

**RESPONSE**  
**TO**  
**CONSULTATION on**  
**NEW LICENCE TEMPLATE**  
**&**  
**REVISED FEE SCHEDULE**

**UWME**

Landline | Internet | Mobile | Entertainment

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**3 February 2012**

## 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 ‘*New Licence Templates and Revised Fee Schedule in ECTEL States*’ (the “**Consultation Document**”) published November 28, 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 at a later date.

## II. LICENCES and REVISED FEE SCHEDULES

3. In the introduction to the consultation, ECTEL cited that ‘*....several emerging services in the ECTEL states which are currently not regulated or which are insufficiently regulated under existing regulatory arrangements...*’ have made it necessary to introduce new licences and consequently to amend the Fee Regulations. ECTEL did not elaborate on what are the emerging, unregulated or insufficiently regulated services.

4. The new licences proposed by ECTEL are:

- Mobile Virtual Network Operators (MVNO) Licence
- Resale of Leased Circuit (RLC) Services Licence
- Internet Exchange Point (IXP) Services Licence

- Value Added Services (VAS) Licence

LIME's comments on the proposed draft licences and the revised fee schedules are as follows:

### **Internet Exchange Services Licence**

5. The Government of Grenada, through the Grenada NTRC had approached LIME with the request that LIME and other providers in Grenada establish an IXP in Grenada. The Ministry sourced several elements for the creation of the IXP and in 2011 the IXP was established. The establishment of the IXP was not initiated by LIME nonetheless LIME facilitated the creation of the IXP. Accordingly LIME understands that the establishment of the IXP is a creature of public policy.

6. ECTEL now proposes to introduce an IXP licence, with which *'The Licensee may establish a physical interconnection site for internet service providers (ISPs) licensed in [Member State] to exchange traffic between their networks and link to the global internet backbone that serves as a form of international transmission media. The exchange may aggregate a provider's traffic before transferring it to the internet backbone in other countries, thereby reducing the need for ISPs to establish their own direct links.'*

7. LIME presumes that this licence is applicable only where a commercial IXP service is being provided, that is, a company would have chosen to offer an IXP service on a commercial basis. Where a non-profit company offers IXP services by fiat or in the public interest,<sup>1</sup> there should be no requirement for a licence or for payment of licence fees.

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<sup>1</sup> For example, the Grenada Internet Exchange Corp.

However as currently worded, this licence is applicable to any person or consortium that offers IXP service.

8. In any event, should LIME decide to offer a commercial IXP service, its Internet Licence would suffice for the provision of the service.

9. Without prejudice to LIME's lack of commercial interest in an IXP licence at this time, LIME request that ECTEL provides better particulars on the Regional Spectrum Plan , which ECTEL references at subsection 4(2) but in the definition of the Plan indicates that the said plan is '*...to be developed by ECTEL...*'

#### **Fair Competition and the Internet Protocol Telephony Service Licence**

10. For some time now providers of VoIP services have marketed this service in ECTEL countries without a licence and consequently without the obligations that other providers who provide IDD services observe. This is unfair competition.

11. LIME does not tire to remind ECTEL of the ill effects of unlicensed VoIP providers, like Magic Jack and Vonage et al, in the ECTEL countries. These unlicensed providers certainly provide cheap rates to consumers, only because they ride over the infrastructure of legitimately licensed providers like LIME and FLOW while bearing none of the applicable costs. These providers make no investment in the local telecommunications market or infrastructure while at the same time deprive legitimately licensed providers (and Governments) of revenues, which are needed to further develop the domestic market.

12. These VoIP providers do not pay license fees nor contribute to the Universal Service Fund (USF) or pay any taxes, whether Value Added Tax (VAT) or corporate tax. Moreover they do not provide employment in the ECTEL countries like legitimately licensed operators such as LIME with whom they compete directly.

13. ECTEL has indicated that the proposed licences would address services that are currently unregulated or insufficiently regulated. Magic Jack is one such service and is accessed by a device called Magic Jack, in the same way that handsets allow customers to access LIME's voice telephony service.

