

COMMONWEALTH OF DOMINICA

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2011

TELECOMMUNICATIONS

S.R.O. 26

COMMONWEALTH OF DOMINICA

STATUTORY RULES AND ORDERS No. 26 OF 2011.

REGULATION

MADE by the Minister under section 74 of the Telecommunications Act, 2000 (No. 8 of 2000).

(Gazetted 13th October, 2011.)**PART I****PRELIMINARY**

1. These Regulations may be cited as the-

Short title.

**TELECOMMUNICATIONS (SPECTRUM
MANAGEMENT) REGULATIONS 2011.**

2. (1) In these Regulations

Interpretation and application.

“Act” means the Telecommunications Act, 2000;

Act No. 8 of 2000.

“Contracting State” means the Commonwealth of Dominica, Grenada, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and any State, which becomes a party to the Treaty by virtue of Article 22;

“ECTEL” means the Eastern Caribbean Telecommunications Authority established under Article 2 of the Treaty;

“harmful interference” means any radiation or induction that endangers the functioning of a radio navigation service or of a safety service or obstructs or repeatedly interrupts a radio service operating in accordance with the Table of Frequency Allocations and these Regulations;

“incidental emissions” means radio-frequency energy generated and emitted during the course of normal operation of a device that is not intentionally designed to generate or emit unwanted radio frequency energy;

“International Table of frequency” means the Table adopted by the International Telecommunications Union specifying the manner in which frequency bands are to be shared among different telecommunications services in specified geographical areas as amended from time to time;

“radio” means the use of electromagnetic waves of frequencies arbitrarily lower than 3,000GHz, propagated in space without artificial guide;

“radio frequency” means any frequency within the electromagnetic spectrum associated with radio wave propagation;

“radio station” means any facility or installation that emits or receives radio frequencies;

“Region 2” means the geographical area defined by the International Telecommunication Union that covers the Americas North America, Central America, South America and the Caribbean;

“Regional Radio Sepctrum Plan” means the regional radio spectrum plan referred to in Article 5(1)(b) of the Treaty;

“station” means one or more transmitters or receivers or a combination of transmitters or receivers, including the accessory equipment, necessary at one location for carrying out a radio communication service, or the radio astronomy service.

“Treaty” means the Treaty establishing the Eastern Caribbean Telecommunication Authority signed at St. Georges Grenada on 4th May, 2000 and includes that Treaty as amended from time to time.

(2) These regulations apply to all matters relating to the management and monitoring of radio frequency.

(3) All persons utilising radio frequency for or in relation to the operation of a telecommunications network or providing a telecommunications service shall obtain frequency authorisation for the use of the frequency.

PART II MANAGEMENT OF SPECTRUM

3. (1) The Commission shall manage and control the use of electromagnetic spectrum in Dominica.

Commission to manage spectrum.

(2) Subject to the ECTEL recommended Regional Radio Spectrum Plan, the Commission may establish a national plan for the allocation and assignment of radio frequencies and review and amend the plan when necessary.

(3) The Regional Radio Spectrum Plan shall, to the extent possible, comply with the International Table of Frequency Allocation for Region 2 of the International Telecommunication Union.

(4) The National Plan shall also take into consideration the policy and objectives related to future use of radio frequency in Dominica.

(5) The management of electromagnetic spectrum shall as far as practicable be in conformity with the Regional Radio Spectrum Plan recommended by ECTEL.

4. (1) The Commission shall monitor the use of radio frequencies in Dominica in order to ensure compliance with these Regulations and that holders of frequency authorisation comply with the conditions, regulations and terms of those authorisations.

Commission to use monitoring equipment.

(2) The Commission may use spectrum management and monitoring equipment to detect illegal use of frequencies or equipment.

(3) The results of monitoring under subregulation (2) is *prima facie* evidence of the use of radio frequencies and radio equipment in Dominica.

Commission to coordinate its management activities.

5. Where the management of the spectrum involves the use of the electromagnetic spectrum by the armed forces, police force, public security or civil aviation, the Commission may consult with the relevant body.

