to build out networks in the most lucrative areas and not the low-income areas. That is where you have the universal service fund and obligation where you encourage, not only the dominant supplier, but also other operators to build out networks in the lower income bracket areas. It is not primitive. That is where the universal service obligation which is your concession document, as well as the universal service fund that will allow you to build out those networks as quickly as possible, and not only the lucrative areas of the industry. Universal service, then, covers, not only voice and data services, it can also encompass all the services of telecommunications depending on what the Authority so decides.

*Question put and agreed to.*

*Clause 24, as amended, ordered to stand part of the Bill.*

**4.45 p.m.**

*Clause 25.*

*Question proposed, That clause 25 stand part of the Bill.*

**Mr. Chairman:** There are some amendments to clause 25. We have a number of amendments from Sens Glenda Morean and Mary King.

Sen. King, you have a number of amendments to clause 25, would you like to share them?

**Sen. King:** Clause 25(2)(b) says:

“...the Authority shall require a concessionaire to provide, upon request, points of interconnection in addition to those offered generally to other concessionaires, subject to rates that reflect the concessionaire’s cost of constructing additional facilities...”

In that case I would like us to be very specific on costs and possibly the second option which I have stated as:

Delete the words “reflect the concessionaire’s cost of constructing additional facilities” and substitute the words “reflect the concessionaire’s cost of constructing (including cost of capital) additional facilities” or with the words “reflect the concessionaire’s total economic cost of constructing additional facilities”.

Economic cost would include his cost of capital and his interest rates and all of that, so it is the true, total economic cost.



**Mr. Maraj:** Okay, we will accept that.

**Mr. Chairman:** Do you have another amendment, Sen. King?

**Sen. Dumas:** Mr. Chairman, I have one question on clause 25(2)(b). One notes that the cost that must be taken into account is the cost of providing the additional facilities. I am wondering where the consideration is for the maintenance of the rest of the system that allows you to plug in the additional facilities.

**Sen. Gillette:** When you identify the points of interconnection then you would identify the cost of putting in the required equipment which includes capital costs of putting that particular—

**Sen. Yuille-Williams:** Mr. Chairman, who identifies it?

**Sen. Gillette:** The person who is applying and then the Authority has to go in and determine whether it is true or not true. Now, when you talk about the maintenance of it, that is where the access deficit of which I spoke is equal to the cost of the service minus the maintenance of the service. That is another thing that the Authority has to regulate to ensure that it is a positive thing and that you are not subsidizing the service.

There are two things: one is the capital cost of interconnection and the other is the cost of maintaining the circuits. Each operator would have certain cost-based analyses in terms of how he maintains that service. If you have the capital costs of the service and you have certain formulas that show you the reuse of the facility, then it is just a matter of formulas coming together to determine what is the cost of maintaining that service. You generally try to find that the cost of maintaining the service is less than the revenue you are receiving for that service, otherwise you need cross-subsidization. You see what is happening. Then, with the whole model changing and the reuse of the facility it tends to be positive. When it tends to be positive the Authority could determine what then is the price cap we should really charge for that service, and what should be the ceiling and flooring of the interconnection rate.

**Mr. Chairman:** Sen. King, would you like to go on to your second amendment, 25(2)(m)?

**Sen. King:** Mr. Chairman, I beg to move the following amendment:

Delete the words “cost-oriented basis such as the Authority” and substitute the words “competitive price basis such as the Authority”.

**Sen. Gillette:** Sen. King, remember the whole determination of price—cap regulation and flooring is based on a cost base of service not on competitive prices.

**Sen. King:** Which costs are you looking at? There are many definitions of costs.

**Sen. Gillette:** There are certain formulas which the Authority would be guided by in terms of working out the cost base of that service to determine the price ceiling as well as the price flooring. When you begin to compete between the price ceiling and the price flooring, the efficiency of technologies or the efficiency of how you advertise or market that service would be reduced over time and hence the consumer would benefit because the price would have been reduced but it has to be on a cost-oriented basis, not competitive.

**Sen. King:** I totally disagree with you. I think we have to be very specific when we are looking at the costs and your cost-oriented basis is very vague and not specific enough.

**Sen. Gillette:** When you go back to competitive pricing you are going back to rate-of-return regulation and what you are trying to do is to move away from that and go into cost-based services, so that, in fact, the regulatory body, based on cost would determine what the price to the consumer will be on a price ceiling as well as a price flooring. That will be for public information as well as the interconnection points. When you determine it that way you know what the cost of the services is and, therefore, you allow each operator to operate in that area of price flooring and price ceiling. It has to be on a cost-based service. If you do not know your cost-based service and it is only on competitive-based services, then you are going back to the rate-of-return regulation because you do not know what the service is truly costing you. You do not know if it is being subsidized or not.

**Sen. King:** But this disaggregation is really for your long-term planning because when we enter now we are not going that route with the dominant provider.

**Sen. Gillette:** When you enter now, the dominant provider or all providers coming in now, as a matter of fact, will have to disaggregate their services. Right now the dominant supplier, which happens to be TSTT, has many services in there. You must disaggregate and determine on a cost basis what that service is. New operators coming into the country may decide to carry data services and video services, so already they could start determining what their cost services are. Depending on those two cost-based services you can then have discussions to

determine what the interconnection would be if you have to use the network at that point in time. That is where the regulatory body would regulate the whole area of the cost of the services as well as the interconnection rates. Then comes the price cap and price flooring, and based on the cost, again, they would determine your price cap and your price flooring in which you would be able to compete.

**Sen. King:** I notice in your price cap you have not taken into account the efficiency factor “X” which is equivalent to the inflation rate and, therefore, we are never going to get down to really cost-efficient and competitive pricing, so how are you going to get down to this?

**Sen. Gillette:** Again, there are many models of working out price cap and floorings because there is the Office of Telecommunications (Oftel) model, the New Zealand model, the Australian model, many different models. Again it is up to the regulatory body, the way they determine that cost, and it is going to be very open in terms of the way they determine that cost-based service and, as seen in the Bill, also at the points of interconnection, what is going to be charged. In the end, price cap regulation based on cost of services really ensures that the consumer benefits in the long run by competing within two areas: the low price and the high price. That is all it does. Once you go to competitive prices, you are going back to rate of return regulation and the consumer would not benefit.

**4.55 p.m.**

**Sen. King:** No, no, no, I totally disagree with you. We are not talking about rate of return. That is redundant. People do not use that any more. It should be actually taken out of the Bill because you do not put into a Bill something which is short-term, and we know that eventually TSTT is going to go to price cap minus X or price cap as you call it. *[Interruption]*

**Sen. Gillette:** That is the reason we cannot take it out now. It is because TSTT is on internal rate of return and, if tomorrow morning the Bill passes, you just cannot say you outlaw—*[Interruption]*

**Sen. King:** But this Bill is not for today or tomorrow, this Bill is for posterity.

**Sen. Gillette:** And when they eventually move to price cap, then that clause could be removed, because right now they have to be legal, they have to start to move across their price cap, if it takes them one year or two years to move to that. They are a big, dominant provider. They are big in many, many services of the industry. They are big in data, cellular, voice, wireless—everything—and they

have to be given time, and that is fair to them, to be able to disaggregate their services on a cost-based service to provide that information to the regulatory body. Then, when the new entrants come in, they also have to give the Authority the required cost of doing those services and then you could communicate.

**Sen. King:** Well, Minister, we have to agree that you do not really understand competitive pricing and the long-run average incremental cost, towards which most countries are going. So let us leave it at that for time's sake.

**Mr. Maraj:** I think on that note we can put the matter to the vote, Mr. Chairman.

**Mr. Chairman:** Before we do that, we have an amendment by Sen. Morean to clause 25(2)(b).

**Sen. Morean:** Yes, well, in the light of Sen. King's amendment, I would withdraw (2)(b). We are on to 2(j).

**Mr. Chairman:** So clause 25(2)(b) is withdrawn?

**Sen. Morean:** Yes, my amendment, because hers has taken care of what I wanted to highlight.

*Amendment withdrawn.*

**Sen. Yuille-Williams:** While the Chairman is looking at that, could I ask Sen. Gillette if the dominant provider can identify and specify points of interconnection?

**Sen. Gillette:** Well, it depends again on where the competition comes in because, depending on where the competition comes in, supposing the competition says, "I only want to provide data services in San Fernando"? Then TSTT may have a central point in San Fernando where they will want to interconnect at that point. Whereas, if you have a person in Port of Spain who wants to really service the Westmoorings area, as an example, their point of interconnection into the network is going to be only in Port of Spain. You see what I am saying? So it is really—depending on the service and depending on where the service is, they have to determine the point of interconnection. It is not up to TSTT. Now, depending on where the point of interconnection is, it may be more costly for TSTT in that area, and that is where the cost of service comes out then at that point in time.

**Mr. Chairman:** Members, there is agreement on clause 25(2)(b). Clause 25(2)(b) as proposed by Sen. Glenda Morean has been withdrawn in favour of Sen. Mary King's amendment which you have accepted. You accepted that?

**Mr. Maraj:** We have accepted that.

**Mr. Chairman:** So I want to put the question on this particular one.

*Question, on amendment, put and agreed to.*

**Mr. Chairman:** Members, I think this is an appropriate time for us to pause. We have a number of—*[Interruption]* Do you want to proceed with (m)?

*[Assent indicated]*

**Mr. Chairman:** All right, there is agreement that we should pursue clause 25(2)(m).

**Sen. Morean:** Mr. Chairman, before we complete clause 25, I just wanted to have an indication of what we are doing. Are we going to adjourn at this point after clause 25 or—*[Interruption]*

**Mr. Maraj:** We are going to the conclusion.

**Mr. Chairman:** We are just suspending for tea and we are coming back...

**Sen. Morean:** Yes, but if we spent how many hours?

**Sen. Lucky:** Four.

**Sen. Morean:** No, it is about five hours.

**Mr. Chairman:** Leave that for the leaders. That is not our business. The leaders will discuss that. We are suspending for tea and you can have tea on that question. *[Crosstalk]* Could we have agreement? Sen. Mary King, you have proposed an amendment to clause 25(2)(m). Is the Government in favour of this particular clause?

**Mr. Maraj:** No.

**Mr. Chairman:** The Government is not in favour of the clause. Do you want us to put it to a vote or do you want to withdraw?

**Sen. King:** I think for posterity's sake it should go to the vote because it is the most important part of costing.

*Question, on amendment, put and negatived.*

**Mr. Chairman:** There are many amendments I am seeing before me. In terms of Sen. Mary King, she has a list of amendments here. *[Interruption]* No, she has not withdrawn. Sen. Mary King, do you want to help us? Are you going to withdraw all your amendments to clause 25?

**Sen. King:** Withdraw which one?

**Mr. Chairman:** You have a new paragraph 25(2)(n).

**Sen. King:** Why should I withdraw that? *[Laughter]*

**Mr. Chairman:** That is the point I am making and that is why I am proposing that we should take a pause here because we have a long, long evening ahead of us.

**Sen. Morean:** Well, Mr. Chairman, this is the point I was making. We are at this point and it seems quite clear that you are tired.

**Mr. Chairman:** No, I am very energetic. *[Laughter]* Do not worry yourself. *[Laughter]* I can go until 11.00. I am good. You see, Members, I was just attempting to accommodate and facilitate. I have seen a number of amendments in the name of Sen. Mary King. She is not prepared to withdraw at this time. She wants to debate her matter, advance her points. So, on that basis, I was suggesting that we pause at this time and have some tea so we can refresh ourselves. So let me return to my Chair.

*Senate resumed.*

**Mr. Vice-President:** We are suspending at this time. It is now 5.05 p.m. We will come back here at 5.35 p.m. when we shall resume committee stage of our proceedings. We now suspend for tea.

**5.05 p.m.:** *Sitting suspended.*

**5.35 p.m.:** *Sitting resumed.*

*Committee resumed.*

**Mr. Chairman:** I do not know what was agreed to behind the Chair among the leaders, but I know that if we are going to be very late here we might become a little brittle and I would like all Senators to exercise some patience as we

proceed, especially when we are engaging in exchanges. I suspect we might be here for a little while, based on the fact that I have not received any directives from the leaders that they are going to be early in terms of the sitting. I get the impression that we could be here for some time, so I appeal to Senators to exercise some great patience and tolerance as we proceed.

We were on clause 25. We had just completed clause 25(2)(m) and we are now on new paragraph 25(2)(n) as proposed by Sen. Mary King. Sen. King, would you like to elaborate?

**Sen. King:** This suggestion is that the dominant provider be given a certain number of days—

Insert a new paragraph (n) as follows:

The elements of interconnection within “x” days from the submission of the request of the other concessionaire.

It is so that we do not get into a position which has happened in some countries where the request for interconnection comes and the dominant provider takes weeks, months and even years, especially when we do not have proper regulations. I am suggesting that there be a time frame for the elements of interconnection to be provided within a certain number of days.

**Mr. Maraj:** It is a good idea, but would it not go in the regulations rather than have it entrenched here?

**Sen. King:** Are you suggesting, Minister, that that should be an alternative?

**Mr. Maraj:** Yes.

**Sen. King:** And we are sure that it will go into the regulations?

**Mr. Maraj:** Yes.

**Sen. King:** Then okay, I will withdraw.

**Mr. Maraj:** Thank you.

*Amendment withdrawn.*

**Mr. Chairman:** We now go on to clause 25(4).

**Sen. King:** Mr. Chairman, I propose the following amendment to clause 25(4):

Delete the words “the Authority may take into account the following factors” to say that “the Authority shall take into account the following factors in framing the relevant rules”.

**Mr. Maraj:** We will accept “shall”. The Authority “shall take into account the following factors”, and could we end there?

**Sen. King:** Is there a reason?

**Mr. Maraj:** We are not making rules. We are making a determination.

**Sen. King:** I do not see why you are suggesting that we end there. Okay, I accept that. We have accepted “shall” and we have withdrawn “in framing the relevant rules”.

**Mr. Maraj:** It shall now read, “The Authority shall take into account the following factors.” That is it.

*Question, on amendment, put and agreed to.*

**Mr. Chairman:** There is another one I saw from Sen. Morean.

**Sen. Morean:** It is a minor amendment that more has to do with the language. It is:

“(j) provide, to the extent technically feasible, number portability when, and in accordance with the requirements, prescribed by the Authority;”

I am suggesting that the words “required to do so” be inserted there, and the comma be placed after “requirements”. So, it would now read, “provide, to the extent technically feasible, number portability when required to do so, and in accordance with the requirements prescribed, by the Authority”.

**Mr. Maraj:** When required to do so by whom?

**Sen. Morean:** By the Authority. The comma is coming after “prescribed”. Would you like me to go it over? After the second line, you are inserting the words “required to do so” and you are removing the comma from after “requirements” and putting it after “prescribed”.

**Mr. Maraj:** Is this necessary?

**Sen. Morean:** Yes. If you read it, it is just a question of language.

**Sen. Gillette:** It is, because it says, “provide to the extent technically feasible, number portability when and in accordance with requirements”. It says exactly the same thing.

**Sen. Morean:** What does the “when” say?

**Sen. Gillette:** When you are going to—if you interconnect.



**Sen. Morean:** Precisely, when required to do so. It is just a matter of language. After “prescribed”, you put the comma. Move it from after “requirements”.

**Sen. Gillette:** It says the same thing, really.

**Sen. Morean:** It is saying what you want to say, but in a better way.

**Mr. Maraj:** It is quite concise.

**Sen. Morean:** It is not that it is not concise. You see, the “when” was standing alone there. It is not saying “when prescribed by the Authority”.

**Sen. Gillette:** When required?

**Sen. Morean:** Yes, “when required to do so and in accordance with the requirements prescribed, by the Authority”.

**Mr. Maraj:** Yes, we will accept it. Thank you. Elegance of language.

**Sen. Morean:** Thank you. More than elegance. Language, and I know you appreciate that.

**Mr. Maraj:** I said “elegance of language”.

*Question, on amendment, put and agreed to.*

*Clause 25, as amended, ordered to stand part of the Bill.*

*Clauses 26 and 27 ordered to stand part of the Bill.*

*Clause 28.*

*Question proposed, That clause 28 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I want to suggest that in light of the amendment I have made to clause 28, based on the views expressed, we may want to ask Senators to consider whether they think them acceptable.

**Mr. Chairman:** Senators, there are a number of amendments coming from Sen. Kangaloo, Sen. Thomas and Sen. Montano. Would you want to withdraw and go along with the Minister's amendments as circulated? Individually, could we get Sen. Kangaloo's views? Are you prepared to withdraw?

**Sen. Kangaloo:** Yes, Mr. Chairman. I withdraw.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Montano?

**Sen. Montano:** Just give me a minute, please.

**Mr. Chairman:** Sen. Prof. Deosaran, are you prepared?

**Sen. Prof. Deosaran:** Is the Minister referring to these amendments on clause 28?

**Mr. Maraj:** Yes, the amendments I circulated.

**Sen. Prof. Deosaran:** From what I see here on his amendments to (5), (6), (7) and so forth, I was speaking about adding a new subsection and, in effect, his amendments really do not speak to the one I am proposing. So, I will be grateful for the opportunity to try to advance some justification, whatever the eventual result might be, when the time does arise, Mr. Chairman.

**5.50 p.m.**

Concerning Sen. Thomas' amendment, even if he were here I think he would use good judgment and withdraw. [*Laughter*]

*Amendment withdrawn.*

**Mr. Chairman:** Sen. King.

**Sen. King:** I was on top of the Minister's recommended amendments. He did not take into account the fact that the Authority shall still forward recommendations to the Minister. What I am suggesting is that the Authority, in determining its recommendations, those should be done in consultation with the other industry participants. That is a separate and distinct amendment besides the Minister's proposed additions.

**Mr. Maraj:** I want to suggest that our amendment of clause 18(4) would cover the concerns expressed by the Senator.

**Sen. King:** If it were included thereunder, you would include clause 28. You have identified clauses 78 and 79, "then it shall afford interested parties the opportunity to consult", but you have not said "also clause 28" so if you go back to include clause 28 then it would cover it.

**Mr. Maraj:** Can we not leave it up to the Authority?

**Sen. King:** I do not think so. We did not leave it to the Authority in clause 18; you specified what they must do.

**Mr. Maraj:** All right. So you are willing to forego your recommendations at clause 25(4) if we give you a commitment to go to clause 18(1) to have it subsumed there?

