

**Response to
Consultation on New Licence Templates and Revised Fee
Schedule in ECTEL States
Consultation Document
N0.01/2012**

Initial Comments

**Response from
Columbus Communications (Grenada) Limited**

INTRODUCTION

CCGL welcomes the opportunity to provide our views on the proposed scope of new telecommunications licences under consideration and the accompanying draft licences. We commend ECTEL and the NTRC for taking the initiative to review existing market conditions and taking steps to update the legal and regulatory framework to keep pace with market developments.

BACKGROUND TO THE DEVELOPMENT OF NEW LICENCE TEMPLATES

Technology changes, emergence of new services, market convergence, the need to maintain a level playing field for operators and the need to protect consumers are among the key drivers given for reviewing the existing licensing regime. We support the stated goals to;

1. enable sound regulation of a wide variety of services and
2. promote the development new services aimed at continued market development.

The licensing regime under consideration is consistent with the trend in developed markets, particularly the move to a more general authorization framework of class licenses and with individual licenses reserved for cases where there is a need to have specific licensing conditions, rights and obligations for individual licensees. Network providers are usually the most likely candidates. We therefore view this developing framework as a step in the right direction.

We are also pleased to see that the proposed regime is focused on information and communication technology (ICT) services as opposed to the technology used to deliver the services. We are aware that this approach reflects the direction alluded to in earlier consultation with industry participants on the proposed Electronic Communications Bill. Both processes are inter-related, as the licensing regime should enable the intentions of the bill. We are therefore seeking clarification on the expected timeframe to finalize the bill and what approach will be used to ensure that the results of both processes (i.e. the bill and licensing regime) are in sync.

INDIVIDUAL LICENCE - SUBSCRIBER TELEVISION NETWORK SERVICES

CCGL notes the inclusion of a Subscriber Television Network Services License. However the consultation does not include a sample of the draft format. We are seeking clarification as to why no template is included. CCGL currently provides cable services on the basis of two individual licences,

1. Telecommunications Facilities License for the Establishment and Operation of Telecommunications Cable Network and the Provision of Telecommunications Cable Services in Grenada.
2. License for the Establishment and Operation of a Subscriber Cable TV Broadcasting Facilities and Services.

Given that the proposed regime only caters for Subscriber Television Network Services License, it is unclear how our existing licences will fit into the regime. CCGL therefore requests that the NTRC clarifies how our existing licences will be addressed or rationalized in the proposed regime.

CCGL recalls that during a consultation meeting on the Draft Electronic Communications Bill held in Grenada in February 2011, there was a question as to whether the provision of subscription broadcasting services would be included in the definition of electronic communications services, and catered for in the new bill. At that point in time there was not a firm position on this issue. We believe that this is a key issue that needs to be clear in the legislation in order to inform the licensing regime. CCGL is therefore requesting that the NTRC clarifies this issue.

It is our considered view that given the convergence of the telecommunications and broadcasting sectors, to ensure consistency in regulatory rules and that all service providers are playing by the same rules, NTRC should have some level of oversight over the regulation of content. This is particularly important in areas such as copyright infringements. Recent and continuing efforts in the United States to pass the Stop Online Piracy Act (SOPA) should be instructive. In the converged market space, a converged regulatory model is consistent with international best practices in the electronic communications sector. This is evident with the converged regulators such as the Federal Communications Commission (FCC), Canadian Radio-Television Telecommunications Commission (CRTC) and Ofcom. The regulatory model used in Trinidad and Tobago reflects this converged approach.

CLASS LICENCE TYPE A - MOBILE VIRTUAL NETWORK OPERATIONS (MVNO) LICENCE

The concept or business model of a MVNO varies widely. At one end are MVNOs that are simply resellers of wholesale mobile network minutes. These operators have no investment in network capacity and their activities are focused on marketing customer services and billing. There are MVNOs whose business model includes responsibility for operational verification and database functionalities related to the carriage of a mobile call. CCGL believes some type of MVNO business model could have the impact of deepening competition in the mobile market. Regulatory views on MVNO vary as well. The views on licensing and other regulatory issues will depend on the business model that would best serve the needs of ECTEL member states. It is therefore our considered view that the interest of the market would be better served by engaging stakeholders on all the issues around the introduction around MVNOs before proceeding to developing a class license for such activities.

