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LEGAL REVIEW OF THE CZECHOSLOVAK TELECOMMUNICATIONS ACT OF 1964 AND PROPOSED AMENDMENTS

A

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LEGAL REVIEW OF THE CZECHOSLOVAK TELECOMMUNICATIONS ACT OF 1964 AND PROPOSED AMENDMENTS[1/]

I. BACKGROUND AND INTRODUCTION

Prior to the adoption of Act no. 150/1992 on March 12, 1992, the Telecommunications Act of 1964, Act no. 110/1964 (the "Act"), set forth the legal framework for the telecommunications sector in the Czech and Slovak Federated Republic ("CSFR"). The Act was promulgated during the communist era and provided for state control and operation of the telecommunications sector.

During the Fall of 1991, federal authorities drafted a proposed set of amendments (the "Amendments"). The Amendments (see Annex I), together with the Reasons of Amendment (see Annex II), were then distributed by the Federal Ministry of Post and Telecommunications to a number of governmental ministries at the federal and republic levels, including the Czech Republic Ministry of Economic Policy and Development (the "Ministry") for comment prior to public debate on the Amendments in the Federal Assembly.[2/] To assist the Ministry in preparing such comments, a team from Milbank,

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1/ The funding for this work was provided by the United States Agency for International Development ("USAID") pursuant to a contract awarded to a consortium headed by Deloitte & Touche.

2/ The Czech and Slovak Federated Republic has a federal government. The legislative body of the federal government is called the Federal Assembly. It is organized into two chambers: the Chamber of People is composed of representatives elected by the entire population, and the Chamber of Nations consists of seventy-five representatives from each of the two constituent republics. All legislation must pass both chambers of the Federal Assembly in order to become law.

The Czech and Slovak Federated Republic operates under the same constitution as the one that existed prior to the Velvet Revolution. Pursuant to Article 42 of the Constitution, legislation on certain subjects must pass with a majority of votes from both the Czech and Slovak members of the Chamber of Nations. These include citizenship, state economic plans, taxes, budgetary matters, customs, currency, the state bank, prices, scientific, technological and foreign investment, the establishment of economic organizations and state organizations. This procedure effectively prohibits Czech or Slovak majorities from ruling the other. Since the Velvet Revolution, this procedure has impeded progress on key legislation because thirty-

(continued...)

Tweed, Hadley and McCloy prepared an assessment of the effect the Amendments might have on creating a legal framework for private sector participation in the telecommunications sector.[3/]

This report was originally prepared in November of 1991. USAID subsequently requested that Milbank Tweed add certain information to the report. In the period between the submission of the first version of this report and the submission of this version, the Federal Assembly enacted Act no. 150/1992, amending Act no. 110 /1964. This report does not review Act no. 150/1992.

Among the questions addressed in this review of the Amendments are the following:

(1) Do the Amendments provide adequate protection to individuals and regulated companies against abuses by administrative agencies? Will individuals and regulated companies have the right to appeal decisions of administrative agencies to courts? Do the Amendments adequately set forth the principles that will govern the behavior of regulators who administer and enforce the Act? If not, what principles should govern their behavior? Will private property be adequately protected against abuses of public authority?

(2) Will the Amendments create, as anticipated by federal authorities, a legal framework for telecommunications in the CSFR that is consistent with the telecommunications laws and policies of the European Economic Community ("EEC")?

(3) Is the proposed regulatory organizational structure clear, effective and comprehensive? Do the Amendments regulate telecommunications industries at the proper governmental level?

[2/](...continued)
eight votes of either the Czech or Slovak members of the Chamber of Nations can block such legislation.

[3/] We were unable to discuss the Amendments with officials at the federal level. As a result, we relied on the understanding of officials in the Ministry in interpreting the Act and the Amendments, as well as on English translations of the Act and Amendments provided to us by Deloitte & Touche. Due to time constraints, the Milbank team did not address other Czechoslovak laws that might contain provisions affecting privatization of the telecommunications sector. Roughly thirty-five days were allocated for this deliverable.

II. GENERAL PRINCIPLES OF ADMINISTRATIVE LAW

This section sets forth certain general principles of U.S. and European organic and administrative law in order to provide a basis for assessing the compatibility of the Act and the Amendments with these principles. We address three topics in this area. The first is whether the Amendments contain guarantees against invidious and arbitrary administrative action. The second is whether the Amendments establish clear principles for the promulgation of regulations. The third is whether the Amendments protect private property from the unbridled state exercise of eminent domain powers.

The need to regulate administrative agencies is a function of the fact that they exercise quasi-legislative functions, but are not immediately responsible to the electorate. In complex modern societies, administrative agencies are called upon to exercise a wide variety of regulatory functions, ranging from the regulation of natural monopolies to the establishment of quality standards for consumer products. Administrative agencies must often make important decisions with potentially profound consequences in the absence of immediate or detailed guidance from the legislature.

The power that administrative agencies possess can be curtailed by the imposition of (1) principles for guiding the promulgation of regulations, (2) requirements as to decision-making procedures and (3) review by the judiciary. Constitutional norms can also limit the power of administrative agencies through concepts of due process and equal protection and otherwise.

A. The Need for Procedural Protection Against Arbitrary Agency Action

The American system of administrative law provides extensive protections against arbitrary administrative agency action by requiring administrative agencies to follow specified decision-making procedures and by permitting administrative and other courts to review agency decisions. The purpose of these requirements is to ensure that administrative agencies follow fair procedures, make rational decisions and respect the rights of affected parties.

In the United States, the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq. (1988), establishes the basic procedural framework within which administrative bodies must usually operate. The APA generally requires that administrative agency rules and regulations be available to the public by publication in the Federal Register, a daily publication of significant federal government action. The APA also establishes procedures that an administrative agency must observe when it makes a variety of decisions, whether

rulings of general applicability or rulings on a case-by-case basis involving the adjudication of individual rights. The APA also sets forth rules as to when appeals are permitted to administrative courts or to courts of general jurisdiction. Judicial review provides an important overall check on the power of administrative agencies.[4/]

Neither the Act nor the Amendments set forth specific procedures that the relevant administrative agencies must follow in making decisions or promulgating regulations. Nor do the Act or the Amendments provide procedures by which the decisions of administrative agencies created by the Amendments would be reviewable or the standards against which such decisions might be measured. Indeed, the Amendments do not even indicate to what extent, if any, decisions of administrative agencies are reviewable. The only reference in the Amendments to any check on the decision-making of administrative agencies is contained in Article 21(1) of the Amendments, which states "[i]n deciding on the rights and duties of the physical and legal entities pursuant to this Act, regulations on administrative proceedings should be observed."

B. The Need for Principles

U.S. and European law generally establishes or imposes principles that constrain administrative agency discretion. Legislative enactments may contain broad grants of authority, but with a qualification that the agency establish procedures based on specific principles set forth in the relevant legislation. Such principles also serve the purpose of providing a reviewing court with guidance as to legislative intent in a specific area. Courts can then apply these principles in determining whether legislative intent is being obeyed.

Unfortunately, the Amendments do not provide the administrative bodies that they would create with principles to guide administrators in the development and application of rules and regulations. The absence of such principles will necessarily mean that regulators and administrators will enjoy a high degree of discretion in the performance of their tasks.

For example, the Amendments would change Article 4(3) of the Act by giving the "permitting body" the right to grant licenses to any legal entity. Yet, aside from a reference to the need for the permitting body to set "quality standards" and consider the "capability of the [legal entity] to provide the respective telecommunication services," no principles are set forth to guide the permitting body as to the basis upon which it should issue licenses. As discussed below in section IV, further principles should be set forth by

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4/ See generally S. Breyer and R. Stewart, Administrative Law and Regulatory Policy 32-35 (1985).

the Federal Assembly that would provide the permitting body with clearer guidance as to how and on what basis licenses should be issued.

C. The Need for Restraints on the State's Eminent Domain Power[5]

Under U.S. constitutional law, the federal government has the power to take private property for public uses through the exercise of eminent domain powers if it provides just compensation. U.S. Const. amend. V.[6] Courts in the United States have been extremely protective of private property rights.[7]

Under Article 1 of the First Protocol of the European Convention on Human Rights, which is applicable in practice as part of EEC law, signatory countries must provide a natural or legal person with monetary compensation when the state takes that person's property. While a looser standard exists in Europe regarding what constitutes a taking and what constitutes just compensation, the principle is the same: compensation must be given when property is taken by the state.

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[5] "Eminent domain" is the term used to describe the power of the sovereign to take private property for public use.

[6] The Fifth Amendment to the United States Constitution provides, in pertinent part, "nor shall private property be taken, without just compensation." Under English common law, property rights are also protected from state interference. The Magna Carta required that property be taken from an individual only pursuant to "the lawful judgement of his peers and by the law of the land." Magna Carta, para. 39, as quoted in Constitutional Law, Fifth Amendment: A Clarification of the Analysis of Takings, 4 N.Y.U.L. Rev. 1137, 1141 (1984).

[7] For example, the United States Supreme Court held in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 417 (1982), that a landlord's property had been taken when a cable television company, at the request of a tenant, installed cables, in full compliance with state law, on the roof of the landlord's building. The rationale of the Court was that (1) even though the size of the cables was quite small, a permanent physical intrusion had occurred on the property which, despite serving a public interest, amounted to a taking of private property and (2) the state law, although within the parameters of the state's legitimate powers, could not, under the U.S. Constitution, authorize a taking without compensation. The basic principle for which this case stands is that any permanent physical occupation of private property, no matter how small, is a "taking" that requires the state to pay "just compensation."

The CSFR is in the process of becoming a full member of the Council of Europe. It will have to meet the requirements of the European Convention on Human Rights once it has ratified that Convention. The Amendments do not sufficiently change the Act to meet either the tougher U.S. standards or the looser European ones on the taking of private property.

III. EEC TELECOMMUNICATIONS LAW AND POLICY: AN OVERVIEW

This section sets forth the context of Czechoslovakia's relationship with the EEC and its legal system and provides an overview of EEC law and policy on telecommunications. Reference is made to the relevant section in the attached Annex of Materials on EEC Telecommunications and Broadcasting Law (hereafter "Annex III").

A. EEC law and Czechoslovakia

Czechoslovakia is in the process of becoming an Associate Member of the EEC, which will require it to adopt legislation following EEC standards and rules. Accordingly, any changes in Czechoslovak legislation relating to telecommunications law and policy should, and indeed shortly must, take into account relevant EEC laws. The Government of Czechoslovakia has expressed its commitment to becoming a full member of EEC, and there is a growing expectation that Czechoslovakia is likely to become a full member of the EC around the year 2000. In the meantime, Czechoslovakia's Associate membership status is assured by the terms of a draft Association Agreement it signed with the EEC in December 1991 (known as a "Europe Agreement").[8/]

The "Europe Agreement" (the "Agreement") between the EEC and Czechoslovakia has not yet entered into force, as it requires the ratification of the national parliaments of all EEC Member States, the Federal Assembly of Czechoslovakia and the European Parliament. The Agreement signals a political and legal commitment by Czechoslovakia to adopt EEC legal standards, including those relating to the telecommunications and broadcasting sector. Its entry into force was originally due to occur in March 1992, but this has been delayed until the middle of 1992.

The "Europe Agreements" represent a new generation of agreements which go beyond the trade and economic cooperation agreements concluded at the end of the 1980's

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8/ "Europe Agreements" were also signed by Poland and Hungary. The EEC is expected to sign "Europe Agreements" with Romania and Bulgaria in the late spring of 1992.

and in the early 1990's. They are mixed agreements, covering areas of both EEC and Member State competence. The Agreement will be concluded for an unlimited period of time, with a transition period of ten years. It is considered a stepping stone aimed at the possible integration of Czechoslovakia into full membership in the EEC. In addition to trade and economic cooperation, the Agreement will provide a regulatory framework for almost all aspects of economic activity, political dialogue, and cultural cooperation.

The Agreement establishes a framework that includes the following principal elements:

(a) political dialogue;
(b) trade in goods;
(c) trade-related issues;
(d) movement of workers;
(e) right of establishment;
(f) services;
(g) competition and other economic provisions;
(h) approximation of law;
(i) economic cooperation;
(j) cultural cooperation;
(k) financial cooperation; and
(l) institutions.

Of particular relevance to the Czechoslovak telecommunications sector and to this report are the provisions set out in (e), (f), (g), (h) and (i).

Right of establishment

The Agreement provides that the EEC and Czechoslovakia will grant each other's companies and nationals "national treatment" (i.e., non discriminatory treatment) for economic and professional activities in each others territories. The EEC will grant national treatment upon entry into force of the Agreement. A transition period will apply to Czechoslovakia, during which it will be able to derogate from granting national treatment to EEC companies and nationals in order to protect newly emerging industries and sectors undergoing restructuring.

Services and capital movements

The Agreement will ensure that the supply of cross-border services (which includes telecommunications services) is progressively made permissible. The EEC and

Czechoslovakia undertake to authorize, in freely convertible currency, any payments relating to movement of goods, services or persons, as well as financial transfers relating to investments, including the repatriation of capital or investment benefits.

Competition and other economic provisions

Czechoslovakia undertakes to introduce competition rules similar to those applied in the EEC. It can, therefore, be expected that provisions similar to Articles 85 (prohibition of anti-competitive agreements or practices), Article 86 (prohibition of abuses of dominant position) and Article 92 (prohibition of subsidies) will be introduced. However, Czechoslovakia will be considered a low-income region, with the result that development-orientated State aids (subsidies) may, in certain circumstances, be authorized.

Within five years from the entry into force of the Agreement, Czechoslovakia will provide levels of protection with respect to intellectual, industrial and commercial property similar to that existing in the EC. Non-discriminatory access to public contract award procedures will also be provided for.

Approximation of law

The Agreement recognizes that the approximation of the laws of Czechoslovakia to EEC law is a major precondition for economic integration into the EEC. Under the Agreement, Czechoslovakia will ensure compatibility of its legislation with EEC law. The EEC will provide technical assistance for this purpose. Particular emphasis will be given to customs laws, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards,[9/] transport and the environment.

Economic cooperation

Finally, the Agreement establishes a program of economic cooperation to enable Czechoslovakia to restructure its economy and achieve competitiveness by the end of the transitional period. Economic cooperation relates to all areas of mutual interest, including industry and industrial standards, and specifically refers to telecommunications, postal services and broadcasting, information and communication, and public administration.

9/ Including rules and standards for the telecommunications sector.

B. EEC Telecommunications Law and Policy

The framework establishing EEC telecommunications policy is to be found in the EEC Commission's Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87) 290 final, 30 June 1987). The Green Paper was endorsed by the EEC Member States under Council Resolution of 30 June 1988 on the Development of the Common Market for Telecommunications Services and Equipment up to 1992 ("1988 Council Resolution") (Annex III, Section 7).

The 1988 Council Resolution identifies eleven major policy goals of EEC telecommunications policy:

- Community-wide network integrity for a common market in telecommunications services and equipment on the principle of full interconnectivity;
- creating an open, common market for services;
- promoting the creation of European-wide services based on efficient pricing principles, while ensuring general services for all;
- developing further an open, Community-wide market for terminal equipment, based on the mutual recognition of type-approval and on common European conformity specifications;
- developing a competitive common market based upon a clear separation of regulatory and operational duties, the application of EEC Treaty rules (notably competition), a transparent fiscal environment and an open market for goods and services;
- developing common standards in the telecommunications sector;
- stimulating European cooperation;
- creating an appropriate social environment;
- integrating less-favored areas fully into the Community-wide market;
- developing a common position on satellite communications; and

- developing, as appropriate, common positions on international telecommunications issues.

EEC policy has now been supplemented by a significant body of binding legislation and non-binding recommendations relating to telecommunications equipment, telecommunications services, satellites and miscellaneous related matters. Additional legislation is also expected to be adopted shortly. The following sections identify, by subject matter, these acts and recommendations that will eventually have to be integrated by the relevant Czechoslovak authorities and briefly describe their objectives.

