

RESPONSE TO:

Recommendation of the Eastern Caribbean Telecommunications Authority ("ECTEL") To the National Telecommunications Regulatory Commission to consult on Adoption in ECTEL States of Regulations Addressing Guidelines for Market Analysis, Access to Network Infrastructure and Wholesale Services, Infrastructure Sharing, Submarine Cable Access, Retail Pricing and Consumer Protection Regulation (Specific Rules for Consumer Protection in the Electronic Communications Sector)

Consultation Document

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By

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Thank you for the opportunity to comment. I have marked my various interventions by using a larger pitch.

To comment fully on this document would require more time than I had available. In future consultations would it be possible to present the material to be commented on in smaller sections? The private sector can designate an employee to carry out a review during uninterrupted working hours.

Consumers/civil society are usually working voluntarily in time that has to be shared among several activities.

11.1 Who are you?

Please identify yourself. Are you a regulator, a Stakeholder, interested party or other operator?

I am both a stakeholder as a customer/consumer of various electronic communications services, and an interested party in terms of a broader interest in policy in this field

11.2 Questions relating to all the draft Regulations

1. Having reviewed the draft Regulations, what are your overall views concerning set of regulatory obligations that may be imposed on operators under certain conditions (for example, but not limited to, after determination that an operator has SMP)? What do you see as the main advantages and benefits? What are your key concerns or misgivings?

Generally speaking I approve of the regulations. However does the Commission have sufficient manpower, expertise and funding to exercise the functions they are given in Section 5? And who will actually carry out the assessment – ECTEL or the Commission?

The issue of costs in Section 20 is a matter for concern since this is information that Licensees seem very unwilling to part with. And costs may be predicated on the cost of external transit where neither ECTEL nor the Commission has any authority. Section 21 seems rather contradictory – the obligation to publish all information immediately followed by the confidentiality restriction.

2. Having reviewed the draft Regulations, do you feel that the regulations properly and completely reflect the intentions of the Act (including both the current Act and the anticipated EC Bill)?

No comment as I don't have time to return in an adequate manner to the Act and the Bill.

3. Having reviewed the draft Regulations, do you consider any of the clauses redundant or conflicting? If yes, please provide examples and possible resolutions or suggestions.

4. Are there any other key provisions, which in your opinion should be included in the Regulations? If yes, please provide examples and possible provisions

5. What alternative suggestions if any do you have for addressing issues of competitive growth, fairness, and consumer protection?

Teaching consumers that they have a right to say no, and factoring that right into the legislation. One means of regulating the tobacco industry was found in controlling sponsorship, particularly for sporting activities. Might this thinking have a place in the consideration of advertising?

11.3 Questions relating to the Market Analysis Guidelines

1. What is your view of the three cumulative criteria to be used to identify markets likely to be subject to *ex ante* regulation (section 1.3(5))? These criteria are based on the EU framework for regulation of the electronic communications sector.

2. The Guidelines also describe factors that the ECTEL and NTRCs should consider in defining relevant markets, including substitutability of supply and demand (section

- 2.2). What is your view on this method, and do you have any suggestions as to how the description in the Guidelines can be strengthened?
3. What is your view of the criteria listed for assessment of SMP? (section 3.2)
4. The Market Analysis Guidelines recognize that a Licensee may enjoy significant market power either individually or jointly with others. What is your opinion regarding the approach stated in the Market Analysis Regulations to assess the potential existence of collective dominance by more than one operator and the impact this may have on the market? (section 3.4)
5. What are your views concerning the provisions authorizing the NTRCs or the ECTEL to collect all information they consider necessary to assess market power in a given market? (section 5)

I have mentioned this in the general section. How can ECTEL/NTRCs insist on compliance by the Licensees? And what about the external costs?

6. What alternative suggestions if any do you have?

11.4 Questions relating to Wholesale Access Regulations

1. The Wholesale Access Regulations identify the following Wholesale Network Infrastructure and Services, the provision of which may be imposed on a SMP Licensee. under ex ante regulation:

- a) Wholesale Access provided at a fixed location;
- b) Passive Backhaul Infrastructure;
- c) Special Wholesale Service
- d) Dedicated Connections and Capacity (wholesale leased lines)

What is your view of the type of infrastructure and services subject to potential access obligations noted in the draft regulation? In your view, are there any other components of infrastructure and/or services that should also be subject to wholesale access obligations where SMP is found?

