

CHAPTER 123A
GOVERNMENT OF GRENADA AND CABLE AND WIRELESS,
GRENADA LIMITED (LOAN AGREEMENT) ACT

• Act • Subsidiary Legislation •

ACT

Act No. 3 of 1999

ARRANGEMENT OF SECTIONS

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CHAPTER 123A
GOVERNMENT OF GRENADA AND CABLE AND WIRELESS, GRENADA
LIMITED (LOAN AGREEMENT) ACT

An Act to authorise the Minister of Finance to execute a loan agreement between the Government of Grenada and Cable and Wireless, Grenada Limited.

[Act No. 3 of 1999.]

[21st May, 1999.]

1. Short title

This Act may be cited as the Government of Grenada and Cable and Wireless, Grenada Limited (Loan Agreement) Act.

2. Interpretation

In this Act “Loan Agreement” or “Agreement” means the Agreement between the Government of Grenada and Cable and Wireless, Grenada Limited and which is set out in the Schedule to this Act.

3. Authorisation to Minister of Finance

(1) Notwithstanding anything contained in the Banking Act, Chapter 26A, Parliament hereby authorises the Minister of Finance to execute the Loan Agreement in the amount of US\$3,719,961.31 or E.C. \$10,000,000.00 under the terms and conditions as set out in the said Agreement.

(2) The Minister of Finance shall do all such things as may be necessary to give effect to the Agreement.

4. Charge upon Consolidated Fund

Without prejudice to anything contained in the Agreement, the loan raised by virtue of section 3 shall be a charge upon the Consolidated Fund.

5. Legal effect of Agreement

The Loan Agreement shall have the force of law in Grenada.

Schedule

GOVERNMENT OF GRENADA AND CABLE AND WIRELESS, GRENADA LIMITED (LOAN AGREEMENT) ACT

[Section 2.]

US\$3,719,961.31 TERM LOAN FACILITY AGREEMENT

BETWEEN

THE GOVERNMENT OF GRENADA, *as Borrower*

AND

CABLE AND WIRELESS GRENADA LIMITED *as Lender*

THIS FACILITY AGREEMENT is dated the day of, 1999 and made BETWEEN:—

- (1) THE GOVERNMENT OF GRENADA, duly represented by [the Minister of Finance] (the “Borrower”) and;
- (2) CABLE AND WIRELESS GRENADA LIMITED, a company organised under the laws of Grenada and situated at The Carenage, P.O. Box 119, St. George’s Grenada (the “Lender”).

RECITALS

WHEREAS the Borrower is desirous of obtaining a loan from the Lender in the sum of US\$3,719,961.31 for financing renovations to the hospital in St. George’s Grenada, and the Lender has agreed to make available to the Borrower a loan facility of up to US\$3,719,961.31 (Three Million Seven hundred and Nineteen Thousand Nine Hundred and Sixty-One United States Dollars and thirty-one cents) (the “Facility”) to assist in the financing of the said hospital upon the terms and conditions hereinafter appearing.

1. INTERPRETATION

1.1 Terms defined

In this Agreement—

“Advance” means an extension of credit under the Facility made to the Lender by the Borrower by way of Libor Loan;

“Agreement” means this Facility Agreement and the schedules attached hereto as the same may be amended from time to time;

“Availability Period” means the period from the date of execution of this Agreement to the date falling 360 days thereafter;

“Business Day” means any day (other than a Saturday or a Sunday) on which banks in Grenada are open for a full range of business;

“Capitalised Interest” means, in respect of a Libor Loan and any unpaid interest accrued thereon, the amount of such interest which, in accordance with Clause 4.1(c), is capitalised on the last day of any Interest Period applicable to such Libor Loan;

“Condition Precedent” means that condition set out in Clause 2.4;

“Drawdown Date” means, in relation to an Advance and the Libor Loan to be made pursuant thereto, the Business Day specified in a Request as being the Business Day on which such Advance is to be made;

“Encumbrance” means any mortgage, pledge, lien, charge, assignment by way of security, hypothecation or other encumbrances or other arrangements in the nature of

security on or over assets of the Borrower;

“Event of Default”, “Default” means any event detailed in Clause 13 and a “Default” is any event which with the giving of notice, lapse of time or other confirmation would become such an event;

