COMMONWEALTH OF DOMINICA

STATUTORY RULES AND ORDERS NO. 18 OF 1997

REGULATIONS

MADE by the Minister under section 16(1) of the Telecommunications Act, No. 18 of 1995.

(Gazetted 17th April, 1997.)

1. These Regulations may be cited as the –

TELECOMMUNICATIONS (SCHEME OF CONTROL) REGULATIONS 1997.

2. In these Regulations the Telecommunications Act 1995 is referred to as “the Act”.

3. (1) The Minister acting in pursuance of his powers under section 16(1) of the Act hereby makes a scheme of control regulating the prices and tariffs to be charged by Telecommunications of Dominica Limited pursuant to the licence made between the Government of the Commonwealth of Dominica and Telecommunications of Dominica Limited and dated 29th April, 1995 such scheme of control to be in the form set out in the Schedule to these Regulations.

   (2) Accordingly, the provisions of section 16 of the Act and all other provisions of the Act which apply to a scheme of control made pursuant to Regulations under the Act shall apply to the scheme of control in the Schedule to these Regulations with immediate effect and such scheme of control shall have the force of law.
SCHEDULE

SCHEME OF CONTROL

1. 1.1 The Company shall be subject to regulation by the Minister as to tariffs charged for Telecommunication Services provided that it shall be permitted to charge such tariffs as will provide to the Company such net profit after taxes and after dividends on preference shares as will when multiplied by one hundred and divided by the Ordinary Shareholders' Equity at the end of the last financial year for which there are audited financial accounts of the Company result in a figure of not less than 15 nor more than 22 (hereinafter called "the permitted rate of return") in each financial year; and provided that tariffs charged for Telecommunication Services shall be adjustable annually as necessary to provide the permitted rate of return.

1.2 For the purposes of paragraph 1.1 above and subject to paragraphs 1.3.2 and 1.3.3 below the accounting methods and principles applied shall be those used in the preparation of the last financial accounts of the Company as determined by the Board of Directors and consistent with those applied generally in the Cable and Wireless Group upon which the Company’s auditors have rendered an unqualified opinion.

1.3 A test period shall be used for arriving at the appropriate tariff adjustment which test period shall comprise the latest twelve months of operation for which there are audited accounts and the results of the test period adjusted to reflect:

1.3.1 Normal operational conditions.

1.3.2 Such changes in revenues and costs as are known and measurable with reasonable accuracy at the time of the filing of an application hereunder and which will become effective within twelve months of the time of that filing. Costs, as used in this paragraph, shall include operating and maintenance expenses, depreciation in relation to plant and equipment in service during the last month of the test period at the rates of depreciation as adopted by the Company from time to
time and corporate and income taxes, interest on all borrowings and a rate of return to equity. Extraordinary or Exceptional items as defined by the Accounting Standards Board of the Institute of Chartered Accountants of England and Wales shall be apportioned over a reasonable number of years not exceeding five years.

1.3.3 Such changes in accounting principles as may be recommended by the Auditors of the Company and are notified to the Minister.

1.4.1 Where the actual return on Ordinary Shareholders Equity exceeds the permitted rate of return in any financial year the Minister may by notice in writing require the Company within 30 days of delivery of the notice to make an application to him for adjustment of the tariffs chargeable by the Company for Telecommunication Services.

1.4.2 Any adjustment of tariffs as deemed necessary as described in 1.4.1 above, should take effect within 60 days, provided that no such adjustment shall be made where the excess of the permitted rate of return arises from a significant devaluation of the EC dollar against the US dollar, in which event the Company shall have the right to revalue its assets in accordance with accepted accounting principles and revaluation procedures.

1.4.3 Any adjustment of the tariffs as deemed necessary as described in 1.4.1 above should take effect within 60 days.

1.4.4 Where having been required to make an application under 1.4.1 above the Company fails to make an application in accordance with the section the Minister may refer to the Referee (as defined in paragraph 1.12 below) a proposal for variation of tariffs and such reference shall
be treated in the same way as a reference by the Minister of a proposed variation of tariffs under paragraph 1.8 and the existing tariffs shall be treated as if they were provisional tariffs properly introduced by the Company from the date of the reference and the provisions of paragraph 1.11 shall apply.