**Sen. King:** Clause 28?

**Mr. Maraj:** Clause 25(4), sorry.

**Sen. King:** Clause 25(4) we have dealt with already. We are now discussing clause 28(1).

**Mr. Maraj:** If we are willing to incorporate it in clause 18(1), are you willing to let it go here?

**Sen. King:** If 28(1) is included in your clause 18 as a section whereby they will consult, that would be the same.

**Mr. Maraj:** All right; we will do that when we get back to clause 18(1).

**Sen. King:** We are going back to clause 18(1)?

**Mr. Maraj:** Clause 18(4), sorry.

**Sen. King:** We are going back to clause 18(4) today?

**Mr. Maraj:** Well, eventually, yes.

**Sen. Montano:** Mr. Chairman, that would leave my amendment still open. I was suggesting that we change the words in paragraphs one and three. Instead of using “subject to the approval of the Minister” that we go along with the new clause 19, which really says “in accordance with the policy established by the Minister”. It is less specific, but it is a policy matter rather than a specific case-by-case basis. It is in line with your clause 19.

**Mr. Maraj:** In other words, you are making a suggestion alternative to Sen. King?

**Sen. Montano:** Correct.

**Mr. Maraj:** Have you heard that, Sen. King?

**Sen. King:** No I did not.

**Sen. Montano:** In subparagraphs one and three instead of using the words “subject to the approval of the Minister”, we go along with what we had agreed on in clause 19, and that is, based on the policy of the Minister, the Authority shall do the various things. That is in line with clause 19, so there is a logical trail.

While my amendment refers to clause 28(1), it should actually be 28(1) and (3), because the amendment is identical in both paragraphs.

**Mr. Maraj:** If Sen. King is prepared to go along with the suggestion of Sen. Montano, we can then consider what he is saying.

**Sen. King:** I think the two are not exactly the same. We still want consultation.

**Mr. Maraj:** Okay, fine. Well, we keep our position that we will incorporate Sen. King's suggestion in clause 18(4), when we have the opportunity to go back. So now we can deal with you.

**Sen. Montano:** What is your position? It really follows from clause 19.

**Mr. Maraj:** Senator, does your suggestion really make any difference to the substance of the thing? You are asking us to delete the words "subject to the approval of the Minister" and substitute the words "in accordance with the policy established by the Minister".

**Sen. Montano:** Yes, it is substantially different, because one occurs before the fact and one occurs after the fact. As you have it here, the Minister is micromanaging.

**Mr. Maraj:** Okay, I see the point. [*Interruption*] I have circulated my amendments and all Senators ought to have them, so I do not think there is much more for me to say.

**Mr. Chairman:** I would like to propose that we deal with clause 28(1) seeing that the Minister has acceded. Are you accepting clause 28(1)?

**Mr. Maraj:** Yes I have accepted it. [*Crosstalk*]

*Question, on amendment, put and agreed to.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 28 be amended as follows:

Insert the following subclauses and renumber accordingly:

- “(5) The Authority shall forward its recommendations to the Minister pursuant to this section and the Minister shall indicate his approval, modification or disapproval of the recommendation within sixty days of receipt of the Authority's recommendation.
- (6) Where the Minister accepts the recommendation of the Authority or modifies or rejects it, he shall give his reasons in writing for so doing

and the Authority shall arrange for the publication of both the recommendation and the Minister's position in respect thereof.

- (7) If on the expiration of the period referred to in subsection (5), the Minister has not indicated to the Authority, in writing, his approval, modification or rejection of the recommendation, it shall be deemed to have been approved."

**Mr. Chairman:** Hon. Senators, the amendments as put forward by the hon. Minister for clause 28(5), (6) and (7), does anyone have any objections to that or would you like to add anything?

*Question, on amendment, put and agreed to.*

**Sen. King:** If we are discussing clause 28(4), I withdraw my suggested recommendation; it is just a matter of language.

*Amendment withdrawn. [Crosstalk]*

**Mr. Maraj:** I would like to comment on Sen. Prof. Deosaran's amendment to clause 28(3).

**Mr. Chairman:** Do you want to do that now?

**Mr. Maraj:** We are dealing with clause 28, are we not?

**Mr. Chairman:** Yes.

**Sen. Prof. Deosaran:** Mr. Chairman, I beg to move that clause 28(3) be amended as follows:

Add a new subsection, that is, 28(3)(b) as follows—

"The Authority may conduct public hearings on applications for public telecommunications service, especially for radio, broadcasting and telephone service, when such applications are made in the first instance, or subsequently at five year periods when such services are in existence."

Given, as it is stated in the Bill, certain obligations of the Authority, I thought this would be a good place to insert my amendment. The amendment seeks to bring the general public into the picture in a way that would be helpful to the owners or operators within the telecommunications industry, especially those with radio, broadcasting and telephone service.

In other words, if I could refer to one of the distinguished Ministers on the other side, Sen. The Hon. Yetming, who is concerned for the destitute. I have a

concern for the powerless. I have seen the consumer on the end of powerlessness in many of these activities. I know there is competition, and price capping but, as we discussed previously, I think there is still room to bring the consumer in, in the way I have specified in this amendment.

**6.05 p.m.**

Mr. Chairman, in addition to that, we seem to have taken away a facility which the consumer had under the Regulated Industries Commission Act, that is to appear and question the application for an increase in rates especially with respect to telephone rates in this context. Having taken away that right and put telephone utility under this particular legislation, the access that the public had no longer seems to exist—subject of course, to correction—in any specific way.

I am seeking to amend that breach and bring the consumer into the position with respect to a right that he had previously. It is not only telephone service, we are into an era where people are very sensitive to broadcasting content and I am not speaking about the code as such, and I am not speaking about censorship, neither am I speaking about oppressing the media in any way, or restricting licences.

Mr. Chairman, I am trying to create what the Minister has called a proper synergy between the operators and the consumers in a mutually friendly manner so that the operators, on the application of a licence through the Authority, or on even the renewal of the licence, the Authority may, and I think the word “may” is very operative. It does not say “shall”. It still leaves some discretion with the Authority depending on the mood of the public at the time, especially with respect to increase in rates; for example, the increase in cable television rates. The public must have a say—I believe at this time—whether they are getting quality service for their money. So it is really a win-win situation and I think it would help both the owners and operators as well as the Government to know how the public feels with respect to the operations of these services and it is in a form of advance transparency.

Mr. Chairman, if this particular amendment is not quite suitable for this position, perhaps given the spirit of things this evening, you might want to move it somewhere else but finally, and in fairness to the Minister, I heard him make some commendable concessions with respect to the functions of the Authority and the manner in which it should consult affected persons and so forth. I do not know if he feels this is specific enough with respect to his own amendments, or if he feels strongly as I do, that the consumer must still have a rightful place in

accessing the quality of the services they get through the Authority's intervention especially with respect to cable services, telephone services and such matters.

The reason I have radio and broadcasting here is that I think the public now—without being legislative about it in terms of censorship—should provide some feedback to the operators of our radio and television services to what they think about the quality without having legislation to impose themselves upon these owners. It is good for them to know, and it is also better for the public to have the reserved right to air their views where it really counts and in the proper forum. It is for such reasons that I submit my amendment for the Minister's consideration.

**Mr. Maraj:** Mr. Chairman, I have listened very carefully to the Senator. Of course, his concerns are really genuine and I am sure they also reflect the concerns on our side with respect to transparency, consumer protection and so forth.

I am not convinced that this piece of amendment belongs where he is suggesting it belongs. I want to ask him to remember that under clause 18(4), we are committed to public consultation. In fact, it is not a question of “may” but “shall”. The Authority shall conduct public consultations with the operation of the legislation. Under concessions in Part III, clause 21(4), there is also the opportunity there to take care of the concerns that Sen. Prof. Deosaran has expressed in his amendments.

If at all it must be included, it must be done so under clause 21 in our view. That is something that we could give consideration to, having already passed clause 21, let us go on and give that a bit of consideration and return to it. Is that all right?

**Mr. Chairman:** Are you going to withdraw in the circumstances?

**Sen. Prof. Deosaran:** Yes.

*Amendment withdrawn.*

**Mr. Chairman:** Let us deal with the entire question of clause 28 now because I think we have exhausted all the amendments that have—

**Sen. Dumas:** Mr. Chairman, what happens to the old clause 28(5) in the Bill which says:

“The obligations to provide and contribute to the funding of the services referred to in subsection (1)...”

What happens with this one? Somehow that seems to escape me.

**Mr. Maraj:** That is in 8.

**Mr. Chairman:** Have you seen it?

**Sen. Dumas:** I am not seeing an 8.

**Mr. Maraj:** It is renumbered. After the insertion of the new clause that would become 8.

*Question put and agreed to.*

*Clause 28, as amended, ordered to stand part of the Bill.*

*Clause 29.*

*Question proposed, That clause 29 stand part of the Bill.*

**Sen. Montano:** Mr. Chairman, I had an amendment to insert a paragraph, but in view of the Minister's amendment to subclause (2), it becomes redundant, so I withdraw it.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. King, I see you have a few amendments to clauses 29(2), 29(4), 29(5) and 29(6).

**Sen. King:** The first one reads:

Delete the words "the Minister may, and subject" and substitute the words "the Minister shall, and subject" to negative resolution of Parliament, establish price regulation regimes...

In clause 29(4) I do not understand the terminology of "rates being fair and reasonable" and I would like to substitute it with the following words:

"...rates to be competitive..."

Clause 29(5) we are back to the maximum rate of return which I have said is now old-fashioned and in fact, is only going to be a temporary position in the Bill. This should be deleted and substituted with the following words:

"shall establish a price cap—'x' requirement that governs what the concessionaire..."

Clause 29(6), the same amendment: "establishing caps on prices" and substituting the words "establishing a price cap—'x' technique with a floor price."

**Mr. Maraj:** With respect to the proposed change made to "shall" we would like to leave that discretionary because it may not be necessary.



**Mr. Chairman:** Sen. King, are you prepared to withdraw clause 29(2)? The Minister has some problem accepting it.

**Sen. King:** He does not like the word “shall”?

*Amendment withdrawn.*

**Mr. Chairman:** Sen. King has withdrawn clause 29(2). Clause 29(4)?

**Mr. Maraj:** I suggest to Sen. King that the words “fair and reasonable” take into account the important matter of affordability and so on, whilst the word “competitive” is market-oriented and may not be in the best interest to consumers at this point.

**Sen. King:** Is the Minister saying there will be some subsidization?

**Mr. Maraj:** Subsidization?

**Sen. King:** Yes. Are you saying it may be in the interest of the consumers who cannot afford and the rates would be fair and reasonable? On what would that be based?

**Mr. Maraj:** On assessment of the situation.

**Sen. King:** So we are actually moving away from market conditions?

**Sen. Gillette:** Clause 29(1) says:

“...shall be determined by providers in accordance with the principles of supply and demand in the market.”

So the words “fair and reasonable” could apply not only to the consumers, but can also apply to the providers of the service. When it is fair and reasonable you take the consumers in mind, when you speak of rates to be competitive you only then speak of the providers and then it is really unfair to the consumers. That is why we are saying “fair and reasonable” that would take the consideration of both sides.

**Sen. King:** I do not agree with you, but I know we will not get—

**Sen. Gillette:** Once we agree to disagree, we are okay without being disagreeable.

**Mr. Chairman:** Sen. King, would you pursue clause 29(4)? Do you want me to put the question?

**Sen. King:** That the rates be competitive? Yes, I would like you to put the question.

*Question, on amendment, put and negatived.*

**Mr. Chairman:** Clause 29(5). Sen. King, I think you have explained your position on the amendments, I want to hear from the Minister now.

**Sen. Gillette:** This takes into consideration a dominant service provider who has exclusive basis and, therefore, you have the rate of return. From the time he goes to price-cap regulation, this clause actually becomes null and void, but it is in there to protect his rate-of-return regulation at present because that is what they operate on, and there is some time before you go to price-cap, but the movement is towards price-cap regulation.

**Sen. King:** Should not the place be to put it in his new concession given that he would be reapplying for his concession and remove it from the Act? This Act will be the Act for a long time.

**Sen. Gillette:** It will be after we negotiate the concession. If we do go to rate of return then this really becomes null and void.

**Sen. King:** That is my point.

**Sen. Gillette:** It is there because if this is made law, then what you are saying is that they are breaking every law because they are now on rate of return and not on price regulation. So there is a timing issue there.

**Sen. King:** But you are going to have to come back to amend it when you remove it, so if we remove it now and put into the agreement—

**6.20 p.m.**

**Sen. Gillette:** It says here “provided...”

**Mr. Maraj:** It will not apply. Price cap will take over where competition exists. So there is no amendment.

**Sen. Gillette:** Which actually is in 6. It says:

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

That takes over from the rate-of-return regulation.

**Sen. Daly:** I do not understand this. How are these two things consistent, one with the other? Subclause (5) is envisaging that something might happen in the market that would have telecommunications services being provided on an exclusive basis. Exclusive means what, monopoly?

**Sen. Gillette:** It says “in respect of any telecommunications services is provided on an exclusive basis by a concessionaire”. Once it is not exclusive, you go to price cap. That is in subclause (6).

**Sen. Daly:** If it is exclusive?

**Sen. Gillette:** Then you have rate of return, which is what is happening right now.

**Sen. Daly:** My point is this: If for some reason you do not get competition, either nationally or in a particular sector, then rate of return will continue for as long as there is no competition?

**Sen. Gillette:** We are hoping that we do have competition.

**Sen. Daly:** Well, I cannot legislate on a hope. I have to understand what we are passing. It is not right to say that this is transitional. This is contingent upon what happens in the marketplace. So we are conceding that so long as somebody has a monopoly they will stay on rate of return?

**Sen. Gillette:** That is correct.

**Sen. Daly:** Regardless of what they charge?

**Sen. Gillette:** Well, there is a formula for rate of return. They can fix the books and all that.

**Sen. Daly:** I know. I did the first two rating cases in Trinidad before the PUC.

**Sen. Gillette:** Right now if you have an exclusive, generally, monopolies on exclusive basis operated on rate-of-return regulation.

**Sen. Daly:** Here is my point. Subclause (5) does not apply to a free market. The market conditions may be such that you might have an exclusive concessionaire. My point is simply this: you will have no PUC or anyone you can appeal to about rates, so that the rate of return will prevail, regardless of whether they are overcharging you for calls or for any service. How does the Government—not you guys—the Government influence prices if there is a monopoly? There is no longer any PUC; I do not understand what the Regulated Industries Commission (RIC) does although we spent much time on it. So you are

conceding that if the market continues to have a monopoly, then there is no control on prices; no rating procedure. It is very important.

**Sen. Gillette:** Really and truly in subclause (5) we are using a little leverage because we are hoping that the dominant provider, the exclusive concessionaire, will eventually allow competition to come in.

**Sen. Daly:** Suppose two guys get together and they have a silent agreement that they will allow one to remain the dominant provider for a cut, as has happened with Cleary and the boys you know so well. So, nominally you have one provider in the market, even though they have some silent arrangement with a sleeping partner; the Government has no influence over prices because you have abolished the PUC.

**Sen. Gillette:** One way of dealing with it is to establish maximum rate of return on voice services. That is the only exclusive service at present. Everything else is price cap because they are all cost-based services. When they apply to the Authority they must provide their costing and they must go on a cost-based service for them to establish pricing and I am saying that this really applies to voice services. Maybe, you can just, at this point in time, put rate of return on voice fixed-line services.

**Sen. Daly:** Why?

**Sen. Gillette:** I do not know, I am just suggesting.

**Sen. Daly:** Suppose we bungle the cellular applications again and there is one cellular provider, which is what is happening now. We have to go by experience. As a result of the case and the bungling, we still have only one cellular provider who is saturating the market, so it is not impossible for this to happen in other sectors.

**Sen. Gillette:** Are you suggesting that we take it out?

**Sen. Daly:** No, I am not suggesting that we take it out because on the other side you must have a transitional arrangement for TSTT.

**Sen. Gillette:** What are you suggesting?

**Sen. Daly:** At the very least we need to think about something to the effect of for such period as may be necessary or such period in the discretion of the Authority as may be necessary. I am only suggesting what it should be.

**Sen. Gillette:** As a matter of fact, I think in the latter half we give one year for everybody to operate in the old regime and come across to the new one. So we can actually give a timing on that.

**Sen. Daly:** You cannot give it a time because the market may not move to your time. Why can we not have some words, “for such period as may be necessary,” or something along that line?

**Mr. Maraj:** And “such period as may be necessary” is all right; that will take care of it.

**Sen. Daly:** We want it tighter than that. Let your draftspeople work on it. Right now you have a situation where the market is aberrant because other cellular providers could not come in because of the bungling of the grant of cellular licences.

**Sen. Gillette:** That is true, that is true. I would like to put a timeframe on it.

**Sen. Daly:** It is a real track record in your time. It is real time bungling. TSTT has been able to saturate the market while all the valid people who tendered cannot come in because we have a court case.

**Sen. Gillette:** You want to think about this.

**Sen. Daly:** Let us play around with “as may be necessary” and come back.

**Mr. Chairman:** May I suggest that we defer 29.

*Clause 29 deferred.*

*Clause 30.*

*Question proposed, That clause 30 stand part of the Bill.*

**Sen. Montano:** Mr. Chairman, based on the amendment of the Minister, I withdraw my amendment.

**Sen. Morean:** Mr. Chairman, the Minister’s amendment coincides with mine, so I withdraw my amendment.

*Amendments withdrawn.*

**6.30 p.m.**

**Mr. Chairman:** Sen. Prof. Deosaran.

**Sen. Prof. Deosaran:** Yes, Mr. Chairman, given what the Minister’s position is with respect to the relationship between the Minister and the Authority, and his

amendments, I am prepared to withdraw both Sen. Thomas' proposed amendment as well as mine, for clause 30(1).

*Amendments withdrawn.*

**Mr. Chairman:** Sen. Prof. Deosaran, are you withdrawing clause 30(1)(b) as well?

**Sen. Prof. Deosaran:** Yes.

**Mr. Chairman:** Okay. We have the Government's amendment before us, which reads as follows:

- A. In subclause (1) delete the words "after consultation with" and substitute the words "n the recommendation of".
- B. In subclause (1)(b) delete the words "the Minister or".

