



SUMMARY OF FACE TO FACE DISCUSSIONS WITH NTRCs ON THE DRAFT EC BILL/NEW LICENCE TEMPLATE/NEW LICENCE APPLICATION FORM AND NEW LICENCING REGIME WITH NTRC'S ON 19TH OCTOBER 2015 AT COCO PALM

On 19th October 2015, ECTEL held face to face discussions with the National Telecommunications Regulatory Commission (NTRC). The meeting took the form of live discussion of the Electronic Communications Bill (EC Bill) consultation document and looking at specific section and their wording.

The following areas were addressed:

1. Change of Name

The NTRC's are not pleased with the suggested name change. They are content to continue to be known as NTRC. This is mainly due to the public image, which they had developed over the years and it would take time to rebuild that image and familiarity with consumers under a new name. The NTRCs did not support a change of name for the Regulator either.

2. Sections to be amended

- Section 3 (2) (d) – add “net” before neutrality; after favouring add “source” or “destination”; after blocking add “degrading”. It was discussed that the content should be defined to say legal content, but that would make providers guardians of what is legal and what is not which is not the intent or purpose of the legislation. The legality of content will be left to copyright rules, public interest and national security, which is already enshrined in Law.
- Section 7 (2) – after a general nature add “ on the electronic communications sector”; remove “to the Commission” and remove “ and the Commission shall comply with such directions”
- Section 11(1) (h) needs clarification. Although the NTRC receive all licences, it keeps and deals with service-licences and forwards network licences to ECTEL for evaluation. The section should be reworded to reflect that.

Section 11(3) – the NTRC does not regulate content. Remove the word “broadcasting”. Replace it with “electronic communication”.

Section 11(3)(a) Questions – Do we need a definition for content in this section? Should any definition embrace electronic communications content and broadcasting content? The legislation does provide a definition for “electronic communication service”.

Section 11 – The CARCIP consultants suggested that NTRCs should have amongst their functions the authority to prepare list of Significant Market Power designations.

The question is, is this a function of ECTEL or can this be done by the NTRCs on the recommendation of ECTEL.

Section 11 – CARCIP has recommended that the NTRC be given power on the recommendation of ECTEL to establish prices for subsea cable capacity based on benchmarking. (this clause is already embedded in section 52 (3) of the draft Bill). However it will assist if the NTRC has a general power to apply bench marking where the Operator fails to provide the information on cost, in relation to any service, when requested.

Section 11 – that the Commission be granted, amongst its functions monitoring compliance with terms of interconnection and access. (It was raised that this is a function which ECTEL performs not the Commission).

- Section 36 (1) (a) remove network licence. The justification is that whoever sets up a network will lease lines etc. and that amounts to providing a service. This means that this provider will automatically need to apply for a licence. (This raises the question whether utility companies, who lease space on their poles, need to apply for a licence).

Remove Section 36(2). If 36(1) (a) is deleted section 36(2) becomes obsolete.

- Section 37 – add additional sections that once ECTEL has recommended the grant of a licence to operate in one territory, it shall notify the NTRC in each territory and the Minister of that grant.

The recommendation by ECTEL to grant a licence, to operate in another territory, shall remain valid for 3 years unless the licence has elapsed due to the failure of the Licensee to roll out in any Member State or in the Member State for which he/she applied to roll out, after the initial grant of the licence and the lapse of a period of 12 months, from the date of grant of the licence. Or the failure of the licensee, due to bankruptcy, insolvency etc, or any other circumstances existing at the time, which would reverse the decision of the Regulator.

The Minister through the NTRC shall verify that the Regulator is not aware of any significant change, which would affect the previous decision of the Regulator to grant a licence, where the Telecommunications providers seeks to commence operation in another Member State, within the 3 year period. Where there has been a change the Regulator may request further information from the Applicant and or give reasons, to the Minister as to why it has refused to recommend the Telecommunications Provider for a licence. The Minister shall then rely on the recommendation of ECTEL, notify the Telecommunications provider of a grant or refusal of a licence.

Upon receipt of a confirmation from the Regulator, the NTRC shall transmit the information to the Minister, who shall proceed to grant or refuse the Licence.

Due to the changes to be made in this section the application form will be amended to include a section to enable the applicant to give an indication of which island he/she intends to roll out in.

Section 37(3) NTRC has indicated a preference for 14 days in section 37 (3) will be required to compute time frames.

Section 37 (11) – compare with current powers. New Bill states that once ECTEL recommends the grant, the Minister has no ground to refuse. He may not have that power under present regime. (On examination of the draft Bill, the Minister's powers have been split between section 7 and section 37(11)-(15).

