

# **A NEW TELECOMMUNICATIONS REGULATORY FRAMEWORK FOR ANGUILLA**

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## **I. OBJECTIVES OF THIS POLICY**

The objective of this Policy is to create an open market for the provision of facilities and services and conditions in Anguilla's telecommunications sector in support of the continued development of tourism, financial services and information-based services on the Island, including the processing and secure storage of all types of data, encryption, software development, web hosting and back office services in the information technology sector, and international finance, trust and company management, insurance, and company registration in the financial services and insurance sectors

While Anguilla can be proud of a highly developed and ubiquitous telecommunications network, it often comes up short of being able to satisfy the requirements for the reliable, high quality and affordable telecommunications of sufficient capacity to transmit the ever increasing quantities of information needed for the production of these quickly evolving services.

It is the Government's opinion that certain constraints, which impede the rapid development of these and other services, can be overcome by encouraging additional investment in telecommunications and by facilitating the entry of those who wish to invest in the telecommunications sector in Anguilla.

There are also important social reasons for promoting the development of telecommunications in Anguilla, which because of its limited resources is dependent on outside sources to support education and health services. Reliable, good quality, efficient, and affordable telecommunications services

are essential to ensure that all citizens and residents can access these essential social services.

Development of the information-based and financial services industries in Anguilla will require a highly specialized and trained workforce. With its limited resources Anguilla is unable to provide all the needed training on its own. Implementation of high-speed data networks easily accessible to all citizens and residents will facilitate access to the best and most up-to-date training available.

Improved communications and information technology will also make government more efficient through electronic processing, storage, and retrieval of information related to rates, taxes, licence fees, filing and copy fees, for court documents, citizens records, infrastructure planning and organization, budgets and expenditures. Improved communications and information technology will also give added support to the emergency measures currently in place to facilitate preparedness for hurricanes and other disasters.

The Government recognizes the important role that the British Government and the incumbent operator, Cable & Wireless, have played in the development and operations of telecommunications networks on the Island. It is the sincere desire of the Government that Cable & Wireless continue to participate alongside other new operators and service providers in making Anguilla's information and communications technology sector the most developed and vibrant of the region.

This Policy proposes a new institutional structure with conditions to ensure fair competition for the telecommunications sector in Anguilla and a timetable for its implementation.

## **II. THE CURRENT LEGAL AND REGULATORY FRAMEWORK FOR TELECOMMUNICATIONS IN ANGUILLA**

The existing legal and regulatory framework for telecommunications in Anguilla is outdated and not appropriate for promoting further development of this and other sectors dependent on telecommunications.

The Telecommunications Act and Telecommunications Rules, which were adopted 50 years ago, regulate the various types of wireless equipment used by radio amateurs, ships, aircraft, and broadcasters. The Telecommunications Ordinance, which allows Cable & Wireless to establish telecommunications within the Island and authorizes the issuance of an external operating licence, was introduced in 1973, and the Telecommunication Operating Licence that was granted to Cable & Wireless dates back to 1988. Taken together, the present framework did not foresee nor does it adequately cater for modern telecommunications systems and services. Indeed, even the most recent of these documents, the licence granted to Cable & Wireless in 1988, did not foresee the provision of access to the Internet as a specific service. The current framework requires the licensing of anyone that establishes any telecommunications station, that installs and operates any telecommunications apparatus (including a simple telephone set), or that sells or leases any telecommunications apparatus.

The sector consists today of a single operator and service provider, Cable & Wireless (Anguilla), and a Government department, the Ministry of Transport and Communication, which sets policy, supervises the sector, and manages the radio frequency spectrum.

### **III. THE TELECOMMUNICATIONS NETWORK AND SERVICES IN ANGUILLA TODAY**

There are currently in excess of 6,000 telephone customers connected to Cable & Wireless' fixed telephone network, which has been completely digitised since 1986. The penetration rate of over 50 main telephone lines per 100 population is similar to that of the developed economies and some other Caribbean countries such as Antigua, Barbados and St. Kitts & Nevis. It is significantly higher than that of Jamaica and Trinidad & Tobago. The current exchange line capacity for the island is about 8,400.

Anguilla is currently connected to the outside world through a STM 4 (565 Mbit/s) spur on the Eastern Caribbean Fiber Optic System and through a 36 km microwave link to the 140 Mbit/s Digital Eastern Caribbean Microwave System in Saba. When this link is taken out of service at the end of this year, it will be replaced by a new microwave system between Anguilla and St. Martin/St. Maarten. This will provide continued redundancy on Cable & Wireless' international network.

Anguilla is not currently connected to the rest of the world via satellite.