*Question put and agreed to.*

*Clause 30, as amended, ordered to stand part of the Bill.*

*Clause 31.*

*Question proposed, That clause 31 stand part of the Bill.*

**Mr. Chairman:** We have a couple of amendments.

**Mr. Maraj:** I have an amendment which I have circulated which reads as follows:

- A. In subclause (1) delete the words "after consultation with" and substitute the words "on the recommendation of".
- B. In subclause (3)—
  - (a) delete the words "where the Minister is not satisfied that the concessionaire operated" and substitute the words "where the concessionaire failed to operate"; and
  - (b) insert the words "where he" between the words "or" and "has";
  - (c) delete the words "but the concessionaire shall be permitted to apply for a new concession".

**Mr. Chairman:** Senators, you have seen the hon. Minister's amendments. Sen. Prof. Deosaran, are you happy with the Minister's circulated amendments?

**Sen. Prof. Deosaran:** Yes, I will withdraw my amendment.

*Amendment withdrawn.*

**Mr. Chairman:** What about Sen. Morean?

**Sen. Morean:** Yes. The amendments are in accordance with what I have also suggested so I will withdraw mine.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Prof. Deosaran, are you withdrawing also for Sen. Thomas?

**Sen. Prof. Deosaran:** Yes. They are quite similar to mine.

*Amendment withdrawn.*

**Sen. Montano:** Mr. Chairman, I had difficulty with this clause. We have given the authority in clause 30 to suspend or to terminate a concession where a concessionaire has failed to comply materially with the provisions of the Act or regulations, or whatever, or the concession, and what we are saying here is that when his licence or concession has expired and is up for renewal, the Authority or the Minister gets another bite of the apple. I find that difficult. Why did you not revoke the concession at the time of the misdemeanour or the wrongdoing, instead of waiting until the end of the period to have, like, a second bite at whatever he was doing wrong. I find that rather difficult. I feel that the Authority or the Minister has a responsibility to deal with the issue as and when it arises, and you cannot, sort of, just add it up at the end of the five years or the end of the concession and say, "Listen, we do not like what you have been doing and therefore we are not going to renew your concession." So in other words, what you did not do on the forehand you are achieving with the backhand, and that does not seem to be right.

**Mr. Maraj:** What is your suggestion?

**Sen. Montano:** My recommendation was just to delete it.

**Mr. Mr. Maraj:** Delete what?

**Sen. Montano:** Clause 31.

**Mr. Maraj:** Entirely?

**Sen. Montano:** Entirely. I am not sure if I would be causing a problem with the renewal at all; I do not think that the renewal is a problem. If it is deleted, I do not see that he cannot apply for a renewal.

**Mr. Maraj:** I am not convinced that we should do that at all. It could create problems for renewal, because you must have some guidelines; you must have a framework. In fact, in clause 31(2) I want to suggest an addition:

“For any renewal after the renewal of the first concession, the period of renewal shall be as agreed between the concessionaire and the Minister acting upon the recommendation of the Authority.”

I want to put after “Minister”, the words, “acting upon the recommendation of the Authority”.

**Sen. Montano:** What I would do then is that I would recommend that in subclause (1) from the words: “where the Authority is satisfied that”, that all that be deleted—(a) and (d) be deleted, and that subclause (3) also be deleted because, to me, those are the offending clauses. I grant that if it is that you need to have something for renewals, it might be necessary to have such a clause, but to make a condition of the renewal, the fact that the Minister or the Authority is not satisfied with the way that he has managed the concession after the fact, seems to me to be unconscionable. If any specific thing that he did during the concession did not warrant a revocation of the concession under clause 30, I do not see why you should be doing it now.

**Mr. Chairman:** While you are thinking, Sen. Mary King do you have an amendment to clause 31(1)?

**Sen. King:** I will withdraw, based on the Minister's proposals here.

*Amendment withdrawn.*

**Mr. Maraj:** I understand what Sen. Montano is trying to say, but to edit this clause, as you are suggesting, could leave room for all kinds of litigation and the Authority could end up in the court with the concessionaire for refusing to renew his concession, and so on. I want to suggest that we maintain the clause as it is.

**Sen. Montano:** It could end up in court, and a court is a very expensive process. You could have almost a David and Goliath situation. I mean you are taking on the State. The Authority is the State. That is expensive and he has no right to continue. I find it unconscionable. I mean, if you are going to revoke, revoke under clause 30 and be done with it. But at the end of the five years I think it is wrong to say, “listen, on balance, over the term of the concession, when we add up all of your misdemeanours, you have a negative score and therefore we are not going to renew.” I find that is really unfair.

**Mr. Maraj:** You are suggesting that if there is to be a revocation it should take place within the period of the first time arrangement?

**Sen. Montano:** Is that not what clause 30 does? Clause 30 is that any time during the period of any concession, whether it is the first, the second, the third or



the fourth, it can be revoked. So do it then. Do not wait until the end. It seems to me that it is not right. For which specific sin would he be refused the renewal? Under clause 30 it is a specific sin that he has committed that his licence is being revoked, but under clause 31, there are no specifics here. It is just that “we do not like what you were doing”, and therefore that does not seem right.

**Mr. Maraj:** Suppose the concessionaire contravenes the terms of his concession just before its expiration and we did not have the time to revoke it, we should still have the opportunity to refuse when it expires.

**Sen. Montano:** That would really be under clause 30. You would take action under 30. You would say, “That licence is terminated and we are not going to give you a new one.”

**Sen. Gillette:** I think it could be a timing issue.

**Sen. Montano:** No it is not. I would imagine that under clause 30 a concessionaire who would have done something that was materially wrong, that he was in default of the terms of the concession or whatever it was, the Authority could call him and say, “I warned you before and we are revoking it now”; end of story. But at the end of the concession under clause 31, you are not saying anything specific; you are saying, “For all of the little misdemeanours that you had over the concession that we did not like and we did not do anything about, we are not going to renew your licence.”

**6.40 p.m.**

**Sen. Gillette:** I agree with what you are saying, but just follow me with this. If you read clause 30(5):

“During the period that the Minister is considering exercising his power to suspend or terminate the concession, the concessionaire shall continue to operate in accordance with the terms of the concession.”

If while that is happening it is the last six months, then the concessionaire has to apply for renewal of the licence and at that point in time, I believe, you may invoke clause 30(1). Telecommunications is such that it is not exact, you have to monitor, look at it and see what is happening. I do not know if clause 30(1) takes that into consideration.

**Sen. Montano:** I take your point, but if you want to tie clause 30(1) to that provision, in such a case where you did not have the opportunity to revoke it, then I understand what you are trying to say, but it does not really say that and is not

really tied to that. I understand that, and I do not have a difficulty with it. In other words, if you want to simply have clause 30(1) as an extension of 30(5) then I understand and would agree, but as it is here, that is not what it is dealing with. It is standing by itself and saying, “We are not going to renew.” If you were to tie 30(1)—I do not know how you would do that, but I know what you are saying.

**Sen. Gillette:** Also, what happens is that during the period of a concessionaire’s life he may be doing certain things, or walking that grey line.

**Sen. Montano:** On the edge of the envelope.

**Sen. Gillette:** Yes, and the aggregate of all that is when he applies to renew the concession, it is only then that the Authority can say, “Listen, I think that when you did this on so and so date, you really walked the line.” It is at that point in time.

**Sen. Montano:** That is exactly what I am trying to get away from, because if he has not done anything that is in direct contravention of the regulations, and if nothing that he did warranted the revocation of the licence, then as long as he is within the line he is within the line.

**Sen. Daly:** I am having some difficulty following this.

**Mr. Chairman:** We have a procedural motion to be moved by the Leader of Government Business.

*Senate resumed.*

#### PROCEDURAL MOTION

**The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette):** Mr. Vice-President, I beg to move that this Senate continue in session until the conclusion of the Bill or otherwise directed by the Minister of Communications and Information Technology.

*Question put and agreed to.*

#### TELECOMMUNICATIONS BILL

*Committee resumed.*

**Mr. Maraj:** To resolve this matter could we take off 31(3)?

**Sen. Montano:** That is a start, but 31(1)(a) and (b) still do the same thing, and that is what we are trying to get away from. That is really wrong, it is just fundamentally wrong. If you had simply removed the words “where the Authority is satisfied that” (a) and (b), you would be on safe ground.

**Mr. Maraj:** I think the limit of our amendments to this would be the removal of 31(3).

**Sen. Daly:** I am really trying to save you another \$60 million on fees to the Privy Council. The difficulty that I am having now is that I was focusing on the earlier clause. If a concessionaire—I have to use the word “misbehaves”; it is not a scientific context—misbehaves during the period of his concession to a degree that you have grounds for revocation, and you do not revoke him, then how can you say, at the time of renewal, “I am revoking you now”? It is a kind of Soviet Union thing. “I think I had grounds for revoking you, but I did not have a good enough case, so now you come to apply I am not going to give you a renewal because I thought you were breaking the law all the time.” That is a kind of police state thing. It is either you have grounds to establish that the concessionaire misbehaved or you do not. This is a back-stabbing provision. All along you did not revoke the man and then when he comes to renew you say, “We really didn’t like how you conducted your concession so now we are not giving you a renewal.” I have a real difficulty with that. Where is the timing difficulty? If he has been misbehaving, let us assume his concession expires on January 30, what is the timing problem? He has up until January 30 to revoke him. Why do you need this sort of longstop provision of “Ha, ha, I am not going to renew him”? I do not understand.

**Mr. Maraj:** Suppose, for example, at the end of the period it was then brought to the attention of the Authority, not before, that some kind of contravention has taken place which had gone unobserved, that will be taken care of in clause 31(1)(b), which is possible.

**Sen. Daly:** But it is worded differently. At the very least it would have to be the same wording. There is importance but, I guess, substantial difference in the wording. Let us assume that clause 31 is designed to take care of the fact that you only found out, after expiry, that the person had been breaking the law, I can see that could happen, then it would have to be worded in the same terms.

**Mr. Maraj:** In what terms?

**Sen. Daly:** Clause 31(1)(a) and (b) would have to mirror 30(1)(a) and (b). You cannot have a different test of wrongdoing. All I am saying is, let us assume that you did not find out about it—I think the Acting Attorney General understands what I am saying. In other words, you have to have the same grounds for revocation or non-renewal in the both sections. I have not thought about it fully.

**Mr. Maraj:** But really, clause 31(1)(a), where we are saying:

“...where the Authority is satisfied that –

(a) the concessionaire has operated within the terms of the first concession;”

**Sen. Daly:** Okay, but then look at (b).

**Mr. Maraj:** Clause 31(1)(b) says:

“during the period for which the first concession was granted the concessionaire did not engage in any conduct amounting to a material contravention of this Act...”

I see nothing—

**Sen. Daly:** I think it should mirror.

**Sen. Montano:** I take Sen. Daly’s suggestion, and he is quite right. If you look again at 30(1)(a) and (b), you should use the same language. That is what we are talking about.

**Mr. Maraj:** Clause 30(1)(b), is it not a bit limited? It states, where

“the concessionaire has failed to comply materially with any lawful direction of the Minister or the Authority.”

But clause 31(b) makes it wider where it states:

“...did not engage in any conduct amounting to a material contravention of this Act, or regulations made pursuant to this Act.”

**Sen. Daly:** But that is caught by 30(1)(a). Why can we not say, in the case of renewal, going back to 31(1), “where the Authority is satisfied that the concessionaire has operated within the terms of the first concession; and has not failed to comply materially or has not failed to comply materially” and put in both. What I do not like is the shift between 30(1)(a) and (b). It is two different tests. You linguistically, at least, and I suggest, conceptually, are introducing two different tests. That is why I am saying that 31(1) would be best served if you lifted the language of (a) and (b) from clause 30 and put it in 31(1). In other words, for renewal you have to do three things: the Authority has to be satisfied that you operated within the terms, that you did not fail to comply materially with any of the provisions, Acts or regulations, and you did not fail to comply materially with any lawful direction. You are not introducing two different tests.

**6.50 p.m.**

**Mr. Maraj:** The concept remains essentially the same. We will accept that. We will lift 31(a) and (b).

**Sen. Daly:** It is (b) and (c), so that you keep operating within the terms of the concession.

**Sen. Gillette:** So (b) and (c) are equal to 30 (a) and (b).

**Sen. Daly:** That is correct. You are getting this a lot cheaper than the cellular.

**Mr. Maraj:** We are eliminating 31(3).

**Sen. Daly:** I do not understand what clause 31(2) means. After you have had a renewal, then you get into a new negotiation about time. In other words, if I had five years initially it is a given if I meet the conditions. The next period would no longer be five years, it would be a new negotiation. Does clause 31(2) mean that?

**Mr. Maraj:** Yes.

**Sen. Daly:** Why?

**Mr. Maraj:** Circumstances may have been different. You may want to extend it or the concessionaire may want a shorter period. Why stick rigidly?

**Sen. Daly:** Why is the first renewal five years? Is it because the type of investment the person makes, he needs to be guaranteed 10 years?

**Mr. Maraj:** Yes. That could be it.

**Sen. Gillette:** The proposal is that we delete clause 31(a) and replace (b) with 30(a) and (b). It would be 31(a), (b) and (c) are equal to 30 (b) and (c). Is that right?

**Sen. Daly:** That is right. I think I have the acting Attorney General's support.

**Sen. Lucky:** That is correct.

**Sen. Gillette:** We would be deleting 31(3).

**Sen. Morean:** I think you are still not getting away from the underlying penalty aspect of (a), in that you are still looking backwards. I think in (a) you should say that the concessionaire is not then in breach of the terms of the first concession. You are looking at the situation as at the time of renewal and not going back to see what infringements may have been committed.

**Sen. Gillette:** With (a), the concessionaire is operating within the terms of the first concession. When (b) and (c) are put, they would be equal to clause 30(a) and (b). That would cover everything.

**Sen. Morean:** Sen. Montano's point was that in looking back over the period to see what infringements the concessionaire may have committed during the period of his licence, if you find that he committed a breach, you would not renew his licence because of that infringement. You should be looking at it from the point of renewal and see whether at that stage he is in breach. The penal aspect would not come into play.

**Sen. Daly:** He could be in breach of his contractual terms separately from breach of the statutory terms. That is why they need (a). The terms of his licence are contractual. I think the State needs to have both. In other words he may have broken his contractual terms but stayed within the Act. Such a thing is possible. In other words, if he were limited geographically and went beyond his geography, he would have broken his contractual terms, but not necessarily broken the Act.

**Mr. Chairman:** I just want to ensure that the Members of the Senate understand what is taking place.

**Sen. Daly:** Send it for writing and bring it back. It is unfair to do this in verbal exchange. Now that we have agreed to something in principle, as conscientious parliamentarians, it should now be reduced to writing and then passed in that form. That is the problem when we start giving ourselves time limits.

**Sen. Lucky:** There is another point which concerns me. It is a fact scenario. I do not think it has been covered by the proposed amendments we are making. In section 30(5) which talks about the Minister in his determination, as to whether there has been untoward or inappropriate conduct, it is said that the concessionaire will continue to operate in accordance with the terms of the concession.

What happens when the Minister is making that determination as to whether to suspend or terminate, the licence period comes to an end? In other words, there is now time for renewal. It means that you are still deciding whether I have breached any of the conditions; and I am going to say renew. We can come up with a subsection that would deal with such a scenario.

It says in subclause (5) that during the period the Minister is considering exercising his power to suspend or terminate concession, the concessionaire shall continue to operate in accordance with the terms of the concession. My concern is that you are making that determination. I am using the time Sen. Daly used;

January 31st is here and I want to renew. You are making this determination. What do you do? I think that there should be a more helpful subsection because we have already agreed in principle that we would be removing 31(3). I am saying introduce a new 31(3) that would cater for this scenario.

**Sen. Daly:** Again, we are now under the gun. We got there in the end where we must do this tonight, and if we write rubbish we are not getting it right.

**Sen. Lucky:** What you write is important.

**Sen. Daly:** I understand what you are saying. This could be interpreted to mean that once you start an investigation, even after the expiry date, you get to hold over. The way you deal with that is to amend 30(5).

**Mr. Chairman:** In the absence of a written submission, we take it for granted that we understand what is being advanced.

**Mr. Maraj:** I suggest that I allow some time for my advisors to put this in writing: If it is necessary to reopen clause 30(5), we will, for the reasons advanced by Sen. Lucky.

**7.00 p.m.**

*Clause 31 deferred.*

**Sen. Daly:** Mr. Chairman, having discussed clause 29(5) with Sen. Gillette in the context of the transitional provisions, my preference is for clause 29(5) to remain as it is. We could take that off the deferred list, if you like.

**Mr. Maraj:** Let us go to clause 29 and vote.

The only question under contention was clause 29(5) and now that has been withdrawn.

*Clause 29 reintroduced.*

**Sen. Daly:** Clause 29(5) is Sen. King's amendment, I played a supporting role and I have withdrawn from my supporting role. She still has to be satisfied.

**Mr. Chairman:** Sen. King?

**Sen. King:** Mr. Chairman, I understand that this is for a maximum period of one year. We are looking at the maximum rate of return. Is that what we understand and is that going to be written into this Bill?

**Sen. Gillette:** If one looks at clause 85(9), it says:

“The Trinidad and Tobago Telephone Act is repealed, with all rights and obligations thereunder remaining in force for one year ...”

And they are the ones who are on the rate-of-return regulation.

**Sen. King:** And the maximum period would be one year. We are hoping it does not exceed one year.

**Mr. Chairman:** Sen. King, have you withdrawn?

**Sen. King:** Yes.

*Amendment withdrawn.*

**Mr. Chairman:** Are Senators satisfied that we have dealt with all the amendments that were placed before us?

*Question put and agreed to.*

*Clause 29, as amended, ordered to stand part of the Bill.*

*Clauses 32 to 35 ordered to stand part of the Bill.*

*Clause 36.*

*Question proposed, That clause 36 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, there are amendments which are circulated and read as follows:

- A. Delete subclauses (3) to (5) and substitute the following accordingly:
  - (3) The Authority shall forward its recommendation to the Minister within ninety days of receiving all relevant information pertinent to the application and the Minister shall indicate his approval, modification or disapproval of the recommendation within sixty days of receipt of the Authority's recommendation.

