

Fourth Session Third Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 22 of 1990

[L.S.]

AN ACT to amend the Trinidad and Tobago Telephone
Act, Chap. 47:30

[Assented to 13th November, 1990]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. This Act may be cited as the Trinidad and Tobago Short title
Telephone (Amendment) Act, 1990.

Act amended
Chap. 47:30

2. The Trinidad and Tobago Telephone Act (hereinafter referred to as "the Act") is amended in section 2(1)—

- (a) by substituting for the definitions of "rate", "rate base" and "return" the following new definitions:

"rate" means every rate, fare, toll, charge, rental or other compensation or payment whatsoever for services rendered by the Company in the course of its domestic operations;

"rate base" means the value of the assets of the Company calculated in accordance with the provisions of section 2A;

Chap. 75:02 "return" means the net amount of domestic revenue after the deduction of the expenses of domestic operations as determined in accordance with the uniform system of accounts as prescribed by the Federal Communications Commission of the United States for telephone utilities, including annual depreciation of plant on a straight line basis at such rate as the Commission may agree upon from time to time, taxes other than tax payable under the Corporation Tax Act and such other income deductions as the Commission may agree upon from time to time, but not including interest on loans;"

- (b) by inserting in appropriate alphabetical sequence the following new definitions:

"the appointed day" means such day as is appointed by a Vesting Order made under section 3A(1) for the coming into force of that Order;

"customer" includes any person having an account transaction, arrangement or other dealing with the Company or Textel, as the case may be, in the course of business;

“domestic operations” means telecommunications activities which both originate and terminate in Trinidad and Tobago;

“domestic revenue” means revenue derived from domestic operations and sixty per cent of all net international revenue;

“existing” means existing or in force, as the case may require, immediately before the appointed day;

“international operations” means telecommunications activities which originate or terminate outside of Trinidad and Tobago, or which transit but neither originate nor terminate in Trinidad and Tobago;

“Minister” means the Minister to whom responsibility for state enterprises is assigned;

“net international revenue” means all billings to customers, including subscribers, less all outpayments to foreign administrations and national bodies for traffic which originates in Trinidad and Tobago, plus all payments received from foreign administrations and national bodies for traffic originating in their respective territories which terminate in Trinidad and Tobago;

“plant” includes freehold or leasehold land or buildings, central office equipment, subscriber premises equipment, external cable plant, external wire plant, underground conduit, furniture, office equipment, motor vehicles, tools and other work equipment;

“project materials and supplies” means materials and supplies being used in or set aside for use in construction work in progress;

“security” includes a mortgage or charge whether legal or equitable, debenture, guarantee, lien, pledge whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability or obligation, whether present or future, actual or contingent;

“Textel” means the Trinidad and Tobago External Telecommunications Company Limited being a company incorporated under the Companies Ordinance with limited liability and having its registered office in the City of Port-of-Spain;

“working capital” means the value of current assets, other than materials and supplies in stock, less the value of current liabilities;”.

Sections 2A and
2B inserted

3. The Act is amended by inserting immediately after section 2 the following new sections:

“Calculation
of rate
base

2A. (1) Subject to the provisions of this section, rate base is the sum of the value of—

- (a) plant directly used or intended for direct use in domestic operations;
- (b) construction work in progress directly related to domestic operations, including project materials and supplies, and deposits paid in pursuance of a contract;
- (c) working capital for domestic operations;
- (d) the average monthly balance of the accounts for materials and supplies for domestic operations, other than project materials and supplies;
- (e) interest on construction work in progress computed in accordance with subsection (3),

less the accumulated depreciation of such plant and any contribution to the Company in aid of construction in relation to domestic operations.

(2) Notwithstanding subsection (1), construction work in progress not directly related to domestic operations may be included in the calculation of the rate base with the prior written consent of the Minister.

(3) Interest based on the average annual interest rate charged on funds borrowed for construction work in progress directly related to telecommunications projects shall be computed on the amounts spent on construction schemes not yet brought into service, and such interest shall be capitalised and added to the rate base.

(4) Rate base shall be calculated at the end of each financial year.

Accounting
basis

2B. (1) Subject to subsection (2), the accounts of the Company shall, where appropriate, be maintained on a historical cost basis.

First
Schedule

(2) Plant accounts other than those listed in the First Schedule shall be maintained on a current cost basis.

(3) Plant shall be revalued as at 31st December, 1991 and thereafter every four years.

(4) Notwithstanding subsection (3), the Minister may authorise the revaluation of plant at such time as he may think fit."

4. The Act is amended by inserting immediately after section 3 the following new section: Section 3A
inserted

"Power to
vest assets
of Textel in
Company

3A. (1) In subsections (2) and (3)—

"director" means a director of Textel;

"Minister" means the Minister to whom responsibility for finance is assigned;

"Shareholder" means a Shareholder of Textel.

(2) Where an agreement has been entered into by the Company with the Shareholders or with the directors on behalf of the Shareholders for the acquisition by the Company of the undertaking or part of the undertaking of Textel, the Shareholders may by resolution authorise the issuance of a power

of attorney conferring on the Minister authority to transfer to and vest in the Company as from the appointed day such existing property, assets, rights, power, liabilities and obligations of Textel as the Shareholders may think fit.

(3) Where a power of attorney is issued under subsection (2), the Minister may make a vesting order transferring to and vesting in the Company as from the appointed day such existing property, assets, rights, powers, liabilities and obligations of Textel as he may be authorised to transfer by the power of attorney.

