

Digicel

The Bigger, Better Network.

Digicel's Comments on Consultation Document No. 02 / 2012

**On Recommendation of ECTEL to the National Telecommunications
Regulatory Commission to consult on a Proposal for Assignment of
Spectrum in the 700 MHz Band**

17 August 2012

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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I. Introduction

1. On 20 July 2012 the Eastern Caribbean Telecommunications Authority (“ECTEL”) issued a Consultation Document (“the Consultation”) Numbered No. 2 of 2012. The Consultation was stated to refer to a *“Recommendation of the Eastern Caribbean Telecommunications Authority (“ECTEL”) to the National Telecommunications Regulatory Commission to consult on a proposal for Assignment of Spectrum in the 700 MHz Band”*.
2. On 9 August 2012, ECTEL issued a Public Notice entitled *“Second extension of initial period for comments on Recommendation of the Eastern Caribbean Telecommunications Authority (“ECTEL”) to the National Telecommunications Regulatory Commission to consult on a proposal for Assignment of Spectrum in the 700 MHz Band”*. This Public Notice confirmed that the deadline for the submission of comments in relation to the Consultation was fixed for today, 17 August 2012.
3. The stated purpose of the Consultation is to *“seek the views of interested parties on a proposed strategy/procedure for determining how applicants will be selected for the assignment of electromagnetic spectrum in the 700 MHz band”*. Digicel (which for the purposes herein refers to each individual operator / licensed entity in each ECTEL Member State) provides its initial submissions / views herein as requested in accordance with the procedural framework as set out in the Consultation.

II. Digicel’s engagement to date in ECTEL Territories re 700 MHz spectrum / Existing Digicel 700 MHz Allocation in SVG

4. Digicel has, over a lengthy period, already extensively engaged with individual NTRCs in respect of the assignment of spectrum in the 700 MHz spectrum. Digicel has exchanged correspondence and had meetings with NTRCs extending back over a period of years in relation to this matter. Digicel has already filed detailed formal applications for assignments of spectrum in the 700 MHz band in St. Lucia; St. Vincent and the Grenadines, Grenada and St. Kitts & Nevis. Digicel has also had numerous discussions and exchanges with the NTRC in Dominica in relation to 700 MHz spectrum. Whilst Digicel notes the proposed Rule 1 in the Consultation (and addresses this specifically below), the position in relation to St. Vincent and the Grenadines requires particular consideration.

5. Digicel (SVG) Limited was formally granted a specified frequency allocation in the 700 MHz spectrum band by the Minister of Telecommunications on 6 December 2011. As such, Digicel has already been lawfully and properly awarded 700 MHz Spectrum by the Government of S. Vincent and the Grenadines and any action which would seek to interfere with or otherwise prejudice that award of 700 Spectrum would be impermissible and unlawful. Digicel shall address this matter further in the confidential section of this document. However, Digicel does not believe that this existing allocation of Spectrum in St. Vincent and the Grenadines ought to interfere with the stated goals and policy objectives as articulated by ECTEL. Indeed, this existing 700 MHz allocation to Digicel is actually consistent with the stated goals and policy objectives.

III. Digicel's specific response to the Consultation

Background

6. The first section of the Consultation is entitled "Background". Digicel notes ECTEL's position that it advised the NTRCs in 2008 that spectrum in the 700 MHz band should not be assigned until a band plan and pricing for that spectrum has been established. Digicel was (until now) unaware of these communications / advises. However, the fact remains that Digicel was lawfully and properly allocated spectrum in the 700 MHz band by the NTRC in St. Vincent and the Grenadines. Accordingly, Digicel has assumed certain inalienable legal rights relating to that spectrum allocation; including a right of legitimate expectation that the NTRC shall not now act in a manner inconsistent with that lawful allocation to Digicel. Again, Digicel does not expect that this will cause any great difficulty.
7. Digicel notes that ECTEL has adopted and approved an administrative pricing approach for spectrum in the 700 MHz band which set the price at XCD \$20,000 per MHz Frequency pair. Digicel submits that this is the pricing approach that ought to be applied to the allocation of spectrum pursuant to this Consultative process and the implementation of any final recommendation by the individual NTRCs in the Member States. As such, each paired MHz on 700 MHz spectrum in each Member State should continue to be invoiced at XCD \$20,000. Indeed, Digicel understands that to be the stated position of ECTEL.

8. Digicel notes ECTEL's comments to the effect that the telecommunications sector had been advised that 700 MHz spectrum was unavailable. Whilst this was the case in respect of some of the individual NTRCs, the fact remains that Digicel (SVG) Limited was not so advised at any stage and indeed the formal frequency allocation as set out above was properly and lawfully made. Digicel notes the somewhat speculative comments that many "would be applicants" did not submit applications for 700 MHz spectrum. What is true is that Digicel has, for its own part, proactively pursued the allocation of 700 MHz spectrum in the ECTEL Member States over a considerable period. This fact ought to be taken into consideration by ECTEL / the NTRCs. Digicel has been very proactive throughout in respect of its desire and requirement for appropriate frequency allocations in the 700 MHz band. Digicel notes that the effective import of proposed Rule 1 is essentially to set all of those considerable efforts at nought; save in respect of St. Vincent and the Grenadines where the actual award of spectrum cannot be undone through the present process. However, Digicel's concerns in this regard are appeased to some extent by the other proposed rules articulated by ECTEL in the Consultation. These matters shall be addressed further below.