Temporary use of frequencies.

6. (1) The Commission may recommend that the Minister authorise, on a temporary basis only, the use of frequencies outside the scope of the Regional Radio Spectrum Plan for emergencies or projects of short duration if the Commission considers that exceptional circumstances require the utilisation, and that harmful interference will not be caused to services operating in accordance with the Regional Radio Spectrum Management Plan or the national plan.

(2) A person to whom frequency authorisation is granted under subregulation (1) shall not use the frequency for any commercial purpose or to develop any service to be operated on frequencies other than those allocated to that service.

(3) The Minister shall forward all frequency authorisations except those issued for emergency purposes or projects of short duration to ECTEL for its advice and comments prior to their issuance.

(4) The Minister shall forward all frequency authorisations issued for emergency or other short duration purposes to ECTEL for its information as soon as practicable after their issuance.

Use of government agency frequency by non-government agency.

7. (1) (a) Where a frequency has been assigned to a government agency the Commission, may recommend to the Minister to grant permission to a non-government agency to use that frequency.

(b) The Commission shall consult the appropriate government agency and ECTEL before making a recommendation under paragraph (a).

(c) On consultation under paragraph (b), the relevant government agency shall certify that the frequency required by the non-government agency is necessary for the purpose of coordinating activities between the government and non-government agencies.

(2) A recommendation made pursuant to regulation 7(1) may include the following conditions:

(a) the non-government agency shall not cause harmful interference to the holder of a frequency authorisation;

(b) in the event the non government agency causes harmful interference to the holder of a frequency authorisation, the non government agency shall take immediate steps to eliminate the harmful interference;

(c) where the holder of a frequency authorisation causes harmful interference to a non government agency the holder of the frequency authorisation shall take the steps that the Commission considers necessary to eliminate the harmful interference.

8. The holder of a frequency authorisation shall ensure that the equipment utilised by it is capable of being adapted within a reasonable time so that it may receive and transmit on any frequency in the bands assigned to the holder of the frequency authorisation.

Capacity of equipment.

PART III
ROLE OF COMMISSION

Guidelines for assigning frequencies.

9. In making recommendations to the Minister regarding the assignment of frequencies, the Commission shall take into account -

- (a) the views of ECTEL;
- (b) representations or objections that are timely and duly made and not withdrawn;
- (c) the availability of frequencies and the ability for sharing the frequencies;
- (d) the distribution of frequencies between commercial, non-commercial, rural, urban, military or other categories;
- (e) the need for, and location of radio frequency spectrum in use, or to be used by the Government; and
- (f) the technical characteristics of the equipment involved, and its capability to interconnect with other communications equipment and networks.

Management of electromagnetic spectrum.

10. (1) Subject to the Act and these regulations, the Commission shall -

- (a) manage and control incidental emissions or emissions from exempted low powered emitters of the electromagnetic spectrum;
- (b) manage and control the use of the electromagnetic spectrum from, to and within the territory of Dominica; and
- (c) put into place measures, give directives and make recommendations to prohibit or minimize the incidence of those emissions.

(2) The Commission may issue a directive requiring a person to comply with technical regulation in respect of the emission of electromagnetic radiation from equipment of any description.

(3) The Minister may limit the number of frequency authorisations in a given frequency band, after a public consultation, to ensure the efficient use and management of the electromagnetic spectrum.

(4) The consultation shall be in accordance with the Commission's established guidelines and notice of the consultation shall be published on the Commission's website, in the Gazette and a local newspaper with wide circulation and the consultation shall bring matters to which it relates to the attention of those likely to be affected and provide opportunity for comments.

11. (1) Where the Commission receives a complaint of harmful interference resulting from the operation of a radio station the Commission shall as soon as practicable investigate that complaint.

Harmful interference.

(2) Where the Commission finds evidence to support a complaint, it shall give the person alleged to be causing the harmful interference notice of the complaint and seven days from the date of service of the notice to satisfactorily respond to the complaint..