(4) Without prejudice of the generality of subsection (3), the effect of a Vesting Order as regards such part of the undertaking of Textel to which the Vesting Order relates shall be that on and from the appointed day and without further act, deed or assurance—

(a) every existing contract to which Textel was a party, whether in writing or not, shall be construed and have effect as if—

- (i) the Company had been a party thereto instead of Textel;
 - (ii) for any reference, however worded and whether expressed or implied, to Textel, there was substituted as respects anything falling to be done on or after the appointed day, a reference to the Company; and
 - (iii) any reference, however worded and whether expressed or implied, to the directors or to any director, officer, clerk or servant of, Textel were, as respects anything falling to be done
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on or after the appointed day, a reference, as the case may require, to the directors of the Company or to such director, officer, clerk or servant of the Company as the Company may appoint, or in default of appointment, to the director, officer, clerk or servant of the Company who corresponds as nearly as may be to the first mentioned director, officer, clerk or servant;

- (h) any account between Textel and a customer shall become an account between the Company and that customer;
 - (c) any existing instruction, direction, mandate, power of attorney or consent given to Textel shall have effect as if given to the Company;
 - (d) any negotiable instrument or order for payment of money which is expressed to be drawn on, or given to or accepted or endorsed by Textel, or payable at any of its places of business, shall have effect as if it had been drawn on, or given to or accepted or endorsed by the Company, or payable at the same place of business of Textel;
 - (e) any security transferred to the Company that immediately before the appointed day was held by Textel as security for the payment or discharge of a debt, liability or obligation whether present or future, actual or contingent, shall be held by and be available to the Company as security for the payment or discharge of that debt, liability or obligation; and any such security which extends to future
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advances or future liabilities shall on and from the appointed day be held by and be available to the Company as security for future advances by, and future liabilities to the Company in the same manner in all respects as future advances by or future liabilities to Textel were secured thereby immediately before the appointed day;

- (f) any security provided by or for Textel that immediately before the appointed day was held as security for the payment or discharge by Textel of a debt, liability or obligation, whether present or future, actual or contingent, shall be held by and be available to a holder as security for the payment or discharge by the Company of that debt, liability or obligation; and any such security which extends to future advances or future liabilities shall on and from the appointed day, be held by and be available to the holder as security for future advances to, and future liabilities of, the Company in the same manner in all respects as future advances to or future liabilities of Textel were secured thereby immediately before the appointed day;
- (g) any judgment or award obtained by or against Textel and not fully satisfied before the appointed day shall be enforceable by or against the Company, as the case may be.

(5) The provisions of subparagraphs (ii) and (iii) of subsection (4)(a) shall apply to any statutory provision, to any provision of any existing contract to which the Company was not a party and to any provision of any other existing document not being a contract

as they apply in relation to a contract to which subsection (2)(a) applies.

(6) The provision of the Stamp Duty Act shall not apply to the transfer and vesting of any of the property, assets, rights, powers, liabilities or obligation of textel in the Company.

5. Section 16 of the Act is amended by renumbering Section 16 of the Act amended subsection (4) as subsection (6) and by substituting for subsections (1) to (3), the following new subsections—

“ (1) The rate to be charged by the Company shall be fixed by the Commission so as to enable the Company to earn a return of fifteen per cent a year of the rate base.

(2) For the purpose of fixing the rate under subsection (1)—

(a) the Commission shall take into account the current financial records of the Company in relation to its domestic operations during the twelve months immediately preceding and the rate base of the Company during the twelfth month;

(b) the actual revenues and costs of the domestic operations of the Company during the twelve months immediately preceding shall be adjusted to reflect—

(i) normal operational conditions, where necessary;

(ii) such changes in revenues and costs for the ensuing year as are known and measurable with reasonable accuracy at the time that the rate is being fixed and which are reasonably expected to become effective within twelve months from that time, and non-recurring items shall be apportioned over a reasonable number of years;

(c) the maximum rate of depreciation for the categories of plant listed in the Second Schedule may, from time to time, be determined by the Company with the approval of the Commission.

(3) In subsection (2), "costs" includes depreciation in relation to plant in service during the twelfth month.

(4) If in any fiscal year the return is less than fifteen per cent of the rate base, the Company may apply to the Commission for an order revising the rates so as to produce a return in accordance with subsection (1).

(5) If in any fiscal year the return exceeds fifteen per cent, the Commission may exercise its jurisdiction under section 13(1)(b)."

Schedules

6. The Act is amended by inserting immediately after section 48 the following Schedules—

"FIRST SCHEDULE

[Section 2B(2)]

Plant accounts to be maintained on a historical cost basis—

Land
Buildings and structures
Office furniture
Office equipment
Accommodation plant including fire prevention equipment, lifts, air-conditioning, water storage, lighting and outside general equipment
Motor vehicles
Mechanical aids

SECOND SCHEDULE

[Section 16(2)]

Categories of Plant

Land
Buildings
Central office switching equipment
Central office transmission equipment
Central office power equipment

Central office equipment—data communications network
Central office equipment—fibre optics
Subscriber premises equipment—telephones
Large private branch exchange
Subscriber premises equipment—telex
External cable plant
External wire plant
Underground conduit
Furniture and office equipment
Motor vehicles and other work equipment”.

Passed in the House of Representatives this 8th day
of June, 1990.

R. CUMBERBATCH
Acting Clerk of the House

Passed in the Senate this 24th day of July, 1990.

J. SAMPSON
Acting Clerk of the Senate

Senate Amendments were agreed to in the House of
Representatives this 10th day of September, 1990.

R. CUMBERBATCH
Acting Clerk of the House