“Final Maturity Date” means 31st October 2004;

“Indebtedness” means, with respect to any Person, any amount payable by that Person as debtor or borrower pursuant to an agreement or instrument relating to or evidencing money borrowed, an extension of credit, a conditional sale or a transfer with recourse or with an obligation to repurchase or pursuant to a lease with substantially the same economic effect as any such agreement or instrument;

“Interest Payment Date” means with respect to any Libor Loan the last day of each Interest Period applicable thereto;

“Interest Period” means with respect to any Libor Loan—

- (i) initially, the period commencing on the Drawdown Date applicable to such Libor Loan and ending on the earlier to occur after such Drawdown Date of March 31st, June 30th, September 30th and December 31st, and
- (ii) thereafter, each period commencing on the last day of the immediately preceding Interest Period applicable to such Libor Loan and ending on the last day of the 3rd calendar month thereafter:

Provided that the foregoing provisions relating to Interest Periods are subject to the following—

- (a) if any Interest Period would otherwise end on a day that is not a Business Day such Interest Period shall end on the immediately preceding Business Day; and
- (b) any Interest Period that would otherwise extend beyond the Final Maturity Date shall end on the Final Maturity Date;

“Libor” means with respect to any Libor Loan during the relevant Interest Period applicable thereto, the annual rate of interest (based on a 360-day year) determined by the Lender on the basis of the offered rates for deposits in United States dollars for a period of three (3) months appearing on the display page designated as the LIBO Page on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO Page on that service for the purposes of displaying comparable rates) as of 11:00 a.m. (London, England, time), on the day which is two (2) London Business Days preceding the first day of such Interest Period provide that if at least two rates appear on such LIBO Page (or, when applicable replacing page as hereinbefore provided), the aforesaid annual rate of interest shall be the arithmetic mean of such rates and further provided that if fewer than two rates appear on the said LIBO Page (or, when applicable, replacement page as aforesaid) or if, for any reason, such offered rates are no longer available on the Reuters Monitor Money Rates Service, then “Libor” for the Interest Period applicable to such Libor Loan shall mean the rate of interest per annum (expressed on the basis of a 360-day year and rounded upwards, if necessary, to the nearest whole multiple of 1/16 of 1% as supplied to the Lender) at which Barclays Bank; in Grenada in accordance with its normal practice, at or about 11:00 a. m. (Grenada time) on the day which is two (2) Business Days preceding the first day of such Interest Period, would be prepared to offer to prime borrowers on the first day of such Interest;

Period and for a period equal to the number of days in such Interest Period, loans in Dollar amounts comparable to the then outstanding amount of the Loan to be outstanding during such Interest Period;

“Libor Loan” means a loan denominated in U.S. Dollars which bears interest at a rate based on Libor in accordance with Clause 4 of this Agreement provided that, if any interest accruing on such loan is at any time and from time to time capitalised in accordance with Clause 4.1(c), then, “Libor Loan” shall mean the aforesaid loan denominated in U.S. Dollars and all Capitalised Interest with respect thereto;

“Loan” means at any time and from time to time the then outstanding total aggregate amount of all Libor Loans, together with any accrued but unpaid interest;

“London Business Day” means a Business Day which is also a day on which dealings in Dollar deposits by and between leading banks in the London Interbank market may be conducted;

“Person” means any corporation, natural person, firm, joint venture, partnership (whether or not having a separate legal entity), trust, unincorporated organisation or government, or any political subdivision, department or agency of any Government;

“Request” means a request in the form of Schedule A made by the Borrower in accordance with Clause 3, for an advance under the Facility;

“Repayment Date” means each of the dates specified in Clause 6.1 (b);

“Taxes” includes all present and future income, corporation and value-added taxes and all stamp and other taxes and levies, imposts, deductions, duties, charges and withholdings whatsoever, together with interest thereon and penalties with respect thereto, if any, and charges, fees and other amounts made on or in respect thereof (and references to “taxation” shall be construed accordingly);

“US Dollars” or “US\$” means the lawful currency of the United States of America.

