

Cable and Wireless's Response to

**Electronic Communication (Dispute Resolution)
Regulations**

Consultation Document []

August 2016

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1. INTRODUCTION

1.1 Cable and Wireless welcomes the opportunity to respond to ECTEL's Consultation Document on: Electronic Communication (Dispute Resolution) Regulations.

1.2 This response is made on behalf of Cable & Wireless (St. Lucia) Limited to the National Telecommunications Regulatory Commission of St. Lucia; Columbus Communications to National Telecommunications Regulatory Commission of St. Lucia; Cable & Wireless St. Kitts and Nevis Limited to the National Telecommunications Regulatory Commission of St. Kitts and Nevis; Cable & Wireless Grenada Limited to the National Telecommunications Regulatory Commission of Grenada; Columbus Communications to the National Telecommunications Regulatory Commission of Grenada; Cable & Wireless Dominica Limited to the National Telecommunications Regulatory Commission of Dominica; Cable & Wireless St. Vincent and the Grenadines Limited to the National Regulatory Commission of St. Vincent and the Grenadines and Columbus Communications to the National Regulatory Commission of St. Vincent and the Grenadines

1.3 Cable & Wireless will be denoted as 'C&W' from this point. All references to C&W are also a reference, mutatis mutandis, to Columbus Communications.

1.3 All responses or communication related to this response should be directed to Ms. Geraldine Pitt at geraldine.pitt@lime.com and copied to Opal Neil at okneil@cw.com.

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C&W notes that this consultation comes against the background of .the anticipated finalization of the Electronic Communication Bill and the need to change the current Dispute Resolution Regulations to complement the new Bill.

1.5 C&W is encouraged by the changes proposed in this consultation process, aimed at simplifying the current dispute resolution framework and the Regulations. The proposed changes, go some way towards addressing the shortcomings of the current regime, which is complex, administratively burdensome to implement and too expensive for the markets, but they do not go far enough. The administrative framework and cost implications to effectively implement even these revised Regulations are still too burdensome and expensive in the context of the size and nature of the markets in the ECTEL states and the availability of resources to effectively implement this approach.

1.6 C&W is not aware of any reported statistics from any of the ECTEL markets that provides aggregated and reliable information on the kind of disputes that these Regulations are intended to address. We believe that this information should be available in the respective markets, as this would provide an informed basis to make regulatory decisions. ECTEL should have made some attempt to address the number of disputes, if any, which have been lodged under the regulations currently in force and also whether any of these complaints have been resolved, and by what means.

1.7 It is likely that ECTEL was not in a position to provide such information because there is little data, if any, on which it could rely. Alternatively, perhaps neither ECTEL nor the NTRCs keep data on how many disputes or complaints are filed and ultimately, resolved. In our view, this should have been the starting point for the efforts to reform the existing regulations since an understanding of the current needs of the market

would better shape and inform the dispute resolution or complaint framework and architecture which would be most appropriate for the markets involved.

- 1.8 From our extensive experience in these markets, the vast majority of disputes likely to arise are between subscribers and providers. This implies that the process for dealing with complaints from customers and resolving disputes should be as straightforward, efficient, inexpensive and administratively easy to implement by the NTRCs as possible. Of course, other kinds of disputes can and do occasionally arise. Disputes between licensees have occurred and are possible. Alternatively, disputes between members of the public who are not subscribers of the particular licensee are also possible, for example because of spectrum interference or other issues. However, even here too, the process for resolving such disputes should be simple and straightforward. It should be easy for complainants to access and should require the NTRC to issue a decision within a short period. The processes and procedures relied upon by the NTRC to review and deliberate over any information and evidence received should be quick and easy for the public to understand.
- 1.9 These considerations suggest that the current regulations are impractical for these markets and are generally unworkable, but they also suggest that the current revisions are not sufficient to achieve the level of simplicity and effectiveness required.
- 1.10 C&W believes that the revised regulations are therefore not fit for purpose, and that ECTEL should continue to review these rules until such time as a more appropriate model can be distilled for consideration and consultation.