Cable & Wireless operates the only cellular mobile system in Anguilla. It is a TDMA system with a limited amount (10%) of AMPS capacity to serve the few remaining analogue customers. There are currently 2,000 subscribers, equivalent to a penetration of about 17 wireless telephone subscribers per 100 population. This level is a third to one-half of that found in European countries that have similar fixed telephone penetration rates. Cable & Wireless has just begun to offer limited inbound roaming. There is currently no outbound roaming. This means that Anguillians travelling to other countries cannot use their handsets on networks in these countries even if technically possible. This is because there is no commercial agreement

between Cable & Wireless and operators in these other countries to permit this. Tariffs for the mobile wireless telephone service are based on the principle of Calling Party Pays (CPP); that is, the wireless telephone subscriber does not pay for incoming calls. The person making the call does.

Cable & Wireless also offers various data services including frame relay and X.25 as well as paging, Internet and leased line services. It has over 1,000 Internet customers of which about 10 are connected to dedicated leased lines.

Weblinks has established a Wireless Local Area Network (WLAN) that supplies high speed Internet access to its customers. The WLAN operates in the 2.4 to 2.5 GHz frequency band and provides a 11 Mbit/s access service. Weblinks had initially provided its customers access to the Internet through a 128 Kbits/s leased circuit connection provided by Cable & Wireless. This service was however terminated by Cable & Wireless in February 2001.

The termination by Cable & Wireless of the Weblinks service and the legality of the Weblinks service are presently the subject of litigation between the parties. This course of events is predicated on the lack of clarity in the legal and regulatory framework. Weblinks currently provides access to the Internet by way of a leased microwave link service provided by a supplier located in St. Maarten.

There are three licensed radio broadcast stations and one television broadcaster. All Island Cable TV provides a cable television service using coaxial cable which serves close to 3,000 subscribers or almost 100% of all households in Anguilla.

## **IV. THE TELECOMMUNICATIONS SECTOR IN ANGUILLA TODAY: THE IMPEDIMENTS TO GROWTH**

### **IV.1 Introduction**

As in other countries in the region and elsewhere, where there is only one supplier of telecommunications services, quality of service in Anguilla is perceived to require improvement to meet international standards, and prices, particularly for international services, are too high. Consumers have no choice and the incumbency of the operator is generally perceived to be contrary to best interests of the people and the economy of the Island. This Policy seeks to establish a framework and propose legislation that will remedy this situation.

### **IV.2 Quality of Service**

There are persistent complaints from business and residential customers, who claim that they are not receiving the quality of telecommunications services that they deserve and pay for. These complaints range from poor sound quality in the fixed telephone service to long service outages in the data services including Internet and lack of prompt response in repairing faults. A particularly disturbing complaint concerns the difficulty that overseas clients of businesses in Anguilla have in completing calls to the Island.

Cable & Wireless is perceived as not doing and investing enough to maintain and expand its network to meet the growing demand for existing and new telecommunications services.

### **IV.3 Prices**

One of the main objectives of this Policy is to create the means and the incentives for all users to be able to benefit from the technical advances and structural changes in the sector, which have caused a significant impact not only on the quality and quantity of services that are available but also on their prices. The potential that a reform of the telecommunications sector in Anguilla can bring is best illustrated through a brief analysis of prices in four particular areas of telecommunications services provision in Anguilla and a comparison with prices for these same services elsewhere. The four areas are the regular fixed telephone service, the cellular mobile service, the leased line service and the Internet.

#### Fixed Line Telephone Service

The monthly residential subscription charge of EC \$ 26 (= US \$ 9.75) for the fixed line telephone service is equal to the average in the Caribbean. Whereas charges in Jamaica and in Trinidad & Tobago are considerably lower, they are higher in countries such as Antigua, Grenada, Barbados, and The Bahamas. However, a study<sup>i</sup> by the International Telecommunications Union (ITU) shows that the average monthly charge is 35% higher in the Caribbean than in Latin America. Local calls in Anguilla are not metered but incur an EC \$ 0.15 (= US \$ 0.055) set up charge.

The story is different for off-Island calls; Anguilla's lifeline to the rest of the world and an essential element in its strategy to develop its services industries. Whether the call is made from or to Anguilla the prices are high. The USA, Canada, and the UK represent some of Anguilla's most important international telephone traffic routes. A three minute peak hour call to the USA and Canada costs the subscriber US \$ 3.60. During off peak hours a three-minute call costs US \$ 2.25. The three-minute peak hour rate to the UK is US \$ 4.50 and a three-minute daytime call to neighbouring St. Martin

costs US \$ 1.80. This compares with long distance and international calls made in North America, which generally cost less than \$ 0.10/minute. Indeed some calling card providers offer rates to Europe and elsewhere for a fraction of this price. It is clear that any business, which wishes to offer a service requiring telephone contact will be disadvantaged with respect to competitors, located in the USA and Canada. 1-800 calling is similarly priced and is thus not an attractive service for business that could benefit by providing this important service to their customers.

#### Leased Circuit Service

Reasonably priced leased circuits are essential for businesses to be able to provide goods and services, whose production and delivery is dependent on transmission of information. Indeed, one of the major obstacles to the promotion of information services exports in an Anguilla and the rest of the Caribbean has been the high price of leased circuits<sup>ii</sup>.