1.2 Construction

In this Agreement, unless the context otherwise requires—

- (a) references to Clauses and Schedules are references to, respectively, clauses of and schedules to this Agreement;
- (b) references to another agreement shall be construed as a reference to that other agreement as the same may have been from time to time, amended, varied;
- (c) the index hereto and headings herein are for convenience only and shall not affect the interpretation of this Agreement.

2. FACILITY

- 2.1 Subject to the terms of this Agreement, the Lender hereby agrees to provide the Facility to the Borrower.
- 2.2 The proceeds of the Facility are intended to be used to finance renovation to the hospital in St. George’s Grenada. The Lender shall have no obligation to enquire as to, and its rights hereunder shall in no way be affected by the use of proceeds.
- 2.3 Advances may be drawn under the Facility in four equal tranches during the Availability Period, the second, third and fourth tranches being available 90, 180 and 270 days respectively after the date of the initial Advance, provided that on or before the Drawdown Date thereof no Event of Default has occurred and the Condition Precedent shall have been met.
- 2.4 The Condition Precedent to this Agreement is the receipt by the Lender of the legal opinion of the Attorney-General of Grenada in the form set out in Schedule B hereto confirming the enforceability of the Agreement and the choice of law and submission to jurisdiction clauses.

3. UTILISATIONS OF THE FACILITY

Subject to the terms of this Agreement, Advances may be drawn under the Facility in accordance with clause 2 above by the Borrower’s delivering to the Lender, no later than 11.00 a.m. two Business Days before the Drawdown Date relating thereto, a duly completed Request specifying the Drawdown Date together with payment instructions in respect thereof.

4. INTEREST AND INTEREST PERIODS

4.1 Interest

- (a) The Borrower shall pay to the Lender, in U.S. Dollars, interest on each Libor Loan at a rate per annum equal to LIBOR plus one per cent (1%). Such interest shall accrue from day to day and shall be calculated daily on the daily outstanding balance of such Libor Loan on the basis of the actual number of days elapsed (including the first day of each Interest Period applicable to such Libor Loan but excluding the last day thereof) divided by 360 days.
- (b) Interest accrued and payable with respect to any Libor Loan shall, subject to Clause 4.1(c) hereof, be paid by the Borrower in arrears for value on each Interest Payment Date with respect to such Libor Loan.
- (c) Notwithstanding Clause 4.1(b), all interest accrued on any Libor Loan and otherwise payable pursuant to Clause 4.1(b) on any Interest Payment Date occurring prior to October 1, 2000, shall, provided that no Event of Default shall have occurred and be continuing on such Interest Payment Date, be capitalised by the

Lender adding the full amount thereof to the then outstanding amount of such Libor Loan.

4.2 Interest on Overdue Amounts

Upon a default in the payment when due of

- (i) all or any portion of any Libor Loan,
- (ii) interest due under this Agreement, and/or
- (iii) any other amount (other than all or any portion of any Libor Loan or interest) due under this Agreement,

the Borrower shall pay interest on such overdue amount or interest at a rate per annum equal to the rate of interest payable under Clause 4(a) plus 5% per annum. All interest on overdue amounts are payable on demand and all interest provided for in this Agreement shall accrue and be payable both before and after maturity.

5. TAXATION

5.1 All payments to be made by or on behalf of the Borrower to the Lender pursuant to this Agreement shall be made without set-off, counterclaim or condition whatsoever and free and clear of, and without deduction for or on account of, any present or future Taxes.

5.2 If the Borrower is required by any law or regulation to make any deduction or withholding on account of any Taxes which arise as a consequence of any payment due under this Agreement, then the Borrower shall notify the Lender promptly as soon as it becomes aware of such requirement. The Borrower shall remit promptly the amount of such Taxes to the appropriate taxation authority, and in any event prior to the date on which penalties attach thereto.

5.3 (a) All payments hereunder shall be increased by such amount as may be necessary to ensure that the Lender receives a net amount, which, after deducting or withholding such Taxes, is equal to the full amount which the Lender would have received had payment not been subject to such Taxes; and the Borrower shall indemnify and hold harmless the Lender against any liability in respect of such Taxes.

(b) Not later than 30 days after each deduction or withholding of any such Taxes, the Borrower shall forward to the Lender evidence satisfactory to the Lender that such Taxes have been remitted to the appropriate taxation authority.

