

CABLE & WIRELESS

Response to Consultation on:

- (1) The Revised draft EC Bill**
- (2) A New Network-Service Licence Template**
- (3) A New Network-Service Licence Application
Form**

**For Implementation with The Electronic
Communications Bill**

30th November 2015

Table of Contents

	Page
1. Introduction.....	1
2. Comments on Draft EC Bill.....	3
3. Comments on New Network-Service Licence	24
4. ECTEL Questions on Multi-Service Network-Licensing Regime.....	23
5. ECTEL Questions on Changes to the Licence.....	27
6. ECTEL Questions on the Consequences of Adopting Multi-Service Licensing Regime.....	30
7. ECTEL Questions on Suggested Clauses to be Included in New Licences.....	32
8. ECTEL Questions on Implementation.....	38
9. Comments on New Network Licence Application Form.....	39
10. Additional ECTEL Questions for Stakeholders and Licensed Operators.....	40
11. Conclusion.....	41

1. INTRODUCTION

1.1. Cable & Wireless welcomes the opportunity to respond to ECTEL's Consultation Document on:

1. The Revised draft EC Bill;
2. A New Network-Service Licence Template;
3. A New Network-Service Licence Application Form;

For Implementation with the Electronic Communications Bill published October 13, 2015 (the Consultation Documents).

1.2. This response is made on behalf of Cable & Wireless (St. Lucia) Limited to the National Telecommunications Regulatory Commission of St. Lucia; Cable & Wireless St. Kitts and Nevis Limited to the National Telecommunications Regulatory Commission of St. Kitts and Nevis; Cable & Wireless Grenada Limited to the National Telecommunications Regulatory Commission of Grenada; Cable & Wireless Dominica Limited to the National Telecommunications Regulatory Commission of Dominica and Cable & Wireless St. Vincent and the Grenadines Limited to the National Telecommunications Regulatory Commission of St. Vincent.

1.3 Cable & Wireless expressly states that failure to address any issue raised in the Consultation Documents does not necessarily signify its agreement in whole or in part with any position taken on the matter by ECTEL, the NTRCs or respondents. Cable & Wireless reserves the right to comment on any issue raised in the Consultation Documents at a later date.

1.4 All responses to this document should be sent to the Ms. Geraldine Pitt at geraldine.pitt@lime.com and copied to Frans Vandendries at frans.vandendries@lime.com.

1.5 Cable & Wireless will respond to the questions asked by ECTEL in accordance with the headings in the Table of Content. Where appropriate several similar or related questions from ECTEL may be combined or grouped and a singular response provided.

2. COMMENTS ON DRAFT EC BILL

2.1 ECTEL has identified the following amendments that it has made to this version of the draft EC Bill¹:

- a) *A proposed change of name of the Directorate from Eastern Caribbean Telecommunications Authority (ECTEL) to Electronic Communications Authority or (ECA).*
- b) *A proposed change of name from National Telecommunications Regulatory Commission (NTRC) to National Electronic Regulatory Commission (NERC)*
- c) *All applications are to be made to the Minister who will immediately forward to the Commission, who will then forward relevant applications to ECTEL.*
- d) *The Licences have been divided into Network and Service licences.*
- e) *The composition of the Commission has expanded.*
- f) *The Functions of the Commission has also been expanded.*
- g) *The Powers of the Commission have been expanded.*
- h) *Provision has been made for applications to be submitted electronically.*
- i) *The procedure for transfer of licences and frequency authorisation has been amended.*
- j) *Change of control of licences and frequency authorisation has been amended.*
- k) *A new definition indicating when one is considered to have a significant interest as a shareholder has been included.*
- l) *The definition of significant interest is 25% of shareholding or voting rights. What are your views on this definition?*

¹ Pgs. 12-13, Document Titled ' Consultation on a (1) The Revised draft EC Bill (2)A New Network-Service Licence Template (3)A New Network-Service Licence Application Form For Implementation With the Electronic Communication Bill

- m) The length of time for an application for renewal has been shortened.*
- n) A new clause has been included to address surrender of licences and frequency authorisations.*
- o) The special licence provisions have been enhanced*
- p) Universal service has been expanded to include access.*
- q) A clause has been included to deal with reference offers under rights and obligations of Licensees and frequency authorisation holders.*
- r) A new section on Market analysis has been added and specific obligations of licensee with significant market power.*
- s) A provision on the assessment of dominance has been included.*
- t) A new competition section has been included.*
- u) New provisions have been included to address submarine cables and landing stations.*
- v) Provisions have been included to address the rights of consumers, regulation of tariffs, dealing with harmful interference, terminal equipment, quality of service, roaming, billing, privacy and confidentiality.*
- w) The powers of the Minister to make regulations have been extended.*
- x) In schedule 3, the lists of items, which may go into a licence have also been extended.*

2.2 ECTEL Questions on the Draft Bill

2.2.1 With regards to the Draft EC Bill, ECTEL asks the following questions:

- i. Having reviewed the draft EC Bill, what concerns if any would you like to express?

Cable & Wireless – Introduction

2.2.2 It is fitting that as expiry of the first set of licenses issued under a liberalized regime is imminent that ECTEL should pause to review the primary legislation, the Telecommunications Act, and the licensing regime. This with the objective of creating a fit for purpose environment for the next licensing period.

2.2.3 Necessary as a fit for purpose environment is, ECTEL has not been successfully in articulating what it should look like because there is no clear policy in place underlying the vision for the future. In this context then changes proposed by ECTEL will have to be evaluated on their own merit rather than as a part of a holistic plan.

2.2.4 Unfortunately ECTEL did not provide enough time to the industry to more thoroughly review the extensive documents.

2.2.5 Cable & Wireless is concerned that the ECTEL States propose to replace the existing Telecommunications Act with the draft Electronic Communications Bill. The basis for ECTEL's desire to replace the existing Act is unclear and insufficiently justified and explained. What is the "mischief" which this draft Bill seeks to address? What are the weaknesses or problems associated with administering the current Telecommunications Act that warrant repealing the current legislation in favor of enacting the new Bill? How does the new Bill successfully resolve the problems which have been identified by ECTEL in its administration, with the NTRCs, of the existing Act? These questions have not been properly addressed in ECTEL's consultative documents and LIME believes that the decision to replace the existing Act with the new Bill is ill-conceived. Without a clear understanding of the problems the new Bill is designed to address, there is considerable risk that ECTEL will replace a strong and clear piece of legislation - which has provided legal stability since liberalization - with a new law which could potentially create more problems than the existing Act. ECTEL States should not reform or replace existing law for the sake of reform, but to address gaps or problems which significantly hamper or limit the capacity of regulators to encourage investment and competition while protecting the public interest.