For example, a 64 Kbit/s local data link from the subscriber's premises to Cable & Wireless' central office including port charges costs in the order of US \$ 850/ month. The same link can be obtained in the USA for less than half and in Mexico for less than a quarter of this price. Last year the European Commission set a recommended benchmark rate of US \$ 76/ month for a 64 Kbit/s link in the European Union for distances up to 5 km. The difference in price of a 2 Mbit/s local link is even more remarkable. Cable & Wireless in Anguilla offers this at about US \$ 16,000/ month, more than 5 times what it costs in the USA. The EU's recommended benchmark rate for links up to 5 km. is US \$ 333/ month.

Cable & Wireless' price for a 64 Kbit/s international leased half circuit varies between EC \$ 2,150 (US \$ 800)/ month for connections to neighbouring islands and EC \$ 17,000 (US \$ 6,300)/ month for connections to the rest of

the world. The price of a 2 Mbit/s link to the same destinations varies between EC \$ 21,700 (=US \$ 8,040) and EC \$ 170,200 (=US \$ 63,040) per month. A 2 Mbit/s half circuit to the UK costs US \$ 32,000/ month.

By comparison AT&T and MCI Worldcom offer international 64 Kbit/s international half circuits between New York and Europe or South America at monthly rates of \$ US 2,500-3,000/ month. These are non-discounted, published rates. Newly created spot markets for the lease of circuit capacity give a better indication of the prices operators, service providers and businesses pay for these essential services. The average spot market price for a transatlantic 2Mbit/s half circuit between the USA and Europe is about \$ US 20,000/ month. Recently there was an offer on Band-X, an online bandwidth exchange, for the lease of a 44 Mbit/s (DS 3) half circuit between San Jose, Costa Rica and Washington, DC for a little under US \$ 11,000/ month. An STM-4 (565 Mbit/s) half circuit between London and New York was being offered at the same time for US \$ 30,000/ month or about US \$ 106/ month per 2 Mbit/s.

These are short-term (1-year) leases, which offer the lessee limited flexibility and must therefore represent a minimum price. One would expect that a realistic price for a long- term lease must lie somewhere between this minimum and the price, that is currently being charged and most likely considerably below the latter.

#### Cellular Mobile Service

For Cable & Wireless' cellular mobile service the fixed monthly charge is \$ EC 50 (= US \$ 18.50). Usage is charged at EC \$ 0.59 (=US \$ 0.22/ minute) during peak times, which is from 6 am to 10 pm. Usage charges are generally in line with what the cellular mobile service is priced at in the rest of the Caribbean. According to the above-mentioned ITU study Anguilla's

prices are among the lower in the region. Prices in the USA generally vary between US \$ 0.10 and US \$ 0.20/ minute depending on the price plan. In Canada there are plans that offer the monthly connection charge plus 200 minutes of local calling for about US \$ 13/ month. The equivalent in Anguilla would cost the subscriber US \$ 62.50. Prices for off-Island calls incur the same relatively high charges as calls from a fixed line telephone.

#### Internet Access

Dial-up access is priced between US \$ 13 for 10 hours/ month and US \$ 44/ month for unlimited service. The cost of accessing the Internet via Cable & Wireless for 20 hours including both Internet and telephone charges (fixed and usage) is in the order of US \$ 30, which is equal to the average in all OECD countries but more expensive than the US \$ 13 – 25 that subscribers pay for unlimited dial up access in the USA or Canada. Cable & Wireless' currently does not offer high speed Asynchronous Digital Subscriber Line (ADSL) service. Bell Canada offers high speed ADSL service over the telephone network at an unlimited use rate of US \$ 26/ month.

## **V. THE NEW LEGAL AND REGULATORY FRAMEWORK**

### **V.1 Introduction**

The new legal and regulatory framework to be implemented as a result of this Policy will create a stable, predictable, institutional environment for the development of telecommunications in Anguilla. It will create a climate which is conducive to private investment and which will contribute to overall economic development of the territory and, in particular, to the development of financial services, tourism, and information technology. The new framework will create an open market for the provision of telecommunications networks and services under conditions of fair

competition. It will promote the development of telecommunications for the social, economic, and cultural well being and the safety and security of all people living in Anguilla. It will ensure universal access to essential telecommunications services and protect consumers.

Under the new framework, only telecommunications networks and services that are offered to the general public and that provide for real time voice and data communications will be subject to a licence and, therefore, to the conditions attached to those licences. The provision of value added services will not require a licence or other authorization but may be subject to regulation if provided under conditions of exclusivity or dominance, nor will telecommunications networks and services for private or restricted use be regulated (except if they use spectrum or public rights of way). The regulator may require, however, that certain types of service providers that are not otherwise subject to licensing or authorization will need to register their services.