C. Terminal Equipment

Commission Directive 88/301 on Competition in the Markets in Telecommunications Terminal Equipment (Annex III, Section 6) was adopted to open the market for terminal equipment to free competition among all suppliers by 30 June 1990. The main object is to require Member States to withdraw all special or exclusive rights granted to public and private bodies in relation to terminal equipment, while giving all economic operators the right to import, market, connect, bring into service and maintain terminal equipment.

Council Directive 86/361 on the Initial Stage of the Mutual Recognition of Type Approval for Telecommunications Terminal Equipment (Annex III, Section 2) establishes the principle of mutual recognition of test results in relation to terminal equipment.

Council Directive 91/263 on the Approximation of the Laws of the Member States concerning Telecommunications Terminal Equipment, including the Mutual Recognition of their Conformity (Annex III, Section 15) provides that terminal equipment that is authorized in one Member State may be sold and utilized throughout the Community without having to undergo further testing and approval procedures. The Directive harmonizes essential rules at the European level and provides for the mutual recognition of national licensing and supervisory procedures that ensure compliance with those rules. The Directive must be implemented by 6 November 1992.

D. Services

Commission Directive 90/388 on Competition in the Markets for Telecommunications Services (Annex III, Section 9) is designed to eliminate national monopolies over the provision of telecommunications services (excluding voice telephony) by requiring the withdrawal of certain exclusive and special rights. Businesses will be able to

offer value-added services throughout the Community in competition with the national telecommunications organizations.

Council Directive 90/387 on the Establishment of the Internal Market for Telecommunications Services through the Implementation of Open Network Provision (Annex III, Section 8) seeks to ensure that economic operators have equal access to the public telecommunications network throughout the Community and to harmonize the conditions of access to the public network, including those relating to technical interfaces, usage conditions and tariff principles.

The 1991 Proposal for a Council Directive on the Application of Open Network Provision to Leased Lines (Annex III, Section 14) is the first specific proposal for an Open Network Provision Directive. It sets out the principles to be applied in respect of access to, and use of, a minimum of four types of leased lines that must be made available in each Member State, including provisions relating to tariffs, quality of service, installation time, fair distribution of capacity in case of scarcity, repair time and network availability.

E. Satellites

The 1990 Commission Green Paper on Satellite Communications (COM(90) 490 final) seeks to extend general principles of Community telecommunications policy on liberalization and harmonization to satellite communications. It is based on four major policies: free competition in the terrestrial segment of the market, unrestricted access to space segment capacity, full commercial freedom for operators of satellites, and harmonization of technical standards together with mutual recognition of licensing and type approval procedures.

F. Integrated Services Digital Network

Council Recommendation 86/659 on the Coordinated Introduction of the Integrated Services Digital Network (ISDN) in the European Community (Annex III, Section 3) encourages the introduction of ISDN throughout the Community.

G. Mobile Communications Systems, Radio Paging, Cordless Communications

Council Recommendation 87/371 on the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community (Annex III, Section 4) seeks to ensure that the main mobile cellular links between major urban areas are covered by 1995.

Council Directive 87/372 on the Frequency Bands to be Reserved for the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community (Annex III, Section 5) obliges Member States to reserve certain frequencies exclusively for the use of mobile systems.

Council Recommendation 90/543 on the Coordinated Introduction of Pan-European Land-Based Public Radio Paging in the Community (Annex III, Section 12) and Council Directive 90/544 on the Frequency Bands Designated for the Coordinated Introduction of Pan-European Land-Based Public Radio Paging in the Community (Annex III, Section 13) have been adopted to facilitate the introduction of a pan-European radio paging system, to be known as the "European Radio Messaging System" (ERMES).

Council Directive 91/287 on the Frequency Band to be Designated for the Coordinated Introduction of Digital European Cordless Telecommunications (DECT) into the Community (Annex III, Section 16) and Council Recommendation 91/288 on the Coordinated Introduction of Digital European Cordless Telecommunications (DECT) into the Community (Annex III, Section 17) have been adopted to facilitate the creation of a Europe-wide system for cordless telephones.

H. Data Protection

The 1990 Commission Proposal for a Council Directive concerning the Protection of Personal Data and Privacy in the Context of Public Digital Telecommunications Networks (Annex III, Section 11) aims to ensure that adequate safeguards for the protection of data exist in all Member States. The protection envisaged applies to "telecommunications organizations" and reflects two fundamental principles: first, that the collection, storage and processing of personal data by a telecommunications organization will be allowed only insofar as it is necessary to provide the relevant services and, second, that subscribers will have the right to inspect personal data concerning themselves, request rectification or erasure and prevent non-authorized disclosure.

I. Public Procurement

Council Directive 90/531 on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors (Annex III, Section 10) is aimed at opening up, inter alia, telecommunications markets to competition by providing detailed rules as to the procurement procedures to be adopted in each Member State.

J. Competition Guidelines

The 1991 Guidelines on the Application of EEC Competition Rules in the Telecommunications Sector (Annex III, Section 18) provide detailed, but non-binding, guidelines aimed at clarifying the application of Community competition rules to market participants in the telecommunications sector. The Guidelines relate to the application of Article 85 (agreements and concerted practices) and Article 86 (abuses of dominant positions) of the Treaty of Rome.

K. Television Broadcasting

Council Directive 89/552 on the Coordination of Certain Provisions Concerning the Pursuit of Television Broadcasting Activities (Annex III, Section 21) requires Member States to ensure freedom of reception and prohibits them from restricting retransmission on their territory of certain television broadcasts from other Member States. To that end, it harmonizes certain rules on (1) the distribution and production of television programs, (2) television advertising and sponsorship and (3) the protection of minors. The Directive is complementary to the 1989 Council of Europe Convention on Transfrontier Television (Annex III, Section 20).

IV. ARTICLE-BY-ARTICLE ANALYSIS OF THE CZECHOSLOVAK FEDERAL COMMUNICATIONS LAW OF 1964, AS IT WOULD BE REVISED BY THE AMENDMENTS

In this section we analyze the Act and the Amendments on an article-by-article basis with a view to assessing:

- the overall clarity and coherence of the Act and Amendments and the new administrative structure created by the Amendments;
- whether the organizational structure envisioned by the Amendments delegates functions to the appropriate level among the administrative agencies;
- the compatibility of the Act and the Amendments with EEC law and policy on telecommunications and, where appropriate, other aspects of EEC law;
- the need for administrative controls on the administrative agencies that would be created by the Amendments; and

- the approach the Act and Amendments take to issues regarding the state's right to exercise its eminent domain powers.

A. General Comments

In order to facilitate the reader's understanding of the Act and the Amendments, it may be helpful to rearrange the substantive provisions of the Act and the Amendments under the following general headings:

Section 1: Definitions

Section 2: Administrative and Institutional Arrangements

Section 3: Networks

Section 4: Services

Section 5: Equipment

It might also be useful for the other subdivisions of the Act and the Amendments to bear titles or headings.

Neither the Act nor the Amendments make reference to a number of relevant substantive legal areas that are highly developed under EEC and other international law. It may be that these areas are addressed in other Czechoslovak legal acts, including international treaties, in which case it might be useful to make explicit reference to such acts in the Amendments. Consideration should also be given as to how the telecommunications law would come into compliance with established EEC and international law and policy in such areas as:

- competition and fair trading;
- public procurement; and
- data protection and privacy.

The Act and the Amendments also fail to provide a clear and coherent approach to the institutional arrangements to be established by the Act, and it is unclear what

role, if any, is to be given to the republics in regulating telecommunications activities. It is also unclear to what extent the Act is intended to regulate the radio and television broadcasting and equipment sectors. Most significantly, the Act and the Amendments fail to establish principles concerning the establishment of tariffs and charges or any obligation to ensure the provision of general services for all.

The Act and the Amendments do not clearly define the functions of federal, republic and local administrative bodies. In the United States, for example, local and state administrative bodies are responsible within certain general parameters for local ratemaking and infrastructure development, while federal authorities regulate long-distance services and interconnectivity. Perhaps a similar structure would be appropriate for the CSFR.

The Act and the Amendments, either by themselves or by cross reference to other legislation, do not adequately address issues of consumer protection. The Act and the Amendments also do not address the issue of fully integrating less favored areas into the market. The integration of less favored areas into the market is one of the eleven major goals of the Green Paper; a new draft of the Amendments should address how the CSFR will achieve this goal.

An interlineated version of the Act and Amendments is set forth below on a section-by-section basis. Each section or part of the Act as it would be amended or left intact as the case may be is followed by a discussion of relevant points. The text of the Act is set forth in bold roman type. The text of the Amendments is set forth in bold italic type.[10/]

B. Specific Comments

TELECOMMUNICATION ACT

Telecommunications serve as means of communication at distance, for transmission of information and have the decisive importance for running of national economy, meeting the needs of population, state administration, security and protection of the country.

10/ We have not retranslated the Act and Amendments, which we received from Deloitte & Touche. Parts of the translated version of the Act and Amendments are difficult to interpret.

For this purpose telecommunications have to be set up effectively, in planned manner with highest possible level of social labor economy, protected from interference and damage and prevented from misuse.

Therefore the National Assembly of Czechoslovak Socialist Republic has passed the following Act:

It would be desirable for the legislature to restate the preamble. The amended preamble should contain the policy objectives of the Act, such as ending the state monopoly on the provision of telecommunication services and creating a legislative framework conducive to the EEC's objectives set-forth in the Green Paper, and the principles, such as equality of treatment, efficiency and fairness, that should govern the various administrative bodies in the implementation and application of the law.[11/] These should be based, inter alia, on the EEC Commission's Green Paper and Council Resolution (see Annex III, Section 7).

Section I

Telecommunication equipment, telecommunication network and Telecommunication services.

Article 1

(1)The right to set up and operate telecommunication equipment and provide telecommunication services appertains to the state. The state grants this right to other entities pursuant to the provisions of the Act. State activity in this area shall be executed by the bodies of the State communication authority to the extent specified in this Act.

(2)Telecommunication equipment is the equipment for transmitting, transfer and reception of information of any kind via transmission line, radio, optical or other means using electromagnetic waves.

(3)Telecommunication network is a set of telecommunication equipment which facilitates the transfer of information between terminal network points.

11/ See Annex II for a discussion of the reasons why the CSFR decided to amend the Act.

(4)Terminal network point is a technically specified interface between the telecommunication network and the connected, or terminal equipment. It is a part of the telecommunication network.

(x)The terminal network point will be further defined by a procedural regulation.

(5)Telecommunication services are services, which consist completely or mostly of the transfer of information via telecommunication equipment.

(6)Telephone services are telecommunication services for the public which consists of ensuring of the transfer of a spoken language in real time between the terminal points of the communication network, on a commercial basis.

(7)Telecommunication performances are telecommunication services concerning the establishment, alteration, renewal, maintenance and operation of telecommunication equipment.

It would be helpful to set out in Article 1 a full set of technical definitions, together with the functions of each administrative agency or other institution and to make conforming amendments throughout the text.[12/] In the context of the stated desire to develop legislation that is compatible with EEC law, it would seem appropriate to adopt legal definitions based upon, and wholly in accord with, those in current usage under EEC law. Examples of the principal terms defined under EEC law include:

Definitions Relating to Institutions:

- "National Regulatory Authority" (Proposed Directive COM(91) 30, Article 2)
- "Telecommunications Administrations" (Council Directive 86/361, Article 2)
- "Telecommunications Organizations" (Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1; Proposed Directive COM(90) 314, Article 3

Definitions Relating to Technical Matters:

12/ It may increase clarity for the first letter of each defined term to be capitalized wherever it appears in the Act and Amendments.

- "Certificate of Conformity" (Council Directive 86/361, Article 2)
- "Essential Requirements" (Council Directive 86/361, Article 2; Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1)
- "European Standard" (Council Directive 90/531, Article 1)
- "Network Termination Point" (Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1; Council Directive 90/531, Article 1)
- "Open Network Provision Conditions" (Council Directive 90/387, Article 2)
- "Public Telecommunications Network" (Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1; Council Directive 91/263, Article 1; Proposed Directive COM(90) 314, Article 3; Council Directive 90/531, Article 1)
- "Public Telecommunications Services" (Council Directive 90/387, Article 2; Council Directive 90/531, Article 1; Proposed Directive COM(90) 314, Article 3)
- "Special or Exclusive Rights" (Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1)
- "Telecommunications Services" (Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1; Council Directive 90/531, Article 1)
- "Telex Services" (Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1)
- "Terminal Equipment" (Council Directive 86/361, Article 2; Commission Directive 88/301, Article 1; Council Directive 91/263, Article 1)
- "Type Approval of Terminal Equipment" (Council Directive 86/361, Article 2)
- "Type Approval Specification" (Council Directive 86/361, Article 2)
- "Voice Telephony" (Council Directive 90/387, Article 2; Commission Directive 90/388, Article 1).

Among the issues that would be resolved by adoption of appropriate definitions would be:

- the breadth of the term "telephone services," which in the translations provided us appears to include any voice communication, whether over the basic local infrastructure network or any another network, such as a cellular mobile digital radio system; and

- the possible inclusion within "telecommunications performances" of the "operation" of telephone equipment.

Without these suggested changes, the amendments create neither a coherent institutional framework nor a clear definition of the types of services that will be regulated.

Section II

The standard telecommunication network and organization of Telecommunications.

Article 2

(1) The state has an exclusive right to set up and operate:

(a) transmission routes for the transfer of information of any kind via telecommunication equipment, except for equipment for the unidirectional propagation of radio and television programs via cable,

(b) equipment for providing telephone services,

(c) transmitting radio equipment for both the radio and television broadcasts.

The state delegates the execution of this right to the telecommunication organizations.

(2) The standard telecommunication network is the telecommunication network destined for the needs of physical and legal entities. The standard telecommunication network comprises equipment which the state has the exclusive right to set up and operate, as well as telecommunication equipment owned by telecommunication organizations providing telegraph and teleprinter services. The network does not include equipment, set

up and operated outside the standard telecommunication network, pursuant to the provisions of Section III of this Act.

(3) A telecommunication organization for the purpose of this Act is understood as any legal entity, which has been granted an exclusive or specific right by the state to set up and operate specified parts of the standard telecommunication network. The state shall set the conditions which a telecommunication organization is obliged to meet during the setting up and operation of the standard telecommunication network, as well as the kind and an extent of services it is obliged to provide to the public. Bodies of the state telecommunication authority specified pursuant to this Act shall proceed in these affairs in the name of the state.

(4) Telecommunication equipment set up outside the standard telecommunication network may be incorporated into the standard telecommunication network if they are fit for such purpose, particularly from the technical and operational viewpoints. Conditions and procedure for this incorporation shall be specified through an agreement between the donor and recipient organizations. This agreement may stipulate the payments, or charges for telecommunication operations provided by the telecommunication organizations, even differently than the general price tariffs.

Article 2(1) would strengthen the Amendments if it discussed the competence of the federal and republic states. Serious ambiguities currently plague the Amendments, because they nowhere define what areas of the telecommunication sector will be regulated at which level.

The definition of "standard telecommunications network" (Article 2(2)) appears to include certain terminal equipment. This would make the definition of this network broader than the EEC definition of network, which is confined to infrastructure. Also, the definition of "the standard telecommunications network" does not appear to distinguish between the public network and other networks.

The definition of "telecommunications organization" (Article 2(3)) should match that under EEC law, under which the term "telecommunications organization" can include "public telecommunications services."

Additionally, there should be an obligation to make information relating to such organizations that have been granted "special or exclusive rights," as defined by EEC law, available to the public. The conditions relating to the grant of such "special or exclusive rights" should be set forth and made public. Under EEC law, these conditions

include so-called "essential requirements" relating to non-economic reasons that may cause a Member State to restrict access to the network or services.

The following is a list of these "essential requirements:"

- security of network operations;
- maintenance of network integrity;
- interoperability of services; and
- data protection.

It is not clear whether Article 2 is intended to govern the provision of "telecommunications services." If so, it should conform to Council Directive 90/387, which requires, inter alia:

- the withdrawal of all special or exclusive rights for the supply of telecommunications services other than voice telephony and the right of any operator to supply such services; and
- where the supply of "telecommunications services" is subject to a licensing or declaration procedure, that the conditions for the granting of a license be objective, non-discriminatory and transparent; that reasons be given for the refusal to grant a license; and that a procedure be established to appeal any such refusal.