- Section 44 – **Termination of licence or frequency authorization before expiry of licence or authorization.** The NTRCs asked if the holder of a licence or frequency authorization would like to give it up immediately then why wait. (This clause was put in to ensure that public interest is protected when such decisions are made. The Minister is not to act unreasonably however).
- Section 48 (6) – **Special Licences** –a response should be provided within 12 hours. (This section is to be amended in the draft Bill to reflect **business hours** as 12 hours may lead to unintended outcomes).
- Section 50 – **Type Approval** - A new section needs to be inserted to say that the manufacturer/ authorized representative need to apply for type approval. Section 50 (3-5) needs be amended in light of the above. Section 50 (1) needs to be expanded to include retailers. Section 50 (13) needs to put “[Name of Member State]” in square brackets.

Sections 50(7), (8), (9), (10), (11) may need to be deleted, as they require something related to testing. The onus should be put on the applicant to show that they conform to the required standard, so that they can be given a certificate of conformity. Remove 50 (2) to put “wireless devices” and consolidate a, d, g.

- Section 51(3) –**Access to towers sites and underground facilities** - NTRCs suggested that this section should amount to a penalty or fine, rather than a breach of the licence e.g.: 3% of its total annual net revenue for the previous year.
- Section 52 (1) (c) - **Access to cable landing station**- the word “offer” is missing between “access” and “in”. Also, after prescribed insert the word “for”.
- Section 53 – **Access to other network elements**- the CARCIP consultants requested that section 53 be expanded to include access to “elements or specific network resources, including broadband capacities enabled in the form of rent, irrevocable rights to use dark optical fibre or unbundled access to the local loop”

- Section 55 – **Access to land for inspection and maintenance** – the NTRCs asked that something be included about the landowner’s permission being required.

Section 55(4) may need tweaking “matter to be taken to the Commission as a first remedy, with other remedies available.”

- Section 62 (1) – **Cost of interconnection** – NTRCs agreed that both parties share the cost.
- Section 66 – **roaming clauses** may need to be strengthened and re-drafted e.g. A provider may comply with any roaming provisions.
- NTRCs agreed that the functions in section 81- **Powers of Commission under this Part** – are really the functions of ECTEL and should be revised to indicate that.
- NTRCs suggested that section 91 (3) needs to be a continuing offence clause like section 90 (2), and that the amount payable should be increased from \$1000.00 to \$5 000.00
- Section 97 (2) should be on indictment.
- Section 100 **Complaints** - ENSURE THAT THESE PROVISIONS ARE CONSISTENT WITH DISPUTE RESOLUTION. The prescribed forms are in the Dispute resolution regulations.

As part of section 100, include a clause to address complaints which ECTEL may hear such as Licensee to licensee disputes as reserved for ECTEL by the Treaty.

- Section 107 – **Notice of discontinuance** – There was concern about how discontinuance should be done. It was suggested that it be done “in any manner as determine by the Commission.” Remove “prescribed form” 107 (2) Also, look at ss.2, as it relates to cost. (Note: the Dispute Resolution Regulations contained forms and the section is in compliance with it. The Prescribed forms are contained in the regulations).

Other issues raised:

1. The **Consultation period** will now run, from **11th October to 30th November 2015**. The **Comments on Comments** to run from **7th December to 22nd December 2015**.

2. The use of short-codes

NTRCs suggested that a business should be able to purchase short codes-which can be used on the market.

3. A recommendation was received for the Directorate to consider radiation regulations. This has been considered but may not be possible before the passing of this draft EC Bill as standard need to be developed and a consultation process undertaken.

4. **Possible further revisions.**

It was suggested by the CARCIP that the following further revisions be considered to address dispute resolution, concerning access and interconnection:-

(a) Provision of additional specific rules for NTRCs to resolve disputes between licensees or between operators and companies providing online communication services to the public (Over the Top service). It was suggested that this provision should be provided in order to:

- (i) Make a clear distinction between the proceeding application to consumer complaints and the one concerning disputes between operators.
- (ii) Give clear and strong powers to ECTEL in this field in order that its opinion binds NTRCs and all parties to the dispute
- (iii) Set out that a licensee or, as the case may be, a provider of online communication services that fails to comply with the opinion of ECTEL commits an offence and is liable on conviction to a fine.

6. In response to the above it has been highlighted that the Treaty gives ECTEL dispute resolution powers by virtue of Article 13. NTRCs may refer such disputes between providers to ECTEL in accordance with the Treaty.