14. Wikipedia states that:

*'MagicJack is a device that plugs into a USB port on the user's computer and that has a standard [RJ-11](#) phone jack into which any standard phone can be plugged. This allows the user to make phone calls to almost any phone in the [U.S.](#) and [Canada](#). It is a computer [peripheral](#) that, in combination with [telephony](#) service from the related YMAX Corporation, provides [Internet-based telephone service \(VoIP\)](#) to the [United States](#) and [Canada](#). The firm's primary product is a [USB device](#) that holds both the [software](#) necessary to place Internet-based telephone calls via a customer-supplied [high-speed internet connection](#) and the electronics (technically known as a SLIC, or [Subscriber Line Interface Circuit](#)) which allow conventional [landline](#) telephones to be plugged directly into the device. The products are promoted through television [infomercials](#) and a website....'*

15. Regulators have argued that they cannot find an effective means of licensing VoIP providers because many of these providers offer service from outside of the jurisdiction and so lack an in-country presence. The result of this state of affairs is that licensed domestic providers of IDD have lost revenues to unlicensed VoIP providers who make no contribution to the economy and who are unregulated.

16. LIME believes that effective means of regulating VoIP providers can be found and continues to recommend that ECTEL mandate that all VoIP providers should incorporate

locally or partner with a licensed domestic provider in order to provide service in the domestic market. Failure to do so would result in a directive from ECTEL to block such traffic. This was successfully implemented in Belize. Failing the foregoing then at the absolute minimum, local licensed operators providing similar services should be given relief towards parity.

17. So far only the NTRC in Dominica has attempted to reckon with this problem and LIME is aware of public statements from the NTRC in St Vincent and the Grenadines in recognition of this anomaly and the need to level the competitive playing field for domestic providers.

18. The proposed Internet Protocol (IP) Telephony Services Licence (IP Licence) provides an opportunity to regulate VoIP providers and particularly the Magic Jack service which is actively sold in the ECTEL countries. ECTEL should not squander the opportunity presented by the IP Licence to require Magic Jack and other unlicensed VOIP services to compete under the same terms and conditions as LIME and other legitimately licensed operators. This is only fair. It's fair competition.

19. The current draft IP Licence however does not appear to address these service providers. Clause 3 of Annex A of the Licences states that:

*3. The Licensee is entitled to convey voice or data, with or without added value, using internet protocol technology **via means of a leased circuit** connected to a public switched telecommunications network at both ends. The Licensee's services to customers enable them to make and receive voice, data and/or video calls using telephone numbers assigned for such purposes.*  
(Emphasis added)

20. As constructed this licence would not capture the unlicensed VoIP providers such as Magic Jack, because it speaks to the provider requiring '...a leased circuit connected to a public

*switch telecommunications network at both ends...*’ which the Magic Jack service, for example, does not require. LIME recommends that the Licence be amended by removing the requirement for a leased circuit in Clause 3 of Appendix A.

21. Under ‘Scope of Licence’, paragraph 3.1, the draft Licence states that *‘This Licence enables the Licensee to provide IP Telephony services using telephone numbers assigned for such purposes (referred to in this Licence as an “IP telephony number”)* and to assign IP telephone numbers to the Licensee’s customers...’. LIME requests better particulars on IP telephone numbers. LIME is uncertain as to whether there will be a specific number range for IP telephony service and if these will in fact be local, geographic numbers. Typically, VoIP providers in the Caribbean assign US and Canadian geographic numbers to their customers. These numbers enable customers in the Caribbean to call as if they are present in those countries.

22. Consistent with its position in its response to the consultation in 2009, LIME maintains that ECTEL should not be licensing technologies but rather services. Technologies wax and wane but services are far more enduring, irrespective of the technology used to deliver the service. Without prejudice to its comments on the IP Licence, LIME maintains that any provider offering basic service should have the relevant individual licence to so do.