The Amendments also do not adequately describe the nature of the licensing mechanism that would be used to grant licenses and the mechanisms that could be used to revoke licenses if the conditions of the license are not met. Clear legislation on how administrative bodies will issue licenses is a prerequisite for attracting capital, especially foreign capital, to the telecommunications sector. Principles pertaining to efficiency, economic viability and technological sophistication should also be added to the Amendments in order to guide administrative decisions in the granting of licenses and provide criteria for the review of those decisions.

The object of Article 2(4) is not entirely clear. In particular, insofar as this provision is concerned with "equipment," as appears to be the case, reference should be made in the main body of the legislation or in subsequent administrative regulations to the essential requirements governing equipment to be found in EEC law.

Under Council Directive 91/263, Article 4, these requirements pertain to:

- user safety;
- safety of employees of public telecommunications networks operators;
- electromagnetic compatibility requirements insofar as they are specific to terminal equipment;
- protection of public telecommunications networks from harm;
- effective use of the radio frequency spectrum, where appropriate;
- interworking of terminal equipment with public telecommunications network equipment for the purpose of establishing, modifying, charging for, holding and clearing real or virtual connection; and
- interworking of terminal equipment via the public telecommunications network, in justified cases.

Article 3

(1) Through Standard Telecommunication Network communication organizations exercise inland and international telecommunication connection. For doing so communication organizations collect defined considerations.

(2) Telephone, telegraph and telex is performed as communication organizations communicate through unified telecommunication network by telephone calls, receive, transmit and delivery the information (pictures) and grant the interest parties the right to use the telephone and telex equipment (user stations) or also other telecommunications means such as telephones, circuits etc.

(3) Central communication Authority takes care of accessibility, economy, speed and reliability of telephone and telegraph connections, confidentiality of transmitted information which is ensured in the first place by implementing of new technology, primarily automation, expanding of numbers of user stations and other facilities (public telephones, public stations and telephone booths) designated to serve as means of public telecommunication connection.

(4) Communication organizations are obliged to maintain the telecommunication equipment of unified telecommunication network in status capable to satisfy the needs of its users.

(5) Central Communication Authority defines the conditions under which the unified telecommunication network is used to perform the activities related to telecommunication connection, to set up and use telephone and telegraph user stations and wire broadcasting user stations, conditions under which the right to use other telecommunication equipment (branch exchanges, circuits etc.) is given to users and conditions of other services provided by communication organizations through unified telecommunication network.

(6) In case of any defects of given (user's) telecommunication equipment, the communication organization is obliged to repair such defects in due course. If the timely reported defect, for which the user has not responsibility and which prevents the use of such equipment for period longer than the period defined by implementing regulations, is not repaired within the above period of time, then the user has the right to be returned the considerations paid to date.

(7) Communication organizations are entitled to refuse provision of services (switch off the given equipment of cancel the user's relationship) to the person who heavily violates the defined conditions or does not pay the defined considerations.

(8) Building up and operation of broadcasting and transmitting radio and television facilities and wire broadcasting equipment is the responsibility of Central communication authority and communication organizations which are obliged to take care of effective expanding of possibilities to receive radio and television programs taken over from organizations responsible for their preparation.

(9) Central Communication Authority can restrict operation of unified telecommunication network in important public interest.

(10) Information, content of which can imperil the security of state or its important economic interests or which otherwise contradict with law, are excluded from transfer.

Definitional problems exist in Article 3. The reference to "communications organizations" is presumably intended to mean "telecommunication organizations." The Amendments need to be changed so that the term "telecommunication organizations" replaces all references to "communications organizations" in the Act.

The right under Article 3(1) to collect a "defined consideration" from telecommunication operators for the right to connect to the telecommunication network should be determined by principles that are "objective, non-discriminatory and transparent" (see, e.g., Commission Directive 90/388, Article 2).

Article 3(2) might be incorporated into the section on definitions and any new section dealing with "services."

The "accessibility, economy, speed and reliability" of connections identified in Article 3(3) should be subject to the "essential requirements" as set out in EEC law (see the discussion regarding Article 2 above).

The obligations of telecommunications operators in respect of equipment, as defined in Article 3(4), should take account of the relevant provisions of EEC telecommunications law, notably "essential requirements" (Council Directive 90/387, Article 2) and equipment criteria (Council Directive 91/263, Article 4). For reasons of clarity, this provision might be moved to a new and separate section dealing with "equipment."

The conditions to be defined by the Central Communication Authority (that is, the Federal Ministry of Communications) under Article 3(5) should conform to those set out under Council Directive 90/387, Article 2.

The conditions under which telecommunications organizations can exercise the right to refuse services to persons should be defined clearly, taking into account the principles of objectivity and transparency and an individual's right to contest a telecommunication organization's refusal of services.

Article 3(8) needs to be expanded significantly, or, perhaps, this provision should be removed from the Act and placed in separate radio and television broadcasting legislation, as tends to be the case in most Member States of the EEC.

Articles 3(9) and (10) could be merged into a single provision concerning suspension or limitations with respect to matters of public interest (including public policy and morality) and national security. The extent and consequences of such limitations should be defined clearly, in accordance with relevant provisions of CSFR and EEC law, as should the administrative and judicial remedies available to challenge them.

Section III

Telecommunication equipment outside Standard Telecommunication network

Article 4

(1) Only authorized equipment may be connected to the standard telecommunication network. The method, conditions and procedure of attestation, authorization and connection of this equipment shall be set out by the Federal Ministry of Communications through a generally binding legal regulation.

(2) The establishment, alteration, renewal and maintenance of equipment connected to the standard telecommunication network may be carried out only by a physical or legal entity which has been granted permission to perform such activities by the respective body, pursuant to this law (hereinafter referred to only as the "permitting body"). The conditions for granting such permission shall be set by the Federal Ministry of Communications through a generally binding legal regulation.

(3) Telecommunication services, with the exception of telephone services, may be provided by a physical or legal entity, which has been authorized to perform such activities by the permitting body. This permission will define the conditions for such activity. The primary condition for granting the permission is to prove the capability to provide the respective telecommunication service to the required extent and to meet set quality standards. The permission document shall particularly specify the conditions necessary to provide a service in order to secure its general availability, mutual cooperation among various operators on the state's territory, as well as international cooperation and define the conditions and means towards securing and attesting of a technical fitness of the utilized telecommunication equipment.

(4) Equipment for the unidirectional propagation of radio and television programs via cable may be established and operated only on the basis of permission granted by the permitting body.

(5) The permitting body may, in justified cases, exceptionally and only under the conditions specified by this body, permit the establishment and operation of equipment listed in Article 2, Paragraph 1, even outside the standard telecommunication network.

(6) If for any reason such permission expires and relevant equipment is not taken over by communication organization, hitherto operator is obliged to put such

equipment in condition excluding its further use. If the operator fails to do so, necessary measure may be taken by permitting body at operator's expense.

(7) Communication organization, Military authority or bodies of Ministry of Interior can, in urgent cases, use the permitted telecommunication equipment without compensation. If, in such cases, operator provides personal services it is entitled to receive compensation for such services, as appropriate.

Article 4(1) should implement Council Directives 86/361 relating to type approval of equipment, and 91/263 relating to, inter alia, conformity of equipment in EEC Member States. Consideration should be given to the question of equipment authorized in other countries and the extent to which such authorizations will be recognized by the Czechoslovak telecommunications authorities. In this regard, consideration could be given to the relevant provisions of Council Directive 91/263, in particular Articles 4, 6, 9 and 10. It may be appropriate for the Amendments to identify the relevant body or bodies at the federal and state levels that are to carry out certification, product checks and similar surveillance tasks.

Article 4(2) should be read in the light of Article 3 of Commission Directive 88/301 on competition in the market, which may require revisions to the Amendments. Directive 88/301 is designed to ensure that "economic operators have the right to import, market, connect, bring into service and maintain terminal equipment," subject to the Member States' right, inter alia, to "require economic operators to possess the technical qualifications needed to connect, bring into service and maintain terminal equipment on the basis of objective, non-discriminatory and publicly available criteria."

The reference to the "permitting body" in Article 4(2) is confusing. It may be appropriate to insert a general definition of the "permitting body" in the definitional section described above, followed by a delineation of its delegated functions in each of the substantive areas, where appropriate.

Article 4(3) should be read in the light of Council Directive 90/387 on open network provision and Commission Directive 90/388 on competition in telecommunication service. In order to assure open and efficient access to public telecommunications networks, conditions relating to such access must, in accordance with relevant provisions of EEC law and policy,

- be based on objective criteria;

- be transparent and published in an appropriate manner; and
- guarantee equality of access and be non-discriminatory.

Restrictions on access, pursuant to EEC law, may be made only on the basis of "essential requirements" (see discussion under Article 2 above). This principle should be incorporated into the Amendments.

Article 4(4) may run into difficulties with Council Directive 89/552 on television broadcasting and the 1989 Council of Europe Convention on Transfrontier Television, both of which govern the receipt and retransmission of television signals from third countries. The Directive and Convention provide that Member States and Contracting Parties "shall ensure freedom of reception and shall not restrict retransmission on their territory of television broadcasts from other Member States for reasons that fall within the field coordinated by this Directive." (Directive, Article 2(2); Convention, Article 4).

Article 4(5) should be amended to ensure that the conditions set forth in Article 4(5) comply with the provisions of Council Directive 90/387 on open network provisions and Commission Directive 90/388 on competition in services.

In Article 4(6), some definition of what "necessary measures" means needs to be included. Perhaps the permitting body should be delegated the task of writing regulations on what "necessary measures" it may take. If this approach is adopted, the legislature should provide some general principles, such as grave national emergency, to guide this endeavor and provide a mechanism for a communications organization to appeal such a decision.

The same analysis applied above to Article 4(6) also applies to Article 4(7). Specifically, the term "urgent cases" needs to be defined more precisely.

Article 5

(1) Permission to establish and operate transmitting radio stations shall be granted by the permitting body under conditions set by a generally binding legal regulation in the following cases:

(a) to meet justified needs of movable services, unless the set goal can be accomplished through the operation of the standard telecommunication network or via the permitted telecommunication services,

(b) if these are transmitting radio stations of immovable services unless the goal followed may be accomplished through the standard telecommunication network, or via wire or optical means,

(c) Amateur transmitting radio stations serving technical self-education and study,

(d) transmitting radio and television equipment, should the equipment's operator be granted permission to propagate radio and television programs,

(e) transmitting radio stations operated for the purpose of development, manufacture, maintenance, repair work and presentation,

(f) transmitting radio stations of foreign embassies on the basis of approval of the Federal Ministry of Foreign Affairs, and on condition of mutuality,

(g) other transmitting radio equipment which does not serve for the purposes of communication, should special circumstances give sufficient reason for their application.

(2) On the basis of international agreements and on condition of their mutuality radio stations may be operated or kept also on the basis of permission issued by the respective foreign authorities.

(3) *Federal Ministry of Communication* **defines the cases when it is necessary to have specific capacity for operation of broadcasting radio stations and if so, what type of capacity as well as how this capacity shall be acquired, confirmed and verified.**

(4) Broadcasting radio stations, even incomplete, if a valid permission to set up and operate then was not granted or if they are not in possession of organizations or entities entitled to set up and operate them without permission, may be kept only subject to *on the basis of permission issued by the permitting body.* This permission is not required for broadcasting radio stations kept by their authorized producers.

(5) If above paragraphs do not define otherwise, regulations of Article 4 apply to broadcasting radio stations.

Article 5(1) defines the areas where the permitting body will have the authority to issue licenses for operating radio stations. Generally, the description of these areas is clear.

The regulations adopted pursuant to Article 5(1) and (2) should be considered in the context and incorporate relevant provisions of Council Recommendation 87/371 on coordination of pan-European cellular mobil communications, and Council Directive 87/372 (cellular digital land-based mobile communications), Council Recommendation 90/543 and Council Directive 90/544 (land-based public radio paging), and Council Directive 91/287 and Council Recommendation 90/288 (digital European cordless telecommunications). Principles derived from these and other Directives should guide the permitting body in how it will issue licenses and ensure that appropriate EEC standards are adopted and followed. Principles, such as objectivity, non-discrimination and transparency, also would serve as protection against the permitting body issuing licenses in an unfair manner and provide a means for a court to review the issuance of licenses in cases where a party believes that it was unfairly denied a license.

Article 6

(1) The following entities have the right to establish and operate telecommunication equipment and telecommunication networks without permission outside the standard telecommunication network pursuant to this Act:

(a) the military administration for military purposes,

(b) bodies of the Federal Ministry of the Interior and the republican ministries of the interior for security purposes,

(c) the Czechoslovak State Railways in railway transportation,

(d) those organizations authorized to provide logistic and communication radio air service, with the exception of radio stations on board aircraft,

(e) energy organizations dealing with the operation, safeguarding and automation of the electrification system.

(2) Operations for the public in the railway stations, on trains and on the board aircraft may also be performed via telecommunication equipment and telecommunication networks of the Czechoslovak State Railways and organizations authorized to provide logistic and radio communication air service under an agreement with communications organizations.

(3) Permission pursuant to this Act is not required for the establishment and operation of telecommunication equipment inside buildings or on continuous real estate of the same user or on the real estate of the same user divided through one or several parallel public communications, unless it is radio equipment.

Such telecommunication equipment may be subject to supervision of bodies assigned by the Federal Ministry of Communications.

However, permission is required should such equipment be connected to the standard telecommunications network or to the telecommunication equipment of some other operator or if they are to extend beyond the state border.

(4) Under the conditions set by the Federal Ministry of Communications no permission is necessary for the establishment and operation of

(a) radio equipment with a very low output, functioning on specified frequencies and possession the set technical parameters,

(b) equipment of the closed circuit television with the transfer of modulations via cable, though a public communication or some other entity's real estate will be temporarily affected,

(c) receiving radio installations, with the exception listed under Article 7.

This Article may need to be redrafted in such a way as to remove the suggestion that such telecommunications networks, services and equipment might, in certain circumstances, be above the law. Specifically, some or all of these networks, services and equipment should be subject to general provisions to be found in EEC law and elsewhere concerning, inter alia, competition, public procurement, data protection, bandwidth allocation and compensation for taking or injury to private property.

Article 7

Permission is not required for use of radio and television sets. However, owners or users of such equipment are obliged to register these sets with communications organization assigned by Central Telecommunication Authority, follow the rules defined by implementing regulations and pay defined charges.

As a matter of policy, the legislature may wish to consider whether principles should be enunciated for determining access to the information collected by the administering agency. The administrative agency that is delegated the task of registering and collecting such charges for television and radio sets should be given guidelines for its procedures in this regard.

Section IV

Considerations for use of telecommunication equipment

Article 8

(1) Everyone, who uses Standard Telecommunication Network or telecommunication performances or to whom communication organizations set up, entrust to use or maintain telecommunication equipment, is obliged to pay defined considerations or charges.

(2) Only reports concerning averting of the natural disasters' consequences, to save human lives, information concerning imperilment of the state security, urgent information concerning contagious diseases or serious traffic disorders, official information by state communication bodies or other information which has been conceded this exception in procedural regulations shall be transmitted free of charge.

(3) Person which failed to keep the rules set for using the Standard Telecommunications Network, especially person which was not authorized to use telecommunication equipment, is obliged to pay a compensation to communication organizations, which may be calculated as a lump sum, if the extent and length of such unauthorized use cannot be exactly determined.

(4) Charges can be collected for permission to set up and operate telecommunication equipment under Articles 4 and 5 and for radio and television sets which are subject to registration under Article 7. These charges amount of which takes into account purpose and range of the equipment are announced by *Federal Ministry of Communication*. Provisions of the previous paragraph apply here fairly.

(5) Responsibility of communication organizations against users of telecommunication performances and equipment is boiled down to obligation quickly remedy the defects and return paid considerations or charges according to the rules set out in terms of use of Standard Telecommunication Network. As far as cooperation and

responsibility relationships between *Federal Ministry of Communication* and Czechoslovak Television and between *Federal Ministry of Communication* and Czechoslovak Radio is concerned, specific regulations, which are based on agreements between the above organizations, apply.