Given the limited resources available in Anguilla to supervise the telecommunications sector, it is intended that regulation will be light-handed and confined to the essential requirements to ensure the optimal implementation of this Policy and the smooth and efficient functioning of the sector. The regulatory function will encompass the granting of licences and authorizations, and ensuring compliance with their terms and conditions; monitoring the sector, and regulating, to promote competition; protecting consumers; ensuring the fulfilment of and funding for universal service obligations; managing and administering the use of scarce resources such as frequencies and numbers; and issuing regulations as necessary to accomplish all of the foregoing.

The new framework establishes an independent telecommunications regulatory capability (an independent regulator) with responsibility for supervising the proper functioning of the sector and ensuring that the

Government's policy for the sector is implemented. This capability will be incorporated into the soon to be established Public Utilities Commission ("PUC").

Under the new regulatory framework, the development and implementation of the Government's telecommunications policies will be transparent; that is, any decisions, rules, guidelines and procedures affecting the sector will be both developed through a process of open, public consultation, where all stakeholders will be able to express their views, and assured that these views are taken into account, and will be set forth in writing.

The following sections describe the roles of the Minister and the regulator and the proposed policies with respect to licensing, convergence, interconnection, management of scarce resources, prices, consumer protection, quality of service, the terminal equipment market, and ensuring fair competition.

## **V.2 Role of the Minister**

The Minister responsible for the telecommunications sector will continue to develop sector policy, prepare legislation, manage the radio frequency spectrum, and administer numbers and other scarce resources in a non-discriminatory, fair and transparent manner, and represent the international interests of the Government of Anguilla.

The Minister will be able to give general policy direction to the regulator but will not be able to interfere with the functions committed by legislation to the regulator, including decision-making as it relates to supervision and regulation of the telecommunications sector in Anguilla.

### **V.3 Role of the Regulator**

The newly established regulator will be responsible for implementing the Government's policy for the sector, issuing licences and authorizations, collecting licence and spectrum usage fees, ensuring compliance with terms and conditions of licences and authorizations, enforcing competition rules for the sector, protecting consumers including the regulation of prices, where this is necessary, monitoring compliance with and, where necessary, establishing standards for telecommunications services and equipment, recommending policy to, and formulating legislative proposals for, the Minister, ensuring that universal service obligations are met and that Anguillians have easy and ready access to emergency communications, and ensuring that Anguilla's international obligations with respect to the sector are met.

New legislation will ensure that the new regulator is able to function effectively and independently.

The new regulator will be independent of any operator, service provider or user of telecommunications services in Anguilla or elsewhere. It will also be independent of the Minister and the Government, its only obligation with respect to them being that of respecting their general policy guidelines and ensuring that laws and licence conditions are respected.

The head of the PUC will be a highly qualified professional with an appointment based on integrity and professional qualifications and not political or other allegiances. It will be possible to remove the head only for criminal reasons, incapacity or malfeasance. The division of the PUC responsible for telecommunications will be staffed with suitable professionals and other support personnel.

There will be a well-defined mechanism for appealing decisions of the

regulator to the courts. The courts will be empowered to reverse decisions of the regulator in defined circumstances. The law will provide that the regulator is accountable to the population as a whole and that the regulator will be subject to strong and effective conflict of interest rules. Finally, the regulatory process will be completely transparent and, to the extent possible, the regulator will be financed independently of the Government's revenues.

The regulator will also be empowered to arbitrate in disputes between users, on the one hand, and network operators and service providers, on the other, and among the latter if invited to do so. It will have the power to resolve disputes in cases where the parties involved in a dispute are unable to agree.

The regulator's actions and proceedings applicable to the regulation of the sector, as well as its relationship, with the Minister generally will be open. This does not, however, mean that the regulator will divulge sensitive or commercially confidential information, which regulated network operators and service providers will have provided as part of their licensing conditions.

The regulator's operating (and to the extent necessary) capital expenses will be funded through a levy on all licensed operators and service providers. This levy will be fair, proportionate, and will be kept to the minimum required for the functioning of the regulator. The regulator's annual accounts will be publicly available and be subject to audit by the Auditor General and scrutiny by the Government. The funding formula and precise amounts to be imposed on each licensed operator and service provider will be established once the new regulatory framework has been put into place. Funding obligations from the telecommunications sector will, to the extent possible, be limited to funding the administration and supervision activities of the PUC and the Ministry as they relate to telecommunications. In other words, regulatory activities of the PUC that are specific to other sectors, or that may

fall under the responsibility of other government departments, will not be funded through licence fees imposed on regulated operators and providers in the telecommunications sector. The Government measures that will set out the licence fee obligations will be subject to public consultation when they are being drafted. In practical terms, establishing an independent regulatory capability for telecommunications will require the new Public Utilities Commission to develop or hire a few telecommunications specialists who will be supported by the cross-sectoral legal, economic, financial, and consumer protection specialists in the Commission. It is also expected that the help of outside experts will be sought during peak work periods, especially during the transition period described below and during the early stages of liberalization of the telecommunications sector.

