

**Submission**

To

**Eastern Caribbean Telecommunications Authority (ECTEL)**

**Digicel's Submission in relation to  
Terms of Reference on the Quality of Service Regulations**

Submitted by

**Digicel**

24<sup>th</sup> July 2015



## INTRODUCTION

Digicel welcomes this opportunity to make these submissions to the Eastern Caribbean Telecommunications Authority ('ECTEL') in respect of the proposed Terms of Reference on the Quality of Service Regulations.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the Consultation Document under reply or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part with ECTEL or with any party on those issues; nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights in this matter generally.

We thank you for inviting Digicel to provide its comments on the Consultation Document and of course are available for any questions you may have.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to (e-mail being preferred means of communication): -

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## Comments on Consultation Process

Digicel is very concerned that ECTEL has published the Consultation Document apparently using draft legislation that has not yet come into effect as its legal basis. Further Digicel has not seen a recent draft of the proposed Electronic Communications Bill and therefore is unclear what is contained in that proposed Bill or whether any changes have been made since a copy was last made available to it. Digicel submits that it is ultra vires ECTEL to proceed in the manner set out in the Consultation Document and that consequently the Consultation Document and the proposals set out therein are void and are not capable of being implemented.

## Questions to Providers

1. Do you think the NTRCs are best placed to update the Quality of Service Regulations?

It is not possible to answer this question as the legal basis for the proposals appears to be draft legislation that is not in force. Therefore it is not clear whether the NTRC's will be empowered to act in relation to the proposals set out in the Consultation Document.

In addition to Digicel's comments above that the current consultation process appears to be invalid, it is Digicel's understanding that the Treaty Establishing ECTEL and the Telecommunications Acts provide no legal basis for ECTEL and the NTRCs to introduce certain of the proposals - for example the regulation of television services or the introduction of so called "Net Neutrality" provisions.

Further, Digicel does not believe that there is a requirement or justification for updating of Quality of Service regulations. Quality of Service standards is specified as part of Digicel's licences and any modifications to the standards are in fact a variation of the applicable Digicel licence. To the extent that a change to a national licence or the setting of national standards could ever be required we believe that it is the NTRC which is best placed to assess the national conditions and set appropriate national standards.

2. If not please explain why.  
N/A.

3. Do you provide customers with information about the Quality of Service?



Information is provided in accordance with the terms of our licence i.e. Customers are notified in the event of any interruptions in Service.

4. Will you be able to meet these proposed QoS standards?

It is extraordinary that the Consultation Document does not seek the views of licensed operators as to whether the proposals set out in the Consultation Document are appropriate or necessary. This is a departure from the established procedures of ECTEL and international best practice.

Digicel is not aware of any analysis that has been conducted by ECTEL that suggests that the current Quality of Service obligations set out in the licences of operators are inadequate.

The above question asked by the Consultation Document would seem to be posed in a manner designed to elicit the agreement of operators to the proposals set out in the Consultation Document. Digicel strongly objects to this approach and what appears to be an attempt to “railroad” through obligations which will greatly impact the businesses of licensed operators. It is clear that almost any quality standard can be achieved if enough money is spent on achieving it. Digicel therefore believes that the correct formulation of this question is whether the cost of meeting the proposed standards (and the inevitable flow through to retail pricing) are sufficiently offset by any consumer welfare benefit of making such quality standards mandatory and binding. Even if these standards are currently being achieved there will be both an initial and ongoing cost in setting up the measurement and monitoring systems required to manage these obligations. It is notable that a Cost Benefit Analysis is absent from the ECTEL paper. We believe that if this had been carried out many of the proposals would have been identified as not appropriate or unwarranted.

In addition to a cost benefit analysis ECTEL must consult operators on any specific changes that are proposed, including the legal basis for any proposed changes or the introduction of new proposals.

Digicel is very concerned that ECTEL is proposing to introduce radical Net Neutrality rules through the current consultation on Quality of Service. This is highly inappropriate, unreasonable and contrary to sound regulatory procedure. Digicel also submits that the attempt to introduce Net Neutrality rules in this manner is not permitted by the Telecommunications Acts or the legal and regulatory framework that underpins the ECTEL system.

5. Would you like to make any suggestion toward improving the Quality of Service being offered to customers and how they may be improved?



Digicel believes that the single largest driver of improved Quality of Service is the retail competitive dynamic. Service quality is a competitive differentiator. A market based approach in effect allows consumers to set the level between quality and price. They will not subscribe to a higher quality, higher priced service if that does not meet their needs. Mandating such “gold plated” services will drive retail prices up by forcing operators to deliver unwanted functionality to a customer base that does not want it.