(6) Right to considerations and charges remuneration under the previous paragraph must be exercised at communication organizations without any unnecessary delay; if this right is not exercised within six months from the day of origin of disorder or defect, this right ceases to exist.

The meaning of the term "considerations or charges" identified in Article 8(1) should be established by regulation on grounds that are, in accordance with the relevant EEC provisions, objective, non-discriminatory and transparent.

Presumably, the exception in Article 8(2) to the general prohibition on the transmission without charge of certain information and reports is a limitation relating to public networks and not a prohibition on private sector or other operators who may wish to provide services, in certain circumstances, free of charge. If so, this should be made clear.

In Article 8(3), the specific organization that is delegated the task of determining whether a person has improperly used the Standard Telecommunications Network is not identified. The organization, the criteria to be applied and the procedures to be used should be set out in this section.

Section V

Protection of telecommunication equipment

Article 9

(1) Standard Telecommunication Network and its facilities and operation are protected against imperilling, harmful interference and damage from other equipment or activity.

(2) All telecommunication facilities outside Standard Telecommunication Network must be set up and operated so that they do not harmfully interfere with the operation of equipment of this network, especially radio communication equipment.

(3) In addition, machines, devices and equipment using of which generates high-frequency energy are necessarily to be produced or modified and operated so that

they do not interfere with the operation of Standard Telecommunication Network. Producers, customers of imported equipment or owners or users of these machines, devices and equipment are obliged, if it is feasible, to acquire at their cost necessary anti interference equipment.

(4) Manufacturers of machinery, devices and equipment and consumers of such imported equipment are obliged, before putting them into circulation, to prove to the bodies authorized by the Federal Ministry of Communications that high-frequency energy generated during their operation does not exceed the level which would interfere with the operation of the equipment of the standard telecommunication network and other telecommunication equipment.

(5) In case of imperilling, interfering with the operation of, or damaging the Standard Telecommunication Network the owner (user) of the harmful equipment or the subject carrying out the detrimental activities shall take any adequate protective measures. If this cannot be realized or if it is more efficient and economical to realize the protective measures on the imperilled telecommunications equipment, these shall be effected by the subject operating the equipment. If the damage occurred due to not observing provisions specifying the establishment or operation of the harmful equipment, the costs of realizing the protective measures shall be defrayed by the subject operating this equipment; otherwise these costs shall be defrayed by the owner (user) of the equipment established or modified later, unless planning regulations indicate another course of actions.

(6) If the source of imperilment, interference or damage is not removed in an appropriate period of time, the Central Telecommunications Authority or any body empowered by the Authority may order to stop operating the harmful equipment or prohibit the harmful activity. In order to discontinue or stop the operation of a facility important to the national economy or security, the consent of the relevant superior state body must be obtained.

(7) A physical or legal entity responsible for committing damage, imperilment or harmful interference with the equipment of the standard telecommunications network is obliged, besides damages for the harm caused to pay a fine up to 200,00 crowns. In setting the amount of the fines, primarily the extent of guilt, its gravity, the way how it was committed, the time it lasted and consequences of the illegal conduct shall be assessed. The fine may be charged within one year of the day when the breach of the obligation has been revealed, but within three years of the day, when this breach took place at the latest.

(8) Authorities empowered by the Central Telecommunications Authority are entitled to search for the sources of imperilment, damage or interference with the operation of the Standard Telecommunication Network or other telecommunications facilities (radio and television broadcasting in particular) and issue obligatory orders to eliminate the defects. To do this, members of the staff of these authorities who properly prove their identity and authority are entitled to enter real estate owned by other subjects, factories and buildings, demand reports and test equipment which can cause defects; when doing this, they are obliged to observe operational and safety regulations concerning such equipment.

(9) The above-mentioned provisions are adequately valid for telecommunications facilities operated outside the Standard Telecommunication Network according to Article 6, par. 1, for telecommunications facilities licensed according to Art. 4 and 5, for radio and television receivers and for technological equipment necessary for creating the broadcasted signal in the radio and television centers or in the transmission system units.

Article 9(1), (2) and (3) should be amended to incorporate the conditions set out in the relevant provisions of EEC law, most notably Article 4 of Council Directive 91/263. Annex III, Section 15. This requires that terminal equipment should satisfy a number of essential requirements, including:

- user safety;
- safety of employees of public telecommunications network operators;
- electromagnetic compatibility requirements;
- protection of the public telecommunications network from harm;
- effective use of radio frequency spectrum; and
- interworking of telecommunications equipment.

In this regard, reference should also be made to the standards established by Council Directive 85/337 on the assessment of the effects of certain public and private projects on the environment.

In accordance with the relevant EEC provisions, Article 9(5) should be amended to give the owner or user of telecommunications equipment a right of recourse against the manufacturer or importer of equipment. In this regard, consideration might be given to dealing with this entire section in separate legislation on product liability, full account being taken of the relevant EEC legislation on the matter (the 1985 EEC Product Liability Directive).

In accordance with standard practice in Member States of the EEC, Article 9(8) and (9) should be amended to ensure that appropriate procedural safeguards are developed to prevent abuses of authority and that the rights granted therein are subject to appropriate review.

Article 10

(1) The provisions on the protection of telecommunications against imperilment, interference and damage are valid for the parallelism and crossing of telecommunications facilities with transmission lines of any kind, with roads, water supply facilities and other equipment as well as for internal relationship between telecommunications facilities (networks).

(2) To reduce the adverse effects of power lines on telecommunications facilities, the planned routes of power lines must be discussed with the telecommunications authorities within the authorization process in accordance with building regulations, resulting in carrying out necessary protective measures.

(3) According to building regulations, building organizations (investors) or general designers of constructions, waterworks or facilities the realization of which involves ground work, shall, within the authorization process, accompany their application for the decision on construction location and the building permit or other similar permit with information from appropriate telecommunications, power engineering and military authorities as well as the authorities of the Ministry of Interior on the existence of underground telecommunications facilities on the site (route).

(4) The authorities qualified to issue area planning decisions, building permits or any other similar authorization within the building process shall set conditions for the protection of telecommunication networks, particularly lines located underground or in stream beds.

(5) Organizations or persons involved in work permitted in accordance with previous paragraphs shall take every measure to prevent any damage to telecommunications lines caused by building work.

(6) Organizations (bodies) managing telecommunication networks shall keep records of these networks, underground cables in particular, and provide relevant organizations and authorities with information necessary for the fulfillment of obligations described in previous paragraphs.

Article 10 should be amended to make express reference to, and, where appropriate, incorporate the conditions of, separate legislation relating to, inter alia, land use and environmental impact assessments. Such conditions would comport with the practice of Member States of the EEC. Those practices are largely based on provisions of EEC law. Of particular relevance is EEC Council Directive 85/337 on the assessment of the effects of certain public and private projects on the environment.

In order to ensure that the records of where telecommunication infrastructure is located can be of practical and effective use, Article 10(6) should be amended to ensure that this information is publicly available at appropriate locations.

Article 11

(1) Telecommunications facilities can be protected using protection zones within which buildings, facilities, terrain arrangement and growth which could imperil telecommunications facilities and their smooth, safe and undisturbed operation are prohibited or restricted to the extent specified by procedural regulations. In the same way, some activities inside or in the proximity of protection zones may be restricted or prohibited.

(2) Protection zones are set by the national committee in charge of area planning on the basis of a proposal submitted by a telecommunications authority, military body or a body of the Ministry of Interior; regulations on the protection of agricultural land and forests are primarily taken into account.

The subject matter of this Article, protection zones for telecommunications facilities, will need to be supplemented by regulations establishing the criteria and conditions for the establishment of such zones. The Article should refer to or be integrated into relevant provisions relating to land use and environmental assessment, as is the practice in the Member States of the EEC.

Section VI

Use of Real Estate for Telecommunications

Article 12

(1) Telecommunications authorities are entitled:

(a) to build and operate overhead and underground telecommunications lines including necessary points of support and demarcation on real estate owned by other subjects;

(b) to enter on foot and by car, to the necessary extent, real estate owned by other subjects, when preparing projects, during construction, operation and repairs, when modifying or removing telecommunications facilities;

(c) to carry out the necessary adjustments of land and growth, particularly remove trees standing in the way of telecommunication lines.

(2) Before the beginning of the execution of the powers according to the preceding paragraph, the telecommunication authorities shall notify the owners or users of the real estate in question. Any argument between the owners or users of the real estate in question concerning the extent of authorization shall be submitted by the telecommunications authorities to the building authorities for resolution.

(3) Telecommunications authorities are not obliged to provide compensation for the execution of rights described in paragraph 1. If, however, the rights to the owner or user of real estate to sue the estate as usual are substantially infringed, he may apply to the building authorities for reasonable one-off compensation from the telecommunications authority. The deadline for sending the application is six months after the day the telecommunications facilities were put into operation (use).

(4) The right to use real estate for telecommunications facilities involves the real estate without taking into account further changes in the administration or ownership of the estate.

(5) After the necessary work on telecommunications facilities is completed, the telecommunications authorities shall, at their own expense, promptly bring the estate or surface road into its original, or appropriate, condition.

(6) The owner or user of real estate which has been used for telecommunications facilities shall take due care when using or carrying out any work on the real estate so that the telecommunications facilities could not be imperiled or damaged.

(7) If the owner or user of the real estate which has been used for telecommunications facilities intends to carry out work or adjustments of the real estate which might endanger the smooth and safe operation of the telecommunications facilities, he shall inform the relevant telecommunications authorities at least six weeks before the commencement of the planned work - if there is no danger of delay.

(8) Within the term specified in paragraph 7, the tele-communications organization shall take the necessary measures or notify the investor that the length of the period is not sufficient and that it will carry out the necessary provisions in a period longer than six months; if the extent of the telecommunications facilities adjustment does not require advance planning, this period shall not exceed six months.

(9) If the intended work on the real estate involves changes of telecommunications facilities which must be planned in advance, the investor shall notify about them the telecommunications authorities in the periods specified by methodical planning regulations. In extraordinarily urgent cases, the investor will negotiate with the telecommunications authorities a course of actions ensuring that the necessary work will be done in time.

(10) Instead of the intended change of the real estate, the telecommunications authorities may offer the owner or user of the real estate to carry out a modification of another kind which will achieve the intended objective without the necessity of cost-intensive changes of telecommunications facilities. The telecommunications authorities shall undertake to cover possible high costs associated with the realization of their proposal.

Article 12 generally, and paragraphs (1), (2) and (3) thereof in particular, should be substantially amended. The procedures to be followed with respect to real estate development by telecommunications administrations or organizations must be subject to clearly defined principles, based on objective, non-discriminatory and transparent criteria, as outlined above in accordance with standard practice in the EEC and its Member States. Their implementation should also be subject to effective administrative and judicial review.

The provisions of Article 12(3) also appear to be in breach of Article 1 of the First Protocol to the 1950 European Convention on Human Rights, which provides, inter alia, that:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Article 1 of the First Protocol has been interpreted by the European Court of Human Rights as giving rise, in certain circumstances, to a right to compensation where property rights are unlawfully interfered with by the state.

Article 12 raises issues about the extent of the state's eminent domain power. Article 12(2) may need to be more specific as to whether a legal or natural person has the right to appeal decisions of the "building authorities." Furthermore, the right of such persons to participate in the decision-making process of the "building authorities" should also be defined.

Article 12(3) provides for compensation on a one-time basis to "owners or users" of real estate if their ability to use the estate is "substantially infringed." This standard should be more specifically defined either in the Amendments or by regulation. If the latter, then some principle should be included to guide the administrative agency responsible for creating appropriate regulations. Some mechanism for review of the telecommunications authority's determinations in this regard should be provided for in the Amendments or by reference to other legislation.

Article 13

(1) Before the beginning of the construction of telecommunications facilities, the owners or users of the real estate shall, to the extent specified by and at the expense of the telecommunications authorities, make the necessary provisions on their land, mainly to harvest agricultural cultures and lop off or cut down and remove trees which could hamper the construction or imperil telecommunications facilities.

(2) If this period elapses to no effect, the telecommunications authorities is entitled to make provisions according to the previous paragraph at their own expense and at the risk of the owner or user of the land.

Article 14

(1) During the operation of telecommunications facilities the trees and branches are removed by the telecommunications authorities at their own expense and to the extent necessary for the smooth and safe operation of the telecommunications facilities, unless otherwise specified by an agreement with the owner or user of the land.

(2) Cutting down trees which is necessary for ensuring the smooth operation of telecommunications facilities shall be carried out by the owners or users in terms specified by the telecommunications authorities which will cover the actual costs. If this period elapses to no effect, the provisions of Art. 13, par. 2 apply similarly.

Article 15

(1) When executing the powers according to Art. 12-14, the telecommunications authorities and persons appointed by them shall pay utmost care to the real estate, its equipment and accessories as well as the rights of their owners and users.

(2) When designing, building and operating telecommunications facilities, it is necessary to pay attention to eliminating to the maximum possible degree the harmful effects on human health and the environment, to protecting natural resources, vegetation necessary for hygienic protection and cultural or historical monuments.

(3) When executing the powers and carrying out activities described in the previous paragraphs, the provisions of regulations on the protection of the agricultural land and forrest stock, water supply management and mineral resource utilization remain in effect.

Articles 13, 14 and 15 will need to be supplemented by more detailed administrative provisions concerning land use planning and environmental assessment. In most Member States of the EEC it is normal for provisions such as these to be found in legislation and regulations concerning planning requirements, rather than in an instrument of telecommunications legislation. The reason for this is that the principles underlying their substance are general in nature and not of specific concern to the telecommunications sector.

Article 16

(1) In case of damage caused to the real estate or its equipment and accessories during the construction, operation, repairs, changes or removal of

telecommunications facilities, the owner or user of the real estate is entitled to recompensation.

(2) Unless an agreement on the damages is arrived at, the claim for damages may be enforced under the generally valid regulations within six months of the day when the harm was done, otherwise the claim shall be forfeited.

This article should be redrafted so as to ensure that generally applicable provisions of law relating to injury to people, property and the environment apply here as well. It is not clear that there is justification for applying special rules in this regard to the telecommunications sector. At present the EEC is developing specific rules on liability for certain types of damage, including damage to people, property and the environment.

Article 17

(1) A building permit according to the Building Order Act is not required for the construction of overhead and underground lines of the Standard Telecommunication Network including points of support and demarcation.

(2) When building telecommunications lines according to paragraph 1, the telecommunications authorities (investor) shall submit to the building office for approval a plan specifying the location of lines. This plan need not be submitted in cases specified by procedural regulations, especially if the construction is not in conflict with public interest or legitimate interest of the owners or users of the real estate.

(3) Constructions of telecommunication lines shall be discussed with the owners and users of real estate involved in advance; the owners (users) may be notified either directly or by a notice at the local national committee or through the committee.

(4) Objections to the use of real estate shall be submitted by the owners (users) to the investor before the deadline of 15 days after the notification; the investor shall submit the objections to the building office for resolution. The objections have a suspensory effect, unless suspension is denied for urgent reasons by the building office.

(5) If technical standards or other general technical regulations are observed and the antenna does not cross surface communications or lines, it is not necessary to obtain a building permit or the approval of the owner (user) of the estate for the erection of outdoor radio and television receiver antennas in case the antenna is located on the same building in which the radio or television receiver is situated. The owner

(user) of the real estate shall be notified about the intended erection of the antenna in time. Outdoor individual receiver antennas cannot be erected on objects where a collective antenna suitable for the required band has already been erected. Within the state supervision over constructions, the building office may order transfer or modification of antennas which imperil the building condition of the real estate or safety of its neighborhood or disturb its appearance.

Construction of telecommunications lines could require an environmental impact assessment under the EEC 1985 Directive on Environmental Impact Assessment, as well as appropriate consultation with the public and consideration of the impact of such construction on the environment. In this context, it is normal practice in the EEC for a special permit to be required. In the event such construction interferes directly or indirectly with private property rights, compensation would normally be due under the relevant rules of EEC Member States.

Article 18

Powers and obligations bestowed upon telecommunications authorities according to this Section VI are also granted to *physical and legal entities* which are entitled to establish and operate telecommunications facilities according to Article 4 and Article 6, par 1.

