

RESPONSE
TO
CONSULTATION on
GUIDELINES FOR PRICING OF ACCESS TO FACILITIES
IN THE ECTEL MEMBER STATES

REDACTED VERSION

LIME

Landline | Internet | Mobile | Entertainment

By E-mail to: consultation@ectel.int

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I. INTRODUCTION

1. CWI Caribbean Limited, on behalf of its affiliates Cable & Wireless Dominica Limited, Cable & Wireless (St. Lucia) Limited, Cable & Wireless Grenada Limited, Cable & Wireless St. Kitts and Nevis Limited and Cable & Wireless St. Vincent and the Grenadines Limited, all trading as LIME (“**LIME**”), is pleased to provide the following response to the Commission’s consultation in the matter of ‘*Guidelines for Pricing Access to Facilities in the ECTEL Member States*’ (the “**Consultation Document**”) published 7 November 2011.

2. LIME expressly states that failure to address any issue raised in this consultative document does not necessarily signify its agreement in whole or in part with the Commission’s position. LIME reserves the right to comment on any issue raised in the Consultation Document at a later date.

II. CURRENT STATUS ON SHARING OF MOBILE INFRASTRUCTURE

3. ECTEL has stated in the Consultation Document that ‘*The main focus of this paper is therefore to present ECTEL’s draft recommendations on how to resolve issues related to the pricing of access to mobile infrastructure...and in particular mobile towers, sites and associated structures...where telecommunication providers fail to reach agreement on the pricing of shared infrastructure*’.

4. In this regard, LIME makes reference to the existing tower sharing agreements. This agreement was originally between Cingular and Digicel and the rates were commercially negotiated. Both LIME and Digicel subsequently adopted this tower sharing agreement, including its rates. The industry has heretofore been self regulated, and the tower sharing agreement has never been submitted to ECTEL, but the arrangements have been operating

without dispute for a number of years. As is generally the case with agreements of this nature, sensitive sites are not available for sharing.

5. The net result has been to limit the number of new cellular masts in the ECTEL member states, and has clearly been in the public interest. This agreement has been used in Jamaica, the Turks and Caicos Islands, the Cayman Islands, and the British Virgin Islands, and in all these markets, the terms, have been found agreeable by the negotiating carriers.

**DRAFT TELECOMMUNICATIONS (ACCESS TO FACILITIES)
REGULATIONS AND RELATIONSHIP TO CURRENT CONSULTATION**

6. ECTEL makes significant reference to the draft *Telecommunications (Access to Facilities) Regulations* (the “**Access to Facilities Regulations**”). This current consultation should properly be contextualized as a subset of the former. Therefore, until ECTEL has made a determination / decision on the Access to Facilities Regulations, they are without effect and ECTEL can infer no authority from them.

7. LIME responded to the consultation on the Access to Facilities Regulation in 2009. LIME’s view remains that those proposed Regulations were unnecessary and disproportionate and further that the definition of facilities was unreasonably wide for the purposes of facilities sharing. LIME also raised the issue that ECTEL did not identify any of the facilities as being essential. ECTEL has yet to respond to LIME’s concerns.

8. Without prejudice to the foregoing, LIME will treat with this consultation as a standalone consultation on the sharing of passive mobile facilities and the pricing of the

same. Specifically, the passive mobile facilities addressed by ECTEL are mobile towers, mobile sites and associated infrastructure.

PRICING OF ACCESS TO FACILITIES

9. LIME already shares mobile towers, mobile sites and associated structures. The price of sharing per tower, per month, per carrier is # #, payable annually. The price of # # is the same price that was in the original Cingular / Digicel tower share agreement and this is the same agreement and substantially the same price that LIME has rolled out through the Caribbean and is also the same price that LIME pays to Digicel to share Digicel's towers.

10. ECTEL states that its approach to pricing access '*...is guided by the pricing principles outlined in the European Commission's Recommendation (2010/572/EU) which recommends the use of cost oriented rates. This is in line with the Acts in force in the ECTEL member states.*'

11. Since the Commission concludes that the referenced EU Recommendation is consistent with the Acts in the ECTEL member states, then there is no reason to rely on the EU Recommendation as providing the basis for determining rates. The Acts in the ECTEL member states have already established the legal framework for determining the cost of sharing mobile infrastructure.

12. Specifically, with regards to the facilities addressed in this consultation, that is towers, sites and related facilities, section 50 (3) of the Acts states:

Access to sites, towers or eligible underground facilities pursuant to this section shall, mutatis mutandis, be on such terms as set out in sections 46 to 48 above, and otherwise on such terms and conditions as are agreed between providers or, failing agreement as determined by the Commission.

13. Section 48¹ of the Acts states:

48 (1) *The cost of establishing any interconnection to the telecommunications network of another telecommunications provider shall be borne by the telecommunications provider requesting the interconnection.*

(2) *The cost referred to in subsection (1) of this section shall be based on **cost oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility**, and sufficiently unbundled such that the supplier of the interconnections service does not have to pay for network components that are not required for the interconnection service to be provided. (emphasis added).*

14. With regards to ‘cost oriented prices’, Recommendation 2010/572/EU (the Recommendation) simply states that ‘*cost oriented prices imply a reasonable return on capital*’. More fundamentally, however, the scope of the recommendation:

‘...primarily covers remedies to be imposed upon operators designated with Significant Market power (SMP) on the basis of a market analysis procedure carried out under Article 16 of Directive 2002/21/EC. However, where it is justified on the grounds that duplication of infrastructure is economically inefficient or physically impracticable, member states may also impose obligation of reciprocal sharing of facilities...’

¹ Section 47 in the *Telecommunications Act* of Grenada and section 46 in the *Telecommunications Act* of St Vincent and the Grenadines.

15. The EU Recommendation, however, focuses exclusively on wired, Next Generation Access Networks (NGA) infrastructure sharing by a provider determined to have Significant Market Power (SMP) and pricing by such a provider. Note that where providers are not categorized as having SMP, that reciprocal sharing is recommended. LIME is not aware that any mobile provider has been determined by ECTEL as being dominant in the provision of mobile infrastructure or services.

16. Accordingly, LIME does not believe that ECTEL can extract a costing approach from the EU Recommendation outside of the context within which the approach is grounded, which is the pricing of shared, NGA wired infrastructure by a provider with SMP.

17. This is not to say that ECTEL ought not to establish a framework for the determination of prices for sharing passive mobile infrastructure where the parties are unable to agree. However, this framework must comply with section 48(2) of the Act, that is the framework must be:

- Cost oriented and reasonable
- Arrived at in a transparent manner having regard to economic feasibility
- Sufficiently unbundled

18. Compliance with section 48(2) is agreeable to ECTEL's cost orientation approach while at the same time avoiding controversy on the legitimacy of the application of the EU recommendation on the pricing of shared, wired NGA by a provider determined to have SMP.

19. LIME believes that any costing approach which satisfies section 48 (2) is acceptable.

V. Closing Remarks

20. LIME thanks the Commission for the opportunity to participate in the consultation. Kindly send any communication in relation to this consultation to:

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