



LIME's Response to the Eastern Caribbean
Telecommunications Authority's (ECTEL)
Policy Recommendation on Internet
Neutrality Discussion Paper - Published
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1. Executive Summary

- 1.1. 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 respond to ECTEL’s discussion paper on **Policy Recommendation On Internet Neutrality** and published September 2013. LIME expressly states that failure to address any issue raised in this discussion paper 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.
- 1.2. LIME is committed to playing its role to make the availability of broadband ubiquitous throughout the ECTEL region
- 1.3. LIME accepts that this discussion paper on internet neutrality is timely and appropriate. There is need to ensure that any approach going forward is specific to the needs of the region and is the outcome of fact based discussions supported by robust analysis, and not simply the adoption of a policy framework used elsewhere.
- 1.4. LIME considers that the “throttling” or “blocking” of traffic may be appropriate from time to time and the circumstances where this is appropriate should be discussed in further detail and agreed on. Further, based on the principles agreed to, ISPs should be afforded the flexibility to manage their networks (not just network traffic) without have to seek the permission of ECTEL.
- 1.5. LIME disagrees with ECTEL’s view that its license, the Telecommunication Act and the Constitution prohibit the use of DPI technology on its network. LIME invites ECTEL to share in more detail the legal arguments that would have informed such a conclusion.
- 1.6. LIME’s responses below have been structured around ECTEL’s five (5) summary positions represented on pages 15 and 16 of its discussion paper.
- 1.7. All responses to this document should be sent to Charles Douglas, Regional Regulatory Advisor, LIME, at charles.douglas@time4lime.com.

2. Discussion of ECTEL's 1st Position

- 2.1.** LIME remains committed to the growth and development of the ICT sector in the ECTEL region, as well as the wider Caribbean. This commitment is evident by its continued investments and service improvements within each country. Furthermore, based on global trends, LIME's future success is inextricably linked to its delivering a high quality broadband product that delights its customers. Market demand (often driven by new technologies) provides a strong incentive for LIME to continue to improve and expand its internet based products and services.
- 2.2.** The growth and development of the ICT sector is largely dependent on access to and the use of the internet by the populace. Undeniably, those that invest in providing access have responsibilities, obligations and constraints; however users of the service also have responsibilities. The balanced management of the interests of both groups is necessary, especially in the Caribbean context. Furthermore, given unavoidable network constraints and growing demand, the interests of some users must be balanced against the interests of other users.
- 2.3.** Whereas, LIME is not discounting the usefulness of discussing the Internet Neutrality issue, ECTEL would do well to avoid the adoption of a regulatory remedy that is not appropriate at this time, given the industry specific prevailing challenges and wider economic context within its jurisdiction. ECTEL's first position appears inflexible, when compared to the example of the treatment by other Regulators cited in its own document. The cited examples of the FCC, Netherlands and Singapore regulators all indicate that there are circumstances in which throttling/blocking content may be appropriate. LIME particularly appreciates the reasonableness of the Singapore Regulator, IDA, which saw the need to give service providers the flexibility to block content or throttle speeds but in the context of fair competition and minimum quality of service requirements. This regulatory remedy strikes a balance between the service provider and customer/user and is appropriate for the ECTEL region. It appropriately, creates an opportunity for a case by case consideration as to whether the blocking or throttling action is reasonable and proportionate. This approach also avoids the outcome whereby the Regulator essentially set up as the traffic manager of the service provider, which outcome is neither efficient effective nor desirable.
- 2.4.** LIME does not practice or condone the blocking of or throttling of rivals content to gain an anti-competitive advantage in the broadband market. However, the evil here is not the act of "blocking or throttling" in and of itself, but the anticompetitive intent or behavior, for which remedies already exist in the communications legislation. Especially given the likely negative impact on LIME's commercial plans.