Principles, such as those set out in the 1988 EEC Council Resolution regarding the establishment of an efficient telecommunications network (see page 9), should be added to Article 18 in order to guide the writing of regulations in this area.

Section VII

Provisions for effective utilization of telecommunications

Article 19

(1) The Federal Ministry of Communications will set uniform rules for the telecommunication operation and for technical fitness of telecommunication equipment, and will supervise directly or through bodies authorized by the ministry these rules in order to be observed by all the operators throughout the whole of the state's territory.

(2) The Federal Ministry of Communications and the bodies entrusted by the ministry shall execute the state inspection of telecommunications and the state professional technical supervision in the area of telecommunications, while at the same they shall supervise whether this Act's provisions and those regulations issued to implement it are being observed, and whether conditions assigned to telecommunication organizations, physical and legal entities, who were granted permission to establish and operate telecommunication equipment and provide telecommunication services are being observed.

(3) The provisions of previous paragraphs do not apply to the telecommunications facilities of the Ministry of Interior and the Ministry of Defense, to railway and air traffic safety equipment and fail-safe power engineering equipment.

(4) The Central Telecommunications Authority controls the utilization of available frequencies by the facilities managed by all branches and of the national economy and departments. It particularly

(a) after discussions with the Ministry of Defense and the Ministry of Interior, allocates frequencies or meter bands; this is also done for telecommunications facilities the establishment and operation of which does not require any permission (Article 6, par. 1 and par. 4, subpar. a),

(b) carries out state supervision over the adherence to the allocated frequencies of meter bands.

(5) The Central Telecommunications Authority is in charge of coordinating discussions on international telecommunications issues and implementing international agreements and treaties.

(6) Unless the communication organization meets the conditions it is obliged to fulfill in the establishment and operation of the standard telecommunication network and in providing telecommunication service, or should a physical or legal entity which has been granted permission to provide telecommunication operations breach the set conditions, it can be fined up to ten times the amount charged for failing to provide the services or to comply with due quality standards or up to ten times the amount charged for an operation provided at variance with the set conditional pursuant procedural regulations.

(7) Should the set conditions fail to be met repeatedly, or breached within 12 months of the day of a previous decision to assess a fine pursuant to Paragraph 6, this fine may be increased up to five times its original amount.

(8) The proceedings concerning the imposing of the fine cannot be started if one year has elapsed since the time of non-fulfillment or breach of the conditions.

(9) The respective body of the state telecommunication authority shall decide on the imposing of the fine pursuant to Paragraphs 6 and 7.

Portions of Article 19(1) and (2) could be integrated into Article 4, which deals in large part with legal issues relating to telecommunications equipment. The provisions of Article 19(1) and (2) should comply with Council Directives 86/361 and 91/263 in order to ensure that appropriate procedural safeguards are developed to prevent abuses of authority.

Article 19(1) delegates broad responsibilities to the Federal Ministry of Communications to "set uniform rules [regulations] for the telecommunication operation" and to "supervise directly or through bodies authorized by the ministry [the implementation of] these rules." Yet it does not set forth the principles that the Federal Ministry of Communications should follow in promulgating these regulations. The Amendments should set forth principles to guide the Federal Ministry of Communications in promulgating these regulations, which should be based on the totality of the standards set out in the EEC legislation to be found in the Annex III to this report.

Section VIII

Telecommunications Secrecy

Article 20

(1) Organizations in charge of operating the Standard Telecommunication Network and their staff including other people charged with tasks within the operation of the Network shall not disclose the content of received and mediated messages, names of correspondence, phone numbers of conversing parties, and any data concerning messages being carried or mediated to third parties.

(2) Information about carried or mediated messages can only be disclosed to the sender and the addressee or their legitimate representatives (barristers). Carried or mediated messages and information about them may only be disclosed to courts and the courts are only allowed to see the content of operational documents in cases specified by law.

(3) The provision of previous paragraphs are also valid to an adequate extent for other subjects operating telecommunications facilities and their staff, including users of the Standard Telecommunication Network who, even by a chance, using telecommunications facilities learn facts which should be kept secret according to the previous paragraphs.

This Article should be drafted to take account of the proposed EEC legislation concerning the Protection of Personal Data and Privacy (Com (90) 314 final).

Section IX

The bodies of the state authority and the proceeding organized before them.

Article 21

(1) In deciding on the rights and duties of the physical or legal entities pursuant to this Act, regulations on administrative proceedings should be observed.

(2) Bodies of state telecommunication authority which perform administrative proceedings in the cases pursuant to this Act include:

(a) regional administrative telecommunication authorities,

(b) the Federal Administrative Bureau of Telecommunications,

(c) the Federal Ministry of Telecommunications.

(3) The regional telecommunication administrative authorities decide in affairs pursuant to this Act which are not under additional regulations or according to special provisions entrusted to the jurisdiction of the Federal Administrative Bureau of Telecommunications, or to the Federal Ministry of Communications. The regional telecommunication administrative authorities shall discuss the offenses in the area of telecommunications.

(4) The Federal Administrative Bureau of Telecommunications shall decide on the following affairs:

(a) granting of licenses for the establishment and operation of specified parts of the standard telecommunication network,

(b) authorization of the fitness of telecommunication equipment,

(c) granting of licenses for the establishment and operation of telecommunication equipment outside the standard telecommunication network, should their operation extend beyond the state border,

(d) granting of licenses for providing telecommunication services outside the standard telecommunication network extending beyond the state border,

(e) assigning of frequencies or frequency bands and execution of state supervision over their observance,

(f) granting of permissions to establish and operate transmitting radio installations of movable or immovable services, if these are services extending beyond the state border and transmitting radio installations of foreign missions,

(g) assessment of fines pursuant to this Act and settlement of offenses in those affairs it is entrusted to decide on,

(h) reviewing the decisions taken by the regional telecommunication administrative authorities. The Federal Administrative Bureau of Telecommunications administers the regional telecommunication administrative authorities. In justified cases it decides about affairs which otherwise fall under the jurisdiction of the regional telecommunication administrative authorities.

(5) The Federal Ministry of Communications:

(a) administers the Federal Administrative Bureau of Telecommunications

(b) reviews the decisions made by the Federal Administrative Bureau of Telecommunications

(c) in justified cases decides on those affairs which otherwise fall under the jurisdiction of the Federal Administrative Bureau of Telecommunications:

Article 21(a)

(1) The regional telecommunication administrative authorities and the Federal Administrative Bureau of Telecommunications shall be budgetary organizations.

(2) The regional telecommunication administrative authorities shall be controlled by, and responsibility for their activities assumed by a director, appointed and recalled from the post by the director of the Federal Administrative Bureau of Telecommunications after discussing it with respective central republican bodies.

(3) The Federal Administrative Bureau of Telecommunications shall be administered and the responsibility for its activities assumed by a director, who is appointed and recalled by the Minister of Communications of the Czech and Slovak Federated Republic; the Bureau shall be based in Bratislava.

Article 21(b)

The local authority and territorial range of the regional administrative telecommunications authorities and their seat will be set by the Federal Ministry of Communications through a generally binding legal provision, after discussing it with the respective central bodies of the republics.

Article 21(c)

(1) The revenues and expenditures of the regional telecommunication authorities are the revenues and expenditures of the republican state budgets, on the territories of which these authorities operate.

(2) The revenues and expenditures of the Federal Administrative Bureau of Telecommunications are the revenues and expenditures of the state budget of the Czech and Slovak Federative Republic.

Article 21(d)

(1) Employees of the bodies of the state telecommunication authority are entitled to carry out all operations necessary to perform their function and to supervise the fulfillment of conditions under which the licenses and permissions have been granted. In particular, they are entitled to enter operational rooms, equipment and sites where telecommunication equipment is located and demand the submission of respective documents, information needed and demand explication.

(2) Employees of state telecommunication authority bodies are obliged to keep as state, economic and official secrets the facts which they learned while performing their activities. This obligation persists even after their employment ends.

(3) Employees of the bodies of state telecommunications authority are prohibited to practice for payment consulting or other similar professional activity for telecommunications organizations, and for physical or legal entities which provide telecommunication operations on the basis of permission issued pursuant to this Act, or which are in the process of asking for permission pursuant to this Act.

Article 21 should be moved up to the introductory part of the Amendments so as to create a more coherent regulatory structure.

In considering Article 21(1), it is worth bearing in mind the requirement of Article 2 of Commission Directive 90/388 that, where the supply of services is subject to a licensing or declaration procedure, the Member State must ensure that "the conditions for the grant of a license are objective, non-discriminatory and transparent, that reasons are given for any refusal, and that there is a procedure for appealing against any such refusal." The same type of principles and procedures for review should be included in the Amendments.

Under Article 21(2), an issue is raised as to whether any of the entities referred to therein is a "national regulatory authority," a "telecommunications administration" or a "telecommunications organization" within the meaning of EEC law. The entities referred to in the Article also seem to have similar functions to the "permitting body." The hierarchical relationships between these bodies and the delegation of functions among federal, republic and local institutions are quite confusing.

Article 21(d)(1) appears to establish an unfettered right of administrative action. These rights are presumably subject to limitations under Czechoslovak constitutional law and relevant international legal obligations, including the European Convention on Human Rights. Nonetheless, the Act itself should also contain provisions that subject administrative action to principled standards, procedural safeguards, appropriate review and other due or fair process standards.

Article 21(d)(2) has implications for obligations under relevant data protection provisions (see, e.g., the 1990 Commission Proposal for a Council Directive on the Protection of Personal Data and Privacy, COM(90) 314 final). It should be understood that such secrecy provisions are also subject to certain overriding public policy requirements, which in EEC law include the European Commission's investigative powers under competition law. The Amendment should be changed appropriately.

Section X

Common and final provisions

Article 22

(1) The Federal Ministry of Communications will issue for the implementation of this Act procedural regulations in accordance with the respective central bodies.

(2) All the licenses and permissions granted pursuant to this Act, can be limited or cancelled by a body which issued them or its superior authority if the set conditions fail to be fulfilled or should the state security require this.

This provision should be moved into a new section on institutions and should be amended to set out in detail the criteria and principles to be taken into consideration in adopting regulations and performing other administrative acts.

V. CONCLUSIONS

This assessment contains a number of observations and recommendations that might be considered in evaluating or redrafting the Act and the Amendments. These observations and recommendations can be grouped into four general categories.

First, as currently drafted, the Act and the Amendments provide inadequate protection to individuals and corporate entities against failures in the exercise of administrative authority. Specifically, the Amendments fail to (a) identify with sufficient precision, or at all, the principles that should guide regulatory authorities in the exercise of their functions, (b) establish a clear and effective framework for administrative and judicial review of decisions and other actions taken under the Act and (c) establish clear rules governing the infringement of private property rights.

Second, while the Amendments incorporate to a considerable extent the general approach of EEC telecommunications law and policy, they fail in a number of important ways to give full effect to EEC principles. Problem areas in the Amendments include, but are not limited to, (a) the rules relating to type approval for terminal equipment, (b) the absence of rules to ensure that less favored areas are fully integrated into the telecommunications network, (c) the rules seeking to develop an open market for goods and services, (d) the absence of rules establishing efficient pricing principles while ensuring the

availability of general services for all, (e) the absence of rules governing public procurement policy and (f) the absence of any competition policy.

Third, the Amendments would be substantially improved if they separated regulatory and operational duties more clearly, followed EEC definitions more closely, adopted consistent terminology and were organized in the following sequence:

Section 1: Definitions
Section 2: Administrative and institutional Arrangements
Section 3: Telecommunications Networks
Section 4: Telecommunications Services
Section 5: Telecommunications Equipment.

Fourth, specific telecommunications legislation needs to be seen in the context of wider issues concerning the fundamental principles and rules of EEC law. These include, but are not limited to, ensuring:

- free movement of goods, capital and persons among Member States;
- freedom to provide services across boundaries of Member States;
- the freedom to establish business enterprises in all Member States; and
- the application of effective rules of competition law.

It is worth recalling that, under the terms of the "Europe Agreement" between the EEC and Czechoslovakia, which will enter into force before the end of 1992, Czechoslovakia will be required, over time, to implement a wide range of EEC legal standards in order to benefit fully from its Associate Member status in the EEC. The telecommunications legislation needs to be seen and understood as part of the broader package of regulatory reform necessary to liberalize the telecommunications sector. The benefits of such a liberalization in accordance with EEC law and policy will be two-fold: increased foreign investment in Czechoslovakia and the ability of Czechoslovak entities to take advantage of the wider European market.

ANNEX I

Telecommunications Act and Proposed Amendments

TELECOMMUNICATION ACT
dated 5 June 1964

Telecommunications serve as means of communication at distance, for transmission of information and have the decisive importance for running of national economy, meeting the needs of population, state administration, security and protection of the country.

For this purpose telecommunications have to be set up effectively, in planned manner with highest possible level of social labor economy, protected from interference and damage and prevented from misuse.

Therefore the National Assembly of Czechoslovak Socialist Republic has passed the following Act:

Section I

Telecommunication equipment, telecommunication network and Telecommunication services.[1/]

Article 1

(1) The right to set up and operate telecommunication equipment and provide telecommunication services appertains to the state. The state grants this right to other entities pursuant to the provisions of the Act. State activity in this area shall be executed by the bodies of the State communication authority to the extent specified in this Act.

(2) Telecommunication equipment is the equipment for transmitting, transfer and reception of information of any kind via transmission line, radio, optical or other means using electromagnetic waves.

(3) Telecommunication network is a set of telecommunication equipment which facilitates the transfer of information between terminal network points.

(4) Terminal network point is a technically specified interface between the telecommunication network and the connected, or terminal equipment. It is a part of the telecommunication network.

[1/]Text in italics signifies amendments to the original Telecommunication act.

(x) The terminal network point will be further defined by a procedural regulation.

(5) Telecommunication services are services, which consist completely or mostly of the transfer of information via telecommunication equipment.

(6) Telephone services are telecommunication services for the public which consists of ensuring of the transfer of a spoken language in real time between the terminal points of the communication network, on a commercial basis.

(7) Telecommunication performances are telecommunication services concerning the establishment, alteration, renewal, maintenance and operation of telecommunication equipment."

Section II

The standard telecommunication network and organization of Telecommunications.

Article 2

(1) The state has an exclusive right to set up and operate:

(a) transmission routes for the transfer of information of any kind via telecommunication equipment, except for equipment for the unidirectional propagation of radio and television programs via cable,

(b) equipment for providing telephone services

(c) transmitting radio equipment for both the radio and television broadcasts.

The state delegates the execution of this right to the telecommunication organizations.

(2) The standard telecommunication network is the telecommunication network destined for the needs of physical and legal entities. The standard telecommunication network comprises equipment which the state has the exclusive right to set up and operate, as well as telecommunication equipment owned by telecommunication organizations providing telegraph and teleprinter services. The network does not include equipment, set up and operated outside the standard telecommunication network, pursuant to the provisions of Section III. of this Act.

(3) A telecommunication organization for the purpose of this Act is understood as any legal entity, which has been granted an exclusive or specific right by the state to set up and operate specified parts of the standard telecommunication network. The state shall set

the conditions which a telecommunication organization is obliged to meet during the setting up and operation of the standard telecommunication network, as well as the kind and an extent of services it is obliged to provide to the public. Bodies of the state telecommunication authority specified pursuant to this Act shall proceed in these affairs in the name of the state.

(4) Telecommunication equipment set up outside the standard telecommunication network may be incorporated into the standard telecommunication network if they are fit for such purpose, particularly from the technical and operational viewpoints. Conditions and procedure for this incorporation shall be specified through an agreement between the donor and recipient organizations. This agreement may stipulate the payments, or charges for telecommunication operations provided by the telecommunication organizations, even differently than the general price tariffs.

Article 3

(1) Through Standard Telecommunication Network communication organizations exercise inland and international telecommunication connection. For doing do communication organizations collect defined considerations.

(2) Telephone, telegraph and telex is performed as communication organizations communicate through unified telecommunication network by telephone calls, receive, transmit and delivery the information (pictures) and grant the interest parties the right to use the telephone and telex equipment (user stations) or also other telecommunications means such as telephones, circuits etc.