CLASS LICENCE TYPE A RESALE OF LEASED CIRCUITS (“RLC”) SERVICES LICENCE

CCGL questions the need for this activity to be licensed. The intended purchasers are business operators, (including service providers) who require the facility for own use or as an input into another product for sale to end users. Standard industry practice is to provide leased circuits as a wholesale product to other licensed service providers who are using the product as an input into to provide services to end users. Wholesale (carrier) products to other licensees are usually priced based on cost. In addition to licensees, other business operators lease the facility for use in their normal business operations. In this channel, standard industry practice is for retail prices to apply. An efficient and effective licensing regime is necessary for the proper functioning and development of the industry. However it is not necessary to license every activity. In cases such as this other regulatory tools such wholesale pricing regime will be more effective.

The scope of the license states that “The License enables the Licensee to subscribe to the services from an individual licensee licensed by [Member State] and to either resell the services; or to share the leased circuits with other companies for the conveyance

of its own telecommunication traffic." CCGL questions the notion of obtaining a license to use leased circuit facilities for one's own business purposes.

CLASS LICENCE TYPE A INTERNET EXCHANGE POINT ("IXP") SERVICES LICENCE

An IXP is a physical location where internet service providers exchange traffic. It allows local internet service providers to efficiently exchange local internet traffic at a common point within the country rather than exchanging local traffic overseas. The predominant model of development is a collaborative approach by industry participants. This is generally implemented through bilateral or multilateral arrangements among existing players. We therefore do not see the need for this activity to be licensed. Governments and regulatory agencies do have a role to play in encouraging and facilitating the development of IXPs, but it is our considered view that this should not include the imposition of licensing requirements, mandating peering arrangements and other IXP operational issues. This view is supported by the International Telecommunications Union (ITU). The ITU cites restrictive licencing regimes as one of the challenges facing the development of regional IXP, especially in developing countries. CCGL would direct the NTRC to the ITU's position on best practices in the development of IXPs.¹

Further, there are regional and international examples of successful IXPs that have developed through collaboration of industry participants that ECTEL and the NTRC can look to as working models. Grenada Internet Exchange (GREX) is one such example. Others include,

- Caribbean Internet Exchange (CAR-IX)
- Amsterdam Internet Exchange (AMS-IX)

CCGL is unclear as to how this licensing regime would work, for example would each participant in the exchange need an IXP license? Of note is the fact that ISPs would already have a license to offer internet services. We cannot see why the decision of a licensee to participate in an IXP would imply additional rights and obligations that are not part of the ISP license. For example the ISPs obligations with respect to end customers would not change by virtue of participating in an IXP. We view further licensing as unnecessary and in fact creating onerous conditions which would militate against the development of IXPs in ECTEL member countries.

¹ <http://www.ictregulationtoolkit.org/en/Section.2194.html>

CLASS LICENCE TYPE A VALUE ADDED SERVICES (“VAS”) LICENCE

The document describes the VAS license as “intended to enable the licensee to establish, install and operate a Value Added Network (VAN) to provide a wide range of telecommunications services, over and above services constituting basic telecommunications services such as voice and data services, over the existing network of another licensee.” The VAS license could therefore cover a wide range of services. The general classification of these services is described as where “suppliers add value to the customers’ information by enhancing its form or content or by providing for its storage and retrieval” Given the trend in the general direction of service based class licenses CCGL questions whether this general classification of service based licences is useful. This is because the category seems open ended and could be used to be a catch all for services not specifically licensed.

For instance Net2Vu under the brand Rush TV currently provides internet based subscription TV services without a license. Direct TV also operates in the market without a license. CCGL is seeking clarification as to where such services would fall in the proposed regime. CCGL is specifically asking whether the consideration is for such services to be treated as value added services. We highlight this here because in July of 2011 CCGL sought clarification on the basis on which Net2Vu provided subscription TV services in Grenada. In its response the NTRC indicated that as part of their market review exercise IPTV services was one area of weakness identified in the current licensing regime that would be addressed under the review of the telecommunications. However based on the existing proposal for the new licensing regime there is no allowance for IPTV licenses so it is unclear where Net2Vu and other video service providers would fall.