#### **V.4 Licensing**

In order to encourage maximum participation in the telecommunications sector in Anguilla there will be a simple, non-discriminatory, transparent and light-handed licensing scheme.

A licence (concession) will be required to operate a public telecommunications network, to provide telecommunications services generally available to the public, and to operate any system that uses the radio frequency spectrum. Licence holders will be subject to a certain number of conditions, which will be described in their licences. These include, *inter alia*, the obligation to pay an annual licence fee based on a percentage of annual revenues, to pay an annual spectrum usage fee according to a formula established by the Minister, to contribute to funding universal and emergency services, to refrain from anti-competitive behaviour, to use scarce resources effectively and efficiently, to provide certain information to the regulator so as to enable it to supervise the sector, to make interconnection available to competing operators and service providers, and to protect consumers' rights and their confidentiality.

The number of licences that will be issued for any particular type of service may be limited if scarce resources, such as frequencies, are unavailable or for economic reasons.

Licences to operate networks, provide services and for the use of spectrum will be granted by the regulator. Licences will be for a fixed term and will be subject to renewal where the licence holder has not breached the terms and conditions of its licence.

No licence will be required to provide information or value-added services. Value-added services are services, other than public telecommunications services, that modify the form, content, code, protocol, or other similar aspect of the communication, restructure, add or supply information or permit user interaction with information.

For the purposes of the new regulatory framework in Anguilla, access to the Internet, other online services, access to Web sites and the similar services all will be considered as value-added services and, therefore, not subject to a licence; however, voice services generally offered to the public, be it over the Internet or by other means, will be considered to be a public telecommunications service and, therefore, subject to a licence and the conditions incumbent on licensed service providers.

No licence will be required for the establishment of telecommunications networks and telecommunications services that are private or otherwise restricted, except to the extent that they may make use of the radio frequency spectrum or cross public rights of way.

The objective of this Policy is to promote market entry, competition and investment in a wide range of existing and future telecommunications services. All licence holders will be subject to licence and annual spectrum

usage fees, which will be established to cover only the costs of administering and regulating the sector and the spectrum used not bring in additional amounts for the Treasury. In addition all licensed operators and service providers may be required to contribute for funding universal access and emergency services. All such fees and contributions will be fair, reasonable and proportionate. The Government, however, reserves the right to charge for the use of a national resource, such as spectrum based on the value of that resource.

## **V.5 Convergence**

Voice, data and images are indistinguishable when transmitted over modern digital networks. This convergence of technologies of transmission has created certain regulatory uncertainties. For example, access to the Internet allows not only the transmission of e-mail messages or voice but also the downloading of recorded music and movies.

The new framework created by this Policy recognizes this convergence of technologies, which allows previously distinct services to be delivered over the same medium, be it a simple telephone line, a coaxial or fibre optic cable connection to the home, a satellite link or a fixed or mobile wireless link. Under the new framework, the means by which this information is transmitted is covered, irrespective of the technological medium used; however, regulation of content is outside the scope of this Policy and this new framework.

The new telecommunications framework will regulate radio and television over-the-air broadcasting only if and the extent to which these require the use of a scarce resource, namely, the radio frequency spectrum. Furthermore, under this framework, other content delivery services that may make use of other resources, such as public rights of way, may also be subject to some regulation, to the extent that they do so.

Convergence may also raise issues of fair competition where, for example, an operator of a telecommunications network merges with a provider of content. To the extent that convergence or market concentration raise issues of potential or actual anti-competitive behaviour, they will be dealt with under the competition rules that will be developed separately. (See Section V. 12 below)

## **V.6 Interconnection and Access to Infrastructure**

Anyone who is licensed to operate a public telecommunications network or to provide public telecommunications services will be obliged to provide interconnection for the purposes of transmitting public telecommunications traffic between subscribers of different networks.

In the first instance, operators seeking to interconnect their networks will be required to negotiate interconnection arrangements on a commercial basis. The regulator will only intervene in these negotiations if invited to do so by the negotiating parties or if they are not able to come to agreement within a specified, reasonable time period. The regulator will have the authority to resolve disputes. Interconnection agreements will be made public.

In order to facilitate such negotiations and to ensure that interconnection is based on fair, non-discriminatory and transparent terms, the regulator will establish general rules, guidelines, conditions and procedures for interconnection. These will be issued after a process of public consultation(s) governing interconnection.

Prices for interconnection must be based only on the cost of providing the required interconnection. Such cost-based pricing means that the operator providing interconnection services must base its prices on the proportionate operating and administrative costs of the elements of its network and

services used by the operator seeking such interconnection.

Any operator in a dominant position will be required to publish an offer that sets out the terms and conditions of interconnection to its network. This offer must include all financial, technical, commercial and informational elements in a clear and unambiguous manner. These terms and conditions will be available equally to all operators and service providers seeking to interconnect their networks and services with those of the dominant operator(s). Dominance will be defined in the same way it is defined for the purposes of price regulation. (See V 9 below).