3. Discussion of ECTEL's 2nd Position

- 3.1. LIME holds in high regard the confidentiality and privacy obligations that it owes to its customers and does not conduct its operational and commercial activities in any way that breaches this duty and obligation.
- 3.2. LIME supports appropriate regulation that protects the confidentiality and privacy of its customers.
- 3.3. Absent any robust explanation or discussion of how Deep packet inspection (DPI) works or what it does, ECTEL concludes that the use of DPI technology by a service provider constitutes a breach of ***“legislative provisions on privacy and confidentiality as well as the terms of the licences currently issued by ECTEL”*** Further, it states that condoning the use of DPI (technology) is contrary to the law and interferes with the constitutional rights of individuals.
- 3.4. On review of the Telecommunications Act, as well as its license, it is unclear to LIME which provision prohibits the use of DPI on its network. Whereas the provision(s) make clear that LIME is required to keep customers information confidential and private, so as not to divulge it to third parties without their expressed permission (which requirement LIME observes), they do not indicate that LIME is prohibited from using customers' confidential and private information to better serve and protect these very customers or protect the very network that these same customers rely on to access their internet service. To the extent that this is the case, LIME invites ECTEL to outline the provisions so as to clarify the issue for its benefit.

The idea that using technology within a network to manage and route traffic by categories, is in and of itself a breach of confidentiality and privacy, due to customers requires robust discussion and justification in law.

4. Discussion of ECTEL's 3rd Position

- 4.1. One source¹ defines DPI is ***“a form of computer network packet filtering that examines the data part of a packet as it passes an inspection point, searching for protocol non-compliance, viruses,***

¹ Wikipedia – en.wikipedia.org/wiki/Deep_packet_inspection

spam, intrusions, or defined criteria to decide whether the packet may pass or if it needs to be routed to a different destination, or, for the purpose of collecting statistical information.”

It further states that ***“In addition to using DPI to secure their internal networks, Internet service providers also apply this technology on the public networks provided to customers. Common uses of DPI by ISPs are lawful intercept, policy definition and enforcement, targeted advertising, quality of service, offering tiered services, and copyright enforcement.”***

- 4.2. From the foregoing definition, it should be apparent that the greater real time monitoring facilitated by the use of DPI technology is very beneficial to ISPs in the management of the traffic, fraud detection and bandwidth allocation on their networks, not to mention the security of the network itself (especially given threat of an increase in cybercrimes).
- 4.3. It is overwhelmingly clear that the use of DPI goes far beyond the simple management of network traffic. LIME asks ECTEL to reevaluate the balance that needs to be struck between the privacy concerns of the customers receiving the service and the technical, operational and technology requirements of the networks providing the service, which when in place delivers significant benefits to the said customer.
- 4.4. LIME invites ECTEL to clarify the apparent contradictions between its position 2 and 3 comments. In position 2, ECTEL states that the use of DPI is unlawful and unconstitutional because it breaches the confidentiality and privacy rights of customers and cannot be condoned. In position 3, ECTEL concedes that for the purposes of traffic management, ISPs must satisfy it that ***“techniques”*** used ***“do not unduly interfere with the individual right to privacy....”***
- 4.5. In light of its position 2 comments, it would be helpful for ECTEL to explain why the use of DPI does not qualify as one such technique? It would also be helpful to understand ECTEL’s view on what represents ***“undue interference”***? For example would the following scenarios in ECTEL’s view be undue interference:
 - 4.5.1. the use of DPI to support law enforcement?
 - 4.5.2. the use of DPI to manage agreed contract terms and conditions between a customer and its ISP?
 - 4.5.3. the use of DPI to protect the technical integrity of the ISPs network as well as the customer’s use of the service?
 - 4.5.4. the use of DPI to manage traffic in order to improve the efficient delivery of a minimum quality of service to all, if not most customers (as opposed to a few who may be spamming the network)?

4.6. Furthermore, ECTEL should be careful not to inadvertently set itself up as the manager of an ISP's network, by requiring that time critical decisions regarding the management of traffic and the protection of the network, be approved by it before the ISP can act. Such an approach would be ineffective and inefficient and ultimately harm customer interests, since ECTEL is not best suited for such a role.

5. Discussion of ECTEL's 4th Position

5.1. Telecommunications network(s) represent high capital investment, much of which are sunk costs. As a consequence, providers will implement from time to time, various pricing schemes for mobile data (and fixed line data as well) both to make a return on their investment and to ensure the sustainability of the service. LIME considers that whether the pricing scheme be usage based or based on a flat rate is best determined by each ISP.