2.2.6 ECTEL should be mindful that the current Telecommunications Act achieves a reasonable balance between creating a level playing field for all operators and promoting market entry and investment with the need for regulation in the public interest. The success of this legislation can be measured by the number of new entrants into the market who emerged in the ECTEL states following passage of this legislation, and the level of competition which has developed and been maintained since liberalization. This is a major objective of any telecoms legislation and the current law helped to achieve this admirable outcome by creating clear and balanced rules for the sector without also creating a burden of regulation which had the effect of making competition in the market unsustainable.

2.2.7 In contrast, the new draft Bill is heavily weighted toward burdensome and invasive regulatory rules. For example, the new rules on access to dark fiber and submarine cable capacity will provide a strong disincentive for investment in the telecoms sector. It will discourage market entry and have a chilling effect on further investment from existing market players such as Cable & Wireless and Digicel. It also goes beyond the rules contained in most Telecoms legislation currently in force in the Commonwealth Caribbean, including Jamaica and Trinidad & Tobago. It contains a number of changes which seem arbitrary in nature. For example, the Bill contains extensive provisions on competition law and rules which are not consistent with either European Union Competition Law or United States (US) Anti-Trust law – utilizing concepts of “dominance” and “significant market power” interchangeably and without any clear basis or rationale. The competition law rules in the Bill are therefore confused and will confuse both ECA and the NERC in their attempts to implement it. It is also unclear why ECTEL should believe that either it or the NTRCs are the appropriate bodies to police breaches of competition rules, given that regionally, the trend is to centralize the skills and expertise required for competition law enforcement in regional specialist organizations. Giving substantive competition law jurisdiction to ECTEL and the NTRCs is a wasteful and expensive duplication of the efforts of CARICOM and the OECS to create regional competition authorities designed for that very purpose. Why should ECTEL seek to extend its responsibilities into an area of law which is famously complex and human resource intensive, when its central mission should be to instead manage the sector-specific telecoms rules which are the normal domain of telecoms regulators around the

world? This problem is not addressed in the current Bill by permitting ECA and the NERC to refer competition law issues to a regional body should one exist at a later date. This will only give rise to confusion and uncertainty for operators, who will seek to exploit the overlap of jurisdiction between the competition regulator and the NTRCs to their advantage.

2.2.8 More troubling, the Bill will also result in an exponential increase in the costs of regulating the sector, as the ECA and the NERC venture into areas which are currently outside the domain of the current Telecommunications Act. The regulation of market rates for subscriber TV services will require the acquisition and development of expertise in content management and regulation which neither ECTEL nor the NTRCs currently possess and which will come at some significant costs to ensure that such regulation is fair and balanced. Equally, the recruitment and development of skills in the area of competition law analysis and enforcement will impose huge costs on the ECA and the NERCs, both administrative and otherwise. Further, the transformation of the NTRCs into independent corporate bodies will have implications for the administrative costs of maintaining and operating the NTRCs. This will create further burdens on the Spectrum Fund by which both ECTEL and the NTRCs are funded. The likely consequence of these increased operating costs will be greater pressure to substantially increase the various regulatory fees and taxes already imposed on operators. Under the current Act, operators pay a range of fees, including licence fees at 3% of Gross Revenues per annum, spectrum fees, taxes to central government in the form of corporate taxes to the Inland Revenue Department, Universal Service Fees, Numbering Fees, Type Approval Fees and otherwise. As a rule therefore, telecoms operators are already significantly burdened by regulatory fees and, in comparison to other industries or utilities, telecoms operators pay a disproportionate amount of their revenues to state and regulatory authorities. In the ECTEL states, these fees are already at their maximum and changing the law to give regulatory bodies more responsibilities and increased areas of regulation will ultimately lead to internal pressure to increase the regulatory fees already paid by an overburdened industry, ultimately leading to making operation in these markets unsustainable. LIME believes that internal pressure will create unsustainable friction between the newly independent and significantly strengthened NERCs and ECA, as the

expansion in the NTRCs roles will place increasing pressure on the existing financial resources of the regulatory system.

2.2.9 It is therefore extremely unfortunate that ECTEL should consider making changes to the law without a clear policy in place underlining the vision for the future, and without a clear and reasoned basis for replacing the current Telecommunications Act. In doing so without a clearly explained policy basis, ECTEL States run the risk of replacing a fair and balanced, albeit imperfect piece of legislation, with a new piece of legislation which could give rise to greater problems and challenges than the law it replaces. While clearly not a perfect piece of legislation, it is the current Telecommunications Act which has provided the basis for all of the development and innovation in the sector in the last fifteen years. It is therefore an unqualified success to the extent that it helped usher in a new period of competition, innovation, investment, employment and improvements in and diversity of services to customers. It is the current Telecommunications Act which has facilitated over 100% mobile penetration in ECTEL states, as well as the introduction of advanced mobile services. ECTEL should therefore think carefully before repealing such a successful piece of legislation, as making changes for the sake of making changes or for the appearance of keeping up with current trends may in fact lead to the creation of a hostile regulatory environment which is not conducive to capital investment and which has the effect of reversing the gains of the previous decade and a half.

2.2.10 LIME therefore believes that the current draft Bill should be set aside and that the current Telecommunications Act should only be amended on a careful, incremental basis to address specific gaps or problems which regulatory practice has revealed over the years as in the case of the licensing regime. This approach will allow for the evolution of the current Telecoms law over a period of time. It will reassure current operators that have already invested heavily in the market and continue to promote the degree of predictability and stability which has been the hallmark of the ECTEL regulatory system since the market was first liberalized in 2000.

Explanatory Note 42

Clauses 46, 47 and 48 of the Bill do not belong together and should be separated.

Explanatory Note 50

The Commission references a number of bodies which are yet to be created – the Tribunal, OECS Competition Commission, Consumer Protection body. It is inappropriate to reference a non-existent entity. If these bodies are created, then the legislation establishing the body should contain any necessary consequential amendments to the EC Act

Section 2 - Interpretation - Access – Section 2(b)(iv)

These provisions represent a significant leap forward from the existing Act and are invasive. They will compel an operator to give access to sensitive commercial infrastructure and ultimately reduce competition and negatively impact all investment in the telecoms sector. The provisions would enable a new entrant or entity to enter the market without making any investment in infrastructure of their own. Rather, such an entrant could free-ride on investments made by Cable & Wireless and others, completing undermining the economic rationale for having made the investments in the first place. The definition of “access” should not be as broad as proposed by the Bill.

