

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

*In the Matter of,*

**TA RESOURCES N.V.**

**FILE No. ITC-214-20100107-00010**

**Application for International Section 214  
Authorization**

**SUPPLEMENT TO APPLICATION FOR INTERNATIONAL SECTION 214  
AUTHORITY**

TA Resources N.V. ("TAR"), by its undersigned counsel, and pursuant to Section 63.18(k)(3) of the Commission's rules, 47 C.F.R. 53.18(k)(3), and pursuant to the Commission's Report and Order in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, FCC 97-398, released November 26, 1997, *on reconsideration*, FCC 00-339, released September 19, 2000 (the "Foreign Participation Order"), hereby supplements its above-captioned application (the "Application") to demonstrate that Aruba provides effective competitive opportunities to U.S. carriers to compete in that country's market for resold and facilities-based international telecommunications services and that the public interest would be served by the grant of the Application. This filing is necessitated by the fact that Aruba is not currently a full member of the World Trade Organization ("WTO") and that, TAR is affiliated, as defined under the Commission's rules, with SETAR N.V. ("SETAR"), Aruba's incumbent local exchange carrier.

## **I. Background**

### **A. The ECO Test**

In its *Foreign Participation Order*, the Commission eliminated the “effective competitive opportunities” (“ECO”) standard which was then in effect for applicants seeking international Section 214 authorizations and submarine cable landing licenses who were affiliated with foreign carriers in WTO member nations, but retained it for applications involving non-WTO member states. The Commission drew this distinction because it found that “competitive concerns continue to exist for carriers that possess the ability to exercise market power in such [non-WTO Member] countries and that we should continue to pursue our goal of encouraging such countries to open their markets to competition.”<sup>1</sup>

By retaining the ECO test for non-WTO Member countries, the Commission hoped to encourage such countries “to take unilateral or bilateral steps toward opening their markets to competition and may provide incentives for them to join the WTO.”<sup>2</sup>

The ECO test, set forth in Section 63.18(k)(3) of the Commission’s rules, is designed to address these concerns.

### **B. Aruba and the WTO**

There is some lack of clarity at the WTO-Secretariat as to the Status of Aruba as a full Member of the WTO. While Aruba is not currently a full WTO Member, and is therefore subject to the ECO test, in recent years Aruba has taken both unilateral and bilateral measures to

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<sup>1</sup> *Foreign Participation Order*, at 12.

<sup>2</sup> *Id.* at 125.

open its telecommunications market to competition, and membership in the WTO itself is imminent.

By way of background, Aruba is a member country of the Kingdom of the Netherlands with full autonomy in internal affairs obtained in 1986 upon separation from the Netherlands Antilles; however, the Dutch Government is responsible for Aruba's defense and foreign affairs. The Kingdom of The Netherlands has been a member of the WTO since 1994. In 1994, the Kingdom of the Netherlands signed the WTO Treaty for the Kingdom in Europe and for the Netherlands Antilles. In 1995 it signed the WTO Treaty on behalf of Aruba.<sup>3</sup> Since then, both the Netherland Antilles and Aruba have taken steps to finalize the terms of accession to the WTO. For instance, Aruba's schedule of services has been received, approved and annexed to the General Agreement of Trade and Services by the WTO. Moreover, since 1996, Aruba became a member of the Government Procurement Act, a multilateral treaty under the WTO designed to eliminate discrimination against foreign products and suppliers in government procurement.<sup>4</sup>

As noted in the DEACI Letter, the Government of Aruba is aware of the importance of finalizing the terms of accession to the WTO. The Kingdom of the Netherlands has indicted its willingness to assist Aruba in finalizing its accession to the WTO in 2010. In any event, Aruba intends to formally access the WTO as soon as practicably possible.

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<sup>3</sup> See Letter of the Department of Economic Affairs, Commerce and Industry of Aruba to TA Resources, dated February 22, 2010, attached hereto as Exhibit A ("DEACI Letter").

<sup>4</sup> *Id.*

## II. Aruba Satisfies the ECO Test

As set forth below, Aruba meets each of the ECO test criteria.