6. REPAYMENT AND PREPAYMENT

6.1 (a) The Borrower shall not be entitled to repay the Loan or any part thereof otherwise than in accordance with this Clause or as specified in this Agreement.

(b) The Borrower will repay the Loan, and any and all other amounts due under this Agreement before the Final Maturity Date by the Lender withholding from the Borrower 23rd of any dividend declared and due to the Borrower from the Lender on the Borrower's 30% (thirty per cent) equity interest in the Lender commencing on 1st October 2000. If the withheld dividends are insufficient to repay the Loan and any and all other amounts due under this Agreement by the Final Maturity Date, the Borrower shall as of such date make payment in full to the Lender of the outstanding Loan balance and all such other amounts.

(c) If the Borrower sells or otherwise transfers or disposes of any of its equity interest in the Lender, or the Borrower's equity interest in the Lender otherwise decreases for any reason, the Lender shall thereafter increase the rate of withholding of any dividend declared and due to the Borrower and referred to in subclause (b) above. The rate of withholding shall be increased *pro rata* to the percentage interest sold, transferred or disposed up to 100% (one hundred per cent) withholding of any dividend declared and due to the Borrower, if the Borrower sells part or all of a 10% (ten per cent) equity interest in the Lender.

6.2 The Borrower may at any time during the Availability Period by seven Business Days prior written notice to the Lender reduce the amount of the Loan.

7. PAYMENTS

7.1 Any funds repaid under the terms of this Agreement will be applied by the Lender first to accrued interest outstanding and unpaid on the due date therefor, then against accrued and unpaid interest, then to reduce the amount of the Libor Loan and then against any other amount owed hereunder.

7.2 Whenever any payment hereunder shall become due on a day that is not a Business Day, the due date for payment shall be extended to the next Business Day. During any such extension of the due date for payment of any principal hereunder interest, shall be payable at the rate payable on the original due date. Notwithstanding the above, if the next Business Day shall be in a calendar Month different from the day on which payment was due, such payment shall be made on the last Business Day prior to the day in which payment was due.

7.3 Any certification or determination of a rate or amount made by the Lender, shall, in the absence of manifest error, be *prima facie* evidence of the matters stated therein.

7.4 All payment under this Agreement shall be made in U.S. Dollars.

8. INCREASED COSTS

(a) If, as a result of any change in or any introduction or change in the interpretation or application of any applicable law, regulation, treaty or official directive or request from any governmental or regulatory authority, (whether or not having the force of law) and/or compliance by the Lender with any such law, regulation, treaty or official directive or request, the Lender incurs any additional costs or any reduced return in the making, funding or maintaining of the Loan hereunder, then the Lender shall notify the Borrower upon its becoming aware thereof, detailing particulars of such event and of the cost thereof.

(b) Within ten Business Days of receipt of any demand from, the Lender, the Borrower shall pay to the Lender such amount as shall compensate the Lender for such additional cost, reduction, payment or foregone interest or other return and within five Business Days of receipt from the Lender of a notice under Clause 8(a) above the Borrower may by giving not less than five Business Days' notice to the Lender elect to repay the Lender (in whole or in part) for the Loan and any and all other amounts due hereunder.

9. ILLEGALITY/AVAILABILITY

9.1 If any change in or introduction of any applicable law, regulation or treaty, or any change in the interpretation or application thereof, shall make it unlawful hereunder for the Lender to make available or fund or maintain the Loan or Advances as the case may require, it shall give notice thereof to the Borrower whereupon the Borrower will repay the Loan or Advances together with all other amounts payable to the Lender hereunder within such period as may be permitted by such law, regulation or treaty or the change in the interpretation or application thereof, or, if no such period is stated therein forthwith.

9.2 The Lender agrees and undertakes to use its reasonable endeavours to transfer, novate or assign the Agreement to another lender acceptable to the Borrower in the event of the provisions of the Clause 9.1 being implemented.