In consultations on the Electronic Communications Bill in early 2011, ECTEL and the NTRC indicated that one of the goals of the new bill is to have a consistent legal and regulatory framework for the converged sectors. During the discussions there were questions as to whether content type services such as the provisioning of subscription TV services would come under the new bill, and by extension the licensing regime. This remains an open question, and goes to the issue of status of the revised bill, as mentioned elsewhere in this response. In order to address the gaps identified in the existing regime, CCGL would recommend that ECTEL and the NTRC consider introducing a Video over IP License under the class license to cover these services. This is consistent with the IP Telephony license under consideration for voice services.

CLASS LICENCE TYPE A INTERNET PROTOCOL (“IP”) TELEPHONY LICENCE

The Internet Protocol (IP) Telephony License is being considered as a replacement for the Voice over Internet Protocol (VOIP) License that ECTEL had proposed back in 2009. The scope of the license being proposed is to enable the licensee to provide IP telephony services using leased circuits with connections to a public switched telecommunications network at both ends. The licensee would be required to purchase network facilities including telephone numbers from a licensed provider of such facilities.

The notion of the IP Telephony License (previously VOIP License, came as a result of the industry grappling to address situations where local based non facilities based and other unlicensed providers were taking advantage technology convergence to unfairly compete with licensed network based operators. Additionally customers have access to out of jurisdiction players such as Skype and Vonage that use the internet to provide voice and other services, without contribution to the development of the access network, the industry and by extension the economy of ECTEL states.

CCGL believes that in addition to network based providers, any provider who offers voice, data and video services to the public should be licensed. As such we support the idea of the licensing for IP telephony services. However the regime should ensure a level playing field for service providers operating in the same market. Licensing fees and other regulatory fees such as contribution to the universal service levy should be levied on all service providers to ensure a level playing field for all. This is in fact one of the main objectives of the revised bill currently under revision.

CLASSIFICATION AND FEE STRUCTURE

The fact that the Individual Licences are network based, while the Class Licenses _ Type A are service based introduces a level of consistency. This is also in line with our understanding of the direction of the telecommunications bill under review. With respect to the fee structure, CCGL firmly believes that all service providers who operate in the market should pay licensing and other regulatory fees such as universal service fees. It is also unclear as to whether holders of class licenses would contribute to the Universal Service Fund. CCGL is seeking clarification on this point. With more providers paying fees, consideration should be given to reducing the base annual fee of 3% of annual revenues to maybe 2.5% or lower.

We reiterate here that we do not see the need to introduce license for Internet Exchange Points and Resale of Leased Circuits, but see the need to licensing to cover Video over IP services and other video related services. Refer to comments in section on Individual Licenses above which addresses Subscription Television Broadcasting Services.

AMENDMENTS TO SCHEDULES OF TELECOMMUNICATIONS (FEES)

Refer to comments in the section on “Classification and Fee Structure” above.

APPENDIX V1 - REVISED FEES SCHEDULE

CCGL refers the NTRC to comments in “Classification and Fee Structure” above.

CONCLUDING REMARKS

The Electronic Communications Bill that will eventually replace the existing laws will inform the licensing regime. As we understand it, the bill is still under review, and will be subject to further rounds of consultation. In our view the path to, and the timeframe for completion is unclear. Since the bill is not finalized, the process seems to be somewhat disjointed, as the bill should inform the licensing regime. CCGL would welcome clarifications around this point. Because of the lack of clarity around this key point, our response is more focused on the broad framework rather than on the specifics of the attached template. We therefore reserve the right to comment further on the subjects of this consultation document and related annexes.

Comments and or questions on our contribution may be referred as follows:

Gail Purcell

Tel. (473) 232-3569

Fax (473)232-6652

Email gpurcell@columbusgrenada.com

Opal Lawton

Tel. (868) 224-2317

Fax (868) 224-4444

Email olawton@columbustrinidad.com