A. Legal Ability of U.S. carriers to enter Aruba market (47 C.F.R. §§. 63.1 8(k)(3)(i) and (ii)).

Under the Policy Document Telecommunications of Aruba 2001-2005 of the Ministry of Transportation and Communications (the "Telecommunications Policy"),<sup>5</sup> licenses for mobile telephone services and international telecommunications services, including, Internet telephone traffic and calling cards have been available in Aruba since January 1, 2005. International telecommunications service licensees may provide services using their own infrastructure (*i.e.*, facilities) or the facilities of other international telecommunications service licensees.<sup>6</sup> There are no limits on the number of international licenses that may be granted.

There are no foreign ownership or other restrictions on the ability of U.S. carriers to enter the Aruban market to provide either of these types of services, provided that they do so through a subsidiary organized under the laws of Aruba.<sup>7</sup>

Moreover, to date, several providers have obtained international telecommunications service licenses and are operating in Aruba. In addition to SETAR, the following companies have obtained international licenses:

- MIO Group, Ltd. ("MIO"). MIO is a pan-Caribbean telecommunication operator.

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<sup>5</sup> A translation of the applicable sections of the Telecommunications Policy is attached hereto as Exhibit B.

<sup>6</sup> See *International Telecommunications Policy*, dated March 15, 2006 (the "International Telecommunications Policy"). A translation of the International Telecommunications Policy is attached hereto as Exhibit C.

<sup>7</sup> See Telecommunications Policy and International Telecommunications Policy.

MIO is 80% owned by Cartesian Capital Group, LLC, a U.S. private equity firm based in New York.<sup>8</sup> MIO is currently operating in Aruba.

- Digicel, an international telecommunications provider with operations throughout the Caribbean and Central America. Digicel is currently operating in Aruba.
- Scarlet, a wholly-owned subsidiary of Belgacom (Belgium's national carrier) which is expected to launch operations soon under the trade name "Rainbownet".

B. Conditions for Interconnection (47 C.F.R. 63.18(k)(iii)). Pursuant to the International Telecommunications Policy, international licensees, including U.S. carriers seeking to originate and terminate international telecommunications service in Aruba, or to provide resale services, are subject to State Decree of June 5, 2003 (the "Interconnection Decree").<sup>9</sup> The Interconnection Decree provides that: (i) interconnection is mandatory for all telecommunications service providers in Aruba; (ii) interconnection and access to networks (including SETAR's network) is an issue of major importance; (iii) interconnection rates shall be equal for equal services; (iv) rates shall be set in proportion to costs; and (v) parties are free to reach an interconnection agreement; however, if the parties are unable to reach such agreement, the Government of Aruba will intervene to resolve the dispute.

C. Competitive Safeguards (47 C.F.R. § 63.18(k)(3)(iv)). The laws of the Government of Aruba also include the following competitive safeguards against anticompetitive behavior:

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<sup>8</sup> See <http://www.cartesiangroup.com/portfolio.html#>

<sup>9</sup> A copy of the Interconnection Decree is attached hereto as Exhibit D.

- Cost allocation rules to prevent cross-subsidization. Under the Telecommunications Policy and the Interconnection Decree, interconnection rates must be cost-based. Cost models shall be relatively simple to review both by competitors and by the Aruban authorities. The overarching goal is that neither the government nor telecommunications companies are forced to incur major expenses and to create and maintain “heavy” and expensive divisions in order to obtain interconnection.
- Diverse Routing (Avoidance of Bottlenecks). Under the International Telecommunications Policy, international telecommunications traffic must be routed through at least two (2) independent routes. Carriers are able to construct and/or use various routes (*e.g.*, submarine cable, satellite, etc.) in order to comply with this quality obligation in the International Telecommunications Policy. Having a mandatory requirement to route traffic through independent routes eliminates any possibility of SETAR controlling any international bottleneck facilities or routes.
- Non-Discriminatory Access to Different Carriers. Under the International Telecommunications Policy, Aruban licensees must ensure that users have the ability to freely select their international telecommunications carrier, thereby guaranteeing non-discriminatory access to competitive international carriers. Carrier selection is done through a dial-around mechanism where customers need to dial a 01XX carrier selection code prior to initiating an international long distance call.

D. Effective Regulatory Framework (47 C.F.R. 63.18(k)(3)(v)). As noted above, the Government of Aruba has launched a number of initiatives, all designed to establish an effective and liberalized regulatory regime.