2. PRELIMINARIES

2.1 In the Preliminaries, and subsection 3 of these Regulations, the disputes to be covered are given as,

- a. subscribers or other members of the public against a licensee;*
- b. persons using frequency authorizations;*
- c. a retail customer against a licensee or against 2 or more licensees; and*
- d. landowner against a licensee.*

- 2.2 It is not clear why ECTEL has revised the parties entitled to bring a dispute in this manner. The current provisions of the regulations are clear and cover all conceivable parties who could bring a dispute. This proposed provision introduces some duplication and uncertainty between “subscribers” in sub-section 3(a) and “retail customers” in sub-section (c). It is unclear what the practical distinction is between “subscribers” and “retail customers” and we request that ECTEL avoid making arbitrary changes to the regulations for the mere sake of it. The existing regulation which covers “subscribers or other members of the public against a telecommunications provider;” is clear and broad enough to cover the vast majority of persons seeking to bring a dispute. The existing regulation also covers persons making complaints in respect of spectrum and disputes arising between licensees.
- 2.3 It is also unclear why ECTEL has decided to introduce a new category of “landowners against a licensee.” If disputes or complaints can be brought by “members of the public” against telecoms operators as in the existing regulations, it is confusing and redundant to create a separate category for “landowners” in the revised regulations.
- 2.4 We suggest that ECTEL should review the revisions and categories of potential complainants and reconsider their approach. The existing rule in the current Dispute Settlement Regulations are broad enough to cover most if not all categories, and should not be changed without a clear policy or objective.
- 2.5 As a general comment, we note that the revised regulations would also benefit from a wholesale review by a qualified drafter to address several drafting, structural, and substantive shortcomings.

3. PART I COMPLAINTS & PART II MEDIATION ARBITRATION

3.1 As we noted earlier, the reality of small and developing markets such as in the ECTEL states, is that the disputes that are likely to be addressed via a dispute resolution mechanism, are those between customer(s) and a service provider. In this regard, we note that the Draft Bill introduces a new section – [Annex F] Consumer Protection Regulations (Specific Rules on Consumer Protection in Electronic Communication Sector.) Several sections of these proposed new Regulations deal with the management and monitoring of consumer complaints. In fact, one change that is proposed to the current Dispute Resolution Regulations is that Form 1 is relocated to the Electronic Communication Consumer Protection Regulations.

3.2 With the proposed introduction of Electronic Communication Consumer Protection Regulations, there seems to be a level of overlap between these regulations. We believe that this merits a fuller analysis in order to reduce any overlap, and further simplify the approach.

3.3 What is required to address disputes between consumers and service providers, is a simplified process, with published administrative rules, where consumers are encouraged, in the first instance, to seek resolution of complaints with their service provider. Where customers are not satisfied with outcome at this stage, the next step would be to report these complaints to the regulator. It would be wrong for the NTRC to seek to resolve a dispute before a customer has exhausted his or her complaint with the provider.

3.4 A simplified process, alongside other factors such as market competition and Quality of Service Regulations should be adequate to address most consumer complaints.

3.5 With respect to disputes between service providers, our experience has been that the vast majority will in all likelihood be pursued in the court system. Despite the multilayered and elaborate administrative framework set out in revised regulations, the Commissions are not sufficiently resourced (with sufficient human resource capacity, or technically & financially) to effectively manage many of these types of disputes. Additionally, without the involvement of the court system, it is also unclear whether the current framework will have sufficient coercive power to force participation and ensure compliance with decisions. In short, C&W believes that intervention of the NTRCs in disputes between licensees should be restricted to basic issues which can be easily resolved and which do not involve contractual or other legal arrangements which could be resolved at Court.

3.6 The objective of the dispute resolution architecture in ECTEL states should be to create as simple and as accessible a framework as possible, which is fast, informal and efficient to be used by all concerned. Where the disputes involved are complex, involve large sums or money, will have significant impacts on the public, or involve existing legal rights or contracts, complainants should be required to resort to the Courts.