In consonance with what I have done before in respect of amendments, I have also submitted on clause 36 some extensive amendments where I am deleting subclauses (3) to (5) in the original draft, and replacing them with new subclauses (3), (4), (5) and (6), adding (6), (7) and (8) and that subclauses would be renumbered accordingly. I therefore ask hon. Senators to look at these amendments which have taken into account their own consideration. Maybe, we can, for the sake of efficient use of time, adopt this approach.

**Sen. Montano:** Mr. Chairman, I think that this is, more or less, what we did in the other part, and it makes a certain amount of sense. The one question I have is what is the rationale for the proposed subclause (8)? And why would you treat a licensee any different from a concessionaire with regard to security of information because I do not think this is on the other side?



**Mr. Chairman:** There are a number of amendments to clause 36. Sen. Prof. Deosaran, based on the Minister's proposed amendments as circulated, are you prepared to withdraw both Sen. Thomas' and your amendments or to pursue them?

**Sen. Prof. Deosaran:** Before I do so, and since you have put the Minister's amendments on the table as it were, I will be grateful if the Minister can elaborate on amendment 36(8):

“Where it appears to the Authority that the licence contains information contrary to the public interest or the commercial interest of the licensee or any other person, the Authority shall withhold that information from public scrutiny.”

Do you mean matters of a confidential nature or public interest? I do not see how something could be contrary to the public interest.

**Mr. Maraj:** Where exactly are you referring?

**Sen. Prof. Deosaran:** There is clause 36 (1), (3), (4), (5), (6), (7), (8). I am referring to subclause (8).

**Mr. Maraj:** “Where it appears to the Authority that the licence contains information contrary to the public interest or the commercial interest of the licensee or any other person, the Authority shall withhold that information from public scrutiny.”

**Sen. Prof. Deosaran:** “...contrary to the...commercial interest of the licensee”?

**Mr. Maraj:** For example, a business plan.

**Sen. Daly:** How come you did not need that exception in the earlier part of the Act where you are publishing—Why do you need it here?

**Sen. Montano:** It does not seem to make any sense. There is no rationale for it.

**Sen. Daly:** Why do we need the exception here? Give me a practical example. We do not have withholding powers under clause 21, so why do we need withholding powers under this clause? What is the difference? That is all we want to know.

**Mr. Maraj:** Would a licensee have cause to object if there is confidential information?

**7.10 p.m.**

**Sen. Daly:** Why would he not object under clause 21? Let us deal in logic. Why does the Minister need it here and not in clause 21? It seems I have cause to object, and so might the concessionaire.

**Sen. Montano:** This is just the licence and the terms of the licence. This is not the rationale, the business plan and so forth.

**Mr. Maraj:** Does the licence not have schedules to go with it with a lot of information?

**Sen. Daly:** How does that differ from [*Inaudible*]

**Mr. Maraj:** I know that is a very strong argument. I am just asking.

**Sen. Montano:** Even if it does, why should that be a big secret?

**Mr. Maraj:** Sen. Daly has an important observation that it should, if it is going to be here, also be in clause 21. We are of the view that the provision ensures that confidential business information will not be out there. We would like to include the provision in clause 21 to ensure uniformity.

**Sen. Daly:** Nah, nah, nah, nah.

**Mr. Maraj:** Why not?

**Sen. Montano:** One of the problems is that this allows the Authority to conceal information for one licensee, while making it public for another. That just is not right. It cannot work on either side, whether under clause 21 or under clause 36. It should not be included at all. The information they are talking about here is only the terms of the licence, and it makes sure that everybody is operating on a level playing field.

**Sen. Gillette:** We are talking about the terms of the licence [*Inaudible*]

**Sen. Daly:** Sure, but you must know the terms of the licence.

**Sen. Gillette:** I agree that is what you are saying there. You must have the terms of the licence.

**Sen. Daly:** It is like there is an auction. The Minister talked about auctions as a possibility. The terms of an auction are not secret. This is long-time, Soviet Union, public servant hiding, and he talks about transparency and all this kind of thing. Why must he be able to withhold the licence from scrutiny? We have not had a single practical example other than a reference to a business plan. The way

the debate has gone, it is, “Oh, oh, we not going to answer your point here; we are going to claw it back three hours later in clause 21”. The person’s business plan will not be attached to the licence. The licence will say for what duration and presumably for what fee. It is not going to disclose the business plan. My car licence does not say anything other than when I was born, what is my gender and that I wear glasses. It does not have my business plan and what car I own. It is a long-time, Soviet Union, clamp-down, go-to-court argument, completely inconsistent with everything we have been told about transparency. I take strong objection to a logical argument being met with, “Oh, well we are going to renege on what we did in clause 21.” Then, everything we are doing is in bad faith—total bad faith. When confronted with a logical argument, you say, “Okay, I am going to defeat a logical argument by reneging on what I conceded before—total bad faith.”

**Mr. Maraj:** All right, do not get too emotional.

**Sen. Daly:** Just remove it and let us come out of the Soviet Union and the public service hiding things. It is total bad faith.

**7.20 p.m.**

**Sen. Dumas:** Mr. Chairman, the problem is, simply, I do not understand how you could deal with having a licence or information—the licence contains the information contrary to the public interest. If that is happening, we should not be granting the licence. I think, therefore, if we were not tired, what we would do is strike that clause. We have to take that out! We cannot pass legislation that says, the licence that you give could be contrary to the public interest—

**Sen. Als:** The fact is Senators, we could also look at the licence from a different angle. The licence itself may not be contrary to public interest, but the licensee may use the licence contrary to public interest. It is possible! I want to make another point. If you are looking at the question of the licence and you made reference also to the concessions—the concessions are something completely different from the licence; the licensee and the concessionaire are two different things, two different realities.

**Sen. Dumas:** The clause is discussing licence.

**Sen. Als:** Yes, but reference was also made to the concession. If we are not making reference to the concessionaire we should not include concessionaire in the argument.

**Mr. Maraj:** Mr. Chairman, we would delete 8. [*Desk thumping*] It would also require an amendment to 7, which refers to, “subject to subsection (8)”, if we are deleting 8.

**Sen. Prof. Deosaran:** Mr. Chairman, I drew the Minister's attention to this clause, and its having been disposed of in a most gracious and commendable manner. To reflect, it really did not make much sense for several reasons, but on that basis I want to withdraw all my amendments which fall under clause 36. Speaking on behalf of Sen. Thomas also, I wish to do the same things with respect to his amendments to clause 36.

*Amendments [Sen. Prof. Deosaran and Sen. Thomas] withdrawn.*

**Mr. Chairman:** Sen. King, would you—

**Sen. King:** Yes, my amendments are included with the Minister's, so I, also, withdraw my amendments.

*Amendments withdrawn.*

**Sen. Morean:** Mr. Chairman, there was just one thing, in keeping with the amendments made, I think that the last line of 36(1), after the word “Minister”, we should have “acting on the recommendation of the Authority”.

**Sen. Gillette:** I think we have to put a clause in there, where we talk about opening up to public scrutiny with respect to the terms and conditions, so that everybody is on a level playing field. When people submit their business plans, I do not think that should be subject to public scrutiny.

**Sen. Daly:** Nobody is going to have to show their business plans to see the terms of a licence. Do you want to see my driving permit?

**Sen. Gillette:** No, not at all.

**Sen. Daly:** It is a good picture. We have gone past this. The Minister has conceded. Leave it! Is this an appeal?

**Sen. Als:** Senator, although we have made some concessions here, I have some experience in acquiring a licence with respect to operating a radio station. You have to submit your business plan in the application. You must put it in! In fact, you have to subject yourself to a thorough examination of your business plan, how you are going to access money; a whole number of things before you get the licence.

**Sen. Daly:** Who says that when they issue the licence the business plan is going to be attached. It is before you get the licence.

**Sen. Als:** What I am saying is that, with the requisition, you must have in your application, a certain amount of information that you would not necessarily want to make public because you have your own business activities to carry out. In that licence, are you suggesting that all that must be made public?

**Sen. Daly:** No, Sir. I am suggesting the opposite. I am agreeing with you. You submit your business information before you get the licence and then they give you a licence and the licence is a formal document that will have its duration.

**Sen. Als:** Sen. Daly, are you, therefore, suggesting that a communications licence is like a driving permit?

**Sen. Daly:** But I have a communications licence in my bag. If you look at the ones that Textel and TSTT got under all the old legislation, it does not have their business plan; it just has the duration. I mean they are just trying to bamboozle us.

**Sen. Als:** No, but there is more than that to it; you, in fact, have to submit a list of information.

**Sen. Daly:** But it is not in the licence. The licence is a formal document, which announces to the world that you have been licenced—

**Sen. Als:** Is that before the Act or after? What is being suggested here is that one has a document after you make an application. The application itself is the basis upon which you would get the licence.

**Sen. Daly:** Yes, but nobody is asking you to expose that.

**Sen. Als:** Then what are you suggesting should be exposed?

**Sen. Daly:** The licence: TSTT, Textel and, I dare say, the ones that they have granted and are hiding from us—

**Sen. Als:** Are you suggesting that a public instrument be placed before the licence is granted so that people would know what an application is like?

**Sen. Daly:** No, I am not saying that at all. I am saying that when you submit your business plan, you get through with your application and then they grant you a document called the licence, which has the bare bones of your concession. I have seen many of these licences. I am in the media business, too.

**Sen. Dumas:** Mr. Chairman, in working through this Bill earlier, there were positions in here that said your competitor must have all your business plans and so on. You, in your drafting of legislation, in your proposals, in all the amendments that have come up to this point, have placed all the information at

the hands of your competitor. I am saying that even if the licence were to include all these things, you have already set the precedent. Further, I think the Parliament has already—

**Sen. Daly:** Let us move on.

**Sen. Gillette:** What I am saying also is, how do we protect, for example, places like National Security, when they have licence spectrum and they are granted a licence for security reasons—security of the country—they may have maritime frequencies, they may have trestle frequencies—

**Sen. Daly:** So make an exception for the national security.

**Sen. Gillette:** It is very difficult to just say, all right, this is the national security spectrum, this is what they operate under and this is what is going to happen.

**Sen. Daly:** But that is not a commercial licence.

**Sen. Gillette:** No, but under this law we have to grant them a licence. Then we have the embassies which also operate at certain frequencies where we have to observe a certain level of privacy. I think what you all are referring to is a commercial licence but we have to try and encompass that. I have no problem with the commercial licences in terms of the condition, the term and the length. What I am trying to protect here, really, is giving out frequency spectrum to people who need it for national security or for embassies that require it for certain things. We cannot do that!

**Sen. Daly:** So come up with an amendment that protects national security issues.

**Sen. Gillette:** But when we give them a licence—this specifically states licence.

**Sen. Dumas:** That is an international problem handled by everybody in the world.

**Mr. Maraj:** What we would do is work a possible aid to take into account the requirements for security with respect to national security and the embassies and we would come back to that.

**7.30 p.m.**

**Sen. Daly:** That is the law.

**Mr. Maraj:** Subclause (8), as is, is deleted, but we want to possibly rework another (8) to include the question of national security of Trinidad and Tobago and the embassies that operate these frequencies and so on.

**Mr. Chairman:** We are going to come back to clause 36, okay. That also has been deferred. We are deferring 36.

**Sen. Morean:** Did we get over 36(1)?

**Mr. Chairman:** Have you seen clause 36(1)?

**Mr. Maraj:** No.

**Mr. Chairman:** Could you look at it? Sen. Morean is saying that after the word “Minister” in the last line add the words “acting on the recommendation of the Authority”.

**Sen. Morean:** In keeping with all your other similar amendments.

**Mr. Chairman:** Are you going to withdraw 36(3)? Have those been withdrawn?

**Sen. Morean:** I think that was—yes, because that was taken care of in the Minister’s amendment.

**Mr. Chairman:** Okay, so we have withdrawn that?

**Sen. Morean:** Yes, because that is deleted. That is withdrawn.

*Amendment withdrawn.*

**Mr. Chairman:** Clause 36(1), Minister, what is your view?

**Mr. Maraj:** Mr. Chairman, we do not find it necessary. The rest of clause 36 takes care of it.

**Mr. Chairman:** What was that?

**Mr. Maraj:** I am saying that we do not find it necessary to adopt that amendment.

**Sen. Morean:** Before you go on, Mr. Chairman, I am just trying to get what is being said. Are you saying that it is implied in the other amendments?

**Mr. Maraj:** Yes.

**Mr. Chairman:** So, Senator, do you want to withdraw?

**Sen. Morean:** Not yet. I am just looking at it to be sure that that is what is being said.

**Mr. Chairman:** Do you want to put the question?

**Sen. Morean:** No, as long as it takes, Mr. Chairman. We are going through this exercise.

**Mr. Chairman:** Well, we are coming back to clause 36 and so on, so if you—  
[*Interruption*]

**Sen. Morean:** All right, if you want to leave it like that and come back to subclause (8).

*New subclause 36(8).*

**Mr. Maraj:** No, well, we have a version here, you know. Hold on. Here it is. This is our suggestion for a new clause 36(8). This is our new clause 36(8).

**Sen. Gillette:** Does it deal—[*Interruption*] Mr. Chairman, I propose a new clause 36(8) which reads as follows:

“Where it appears to the Authority that the licence contains information contrary to national security or other international obligations, the Authority shall withhold that information for public scrutiny.”

*New subclause 36(8) read the first time.*

*Question proposed,* That the new subclause be read a second time.

**Sen. Montano:** Why did you not just say, “the licences granted to the Ministry of National Security or other governmental organizations and foreign embassies”? I mean, why do you not say it that way? You know, “Where it appears to the”, I mean, that is so vague.

**Mr. Maraj:** We are satisfied, Mr. Chairman, that we have taken into account all the considerations. I think we have been very cooperative. We are saying that:

“Where it appears to the Authority that the licence contains information contrary to national security or other international obligations, the Authority shall withhold that information for public scrutiny.”

That is our position.

**Sen. Dumas:** Mr. Chairman, what does the Minister mean by, “information contrary to national security”? What does that mean?

**Mr. Maraj:** For example, the frequencies that the police operate and so on.



**Sen. Dumas:** Well, that cannot be contrary to national security. We know you are getting tired but “doh get angry”.

**Sen. Morean:** But this is legislation we are enacting, Mr. Chairman, and we have to word it right. You cannot just put any words together. We have to have it properly worded. I do not agree with that at all. What is “contrary to national security”?

**Mr. Maraj:** All right, let us go.

**Mr. Chairman:** Members, there is an amendment to clause 36 new subclause (8) because the old (8) has been deleted, as you know, and it is proposed that new clause 36(8) should read as follows:

“Where it appears to the Authority that the licence contains information contrary to national security or other international obligations, the Authority shall withhold that information from public scrutiny.

This is the amendment that is being proposed by the hon. Minister as new subclause (8).

*Question put and agreed to.*

*Question proposed, That the new subclause be added to the Bill.*

*Question put and agreed to.*

*New subclause 36(8) added to the Bill.*

**Mr. Chairman:** Sen. Morean, clause 36(1)—are you agreeing to clause 36(1) or you are not going to—*[Interruption]*

**Mr. Maraj:** No, I am not agreeing with it.

**Mr. Chairman:** Sen. Morean, the Minister is not in support of your amendment to clause 36(1).

**Sen. Dumas:** Could I just say something, Mr. Chairman?

**Mr. Chairman:** On this one. Let us deal with this one.

**Sen. Dumas:** That is what I am talking about.

**Mr. Chairman:** Yes, go ahead, okay. Go ahead.

**Sen. Dumas:** Why are you trying to—*[Interruption]*

**Mr. Chairman:** No, no, no, no, no, no, no, no. Do not try to—*[Interruption]*

**Sen. Dumas:** Mr. Chairman, please. [*Interruption*]

**Mr. Chairman:** You know I am a democrat. I am giving everybody an opportunity to speak.

**Sen. Dumas:** Let me say just a quick thing. If you take number (1) and you come to number (3) as newly proposed by the Chairman, number (3) is assuming number (1) as amended by Sen. Morean. In the absence of the statement that Sen. Morean is suggesting to end number (1) with, you will be hanging number (1) with no reference to the recommendations which number (3) referred to.

**Mr. Chairman:** I have to put the question on clause 36(1).

*Question, on amendment, put and negatived.*

**Mr. Chairman:** I shall now put the question on clause 36.

*Question put.*

**Sen. Dumas:** Mr. Chairman, could we get a division on that one, please? [*Crosstalk*]

**Mr. Chairman:** Members, if I may, I just want to put the question so that people understand what we are talking about. [*Interruption*] Could we have one meeting?

*The committee divided: Ayes 16 Noes 10*

**AYES**

Gillette, Hon. L.

Yetming, Hon. G.

John, Hon. J.

Lucky, Hon. J.

Phillips, Dr. The Hon. D.

Moonilal, Dr. The Hon. R.

Gopeesingh, Dr. T.

Lasse, Dr. V.

Ahmed, Mrs. R.

Lambert, J.

Als, M.

Augustus, R.

Jones-Kernahan, Dr. J.

Ryan, S.

Cabrera, V.

King, Mrs. M.

**NOES**

Montano, D.

Yuille-Williams, Mrs. J.

Dumas, R.

Morean, Ms. G.

Kangaloo, Ms. C.

London, J.

McKenzie, Dr. E.

Daly, M.

Kenny, Prof. J.

Quamina, Dr. D.

*Sen. Rev. Teelucksingh and Sen. Prof. Deosaran abstained.*

*Question agreed to.*

*Clause 36, as amended, ordered to stand part of the Bill.*

**7.45 p.m.**

*Clause 37.*

*Question proposed, That clause 37 stand part of the Bill.*

**Sen. King:** Mr. Chairman, I propose the following amendment:

The words, “between the Authority and the licensee” be substituted by “between the Minister and the licensee”.

Because we have agreed that the Minister awards the licence.