2. The main goal of this regulation is to provide that Licensees can obtain effective access to the infrastructure and services specified, where such obligations are imposed on a SMP Licensee. In your view, will the regulation provide sufficient clear and concrete obligations to make effective such access?

For example:

- a) With regard to Wholesale Access provided at a fixed location
 - i. What is your view of the relevance of imposing VULA instead of or in addition to traditional LLU, taking into account the evolution of networks toward NGA architecture?
 - ii. The draft regulations provide that, the NTRCs on ECTEL Recommendation may mandate access to ancillary infrastructure (for example, dark fibre or

ducts) in order to promote effective competition. Do you think this provision is useful? Insufficient? Do you have any suggestions to clarify these obligations?

b) The Wholesale Access Regulations provide that NTRCs may require an SMP Licensee to make available Special Wholesale Services (sometimes more commonly referred to as “White Label” services), provided at a discounted price from the retail prices at which the SMP Licensee offers such retail service. What is your view of this provision? Should the Regulations add further detail or specificity, for example as to how the price discount should be calculated?

c) With regard to access to Passive Infrastructure:

i. The draft regulations provide the option to impose access to Underground Facilities such as ducts and dark fiber, or any other passive infrastructure belonging to an SMP operator and needed by other Licensees to provide broadband services. What is your view on these obligations? Which elements of such passive infrastructure should be included in these mandates, and how should they be specified?

I agree with the draft regulations. For more detail see under Infrastructure Sharing below

ii. What is your view of the proposed measures to ensure compliance and prevent undue refusal of access requests by SMP Licensees? Are the required justifications and technical details that SMP Licensees must provide in support of such refusal appropriate and sufficient?

iii. More generally, do you have any suggestions to improve the effectiveness of the proposed access obligations to passive backhaul infrastructure?

d) With regard to the provision of Dedicated Connections and Capacity (wholesale leased lines)

ECTEL considers that this type of access obligation is required to ensure competitive market development and encourage new entrants to the market, by making available affordable wholesale transmission capacity. What is your view of these obligations? Are they appropriate and necessary to support effective new competition? Are the provisions sufficiently detailed and specific to achieve the intended goal?

3. Do you have any other comments on the proposed Wholesale Access Regulations, for example, but not limited to:

a) The mandatory content of Reference Access Offer which SMP operators may be obliged to published (section 10 of the draft regulations);

b) The other obligations that may be imposed on SMP operators such as non-discrimination, accounting separation obligations, tariff control;

c) The mechanism of dispute resolution, in order to improve the effectiveness of this process.

11.5 Questions relating to the Infrastructure Sharing Regulations

1. What is your view of the necessity and the applicability of a regulation requiring sharing of electronic communications infrastructure, recognizing that these obligations apply to all Licensees, not only SMP Licensees?

It would be interesting to know the amortisation period which existing Licensees work with. It is possible to look at the issue from the perspective that after this period is over the consumers, not the Licensees, have in fact “bought” the infrastructure and can no longer be charged for its use in supplying them with a service. (This makes it important to be able to establish a separate maintenance cost to the Licensee, together with the regular running costs) Therefore, after the amortisation period, the infrastructure becomes a type of common good which could be managed by ECTEL/NTRCs in the interest of providing an appropriately competitive market, with maintenance and running costs the obligation of all Licensees, new and existing.

2. What infrastructure should be subject to such an obligation?

Start with ALL and then identify possible exceptions

3. What is your view of sections 6, 7 and 8 of the Infrastructure Sharing Regulations, which provide that the Commission may require the establishment by Licensees of forward deployment plans and may require coordination of such deployment plans (including identification by the Commission of geographic areas where systematic sharing of new BTSs must be implemented by Licensees through measures including framework sharing agreements)?

4. What is your view of Section 9, which specifies features required of any new BTS, in order to make possible the sharing of a new BTS with at least one third party operator.

11.6 Questions relating to the Submarine Cable Access Regulations

1. What is your view of the necessity and the applicability of a regulation mandating access and co-location to any submarine cable landing station?