- As demonstrated above, Aruban law currently contemplates policies and regulations on open licensing, interconnection requirements, safeguards against anticompetitive conduct and consumer protection. Moreover, the Government of Aruba has legal authority to issue and enforce orders, make determinations and impose fines and forfeitures in the event of anticompetitive behavior.
- The Aruban telecommunications regulator (known as Directie Telecommunicatie Zaken) was established in 2003, and has been actively involved in regulating the market. Most recently, it has taken an important role in ruling on interconnection between Digicel as a newcomer to the market and SETAR as the incumbent. The regulator's website is <http://www.dtz.aw>.
- A new package of telecommunications legislation, including further liberalization of the market and the creation of a new and more independent telecommunications regulator is currently contemplated by the Government of Aruba and is expected to be discussed in the Parliament of Aruba in the near future.

E. Other factors (47 C.F.R. 63.18(k)(3)(vi)). In addition to the above factors, TAR respectfully submits that the initiatives which the Government of Aruba has taken to open its telecommunications market to competition are all relevant to the Commission's evaluation of whether the Government of Aruba meets the ECO test, and whether the public interest warrants a grant of the Application. Of particular importance is the fact that U.S. carriers are able to enter

the Aruban market and provide facilities-based and resold international services without any significant restrictions or any discrimination. Moreover, at least one U.S.-backed carrier, MIO, has already entered the Aruban market and is currently operating in Aruba. Given these circumstances, there is no reason to believe that the Government of Aruba will prevent U.S. carriers from entering Aruba's telecommunications market, or that SETAR, currently Aruba's dominant carrier, will be able to use bottleneck facilities to discriminate against U.S. carriers. On the contrary, the facts in this case clearly show that the Government of Aruba embraces the Commission's goals of full and robust competition.

### **III. Conclusion.**

For the reasons set forth above, TAR respectfully submits that the above showing clearly demonstrates that Aruba provides effective competitive opportunities to U.S. carriers seeking to provide international telecommunications services in Aruba, and that other public interest factors warrant the grant of the Application. Therefore, TAR respectfully requests that the Commission grant the Application as expeditiously as possible.

Respectfully submitted,

TA Resources N.V.

By:



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Its Attorneys

May 12, 2010



**Exhibit A**  
**DEACI Letter**



ARUBA

**Directie Economische Zaken, Handel en Industrie**  
**Department of Economic Affairs, Commerce and Industry**

Aan: TA Resources N.V.  
Mr. Zenovio Roland Croes  
Director  
Seroe Blanco z/n  
Alhier

Uw kenmerk: Uw brief:

Ons kenmerk: DEZHI/Alg-00032

Onderwerp: Aruba's membership of the  
World Trade Organization

Oranjestad, 22 FEB 2010

Dear Mr. Croes,

Herewith I would like to inform you the following.

Referring to the actual membership of Aruba to the World Trade Organization, I can inform you that there is a lack of clarity in the WTO-Secretariat on the status of Aruba. Aruba has taken in the past the formal steps to finalize accession to the WTO and is a formal member of the Government Procurement Act since 1996. However, Aruba is still not mentioned as a member of the WTO to date.

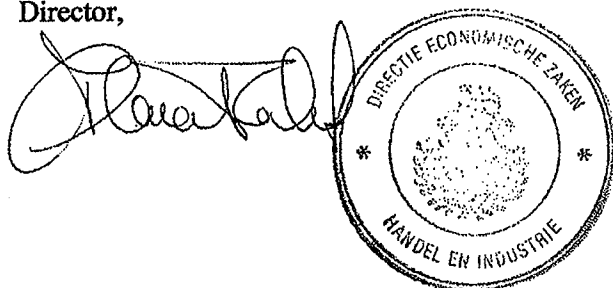
The Kingdom of the Netherlands is a member of the World Trade Organization since 1994. In 1994 the Kingdom of the Netherlands signed the final act of the Uruguay Round and the WTO Treaty for the Netherlands Antilles, while in 1995 it was signed for Aruba. Since then both Aruba and the Netherlands Antilles took steps to finalize the terms of accession, which are the lists of schedules. Even though Aruba took all the necessary steps to offer its lists of schedules (goods and services), including negotiations with Aruba's most important trade partners, only the schedule of services has been received and approved to be subsequently annexed to the General Agreement on Trade in Services by the WTO. The Netherlands Antilles on the other hand have not completed the terms of accession, but is already mentioned as a member of the WTO.