9. Digicel notes that the proposal seeks to *"strike a balance between the need to ensure a fair opportunity to all applicants for access to 700 MHz and the need to assign spectrum in a manner that attempts to optimize its benefit to the telecommunications sector"*. Digicel would certainly support this broad policy objective. Digicel would submit however that the NTRCs ought certainly to be highly cognizant that certain potential applicants (foremost of which is Digicel) have a proven track record of successfully and effectively deploying networks within the Member States and elsewhere. The NTRCs ought not to involve itself in making awards of spectrum (in any band) to entities or applicants with speculative plans or where those entities have not proven their ability to provide telecommunications services in the relevant field. The NTRCs ought to focus on the industry players that have made significant capital investments to date in the Member States and who possess a proven ability to deliver make good use of the frequency allocations as made to date. This is a key element of seeking to optimize the benefit to the telecommunications sector. Digicel would respectfully submit that the Consultation and proposed rules do not give enough weight and consideration to these factors. In simple terms, the correct allocation of 700 MHz spectrum should be awarded, without much further delay, to those operators that already provide the relevant services in the ECTEL Member States.

Fair Access and Practicability

10. Digicel notes that ECTEL wishes to eschew the normal practice of considering frequency authorisations on a first come first served basis in the context of the 700 MHz spectrum. ECTEL considers it “undesirable” to do so “for reasons related to fair access, practicability and efficient assignments”. The Consultation goes on to elaborate on these reasons.
11. Digicel notes ECTEL’s view that it would unfairly and unreasonably discriminate against so called “would-be” applicants by considering applications on a first come first served basis. In fact, the approach adopted herein by ECTEL (which they expressly confirm is a deviation from normal industry and international best practice) actually unfairly prejudices Digicel as an entity that had the foresight and aptitude to file applications for Frequency Authorisations in the 700 MHz range. Whilst Digicel notes ECTEL’s position in this regard, it is somewhat disgruntled at the approach that essentially sets its efforts to date at naught so as to allow all other entities to “catch up” with the play. Digicel would submit that its applications and attendant efforts to date in securing 700 MHz spectrum should not simply be discounted in full for the simple reason that other “would be” applicants may have received mixed signals from the NTRCs. The serious operators would have made their intentions abundantly clear.

Efficient Assignment of the Spectrum

12. Digicel notes ECTEL’s comments that “the total demand is likely to exceed the amount of spectrum available (only 72 MHz)”. This comment serves only to accentuate the inherent unfairness involved in essentially scrapping all applications and efforts as made by Digicel to date in the Member States to secure 700 MHz spectrum. As a progressive and forward looking Telecommunications Company, Digicel was aware of the likely demand for a 700 MHz Frequency Allocation and took steps accordingly. Whilst Digicel notes the factors relied upon by ECTEL in arriving at this position (many of them matters of obvious practicality), Digicel would urge that the previous efforts by Digicel in terms of obtaining 700 MHz spectrum be factored into the consideration of Digicel’s **primary submissions that the minimum award of spectrum to existing operators (foremost of which is Digicel) be increased from 12 MHz to 24 MHz and that the maximum be increased from 24 MHz to 36 MHz.**

13. Digicel agrees with ECTEL where it states that:

“one of the most important goals of a telecommunications regulator is to ensure that scarce spectrum resources are assigned in a manner that maximises its benefits to the sector. Such a goal would include at least the following two objectives:

- *Ensuring the most rapid rollout/deployment of spectrum possible*
- *Ensuring that a reasonable measure of priority is given to the provisions of access to the spectrum for the purpose of upgrading existing networks and customer services-especially those networks with large subscriber bases”*

Digicel agrees with the priority as identified. In simple terms, the NTRCs should focus on those entities that have delivered in the past and who are most likely to deliver again. Those are the entities that will clearly provide the most rapid rollout / deployment of the 700 MHz spectrum. A proven track record in rolling out networks and providing telecommunications services to large subscriber bases with the Member States is precisely what the NTRCs should be considering as the primary factor when it comes to allocation this 700 MHz frequency.