(3) Central communication Authority takes care of accessibility, economy, speed and reliability of telephone and telegraph connections, confidentiality of transmitted information which is ensured in the first place by implementing of new technology, primarily automation, expanding of numbers of user stations and other facilities (public telephones, public stations and telephone booths) designated to serve as means of public telecommunication connection.

(4) Communication organizations are obliged to maintain the telecommunication equipment of unified telecommunication network in status capable to satisfy the needs of its users.

(5) Central Communication Authority defines the conditions under which the unified telecommunication network is used to perform the activities related to telecommunication connection, to set up and use telephone and telegraph user stations and wire broadcasting user stations, conditions under which the right to use other telecommunication equipment (branch exchanges, circuits etc.) is given to users and conditions of other services provided by communication organizations through unified telecommunication network.

(6) In case of any defects of given (user's) telecommunication equipment, the communication organization is obliged to repair such defects in due course. If the timely reported defect, for which the user has not responsibility and which prevents the use of such equipment for period longer than the period defined by implementing regulations, is not repaired within the above period of time, then the user has the right to be returned the considerations paid to date.

(7) Communication organizations are entitled to refuse provision of services (switch off the given equipment of cancel the user's relationship) to the person who heavily violates the defined conditions or does not pay the defined considerations.

(8) Building up and operation of broadcasting and transmitting radio and television facilities and wire broadcasting equipment is the responsibility of Central communication authority and communication organizations which are obliged to take care of effective expanding of possibilities to receive radio and television programs taken over from organizations responsible for their preparation.

(9) Central Communication Authority can restrict operation of unified telecommunication network in important public interest.

(10) Information, content of which can imperil the security of state or its important economic interests or which otherwise contradict with law, are excluded from transfer.

Section III

Telecommunication equipment outside Standard Telecommunication network

Article 4

(1) Only authorized equipment may be connected to the standard telecommunication network. The method, conditions and procedure of attestation, authorization and connection of this equipment shall be set out by the Federal Ministry of Communications through a generally binding legal regulation.

(2) The establishment, alteration, renewal and maintenance of equipment connected to the standard telecommunication network may be carried out only by a physical or legal entity which has been granted permission to perform such activities by the respective body, pursuant to this law (hereinafter referred to only as the "permitting body"). The conditions for granting such permission shall be set by the Federal Ministry of Communications through a generally binding legal regulation.

(3) Telecommunication services, with the exception of telephone services, may be provided by a physical or legal entity, which has been authorized to perform such activities

by the permitting body. This permission will define the conditions for such activity. The primary condition for granting the permission is to prove the capability to provide the respective telecommunication service to the required extent and to meet set quality standards. The permission document shall particularly specify the conditions necessary to provide a service in order to secure its general availability, mutual cooperation among various operators on the state's territory, as well as international cooperation and define the conditions and means towards securing and attesting of a technical fitness of the utilized telecommunication equipment.

(4) Equipment for the unidirectional propagation of radio and television programs via cable may be established and operated only on the basis of permission granted by the permitting body.

(5) The permitting body may, in justified cases, exceptionally and only under the conditions specified by this body, permit the establishment and operation of equipment listed in Article 2, Paragraph 1, even outside the standard telecommunication network.

(6) If for any reason such permission expires and relevant equipment is not taken over by communication organization, hitherto operator is obliged to put such equipment in condition excluding its further use. If the operator fails to do so, necessary measure may be taken by permitting body at operator's expense.

(7) Communication organization, Military authority or bodies of Ministry of Interior can, in urgent cases, use the permitted telecommunication equipment without compensation. If, in such cases, operator provides personal services it is entitled to receive compensation for such services, as appropriate.

Article 5

(1) Permission to establish and operate transmitting radio stations shall be granted by the permitting body under conditions set by a generally binding legal regulation in the following cases:

(a) to meet justified needs of movable services, unless the set goal can be accomplished through the operation of the standard telecommunication network or via the permitted telecommunication services,

(b) if these are transmitting radio stations of immovable services unless the goal followed may be accomplished through the standard telecommunication network, or via wire or optical means,

(c) Amateur transmitting radio stations serving technical self-education and study,

(d) transmitting radio and television equipment, should the equipment's operator be granted permission to propagate radio and television programs,

(e) transmitting radio stations operated for the purpose of development, manufacture, maintenance, repair work and presentation,

(f) transmitting radio stations of foreign embassies on the basis of approval of the Federal Ministry of Foreign Affairs, and on condition of mutuality,

(g) other transmitting radio equipment which does not serve for the purposes of communication, should special circumstances give sufficient reason for their application.

(2) On the basis of international agreements and on condition of their mutuality radio stations may be operated or kept also on the basis of permission issued by the respective foreign authorities.

(3) Central communication Authority defines the cases when it is necessary to have specific capacity for operation of broadcasting radio stations and if so, what type of capacity as well as how this capacity shall be acquired, confirmed and verified.

(4) Broadcasting radio stations, even incomplete, if a valid permission to set up and operate then was not granted or if they are not in possession of organizations or entities entitled to set up and operate then without permission, may be kept only subject to *on the basis of permission issued by the permitting body.* This permission is not required for broadcasting radio stations kept by their authorized producers.

(5) If above paragraphs do not define otherwise, regulations of Article 4 apply to broadcasting radio stations.

Article 6

(1) The following entities have the right to establish and operate telecommunication equipment and telecommunication networks without permission outside the standard telecommunication network pursuant to this Act:

(a) the military administration for military purposes,

(b) bodies of the Federal Ministry of the Interior and the republican ministries of the interior for security purposes,

(c) the Czechoslovak State Railways in railway transportation,

(d) those organizations authorized to provide logistic and communication radio air service, with the exception of radio stations on board aircraft,

(e) energy organizations dealing with the operation, safeguarding and automation of the electrification system.

(2) Operations for the public in the railway stations, on trains and on the board aircraft may also be performed via telecommunication equipment and telecommunication networks of the Czechoslovak State Railways and organizations authorized to provide logistic and radio communication air service under an agreement with communications organizations.

(3) Permission pursuant to this Act is not required for the establishment and operation of telecommunication equipment inside buildings or on continuous real estate of the same user or on the real estate of the same user divided through one or several parallel public communications, unless it is radio equipment.

Such telecommunication equipment may be subject to supervision of bodies assigned by the Federal Ministry of Communications.

However, permission is required should such equipment be connected to the standard telecommunications network or to the telecommunication equipment of some other operator or if they are to extend beyond the state border.

(4) Under the conditions set by the Federal Ministry of Communications no permission is necessary for the establishment and operation of

(a) radio equipment with a very low output, functioning on specified frequencies and possession the set technical parameters,

(b) equipment of the closed circuit television with the transfer of modulations via cable, though a public communication or some other entity's real estate will be temporarily affected,

(c) receiving radio installations, with the exception listed under Article 7.

Article 7

Permission is not required for use of radio and television sets. However, owners or users of such equipment are obliged to register these sets with communications organization assigned by Central Telecommunication Authority, follow the rules defined by implementing regulations and pay defined charges.

Section IV

Considerations for use of telecommunication equipment

Article 8

(1) Everyone, who uses Standard Telecommunication Network or telecommunication performances or to whom communication organizations set up, entrust to use or maintain telecommunication equipment, is obliged to pay defined considerations or charges.

(2) Only reports concerning averting of the natural disasters' consequences, to save human lives, information concerning imperilment of the state security, urgent information concerning contagious diseases or serious traffic disorders, official information by state communication bodies or other information which has been conceded this exception in procedural regulations shall be transmitted free of charge.

(3) Person which failed to keep the rules set for using the Standard Telecommunications Network, especially person which was not authorized to use telecommunication equipment, is obliged to pay a compensation to communication organizations, which may be calculated as a lump sum, if the extent and length of such unauthorized use cannot be exactly determined.

(4) Charges can be collected for permission to set up and operate telecommunication equipment under Articles 4 and 5 and for radio and television sets which are subject to registration under Article 7. These charges amount of which takes into account purpose and range of the equipment are announced by Central Communication Authority. Provisions of the previous paragraph apply here fairly.

(5) Responsibility of communication organizations against users of telecommunication performances and equipment is boiled down to obligation quickly remedy the defects and return paid considerations or charges according to the rules set out in terms of use of Standard Telecommunication Network. As far as cooperation and responsibility relationships between Central Communication Authority and Czechoslovak Television and between Central Communication Authority and Czechoslovak Radio is concerned, specific regulations, which are based on agreements between the above organizations, apply.

(6) Right to considerations and charges remuneration under the previous paragraph must be exercised at communication organizations without any unnecessary delay; if this right is not exercised within six months from the day of origin of disorder or defect, this right ceases to exist.

Section V

Protection of telecommunication equipment

Article 9

(1) Standard Telecommunication Network and its facilities and operation are protected against imperilling, harmful interference and damage from other equipment or activity.

(2) All telecommunication facilities outside Standard Telecommunication Network must be set up and operated so that they do not harmfully interfere with the operation of equipment of this network, especially radio communication equipment.

(3) In addition, machines, devices and equipment using of which generates high-frequency energy are necessarily to be produced or modified and operated so that they do not interfere with the operation of Standard Telecommunication Network. Producers, customers of imported equipment or owners or users of these machines, devices and equipment are obliged, if it is feasible, to acquire at their cost necessary anti interference equipment.

(4) Manufacturers of machinery, devices and equipment and consumers of such imported equipment are obliged, before putting them into circulation, to prove to the bodies authorized by the Federal Ministry of Communications that high-frequency energy generated during their operation does not exceed the level which would interfere with the operation of the equipment of the standard telecommunication network and other telecommunication equipment.

(5) In case of imperilling, interfering with the operation of, or damaging the Standard Telecommunication Network the owner (user) of the harmful equipment or the subject carrying out the detrimental activities shall take any adequate protective measures. If this cannot be realized or if it is more efficient and economical to realize the protective measures on the imperilled telecommunications equipment, these shall be effected by the subject operating the equipment. If the damage occurred due to not observing provisions specifying the establishment or operation of the harmful equipment, the costs of realizing the protective measures shall be defrayed by the subject operating this equipment; otherwise these costs shall be defrayed by the owner (user) of the equipment established or modified later, unless planning regulations indicate another course of actions.

(6) If the source of imperilment, interference or damage is not removed in an appropriate period of time, the Central Telecommunications Authority or any body empowered by the Authority may order to stop operating the harmful equipment or prohibit the harmful activity. In order to discontinue or stop the operation of a facility important to the national economy or security, the consent of the relevant superior state body must be obtained.

(7) A physical or legal entity responsible for committing damage, imperilment or harmful interference with the equipment of the standard telecommunications network is obliged, besides damages for the harm caused to pay a fine up to 200,00 crowns. In setting the amount of the fines, primarily the extent of guilt, its gravity, the way how it was committed, the time it lasted and consequences of the illegal conduct shall be assessed. The fine may be charged within one year of the day when the breach of the obligation has been revealed, but within three years of the day, when this breach took place at the latest.

(8) Authorities empowered by the Central Telecommunications Authority are entitled to search for the sources of imperilment, damage or interference with the operation of the Standard Telecommunication Network or other telecommunications facilities (radio and television broadcasting in particular) and issue obligatory orders to eliminate the defects. To do this, members of the staff of these authorities who properly prove their identity and authority are entitled to enter real estate owned by other subjects, factories and buildings, demand reports and test equipment which can cause defects; when doing this, they are obliged to observe operational and safety regulations concerning such equipment.

(9) The adore-mentioned provisions are adequately valid for telecommunications facilities operated outside the Standard Telecommunication Network according to Article 6, par. 1, for telecommunications facilities licensed according to Art. 4 and 5, for radio and television receivers and for technological equipment necessary for creating the broadcasted signal in the radio and television centers or in the transmission system units.

Article 10

(1) The provisions on the protection of telecommunications against imperilment, interference and damage are valid for the parallelism and crossing of telecommunications facilities with transmission lines of any kind, with roads, water supply facilities and other equipment as well as for internal relationship between telecommunications facilities (networks).

(2) To reduce the adverse effects of power lines on telecommunications facilities, the planned routes of power lines must be discussed with the telecommunications authorities within the authorization process in accordance with building regulations, resulting in carrying out necessary protective measures.

(3) According to building regulations, building organizations (investors) or general designers of constructions, waterworks or facilities the realization of which involves ground work, shall, within the authorization process, accompany their application for the decision on construction location and the building permit or other similar permit with information from appropriate telecommunications, power engineering and military authorities as well as the authorities of the Ministry of Interior on the existence of underground telecommunications facilities on the site (route).

(4) The authorities qualified to issue area planning decisions, building permits or any other similar authorization within the building process shall set conditions for the protection of telecommunication networks, particularly lines located underground or in stream beds.

(5) Organizations or persons involved in work permitted in accordance with previous paragraphs shall take every measure to prevent any damage to telecommunications lines caused by building work.

(6) Organizations (bodies) managing telecommunication networks shall keep records of these networks, underground cables in particular, and provide relevant organizations and authorities with information necessary for the fulfillment of obligations described in previous paragraphs.

Article 11

(1) Telecommunications facilities can be protected using protection zones within which buildings, facilities, terrain arrangement and growth which could imperil telecommunications facilities and their smooth, safe and undisturbed operation are prohibited or restricted to the extent specified by procedural regulations. In the same way, some activities inside or in the proximity of protection zones may be restricted or prohibited.

(2) Protection zones are set by the national committee in charge of area planning on the basis of a proposal submitted by a telecommunications authority, military body or a body of the Ministry of Interior; regulations on the protection of agricultural land and forests are primarily taken into account.

Section VI

Use of Real Estate for Telecommunications

Article 12

(1) Telecommunications authorities are entitled:

(a) to build and operate overhead and underground telecommunications lines including necessary points of support and demarcation on real estate owned by other subjects;

(b) to enter on foot and by car, to the necessary extent, real estate owned by other subjects, when preparing projects, during construction, operation and repairs, when modifying or removing telecommunications facilities;

(c) to carry out the necessary adjustments of land and growth, particularly remove trees standing in the way of telecommunication lines.

(2) Before the beginning of the execution of the powers according to the preceding paragraph, the telecommunication authorities shall notify the owners or users of the real estate in question. Any argument between the owners or users of the real estate in question concerning the extent of authorization shall be submitted by the telecommunications authorities to the building authorities for resolution.

(3) Telecommunications authorities are not obliged to provide compensation for the execution of rights described in paragraph 1. If, however, the rights to the owner or user of real estate to sue the estate as usual are substantially infringed, he may apply to the building authorities for reasonable one-off compensation from the telecommunications authority. The deadline for sending the application is six months after the day the telecommunications facilities were put into operation (use).

(4) The right to use real estate for telecommunications facilities involves the real estate without taking into account further changes in the administration or ownership of the estate.

(5) After the necessary work on telecommunications facilities is completed, the telecommunications authorities shall, at their own expense, promptly bring the estate or surface road into its original, or appropriate, condition.

(6) The owner or user of real estate which has been used for telecommunications facilities shall take due care when using or carrying out any work on the real estate so that the telecommunications facilities could not be imperiled or damaged.

(7) If the owner or user of the real estate which has been used for telecommunications facilities intends to carry out work or adjustments of the real estate which might endanger the smooth and safe operation of the telecommunications facilities, he shall inform the relevant telecommunications authorities at least six weeks before the commencement of the planned work - if there is no danger of delay.

(8) Within the term specified in paragraph 7, the tele-communications organization shall take the necessary measures or notify the investor that the length of the period is not sufficient and that it will carry out the necessary provisions in a period longer than six months; if the extent of the telecommunications facilities adjustment does not require advance planning, this period shall not exceed six months.

(9) If the intended work on the real estate involves changes of telecommunications facilities which must be planned in advance, the investor shall notify about them the telecommunications authorities in the periods specified by methodical planning regulations.

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In extraordinarily urgent cases, the investor will negotiate with the telecommunications authorities a course of actions ensuring that the necessary work will be done in time.