Section 2 - Interpretation - Alternative Infrastructure

The use of the term ‘*alternative infrastructure*’ has not been identified in the Bill.

Section 2 - Interpretation - ECA

This will require an amendment to the Treaty establishing ECTEL.

Section 3 - Objects of Act

3(d) The blanket requirement to facilitate OTTs could potentially lead to unfair competition and a reduction in investment in the sector. Some exceptions to this rule should allow for proper network management tools to be used as well as for blocking of illegal activity, such as child pornography and the theft of intellectual property via illegal downloads. Moreover, fair and efficient market conduct is undermined by the unfettered operation of a growing number of OTT services/applications. Value is extracted from the market by persons outside of the ECTEL States with no benefit to the government and local investors in communications infrastructure. 3(2)(f) essentially repeats 3 (2)(d). Both sections appear to be concerned with OTTs.

The Bill cites encouraging, promoting and otherwise facilitating the development of the sector as one of its objectives. Achieving this requires market conditions that encourage investment in infrastructure. Competition is more sustainable at the infrastructure level than it is at the services level. For this reason policies on matters such as LLU, colocation and the like are best arrived at after robust, factual economic analysis and should often have a time limit to enable and incentivize investment in infrastructure, if they are mandated at all.

Section 6 – Exemptions

This provision is widely drafted and open to abuse. There should be some limits on powers of the Minister to exempt parties from the application of the Act and this should be subject to an open and transparent process where the regulator and the public are consulted alike before any exemption is issued.

Section 7 – Powers and Duties of a Minister

As drafted, this provision undermines the principle of the harmonized telecommunications sector which ECTEL was established to promote. It does not require the NERC to consult with the ECA or the Minister to consult with the ECA either.. This is a specific example of how the independence of the NTRC will be strengthened, but the provision will lead to increased fracturing of the principle of a harmonized telecommunications regulatory environment. The Minister should also be required to provide an explanation in writing where he departs from the forms and policies or recommended practices of the NERC or ECA.

Section 8 - Establishment of the Commission

The establishment of the Commission as a corporate body will significantly increase the administrative costs of operating the commission and place greater burdens on the fixed resources of the regulatory system.

Section 9(2) – Composition of the Commission

The presence of public officers on the Commission undermines its independence and reinforces the notion that the Commission is a mere extension of the Minister's will. Indeed, none of the commissioners should be public officers as it compromises the independence of the commission. Since the Commission is required to follow Ministerial Policy the presence of these officers does not add value but undermines the Commission's independence, especially when votes are taken. Conceivably, if there were 3 commissioners, 2 could be public officers and could capture the decisions of the Commission, effectively ensuring that the Government controls the decisions of the Commission. This would be inappropriate, highly irregular and contrary to international best practice.

There should be a requirement that at least one Commissioner has extensive experience or some experience in spectrum matters. A major responsibility of the Commission is to regulate spectrum and yet anecdotal evidence suggests that regulators in the Caribbean underinvest in both training and maintenance of spectrum experts on staff, leading to the development and adoption of poor spectrum management policies and weak spectrum planning and coordination. This is a major area of concern for operators which frequently receives inadequate attention and resources from regulators. This is true of the ECTEL countries where current proposals for the release of LTE spectrum are both inefficient and potentially unfair. A new Bill should seek to address this problem by recognizing the importance of spectrum management to the successful regulation of the sector and provide the basis for appropriate attention and resources to be directed toward that activity.

Section 11(1)(e)(1) – Functions of the Commission

The intent of this provision is unclear. Typically the regulation of services only occurs when there are firms with significant market power and there is an abuse of that position. These provisions exceed the standard, internationally accepted grounds for regulating rates. The provision enabling regulation of rates in the public interest should be deleted. Regulation cannot be in the Public Interest if the entity does not enjoy SMP. This clause could potentially facilitate bias and emotive decision making. It is in the Public Interest to allow competition and market forces to set prices and not a regulatory bodies.

Section 11(3) – Function of the Commission

Section 5 of the Act specifically states that '*Subject to this Act, this Act does not apply to broadcasting content*'. ECTEL is currently prohibited from becoming involved in the regulation of broadcasting content. Cable & Wireless supports this, as we believe neither the NTRCs nor ECTEL are adequately designed and resourced to regulate broadcasting content. To expand their remit in this area would significantly increase the costs of regulation as well as dilute the mission of the NTRCs.

However in section 11(3) the Commission arrogates to itself powers to regulate broadcast content. It is an inconsistency in the Bill which can only be resolved by deleting this section. This is similarly the case at clause 42 (5)(c) which gives the Commission authority over content and which must be deleted for consistency with section 5. These provisions directly contradict the earlier prohibition on regulation of content. It is an inconsistency in the Bill which can only be resolved by deleting 11(3). The regulation of content will require significant resources which will impose significant costs on the Commission. Given the persons who may be appointed to serve on the Commission, it is not well suited (by design) to developing appropriate policy on broadcasting content. The Commissions and ECTEL are not designed to regulate content issues and therefore, the regulation of any content, including the rates charged for broadcasting services, should be excluded from the ambit of the Act. Otherwise, the prohibition at the start of the Act which removes the regulation of broadcasting content from the scope of the Act is contradictory and will lead to legal confusion. Moreover, as the governments of ECTEL States develop broadcasting commissions of their own, independent from telecoms regulators, the potential overlap in functions with the Commissions will lead to jurisdictional problems which will adversely affect the

development of broadcasting and investment in that sector as a whole. The economic regulation of broadcasting, i.e. the regulation of the prices of broadcasting services, should continue to be excluded from the Act. This provision should be deleted.

Section 13(f) – Powers of the Commission

This clause is unclear because it appears incomplete.

Section 15 (3)(a)– Chief Executive Officer

The Commission should be mandated to publish its work and to make its information and non-confidential information collected about operators, its determinations, its records, its budgets and official recommendations public. These documents should be published on the Commission's websites.

Section 25 – Remuneration

The remuneration of Commissioners and staff of the Commission should be made public, as should information about the accounts of the Commission.

Section 28 – Budget and Work-plan

The Commission should be required to consult with the Industry on its plans and budget and take the feedback provided into account prior to submitting same to parliament for approval. This recommendation is underpinned by the principle of fairness, transparency and accountability. It is also consistent with international and regional best practice. The Office of Utility Regulation (OUR) in Jamaica, consults on its corporate plan on an annual basis and received feedback from industry and other stakeholders about its accomplishments for the prior year and its plans for the coming period. This promotes accountability and represents the gold standard in the region.

Section 31 – Annual Report

There must be a requirement for the Commission to publish the annual report on its website at the same time that it is submitted to the Minister and the ECA.