9.3 notwithstanding anything to the contrary herein contained, if at any time the Lender, after consultation with the Borrower, shall have determined (which determination shall be conclusive and binding upon the Parties) that—

9.3.1 adequate and fair means do not exist for ascertaining the rate of interest with respect to a Libor Loan,

9.3.2 the making or continuing in the ordinary course of business under normal market conditions of any Libor Loan has been made impractical by the occurrence of any event which affects the LIBOR market or the national or international financial or economic conditions or exchange controls applicable to US Dollars, or

9.3.3 by reason of any change in applicable law or regulation or regulatory requirement it is impracticable for the Lender to fund or continue to fund any Libor Loan or that the cost to the Lender of making or continuing to fund any Libor Loan is not accurately reflected in the interest provisions of Clause 4(a) hereof,

the Lender shall promptly give written notice of such determination to the Borrower.

9.4 If the Borrower receives a notice from the Lender under Clause 9.3, thereafter the Lender shall not be obliged to make any further Advances hereunder. During the period of thirty (30) days from the date of such notice the Parties shall consult in good faith with a view to agreeing to an alternative basis for the making of any further Advances hereunder.

If such notice relates to any Libor Loan outstanding at the time of such notice, the Lender shall certify to the Borrower an alternative basis for continuing the Libor Loan. Such alternative basis may be retroactive to the notice date and may include an

alternative method of fixing the interest rate (which shall reflect the reasonable cost to the Lender of funding the Libor Loan).

The Borrower shall notify the Lender in writing within 10 Business Days of its receipt of the foregoing certificate whether or not it accepts the alternative basis. If the Borrower accepts, such alternative basis shall apply in accordance with its terms. If the Borrower does not accept within such 10 Business Days, then the Borrower shall forthwith repay to the Lender all amounts owed hereunder.

So long as any alternative basis is in force, the Parties shall review semi-annually whether or not the circumstances detailed in Clause 9.3 still prevail with a view to returning to the original provisions of this Agreement.

10. SECURITY

10.1 If the Borrower sells more than a 10% (ten per cent) equity interest in the Lender before the Final Maturity Date, and there are sums outstanding under the Facility, the Borrower hereby assigns, and commits to cause to be paid, to the Lender the proceeds of the said sale at the closing thereof to the extent necessary to repay the Loan or Advances in full together with any outstanding interest and expenses.

10.2 If any sums remain outstanding under the Loan (including Interest) after an assignment of the proceeds of sale in the circumstances set out in clause 10.1 above, the Borrower agrees to immediately after such sale grant a lien in favour of the Lender over the Borrower's remaining shares in the Lender until the Loan together with any interest and expenses are paid in full. Until such lien is properly vested in the Lender, the Borrower shall hold the remaining shares in the Lender in trust for the benefit of the Lender for the express purpose of repaying the Loan together with any interest and expenses.

11. REPRESENTATIONS AND WARRANTIES

11.1 The Borrower represents and warrants to the Lender, the latter thereon relying, that—

- (a) the Borrower has the power to make and carry out the terms and has taken all necessary action required to authorise the entry into, performance and delivery of this Agreement and the transactions contemplated hereby;
- (b) the entry into and performance of the obligations detailed herein constitutes a valid legal and binding obligation of the Borrower and will not conflict with any laws, regulations or agreement or document to which it is a party or which is binding upon it or any of its assets;
- (c) no event has occurred which constitutes a Default;
- (d) it is not necessary for the legality validity or enforceability or admission in evidence of this Agreement that it be filed, recorded or enrolled with any court or authority in Grenada or that any stamp, registration or similar tax be paid in relation to this Agreement;
- (e) the payment obligations under this Agreement are the direct, unconditional general obligations of the Borrower ranking in all respects at least *pari-passu* with all its other unsecured and unsubordinated indebtedness;
- (f) it is subject to civil and commercial law with respect to all its obligations under this Agreement and the performance of its obligations and the exercise of its rights in this Agreement constitute private and commercial acts and neither it nor any of its property or assets enjoys any right of immunity from service of process, jurisdiction, suit, judgement or execution.

The representations and warranties set out in Clause 11 shall survive the execution of this Agreement and making of the Advances, as the case may require, and shall remain extant so long as any amounts are outstanding hereunder and shall be deemed to be repeated on the date of delivery of each Request and on each Interest Payment Date with reference to the facts and circumstances then subsisting, as if made at each such time.