(10) Instead of the intended change of the real estate, the telecommunications authorities may offer the owner or user of the real estate to carry out a modification of another kind which will achieve the intended objective without the necessity of cost-intensive changes of telecommunications facilities. The telecommunications authorities shall undertake to cover possible high costs associated with the realization of their proposal.

Article 13

(1) Before the beginning of the construction of telecommunications facilities, the owners or users of the real estate shall, to the extent specified by and at the expense of the telecommunications authorities, make the necessary provisions on their land, mainly to harvest agricultural cultures and lop off or cut down and remove trees which could hamper the construction or imperil telecommunications facilities.

(2) If this period elapses to no effect, the telecommunications authorities is entitled to make provisions according to the previous paragraph at their own expense and at the risk of the owner or user of the land.

Article 14

(1) During the operation of telecommunications facilities the trees and branches are removed by the telecommunications authorities at their own expense and to the extent necessary for the smooth and safe operation of the telecommunications facilities, unless otherwise specified by an agreement with the owner or user of the land.

(2) Cutting down trees which is necessary for ensuring the smooth operation of telecommunications facilities shall be carried out by the owners or users in terms specified by the telecommunications authorities which will cover the actual costs. If this period elapses to no effect, the provisions of Art. 13, par. 2 apply similarly.

Article 15

(1) When executing the powers according to Art. 12-14, the telecommunications authorities and persons appointed by them shall pay utmost care to the real estate, its equipment and accessories as well as the rights of their owners and users.

(2) When designing, building and operating telecommunications facilities, it is necessary to pay attention to eliminating to the maximum possible degree the harmful effects on human health and the environment, to protecting natural resources, vegetation necessary for hygienic protection and cultural or historical monuments.

(3) When executing the powers and carrying out activities described in the previous paragraphs, the provisions of regulations on the protection of the agricultural land and forrest stock, water supply management and mineral resource utilization remain in effect.

Article 16

(1) In case of damage caused to the real estate or its equipment and accessories during the construction, operation, repairs, changes or removal of telecommunications facilities, the owner or user of the real estate is entitled to recompensation.

(2) Unless an agreement on the damages is arrived at, the claim for damages may be enforced under the generally valid regulations within six months of the day when the harm was done, otherwise the claim shall be forfeited.

Article 17

(1) A building permit according to the Building Order Act is not required for the construction of overhead and underground lines of the Standard Telecommunication Network including points of support and demarcation.

(2) When building telecommunications lines according to paragraph 1, the telecommunications authorities (investor) shall submit to the building office for approval a plan specifying the location of lines. This plan need not be submitted in cases specified by procedural regulations, especially if the construction is not in conflict with public interest or legitimate interest of the owners or users of the real estate.

(3) Constructions of telecommunication lines shall be discussed with the owners and users of real estate involved in advance; the owners (users) may be notified either directly or by a notice at the local national committee or through the committee.

(4) Objections to the use of real estate shall be submitted by the owners (users) to the investor before the deadline of 15 days after the notification; the investor shall submit the objections to the building office for resolution. The objections have a suspensory effect, unless suspension is denied for urgent reasons by the building office.

(5) If technical standards or other general technical regulations are observed and the antenna does not cross surface communications or lines, it is not necessary to obtain a building permit or the approval of the owner (user) of the estate for the erection of outdoor radio and television receiver antennas in case the antenna is located on the same building in which the radio or television receiver is situated. The owner (user) of the real estate shall be notified about the intended erection of the antenna in time. Outdoor individual receiver antennas cannot be erected on objects where a collective antenna suitable for the required band has already been erected. Within the state supervision over constructions, the building

office may order transfer or modification of antennas which imperil the building condition of the real estate or safety of its neighborhood or disturb its appearance.

Article 18

Powers and obligations bestowed upon telecommunications authorities according to this Section VI are also granted to *physical and legal entities* which are entitled to establish and operate telecommunications facilities according to Article 4 and Article 6, par 1.

Section VII

Provisions for effective utilization of telecommunications

Article 19

(1) The Federal Ministry of Communications will set uniform rules for the telecommunication operation and for technical fitness of telecommunication equipment, and will supervise directly or through bodies authorized by the ministry these rules in order to be observed by all the operators throughout the whole of the state's territory.

(2) The Federal Ministry of Communications and the bodies entrusted by the ministry shall execute the state inspection of telecommunications and the state professional technical supervision in the area of telecommunications, while at the same they shall supervise whether this Act's provisions and those regulations issued to implement it are being observed, and whether conditions assigned to telecommunication organizations, physical and legal entities, who were granted permission to establish and operate telecommunication equipment and provide telecommunication services are being observed.

(3) The provisions of previous paragraphs do not apply to the telecommunications facilities of the Ministry of Interior and the Ministry of Defense, to railway and air traffic safety equipment and fail-safe power engineering equipment.

(4) The Central Telecommunications Authority controls the utilization of available frequencies by the facilities managed by all branches and of the national economy and departments. It particularly

(a) after discussions with the Ministry of Defense and the Ministry of Interior, allocates frequencies or meter bands; this is also done for telecommunications facilities the establishment and operation of which does not require any permission (Article 6, par. 1 and par. 4, subpar. a),

(b) carries out state supervision over the adherence to the allocated frequencies of meter bands.

(5) The Central Telecommunications Authority is in charge of coordinating discussions on international telecommunications issues and implementing international agreements and treaties.

(6) Unless the communication organization meets the conditions it is obliged to fulfill in the establishment and operation of the standard telecommunication network and in providing telecommunication service, or should a physical or legal entity which has been granted permission to provide telecommunication operations breach the set conditions, it can be fined up to ten times the amount charged for failing to provide the services or to comply with due quality standards or up to ten times the amount charged for an operation provided at variance with the set conditional pursuant procedural regulations.

(7) Should the set conditions fail to be met repeatedly, or breached within 12 months of the day of a previous decision to assess a fine pursuant to Paragraph 6, this fine may be increased up to five times its original amount.

(8) The proceedings concerning the imposing of the fine cannot be started if one year has elapsed since the time of non-fulfillment or breach of the conditions.

(9) The respective body of the state telecommunication authority shall decide on the imposing of the fine pursuant to Paragraphs 6 and 7.

**This section seems out of place:*
(10) The title above the Section IX reads:

"The bodies of the state authority and the proceeding organized before them."

Section VIII

Telecommunications Secrecy

Article 20

(1) Organizations in charge of operating the Standard Telecommunication Network and their staff including other people charged with tasks within the operation of the Network shall not disclose the content of received and mediated messages, names of correspondence, phone numbers of conversing parties, and any data concerning messages being carried or mediated to third parties.

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(2) Information about carried or mediated messages can only be disclosed to the sender and the addressee or their legitimate representatives (barristers). Carried or mediated messages and information about them may only be disclosed to courts and the courts are only allowed to see the content of operational documents in cases specified by law.

(3) The provision of previous paragraphs are also valid to an adequate extent for other subjects operating telecommunications facilities and their staff, including users of the Standard Telecommunication Network who, even by a chance, using telecommunications facilities learn facts which should be kept secret according to the previous paragraphs.

Section IX

Proceedings

Article 21

(1) In deciding on the rights and duties of the physical or legal entities pursuant to this Act, regulations on administrative proceedings should be observed.

(2) Bodies of state telecommunication authority which perform administrative proceedings in the cases pursuant to this Act include:

(a) regional administrative telecommunication authorities,

(b) the Federal Administrative Bureau of Telecommunications,

(c) the Federal Ministry of Telecommunications.

(3) The regional telecommunication administrative authorities decide in affairs pursuant to this Act which are not under additional regulations or according to special provisions entrusted to the jurisdiction of the Federal Administrative Bureau of Telecommunications, or to the Federal Ministry of Communications. The regional telecommunication administrative authorities shall discuss the offenses in the area of telecommunications.

(4) The Federal Administrative Bureau of Telecommunications shall decide on the following affairs:

(a) granting of licenses for the establishment and operation of specified parts of the standard telecommunication network,

(b) authorization of the fitness of telecommunication equipment,

(c) granting of licenses for the establishment and operation of telecommunication equipment outside the standard telecommunication network, should their operation extend beyond the state border,

(d) granting of licenses for providing telecommunication services outside the standard telecommunication network extending beyond the state border,

(e) assigning of frequencies or frequency bands and execution of state supervision over their observance,

(f) granting of permissions to establish and operate transmitting radio installations of movable or immovable services, if these are services extending beyond the state border and transmitting radio installations of foreign missions,

(g) assessment of fines pursuant to this Act and settlement of offenses in those affairs it is entrusted to decide on,

(h) reviewing the decisions taken by the regional telecommunication administrative authorities. The Federal Administrative Bureau of Telecommunications administers the regional telecommunication administrative authorities. In justified cases it decides about affairs which otherwise fall under the jurisdiction of the regional telecommunication administrative authorities.

(5) The Federal Ministry of Communications:

(a) administers the Federal Administrative Bureau of Telecommunications

(b) reviews the decisions made by the Federal Administrative Bureau of Telecommunications

(c) in justified cases decides on those affairs which otherwise fall under the jurisdiction of the Federal Administrative Bureau of Telecommunications:

Article 21(a)

(1) The regional telecommunication administrative authorities and the Federal Administrative Bureau of Telecommunications shall be budgetary organizations.

(2) The regional telecommunication administrative authorities shall be controlled by, and responsibility for their activities assumed by a director, appointed and recalled from the post by the director of the Federal Administrative Bureau of Telecommunications after discussing it with respective central republican bodies.

(3) The Federal Administrative Bureau of Telecommunications shall be administered and the responsibility for its activities assumed by a director, who is appointed and recalled by the Minister of Communications of the Czech and Slovak Federative Republic; the Bureau shall be based in Bratislava.

Article 21(b)

The local authority and territorial range of the regional administrative telecommunications authorities and their seat will be set by the Federal Ministry of Communications through a generally binding legal provision, after discussing it with the respective central bodies of the republics.

Article 21(c)

(1) The revenues and expenditures of the regional telecommunication authorities are the revenues and expenditures of the republican state budgets, on the territories of which these authorities operate.

(2) The revenues and expenditures of the Federal Administrative Bureau of Telecommunications are the revenues and expenditures of the state budget of the Czech and Slovak Federative Republic.

Article 21(d)

(1) Employees of the bodies of the state telecommunication authority are entitled to carry out all operations necessary to perform their function and to supervise the fulfillment of conditions under which the licenses and permissions have been granted. In particular, they are entitled to enter operational rooms, equipment and sites where telecommunication equipment is located and demand the submission of respective documents, information needed and demand explication.

(2) Employees of state telecommunication authority bodies are obliged to keep as state, economic and official secrets the facts which they learned while performing their activities. This obligation persists even after their employment ends.

(3) Employees of the bodies of state telecommunications authority are prohibited to practice for payment consulting or other similar professional activity for telecommunications organizations, and for physical or legal entities which provide telecommunication operations on the basis of permission issued pursuant to this Act, or which are in the process of asking for permission pursuant to this Act.

Section X

Common and final provisions

Article 22

(1) The Federal Ministry of Communications will issue for the implementation of this Act procedural regulations in accordance with the respective central bodies.

(2) All the licenses and permissions granted pursuant to this Act, can be limited or cancelled by a body which issued them or its superior authority if the set conditions fail to be fulfilled or should the state security require this.

Section II.

Where the Act no. 110/1964 concerning telecommunications refers to the Central Communication Administration, the Federal Ministry of Communications shall be understood.

Section III.

This Act comes into force on .....

Article 23

Use of Communication Roads and real Estate for Telegraphs Act no. 33/1922, Government Decree no. 21/1923 implementing the Use of Communication Roads and Real Estate for Telegraphs Act, Telecommunications Act No. 72/1950 and Government Decree No. 73/1950 on Authorizing Telecommunications Facilities are repealed.

Article 24

Concessions to establish and operate telecommunications facilities issued according to Act No. 72/1950 are considered licenses or notification for registration according to this Act.

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Article 25

This Act becomes effective on the day of July 1, 1984.

ACT

dated _____,

which alters and amends the Act no. 110/1964 on telecommunications.

The Federal Assembly of the Czech and Slovak Federative Republic has enacted the following law:

ANNEX II

Reasons for Amendment

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REASONS OF AMENDMENT

In general:

In CSFR the law concerning telecommunications No. 110/1964 is in force which provides the telecommunications organizations with a monopoly to provide all telecommunications services.

If the law enables, under certain exceptional circumstances, other legal entities to establish and operate telecommunications equipment, then it is only to satisfy their own requirements. The law explicitly excludes their commercial activities in this field.

The current legal practice is consistent with the standard practice of other European countries as it was founded on binding regulations of the International Telecommunications Union (ITV) which were in force at the time when this amendment was accepted. A similar amendment was in force e.g. in the Netherlands until 1988, in West Germany until 1989, in France by the end of the year 1990, in Switzerland and Austria it still is in force. The change of the legal amendment in Austria is expected to take place approximately in the mid 1990's and in Switzerland the bill is currently being discussed.

During the 1980's trends towards the liberalization of the telecommunications market have begun in the EEC countries. Following detailed analyses, offered by the EEC operative bodies, a document called 'The Green Paper on Telecommunications', stating principles of the telecommunications market liberalization, was produced and accepted by the EEC committee in 1987.

On the basis of this document, the EEC accepted certain directives which are obligatory for the member countries and which state detailed rules concerning the liberalization of the telecommunications market. Other directives concerning telecommunications are only being prepared.

The trends towards the liberalization have become prominent even in other countries than the member countries of the EEC. This becomes prominent especially in proceedings concerning the trade in services within the limits of GATT.

The reason for amending law No. 110/1964 is to create similar legal conditions in the field of telecommunications to those created in developed countries, namely in the EEC countries and thus make it possible for other legal entities than telecommunications organizations, private entrepreneurs included, to provide commercial activities. Within the scope of the proposed amendment, the consistent separation of the administrative and commercial actives is being proposed so that independent administrative telecommunications offices would be established, completely separated from the organizations which provide and operate telecommunications equipment and provide telecommunications services.

Legal practice in other countries of Central and Eastern Europe (e.g. Poland and Hungary) is being liberalized in a similar way,

The Bill also respects the Constitution and Convention of the ITV which were accepted at a conference of government representatives in Nice, June 1989.

With regard to these documents, CSFR as a member of the ITU is obliged to keep to the following obligations, namely:

- telecommunications services can be provided on the territory of the member state only by those suppliers who were licensed to do so by the member;

- the member state's duty is to make sure that the suppliers provide to the public a wide range of telecommunications services, that these services are in compliance with international standards, that they are provided on a necessary quality level and are available to customers;

- the member state's duty is to make sure that different suppliers' networks are compatible both on the domestic and international level;

- the member state is obliged to make sure that the suppliers keep to the regulations of the International Agreement on Telecommunications and the International Telecommunications Regulations.

The responsibility for keeping to rights and obligations of the member of the ITU will continue to be taken on, on behalf of the state, by the Federal Ministry of Posts and Telecommunications.

The amendment bill specifies only the exclusive rights, in agreement with the practice in other countries where market liberalization has already taken place, only to the infrastructure (transmission) network, provision of telephone services to the public and to radio and television broadcasts of state programs, while there will be a possibility, according to the proposed amendment, to grant exceptions even from these exclusive rights.

The bill enables the installment and service of the terminal (customer's) equipment; especially here a wide range of activities of private entrepreneurs is expected. These activities will be provided by those legal entities which comply with the given conditions (namely expert knowledge and skills, necessary equipment and material). The bill also enables undertaking concerning all telecommunications activities except for the telephone services, which is similar to the practice in the EEC countries. In compliance with the Constitution and Convention of the ITU these activities can be provided only by those suppliers to whom the state as the ITU's member gave the right to provide and operate telecommunication equipment and provide telecommunication services.

The above mentioned trends towards liberalization and the domestic social and economic development in the CSFR lead to a demand for their being including very quickly into our legal system. A partial amendment of the law No. 110/1964 is therefore proposed,

with regard only to the pertinent regulations. This was the way the problem was being solved in a number of other states (e.g. Germany and Switzerland). The regulations not affected by the amendment are fully in compliance with the Constitution and Convention of the ITU; similar regulations are included in the legal practice of developed countries, namely the EEC countries.