5.2. Pricing however is not just about the ISP and its desired return. Pricing is inextricably linked to the market demand for the service, which is influenced by the culture of the participants in the market. The price point at which internet access is made available within low GDP countries such as the ECTEL region and the wider Caribbean, is a key driver of market demand. In order to promote ubiquitous internet access within the region, especially on mobile which is the device most accessible, prices have been suppressed. This has resulted in an increased take up of internet users and at the same time highlight the need to appropriately manage traffic such that all users enjoy a minimum quality of service level.

5.3. Whereas LIME supports usage based charges, such schemes are designed to minimize the occurrence of "bill shock", which may occur when customers are billed at an increase rate per mega bit consumed, after they exceed their Plan limit. Not an insignificant number of customers have little appreciation of their data usage and best seek to manage their bills by signing up for a Plan with a fixed threshold for the bandwidth capacity to be used. In our view the ISP adds value to such customers, by assisting them stay within their budgeted spend and not just simply allow them to consume the service only to send them a huge bill afterwards and have them churn off the network.

5.4. The application of usage based charges is a necessary but not a sufficient method to manage network congestion. This is because the few

customers that may demand an inordinate amount of capacity on the network (say sending spam to further their commercial interests) may very well have the ability and willingness to pay for such usage but to the detriment of the quality of service experienced by other users that require access to the internet.

- 5.5. It is unclear to LIME what ECTEL means when it states that providers should use an “**application agnostic network management**” method(s) to manage congestion on its network. Would DPI qualify as such? Notwithstanding, it is to be noted that the use of DPI by an ISP significantly reduces the capital and operational costs that it incurs to provide high quality internet access services. The savings resulting from such use allows for greater expansion of the network, which in turn benefits consumers and the wider society. This is especially critical to small economies in the Caribbean, where ISPs do not benefit from the economies of scale (and scope) enjoyed by ISPs in Europe and America.

6. Discussion of ECTEL’s 5th Position

- 6.1. LIME supports initiatives to provide customers with clear, readily accessible and relevant information so as to assist them to choose their preferred service provider. Once customers make their choice of service provider, the quality of service they should expect and all other terms and conditions relating to their broadband service should be specifically made clear.
- 6.2. Understandably, a net neutrality policy is not required to bring into effect the foregoing. In fact, in many respects LIME is already observing these requirements and is prepared to make adjustments to its communication to its customers and the wider public as needed.
- 6.3. LIME considers that customer communication of this nature should be standardized for all ISPs and done in a manner that does not generate unnecessary hysteria and distrust among broadband users within the ECTEL region. The communication therefore needs to be balanced and not one sided.

7. Conclusion

- 7.1. LIME is committed to playing its role to make the availability of broadband ubiquitous throughout the ECTEL region

- 7.2.**LIME is committed to providing good quality of service (QOS) to its customers. It aims to improve its QOS over time by leveraging existing and emerging technologies.
- 7.3.**LIME accepts that there must be a balancing of the interests of ISPs and internet users in the ECTEL region to promote the greater good for all. Thus both the ISPs and users have responsibilities to discharge to ensure the sustain deployment of broadband networks and advancement toward the goal of ubiquitous access across the region.
- 7.4.**LIME accepts that this discussion paper on internet neutrality is timely and appropriate. There is need to ensure that any approach going forward is specific to the needs of the region and is the outcome of robust fact based discussions supported by legal provisions, robust analysis, and not simply the adoption of a policy framework used elsewhere.
- 7.5.**LIME considers that the “throttling” or “blocking” of traffic may be appropriate from time to time and the circumstances where this is appropriate should be discussed in further detail and agreed on. Further, based on the principles agreed to, ISPs should be afforded the flexibility to manage their networks (not just network traffic) without having to seek the permission of ECTEL.
- 7.6.**LIME considers that the use of DPI technology is extremely beneficial to the users of the internet. Further, the fact that the technology may be misused does not in and of itself make it illegal. ECTEL is asked to consider the use of ex post regulation, dealing with any issues that arise on a case by case basis, as opposed to “heavy handed” ex ante regulation, which if implemented will stymie the ability of ISPs to roll out their networks in a region where the economies are stagnating and disposable income is moderate to low.

End