**Mr. Maraj:** All right, we accept that.

*Question put and agreed to.*

*Clause 37, as amended, ordered to stand part of the Bill.*

*Clause 38 ordered to stand part of the Bill.*

*Clause 39.*

*Question proposed, That clause 39 stand part of the Bill.*

**Mr. Chairman:** We have amendments by Sen. Thomas, Sen. Prof. Deosaran, Sen. Morean, as well as Sen. Montano.

**Mr. Maraj:** Mr. Chairman, I would suggest that the amendments I have included in clause 39 be looked at and they could see whether they agree with them. They are as follows:

- A. In subclause (1) delete the words, “after consultation with” and substitute the words “on the recommendation of the Authority”.
- B. In subclause (1)(b) delete the words “the Minister or”.
- C. In subclause (10)—
  - (a) delete the words “where the Minister is not satisfied that the licensee operated” and substitute the words “where the licensee failed to operate”.
  - (b) Insert the words “where he” between the words “or” and “has”;
  - (c) delete the words “but the licensee shall be permitted to apply for a new licence.”

It is something that people would want.

**Mr. Chairman:** Sen. Prof. Deosaran, you have a number of proposed amendments?

**Mr. Maraj:** Mr. Chairman, if we could put clause 39(1) to the vote?

**Sen. Daly:** May I say something? Do we not have the same problem here with 39(8) which we so graciously resolved without renege where we have different grounds for revoking and renewing? Do we not have the same problem?

We have 39(1)(a) and (b) and then we have 39(8), which is different grounds. This is the same problem we had with clauses 30 and 31, and the same point that Sen. Lucky raised about 39(5) about continuing to operate. Could we have the same drafting exercise?

**Mr. Maraj:** All right. Yes, we agree with the drafting being suggested, so that is being worked upon now. That is at 39(1)(a) and (b).

**Sen. Daly:** Sir, 39(8) has to be amended to be brought in line with 39(1).

**Mr. Chairman:** Do you want to defer it?

**Mr. Maraj:** There may be other people with more amendments. What we could do is come back to clause 39 after the drafting has been done.

**Sen. Prof. Deosaran:** I have listened to the Minister and I have seen his amendments, and on behalf of Sen. Thomas and myself, I will withdraw the amendments.

*Amendments withdrawn.*

**Mr. Maraj:** All that is left for clause 39 is for us to do the redrafting.

**Mr. Chairman:** Sen. Morean, you have a number of amendments to clause 39? We were going to defer clause 39 in order to deal with some drafting, but I think the Minister would need to hear your views on what you are proposing and whether you are prepared to withdraw or hold out.

**Sen. Morean:** I will hold until, because some of the amendments I propose are similar to what has already been proposed by the Minister.

*Clause 39 deferred.*

*Clause 40 ordered to stand part of the Bill.*

*Clause 41.*

*Question proposed, That clause 41 stand part of the Bill.*

**Sen. King:** Mr. Chairman, I propose the following amendment to clause 41(5):

Delete the words “may include, but shall not be limited to”, and replace with “shall include a commitment to charge economic rents for the use of the spectrum using but not limited to”.

And then go on to (a), (b), (c), (d). Then, insert a new clause 41(6) where:

If an economic rent is not charged for the use of the spectrum the Minister will have to approve it as a special case.

This is to ensure that we do obtain a competitive price for our spectrum and an economic rent.

**Mr. Maraj:** Mr. Chairman, I did make the point in my presentation that we did view the spectrum as a very valuable national resource. We see auctioning as one option—to include the amendments of the hon. Senator, and I know she is very concerned about this and the utilization of it—but to include the amendment would be to eliminate other options and not allow the Authority to exercise some measure of flexibility and creativity in the use of the spectrum. So, it is difficult for us to accept that at this time.

**Sen. King:** Minister, I think you should take into account here that I have not identified any route, any system, auction or otherwise. I am saying that whatever we do in the allocation of the spectrum, we shall ensure that we include a commitment to charge economic rent for the use of the spectrum. I have not identified any way of dealing with it, but a system.

**Mr. Chairman:** The Minister seems not to be willing to accept it at this time.

**Sen. King:** I think we need to know why.

**Sen. Daly:** Mr. Chairman, I think we need to examine the reason. The reason given is that it is set against Sen. King's amendment that this will limit the room of the Authority to make the best use of the spectrum. She is not interfering with any of the options. Her amendment does not interfere with any of the options given to the Authority. She is simply saying, as I understand it, that other things being equal, whatever option you use, the objective must be—I am not interfering with the options—to get an economic rent. Then she is still giving the exception that if there is some special case where an economic rent is not justified, that is fine. So, it is not tying your hands in any way.

**Mr. Maraj:** The term “economic rent” is a specific term that ties you and limits you to a particular line of action. It may be the rental of the spectrum. One may want to use the spectrum in a different way, as I said earlier on, as an inducement for investment. One may want to do all kinds of things, but the commitment is there to utilize the spectrum, this national resource, in the most efficient way and for the development of the sector. I am afraid that if we go to talk about economic rent and competitive economic rent, we are getting into the area of specificity. Do you understand?

**Sen. Daly:** You cannot trade it. I understand that. It think that is right.

**Sen. King:** No.

**Mr. Chairman:** Sen. King, do you want to ask another question?

**Sen. King:** I have not changed my mind. I think we need to get the best rate we can get. That is all this is saying.

**Mr. Maraj:** I understand, but I just want to comment on that. When we use the word “rate” we are limiting ourselves to a certain line of action. Rate is not the type of terminology that will embrace the wide range of options available to the Authority.

**Sen. King:** Are we suggesting that it may be free?

**Mr. Maraj:** Absolutely not.

**Sen. Daly:** Can I just make a comment, Sir?

**Mr. Chairman:** Yes.

**Sen. Daly:** If the reason for the renege on whatever clause it was, then we need to protect national security here, too. If we are going to publish a spectrum, make a spectrum plan available, we may have to have blanks in that plan for national security. I am just helping you. If you are going to publish a spectrum plan without reservation, are you not going to have the same national security difficulties? At clause 41(3), the spectrum plan should be made available to the public on payment of the prescribed fee. In fairness to you, I think I ought to point out that you might need to consider national security there too, but properly drafted, of course.

**Mr. Maraj:** I am advised that this would be an allocation plan.

**Sen. Daly:** If you allocate it to embassies, will you show it on the plan? Then my logic is really flawed.

**Mr. Maraj:** We do not see the need for it here.

**Sen. Daly:** We must be big enough to admit when we make mistakes. The argument was that you do not want to show what you have allocated to embassies and to the Ministry of National Security. Are you now going to publish a spectrum plan that might show what you have allocated to embassies or the Ministry of National Security?

**Sen. Gillette:** Maybe I can answer it this way because the spectrum plan is a broad thing with respect to all of the frequencies inside of it. For example, you may say, from 450 megahertz to 500 megahertz is UHF frequencies, and in there you can have 100 applications but you say what it is going to be used for. You could say from 910 to 950 is narrow band PCS, which is just paging operations

and Internet operations operating inside of it, but you are not saying who is going to apply for it. That is what he means by spectrum allocation.

Within the frequency bands, like radio, you may have 98.1, 98.2, 98.3, 98.4 and 98.5. Within the frequency band from 90 to 105, it is for FM radio and that is allocated for FM radio without saying who is getting what inside the bands. Each band of the spectrum is huge. It is hundreds of little .1s and .2s, .3s and .4s. We can, in fact, just say that this is what the band is going to be allocated for and people can apply within these bands.

**Sen. Daly:** I will not pursue it because I was just trying to help you. It was just to show that I am awake, that when you give me one argument at one place, I recognize it in a different place. What will happen logically is that eventually, when you allocate, remember all of the licences are going to be public, except for national security.

Any child—I do not have the brain of a child—would be able to deduce within this frequency, to keep it simple—I like simple things—if you have 10 options, 10 .1s, it goes from 90.1 to 90.9. Then by a process of elimination, we see that John Smith gets so forth and one of them is missing, somebody gets it and then the press—happily, we have a vigilant press—will start saying, who has the missing spectrum, and then in no time at all, we will find out that it is the Canadian Embassy or the Afghan Embassy.

Logically, you need to make an exception for national security here, but I am not going to plead the case for covering up anything. I am just letting you know that I am awake.

**8.00 p.m.**

If you tell me you have national security considerations in one place, you have it in another place, so the talk about national security was just to fool us.

**Sen. Gillette:** I think it is protected here, because we are not publishing assignments; we are publishing what the frequencies are going to be used for, and then the licence would evolve.

**Sen. Daly:** “Yuh” lose another case with the same advice.

*Question, on amendment, put and negatived.*

**Sen. King:** Mr. Chairman, I beg to move that clause 41 be amended as follows:

Insert a new subclause as follows:



“If an economic rent is not charged for the use of the spectrum the Minister will have to approve it as a special case”.

*Question, on amendment, put and negatived.*

*Question put and agreed to.*

*Clause 41 ordered to stand part of the Bill.*

*Clause 42 ordered to stand part of the Bill.*

*Clause 43.*

*Question proposed, That clause 43 stand part of the Bill.*

**Sen. Dumas:** Mr. Chairman, before we look at the proposals that the Minister made for repeals, as he has put in clause 85, it seems to me that if the Authority, exercising these functions, and taking into account only these things, then maybe he needs to make sure that we are going to repeal what we have in clause 85. I know the proposal here is that the Tobago House of Assembly Act be amended by deleting. I am just drawing the parallel to you. The Minister had a proposal for dealing with the Tobago House of Assembly Act. One would hope that while we can assume it will survive, we can only take into account what is here in clause 43, except we have dealt with clause 85. It might be a wrong order of thinking, but—

**Mr. Maraj:** I think we need to deal with clause 43, and then as we go along when we reach to clause 85 we will deal with it.

**Sen. Dumas:** We are assuming deletion?

**Mr. Maraj:** Deletion of what?

**Sen. Dumas:** The deletions from the Act that you have in there, “the Tobago House of Assembly Act is amended by deleting...” and you have a proposal as to how it should be filled.

**Mr. Maraj:** Clause 85 deals with repealing some of the Acts that are already present.

**Sen. Dumas:** But your proposal changes something there. It does not say repeal; it says something else. I do not know if I am reading it wrong.

**Mr. Maraj:** What are you talking about, clause 43?

**Sen. Dumas:** Clause 43 in relationship to clause 85, and you have a proposal (d). If you are saying that these are the things you are taking into account in exercising the functions under clauses 36 to 42, which deal with all these various things, rightfully so, it has no effect.

**Mr. Maraj:** I do not understand what you are saying at all. It is very opaque.

**Sen. Dumas:** Unfortunately, you need to be able to follow. Mr. Minister, let me try again. Clause 43 says that you should take into account the objects of the Act. For our purposes, at this point in time, this Bill is the Act, and then as we go beyond that we are seeing all these other things down to (f). You made a suggestion in clause 85, but if that does not succeed or it is changed, we may need to take some of those things into account also. If the law, as presently stands in the Tobago House of Assembly Act, stands, then you may need to take those things into account also.

**Mr. Maraj:** There has been a bit of clarification, but it does not change my position that we now must deal with clause 43.

**Sen. Demas:** Thank you for the acknowledgement that there was some clarification.

*Question put and agreed to.*

*Clauses 43 and 44 ordered to stand part of the Bill.*

*Clause 45.*

*Question proposed, That clause 45 stand part of the Bill.*

**Mr. Maraj:** I beg to move that clause 45 be amended as follows:

In subclause (2) delete the word “establish” and substitute the words “identify, adopt or establish preferred”.

**Mr. Chairman:** Is there any comment on clause 45?

*Question put and agreed to.*

*Clause 45, as amended, ordered to stand part of the Bill.*

*Clauses 46 to 49 ordered to stand part of the Bill.*

*Clause 50.*

*Question proposed, That clause 50 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 50 be amended as follows:

- A. Delete the numeral “(1)” at the beginning of the clause.
- B. In paragraph (d) delete the words “including the answering of questions”.

- C. In paragraph (e) delete the words “subject to having obtained a warrant pursuant to section 51;”.
- D. Delete subclause (2).

*Question put and agreed to.*

*Clause 50, as amended, ordered to stand part of the Bill.*

*Clause 51.*

*Question proposed, That clause 51 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 51 be amended as follows:

Delete subclause (1) and substitute as follows:

“(1) Notwithstanding section 50 an Inspector shall not exercise the powers vested in him under that section except upon warrant of a magistrate issued to him for the purpose and, in the execution of the warrant, the Inspector shall be accompanied by a police officer.”

I am deleting subclause (1) and substituting that which I submitted.

*Question put and agreed to.*

*Clause 51, as amended, ordered to stand part of the Bill.*

*Clause 52.*

*Question proposed, That clause 52 stand part of the Bill.*

**Sen. Prof. Deosaran:** I beg to move that clause 52 be amended as follows:

In the opening paragraph, delete the words “with the prior written approval of the Minister” and substitute the words “in accordance with the policy framework established by the Minister”.

**Mr. Chairman:** Prof. Deosaran, would you like to speak on this?

**Sen. Prof. Deosaran:** Mr. Chairman, Sen. Thomas explained to me that clause 52(1) has the words in the first line “with the prior written approval of the Minister”. It is his thinking—and considering what we have done today with earlier amendments, his recommendation is to insert just after the words “the Authority shall”, “in accordance with the policy framework established by the

Minister". For my own self I think that fits in quite well with our earlier amendments. I see no great harm done to the provision. I would submit it for consideration.

**Mr. Maraj:** We accept.

*Question put and agreed to.*

*Clause 52, as amended, ordered to stand part of the Bill.*

*Clause 53.*

*Question proposed, That clause 53 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 53 be amended as follows:

A. Insert a new subclause (4) as follows and renumber the subsequent clauses accordingly.

“(4) A percentage of the funds collected in respect of concessions and licences may be transferred to the account opened in accordance with subsection (6), at the discretion of the Authority.”

B. In subclause (5) as renumbered, delete the numeral “(5)” and substitute the numeral “(6)”.

C. In subclause (7) as renumbered, delete the numeral “(4)” and substitute the numeral “(5)”.

**Mr. Chairman:** We have some Government amendments and some from Sen. King.

**Mr. Maraj:** It is a substantive amendment which, as I said, has been circulated.

**8.15 p.m.**

**Mr. Chairman:** Sen. Mary King.

**Sen. King:** I was suggesting that funds from the spectrum be put into a separate account with the approval of the Minister of Finance for the purpose of planned universal service. The Minister, in his earlier submission to us said that they discussed it, they thought it was a good idea, however, they have declined that clause and given that, he has now assumed that we would accept clause 53(4) that a percentage of the funds collected shall be transferred to an account opened in accordance with subclause (6).

I would withdraw my proposal given that some part of those funds are going to the Consolidated Fund and, hopefully, would be used for the supply of universal service.

*Amendment withdrawn.*

**Sen. Montano:** Mr. Chairman, I do not know if I am missing something, but what we are really saying is that we are going to open up this account, but then subclause (6) says that at the end of the year any unused part of the funds would be paid into the Consolidated Fund so it becomes extinguished, and we eventually lose it.

**Sen. King:** I think I was proposing that perhaps what goes into the Consolidated Fund could be used for the supply of universal service because we must set aside funds for universal service.

**Sen. Montano:** Once it is in the Consolidated Fund, it is not yours anymore. The Minister of Finance is going to do what he wants with it. That really is a policy matter for the Government to decide because, as the Minister says, that is part of your national patrimony. Are you going to sell it? What are you going to do with it? It is like selling off his state enterprise. What are you going to do with the proceeds?

**Mr. Chairman:** Is there any further clarification?

**Mr. Maraj:** The money that is going to be returned to the Consolidated Fund is money that would have been left over from the budgetary allocation, but the money that deals with the universal service obligation goes into a separate account. That is what is operating here.

**Sen. Montano:** As I understand it, if part of the spectrum is auctioned, it is going to fall within the definition of what you are talking about in the new clause 53(4).

**Mr. Maraj:** That goes in a separate account.

**Sen. Montano:** I am talking about money that you get on the auctioning of the spectrum which has nothing to do with universal service, that is the auctioning of the spectrum so that falls within subclause (4) because it is in respect of concessions and licences and then it goes into the Consolidated Fund at the end of the year. Is that in fact what you want to happen?

**Sen. Gillette:** A percentage goes to the universal service and a percentage goes into the other account, so that if it is in surplus, it goes back to the Consolidated Fund.

**Sen. Montano:** I do not see that a percentage is going to the universal service. Where does it say that?

**Sen. Gillette:** In the Minister's amendment to clause 53 it says:

- A. Insert a new subclause (4) as follows and renumber the subsequent clauses accordingly.

“(4) A percentage of the funds collected in respect of concessions and licences may be transferred to the account opened in accordance with subclause (6), at the discretion of the Authority.”

**Sen. Montano:** Yes, but it has nothing to do with universal service. If you collect funds on the auctioning of the spectrum that is not universal service, that is not (1)(d).

**Sen. Gillette:** But some of it goes into the consolidated account which is in subclause (6)—sorry, into the universal service fund account which is separate.

**Sen. Montano:** How does it get there?

**Sen. Gillette:** I do not know if you have this amendment to clause 53(4), which is:

“A percentage of the funds collected in respect of concessions and licences may be transferred to the account opened in accordance with subclause (6), at the discretion of the Authority.”

And subclause (6) says—

**Sen. Montano:** At the end of each financial year, any unused funds go back to the Consolidated Fund.

**Sen. Gillette:** Not from the universal service fund account.

**Mr. Maraj:** There are two accounts, that is the important thing.

**Sen. Montano:** It is not clear you know. The universal service account is under subclause (3). Funds arising in respect of paragraph 1(d) shall only be applied to facilitate the provision of universal service. So those funds are isolated, but no other funds are isolated. That is the point. I am merely trying to clarify what the position is. As it stands now, if we in fact auction the spectrum, all the money is going to end up in the Consolidated Fund. Is that what you intend?

**Sen. Gillette:** No. Some has to go to universal service.

**Sen. Montano:** That is not what is going to happen. That is not what this says.

**Sen. Gillette:** Do you have the amendment before you?

**Sen. Montano:** Yes, but that is not what it says.

**Mr. Maraj:** Clause 53(4) which is underlined there?

**Sen. Montano:** A percentage of the funds may be transferred to the account owned in accordance with subclause (6).

**Mr. Maraj:** That is the universal service fund account.

**Sen. Montano:** I beg your pardon, I keep reading subclause (6). It is now subclause (5) which is now subclause (6).

**Sen. Gillette:** Do you understand it?

**Sen. Montano:** Yes, I beg your pardon, I now follow you.

**Mr. Maraj:** Okay, let us go.

*Question put and agreed to.*

*Clause 53, as amended, ordered to stand part of the Bill.*

*Clause 54.*

*Question proposed, That clause 54 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 54 be amended as follows:

Delete subclauses (3), (4) and (5) and substitute as follows:

“(3) The Authority shall, in the performance of its functions, be subject to the provisions of the Central Tenders Board Ordinance until such time as the Authority develops its own tendering rules, approved by the Minister and subject to negative resolution of Parliament.