(3) On the request of the person alleged in a complaint to be causing harmful interference the Commission may extend by not more than seven days the time required to satisfactorily remedy the harmful interference.

(4) Where the Commission determines that the source of the harmful interference is from within another Contracting State the affected Commission shall immediately notify ECTEL.

(5) Where ECTEL is notified pursuant to subregulation (4) ECTEL shall request the Commission of the other Contracting State to investigate the complaint

(6) Where harmful interference is not from a source in a Contracting State, the Commission shall advise ECTEL and ECTEL shall as soon as practicable initiate the procedure established by the International Telecommunication Union for the management of electromagnetic interference between States which are members of the Union.

(7) Where the person alleged to be causing the harmful interference is the holder of a frequency authorisation and does not request an extension pursuant to paragraph (3) and it fails to satisfy the Commission that it is not causing harmful interference as alleged or fails to remedy the harmful interference, the Commission shall immediately submit to the Minister a report including details of the complaint, results of the investigation, any response from the holder of the frequency authorisation holder and the Commission's recommendation to revoke, suspend or vary the non-statutory terms and conditions of the frequency authorisation.

(8) The Minister, on receipt of the recommendation from the Commission under subregulation (7) shall give the holder of the frequency authorisation notice in writing in accordance with the Act of his intention to revoke or suspend the frequency authorisation specifying the ground on which he proposes to do so, and giving the frequency authorisation holder an opportunity to -

- (a) present his views;
- (b) satisfy the Minister that it is not causing the harmful interference as alleged;
- (c) provide satisfactory reasons why the frequency authorisation should not be revoked or suspended or its non-statutory terms or conditions varied.

(9) If after the Commission has conducted the investigation it is of the view that the harmful interference is from an unauthorized source within Dominica -

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- (a) it shall advise the offender of the illegal operation and request they cease from transmitting an unauthorized frequency;
- (b) in the event that the offender fails to comply with the Commissions request the Commission shall as soon as practicable advise ECTEL and submit a report including the results of its investigation to the Director of Public Prosecutions detailing the breach of the Act.

12. A licensee or the holder of a frequency authorisation, its agents or servants on or at any premises or place entered by an inspector or other authorised officer of the Commission under this regulation shall give to the inspector or other authorised officer any information he may reasonably require for the purposes of these regulations and shall not hinder or obstruct him in the performance of his functions.

Obligation to give information.

PART IV MISCELLANEOUS

13. (1) The Minister may, on the advice of the Commission and consistent with the Regional Spectrum Management Plan, reassign frequency -

Reassignment of Radio Frequencies.

- (a) to allow for the introduction of new technology;
- (b) where it is necessary to ensure the efficient use of the radio spectrum;
- (c) where the overall demand for radio frequency for a particular telecommunications service cannot be met; or

(d) where the holder of a frequency authorisation requests frequency held by another holder of a frequency authorisation and the Minister considers it appropriate to do so.

(2) The Commission shall, before advising the Minister regarding the reassignment of radio frequency:

(a) consult with ECTEL;

(b) allow any person likely to be affected by the proposed activity an opportunity to make representations;

(c) ensure that any person licensed to provide telecommunications services or establish and operate a telecommunications network is able to maintain continuity in the provision of the relevant services or networks;

(d) give holders of existing frequency authorisations reasonable notice of the pending reassignment; and

(e) where necessary publish specific objectives and non-discriminatory procedures for the proposed reassignment.

(3) Except where a reassignment is made pursuant to subregulation (1) (d) the holder of a frequency authorisation holder is not entitled to compensation.

(4) Where a reassignment is made pursuant to subregulation (1) (d) the holder of a frequency authorisation for that frequency may be entitled to compensation from the requesting licensee.

(5) The compensation referred to in subregulation (4) means costs reasonably incurred in complying with the reassignment.

2011

TELECOMMUNICATIONS

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14. The Telecommunications (Spectrum Management) Regulations 2002 are revoked.

Revocation.

S.R.O. 12 of 2002.

Made this 29th day of July, 2011.

AMBROSE GEORGE

Minister for Telecommunications