To ensure that new entrants will have access to facilities that may be technically or commercially essential, operators will be required to provide access to their infrastructure (such as towers, conduits and other facilities) to other operators on the basis of fair and non-discriminatory terms and conditions. Access may be denied only for specified reasons, such as safety, interference or lack of space. Disputes among operators may be mediated or be subject to arbitration by the regulator.

## **V.7 Regulation of Scarce Resources**

Scarce resources in telecommunications sector include the electromagnetic spectrum and the space segment, numbers, rights-of-way and Internet domain names. Fair, open and non-discriminatory treatment of these scarce resources is essential in supporting effective competition. This is reflected, for example, in the World Trade Organization's principles pertaining to competition in the telecommunications sector.

Accordingly, the Minister will be responsible for Anguilla's radio frequency spectrum. He will do this on behalf of and in co-operation with all users of spectrum in Anguilla including broadcasters, public security, civil aviation, maritime transport, Government services and, of course, the

telecommunications sector.

As indicated above the Government reserves the right to charge for the use of a national resource, such as spectrum based on the value of that resource.

Given that there are competing uses of scarce resources all planning, policy, and regulations related to such resources will be developed through consultation with all stakeholders.

It will also be the responsibility of the Minister to co-ordinate spectrum use regionally with the other countries and regional organizations such as Eastern Caribbean Telecommunications Authority (ECTEL) and the Inter-american Telecommunications Commission (CITEL) of the Organization of American States and globally within the framework of the International Telecommunications Union.

The Minister will also ensure that there is transparent and non-discriminatory access to space segment through any fixed or mobile satellite service be it Intelsat or any other global and regional satellite system.

The Minister will be responsible for administering Anguilla's **(264)** numbering plan in a fair, non-discriminatory and transparent manner. The Minister may assign this task to a neutral, non-governmental organisation.

As competition in the sector develops, the Government and the regulator will consider whether to require number portability, whereby any customer who wishes to change telecommunications providers is able to maintain the number that he or she has been assigned. The Government recognizes that number portability will facilitate competition, but will evaluate the possible future requirement in light of economic and technical considerations.

Anguilla's "Top Level Domain" (.ai) will be administered by the Minister, who may, however, assign this task to a neutral, non-governmental organisation. In any case the Minister will be responsible for ensuring that administration of this scarce resource is open, transparent and non-discriminatory.

## **V.8 Consumer Protection**

The legislation and implementing regulations and licences will require that public telecommunications network operators and service providers directly respond to complaints addressed to them by their customers. The regulator will monitor compliance with these requirements to ensure that these operators and service providers respond properly, adequately, and rapidly to each of these complaints. The regulator will not normally be expected to intervene but will be available at the request of either party to either arbitrate or mediate in any such dispute. (See Section V.10 below).

The regulator will publish guidelines on consumer protection including the procedures to be followed in dealing with customer complaints and standards for customer contracts and bills. These will be developed in consultation with consumers, industry groups, operators and service providers.

## **V.9 Regulating Prices for Users**

This Policy and the implementing legislation will establish the principle that prices for telecommunications networks and services, in an open and competitive market, will not be regulated. Instead, they will be freely determined by the principles of supply and demand in the market. Nevertheless, in the following limited circumstances, the regulator will be able to regulate prices: where there is only one operator or service provider supplying a particular facility or service (monopoly supplier), where an

operator or service provider is in a dominant position as the supplier of the particular facility or service, where, in the regulator's opinion, there is no fair and open competition to establish prices, or where there is evidence of anti-competitive pricing practices.

Increasingly, an incentive-based approach is being adopted internationally as the standard for regulating the prices of dominant providers. Such an approach places caps on certain prices, to assure end users that prices will not increase above a ceiling; instead, this approach generally requires certain price decreases, and allows a provider to retain profits if it increases its efficiency. The Government and the regulator will consider this approach with respect to regulating those services of Cable & Wireless where it is dominant.

The regulator will establish rules and procedures for regulating prices of networks and services in the above-described cases. This will be done through a process of public consultation. Prices for the supply of all regulated services and facilities will be published. The regulator will also determine what constitutes dominance of a facility or service in a market for the purposes of regulating a dominant provider's prices. One of several possible tests of dominance is whether an operator or service provider is able to raise prices without its customers moving away to other suppliers.

The Government undertakes to determine the extent to which current prices for the supply of certain services and facilities are provided either below or above their cost of production. It is the intention of the Government to allow prices, which do not reflect the cost of supplying the particular service or facility, to evolve toward cost in a transition period to full liberalization of the market. This should prevent "cream skimming", where new entrants may be tempted to enter only market segments, where current prices are above cost. This process of rate rebalancing, by which prices of services will be aligned more closely with costs, will need to take place before any price cap

formula is fully implemented.