Section 32 – Exemption from Taxes

For the avoidance of doubt, it should be made clear that this provision does not extend to the staff of the Commission or the Commissioners themselves.

Section 34 – Prohibition on Operating A Network or Providing Services Without a Licence

This provision should make clear that Over-the-top (OTT) providers are prohibited from operating without a licence as they clearly provide electronic communications services in the ECTEL States and materially impact the markets involved.

Section 37 (16) – Procedure for Grant of Licence

LIME recommends that licence durations should be indefinite. However, where ECTEL states adopt a fixed term for licences, LIME recommends that renewal should be automatic, similar to the way licences renew automatically in Anguilla. Automatic renewal of licences will make the States attractive to new entrants, as well as reduce the uncertainty and unpredictability around continued operations in a given country.

The Commission must be required to provide its reasons in writing as to why it will not recommend the grant of a licence to an applicant.

Section 38(1) - Requirement for a frequency authorisation

This clause is unclear because it is incomplete.

Section 41 – Transfer of Licences

This provision gives wide discretion to ECA or the Commission to refuse to grant a transfer of a licence, on the basis that, among other things, it is contrary to the public interest. This is vague and likely to lead to confusion and abuse. Delete 'or refusal' from subsection 41(8).

Section 42(11)(d) - Change of Control of the Licensee or Frequency Authorization Holder

The definition of 'merger' is unclear and should be reviewed. The provision also makes the market unattractive for investment and is too restrictive. The ninety (90) day rule for notification of change of control is questionable, at least for publicly traded companies.

Section 43 – Notification of Change of Interest

This provision will negatively impact the market for telecoms operators in the region and potentially stifle investment. It will discourage investors from purchasing an interest in local operators who might benefit from that investment. At a minimum there must be an exemption from this obligation for publicly-traded companies, as it is a duplication of efforts and a waste of resources, as such notices are typically already required on the applicable bourse or exchange.

Section 45 – Renewal of Licence and Frequency Authorisation

Licences should, at least, be automatically renewed to reduce uncertainty and promote investment, in which case there would be no need for Section 45 of the Act.

Section 46(7) Suspension and revocation of licence or frequency authorisation

The provision should be redrafted so that it is clear that the obligation relates to the payment of fees that are owed or which accrued prior to the suspension or revocation of the licence or frequency authorisation. .

Section 50- Type approvals

These provisions should be the subject of regulations made under the Act. The provision in the Act should simply provide for the permission to grant type approval to telecoms equipment.

Section 52 - Access to Cable Landing Station

These provisions will negatively impact investment in submarine cables in the ECTEL region and discourage the landing of further cables or the expansion and upgrading of international capacity into and transiting the islands. Cable & Wireless recommends that ECTEL rethink this provision.

Further, a licensee can only reasonably be expected to possibly give access to capacity that it controls. It cannot properly be asked to grant access to the capacity of third parties in a consortium. In addition, since the licensee would have invested in an IRU on a cable system to meet its medium- to long-term needs, it cannot possibly allocate out the unused capacity to its competitors without impacting its own ability to provide services to consumers. If such an obligation were maintained, the licensee would need to charge rates to recover not only the profits foregone by selling it to other competitors but also the costs associated with the need to accelerate investment in new capacity (because existing capacity had to be allocated out to other operators). In any event the rates for such access must be commercially negotiated.

Section 52(b) - Access to Cable Landing Station

This clause appears to contain an error and should be re-drafted.

Section 53 - Access to other Network Elements

Cable & Wireless strongly objects to the requirement to force access to proprietary and sensitive commercial infrastructure such as dark fibre. This is an invasive provision which will essentially reward free riders looking to avoid making their own network investments and will punish existing operators for having made investments in their own networks in the ECTEL states.

In a recent decision published by the Cayman Islands regulator, the Information and Communications Technology Authority (ICTA), unbundling local loops was rejected as a means of promoting increased competition on the grounds that they were against public policy. Internationally, significant evidence and academic work exists which highlights the fact that compelling access to local loops and dark fibre reduces network competition and has an adverse effect on network rollout and investment. Ultimately, these rules reduce choice and quality for consumers. It is well understood internationally that network competition is crucial to the promotion of sustainable broadband competition and that mandates for sharing infrastructure are counter-productive. Under such conditions as the Bill proposes, operators such as Cable & Wireless and others will have no incentive to invest in the ECTEL States and competition will suffer. This provision should be deleted from the draft.

Section 54 (4) – Access to Road Works

Section 54 (2)(d) requires notification to the Commission of intended roadworks. It does not require approval from the Commission. Accordingly clause 54(4) must be amended.

Section 56 – Equal and Indirect Access

Equal and indirect access needs to be defined. Further, applying international best practice would impose such mandates only after a full and public consultation clearly demonstrating the need for and impact on the market of such requirements.

Section 57- Lease of Excess Capacity Electronic Communications Network, Infrastructure or Facility

How is 'excess capacity' defined?

Section 61 - Interconnection Agreements

Provision must be made for interconnection agreements to be available on the Commission's website. No interested party should have to physically attend the Commission's office to have sight of the agreements. That would not be in the public interest.

Section 62(1) - Cost of Interconnection

This is contradictory and needs to be resolved. The principle is that the party requesting interconnection should bear the costs of establishing it.

Section 65 - Spectrum

This provision is more appropriate in the sections dealing with frequency authorizations. Most probably Section 39.

Section 68(3)(a) – Tariffs

This paragraph should be deleted. Publishing tariffs in a printed directory is anachronistic and, as prices change from time to time, will inevitably lead to out-of-date information that is misleading and of no use to consumers.

Section 70 – Privacy and Confidential Data

Clauses 70(7), 70 (8), 70 (9)(a) are unclear and appear to contain errors.

Section 71 (2) - Billing

The provision should include that the detailed bill may be provided electronically and that costs may be recovered for additional printed bills.

Section 72(1), (6) - Communications During an Emergency

'Head of State' should be replaced with 'Prime Minister' or 'Head of Government' in the first instance. In the second instance 'Head of State' should be replaced with 'Prime Minister' or 'Minister for National Security'. In ECTEL states, the "Head of State" would mean the Governor General or President (in the case of Dominica.) whereas directions of this nature should ideally come from the Prime Minister or the Executive branch of government.

Section 73(3)(c) - General Competition Practices

This provision is inappropriate. The Commission can have no jurisdiction to address anti-trust breaches outside of the state in which it operates. The geographic market in which the Commission operates will therefore only be the country in which the Commission is established. As such the Commission will have no power to assess, investigate or sanction anti-trust conduct that has cross border effects. Further, the provision introduces a number of extraneous concepts, such as the CSME and the OEU. This provision must be deleted.