If the goal is a competitive environment this is essential.

2. What is your view of the obligation imposed on a CLS Licensee to provide operators seeking access the option to access capacity on an IRU basis **and** on a lease basis?

For a small new company IRU may initially be too onerous, so a good idea to have both.

3. Regarding the proposed CLS Reference Access Offer:

a) Do you have any comments on the time frame for submission of a draft CLS Reference Access Offer to the NTRC within sixty (60) days from the date of commencement of the Submarine Cable Access Regulations?

b) Do you have any comments on the content of the CLS Reference Access Offer, as described in Schedule 1 of the Submarine Cable Access Regulations?

4. Provision of Backhaul Circuits

a. What is your view of imposing on a CLS Licensee the obligation to provide backhaul facilities and, where another service provider has requested provision of a backhaul circuit,

the obligation to facilitate the interconnection between the operator seeking access and the said service provider at the CLS?

b. Do you have any suggestions in order to improve the effectiveness of this obligation?

5. Co-location: do you have any comments on the obligation imposed on CLS Licensees to provide co-location services as described in clause 17 to 22 of the Submarine Cable Access Regulations draft?

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6. Tariffs: The EC Bill and the Submarine Cable Access Regulations provide that the CLS Licensees shall determine charges on the basis of cost oriented principles. Under this regulation, the NTRC has the authority to impose on offers by CLS Licensees the rates which it has determined by its own cost calculations on the basis of information at its disposal or, in a transitional manner, on the basis of international benchmarks.

c) Do you have any comment on these principles, or how they should be applied by the NTRCs?

As mentioned above information about costs is difficult to come by. “determine the tariffs of the charges to be paid using international benchmarks.” Is it possible and would it be helpful to define the “international benchmarks” more specifically?

d) Do you have any suggestions on the key issues that should be addressed in the Regulations with respect to the cost accounting methods to be established by the NTRC?

11.7 Questions relating to the Retail Pricing Regulations

For mobile services or fixed to mobile does the difference in pricing between own to own and own to other calls reflect an actual cost to the Licensee or is this about protecting market share? If the latter is it covered by other provisions in these regulations – under consumer protection?

1. What is your view of the provisions relating to identification of services that may be subject to retail pricing regulation, due to lack of competition or SMP (sections 6, 7, 8)? Do these provisions adequately reflect the intent of the EC Bill? Please suggest any specific changes or improvements.

2. What is your view of the proposed establishment of Basic Affordable Service Packages (section 9)? Will this be an appropriate and effective means to ensure access to affordable service by low-income consumers? How should the prices for such basic services be determined?

3. Do the provisions on anti-competitive pricing, including Price Squeeze (sections 10 and 12) adequately identify and define the range of potentially anti-competitive pricing behaviour that may require intervention? What are your views on the extent or risk of such practices? Should some provisions or practices be strengthened, and how?

See the comment at the beginning of this section.

4. Under what circumstances should the NTRCs impose Price Cap regulation rather than direct pricing controls, as outlined in this regulation (sections 11, 16, 17)? What are the advantages and disadvantages of each approach? What guidance should this regulation provide as to their implementation?

5. What are your views on the provisions relating to prohibition on undue price discrimination, particularly the option for the ECTEL and NTRCs to prohibit or control differential pricing between on-net and off-net calls? What would be the impact of such limitations on the market?

6. What are your views on the procedures for implementing price controls (section 17)?
Will this be an appropriate and effective mechanism for addressing prices of non-
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competitive services? What are the advantages and disadvantages? What alternatives should be considered?

7. What are your views on the provisions relating to promotions and market trials? Are the time limitations on such trials sufficient? Will the provisions ensure that competitive pricing prevails? Please suggest alternative language, if any.

It is not clear at what point the prohibition, if any, would happen. The trial occurs with notification but without needing approval. Can the Commission stop the trial, or only prohibit after the trial when a new tariff is requested?

11.8 Questions relating to the Consumer Protection Regulation

See detailed comments on this regulation below.

1. Do the provisions addressing Licensee obligations with respect to provision of information to consumers (sections 4, 5, 6) adequately define these responsibilities? Are these provisions reasonable and sufficient? What further detail or specifics, if any, should be included?