12. UNDERTAKINGS

12.1 The Borrower shall promptly give notice to the Lender of each Default or Event of Default and each other event that has or might have a materially adverse effect on its ability to perform its obligations under this Agreement or the Notes.

12.2 The Borrower shall not create or permit to be created any lien or other encumbrance on any of its equity interest in the Lender to secure any liability or Indebtedness.

13. DEFAULT

13.1 Each of the events set out below is an Event of Default—

- (a) the Borrower fails to make payment of any principal or interest or other sum payable hereunder on the due date thereof;
- (b) the Borrower fails to comply with any provision of this Agreement, such non-compliance does not otherwise constitute an Event of Default under any of sub-clauses (a), (c) or (d) of this Clause 13.1 and (if capable of remedy) remains unremedied 7 (seven) days after the Lender notifies the Borrower of such non-compliance;
- (c) any representation, warranty or statement made or repeated in, or in connection with this Agreement or any certificate statement or opinion delivered by or on behalf of the Borrower hereunder or in connection herewith is incorrect in any material respect when made or deemed to be repeated; and/or
- (d) it shall become unlawful or impossible for the Borrower to perform or observe or to procure the performance or observance of any obligation or undertaking contained in this Agreement.

13.2 If any Event of Default shall occur and be continuing the Lender may by notice declare that the obligations of the Lender hereunder to make further Advances or otherwise extend any further credit to the Borrower are cancelled forthwith whereupon the same shall be so cancelled forthwith declare all Loans and all other indebtedness and liabilities of the Borrower to the Lender then outstanding under or pursuant to this Agreement to be immediately due and payable whereupon the same and all other amounts if any owing or payable by the Borrower under or pursuant to this Agreement shall without further notice or demand of any kind become immediately due and payable to the Lender.

14. SET OFF

14.1 The Borrower hereby authorises the Lender to withhold any amount due by the Lender to the Borrower for dividends declared and due to the Borrower, taxes licence fees and any other sums owing under law or contract by the Lender to the Borrower in or towards the satisfaction of any sum due to the Lender under this Agreement but unpaid when due. This right of set-off shall be in addition to any rights to which the Lender may be entitled by operation of law, contract or otherwise.

14.2 The Borrower shall promptly indemnify the Lender against any expense, liability or cost which it shall certify as sustained or incurred as a result of any judgement or order rendered in connection with this Agreement.

15. ACCOUNTS AS EVIDENCE

Accounts maintained by the Lender in connection herewith shall constitute *prima facie* evidence of sums owing to the Lender hereunder.

16. EXPENSES

The Borrower shall reimburse the Lender promptly on demand for the proper charges and expenses, including but not limited to, value added tax or any similar tax thereon and including the reasonable fees and expenses of legal advisers incurred in connection with the enforcement of, or the preservation of, any rights under any of this Agreement and any other documents referred to herein.

17. STAMP DUTIES

The Borrower shall pay or indemnify the Lender against any and all stamp, registration and similar taxes which may be payable in connection with the entry into or performance or enforcement of any of the Agreement.

18. WAIVERS, REMEDIES CUMULATIVE

18.1 No failure to exercise and no delay in exercising on the part of the Lender, any right, power or privilege under this Agreement or any other documents ancillary thereto shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No waiver by the Lender shall be effective unless it is in writing.

18.2 The rights and remedies of the Lender herein provided are cumulative and not exclusive of any rights or remedies provided by law.

19 NOTICES

19.1 Address

(a) Except as otherwise stated in this Agreement, all notices or other communications under this Agreement to any party hereto shall be made by letter sent by first class post, courier or facsimile and shall be deemed to be duly given or made when delivered (in the case of a letter), and when received in a complete and legible form (in the case of facsimile).

(b) The Borrower's address for notices is—

[]

[]

Telephone No: []

Facsimile No: []

For the attention of:

(c) The Lender's address for notices is—

The Carenage

P.O. Box 119

St. George's

Grenada

Telephone No: (473) 440-1000

Facsimile No: (473) 440-4134

For the attention of: General Manager

19.2 A notice or other communication received other than on a Business Day or after business hours in the place of receipt shall be deemed to be served on the next following Business Day in such place.

20. ASSIGNMENTS, TRANSFERS AND SUBSTITUTIONS

20.1 This Agreement shall be binding upon and inure to the benefit of the Borrower, the Lender and their respective successors and permitted assigns.