Section 73(6) - General Competition Practices

A new provision 73(6)(c) should be added which allows a licensee to 'meet the competition'. A licensee which is simply responding to the competition is not guilty of anti-competitive behaviour.

Section 73(8)(f) - General Competition Practices

A definition is required for 'essential infrastructure'

Section 76(2)(e)(i) - Obligations on Licensees Having Significant Market Power

An operator who has installed infrastructure for its own use cannot be mandated to confer 'Irrevocable rights to use optical fiber not active or unbundled access to the local loop'. This is an abuse of regulatory authority and a denial of the rights of the infrastructure owner. And in fact, bearing in mind that there is a reason the operator installed the infrastructure in the first place, any access should be conditional until such time the infrastructure owner has need of it. To the extent that regulatory intervention is needed it should be pursued only to the point that the market becomes competitive. Once the market is competitive, regulatory rules should be relaxed from the former SMP provider. Irrevocable rights make a mockery of the purpose of regulatory intervention and the rights of the infrastructure owner.

Section 76(iv)-(vi) - Obligations on Licensees Having Significant Market Power

These provisions could potentially compel an operator to grant access to sensitive intellectual property, in breach of international standards and rules, which require states to allow IP holders to protect their IP without undue interference.

Section 76 – Obligation on Licensees Having Significant Market Power

Section 76 should be deleted from the Bill. Many of the provisions represent an overreach by the ECA and the NERC to the extent that the provision essentially allows the regulatory system to expropriate the network of an SMP provider and hand it over to a competitor to exploit for its own commercial benefit. These provisions go too far and grant too wide discretion to the ECA and the NERCs.

Section 77 – Market Analysis

A provision should be made requiring the Commission to publish the market analysis on its website.

Section 78 - Assessment of Dominance

This provision uses the term dominance whereas previous provisions use the term significant market power. This inconsistency in use of terminology throughout sections of the Bill needs to be remedied. Clause 78(1) is unclear because it contains errors.

Part 7 – Other Offences

Note that a section on offences is not identified in the Bill. Therefore this section cannot be titled 'Other Offences' since there is no section titled 'Offences'.

Section 90 – Cross-Shareholding

This section should be deleted. The need for such a prohibition is unclear, as there is no reason why the public interest would be harmed in any way if one licensee held shares in another. Further, it is unnecessary, as such material shareholdings would be approved in any event by the Commission, who could address any impacts on the public interest at that time, and it unduly restricts the abilities of operators to structure their operations in the most efficient manner.

Section 92 - Failure to Comply with Directions

This is not an offence as drafted and should be excluded from this section.

Section 93 - Breach of Code of Practice

A fine of 3% of its total annual net revenue for the previous year for breach of any code of practice is equivalent to the annual licence fees paid by licensees to operate. This is punitive and unreasonable.

Also, the provision as drafted does not expressly state that contravention of subsection 1 represents an offence liable to punishment upon conviction. In any event, offences are more appropriately associated with breaches of an Act or subsidiary legislation, not codes of practice.

Section 94 – Liability of Body Corporate

This clause should be restructured so that an officer of the Company is accountable for any breaches. An employee, who is not an officer of the company, should not be held liable for breaches.

Section 95 - Part 8 – Investigation

This part of the Bill should ideally be placed shortly after section 34. Moreover, the provision confusingly suggests that the only occasion on which the Commission can establish an investigation is in relation to a potential breach of section 34, which is erroneous. This provision is misleading and likely to cause confusion, and should be deleted.

Section 100 (2)

The following drafting is recommended:

- 2a. subscribers to the service
- b. members of the public affected by the service
- c . a retail customer
- d. a landowner affected by the works of the licensee

Section 104 - Disposition of Complaint

This section does not appear to empower the Commission to resolve or dispose of the complaint. It merely enables the Commission to refer the complaint to others. The Commission should have the power to resolve a complaint if it is to hear complaints at all.

Section 105 - Frivolous Complaints

The provisions in this section should ideally be the subject of separate regulations rather than a matter for the parent Act.

Sections 111, 112, 113 – Matters Related to Tribunal [Cable & Wireless Heading]

It seems disproportionate to establish a tribunal for the resolution of customer complaints. Between the operators and the Commission all complaints should be resolvable. To establish a bureaucratic machinery to do this is patently unnecessary, and this tribunal will become an expensive and inefficient body for dealing with public complaints. Moreover, this procedure will require the Commission to refer complaints by the public about small amounts or petty matters when the convening of the Tribunal itself will be more expensive than the sums involved. The entire section dealing with the Tribunal needs to be deleted from the Bill.

Section 126 – Continuation of Service During Complaint process

The clause needs to be amended to make it clear that that it is the service of the complainant that cannot be disconnected while a complaint is being adjudicated.

Part 10 – Miscellaneous (Fees)

There is no consistency about how these various funds are to be paid or distributed. This seems an arbitrary approach to the issue of the fees collected under the Act. This may not be constitutional.

Section 131 - Permission under Other Laws

The permission that is required needs to be stated.

Section 134(3) - Regulations

This provision is likely to be unlawful. Regulations should not create offences. All offences should be clearly set out in the parent act.

Section 135(4) - Repeal and savings

The placement of this provision is inappropriate. Also, the terms 'dominance' and 'significant market power' are used interchangeably in the Bill. However, they do not mean the same thing so this provision is not correct as stated.

Comments on the Draft Bill Applicable to the Draft Licence (Cable & Wireless Heading)

Where a provision in the proposed Bill is replicated in the draft Licence Cable & Wireless' comments on the draft Bill apply mutatis mutandis to the Licence.

ECTEL Question

- ii. Having reviewed the revised draft EC Bill; do you consider any of the clauses redundant? If yes, please provide examples and possible resolutions or suggestions.

Cable & Wireless Response

Yes. Please see the following which LIME recommends be removed from the draft:

- a. Section (11)(3) – Function of the Commission. See page 12 of this Response
- b. Section 45 – Renewal of Licence and Frequency Authorisation. See page 15 of this Response.
- c. Section 53- Access to Other Network Elements. See page 16 of this Response.
- d. Section 73(3)(c) – General Competition Practices. See page 18 of this Response.
- e. All sections on the Tribunal. See page 22.
- f. Section 134- Regulations. See page 22 of this Response

ECTEL Question

- iii. Are there any other provisions, which in your opinion should be included in the revised draft EC Bill. If yes, please provide examples and possible provisions

Cable & Wireless Response

Yes. Please see the following for inclusion in the draft Bill:

- a. Section 73(6) – General Competition Practice. See page 19 of this Response
- b. Section 73(8)(f) – General Competition Practice – See page 19 of this Response.
- c. Section 77 – Market Analysis. See page 20 of this Response.