As per February 1996 Aruba became a member of the Government Procurement Act, a plurilateral treaty under the WTO. The Agreement is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers. It applies to contracts worth more than specified threshold values. For central government purchases of goods and services, the threshold is SDR 130.000. For utilities, thresholds for goods and services is SDR 400.000. Aruba has since complied with the principles of non-discriminatory conditions and transparency in government procurement.

The government of Aruba is aware of the importance of finalizing the terms of accession to the WTO. Due to a minimum of human capacity Aruba has not been able to finalize its schedule of goods until now. The Netherlands has indicated to be willing to help Aruba in finalizing the terms of accession to the WTO in 2010.

Yours sincerely,

Director,



The image shows a handwritten signature in cursive script, which appears to be "H. A. J. J. J.", written over a circular official seal. The seal contains the text "DIRECTIE ECONOMISCHE ZAKEN" at the top and "HANDEL EN INDUSTRIE" at the bottom, with a central emblem featuring a map of Aruba and two stars.

**Exhibit B**  
**Telecommunications Policy**



M.C. Meelhuysen  
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OFFICIAL GAZETTE OF ARUBA February 1, 2002 Pages 8-9-10  
**SUMMARY POLICY DOCUMENT TELECOMMUNICATIONS 2001-2005**

The following is a brief representation of the Policy Document Telecommunications of Land *[government; translator]* Aruba 2001-2005 of the Ministry of Transportation and Communications. In this document, Articles 2 and 4 of the Telegraph and Telephones Ordinance (Statute Publication Gazette 1996, No. GT 2) are further elaborated for concessions concerning Telecommunications. The complete document is open for inspection at the Directorate of Telecommunications Affairs.

#### General

Having high-quality telecommunications facilities available at reasonable rates has always been the policy starting point of the government. Because of the significant public interest hereof, the government has undertaken the ultimate responsibility for the guaranteeing hereof.<sup>1</sup> In order to secure the continuity of availability, the guaranteed continued existence of a sound telecommunications company has been set as a condition.

Apart from the considerable influence on the economic development of a country, telecommunications also have substantial social consequences. Making available means of telecommunications and telecommunications services and the responsible use hereof is of major importance, not only in the personal lives of individuals but also for groups in society, in order not to lag behind or become isolated. The latter also greatly affects the income and social welfare. For Aruba, staying up-to-date concerning the advanced developments in telecommunications also has a special value, given the fact that it depends on foreign countries and tourism.

Taking into account the worldwide trend in telecommunications, the government has decided (decision Ministerial Council of December 13, 2000) to give the possibility to leave the provision of specified services to the market. However, with each decision the advantages of an open market for the consumer have to be balanced against the profitability of telecommunications facilities in the long term. Geographically, Aruba is only a small territory, so that the financial room for making the necessary investments in new technology always has to be secured. In this respect it is also of importance that the government reserves the care for the proper functioning of the market by means of regulations and supervision. Given the dynamic movements in this market, it is of necessary importance that the regulator has been organized for it and is given the necessary decisiveness, authority, and control.

#### Criteria

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<sup>1</sup> The report of the Netherlands Advisory Council on Government Policy ("WRR" No. 56, 2000 "guaranteeing the public interest") uses the term "public interest".

The government uses the following four criteria for whether or not opening the market to the networks of fixed telephone traffic, mobile, and Internet, notably the guaranteeing of:

- creating advanced basic telecommunications infrastructure (accessible to everyone);
- using reasonable rates;
- innovation and efficiency;
- the economic stability of Aruba.

For the fixed network, providing universal service is put first as a condition, while the connection should not depend on the distance to the exchange and the costs of installation. As there is still cross-subsidizing of local rates at this time, and the government does not support an increase (rebalancing), whereas the international rates constantly have to be reduced and attuned to the environment (benchmarking), the infrastructure for international telephone traffic will not be released in the next three (3) years. For the local telephone network, a period of 8 years applies. This creates the room for making necessary investments, notably in facilities for broadband capacity available to everyone and the preservation of a reasonable dividend payment for the government.<sup>2</sup> With a view to stimulating innovation, allocation efficiency and cost efficiency, the possibility is given to provide value added services<sup>3</sup> through the SETAR network.