20.2 The Borrower may not assign or transfer all or any part of its rights and/or obligations under this Agreement without the prior written consent of the Lender.

20.3 The Lender may, with the consent of the Borrower, such consent not be unreasonably withheld, at any time cause all or any part of its rights, benefits and obligations under this Agreement to be assigned.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

22. SEVERABILITY

If any provision of this Agreement is or becomes at any time invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of its remaining provisions shall not in any way be affected or impaired thereby.

23. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and construed in accordance with, English Law. The Borrower hereby irrevocably submits to the jurisdiction of the High Court of Justice in England and waives any objection on the grounds of inconvenient forum.

Nothing in this Clause shall limit the right of the Lender to take proceedings against the Borrower in any other jurisdiction.

The Borrower agrees that it will not claim immunity from any legal proceedings (including but not limited to attachment prior to and in execution of judgement) and to the full extent permissible under the laws of Grenada waives any such rights to claim immunity which it or its property or assets have now or may hereafter acquire.

24. JUDGEMENT CURRENCY

If for the purpose of obtaining judgement in any court in any jurisdiction with respect to this Agreement, it becomes necessary to convert into the currency of such jurisdiction (herein

called the "Judgement Currency") any amount due hereunder in any currency other than the Judgement Currency, then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which the judgement is given. For this purpose "rate of exchange" means the noon spot rate at which the Lender, in accordance with its normal practices, is able on the relevant date to sell the currency of the amount due hereunder against the Judgement Currency. If there is a change in the rate of exchange prevailing between the Business Day before the day on which judgement is given and the date of payment of the amount due, the Borrower will, on the date of payment, pay such additional amounts, if any, as may be necessary to ensure that the amount paid on such date is the amount in the Judgement Currency which, when converted at the rate of exchange prevailing on the date of payment, is the amount then due under this Agreement in U.S. Dollars. Any additional amount due under this Clause 24 will be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under or in respect of this Agreement.

IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed on the date first written above.

For and on behalf of the Government of Grenada

.....

Hon. Prime Minister.

For and on behalf of CABLE AND WIRELESS GRENADA LIMITED

.....

*David Wright
General manager*

SCHEDULE A

Request

[LETTERHEAD OF BORROWER]

TO: Cable and Wireless Grenada Limited
The Carenage
P.O. Box 119
St. George's
Grenada

[Date]

Attention: General Manager

Dear Sirs

REQUEST

We refer to the Agreement ("the Agreement") entered into between yourselves and ourselves and dated [] 1998. Terms used herein shall have the same meaning as ascribed thereto in the Agreement unless otherwise indicated. References to Clauses are to clauses of the Agreement.

We request drawing of an Advance as follows—

- (A) The Drawdown Date is [].
- (B) The amount of the Advance is ECD [].
- (C) The payment instructions are [].

We confirm that the Representations and Warranties made by us in Clause 11 of the Agreement are true and accurate on the date hereof as if made on such date and that no Default or Event of Default has occurred and is continuing or would result from the proposed borrowing.

[Authorised Signatory]

for and on behalf of

the Government of Grenada

SCHEDULE B

Form of Legal Opinion

CABLE AND WIRELESS GRENADA LIMITED

The Carenage
P.O. Box 119
St. George's
Grenada

Re: The Government of Grenada

Facility Agreement dated, 1998

for US\$3,719,961.31.

Dear Sirs:

We refer to the Facility Agreement (the "Agreement") dated 1, 1998, and made between The Government of Grenada (the "Borrower") and Cable and Wireless Grenada Limited (the "Lender"), whereby the Lender has agreed to make available to the Borrower a loan facility of up to a maximum aggregate amount of US\$3,719,961.31.

In this connection, we have examined the following—

- (i) a certified copy of [?Order in Council No. 1?] passed by the Borrower on 1, 1998, authorising the execution of the Agreement, the borrowing of money by the Borrower thereunder, the performance by the Borrower of its obligations arising therefrom [?and identifying the person or persons having the authority to sign and deliver from time to time, Requests (as such terms is defined in the Agreement) for and on behalf of the Borrower pursuant to the Agreement?],
- (ii) a signed copy of the agreement,
- (iii) the legislative authority under which the Agreement has been executed and giving to the Borrower the authority to borrow money thereunder and to perform its obligations arising therefrom, and
- (iv) such other documents and legislation as we have seen fit to examine for the purpose of this opinion;

and we have made such other enquiries as we have considered appropriate for the purpose of giving this opinion.