3. COMMENTS ON NEW NETWORK SERVICE LICENCE

3.1 ECTEL's Questions Related to the New Licensing Regime

ECTEL's asks the following questions with regards to the New Licencing Regime²

a) Would you agree that a licencing regime, which requires a provider to apply only once to provide a number of services, is desirable?

Cable & Wireless Response

Yes. LIME agrees that it would be desirable for a provider to apply only once to provide a number of services. It is more efficient and as ECTEL has identified this approach has already been embraced by several countries.

b) Would it assist ECTEL if only one application for a licence needed to be made to enable a provider to operate in any Member State?

Cable & Wireless Response

This would most definitely be useful, particularly for regional providers since it would reduce administrative burdens.

c) Would it be beneficial to be able to complete an electronic communications application online?

Cable & Wireless Response

Completing the application online should be standard.

d) Are you familiar with the various licencing regimes, which have been presented here?

Cable & Wireless Response

Cable & Wireless is familiar with the licensing regimes presented by ECTEL.

²Pgs. 13-15, Document Titled ' Consultation on a (1) The Revised draft EC Bill (2)A New Network-Service Licence Template (3)A New Network-Service Licence Application Form For Implementation With the Electronic Communication Bill

e) What are your views as it relates to the submission of all licence applications to the Minister of each relevant ECTEL Contracting Member State as the Minister is the one issuing the licence?

Cable & Wireless Response

The proposed Electronic Communications Bill still requires the Minister to issue licenses based on recommendation by ECTEL and the Minister is in fact prohibited from issuing any licence that has not been recommended by ECTEL. So it does not seem that any value is added by first sending the licence application to the Minister who then still has to await guidance from ECTEL. Further, the need for the Minister to amend licences and frequency authorizations adds an unnecessary bureaucratic step that makes it extremely difficult to adjust licences and frequency authorisations in a timely manner (in the most egregious case of which Cable & Wireless is aware, the process of referring the matter to the Minister added approximately seven years to the process of amending a frequency authorization in one of the ECTEL States). Since the step adds no value it should be removed.

4. ECTEL QUESTIONS ON MULTI-SERVICE NETWORK-LICENSING REGIME

a) What are your views on the adoption of a Multi-Service Network Licencing Regime for implementation in the ECTEL Member States?

Cable & Wireless Response

LIME .would prefer the introduction of a true Unified Licensing regime.

b) Do you favour the use of only one licence, which gives you permission to carry out more than one service?

Cable & Wireless Response

Yes LIME does favour the use of only one licence which gives permission to offer several services.

c) Why do you favour this regime?

Cable & Wireless Response

LIME understands that ECTEL is proposing a multi-service licence regime which is different from a true unified licence because, ECTEL argues, it does not regulate content and because it intends to have separate application forms for each category of service. While Cable & Wireless prefers a true unified licence it does appreciate that ‘³Network-service licences are flexible and allow an operator to apply to deliver a number of services in one application form regardless of the type of technology to be utilized in the delivery of an electronic communications network-service..’.

d) Should this regime be extended to include service licences as well? Give reasons for your answer.

Cable & Wireless Response

The regime should include service licences as well because it streamlines the application process and it is not insurmountable to include the service licences since these same annexes are relevant for the Network-Services Licence. Note as well that Over-The-Top service providers (OTTs) must be included in this regime, as they too provide services in the ECTEL states. It would be inappropriate and inequitable to exclude an entire class of service providers from the licensing regime, particularly when members of this class contribute little to the development and maintenance of electronic communications markets in the ECTEL states.

e) What alternative suggestions if any do you have?

Cable & Wireless Response

A true unified licensing regime.

³ Pg. 5 Document Titled ‘ Consultation on a (1) The Revised draft EC Bill (2)A New Network-Service Licence Template (3)A New Network-Service Licence Application Form For Implementation With the Electronic Communication Bill

f) Why are you of the view that your suggested regime would be better suited for implementation in the ECTEL States?

Cable & Wireless Response

A unified licensing regime is a simpler regime to administer, is cost effective and most suitable for a converged environment.

5. ECTEL QUESTIONS ON CHANGES TO THE LICENCE

a) Have you observed any specific areas of the current Licences, which are problematic?

b) If yes what areas are they?

Cable & Wireless Response

(i) Yes. Licence classification of individual and class licences which are specific to particular technologies. This approach can be administratively burdensome, requiring the creation and adoption of multiple licence types to cover every variety of telecoms service and activity possible. It requires that an operator providing multiple services acquire each type of licence and submit separate applications for each type of activity. This is true of both individual and class licence applicants.

(ii) Further, the legal definition of the categories of what constitutes “individual” versus “class” licences is potentially confusing and often difficult even for experienced regulators to administer. By definition, “individual” licences are granted to enable a particular applicant to operate within certain terms and confines. Although these terms are specific to the operator, they are not unique, as every individual licence granted should contain similar terms and conditions to be lawful, as regulators and governments are not able to discriminate unfairly between licensees. On the other hand, class licences theoretical enable entire classes of operators to undertake certain types of activity at once. Notwithstanding these general distinctions, some regulators can issue class licences on an individual basis.

(iii) The greatest challenge however of such a classification system is that it is very technology dependent, often requiring development of a new licence type with the introduction of a novel service or novel technology. It is not essential that this approach is adopted for individual and class licence type regimes, but in the vast majority of cases, regulators have administered the classifications in that manner.

(iv) Notwithstanding these concerns, changes to a licensing system should be approached cautiously. Although potentially burdensome to administer, individual and class licensing systems are used throughout multiple countries in the world and there is therefore an abundance of case law and practical experience on how such systems can be administered. That body of knowledge can be helpful to guide ECTEL and the NTRCs on the administration of the licensing regime and avoid costly regulatory errors. ECTEL should be careful to adopt a new licensing regime which is not equally well understood or which is novel, merely to satisfy a desire to be seen to responding to “convergence.”

(v) Unified licensing regimes or general authorization regimes are also equally well understood and utilized by many countries in the world. ECTEL should pause to consider these options before proceeding with the network and service type approaches.

(vi) Finally, Cable & Wireless believes the current licence template is adequate and strikes the right balance between certainty for providers and ensuring appropriate regulatory oversight by the regulatory system.

c) Do you think they can be addressed and in light of the current changes being made?

Cable & Wireless Response

Yes. See previous comments about re-consideration of a unified licensing regime or a general authorization regime.

d) Do you have any suggestions, which may assist with revising the current licences to meet the needs of a multi-service network-licencing regime?