Another reason for a partial amendment is the fact that the European process of demonopolization and liberalization in the field of telecommunications is not finished yet. In the EEC other directives are being prepared which it will be necessary to include into the Telecommunications Act and within the scope of the European Organization of Posts and Telecommunications - CEPT, whose member the Czechoslovak Telecommunications have been since September 1990, the recommendations are being prepared concerning the standard state regulation in the field of telecommunications. The directives underway within the scope of the EEC are to be ratified in 1992 and 1993 and for the same terms the recommendations of CEPT are being prepared. After these materials are accepted a new Telecommunications Act is expected to be prepared. The preparation of the new act (instead of a partial amendment) would necessarily lead to the situation when, in 1993, the new law would have to be amended. In the Netherlands, for example, the new law concerning telecommunications was accepted in 1988 (in force from January 1989) and in 1991 it was necessary to amend it with regards to directives released by the EEC).

The realization of the proposed amendment is connected with demands concerning funding from the state budget of the federation and each of the republics, in connection with the establishment of independent administrative bodies. It is expected that the costs covering their activities will be about 130 m Kcs annually. These costs are still being provided for by the state telecommunications enterprises which are entrusted, in compliance with the current legislation, with the right to decide administrative affairs to which the Telecommunications Act applies.

On the other hand, though, the state budget income (both of the federation and the republics) will grow annually by approximately 240 m Kcs as a result of the fact that fees and other payments for administrative activities charged so far by state enterprises in the field of telecommunications will become an income of the state budget of the federation and republics. At the same time, according to the proposed amendment, the administrative work will be simplified by limiting the scope of providing various agreements, operating the evidence activities, etc.

The activities of these administrative bodies will be provided by approximately 500 laborers. It is expected that it will be provided mostly by those employees who have been employed to do these activities by the state telecommunications enterprises. This number is being compared to approximately 1500 employees in Germany and approximately 700 employees in the Netherlands who provide these activities.

Concerning specific regulations:

Article 1

The regulation of this Article specifies the right of the state to establish and operate telecommunications equipment and to provide telecommunications services. Similar regulations exist in the legislation of developed countries. When creating law No. 110/1964 it was not necessary to stress specifically the rights of the state because at that time the only existing ownership concerning telecommunications was the so called "state socialist ownership" and the state made decisions concerning everything.

What is newly defined is the concept of the telecommunication equipment in compliance with the new definition accepted by the ITU. In addition, the definitions of the telecommunications network are being implemented, together with the definitions of the terminal point of the network, telecommunications services, telephone services, and telecommunications performance. These definitions are necessary with regards to other proposed regulations and are fully in compliance with the definitions stated in the directives of the EEC.

As far as the definition of the terminal point of the network is concerned, its most simple case, i.e. the case of a telephone station terminated in the telephone set, will be the customer's socket. In a procedural regulation it will be necessary to state its exact dimensions and to define the electrical parameters of this point (especially the level of the useful and interfering signal and impedance). In other cases it will be much more difficult to specify the terminal point - especially concerning the branch exchanges of various types, secretarial equipment of various types, etc.

Article 2

What is newly defined is the Standard Telecommunications Network. As contrary to the demonstrative list in the current version of the law, Standard Telecommunication Network is being defined in an exact and enumerative way, all terminal customers' equipment (telephone sets, teleprinters, secretarial equipment, branch exchanges, etc.), which may be owned by the customer or by other organizations that the telecommunications organization, is being excluded. These equipments may continue to be owned by a telecommunications organization, but will be in this case only one of the competitors. Exchanges and other equipment used for providing the telecommunications services (with the exception of the equipment necessary for providing the telephone service) can be established and operated also by other legal entities than the telecommunications organizations and will compete with them.

The concept of the telecommunications organizations is also being newly defined. The proposed definition does not specify the legal form of a telecommunications organization, it can be either a state enterprise or a joint-stock company or some other form of a legal entity.

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The proposal does not exclude the possibility that the state can give the right to establish and operate the Standard Telecommunication Network in a special territory to more telecommunications organizations so that there will be a competition among them.

The telecommunications equipment which is not a part of the Standard Telecommunication Network (i.e. the equipment owned by other legal entities than the telecommunications organizations) can be, as contrary to the current legislation, included into Standard Telecommunication Network only after an agreement between the donor and the recipient telecommunications organization.

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Article 4

Following the abolishment of the telecommunications monopoly in the field of terminal equipment (amendment of art. 2) it is necessary to set down, in compliance with the practice in the countries with the developed telecommunications and with the regulations of the International Agreement on Telecommunications, the possibility to connect to Standard Telecommunication Network only such equipment which ensures the necessary quality of the provided service and at the same time does not imperil people, property or equipment of the Standard Telecommunication Network or does not cause harmful interference of the Standard Telecommunication Network functions, namely the reception of the radio and TV programs. This requirement can be met only by permitting to connect only approved (homologized) equipment to the Standard Telecommunications Network.

The establishment (construction), replacement, renewal, adjustments and maintenance of the terminal equipment can be provided, because of the expert knowledge and skills required, only by qualified employees who have at their disposal necessary technical equipment (e.g. measuring instruments), and the material. That is why the license for this activity will only by given to those who will prove that they comply with the above mentioned conditions.

Other legal entities will also be able to provide telecommunications services (with the exception of the telephone ones), if they have a license. This will be in compliance with the legislation and practice in developed countries.

The amendment also enables to make an exception from the state monopoly, e.g. where the telecommunications organizations are not able to ensure the required performances of necessary quality, quantity and time limits. What is specifically meant by the, is a permission to construct transmission ways both for the own need of the legal entity and for the providing permitted telecommunications performances. In case of the telephone service it is mostly expected to give permissions to provide the mobile radiotelephone service.

Article 5

The current legislation expects the establishment and operating of radio broadcasting stations independent of Standard Telecommunication Network only in exceptional cases. This legislation, though, is unjustifiable under the current development of communication and therefore it is necessary to liberalize it. The cases when it is possible to permit the establishment and operation of radio broadcasting stations independent of Standard Telecommunication Network are being more and more common; with regards though to the limited capacity of the frequency spectrum it is necessary to prefer even under the new amendment, the application of the Standard Telecommunication Network and the cable or optical equipment. As contrary to the current legislation the amendment rules that if the set conditions are met, the permission will be given (currently the wording 'may be given' let the state administration bodies to decide whether to give the permission or not).

The above mentioned regulation also relates to a newly proposed establishment and operation of radio broadcasting equipments outside Standard Telecommunication Network with the aim to broadcast radio and TV programs. The necessary condition for giving the permission in these cases will be for the applicant to obtain the permission to broadcast programs from the pertinent bodies.

In connection with widening the international relations, in compliance with the international practice and the rapid development of the radiocommunication services, it appears as useful to enable the recognition of the validity of the permissions issued by pertinent and responsible foreign bodies in cases when it will be technically difficult to receive the required permission to establish and operate radio broadcasting stations from the pertinent Czechoslovak body in advance. This principle will be used for radiotelephones in cars, satellite equipment in trucks, civil radio stations, etc.

Other regulations of the amendment repeal the current right of the Ministry of the Interior to give permissions to establish and operate amateur radio broadcasting stations and permissions concerning the ownership of all kinds of broadcasting radio stations, and its right to entrust other bodies with the performance of these rights. These rights are attributed by the amendment to the permitting bodies of the telecommunications organizations which have administered permissions to establish and operate amateur stations since 1974 and the permissions concerning keeping at home broadcasting stations since 1966 but in both cases they were entrusted with this activity by the Interior Ministry.

Article 6

The regulations of the first two paragraphs were specified especially with regards to the CSD law and to definitions included in art. 1.

As contrary to the current legislation it is acceptable to establish and operate without a permission not only the cable telecommunication but also other telecommunications equipments (e.g. optical) providing they are inside the buildings or on not discontinued lands of the same user. Apart from that, it is now made acceptable to establish and operate telecommunications equipments without permission if the lands are separately by public communications.

The law still allows the operation of radio equipments of very low outputs used for operating models, toys, medical radio probes and similar equipments without permission. In the interest of the liberalization of the law the amendment will, as contrary to the current wording, increase the number of cases when it is possible to operate these equipments without permission on allocated frequencies. Apart from the above mentioned it will also apply to civil radiostations and other radio equipments of small output (like e.g. radiotelephones). The reason for this is the simplification of the permission agenda concerning the supervision over the frequency spectrum wherever it is possible. This change is also in compliance with the current tendency in developed European countries. With

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regards to the wide assortment of products coming to this category of radio equipments it will be necessary to rule by an procedural regulation to which equipment and under which conditions this regulation will be applied.

As far as the regulation concerning the closed circuit television is concerned, the newly proposed wording preserves fully the original meaning, while making the terminology more exact.

Accordingly to the current legislation the recipient radio equipments are the telecommunications equipments and are basically subject to a permission. In radio and TV receivers though the law rules that there is not necessary any permission concerning their use but their owners, or users continue to be obliged to register at a pertinent telecommunications organization. In compliance with the current practice which is not provided for by law the proposal is to operate all other recipient radio equipments (with th exception of radio and TV receivers) not only without a permission but also without the obligation to register their ownership. To dwell upon the obligation to have a permission would not be in this case in compliance with the liberalization tendency in the telecommunications, notwithstanding the fact that the operating recipient radio equipments cannot be practically found by technical means so that the control of keeping to such regulation would be impossible.

Article 7

Out of the current wording art. 2 is being left out because to control this regulation is practically impossible taking into account the large amount of portable receivers.

Article 8

As contrary to the current legislation the communication free of charge of so called emergency messages applies to all means of the telecommunications (so far this applied only to wire messages). This is significant especially where the telephone emergency calls are concerned.

Article 9

The original text of para 4 did not guarantee the protection against interference. The new text is concerned with the preventive protection of the radio reception which is practically the only possible way how to resist the general growth of the radio interference level with all its negative results. The liberalization of commerce enables to flood the commercial network with unanti-jammed products or products whose operation is forbidden. In Germany for example there are largely sold products whose operation in Germany is forbidden (labeled 'only for export'). These products, though, are imported into the CSFR where they have negative influences on the radio reception as well as on the Standard Telecommunication Network.

The current para 4 was based on an assumption that the high-frequency equipment can be a potential source of a damaging interference of the radio reception and they have, in a certain sense, inherent characteristics of radio transmitters. The filing required by law was supposed to make the improvement of the situation possible. The long practice, though, has showed a very small number of cases of interference and that was the reason why filing is formal and useless. Keeping to technical parameters and operation of high-frequency equipment from the point of view of interferences is effectively secured by other regulation of this law and by pertinent Czechoslovak norms.

According to the current wording of the law an overall fine is given only to organizations for damaging the Standard Telecommunication Network equipment. Because according to the current legislation it is possible for the citizens to undertake on the same basis as the organizations, it is necessary, to provide protection to the telecommunications, by increasing the number of responsible legal entities which imperil, damage and cause damaging interference to the Standard Telecommunication Network equipment by their equipments or activities.

In the current wording of the law the organizations are responsible for damaging the Standard Telecommunication Network equipment (responsibility for the result).

The proposal is to lay down directly in the law the responsibility for the fault, because to apply the responsibility for the result would be, especially where physical entities are concerned, unreasonably harsh. At the same time the upper level of the sanction is being proposed directly in the law so that its level will be decided individually in every case according to the level of the fault, seriousness, methods, time of during and results of the illegal activity. The statement concerning the level of the sanction directly in the law is compliance with art 4 and 13, law No. 23/1991, the List of the Essential Rights and Liberties.

According to art. 9 para 1 of the Act, Standard Telecommunication Network is protected against the imperilment, damage the damaging interference by other equipments or activities. Therefore it is necessary in the interest of the users of Standard Telecommunication Network to increase the possibility to give fines even for the imperilment and damaging interference of Standard Telecommunication Network, as it is in the cases of damaging the equipment of Standard Telecommunication Network.

Articles 12 and 18

These changes are results of amendments by which concepts "socialist ownership" and "socialist organization" were repealed.

Article 16

It will be possible from now on to claim the compensation of caused damages only in compliance with general rules concerning the compensation of caused damage, i.e. in a civic court. There is no reason why these claims should be decided by state administrative bodies.

Article 19

The currently amendment makes it an obligation for the Federal Ministry of Telecommunications to control the development of the telecommunications in all branches of the national economy. The proposed amendment leaves with the Federal Ministry of Telecommunications the obligation to set standard rules concerning the telecommunications operation and technical qualification of the telecommunications equipment.

To realize the control over the operation of telecommunications equipment at all operators and over the operation on the whole territory of the state stays with the bodies of the state inspection of telecommunications and the state expert technical control. Their duty is to take necessary measures which would secure that this Act's regulation are being kept.

The necessity to add the performance of the state expert technical control to this regulation is given by the Act of the state expert control over the security of work, which exempts technical equipments which according to special regulations are controlled by the telecommunications from the range of activities controlled by the bodies of the offices of the work security. The duty of the Federal Ministry of Telecommunications to provide expert technical control over the telecommunications equipment is in compliance with the Act which rules the range of activities controlled by central federal bodies of the state administration.

At the same time the regulations which are overcome under the circumstances of the beginning market economy.

The purpose of implementing sanctions for not keeping to the conditions set down to establish and adjust telecommunications equipment and to provide telecommunications services is to secure that quality services in the given range are being continuously provided. The possibility to give a fine ensures that interest of the telecommunications organizations and other legal entities to provide proper services. With regard to the fact that the levels of rates for individual services differ substantially (e.g. the elementary monthly rate for a telephone station is 50 Kcs; the monthly rate...

...of districts. Their residence will be chosen so that they are easily accessible by the participants of the proceedings. As far as the residence of the Federal Telecommunications Office is concerned, it is being proposed to place it in Bratislava. The residence of this body can be only in one of the two republic capitals because qualified workers who provide these

activities and work at the directors' offices of the state telecommunications enterprises live there.

In this situation it appears to be suitable that this residence is in Bratislava, Prague being the residence of the Federal Ministry of Communications as a central body of the state administration in the field of telecommunications. Even in other countries it is usual that the residence of a similar office is outside the capital.

In compliance with demands of both republics it is being proposed that the income and expenses of the regional offices become the income and expenses of the republic on whose territory these offices operate. This will ensure that the income will always be the income of the republic on whose territory it was created.

As far as the income of the Federal Telecommunications Administrative Office is concerned, its income and expenses will be connected to the federation budget.

With regard to the fact that the levels of rates for individual services differ substantially (e.g. the elementary monthly rate for a telephone station is 50 Kcs; the monthly rate for renting the international circuits is tens thousands Kcs), it is proper to set up not a fixed amount, but a multiple of the set up amount.

Giving a fine is a facultative, not obligatory measure. An operational regulation will be based on this fact. It is expected that after a certain transition period, before the communication organizations will have conditions necessary for doing their duties, the sanctions will not be administered in such cases or these sanctions will be given on the level referring to the situation in communication organizations and to their development, i.e. only under special circumstances e.g. when the agreed conditions are not being kept as a result of a gross neglect etc.

Section IX (Article 21-21d)

In the current reading of the Telecommunications Act it is the administrative bodies which can make decisions in a course of the administrative process concerning rights, due interests or duties of citizens and organizations. These bodies are parts of state enterprises i.e. they belong to the economic sphere.

In an expected transition towards liberalization of certain services, towards denationalization and privatization the economic and administrative activities must be separated. The proposed Amendment fully respects this demand by leaving it to the newly established administrative bodies, independent of the economic activities of legal entities which provide telecommunications services, to make decisions in the course of the administrative process.

The Act sets up the following administrative bodies; regional telecommunications administrative offices and the Federal Telecommunications Administrative Bureau. The Act specifies the terms of reference of the bodies.

The Act does not set up the seats and districts of regional telecommunications administrative bodies because a detailed specification of their regional relevance would enlarge the scope of the Act and it cannot be excluded that this relevance will have to be changed with respect to the changes in the territorial division of the state.

About 12 regional telecommunications administrative bodies is expected to be established all over the state territory, with one body pertinent to several districts.