4. PART III TRIBUNAL

4.1 The primary change proposed is the removal of the tribunal function from the Commission. The document states that function is now to be handled by an independent body. However the current draft is silent on the nature of this independent body, how it will be constituted and function.

4.2 We believe the removal of a tribunal function from the Commission is a mistake. The fundamental problem as indicated above is the approach is unrealistic and too complicated for the needs of the market. In the majority of cases, the most efficient and straightforward way for dealing with disputes will be for the Commission to form itself into a tribunal and issue a ruling or directive based on the evidence before it. By moving this function to a so called independent body, the revised regulations risk creating a new layer of bureaucracy which will add further complexity, time, and cost to the resolution of disputes in ECTEL states.

4.3 This is a backward step for the ECTEL states. It is creating complexity which will result in institutional paralysis for the markets concerned. ECTEL should not be seeking to create layers of bureaucracy and seek to give responsibilities to the NTRCs or new institutions which will only be difficult to administer. In other words, where a dispute is simple, doesn't involve complex technical issues, doesn't require a ruling on existing legal rights such as a contract between licensees, and does not involve large sums of money, the NTRCs should take jurisdiction and resolve it. Where on the other hand, the issues are complex, involves existing legal rights, involves large sums of money, or complex technical issues, the complainants should be encouraged to resort to the Courts. ECTEL should seriously reconsider its proposed approach.

4.4 To enable the NTRCs to resolve disputes, deal with complaints and issues directives on matters referred to it, all that is required is that a set of regulations governing the administrative procedures of the Commission when constituted as a quasi-judicial body should be promulgated. A good model for a simple and effective set of administrative procedures are the Administrative Procedures Regulations for the Public Utilities Commission based in Anguilla. ECTEL should review these rules and consider adopting and if necessary, slightly adapting them for the ECTEL markets.

5. PART IV COSTS

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5.1 Cost is a key consideration in making decisions on regulatory approaches. A key goal of any regulatory intervention is to ensure cost efficiency. Even with the changes proposed to these regulations, there is no indication that cost considerations has been a factor. What is being proposed remains too expensive for small markets.

5.2 C&W also believes that a provision should be introduced to discourage licensees from filing frivolous complaints. All applicants, other than members of the public or private individuals, seeking to have a dispute resolved, should be required to give an undertaking that they will pay the costs of whatever process is required to resolve the dispute. Parties should not be able to impose costs on the NTRCs for resolving disputes unless they are genuinely interested in a ruling. This will dissuade frivolous applications. For members of the public or ordinary subscribers, no undertakings should be required.

5.3 Complaints or parties to a dispute should also be required to pay the actual costs of the eventual winning side where they lose a dispute. This rule should not be imposed on members of the public.

6. SCHEDULES

6.1 We note that various changes have been proposed to the existing schedules. However we are of the considered view that, for reasons outlined above, a more workable, reasonable and approachable dispute resolution framework is required. The current proposals still continue to be too complex, expensive and difficult to administer, and they further set the basis for the creation of still more bureaucracy for dealing with disputes. As we noted in 4.4 above, what we believe is required is the promulgation of a simple set of administrative rules governing the operations of the NTRC when constituted into a tribunal or quasi-judicial body. This will suffice and avoid the need for the various schedules ECTEL has included in the current draft. Accordingly, C&W hopes that ECTEL will reconsider its approach, and withdraw the current draft until such time as a more workable approach to the issue of dispute resolution can be adopted. If such a course is

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pursued, C&W would be in a better position to provide more useful comments on any system ECTEL proposes to establish. .

7. CONCLUSION

C&W thanks ECTEL for the opportunity to comment on the revised regulations. We do not believe the current revisions go far enough to eliminate the inherent complexity, cost, delay and inefficiency of the current dispute resolution framework, and urge ECTEL to reconsider its approach from the ground up. We look forward to working with ECTEL in future to discuss a more workable framework, hopefully in line with the basic approach adopted in places like Anguilla, and elsewhere in the Caribbean.

END