Cable & Wireless Response

See responses at section 3.2.

e) What problems do you foresee in adopting the changes suggested in this consultation document?

Cable & Wireless Response

Transitioning to the new regime may present a challenge if the new licensing regime creates inequities either way – for those who hold the new licences under the new licensing regime and those who hold old licenses under the new licensing regime.

Also, problems could arise if the new licensing regime is insufficiently understood by ECTEL and the NTRCs, leading to inefficient, unreasonable or confusing regulation.

f) Is there any category of licence, which you envisage will not fit into the current changes?

Cable & Wireless Response

No, but do see note on separate service licences in section 3.2.

g) Should special licences continue to be a special category under the revised EC Bill?

Cable & Wireless Response

Yes.

h) Is there any other way of dealing with special licences? Can you make any suggestions?

Cable & Wireless Response

No comments on this issue at this time.

6. ECTEL QUESTIONS ON THE CONSEQUENCES OF ADOPTING MULTI-SERVICE LICENSING REGIME

a) Do you have any concerns about this new regime recreating the monopolies of the past?

Cable & Wireless Response

No. The licensing regime in and of itself cannot create or re-create a monopoly. This question evidences a misunderstanding of how simplifying the licensing system should work. A multi-service licensing regime alone cannot create the conditions for market concentration, or a monopoly.

b) If yes, how do you envisage monopolies being recreated based on this new regime?

Cable & Wireless Response

N/A.

c) Having reviewed the draft EC Bill, will the new competition provisions address your concerns?

Cable & Wireless Response

No. The new competition provisions are troubling in their breadth and scope. They represent a significant expansion in the powers of the Commission. They will impose significant costs on the operations of the ECA and the Commission. The provisions are also confused; using the term “significant market power” and “dominance” interchangeably. Above all, the provisions are too wide and invasive and will have an adverse impact on the development of the sector. . Finally, these provisions are not required merely because ECTEL proposes to adopt a multi-service licence regime. They are inappropriate in the Bill and should be excluded. Competition issues and the enforcement of competition law should be left to the purview of a body specifically established by the states to respond to such issues.

d) Is there a need for a licence to provide a network without a service?

Cable & Wireless Response

This is definitely a possibility and because licences will be for a long enough period of at least fifteen (15) years, ECTEL must consider all the operating models that need to be supported by the licensing regime.

e) Do you have any additional suggestions? If any, do you wish to put them forward for consideration?

Cable & Wireless Response

No additional suggestions at this time.

3.5 ECTEL Questions on Spectrum and Numbering

a) Should Spectrum and Numbering be treated as separate issues?

b) If not, why?

c) If you agree, why?

3.5.1 Cable & Wireless Response

Spectrum and numbering resources should be treated as separate issues and the specific resources should not be embedded in the licence. This allows for spectrum and numbering issues to be dealt with separately without affecting the licence and vice versa. The separation from the licence allows for greater flexibility in addressing specific spectrum and numbering issues.

3.6 ECTEL Questions on Redundant Provisions in current Licences

a) Are there any provisions in the existing licencing regime, which you consider to be redundant or irrelevant and should not be included in the New Multiservice Network Licences? Please provide examples and possible resolutions or suggestions.

Cable & Wireless Response

NA.

b) Should adherence to net neutrality and technology neutrality be included in the licence?

3.6.1 Cable & Wireless Response

Care should be taken when embedding current industry jargon into licences with a significant time horizon, particularly when that jargon is ill-defined. It is better to describe what is expected in licence condition(s) rather than introduce a specific terminology that may lose its currency in a few years or may evolve to mean something else. Of course should this happen, it might necessitate an amendment to the Act. So, additionally, it is best to use secondary legislation to address specific issues of 'net neutrality' and 'technology neutrality'. Finally, there are some issues on which there is general industry agreement like 'technology neutrality' and others like 'net neutrality' that are contentious. If specific terminologies are to be introduced into the licences, they should be only those that are not contentious, for the minimization of any challenges, legal or otherwise.

More fundamentally, ECTEL should proceed with caution on including requirements on OTTs and net neutrality in licensing instruments, as these are difficult to change. Management of such issues should ideally be left to specific regulations of some kind. The new licensing categories should take account of OTTs and seek to regulate OTTs in the same manner as traditional network operators, once these OTT operators are providing services which compete with those provided by network operators.

7. ECTEL QUESTIONS ON SUGGESTED CLAUSES TO BE INCLUDED IN NEW LICENCES

a) Are there any clauses, which in your opinion should be included in the licence? If yes, please outline the clause and give your reasons.

Cable & Wireless Response

Yes. A clause should be added under both Licensed Services and Licensed Networks respectively that would say:

- (i) The particular network is licensed to provide any service capable of being carried by the network as technology evolves.
- (ii) The licensee is authorized to provide the particular services in keeping with the development of technology or such services as the technology allows.

7.1 Cable & Wireless Further Comments on the Draft Licence

7.1.1 General Comment – Definition of services and Connections to Licensed Network (LIME’s Heading)

(a) LIME notices that the definition of the services and connections to licensed network are too much influenced by existing technology and even technology that is no longer used in the network such as ATM and services such as telex. At the same time the services and connections to the licensed network are so specific that they preclude any allowance for future changes in technology and services which will happen during the duration of licenses issued under the new regime.

(b) Cable & Wireless recommends that the Commission should not seek to define all the ways that voice services can be offered because it is a futile exercise. Moreover in the ‘Voice Services’ categories under ‘Licensed Services (Fixed Public)’ many of the services are no longer offered and the terminologies from 6a-c are not used in the region. Cable & Wireless therefore urges the Commission to look at the provisions for all the licences because some provisions are outdated and in all cases the licenses lack future flexibility.

(c) To future proof the licences, Cable & Wireless recommends that the Commission includes a provision to provide all such services capable of being provided over the network and with regards to services, to provide such services in keeping with the development of technology.

(d) While it is the Commission's stated objective to provide technology neutral licenses, the insistence on identifying separate fixed and mobile networks and separate fixed and mobile services undermines this objective. The Commission needs to make voice licences technology neutral in order to achieve its stated objective. Now is the opportunity.

7.2 Cable & Wireless Comments Specific to Provisions of the Draft Licence

Interpretation - Customer Equipment

Customer equipment should be technology neutral. Interpretation should be any equipment used by the customer to access the service of a provider.

Part 1 - Section 5 – Duration and Renewal

At the beginning of the clause remove the words 'A licensee wishes' and begin with 'To'.

Part 1 - Section 8 – Surrender of Licence

After the word Minister add 'which consent shall not be unreasonably withheld or delayed'.