Based on the foregoing, we are of the opinion that—

- (a) the Borrower has the power and capacity to enter into the Agreement and to perform its obligations thereunder;
- (b) all necessary actions have been taken by or on behalf of the Borrower and all necessary authorisations and approvals have been duly obtained for—
 - (i) the authorisation, execution and delivery by the Borrower of the Agreement, and
 - (ii) the borrowing of money thereunder by the Borrower for the amounts and in the manner contemplated thereby;
- (c) the Agreement has been duly authorised, executed and delivered by the
[Editorial Note: Wording as per *Gazette*.]
- (d) the Agreement and the covenants therein contained constitute valid and legally binding, direct, unconditional and general obligations of the Borrower enforceable in accordance with the terms of the Agreement and such obligations are ranking in all respects at least *pari passu* with all other unsecured and unsubordinated indebtedness of the Borrower;
- (e) all interest payments to be made by the Borrower under the Agreement may be made free and clear of and without deduction for or on account of any Taxes (as such terms is defined in the Agreement);
- (f) all payments obligation of the Borrower will be a charge on and payable out of all revenue and money, from whatever source, of the Borrower;
- (g) neither the execution and delivery of the Agreement by the Borrower nor the consummation of the transactions contemplated thereby or compliance with the terms, conditions and

provisions thereof by the Borrower will conflict with or violate, result in a breach of, or constitute a default under applicable laws, including without limitation the [Companies Act – verify name] as it may pertain to assistance granted by a company to a shareholder, or the [Order in Council] referred to in (i) above;

- (h) the Borrower enjoys no right of immunity under applicable laws on the ground of sovereignty or otherwise from suit in respect of the Borrower's obligations under the Agreement;
- (i) neither the laws of Grenada nor the laws of England require the consent of any public official or authority to the commencement or prosecution of any action, suit or proceeding against the Borrower arising out of or relating to its obligations under the Agreement and no immunity from jurisdiction based on the status of the in any such action, suit or proceeding;
- (j) the Borrower's submission to the non-exclusive jurisdiction of the courts of or in England is valid;
- (k) the laws of Grenada recognise as enforceable a final and enforceable judgement of a foreign court, including, without limitation, the courts of England, in respect of the Borrower's obligations under the Agreement;
- (l) the choice of the laws of England to govern the Agreement will be upheld as a valid choice of law and shall be applied by the courts of competent jurisdiction in Grenada or England;
- (m) the form and content of the Agreement is sufficient to assign and effectively assign to the Lender the proceeds of the sale of shares intended to be so assigned under the Agreement so as to give the right to the Lender to apply such proceeds, as and when they would otherwise become due and payable to the Borrower, in reduction of the Borrower's obligations under the agreement; all rights conferred to the Lender pursuant to such assignment can be set up by the Lender against any and all third parties and no filing, recording or registration in any office of public record maintained under the laws of England or the laws Grenada is required in order to perfect or otherwise protect and preserve the said rights of the Lender arising from such assignment; and
- (n) the form and content of the Agreement is sufficient to grant to the Lender the lien over shares intended to be created under the Agreement so as to give the right to the Lender to have a valid and complete security interest in such shares; all rights conferred to the Lender pursuant to such lien can be set up by the Lender against any and all third parties and no filling, recording or registration in any office of public record maintained under the laws of England or the laws of Grenada is required in order to perfect or otherwise protect and preserve the said rights of the Lender arising from such lien.

In giving the opinions hereinbefore set forth, we do not purport to be experts in, and are not opining on, the laws of any jurisdiction other than the laws of Grenada and the laws of England.

Yours truly,

[ATTORNEY-GENERAL, GRENADA]

**CHAPTER 123A
GOVERNMENT OF GRENADA AND CABLE AND WIRELESS, GRENADA
LIMITED (LOAN AGREEMENT) ACT**

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