1.5. The Company’s depreciation rates shall be determined by the Board of Directors and be subject to periodic review and agreement by the Company’s Auditors and shall be consistent with those applicable generally in the Cable and Wireless Group.

1.6. The Company may apply to the Minister for determinations of the tariffs to be charged for Telecommunication Services by the Company by an application in writing setting out the proposed tariffs and the bases for such tariffs provided that:

1.6.1. The application relates to tariffs proposed to be introduced no earlier than 60 days after the delivery of the application to the Minister; and

1.6.2. Except in relation to the first determination of the tariffs pursuant to the scheme of Control, to take effect from 1st April, 1996, no application for an increase in tariffs has been made to the Minister in the preceding twelve months.

1.7. If the tariffs proposed by the Company in its application meet the required rate of return criteria as defined in 1.1 above then the Minister shall so determine and notify the Company accordingly.

1.8. If the tariffs proposed by the Company in its application do not comply with the rate of return criteria defined in 1.1 above then the Minister shall propose in writing to the Company a variation in such Tariffs provided that such variation does not yield the Company less than the permitted rate of return. The Minister shall state in his proposal the intended tariffs. If the Company by notice delivered to the
Minister within 15 days of receipt of the Minister’s proposed variation approves of such variation the Minister shall determine the tariffs to be as so varied and notify the Company accordingly. If the Company does not so approve of such variation then the Minister shall refer the Company’s application and a copy of the proposed variation to the Referee for a determination as to whether the proposed tariffs as varied by the Minister comply with the rate of return referred to in paragraph 1.1 above.

1.9. If within 30 days of the receipt by the Referee of an application as defined in paragraph 1.6 above, the Minister fails to determine the tariffs in accordance with paragraph 1.7 or to propose in accordance with paragraph 1.8 a variation of tariffs applied for by the Company then if within 7 days of the expiry of the aforesaid 30 days the Company delivers to the Referee a true copy of the application made to the Minister the Referee shall be deemed to have received a reference of the application from the Minister for the Referee’s determination as to whether the tariffs proposed by the Company comply with the rate of return defined in paragraph 1.1.

1.10 1.10.1. Where a reference has been made or deemed made to the Referee, the Company shall be entitled to introduce the tariffs proposed in its application as provisional tariffs from the commencement date proposed in its application being not less than 60 days after delivery of its application to the Minister PROVIDED THAT the tariffs applicable by reason of a determination by the Referee shall supersede the provisional tariffs ab initio and retrospective adjustments to such tariffs shall be made accordingly.

1.10.2. Refunds or rebates to customers of excess amounts charged on account of provisional tariffs shall only apply in respect to the last 60 days during which provisional tariffs were applied.
1.11 The Referee shall determine whether proposed tariffs as varied by the Minister in the case of a reference under paragraph 1.8 or tariffs as applied for by the Company in the case of a reference under paragraph 1.9 comply with paragraph 1.1. If the Referee determines that there is such compliance then the proposed tariffs as varied or as the case may be the tariffs applied for by the Company shall apply with effect from the date proposed in the Company’s application. If the Referee determines that there is no such compliance as aforesaid then he may require the Company to adjust the tariffs applied for in the manner determined by him as effective to produce, in the case of a reference under paragraph 1.8, a rate of return which is equal to the rate of return intended by the Minister and within the permitted rate of return or in the case of a reference under paragraph 1.9 a rate of return which is no more than the permitted rate of return. On the Referee further determining that the Company has so complied the tariffs applied for by the Company as adjusted shall apply with effect from the date proposed in the Company’s application or 30 days after the Referee’s further determination, whichever is later.