With regard to the mobile network, the government uses the starting point that it also has to be available for everyone for speech and brief data messages, irrespective of the cost involved. An excellent coverage, good quality, and low rates are crucial in this respect. Here, value added services are also released.

The government supports a spread of the Internet use as wide as possible and consequently a quick development of the market. In its policy, the availability of computers and the development of a range of new applications as wide as possible will be stimulated. Internet Service Providers (ISPs) are admitted to the market through the SETAR infrastructure. However, also the installation of infrastructure for international telephone traffic on Internet protocol is not released as yet.

#### Updated Policy

Taking into account the dynamic telecommunications environment, the recent decrease in economic growth, the shown importance of SETAR for the Aruban economy, and a worldwide drop in the value of telecom companies, the government's policy is updated as follows.

Reserved for SETAR and at the same time services assigned to SETAR shall be considered to be, until the dates specified below, the national mobile telephone infrastructure, fixed local telephone network, international telecommunications traffic, including international telephone traffic and operator services, satellite traffic, and other international connections.

The following services are subject to a license issued by State Decree:

1. Operation of paging networks (radio transmitter and receiver unit).
2. Operation of trunking (mobile telephone) networks.

<sup>2</sup> Considered a public interest, particularly given the present budget deficits. See also page 8 Discussion Document "SER" "Policy priorities for the government period 2001-2005", August 2001.

<sup>3</sup> Value added services. They also include E-commerce providers.

3. Walkie-talkie service, mobile telephone service (national and maritime).
4. Single peripheral equipment: for instance telephone sets, wall sockets, etc.
5. Multiple peripheral equipment: for instance line switch devices, company switchboards.
6. The installation of necessary internal wiring for connections of 4 and 5 to the local fixed telephone infrastructure of SETAR.
7. Internet Service Providers through the SETAR infrastructure, including the connection to the worldwide Internet network. The installation of the infrastructure for telephone traffic on Internet protocol has been excluded.
8. Internet Cafes through the SETAR infrastructure and ISPs admitted by State Decree.
9. Providers of Call Back and similar services for international calls, both physically present and not physically present providers.
10. Closed data networks for a company's operations, not including satellite connections.
  - As per January 1, 2005: mobile telephone services.
  - As per January 1, 2005: international telecommunications, including Internet telephone traffic with the Calling Cards belonging thereto.
  - As per January 1, 2010: fixed telephone network.

With regard to sections 1 through 10, no restrictions will be set to the number of providers that will be admitted, but they have to meet the prevailing rules for establishing companies in Aruba. A thorough investigation of the company's record of interested parties will also have to take place, as the making available of telecommunications facilities also includes the possibility of activities that have to be prevented. Of course, in the near future the regulations required have to be created. For mobile telephone services and international telephone traffic, the conditions to obtain a license will be published in the year 2004. For the time being, it is assumed that these licenses are sold in a public sale in which companies that meet the preconditions formulated by the government in advance can participate.

Thus established by decision of the Ministerial Council of Friday, January 11, 2002, and issued by the Minister of Transportation and Communication.

Aruba, January 17, 2002

**Exhibit C**

**International Telecommunications Policy**





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OFFICIAL GAZETTE OF ARUBA March 24, 2006 Page 21  
**THE MINISTER OF GENERAL AFFAIRS ANNOUNCES THE FOLLOWING:**

## INTERNATIONAL TELECOMMUNICATIONS POLICY

### INTRODUCTION

The government of Aruba established a telecommunications policy on January 11, 2001, proceeding on a gradual liberalization of the telecommunications market. In this connection, the Minister of General Affairs had a policy drafted for the market of international telecommunication services and access to the Internet. In this policy, all international telecommunication services, including the call-back and calling card platform services and Internet services require a concession.

### INTERNATIONAL TELECOMMUNICATION SERVICES

International telecommunication services are services related to the direct transportation of signals, by means of which, from a connection to a fixed public telecommunications network or a mobile telephone network or any other telecommunications network, a user can create a connection or has a connection with a connection in another country through international transmission. Service providers can provide these services both through their own infrastructure and through the infrastructure of other concession holders for international telecommunication services. To use transmission means from parties that do not have a concession is not permitted. All service providers or their representatives have to be domiciled in Aruba.

#### Quality requirements

International telecommunications traffic has to be handled through at least two independent routes, so that when one route falls out, traffic can be handled through the other route. In this respect, the chance of stagnation with two routes cannot be higher than 1% and the chance of stagnation when one route falls out cannot exceed 10%.