(4) Rules made pursuant to subclause (3) shall govern the award of tenders and related matters.

(5) Every tender shall be opened in public and shall indicate the parties to and the content of each tender.”

*Question put and agreed to.*

*Clause 54, as amended, ordered to stand part of the Bill.*

*Clause 55.*

*Question proposed, That clause 55 stand part of the Bill.*

**Mr. Chairman:** We have two amendments to clause 55, one by Sen. Morean and one by Sen. Montano.

**Sen. Morean:** Mr. Chairman, I beg to move that clause 55 be amended as follows:

Renumber 57(6) as 55(1) and renumber subclauses (1), (2) and (3) as (2), (3) and (4).

It just makes for better reading to have subclause (6) earlier in so that we know what GAAP is when you are reading because you are finding the definition section way down. In clause 57(6) it is giving the definition of the generally accepted accounting practice (GAAP) and we are reading about it in clause 55 all the way before we get to that. That should not be controversial.

**Sen. Montano:** Mr. Chairman, my amendment was basically the same thing, I was just trying to clarify that up front rather than after the fact.

**Mr. Maraj:** We will give the definition of GAAP and change the word “section” to “part” within that definition. We have accepted the amendment.

*Question, on amendment, put and agreed to.*

**Mr. Chairman:** What about Sen. Montano’s.

**Sen. Montano:** I will withdraw.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 55, as amended, ordered to stand part of the Bill.*

*Clause 56.*

*Question proposed, That clause 56 stand part of the Bill.*

**Sen. Montano:** Mr. Chairman, I would withdraw mine because it has now been corrected by the amendment that we have made in clause 55.

*Amendment withdrawn.*

**Sen. Morean:** Mr. Chairman, I seem to have a note for the laying of this report in Parliament by the Minister.



**Mr. Maraj:** You are saying that it shall be laid in Parliament as soon as possible thereafter.

**Sen. Morean:** Yes.

**Mr. Maraj:** After the copy of the report and financial statements have been forwarded to the Minister?

**Sen. Morean:** Yes.

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 56(2) be amended as follows:

“Within three months after the end of each financial year the Authority shall cause to be prepared, in respect of that year—

- (a) a report setting out the activities of the Authority; and
- (b) financial statements prepared in accordance with GAAP,

and a copy of such report and financial statements shall be forwarded to the Minister and shall be laid in Parliament as soon as possible thereafter.”

In clause 56(3), the penultimate line where we are talking about the Treasury, “method the Treasury”, we should say “method the Comptroller of Accounts”.

**8.30 p.m.**

**Mr. Chairman:** We are replacing “Treasury” with “Comptroller of Accounts”.

*Question put and agreed to.*

*Clause 56, as amended, ordered to stand part of the Bill.*

*Clause 57.*

*Question proposed, That clause 57 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, our adjustment to clause 55 now necessitates the elimination of subclause 57(6).

*Question put and agreed to.*

*Clause 57, as amended, ordered to stand part of the Bill.*

*Clauses 58 and 59 ordered to stand part of the Bill.*

*Clause 60.*

*Question proposed, That clause 60 stand part of the Bill.*

**Sen. Dumas:** When we say “with the Minister”, is there any reference to the CPO or any of the other agencies that help in setting public sector wages? I do not expect the Minister to do it himself so I am just wondering if there is any other public body that would become involved here.

**Mr. Maraj:** It is not anticipated that it would be, because this is not a public service body in the usual sense of the word.

*Question put and agreed to.*

*Clauses 60 ordered to stand part of the Bill.*

*Clause 61 to 64 ordered to stand part of the Bill.*

**Mr. Chairman:** At this time we need to pause to have dinner.

**Hon. Senators:** Let us finish it.

**Mr. Chairman:** Finish what? The entire Bill?

**Hon. Senator:** Yes.

**Mr. Chairman:** Hon. Members, are you in favour of that?

**Hon. Senators:** Yes.

**Mr. Chairman:** Okay, let us go. I have to be guided.

*Clause 65.*

*Question proposed, That clause 65 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 65 be amended in paragraph (e) by deleting the words “without the authorization of the provider or user”. Mr. Chairman, I forgot to indicate that we have had consultation among ourselves and the legal luminaries advised that I should eliminate this clause completely.

**Sen. Prof. Kenny:** Mr. Chairman, I would just like to have clarification from the hon. Attorney General. Is it permissible to tap a phone in this country?

**Sen. Lucky:** As it stands now, Sen. Prof. Kenny, telephone tapping is not a criminal offence. That is as much as I can say now.

**Sen. Prof. Kenny:** The question is: Is phone tapping actually going on?

**Sen. Lucky:** I will not be able to give you that information.

**Sen. Prof. Kenny:** How will a citizen know?

**Sen. Lucky:** That, I will not be able to answer.

**Mr. Chairman:** Sen. Martin Daly, do you have an amendment to clause 65?

**Sen. Daly:** It does not arise. There has been a larger and undoubtedly correct concession.

**Sen. Prof. Deosaran:** Mr. Chairman, before you proceed, I want to draw your attention and that of the Minister to subclause (f), at the end of which makes reference to subclause (e), which has been removed.

*Question put and agreed to.*

*Clauses 65, as amended, ordered to stand part of the Bill.*

*Clauses 66 to 72 ordered to stand part of the Bill.*

*Clause 73.*

*Question proposed, That clause 73 stand part of the Bill.*

**Mr. Chairman:** There is an amendment by Sen. Christopher Thomas.

**8.40 p.m.**

**Sen. Prof. Deosaran:** Are you ready for me, Mr. Chairman?

**Mr. Chairman:** Yes.

**Sen. Prof. Deosaran:** On behalf of Sen. Thomas, I think his proposals to amend clause 73(1), 73(2)—well, (3) and (4) are quite self-explanatory; they express a certain view about the relationship between the Minister and the Authority and in particular the role of the executive director. If I, therefore, could elaborate on clause 73(2), what Sen. Thomas' amendment is saying is that instead of having: "Upon such notification by the executive director", he has a preference for having, "Upon such notification by the Authority". In other words, he feels that the executive director would have an inordinate amount of power for that function. What follows also is that after the word "Minister" in that same subclause, he is asking for: "the Minister or the Authority".

**Mr. Maraj:** Mr. Chairman, it is our view that the executive director is the one involved in the day-to-day operations. He is the one who is in the best position to detect any breaches of national security, any threats to the national security, any concerns for national security. If we put it in the hands of the Authority which is a large body and which has to meet, and so on, and which has now become larger as

a result of our own amendments, the question of immediacy and immediate action to be taken to protect national security is jeopardized. This is the reason we are saying the executive director is the person in the position to do it.

**Sen. Prof. Deosaran:** I will certainly tell him so.

**Mr. Maraj:** Thank you very much. [*Laughter*]

**Mr. Chairman:** Sen. Prof. Deosaran, is the amendment withdrawn?

**Sen. Prof. Deosaran:** Yes.

**Mr. Maraj:** May I indicate for the same reasons we cannot accept amendments that he made to clauses 73 and 76.

**Sen. Prof. Deosaran:** Withdrawn.

*Amendments withdrawn.*

**Sen. Morean:** If you set up an Authority to act in a certain way, I cannot see that constraints of time can be relevant here, where you are dealing with telecommunications and you are dealing with a subject where there is speedy communication. We have all sorts of means of communicating in this day and age, so that it is quite easy for the Authority to get together if there is an emergency. This power should reside in the Authority, not the executive director.

**Mr. Maraj:** I do not mean to be disrespectful—

**Mr. Chairman:** Do not be.

**Mr. Maraj:** No, no, not at all. But I am saying that that in theory sounds good but, really, in practice it cannot operate. Even in a Cabinet, for example, when there is a national security concern, do you think you need to call a Cabinet meeting to decide what you are going to do? You cannot. The executive director and the Minister, in conjunction with the Minister of National Security, must take the action. So we want to retain our position.

**Sen. Morean:** You have a board and whatever action is being taken, should be taken by the board. So that if a decision like this has to be made, it should be a collective decision of the board and not the decision of one person, to say what is dangerous to the security of the State.

**Mr. Maraj:** I remain unchanged.

**Mr. Chairman:** Sen. Morean, the Minister seems to be unchanged on that. Do you think you want to pursue it?

**Sen. Morean:** Yes. Well, I have to make my point. He could remain unchanged, but my point must be made.

**Mr. Chairman:** Yes, I agree.

**Mr. Maraj:** I have no problem with that.

**Mr. Chairman:** I would like to know if you would like to pursue it.

**Sen. Morean:** I most certainly will. I am not withdrawing it because I feel strongly about this.

*Question, on amendment, put and negatived.*

**Sen. Morean:** That will live to haunt you, too.

**Mr. Chairman:** Okay. We do not want any ghosts here, please.

*Question put and agreed to.*

*Clause 73 ordered to stand part of the Bill.*

*Clause 74.*

*Question proposed, That clause 74 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I did circulate an amendment which reads as follows:

Delete the words “an appeal against a direction” and substitute the words “an application for review of a decision”.

*Question put and agreed to.*

*Clause 74, as amended, ordered to stand part of the Bill.*

*Clause 75 ordered to stand part of the Bill.*

*Clause 76.*

*Question proposed, That clause 76 stand part of the Bill.*

**Mr. Chairman:** We have amendments from Sen. Morean and Sen. Thomas.

**Sen. Morean:** Well, it is the same position here.

**Mr. Chairman:** Would you like to withdraw it?

**Mr. Maraj:** And our position remains unchanged.

**Sen. Morean:** You know, I get the impression that this is not a serious thing we are dealing with.

**Mr. Chairman:** Sen. Prof. Deosaran, do you have an amendment?

**Sen. Prof. Deosaran:** Sen. Thomas' amendment, once again, with reference to clause 76(1), seeks to replace the role of the executive director with that of the Authority, as a whole, in this particular function, both the clause 76(1) and (2). He feels that such a function, because of its importance and its consequences, I should say, should be given a more thoughtful intervention, that is, by the Authority as a whole, rather than this one particular individual, the executive director.

**Mr. Chairman:** Are you pursuing it?

**Sen. Prof. Deosaran:** Well, yes. How do you mean, pursuing? I am submitting—

**Mr. Maraj:** Mr. Chairman, my response to that is exactly the response I made on the last occasion and on the previous amendment. We feel that the executive director is the one who is best positioned to be able to report to, and determine in consonance with, the Minister and the Minister of National Security on these matters. So our position remains the same.

**Sen. Prof. Deosaran:** Just one point, Mr. Chairman. I mean, I respect the view and I accept it, but, you know, as I am thinking about it—this has not been my amendment—do you not feel that over time the Authority itself would get a feeling of subversion by being bypassed on such important matters, and they would feel the whole Authority is being unduly manipulated by the role of the executive director?

**Mr. Maraj:** Well, I do not know. Do matters of national security arise every day? Again, this is an operational thing, a day-to-day operation. I expect that the executive director would bring the Authority up to date on what is going on with respect to the operations.

**Sen. Daly:** What is this crackling, and so on, interference, overlap? What is the harmful interference we are talking about?

**Mr. Maraj:** Any distortion in the communications system: disruption of services, interruption, distortion, lack of clarity in reception, things like that; mundane matters, really.

**Sen. Gillette:** Sometimes a lot of the equipment that do not conform to certain standards in the United States will have interference. Sometimes you call it EMF interference or spectrum interference and that is what the executive director can determine. Harm can also be caused by radiation. Some equipment that is not in

conformance with certain specifications can cause radiation, like what is happening now with cellular. You have to abide by a certain level of interference.

**Mr. Chairman:** Sen. Prof. Deosaran and Sen Morean, I would put the question.

**Sen. Prof. Deosaran:** I would like to withdraw mine, both clause 76 (1) and (2).

*Amendments withdrawn.*

**Mr. Chairman:** Sen. Morean, do you want me to put the question?

**Sen. Morean:** Yes, put the question.

*Question, on amendment, put and negatived.*

*Question put and agreed to.*

*Clause 76 ordered to stand part of the Bill.*

**8.50 p.m.**

*Clause 77 ordered to stand part of the Bill.*

*Clause 78.*

*Question proposed, That clause 78 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 78 be amended as circulated:

Delete the word “may” and substitute the words “, on the recommendation of the Authority, shall”.

**Sen. Montano:** On the basis of that I withdraw my amendment.

*Amendment withdrawn.*

**Sen. Yuille-Williams:** Mr. Chairman, seeing that these regulations are so important, should it not be an affirmative resolution?

**Mr. Maraj:** Because of the technical nature of these regulations, I want to suggest that we leave it as a negative resolution.

*Question put and agreed to.*

*Clause 78, as amended, ordered to stand part of the Bill.*

*Clause 79.*

*Question proposed,* That clause 79 stand part of the Bill.

**Mr. Chairman:** There are amendments proposed by Sen. Daly, Sen. King, Sen. Montano and Sen. Thomas.

**Sen. Montano:** Mr. Chairman, we are back to the issue of the broadcasting code, and the position I adopted in dealing with clause 23 was that it be deleted. There is no basis for a broadcasting code at this time so my arguments are the same. There should be no broadcasting code at this point. We are seeking to pass legislation with a code that we have not had the opportunity to see.

**Mr. Chairman:** Sen. Martin Daly.

**Sen. Daly:** I am thinking, Sir.

**Mr. Chairman:** Sen. Prof. Deosaran on behalf of Sen. Christopher Thomas.

**Sen. Daly:** May I ask a question, Sir?

**Mr. Chairman:** Yes.

**Sen. Daly:** As you are coming to Sen. Thomas' amendment, is he not proposing that clause 79(4) be deleted?

**Mr. Chairman:** Yes.

**Sen. Daly:** Is the deletion of clause 79(4) by itself likely to be accepted?

**Mr. Maraj:** Sorry, I did not hear that.

**Sen. Daly:** Are you likely to accept the deletion of clause 79(4) alone and leave 79(1), (2) and (3)?

**Mr. Maraj:** Yes, that is something I would accept.

**Sen. Daly:** As much as I would like to accommodate the Minister, I am not in a position to agree to withdraw my amendment to clause 79. [*Interruption*] I had proposed the deletion of clauses 23 and 79 and I was trying to see whether I could accommodate Your Graciousness, but I cannot, with much regret and reluctance. We would have to vote on it.

**Mr. Maraj:** Okay.

**Sen. Daly:** I do so with great regret. I feel almost churlish, but I cannot. I have a philosophical position.

**Mr. Maraj:** Okay.



**Mr. Chairman:** It seems as though we do not have agreement, so I would put the question.

**Sen. Prof. Deosaran:** Mr. Chairman, I have Sen. Thomas' amendment.

**Mr. Chairman:** Sorry about that, Senator.

**Sen. Prof. Deosaran:** I do not think Sen. Thomas would be pleased if I did not represent him properly. *[Laughter]*

Mr. Chairman, he is asking that this entire clause be removed because it does not serve, in his thinking, any particular purpose. More than that, once the question is raised, in clause 79(1), about promulgating a broadcasting code to regulate broadcasting, the mere mention of that in a Bill like this would, by the sheer logic of section 4 in the Constitution, require a three-fifths majority. By just mentioning the words "code" and "regulating" you do not necessarily have to be specific as to what programme you are regulating and so on. It is so substantively offensive to section 4 of the Constitution that this subclause (4) is not necessary because it already implies a violation of section 4 of the Constitution requiring a three-fifths majority. It does not have to be in detail. I do not know why we are disguising this about just putting it here and then hoping to get into the deeper process with a three-fifths majority afterwards. Just the mere mention of it here would require a three-fifths majority.

**Sen. Daly:** May I suggest this: If the Minister is prepared to remove clause 79(4) and to open 79(1) with the words "subject to this Act", I might take a certain position. The Government did concede a regulatory clause 3(g) that I had proposed. We are putting in a new subclause which states:

"to regulate broadcasting services consistently with the existing Constitutional rights and freedoms"

So, it seems to me that if you say "subject to this Act the Authority shall" it means subject to the new subclause (g) among other things, then I would be inclined to let it go.

**Mr. Maraj:** And delete (4)?

**Sen. Daly:** Delete (4) and introduce 79(1) and by "subject to this Act" and then I might be inclined to withdraw my amendment because I now have the guarantees mentioned in another part of the Bill. *[Interruption]* Yes, and remove (4) and then I would withdraw my amendments to clauses 23 and 79.

**9.00 p.m.**

**Mr. Maraj:** We thank the Member for his contribution. We are prepared to accept “subject to this Act the Authority shall” and to delete 79(4).

Thank you very much. [*Desk thumping*]

**Sen. Daly:** I will withdraw mine.

*Amendment withdrawn.*

**Sen. King:** Now that we have deleted subclause (4), I suggest that we amend clause 79(3) to ensure that the Minister may by order amend the broadcasting code subject to an affirmative resolution of Parliament and not the Authority.

**Sen. Montano:** Mr. Chairman, I beg to move that clause 79 be amended by deleting and renumbering the subsequent clauses.

*Question, on amendment, put and negatived.*

**Mr. Chairman:** We are deleting 79(4) and there is an amendment to 79(1).

**Mr. Maraj:** There is an argument that in (3) there may not be the need to change “Authority” to “Minister” because the Authority in clause 79(1) promulgates the code, and the Authority may by order amend the broadcasting code subject to affirmative resolution. Inherent in that, the Minister will take it to Parliament. That is the legal perspective. We do not need to change “Authority” to “Minister”. The Authority would amend and the Minister, naturally, would be the one to take it to Parliament.

**Sen. Daly:** Do you know if we have any precedent for that? With the financial institutions, who amends the financial criteria?

**Mr. Maraj:** There cannot be two persons directing the process. Whoever makes it must amend it. We must have either one or the other. Since we have the Authority promulgating, the legal advice I am getting is that it does not prevent the Minister; it does not violate the practice that the Minister would take it to Parliament to seek the affirmative resolution.