6. Do you take issue with any of the Q o S matters addressed above? If yes please state why?

ECTEL’s approach to assessing the issues around setting Quality of Service standards does not include any cost benefit analysis related to the imposition of such standards. The lack of an objective evidenced based approach to proportionate regulation can only serve to damage the region’s reputation as a place to do business. This has affects more than just the telecoms market but will also impact wider FDI considerations.

The consultation focusses on operators who have sought and obtained licences. OTT providers of retail telecommunications services, who remain outside of the regulatory purview by the simple expedient of failing to apply for a licence, are omitted entirely from ECTEL’s consideration.

### **Public Mobile Telecommunications**

Digicel believes that OTT operators providing voice services are operating in contravention of the Telecommunications Act on the basis that they are originating and terminating both domestic and international telecommunications calls without a telecommunications licence. The Telecommunications Acts provide *“A person shall not establish or operate a telecommunications network or provide a telecommunications service without a licence.” “A person who contravenes subsection (1) ... commits an offence and shall be liable on indictment to a fine not exceeding one million dollars or to imprisonment for a period not exceeding ten years.”*

Until such time as ECTEL and the NTRCs take effective action to ensure that all operators providing services are properly licenced any purported imposition of additional burdensome obligations on compliant operators is unfair and discriminatory. The regulatory holiday currently afforded these delinquent OTT Operators is completely at odds with the regulatory best practice approach which ECTEL has advanced as underpinning the formulation of these Quality of Service standards.

The contradictions between ECTEL’s espoused objectives in proposing these standards and its acquiescence in OTT Operators’ breach of current regulation serve to undermine confidence in the objectivity of the regulatory process in the ECTEL states.



It is common cause that the quality standards which are obtainable from the operators of OTT services (both in terms of service performance and customer care) are inferior to those provided to consumers by traditional voice and messaging providers. While consumer advocacy groups might make self-serving and self-perpetuating claims for higher standards these are not supported by the empirical evidence of large scale consumer adoption of lower quality OTT services.

In the face of this demonstrated acceptance and appetite of consumers for lower quality services there can be no objective, evidenced based justification for the imposition of higher standards on traditional voice providers. Any such imposition could not be reasonable, proportionate or justified.

ECTEL has not provided any evidence which would justify the additional regulatory burden of the proposed standards. It has not shown that consumers will be willing to pay for the costs of these higher standards. In fact the evidence of the OTT Operators is that consumers demonstrate a high level of price sensitivity when compared against quality. i.e. they are not prepared to pay for higher priced, higher quality services. The ECTEL proposals fail entirely to explore this important dynamic and as such the process for arriving at the proposed standards could not to be considered to be in line with accepted best (or even typical) practice for evidenced based regulation.

#### Net Neutrality

In respect of the issue of Net Neutrality the proposal by ECTEL goes far beyond what might be considered a "Quality of Service" matter. The wording that "*internet service providers should not degrade or give preferential treatment to certain services*" is in effect the imposition of a specific business model for the charging of broadband services. i.e. that there should be a prohibition on differentiated commercial terms for different data services with . We also note that it goes beyond the principles outlined in ECTEL's "Determination on Net Neutrality"

This is fundamental issue which has the potential to seriously undermine the commercial viability of telecommunications investment in so called "micro-economies" such as those represented by the ECTEL states. There is no assessment of whether the proposed rules on net neutrality are in fact appropriate for markets where the issue is not one of how broadband might be used but how to provide even basic broadband access in the first place.

The lack of a substantive discussion of the issues related to net neutrality in the consultation is deeply concerning to Digicel. Especially as the proposals go beyond ECTEL's previously stated intent. We note that the Regulatory Authorities in the US, Europe, India and Trinidad have all conducted or are conducting substantive processes to assess whether interventions on net neutrality are appropriate and if so what form they should take.

ECTEL appears to be proposing to follow a model adopted by the US. This was specific to the circumstances of the US legal system and wider US telecommunications and ICT markets. The European



Union on the other hand (which also has high levels of broadband penetration, high levels of GDP and larger more developed economies) is proposing to adopt a different approach.

Regulators in emerging markets such as India and Trinidad and Tobago are adopting a much more cautious approach. This recognizes that simply following one or other big trading blocks on this issue may have serious, adverse and long term impacts on their economies. They are consulting on whether some services carried over the internet (so called OTT services) should be amenable to existing regulation.

ECTEL's approach in attempting to introduce such fundamental and far reaching regulation on the market by including in a table with other parameters such a jitter and latency is not what one would expect from a best in class regulatory framework.

The inadequacies of this approach are thrown into sharpest relief where in the same tables (tables 4 and 5 of the consultation document) that ECTEL specifies that all traffic should be treated equally it also specifies three different levels of performance for latency depending on the traffic type. The internal inconsistencies in ECTEL's proposals are manifestly evident and highlight the need for a substantive consultation on the issue.

[Ends]