2. In particular, are the requirements in section 5 for publication of tariffs for services by Licensees sufficient?

3. Do the requirements in section 12 for specific billing information provide sufficient information to customers so that they may fully understand their bill?

4. The Rules contain several key provisions regarding advertising by Licensees, and the types of information and promotional methods that may or may not be employed, to protect consumers from unfair or misleading practices (sections 14 to 21). In your view, will adoption and enforcement of these provisions adequately prevent such inappropriate marketing tactics? Are there any important “unfair commercial practices” currently used in ECTEL markets that are not addressed? Are any of the provisions too burdensome for Licensees? Please suggest any improvements or additional options.

5. In your view, do the requirements for net neutrality (section 29) appropriately balance consumer and operator needs and concerns?

6. What are your views on the process for complaints handling by the Licenses as described Part IV of the draft regulations. Are the provisions of the aforementioned Part IV likely to ensure that customers who make a complaint to a Licensee shall be treated with fairness and courtesy, and their complaint shall be dealt with objectively and efficiently by the Licensee?

f. Consumer Protection Regulations - Specific Rules on Consumer Protection in the Electronic Communications Sector

(p115) Interpretation

2. (1)

“net neutrality” means the principle that service providers are obliged to treat all data on the internet the same, not intercepting, interrupting, blocking, degrading, discriminating or charging differentially,

by user, content, site, platform, application, type of attached equipment, mode of communication or source or destination of communication;

This wording seems to me to insist that all data delivered or transmitted by a provider, whether by wired or wireless transmission, must be charged for at the same rate? This would include VOIP services.

Objectives (p5)

3d)

which shall include specific [clearly understandable/plain language] details of tariffs and costs, and the manner in which the contract may be terminated if the Licensee changes its terms;

(f) ensure the implementation by the Licensee of efficient procedures for the [making and] resolution of complaints and disputes with customers;

PART II PROVISION OF INFORMATION (p6)

5c) ii. accessing them in a physical format. –

“accessing” is not defined. Does this mean “be given a chance to read” or “be given a copy”? Terms and Conditions are frequently wordy documents in small print. What is the obligation on the Licensee to make them accessible to comprehension?

Hot Line

8. (1) A Licensee shall provide a dedicated telephone line for the purpose of allowing persons to submit complaints. (p7)

Flow provides a phone number which runs on its own broadband service. When the service breaks down the phone line also breaks down so that complaint is impossible. Does this provision address that circumstance adequately?

Cable & Wireless uses a call centre in El Salvador for complaints. This is not helpful when one is trying to complain about a local fault.

(4) Each Licensee shall establish a call centre that is fully accessible via telephone and online and free of charge pursuant to quality of service parameters.

See above. Can the call centre be stipulated to be in Saint Lucia, or in the state in question?

PART III

CUSTOMER CONTRACTS

Approval of customer contracts

9. (5) A Licensee shall not disclose personal information about a customer unless the customer consents to the disclosure.

This seemed out of place here?

Customer Contracts

10. (1) A Licensee shall-

(a) make its standard form customer contracts available and provide a copy to the customer upon request at no charge;

The customer must ask “upon request” for the contract? What if s/he is unaware of the entitlement?

12. Protection against anti-competitive customer lock-in (p9)

3 (a) tie services together in such a manner that a customer is required when purchasing one service to purchase another service that the customer does not require;

How would this work for “bundling” of television channels?

(12) Where a customer self-identifies as a person with a disability, the Licensee shall extend the trial period to at least 30 calendar days, and the permitted usage limits shall be at least double the Licensee’s general usage limits for the trial period.

Why the double or more usage limits?

(13) A Licensee shall notify a customer on a fixed-term contract at least 90 calendar days before the end of the initial commitment period whether or not the contract will be automatically extended.

Earlier it was established that there should be no automatic extension of contracts.

Billing

14. (1) A Licensee shall provide a bill to a customer, with regards to the provision of electronic communications service or products, which accurately represents and does not exceed the true extent of the amounts due for the service or products that are actually provided to the customer.