**9.10 p.m.**

**Mr. Chairman:** Could we revisit that particular clause and return to the status quo? We have to get everyone’s consent.

There was an amendment, as was suggested and agreed upon, so I am putting the question with those amendments having been advanced and accepted by the Minister, that is, at the beginning of clause 79(1).

*Question put and agreed to.*

*Clause 79, as amended, ordered to stand part of the Bill.*

*Clause 80.*

*Question proposed, That clause 80 stand part of the Bill.*

**Mr. Chairman:** Given that there is a Freedom of Information Act which has certain stipulations for disclosure, I thought that under this particular clause we would have ensured that disclosure would be given which the Authority is bound to disclose under regulations which are already in place in the Freedom of Information Act.

I am suggesting we also include disclosure which the Authority is bound to disclose under the Freedom of Information Act.

**Mr. Maraj:** Is that necessary, or expected or included here?

**Sen. King:** It is not included here.

**Sen. Daly:** Mr. Chairman, clause 80(1)(a) should include “pursuant to the provisions of this or any other Act,” because there may be requirements for a disclosure under the Freedom of Information Act, and maybe, even the integrity legislation.

Someone may file a request under the Freedom of Information Act that would require disclosure of material by the Authority. Maybe, it should be subject to what the draftspeople suggest, “pursuant to the provisions of this or any other Act” because they might have to disclose things to the Integrity Commission under an investigation as well.

**Mr. Chairman:** All right. Sen. King, are you withdrawing your amendment? The Minister is making an amendment to clause 80(1)(a).

**Sen. King:** I have accepted the amendment to clause 80(1)(a) which includes “or any other Act” and, therefore, I automatically withdraw.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause, 80, as amended, ordered to stand part of the Bill.*

*Clause 81 ordered to stand part of the Bill.*

*Clause 82.*

*Question proposed, That clause 82 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, there are amendments which I have circulated which read as follows:

Delete and substitute as follows:

“82 (1) The Authority shall establish a dispute resolution process to be utilized in the event of a complaint or dispute arising between parties in respect of any matter to which sections 18(1)(m) or 25(2)(h) applies, or where a negotiated settlement, as required under section 26, cannot be achieved or in respect of any other matter that the Authority considers appropriate for dispute resolution.

(2) The Authority shall not be a party to any dispute resolution process.

(3) Such dispute resolution process shall be funded by the parties to the dispute and shall be conducted in an open, non-discriminatory and unbiased fashion, within thirty days after the filing of the dispute.

(4) The Authority may establish penalties for referral of frivolous disputes to the dispute resolution process.”

*Question put and agreed to.*

*Clause 82, as amended, ordered to stand part of the Bill.*

*Clause 83.*

*Question proposed, That clause 83 stand part of the Bill.*

**Mr. Maraj:** Mr. Chairman, I also propose amendments which read as follows:

Delete and substitute as follows:

“83 (1) A person aggrieved by a decision of the Minister or Authority may request that such decision be reconsidered based upon information not previously considered, and the Minister or the Authority, as the case may be, shall consider the new information submitted and decide accordingly.

(2) A decision of the Minister or the Authority, pursuant to any provision of this Act, may be reviewed by the High Court and shall be subject to the Rules of Court.”

**Mr. Chairman:** Could I seek Senators' support here? There is an amendment to clause 83 by Sen. Christopher Thomas.

**Sen. Prof. Deosaran:** Mr. Chairman, I believe in large measure Sen. Thomas' concerns are dealt with by the Minister's amendment. I therefore withdraw and defer to the Minister's amendment.

*Amendment withdrawn.*

**Sen. Morean:** Mr. Chairman, in clause 83(2) in the proposed amendment:

“A decision of the Minister or the Authority, pursuant to any provision of this Act, may be reviewed by the High Court and shall be subject to the Rules of Court.”

Are you saying that the decision “shall be subject to the Rules of Court” or procedures adopted for reviewing the decision? I think there should be cleaning up of the section so that it is properly written. If the High Court is acting, it is acting in accordance with the Rules.

**Mr. Maraj:** Okay, so you stop at High Court.

**9.20 p.m.**

**Sen. Daly:** [*Inaudible*] We do not need it. Do we need this subclause at all, Sen. Morean?

**Sen. Morean:** I have no problem deleting it. This reinforces the position. Delete it.

**Mr. Chairman:** We are deleting (2) and clause 83 will just be clause 83.

*Question put and agreed to.*

*Clause 83, as amended, ordered to stand part of the Bill.*

*Clause 84.*

*Question proposed, That clause 84 stand part of the Bill.*

**Sen. Daly:** Why is the Government assuming the obligation to compensate under clause 84(2)? When there is a state of emergency, the normal constitutional guarantees, as I understand it, are suspended. If you undertake to compensate the owner, for example, of a radio station, does that mean you will compensate him for loss of profits during the period? Is that not a bit of an onerous obligation? I just wondered. It is a bit open-ended. It ought to be limited. I am trying to save you money. Maybe people should look at it and confine the damages to a particular Head. I would really be concerned about loss of profits.

**Mr. Maraj:** We appreciate it.

**Sen. Dr. Gopeesingh:** Does the word “reasonably” encompass your thinking?

**Sen. Daly:** It might not be sufficient.

**Mr. Maraj:** The question too that now arises in my mind is whether the Government should be called upon to compensate at all in certain cases.

**Sen. Daly:** Then you have binding arbitration. You are really getting yourself in—

**Mr. Maraj:** We may want to consider deleting it.

**Sen. Daly:** Or limiting the damages to “laundry ticket damages”. You can put a limit by saying “not to include” or something. It is something we need to think about. I am not sure you should not compensate the person at all. I am more concerned about the fact that it is very open-ended even though it said “reasonably”. “Loss of profits” would bother me if I were in your shoes.

**Mr. Maraj:** Can we say “excluding loss of profits”?

**Sen. Daly:** You need to think it out. Clearly, for example, if you send troops in there, and they use some part of the installation for target practice, the person should be compensated. I do not think we can settle it just like that. We need to think about it.

**Mr. Maraj:** I need my layman intervention here. After subclause (1), could we say “excluding loss of profits” or “not including loss of profits”?

**Sen. Daly:** Should it not be limited to physical damage? I do not think we could do it “on the hoof”. There are some other sections that need to be redrafted. We need to put this on the list.

**Sen. Prof. Kenny:** Mr. Chairman, clause 84(1)(a) says:

“authorize the taking of possession and control by the Government of any telecommunications equipment...”

Does that mean any telecommunications equipment—a cellphone if I had one?

**Sen. Daly:** That is another very important point. That may be too broad as well. I think this section needs to be looked at with a little more sophistication.

**Mr. Maraj:** We will just look at it while we go on. We will come back to clause 84.

*Clause 84 deferred.*

*Clause 85.*

*Question proposed, That clause 85 stand part of the Bill.*

**Sen. Montano:** Mr. Chairman, I wish to withdraw my amendment.

*Amendment withdrawn.*

**Mr. Maraj:** Mr. Chairman, I beg to move that clause 85 be amended as follows:

- A. In subclause (5), delete the word “Authority” and substitute the word “Minister”;
- B. Delete subclause (11) and substitute as follows:
  - “(11) The Tobago House of Assembly Act is amended by deleting—
    - (a) item 17 of the Fifth Schedule; and
    - (b) item 10 of the Seventh Schedule and replacing it as follows:  
‘The Telecommunications Authority’.”

**Sen. Dr. McKenzie:** Why is the Minister taking away authority from the Tobago House of Assembly under Schedules V and VII? When one considers that the Minister has the final say under the Tobago House of Assembly Act, it is a limited amount of power. Why is he taking away the responsibility for their working up their own concessions when they still have to refer it to the central authority and the Minister? Why is he taking away control, under Schedule VII, of the Authority being responsible for providing the service, especially when there are problems in Tobago of broadcasts from Trinidad not reaching all of Tobago?

**Mr. Maraj:** That is a technical dimension of the transmission which needs to be looked at. This is something I have thought about. The danger is if one allows the Tobago House of Assembly to act on its own with respect to influencing concessions and licences operating from Tobago, then, you are jeopardizing the role of the Authority. If, for example, in the first instance, a potential provider is allowed to negotiate with the Tobago House of Assembly in the initial stages and report back to the Authority for final approval, is the Authority not then being asked to rubber-stamp what is going on? Should not the Authority have the final approval over a sector, which transcends geographical distance?

**Sen. Dr. McKenzie:** I agree with him, but the Authority and the Minister have the final say in different areas. We can just say that we are doing a preliminary thing and the power does not rest with us to grant that licence. I think it makes for a certain amount of decentralization and groundwork being done by the Tobago House of Assembly. It makes people feel that they have been given some power and that they are gradually taking it back. Once they know they have

limited power, I do not see that any harm could be done in leaving this limited power. It is not that they can duplicate anything that you are doing or usurp your power.

Mr. Chairman, what bothers me is the inconsistency of government when it comes the authority of the Tobago House of Assembly. Sometimes they say Cabinet overrules, so therefore; and another time they say you have the power. When it suits them, they say the power is theirs. We see it all the time. We see it in the Tourism Development Bill where they say it is under your portfolio, but—

**Mr. Maraj:** There are some areas of national life—and we are talking Trinidad and Tobago—where there is an inseparable link between what goes on in both islands and where the whole of the national interest has to be taken into account. Tourism is one such area. When we are talking about tourism, we are not talking about tourism only for Tobago, but for Trinidad as well.

**9.30 p.m.**

We can separate activities in terms of education and health to a certain extent and so on, but I suspect that in a sector like this where you are dealing with the frequency spectrum and the airways, it is very difficult to delineate and demarcate.

**Sen. Gillette:** The regulatory body will have a lot of expertise that the THA may not have and that is why a representative of the THA would be on the board of the Authority.

**Sen. Dr. McKenzie:** I see that as a good move but to make us feel that we do not have any say, power—not power as such but—

**Sen. Gillette:** Senator, we have to be careful that we do not have duplication. If there is duplication of Channels 2 and 13, it gets confusing. The spectrum is something you do not see in the air, it is over Trinidad and Tobago and you really cannot separate it and say, we could give two Channel 2 licences, one up to Trinity Hill and one to Scarborough. It is very difficult. That is why we thought, by putting someone who was recommended by the Tobago House of Assembly he could plead Tobago's case, in consultation with the Minister, and determine, maybe, that the policy is such that we could do this and do that. It is very difficult to have two regulatory bodies.

**Sen. Dumas:** The Minister was going well until his last words, that you put somebody from Tobago on the Authority so that person “could plead Tobago's case”. Mr. Chairman, that is exactly the problem. That is exactly the battle, the



war, the problem that you have been creating between Trinidad and Tobago—the conception that the place of the Tobagonian is pleading his case to an authority that may not even recognize what he is saying. That is exactly why over the years, beginning 1973 to 1980 to now there were different legislative arrangements.

In 1996, the THA Act, as presently constituted, was passed. It was the best piece of legislation. People argued that six miles off the coast of the island is our physical jurisdiction. As you said, Mr. Minister, the spectrum is natural patrimony. There is no rule, no moral that says this has to be handled in Trinidad, that there can be no subdivision of the spectrum; that there can be no allocation of responsibilities over that spectrum that does not recognize the capacity and the right of the THA to exercise some control over it, to do some strength of purpose in terms of its allocation and to give room to how it works. The argument that has been made does not answer the question. If we go to the amendment that we have put out here, it does not even fall in line with the law.

**Sen. Gillette:** With all due respect, Sen. Dumas, I think it is technically impossible to split that between the two islands.

**Sen. Dumas:** Nobody is asking you to, what they are saying is that in your regulation that maybe you can make arrangements to ensure—

**Sen. Gillette:** No.

**Sen. Dumas:** You are saying, no, I am saying yes.

**Sen. Gillette:** What I am saying is, it is technically impossible to split the spectrum because of the distance and the type of equipment you are going to put down. Do you want to create a new regulatory body?

**Sen. Dumas:** Nobody is asking for that. If I read what was said to you and from which I thought, I got the total impression from reading the newspapers, that what was said was accepted. Of course, it seems to come across like deception, with all due respect. You come to Tobago, there is a general feeling of agreement—from what I was told in Tobago—that people had an understanding, that you understand where the limits are in terms of regulation; that people know what is legal and what is illegal. People come away with the feeling, and you understand, and then you have this withdrawal.

**Mr. Maraj:** Let me make it clear, the Chief Secretary and I have discussed this matter as well. I have something that I am thinking about; I am consulting with my legal people to see whether it is possible and then we can come back to it. I just want to make that point. There is still some room for discussion.

**Sen. Dumas:** I will stop here then.

**Mr. Maraj:** All right.

*Clause 85 deferred.*

**Mr. Chairman:** Maybe we can go back to clause 2.

*Clause 2 reintroduced.*

**Sen. Gillette:** We have the definition here for “access” and we are going to insert it in the proper alphabetic sequence. It says, “access means the ability of a user or provider to utilize the available network of another provider or user”. Is that okay?

**Mr. Chairman:** Yes. Hon. Senators, the following amendment has been proposed to clause 2, “access means the ability of a user or provider to utilize the available network of another provider or user”. This is the proposed amendment as agreed by parties before.

*Question put and agreed to.*

*Clause 2, as amended, ordered to stand part of the Bill.*

*Clause 18 recommitted.*

*Question again proposed, That clause 18 stand part of the Bill.*

**9.40 p.m.**

**Mr. Maraj:** Mr. Chairman, we wanted to come back to clause 18(4) to say:

“In the performance of its functions under subclause (1), paragraphs (c), (d), (e), (m) and (p) and clauses 28, 78 and 79...”

That is the change we wanted to make, and that will take care of the concern of Sen. King and others. That is going in 18(4). We are saying in 18(4), as amended, it should now read:

“In the performance of its functions under subclause (1), paragraphs (c), (d), (e), (m) and (p) and clauses 28, 78 and 79...”

Remember we had promised to include your concerns in 28 and you agreed to forego yours and for us to come back to 18(4); and so we are keeping that promise. We are just adding now to the amendments that we had already circulated on 18(4). Okay, that is it.

**Mr. Chairman:** Is that understood? Is it clear? [*Assent indicated*]

*Question put and agreed to.*

*Clause 18, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** The other one that was deferred was clause 20(3).

**Sen. Daly:** I withdraw.

*Amendment withdrawn.*

**Mr. Chairman:** Next is clause 31?

**Mr. Maraj:** Clause 30(5).

*Clause 30 recommitted.*

*Question again proposed, That clause 30 stand part of the Bill.*

**Mr. Maraj:** We have an amendment here that we shall give to you, Mr. Chairman, where we are saying:

“During the period that the Minister is considering exercising his power to suspend or terminate the concession, the concessionaire shall continue to operate until such time as the Minister makes a determination and in the event that the period of the concession comes to an end before the determination is made, an interim renewal of concession on the same terms shall be granted until the determination of the matter by the Minister.”

That is to take into account all those issues that were brought up by both Sen. Daly and Sen. Montano.

**Sen. Gillette:** You also replace clause 31 with (a), (b) and (c).

**Mr. Chairman:** Do you want me to read this? The amendment is to subclause (5):

“During the period that the Minister is considering exercising his power to suspend or terminate a concession, the concessionaire shall continue to operate until such time as the Minister makes a determination and in the event that the period of the concession comes to an end before the determination is made, an interim renewal of the concession of the same terms shall be granted until the determination of the matter by the Minister.”

*Question put and agreed to.*

*Clause 30, as amended, ordered to stand part of the Bill.*

*Clause 31 reintroduced.*

**Mr. Maraj:** The other clause to discuss is clause 31 and the amendment is that after “granted” we eliminate, “where the Authority is satisfied that” and replace it with “unless” and then we go to new subclauses (a), (b) and (c). So clause 31(1) should read:

“Upon an application by a concessionaire for the renewal of the first concession issued to him under this Act, the Minister shall, on the recommendation of the Authority, renew the concession for a period equivalent to the period for which the first concession was granted unless—

- (a) the concessionaire failed to operate within the terms of the concession;
- (b) the concessionaire failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of the concession; and
- (c) the concessionaire failed to comply materially with any lawful direction of the Authority.”

Here you are, Mr. Chairman.

**Mr. Chairman:** We are amending clause 31 to read as follows:

“Upon an application by a concessionaire for the renewal of the first concession issued to him under this Act, the Minister shall, on the recommendation of the Authority, renew that concession for a period equivalent to a period for which the first concession was granted unless—

- (a) the concessionaire failed to operate within the terms of the concession;
- (b) the concessionaire failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of the concession; and
- (c) the concessionaire failed to comply materially with any lawful direction of the Authority.”

These are the amendments as proposed by the Minister.

*Question put and agreed to.*

*Clause 31, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** Do we next have clause 36, Mr. Minister?

**Sen. Prof. Deosaran:** Mr. Chairman, could I just draw your attention to an amendment which was proposed for clause 28 and after some discussion, and I believe the Minister's agreement in principle to draft it appropriately, is that still—[*Interruption*] the one about public hearings and so on, having public hearings and applications for public telecommunications services, and then you had suggested you would refer it to your—[*Interruption*]

**Mr. Maraj:** Well, we said we would put it in clause 18(4)?

**Sen. Prof. Deosaran:** So I am asking, was that done already? Especially for radio broadcasting and telephone service, when such applications are made in the first instance—this is one of my amendments for those of you who have the list—and then you expressed agreement because you understood the clause and the objective of the provision.

**Mr. Maraj:** So let us go back to clause 18(4).

**Sen. Prof. Deosaran:** And you referred it to your advisors for tidying up, I guess, and I would hate for it to be neglected at this late stage. [*Crosstalk*]

**Mr. Maraj:** I think it was taken into consideration under the amendment that we have already made.

**Sen. Prof. Deosaran:** So it is part of the Bill?

**Mr. Maraj:** Clause 28. We will have to verify that. We are trying to. We will go on and come back. You were saying clause 36? What did we have to do with clause 36? We have already done clause 36.

**Sen. Daly:** We had to do the renewal for clause 39.

**Mr. Maraj:** We did clause 36(8) where we eliminated it. That was the one with “contrary to national security” and so on. That was done.