The analysis of prices being currently charged may reveal that Cable & Wireless is subsidizing the supply of certain non-profitable services and facilities with the benefits derived from market segments where it is able to price its services or facilities above cost. The regulator will determine to what extent it is currently not possible to supply these subsidized facilities and services on a commercial basis and develop a program to ensure that these are made available at affordable prices to the extent it is considered that they are essential. (see VI. Universal Access to Communications, below)

#### **V.10 Quality of Service**

The regulator will establish a list of quality of service performance indicators for all services, which are not being provided in full competition. Public telecommunications network operators and service providers will be required to report regularly on their performance as measured against these indicators. The regulator will have the power to verify the reported results through independent investigations. Performance indicators and results obtained will be published at regular intervals. Public telecommunications network operators and service providers will have to respond quickly and adequately to customer complaints related to quality of service. The regulator will have the power to intervene in disputes between the customer and an operator or service providers, if they are not able to satisfy the customer in his or her complaint in a reasonable time, or if the regulator is requested to intervene by either party.

#### **V.11 Terminal Equipment and Technical Standards**

The market for the supply of telecommunications equipment, which can be attached to a public telecommunications network, will be open under the

new regulatory framework; however, there will be provisions to ensure that such terminal equipment is compatible with and does not pose a risk of harm to any public telecommunications network, that it is not harmful to the environment or to the health and safety of anyone, and, if it uses the radio frequency spectrum, that it does not interfere with other users of the spectrum.

The new regulator will define standards for such equipment. It will do so generally by adopting internationally approved standards, in consultation with the public telecommunications network operators. One approach is for the regulator to recognize approval of telecommunications equipment by other jurisdictions, such as the European Union or the United States. No licence or any permission will be required to install, own and operate any equipment, which has been approved by the regulator for attachment. There will, furthermore, be no restrictions on building, importing and selling such equipment as long as it has been approved by the regulator for attachment to a public telecommunications network.

## **V.12 Regulating to Ensure Fair Competition**

One of the main functions of the regulator will be to ensure that there is fair competition, that services and facilities are made available to consumers and interconnecting operators and service providers at cost based prices, and that operators and service providers that are in a position of monopoly or dominance do not discriminate against existing or potential new competitors by subsidizing their competitive business with the benefits of their non competitive businesses or through other anti-competitive practices such as predatory pricing.

Other types of anti-competitive practices will also be proscribed. The regulator, for example, will have the principal responsibility for ensuring that operators and service providers comply with the law, applicable regulations

and their licences, if any. That is, operators and service providers will have no responsibility for compliance and enforcement. Accordingly, except for reasons relating to billing, public safety and other specified circumstances, an operator or service provider should not be able to disconnect the service of a competitor on the ground of non-compliance absent a determination of the regulator.

The Government will separately be developing a policy and legislation to ensure fair competition in all sectors.

## **VI. UNIVERSAL ACCESS TO COMMUNICATIONS**

The Government considers that it is a fundamental right of each citizen, resident, social and community organisation, and business establishment to have access to the basic means of communication. This access has to be of good quality and affordable for all users.

The definition of what constitutes basic means of communication will evolve with time but must today include basic voice telephone service, a free telephone directory and operator assisted information services, free emergency services access, and special voice telephone services for the handicapped. This list will be reviewed from time to time in consultation with all stakeholders and revised as necessary.

Before implementation of the new regulatory framework the Government will undertake a study of the availability and prices of these essential services today. It will determine to what extent they would continue to be unavailable if they are currently unavailable or would no longer be available, when the telecommunications market in Anguilla is liberalized. If the Government and, subsequently, the newly established regulator determine that not all these services would be universally available under the new regime for the sector at prices that people on the Island can afford, they will establish a program

designed to ensure that anyone who wants and needs these services can obtain them at affordable prices. Such a program will consist of methods of funding and realizing universal access.

If it is determined that a funding mechanism does need to be established, all licensed public telecommunications network operators and service providers will be obliged to contribute. The new regulator will develop regulations establishing a fair, non-discriminatory, and proportionate formula for determining contributions to universal access for each licensed public telecommunications network operator and service provider. Contributions may be based on a percentage of gross revenues; however, licensed public telecommunications network operators and service providers who are obliged to contribute will be given the option of making in-kind instead of financial contributions. In-kind contributions will be in the form of investment in and construction of facilities or provision of universal services to users and in areas where such facilities and services would not be provided if left to the commercial market. The economic value of such in-kind contributions must be equal to the financial contribution that the licensed network operator or service provider will have been obliged to make.

Regulations will also define the functioning of the universal access fund, how universal access objectives are to be achieved, and how in-kind contributions are to be made. Development of these regulations will be through public consultation. The new regulator will have responsibility for administering the program of universal access to the extent that it is considered to be necessary. Its administration will be transparent.