1.12

1.12.1. The Referee shall be an internationally recognised independent firm of accountants or a current or former Judge of the High Court or Court of Appeal of any of the Commonwealth Caribbean jurisdictions as the Minister in consultation with the Company shall agree to appoint from time to time for determination of any reference made or deemed to be made to him under paragraphs 1.4, 1.8 or 1.9.

1.12.2. References to the Referee shall be treated as submission of differences to an arbitrator to which the Arbitration Act applies.

1.12.3. The Referee may be assisted in a determination by not more than two persons appointed by him and appearing to him qualified as having experience in matters relating to accountancy, finance, economics or commerce.
1.12.4. The Referee shall make a determination or further determination as the case may be within three months of the reference or such longer period as the Minister and the Company shall determine not exceeding six months from the reference.

1.12.5. The remuneration and allowances of the Referee and of his appointees assisting him during a determination shall be paid for by the Government and shall be reimbursed by the Company.

1.12.6. The Referee shall make no award as to costs.

1.12.7. The Minister may be represented by the Attorney General in proceedings on the reference.

1.13. If the Referee finds that the Company has been guilty of inordinate delay in proceedings on a reference, other than a reference consequential on a requirement by the Minister under paragraph 1.4 that the Company make an application for adjustment of tariffs, then the Referee may terminate the proceedings and upon such termination the tariffs prevailing prior to the reference shall apply and those consequences shall apply which, by paragraph 1.10, follow upon a determination by the Referee of applicable tariffs.

2. The accounts and records of the Company shall be maintained in accordance with sound accounting methods and principles specified in paragraph 1.2 above subject to such changes in accounting principles as may be approved by the Board of Directors from time to time.

3. Provisions for depreciation shall be maintained separately for the following classes of telecommunication assets:

3.1. Telephone exchange equipment, telex exchange equipment and radio and transmission equipment subdivided into equipment existing at the date of this licence and each additional installation;

3.2. Station apparatus including private branch exchanges;
3.3. Main line and distribution system including pole lines, aerial cable, underground cable, underground conduit, aerial wires;

3.4. General property classified as to:

3.4.1. Automatic equipment, mechanical aids and tools;

3.4.2. Buildings;

3.4.3. Fixed assets including: motor vehicles, computer hardware and software, and furniture and fittings used in the Company's normal course of business.

The foregoing classification may be altered from time to time by the Company upon notification to the Minister.

4. The Minister or the Referee as the case may be shall be entitled to enquire into the accuracy and reasonableness of items of expenditures and revenues reported for the test period for rate-making purposes. Charges for consultant and specialist services shall be at competitive rates as normally understood in this type of business; however the Company shall not be required to seek such services in ways which do not conform to the accepted practices for such transactions.

DEFINITIONS

For the purposes of the Scheme of Control "Company" means Telecommunications of Dominica Limited and the following definitions shall be applied in calculating the return on Ordinary Shareholders' Equity:

1. Ordinary Shareholders' Equity will comprise –

   Ordinary Share Capital, Share Premium, Revenue Reserves, and Capital Reserves at the end of the previous financial year together with Revaluation Reserves (if any).

2. The return on Ordinary Shareholders' Equity shall be derived from net Operating Revenues derived by the Company in the Ordinary course of business.
3. The asset base to be used for the purposes of calculating the rate of return will include –

(a) (i) Land and Buildings;
(ii) Telecommunications Plant and Equipment;
(iii) Motor Vehicles;
(iv) Computer Equipment and Furniture and Fittings;

held in the books of the Company at either replacement or historical cost for future use with the agreement of the Independent Auditors;

(b) Construction work in progress;

(c) Working Capital defined as:
   Materials and Supplies in stock;
   Consumable Stores;
   Debtors due in less than one year;
   Creditors payable in less than one year;
   Bank Balances and Overdrafts;

(d) Investments at book value;

(e) Debtors due in greater than one year;

LESS:

(f) Accumulated depreciation of the assets identified in (a) above;

(g) Contributions in advance of construction;

(h) Creditors due in greater than one year.

Made this 8th day of April, 1997.

EARL M. WILLIAMS
Minister for Communications,  
Works and Housing

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