#### Interoperability

Providers of international telecommunication services that want to have access to the users of the fixed and mobile telephone networks will have to conclude interconnection agreements with the concession holder in question. Determining the interconnection rates is first a matter of negotiations between the parties in question. The interconnection rules as established in the State Decree of June 5, 2003 will further apply in the event of disputes.

#### Carrier selection

By means of a system of carrier selection on the fixed and mobile telephone networks, the possibility has to be provided to the users hereof to select their provider for international telecommunication services (carrier hereinafter). This will also guarantee a non-discriminatory access to the users for the different carriers. One of the forms of carrier selection is the *Call-by-call carrier selection*. This is the procedure by which the user indicates by selecting a "carrier

selection code" (CSC) that he wants to route a call through a certain carrier. If the user does not press the CSC when making an international phone call, the call will automatically go through the carrier determined by the operator of the fixed or mobile telephone network.

Concession holders for fixed and mobile telephone networks (postpaid and prepaid) have to provide carrier selection. Each carrier can qualify for one CSC. If a concession holder also wants to provide card platform services, it will qualify for another, different CSC. The CSC consists of digits in the series 01XX.

#### Billing

Subscribers of the fixed network and the mobile networks have received one invoice until now for both local and international calls. When the carrier selection is introduced, this will change, because each carrier is responsible for the collection and billing of its own customers (users), including the part of originating the call. Operators of fixed and mobile networks have to bill the carrier for starting calls on their networks. This does not alter that the operators of the fixed and mobile telephone networks can provide billing and collection services.

#### INTERNET SERVICES

##### Quality requirements

In order to be able to guarantee a certain Committed Information Rate (CIR) at all times, Internet service providers have to see to it that their traffic is routed to the global Internet backbone through different routes. In this respect, at least 75% of the CIR has to be guaranteed in the event that one route falls out. Internet service providers will not be obligated to install their own transmission means; they can also buy them from other concession holders in Aruba. On this point they do have to make sure that they meet aforementioned quality requirements. Buying transmission means from parties that do not have a concession is not permitted.

##### Interoperability

Internet service providers use the fixed telephone network in order to gain access to the subscribers of this network. Internet service providers will have to conclude interconnection agreements with the operator of the fixed telephone network for this purpose. Determining the interconnection rates is first a matter of negotiations between the parties in question. The interconnection rules as established in the State Decree of June 5, 2003 will further apply in the event of disputes.

#### POSSIBILITY OF TAPPING

It has to be possible to tap all transmission means (infrastructure) that have connections with foreign countries, in accordance with guidelines of national security of Aruba. The cost of technically making it possible to tap the transmission means (infrastructure) will be paid by the concession holder.

March 15, 2006

**Exhibit D**  
**Interconnection Decree**



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**STATE DECREE  
OF JUNE 5, 2003 No. 1  
THE GOVERNOR OF ARUBA**

No. DTZ/762/03

**By and with the advice of the Minister of General Affairs;**

**Having read:**

the Policy Document Telecommunications of Land [*government; translator*] Aruba 2001-2005;

the concession issued to New Millenium Telecom Services N.V. by State Decree of July 5, 2002, No. 1, No. DTZ/2298 Geh.;

the concession issued to Setar N.V. by State Decree of January 28, 2003, No. 7, No. DTZ/354 Geh.;

**Having taken into consideration:**

that the government has the ultimate responsibility to see to it that the public interest of telecommunications is guaranteed;

that, as, when the market opens, a shift occurs from the allotment of the operational responsibility for the provision of services from public to private organizations, one has to see to it that there are conditions to let the provision of services take place in an acceptable manner in the new situation, notably in such a manner that the public interest is protected at all times;

that, notwithstanding the fact that the market has been opened for mobile telephone traffic on account of a judicial decision, the criteria by which the government evaluates the telecommunications market in conformity with its Policy Document always shall continue to apply in full. They are mainly:

- Aruba shall dispose of an advanced basic telecommunications infrastructure in a permanent manner;
- Reasonable rates shall be used in Aruba;
- Innovation and efficiency shall be stimulated;
- The economic stability of Aruba shall be guaranteed;

that in order to achieve the above, particularly for a small-scale community as Aruba, the efficiency on account of optimal use of production factors outweighs the rest, as reasonable rates can be obtained with it and the Aruba economy is stimulated;

that, within the framework of this policy, a rate structure has to be used for interconnection which keeps the thresholds for access to the fixed communication facilities low for the residents of Aruba, *inter alia* expressed in (in accordance with international standards) low rates for connection, subscriptions, and calls inside Aruba;

that the government wants to realize that no increase of local telephone costs and subscriptions occurs, so that the community would be hindered to use the broad possibilities of their connection to the telephone network and furthermore, given the strong inflation effect it would have on the total economy of Aruba;

**Having regard to:**

Article 2 of the Telegraph and Telephones Ordinance (Statute Publication Gazette 1996, No. GT 2);

**HAS ORDERED:**

- I. that for the creation of the interconnection between the various networks the following principles shall be maintained:
  - Giving access to other operators or service providers to the network of Setar N.V. cannot affect the policy starting points in this State Decree;
  - In case of interconnection (creating a physical and logical link between networks) the point is that, in a telecommunications market where competition has been admitted, mutual seamless communication continues to be possible between the users of different networks (inter-operability);
  - The obligation to interconnect shall be applicable to all providers in Aruba, who hereby control the access to network connections (including terminals for mobile telephone traffic) of end users (hereinafter referred to as "providers of public telecommunication services"). These network connections can be accessible through numbers from a number plan;
  - Interconnection of these networks shall be of major importance. For this purpose, the providers of public telecommunication services involved shall make proper arrangements on the handling of calls to their own subscribers, especially if these calls are initiated by subscribers connected to a different network;
  
- II. that the Minister may grant exemption from the obligation of interconnection if there are other, technically and commercially feasible, possibilities for the interconnection in question, or if the interconnection in question cannot be required in reason, given the means available;
  
- III. that interconnection rates to be agreed on shall be at any rate reasonable, taking into account aforementioned policy starting points. This shall mean at least that:
  - Parties shall request equal rates for equal services;
  - Rates shall be in reasonable proportion to the costs;

- The rates presently valid for basic telephone traffic shall be maintained. Consequently, one shall take aforementioned starting points into account for the interconnection rates to fixed connections on the network of Setar N.V. ;
- IV. that, in order to facilitate the evaluation, if any, of the reasonable proportion between rates and costs, one shall take into account that evaluation can be done simply and cheaply. The model has to be relatively simple to check. Evaluation shall not lead to it that the government and the telecommunications companies are forced to incur major expenses and to create and maintain "heavy" and expensive divisions;
  - V. that determining interconnection rates shall primarily be deemed the responsibility of the parties involved in the interconnection. It is preferred that parties, without further intervention from the government or the judiciary, reach a consensus. Consequently, parties shall adopt a reasonable attitude towards the other party in the negotiations and make any reasonable effort to reach a consensus without intervention of the judiciary. One can only intervene in this freedom of parties to mutually reach a consensus if a consensus reached in this manner would lead to conflict with the interest of Aruba. If an interconnection agreement is not concluded, the Minister may set a term within which it is to be realized;
  - VI. that the Directorate of Telecommunications Affairs shall act as an intermediary in the event of disputes between parties on the interconnection agreement. If parties also cannot reach a consensus after mediation, it is up to parties to request the Court, after the Directorate of Telecommunications Affairs has given advice on the dispute, to give a judgment on the rates to be determined in reason;
  - VII. that the Directorate of Telecommunications Affairs shall be able to inspect the interconnection agreement between parties at its request at all times. During this inspection, it will be verified, *inter alia*, whether parties have sufficiently taken into account what has been specified in these directives;
  - VIII. that the government intends to establish an organization within the framework of the new telecommunications legislation, which organization shall see to independent supervision over the telecommunications market. This organization shall deal with, *inter alia*, the interconnection agreements. For the payment of the supervision over the telecommunications market, a system of fees shall be created. Awaiting this new situation, in the present situation the costs to be incurred by the government in connection with an interconnection dispute shall be recovered in advance from the parties involved in the dispute.

Oranjestad, June 5, 2003  
[was signed]

The Minister of General Affairs,  
[was signed]

Copy hereof to be sent to:  
the Audit Office,  
the Procurator General,  
the Director of Telecommunications Affairs,

Setar N.V.,  
New Millenium Telecom Services N.V.