## **VII. REGIONAL COOPERATION**

Development of the information and technology sector will not succeed in Anguilla if it is treated on the scale of the Island alone. The Government recognizes that the economics of developing this highly capital intensive

sector will require regional cooperation and that there is a need to share the few, very specialized human resources, which each of the small economies in the region can offer. Consequently, the Government will explore the possibility of developing cooperative arrangements initially with the other Overseas Territories to share the expertise and burden of regulating this highly specialized sector. The goal is to agree with the Overseas Territories on a common regulatory framework for the information and communications technology sector and to establish a single regulatory capability, which can share the function of regulating the sector among all the territories. Indeed, the Government of Anguilla will welcome an initiative to have all Overseas Territories adopt common legislation designed to promote information and communication technologies.

In addition, the new regulator will look into the possibility of entering into a cooperative agreement with the newly established Eastern Caribbean Telecommunications Authority (ECTEL) with the objective of cooperation, and harmonization of the regulatory framework of countries and territories in the Caribbean and of eventually joining this organization.

## **VIII. IMPLEMENTATION**

On approval of this Policy by the Executive Committee, the Government will initiate the process of drafting new legislation to give effect to this Policy. Concurrently, the Government will be negotiating with Cable & Wireless with a view to reaching agreement on modifications required to its present licence in order that the Policy, once implementing legislation is adopted, can be implemented as quickly as possible.

The telecommunications sector in Anguilla will begin liberalization according to this Policy immediately on passage of the new law; however, in order to ensure a smooth transition from monopoly provision of telecommunications

services to full competition, there will be a period of transition of one year to permit:

- prices for services and facilities to be adjusted so that they are cost based in order to minimize the possibility of cross-subsidization of competitive services with potential benefits gained from services being provided under non-competitive circumstances. The Government undertakes to carry out a study of prices of services and facilities to determine the extent to which they may currently be above or below their cost of production. It will subsequently negotiate with Cable & Wireless a formula for adjusting or re-balancing of prices, if this should prove necessary;
- the putting into place of an adequate regulatory framework necessary for competition to work. This includes required provisions for interconnection of competing networks and services (including all pricing, technical, accounting and informational aspects), authorization of the existing operator and new entrants, tariffs and quality of service regulations, and essential regulations pertaining to the use of scarce resources in particular frequencies and numbers. During this period the Government will establish the required telecommunications regulatory capability within the Public Utilities Commission and give the Minister the power he requires to fulfil his duties under the new legislation.
- the Government to determine the extent to which the provision of essential services will be affected by the introduction of competition and the liberalization of prices and to design a program to ensure universal access is available to these services at affordable prices.

On passage of the new law, it will be possible for anyone, including the incumbent, to provide all services and networks, which do not require

licences, including the establishment of private networks, the provision of value added services, access to the Internet, and the provision and installation of terminal equipment.

Any entity that is operating a network or providing a service under the current legal and regulatory framework that would require a licence under the new framework will be able to operate that network and provide that service until he/she has a licence under the new regime, or until a licence is finally denied. During a transitional period, existing operators and service providers that will be required to obtain a licence under the new framework will be given an opportunity to file applications during the one-year transition period, only Cable & Wireless will be able to operate a public telecommunications network for voice services or offer a public telecommunications voice service.

The Government will also confirm any current licences for the operation of public telecommunications networks and the provision of services during the transition period.

The Government will, immediately on passage of the new law, open a tender process for a second cellular operator licence. This licence will permit the licensee to offer both domestic and off-Island services for its customers immediately; the new cellular operator will, however, not be permitted to offer off-Island services to customers of other network operators and service providers until after the end of the one-year transition period to a fully open market.

In connection with the transition to competition in international services, the regulator will have to develop and implement the mechanism by which subscribers will chose their provider, when there is more than one. In addition, such rules will have to ensure that any domestic provider of telecommunications services provides equal access to all competing

operators and service providers who offer an international service.

Anyone wishing to provide a public telecommunications network or service will be free to apply for a licence; the Government may, however, initially limit the number of licences it will issue for the use of scarce resources such as the radio frequency spectrum. Applications can be submitted before the end of the transition period to full liberalization; however, new entrants who are granted licences may not begin operations or provide services before the end of that period.

During the period of transition and before the new regulator is fully functional, the Government will do everything to ensure a smooth passage to a fully liberalized telecommunications market. In particular, the Government will monitor the sector to ensure that no providers engage in anti-competitive practices that would inhibit any new operator or service provider from entering the market. It will also ensure that all the necessary implementing regulations are in place before the market is fully liberalized. These include regulations governing interconnection, the funding and provision of universal services, prices and rate rebalancing (where required), licensing, cost accounting and internal, public comment and other administrative procedures. To engage in this activity, the Government will, to the extent, necessary, seek outside assistance and support.

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1 Americas Telecommunications Indicators 2000, ITU, March 2000

2 Prospects for Information Service Exports from the English-Speaking Caribbean, The World Bank, March 1996