**Mr. Chairman** All right, we go to clause 39.

*Clause 39 reintroduced.*

**Mr. Maraj:** We go to clause 39(8) and our proposal is that it should read this way:

“Upon application by a licensee for the renewal of the first licence issued to him under this Act, the Minister shall renew that licence for a period equivalent to the period for which the first licence was granted, unless...”

And “unless” was replaced with “where the Authority is satisfied that”:

“...unless—

- (a) the licensee failed to operate within the terms of the licence;
- (b) during the period for which the first licence was granted the licensee engaged in conduct amounting to a material contravention of this Act, or regulations made hereunder; and
- (c) The licensee failed to comply materially with any lawful direction of the Authority.”

That is the amendment.

**9.55 p.m.**

Mr. Chairman, I propose the following amendment to 39(5) and I would like Senators to follow:

(5) During the period that the Minister is considering exercising his power to suspend or terminate the licence, the licensee shall continue to operate in accordance with the terms of the licence...

And the same wording as 30(c)(5).

Then 39(8) reads as follows:

“(8) Upon application by a licensee for the renewal of the first licence issued to him under this Act, the Minister shall, in consultation with the Authority, renew that licence for a period equivalent to the period for which the first licence was granted, unless—

- (a) the licensee failed to operate within the terms of the licence;
- (b) during the period for which the first licence was granted the licensee engaged in any conduct amounting to a material contravention of this Act, or regulations made hereunder; and
- (c) the licensee failed to comply materially with any lawful direction of the Authority.”

Those are the amendments to 39(8), then 39(10) must be deleted.

*Question put and agreed to.*

*Clause 39, as amended, ordered to stand part of the Bill.*

*Clause 84 reintroduced.*

**Sen. Daly:** I had a thought on state of emergency, Mr. Chairman. I accept that if we exclude loss of profit, that will help. It means that if one takes possession of

somebody's station, they have to pay their staff even while one is using it, so if we exclude loss of profit, that will limit the bill the Government will have to pay. Maybe we should say, "should compensate reasonably, but excluding loss of profit".

Maybe we should say:

"The Government shall, excluding loss of profit, compensate reasonably the owner or controller of any installation..."

Sen. Prof. Kenny raised a point and I can speak for him on this, that under 84(1)(a) we were concerned that it was so wide, the police could take one's cellular phone and the CB radios, so we were wondering whether it would not be sufficient to say:

"authorize the taking of possession and control by the Government of any telecommunications installation, service or station."

What they really want to do is take control of a radio station or a service and leave out equipment and apparatus.

**Mr. Maraj:** What about the development of the information and technology sector? With the growth of the technology, they have developed some kind of equipment which would serve the purpose, if you limit it to installation service, apparatus or station.

Let me ask the question—I am just asking for advice here. Suppose a policeman is going down the road in an emergency situation and needs to have a cellular phone to make a call and you are available?

**Sen. Daly:** He will take mine and I will never get it back!

**Mr. Maraj:** Then the Government must compensate you. Should he not be entitled to have that phone to make a call?

**Sen. Daly:** Yes, but I would not get it back when he is finished calling his girlfriend to make sure she is all right. Where are you living? [*Laughter*]

**Mr. Maraj:** Let us take the loss of property. We will say:

"The Government shall, excluding loss of profit, compensate reasonably the owner or controller of any installation service, apparatus or station which possession or control is assumed under subsection (1)."

**Sen. Daly:** So you will pay me for my cellular phone?

**Mr. Maraj:** Yes.

**Sen. Daly:** In how many years? I suppose it is late and we will have to let it go again.

*Question put and agreed to.*

*Clause 84, as amended, ordered to stand part of the Bill.*

*Clause 85 reintroduced.*

**Mr. Maraj:** Mr. Chairman, we are very sensitive on this matter and really, I understand quite well what is being said on the question of Tobago. I want to suggest that under subclause (11), we should say “The Tobago House of Assembly Act is amended by item 10 of the seventh Schedule and replacing it with ‘the Telecommunications Authority’”. In other words, I am proposing that we do not amend item 17 of the fifth Schedule. Delete 10 and preserve 17. It should read:

“The Tobago House of Assembly Act is amended by deleting item 10 of the seventh Schedule and replacing it as follows: the “Telecommunications Authority’.”

**Sen. Dumas:** Could someone read what the second part would read as? If you were to put what is proposed there in the Tobago House of Assembly Act, what would it read as?

**Mr. Maraj:** The Schedule would read as “the Telecommunications Authority”.

**Sen. Dumas:** In the Tobago House of Assembly Act, Schedule 7 would have a number of items. How it reads now is:

“Services to be performed or delivered in Tobago. Services of the telecommunications division in respect of issuance licences.”

Would that change to “services of the Telecommunications Authority”?

**Mr. Maraj:** Yes, “the Telecommunications Authority in respect of issuance of concessions and licences”.

**10.10 p.m.**

**Mr. Chairman:** Hon. Members, the question is a proposed amendment to clause 85(11). I will reread clause 85(11):

The Tobago House of Assembly Act is amended by deleting item ten of the Seventh Schedule and replacing it as follows:



“The Telecommunications Authority in respect of the issuance of concessions and licences”.

*Question put and agreed to.*

*Clause 85, as amended, ordered to stand part of the Bill.*

*Schedule ordered to stand part of the Bill.*

*Preamble.*

*Question proposed, That the Preamble stand part of the Bill.*

**Mr. Chairman:** I think Sen. Daly has an amendment. Have you accepted the amendment?

**Mr. Maraj:** You mean the change in the title?

**Mr. Chairman:** Yes.

**Mr. Maraj:** No, we have not accepted it.

**Sen. Daly:** The Preamble?

**Mr. Maraj:** Okay, fine.

*Question put and agreed to.*

*Preamble, as amended, ordered to stand part of the Bill.*

*Long Title.*

*Question proposed, That the Long Title stand part of the Bill.*

**Sen. Daly:** I concede.

**Mr. Chairman:** So it is withdrawn?

*Amendment withdrawn.*

*Question put and agreed to.*

*Long Title ordered to stand part of the Bill.*

**Mr. Chairman:** There are two comments, one from Sen. Prof. Deosaran and the other from Sen. Morean. Both are asking for a special majority. They are advancing that a special majority is needed.

**Sen. Prof. Deosaran:** What about the amendment you promised to verify? Is it in the Bill?

**Mr. Maraj:** We have already passed that amendment. We have accepted that amendment.

**Sen. Prof. Deosaran:** So that is there, the one I was speaking about, the holding of public hearings and so on?

**Mr. Maraj:** Yes, the amendment to clause 51.

**Sen. Prof. Deosaran:** Thank you; I just wanted to make sure.

**Mr. Chairman:** Are you withdrawing or pursuing that matter?

**Sen. Prof. Deosaran:** No, he has accepted the amendments.

**Mr. Chairman:** It is not a clause, it is just a view. You are making a comment. It is a proposal.

**Sen. Daly:** I took the liberty of checking with the Parliament staff, having been requested to find out the answer. As I understand it, there is a proposal by Sen. Prof. Deosaran and Sen. Morean that we add a special majority certificate to the Bill; so that is an amendment like anything else. It follows a standard form. The proposal is that we add a special majority certificate to the Bill.

**Mr. Maraj:** What does that mean?

**Sen. Daly:** Saying that it has been passed notwithstanding it is inconsistent with the provisions of clauses 4 and 5.

**Mr. Maraj:** Does it not mean that we are accepting that it requires a special majority? I do not see how we could accept that; forgive me, I really cannot. I want to be fair to Sen. Prof. Deosaran. I want to just be sure about the matter of the Authority conducting public hearings. I am advised that we took it at clause 21(10), that the Authority may conduct public hearings.

**Mr. Chairman:** That was approved.

**Mr. Maraj:** That is what I have been advised.

**Sen. Prof. Deosaran:** Mr. Chairman, as Sen. Daly properly reflected, I am, in effect, making an amendment that will require a three-fifths majority for this particular legislation. I have been working for two persons this entire evening, I would be grateful if you can allow Sen. Morean to precede me in presenting this amendment, and I will certainly come after. Can you allow Sen. Morean to precede me in arguing the case?

**Sen. Morean:** Let me see if I can get my thoughts together. It is my contention that section 24(k) which says:

“In addition to the conditions stipulated in section 22a, concession for a public telecommunications network or a public telecommunications service shall require the concessionaire to adhere, where applicable, to conditions requiring the concessionaire to—

- (k) make available on a timely basis, to other providers of telecommunications services, such technical information as the Authority may prescribe regarding the concessionaire’s network including planned deployment of equipment, and other relevant information necessary for the provision of such services.”

I am contending that this provision is inconsistent with section 4(a) of the Constitution.

In addition, because it is dealing with property rights and section 4(a) provides that an individual—an individual means an entity also—I will read the whole thing:

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without...”

I think something is wrong with this section here.

“...recognition of rights and discrimination by reason of race, origin, colour, religion...the following fundamental human rights and freedoms, namely—

- (a) the right of the individual to...enjoyment of property and the right not to be deprived thereof except by due process of law;”

Section (5) provides, despite these provisions:

“Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised...”

So there is this provision in the Constitution of the right to enjoyment of property and not to be deprived thereof except by due process of law.

I would think possibly section 25(m) where it provides:

“In respect of a concessionaire’s obligations pursuant to subsection (1), the Authority shall require a concessionaire to—”

And we go to subsection (m):

“(m) disaggregate the network...”

I think this was amended. I do not recall what the amendment was, but it is not relevant to what I am saying.

“...as the Authority may prescribe, establish prices for its individual elements and offer the elements at the established prices to other concessionaires of public telecommunications networks and public telecommunications services.”

This goes directly to the rights of the Telephone Services of Trinidad and Tobago.

We also have clause 26(1) where it is provided:

“Subject to the provisions of this section it shall be a further condition of a concession for a public telecommunications network and broadcasting service that the concessionaire be required to provide other concessionaires with access to the facilities that it owns or controls, such access not to be unreasonably withheld.”

It is my contention that these sections deprive the entity or individual of property rights and if there is to be such a provision, then it has to be passed with the requisite majority, as is prescribed in the Constitution.

**Mr. Maraj:** Mr. Chairman, in response to what the hon. Senator has said, whilst it is true, under normal circumstances, such violations of people's rights, interference with their property, denial of their property rights and so forth, may be a violation of the Constitution, we must understand that we are dealing here with a business environment, a fundamental principle of which is an environment of cooperation with one another.

That cooperation involves interconnectivity, access to each other's infrastructure and so on. It is that kind of environment. The Authority that we are setting up is going to regulate the environment based on very clear principles and very clearly set out guidelines. We do not think it is accurate to say that, in this case, if a provider grants access to a competitor, grants access to his network, as is required by the law, that that is a denial of his rights and so forth. That is a condition of competition, and without which the sector cannot develop.

I, therefore, suggest that we cannot agree that because of this argument and this situation, it will require a special majority. [*Desk thumping*]

**10.25 p.m.**

**Sen. Prof. Deosaran:** I understand the Minister's point of view, but I am not talking about amongst ourselves and I do not want to elaborate too much, but

there are many challenges against pieces of legislation which did not pass the special majority test and it has been very expensive in its consequences and I am looking ahead.

Mr. Minister, through you, Mr. Chairman, I do not really agree that it is a friendly atmosphere and neighbourliness in allowing people to enter your premises and—

**Mr. Maraj:** No, no, please, you are putting words in my mouth and I do not want that to happen. I did not talk about friendliness and neighbourliness and so forth. I said it is a sector, the success of which requires even enforced cooperation.

**Sen. Prof. Deosaran:** You have now used the word “enforced”.

**Mr. Maraj:** No, no, no. Enforced cooperation as is provided. I have clearly set guidelines and so on. It is not a question of a domestic situation where somebody's house is being violated. I just want to clear that up.

**Sen. Prof. Deosaran:** The point is taken, but I was trying to tell you that sections 50 and 75 do not speak in the terms to which you have presented here. They speak about inspectors seizing stuff and examining documents against the consent of the people who own such property. Though you have what is called due process, I am still not convinced that the due process about a warrant, and being accompanied by a police officer, that those conditions are enough. I think you are still violating section 4 of the Constitution and the key that is used to allow that due process is really a three-fifths majority.

The logic is simple. The reason for the three-fifths majority in this case is to prevent legislators and parliamentarians like ourselves putting in a due process clause in every piece of legislation and, call that George. “The real hurdle to protect privacy and property” which is the issue in this case, is the three-fifths majority which would give you the key to enter into the realm of due process in terms in which the Bill stipulates, and the three-fifths majority. I submit again, with due respect, that it is certainly required in this instance and it would be, in my respectful judgment, foolhardy, if for reason of expediency, or whatever, to disregard this fundamental point. We will live to regret it, I believe.

**Sen. Lucky:** In answer to Sen. Prof. Deosaran, I remember quite distinctly that when he was making his contribution, he had referred to section 50 and the power of the inspectors, and his concern with respect to the need for the three-fifths majority was raised in that context. When looking at that particular section,

I too was concerned—and I am talking about the original draft—because what was being allowed were instances in which inspectors would have been able, without warrants, or where there was the consent given by the owners of dwelling places, or vessels, or ships to go into the property and do certain things, and to exercise some of the powers, warrants would not have been necessary.

In reviewing that, therefore, I agreed with you that in the original draft that would have definitely been in breach of section 4, in that there would not have been due process, but I think the amendment, as proposed by the Minister and what has been agreed to, is that for the inspectors under clause 50, all the powers. In other words, they can do nothing unless they get a warrant from the magistrate, and if you go back to the 1971/1972 case of *La Salle v. the Attorney General* where you first got a definition by Justice of Appeal Phillips—I think it was—trying to give us a definition of what due process was. The key element, and of course, the development of this whole concept of due process of law is to ensure that nothing arbitrary is done. In other words, there must always be that test of reasonableness and when you consider that an inspector before he exercises any powers under clause 50 is going to have to go to a magistrate first, who is not going to use any frivolous or vexatious means to determine if that warrant would be granted, but would have to use and satisfy that test of reasonableness before granting that warrant to that inspector and, further, the inspector is going to have to go with a police officer. It means that you are satisfying that criteria that must be met in due process of law. So that when you read that now into section 4(a), the section says that:

“the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;”

That due process of law is being satisfied by the granting of the warrant by the magistrate.

That is how I would answer section 50, and I feel quite confident in terms of the fact that with the redraft, and what we have agreed to, that the inspector can do nothing without the warrant. I feel quite confident that that does not, as it is now, attract the three-fifths majority argument.

**Mr. Chairman:** Are there any other views?

**Sen. Prof. Deosaran:** No, Mr. Chairman.

**Mr. Chairman:** Senators, I think the Minister has said that the Government is not at this time prepared to go that route or adopt that particular course. Sen. Daly

had said that a certificate be added at the end of the Bill stipulating a special majority, I think that is trying to capture—

**Sen. Daly:** No, I did not say that. I framed the request, I was merely framing it on behalf of Sen. Prof. Deosaran as he had asked me to.

**Mr. Chairman:** Sen. Prof. Deosaran, I want to know if you would like to pursue this matter.

**Sen. Prof. Deosaran:** Yes, I would like to, for the record.

**Mr. Chairman:** Sen. Morean?

**Sen. Morean:** Yes, Sir.

**Mr. Chairman:** Senators, the issue here is whether a certificate should be added at the end of the Bill stipulating a special majority.

**Sen. Prof. Kenny:** It is not only a certificate.

*Question put and negatived.*

**Mr. Chairman:** You called for a division? It does not specifically form part of the Bill you know, I think we should take it in the spirit in which it has been said. In other words, I am advised that it does not form part of the Bill, and I have put the question just to satisfy the views of the Senators, but to go for a division, I do not think so. I am just doing that for the record, it is recorded that the “NOES” have it.

*Question put and agreed to, That the Bill be reported to the Senate.*

*Senate resumed.*

**The Minister of Communications and Information Technology (Hon. Ralph Maraj):** Mr. Vice-President, before I move the third reading of the Bill if you would permit me a brief word, I want to say that I have been in this Parliament for about 10 years now and I can say that today has been the best day in my life as a parliamentarian. [*Desk thumping*]

It was a productive day, a creative day, a harmonious day; it was full of so much that is good, and I thank all Senators, especially those opposite. I hesitate to use the word “opposite” because we proceeded in such an atmosphere of cooperation, togetherness and family feeling that I do not want to use the word “opposite”. I thank my brothers and sisters on both sides of the Senate for their contribution, cooperation, and their suggestions, for all that we did so very well today.

I thank you, Mr. Vice-President, for your perseverance; you remained calm and focused always. I thank the staff of the Parliament for bearing with us. [*Desk thumping*]

Mr. Vice-President, I want to put on record thanks to a special group of people: my team of advisors who have been working with me and without whom I would not have been able to pilot this Bill. I want to name them and to thank them. We have: Mrs. Elizabeth Camps, Mr. Harjindra Atwal, Mr. Winston Ragbir, Mr. Deoraj Ramnarine who is not here, Mr. Peter Mitchell, Mr. Jerry Hospedales and my dear own permanent secretary, Mrs. Carol Clarke. Could you please give them a round of applause? [*Desk thumping*] I thank them for their wonderful work.

*Bill reported, with amendment, read the third time and passed.*

#### EXPRESSION OF APPRECIATION

**Mr. Vice-President:** Hon. Senators, before calling on the Leader of Government Business to move the formal motion for the adjournment, let me say that it has been a very great experience for me here in the Chair, and I join with the Minister in extending my profound appreciation for the cooperation that I was given today and during the last two days while I was here as Vice-President of the Senate.

I also indicate to Senators that even though we were not able to go for dinner at the appointed time, those of you who are desirous of having dinner, when you leave here you can collect it, or take part in dinner.

I also take this opportunity to extend to each and every one of you and your respective families a very holy, happy and peaceful Easter.

Thank you.

#### ADJOURNMENT

**The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette):** Mr. Vice-President, I think we really all deserve a little holiday, such a great job we did today.

Before I move the adjournment, I wish everyone a very happy Easter filled with love and God in their lives.

Mr. Vice-President, I beg to move that the Senate do now adjourn to Tuesday, May 08, 2001 at 1.30 p.m.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 10.37 p.m.*