14. The NTRCs should not try to “split the baby” by awarding insufficient bandwidths to a myriad of applicants (*“would be”* applicants or otherwise). In order for established telecoms operators such as Digicel to properly realise the benefits of 700 MHz spectrum and to provide a level of service and coverage to the peoples of the ECTEL Member States, an appropriate allocation of 700 MHz will be required. Digicel submits that the maximum level articulated by ECTEL of 24 MHz is simply insufficient. The bandwidth required in order to roll out these services properly in the individual Member States is 36 MHz. This will allow Digicel provide an LTE service comparable to global standards across ECTEL markets. This takes into account such key factors as coverage, service levels, network expansion, subscriber growth, handset strategy etc. By way of example, Digicel has recently embarked on a highly ambitious and exciting plan in partnership with Government to roll out LTE services across Antigua and Barbuda. To this end, the Government of Antigua and Barbuda has awarded 2 X 18 MHz (total 36 MHz) of 700 MHz to Digicel. Digicel would strongly urge ECTEL to increase

the maximum awarded to each qualifying entity in the Member States from 24 MHz to 36 MHz. In simple terms, if the ECTEL Member States wish for telecoms operators such as Digicel to bring them the benefits of the very latest technological developments through the provision of 700 MHz spectrum, then the Member States should assign adequate 700 MHz spectrum to allow those operators (such as Digicel) to do it properly. 36 MHz is what is needed to do it properly – not 24 MHz.

15. As such, Digicel would strongly support ECTEL's proposal for giving "*a certain level of priority access to existing major providers of Public Mobile Telecommunications (PMT) services and Broadband Wireless Access (BWA)*". This makes obvious common sense. But it should be more than just a "*certain level of priority*". Digicel notes that the NTRC's propose that these existing and operational major providers (which obviously would include the licensed Digicel operator in each Member State) should be assigned a minimum of 12 MHz of 700 spectrum; provided that they submit their applications within a specified time window. Digicel would submit that this minimum should be fixed at 24 Mhz. This is for the very same reasons as articulated above. 12 MHz is simply not enough. By way of illustration, it is one third of the allocation provided by the Government of Antigua and Barbuda to Digicel to allow Digicel provide LTE services in that country.

The Assignment Process

16. Again, Digicel must note that it has already been properly and lawfully assigned 700MHz spectrum in St. Vincent and the Grenadines. This is relevant to the statement by ECTEL that "*the availability of 700 MHz spectrum in each Member State will begin at the time of promulgation of the amended Fees Regulations*". Whilst this may be the case with respect to the other Member States, the fact of the matter is that Digicel has a pre-existing 700 MHz allocation in St. Vincent and the Grenadines. However, with respect to these other Member States, Digicel accepts what is set out in terms of the timing of the availability of 700 MHz spectrum in St. Lucia, Grenada St. Kitts and Nevis and Dominica.
17. Digicel notes that the proposed assignment process would begin with the publication of a Notice and notes the contents of the template Notice which is proposed. Digicel has no issue with the Notice per se over and above the comments submitted in this document generally. Digicel would again submit that the appropriate and fair pricing strategy would be

to follow the existing strategy of XCD\$20,000 per paired Mhz. Digicel understands that this will be the case.

18. The Consultation then sets out 7 rules which it states will govern the proposed assignment process stating that those 7 rules only address aspects which are specific to this process relating to the 700 MHz spectrum. Digicel notes this and further notes that all existing rules that are not in conflict with those 7 rules would continue to apply. Digicel would suggest that the specific identification of those “*existing rules*” in the Notice to be published would be of general assistance in terms of clarity and avoidance of ambiguity.

Rule 1

19. With the obvious exception of St. Vincent and the Grenadines where Digicel has been formally awarded Spectrum, Digicelreluctantly accepts that all applications filed prior to the date of publication of the Notice shall not be considered and that all applicants shall be required to submit fresh applications in response to the Notice in order to be considered for assignment of 700 MHz spectrum. In essence (with the exception of St. Vincent and the Grenadines) the process is essentially a clean slate.

Rule 2

20. Digicel has no difficulty with this first come first served procedural rule.

Rule 3

21. Digicel has no difficulty with this rule. Digicel would propose that the publication of the applicable “existing evaluation criteria” as part of the Notice to be published immediately after promulgation of the amended Fees Regulations would assist for the purposes of avoiding ambiguity.

Rule 4

22. Digicel believes that this rule ought to be amended such that existing operational PMT or BWA service providers that submitted an application within the time prescribed should be

assigned a minimum of **24 MHz** (as distinct from 12). 12MHz is simply insufficient to roll out with the level of coverage and services envisaged.

Rule 5

23. The comment on Rule 4 would apply here. Existing PMT of BWA service providers should be assigned a minimum of **24 MHz**.

Rule 6

24. Digicel has no objection to this rule.

Rule 7

25. Digicel notes that the maximum assignment per applicant shall be 24 MHz of spectrum in the 700 MHz band. Digicel objects to this rule and believes that the maximum should be set at 36 MHz
26. Digicel notes that ECTEL has recommended that the assignment of 700 MHz spectrum shall be on the condition that the spectrum is deployed for Broadband Wireless Access on the applicant's network within 6 months of assignment and that Spectrum not utilized for the purpose assigned within that period shall be subject to forfeiture. Digicel has no difficulty with this concept of "use it or lose it" noting that this is consistent with effective spectrum management. Digicel would of course assume that any such forfeiture type action engaged in by any NTRC would be exercised judiciously and carried out in a manner consistent with natural justice and fair procedure. Accordingly, any holder of spectrum would be given a fair opportunity to respond to any threatened forfeiture action consistent with normal constitutional rights of natural justice and fairness of procedure.

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