23. LIME notes that Sections 5 and 6 of the Licence empowers the Commission to require service providers to provide directory enquiry services and integrated printed directories respectively but makes no provision for providers to recover costs. At subsection 6.2 of the Licence, ECTEL acknowledges that a Licensee may incur a charge for the provision of printed directories and the same should be acknowledged for directory

enquiries. Accordingly the draft licence should be amended to provide licensees with the discretion to recover costs.

### **Value Added Service Provider Licence**

24. The Value Added Service Provider Licence will allow a provider to offer Call Back / Call Re-Origination Services, International Calling Card Services and Resale of Public Switched Telecommunication services, among other services.

25. LIME recognizes that this Licence is intended to increase competition in the market and cautions that this licence could be used to *not* provide service in the ECTEL domestic market, as is the intent, but rather to offer *only* international call termination services to overseas carriers. ECTEL must insert safeguard provisions in the Licence to prevent this from happening. One way is by ensuring that there are commitments for such a licensee to have or to roll out a domestic network providing services to customers within the ECTEL domestic market.

26. When a licensee provides only call termination services to overseas carriers there tends to be rapid erosion of the settlement rate paid to domestic facilities-based providers for the termination of incoming traffic. The settlement rate is the rate agreed between the local licensed carrier and an overseas carrier for the termination of traffic, originating overseas, in the domestic market.

27. The pressure on the settlement rate from providers offering only international call termination services causes settlement rates to approach zero (0). This may seem to be a good thing but it actually isn't. Although the settlement rates falls, there is no automatic

reduction in price to overseas consumers who are making the calls into ECTEL Markets, or any increase in calling from the overseas countries, but rather a gathering of the margin by the overseas operator. In other words, the benefit in the reduction in settlement rates goes to the overseas operator and definitely not to the local consumer in the ECTEL countries. In addition, because of the continuous pressure on and reduction in the settlement rate there is significant loss, not just for domestic, facilities-based service providers, but to the ECTEL economies of hard foreign exchange. This is a considerable public policy issue.

28. Finally, as the settlement rate approaches zero (0), providers, under this Licence, exit the market as there is no additional margin to be reaped. This familiar script was played out in Jamaica with millions in US\$ losses to that economy per month and is worthy of further examination by ECTEL.

29. It is LIME's view that ECTEL should consider that this Licence is likely to be mis-used by operators seeking only to terminate international incoming calls, and not actually provide services to consumers in the ECTEL countries. There will likely be very little benefit to the ECTEL countries but significant loss of hard currency. At least, ECTEL should incorporate safeguards in the Licence to prohibit the use of the Licence for anything other than retail services provided in the domestic market, and exclude termination of international incoming traffic.

### III. TRANSITION TO NEW CLASS LICENCES

30. ECTEL has not addressed the matter of transition to the new, proposed class licences for existing providers who are currently offering services covered by those licences. A ‘class licence’ is defined in the Telecommunications Act of the ECTEL countries as follows:

*“class licence” means a licence, as distinct from an individual licence, issued on the same terms to each applicant of a category of users in respect of the operation of a type of telecommunications network or telecommunications services specified under section 7;*

31. An individual licence is defined in the Telecommunications Act of the ECTEL countries as follows:

*“individual licence” means a licence granted to a particular person in accordance with section 31 on terms specific to that person;*

32. ECTEL needs to include a transitional clause in the relevant legislation, where it is that existing providers are providing a service which is now specified under any of the proposed licences and which formerly operated without a licence or was operating under an inadequate licence. The transitional arrangement must also provide for a timeframe for application for new licences and the period within which a service provider can operate pending award of the licence or withdrawal of the application.

33. LIME’s individual licences would allow LIME to offer all the services to be provided under the class licences proposed by ECTEL. It is therefore LIME’s reasonable

expectation that its licence terms will remain unchanged, and that LIME will continue to provide these services under its individual licences.

#### **IV. Closing Remarks**

34. 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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