I have a problem with my bill from one of the providers. I pay all of our “utility” type bills together at the end of the month. The new bill is issued about 3rd of the month. Almost immediately I receive a text message to say that I have exceeded 75% of my credit limit. However although the bill has been issued it doesn’t fall due until the end of the month, so the text message is a nonsense – mine is a postpaid contract, and until the end of the month I don’t strictly speaking owe them anything. Does this clause have the legal force to solve that problem?

(p11) (3) A Licensee shall provide customers with bills-

(b) in paper form, or in electronic form if the customer consents;

Does this need to describe a process for obtaining consent? Two providers have decided on their own to send me electronic form bills; when asked to choose bill format by one of them I had indicated that I prefer a paper bill. The other suddenly stopped sending paper bills.

15. (1) A Licensee shall provide electronic notification to a customer who has subscribed to a plan with a pre-set included usage or value (such as an allowance for calls, SMS, or data), when the customer reaches 80% and 100% of the usage measure, monthly expenditure or other allowance permitted under that plan.

See under **14 (1)** above

Sales by phone and internet

16. (1) A Licensee may, in relation to sales conducted through the telephone or internet, impose upon customers a usage charge billed per minute commencing after the first minute of the call.

This needs rewording to make the meaning clear.

This together with (2) and (3) have a potential to infringe on network neutrality, in respect of internet usage.

(4) A Licensee may collect charges on behalf of another Licensee, for any goods and services provided by that other Licensee.

This seems to me to need more detail. Receipts? How can the customer prove that its obligations to the “other Licensee” have been met? What is the accountability of original Licensee?

PART IV PRE-PAID

Terms and conditions

17. Every Licensee shall publish on its website the terms and conditions of a pre-paid
Shouldn't “a” be “any”?

Prohibited actions

18. A Licensee that provides a pre-paid electronic communications service shall not to do any of the following-

It is possible for one subscriber to “send credit” to another subscriber. Should this be listed among the exemptions?

Don't (2) and (3) require an obligation of reporting (speeds, minutes etc) on the part of the Licensee?

Do SIM cards require any type of specified regulation?

PART V ADVERTISING AND PROMOTIONS

Unfair commercial practices

19. (1)

Thank you for including the specifics (a) to (j).

Standard Charges for text advertising

(2) In the case of post-paid data plans with an included data allowance, the Licensee shall prominently display the following standard pricing element when advertising the price or dollar value of a post-paid service the price (prior to any discounts being applied) of using one megabyte of data within (Member State), provided that if the usage is unlimited, the Licensee is not required to quote a price for the data usage that is unlimited in the text advertising.

The Licensees argue convincingly that “unlimited usage” is impossible to provide due to fluctuating potential demand. It might be better to ban the use of “unlimited” as a selling point.

Standard charges for brief online advertising

23.

Is there a means to control the Licensee's use of the service being paid by for the Customer to advertise to the Customer?

Protection of consumer data

(2) A Licensee shall ensure that all customer information submitted to it is accurate, complete and valid for use.

How? This seems a rather onerous obligation.

Privacy and confidentiality

29. A Licensee-

1) shall take all reasonable steps to ensure the confidentiality of customer communications, and shall not intercept, monitor or alter the content of a customer communication, except with the explicit consent of the customer or as permitted or required by applicable laws of [Member State];

Interception of communications required by law requires a warrant. Shouldn't this be stipulated also in these regulations?

Net neutrality

Thank you for the clear statement about this.

Toll free customer services

32. (1) Every Licensee shall implement toll-free customer care service telephone lines for all categories of services provided that at a minimum—

Among the stipulations what about location (geographic understanding for complaints), accent, speed with which a call may be answered?

Complaint management

34.

iii. that is submitted via the Licensee's website or another website endorsed by the Licensee for that purpose.

This needs a time stipulation

(b) post;

(c) telephone and providing a recorded message without the need for direct contact with a staff member of the Licensee;

These 2 don't make sense within their context.

vii. for urgent complaints, providing confirmation of the proposed resolution of the urgent aspects of the complaint and, if accepted by the consumer, implementing the urgent aspects of the resolution within 2 working days ~~Of~~ the date the complaint is received.

(g) days of the consumer's or former customer's acceptance of that resolution unless:

Something wrong here – doesn't make sense

I noticed several instances where careful proof-reading is needed to make minor corrections to the text.