Part II – Section 1.2 – Licence Fees and Monies Owed

Consistency of terminology. NTRC is used instead of Commission. Commission is the terminology used in the rest of the draft licence.

Part II – Section 4.2 - Registration of Customer Information

The word 'reasonably' should be inserted before the word 'necessary'.

Part II – Section 5.2.2 – Confidentiality of Customer Information

Disclosure should only be made pursuant to a legal obligation, whether by law or court order.

Part II – Section 8.3.4 – Emergencies

This provision is expensive to implement, and yet is not likely to add anything to the safety and security of the customer. This provision should be deleted.

Part II – Section 8.6 – Emergencies

The referenced clause 2.3.1 cannot be found.

Part II – Section 12.3- Non-Discrimination and Fair Trading

As currently drafted customer equipment means mobile handset, so as it stands this prohibition would only apply to mobile handsets.

Part II – Section 12.6.- Non-Discrimination and Fair Trading

The first part of this clause 12.6 is incorrect because an anticompetitive agreement does not necessarily create significant market power and the second part is redundant given clause 12.5. This clause should be removed.

Part II – Section 12.6.- Non-Discrimination and Fair Trading

After power add 'in accordance with the procedure established by the Act'

Part II – Section 14.1 – Change of Control / Transfer of Shares

The Licensee cannot divest itself of its own shares.

Part II – Section 14.4 – Change of Control / Transfer of Shares

Neither 'competition' nor 'competition body' are defined.

Part II – Section 15.2 – Rights of Access

'Offers' should be 'officers'.

Part II – Section 15.6 – Rights of Access

After word 'suffers' insert the word 'proven'

Part II – Section 16.4- Interconnection Agreements

Before the word 'cost' insert 'Long Run Incremental'

Annex A (1)

Remove word 'subject'.

Annex B – Licensed Services – Internet Networks and Service- Section 1(vi)

Section 5 of the Act specifically states that '*Subject to this Act, this Act does not apply to broadcasting content*'. Accordingly the Minister has no authority to approve broadcast content and schedule. This section of the clause must be removed.

Annex C – Licensed Networks – Licensed Network for Fixed Public – Section 1.1

A definition of 'Transitional Provisions' is required.

Annex C – Licensed Networks – Licensed Networks for Subscriber TV

See previous comment above about excluding "content" from the licence.

Annex D- Obligation of Licensees – Interconnection and Leased Line Obligations for Submarine Cable Only

1b. The use of 'provide for' is vague.

2. Delete 'indirectly'

Annex D- Build Out Obligations for Fixed Public Only and Annex E- Universal Service Obligations for Fixed Public

(i) The provisions of this section are a throwback to a long-gone era in telecommunications. And it is at odds with the fact that the licenses are intended to be technology neutral and so the Commission should not be specifying the technology to be used to provide a service.

(ii) The fixed line network is unlikely to grow to any place where it does not currently exist and where it is not economically feasible. The entire industry knows that mobile has supplanted the fixed line as the main means of communication for most customers and the industry also knows that the mobile network is in far more places than the fixed network will ever reach. The establishment, therefore, of licence obligations that require

roll-out of the fixed network and the roll-out and maintenance of payphones is illusory and has no place in the telecoms environment of today much less in the next fifteen (15) years.

(iii) The same is also applicable to Annex E which addresses '**Universal Service Obligations for Fixed Public**'. Conditions 1a and 1b cannot be met because service from the fixed network will not be available to all persons regardless of their geographical location because the fixed network is not present in all geographical location. This is similarly the case with payphones.

(iv) At section 2 of Annex D add 'where facilities exist' after the word 'basis'.

Annex D – Geographical Coverage Obligation for Public Mobile Only – Section 1

The meaning of 'geographical coverage of at least 95% for each cell' is unclear.

Annex E – Universal Service Obligation for Public Mobile

1a. 100% geographic coverage for mobile is an unusually high requirement because the tendency for mobile networks is that there may be pockets of unserved communities or a few areas where the service is highly variable. This is the nature of the technology rather than a failing on the part of the provider. The requirement for 100% geographic position then puts service providers in an untenable position. The standard needs to be reviewed.

1b. Dial-up is not relevant for mobile and this clause should be deleted.

Annex E – Universal Service Obligation for Submarine Cable Only

Submarine Cable ends at the landing station. Any capacity to provide broadband internet access to public places would have to come from a terrestrial operator. Accordingly this provision needs to be removed.

Technical Specifications (For Submarine Cable Only) – Section 4

Backhaul would come from land-side operators, that is, the terrestrial service providers not the subsea cable operator. Therefore this clause should be removed.

8. ECTEL QUESTIONS ON IMPLEMENTATION

a) Should ECTEL cease the issuing of any new licences until a decision has been arrived at in relation to the new licencing regime?

Cable & Wireless Response

It is not practical to cease the issuing of new licences until a decision has been arrived at on the new licensing regime.

b) Should old licences simply be extended for a period of 12 or 24 months to allow effective migration to the new regime?

Cable & Wireless Response

This certainly is an option worth considering. It does however mean that the ECA/NERC will have to engage the licensees so affected and that the ECA/NERC must be prepared to work through the issues should the affected licensees feel particularly aggrieved by the delay in renewing licences.

c) Should stakeholders holding licences migrate onto the new regime automatically?

Cable & Wireless Response

Migration to the new regime cannot be automatic unless the licence has expired and even so the matter of equity is still a major consideration if there remain licensees who are not under the new regime.

d) What do you consider to be a reasonable period for migration once the new system is in place?

Cable & Wireless Response

Once the new system is in place, new licences will be issued under that system whether licences to new entrants or renewals for existing providers. The real issue is not the timeframe for the migration but rather the management of any inequities that may arise from providers with old licences in the new regime.

e) Should current licenced Stakeholders be required to provide all documentation previously provided on first application upon migration?

Cable & Wireless Response

If migration occurs before the expiry of the licence period, a licenced stakeholder ought not to be required to submit any further documentation as (i) the licence is still valid (ii) the stakeholder is not applying for a new licence or to amend a licence.

f) Would license operators and stakeholders appreciate a forum or series of forums with ECTEL to explain the new regime and how they may be impacted by it?

Cable & Wireless Response

This would certainly be useful.

9. COMMENTS ON NEW NETWORK LICENCE APPLICATION FORM⁴

ECTEL Questions on Network Licence Application Form

1. What are your views on the proposed revised application form?

Cable & Wireless Response

The form is similar in many respects to the existing form. The advantage however is that only one form will be required instead of several for each service type, and an application form will not be required for Frequency Authorisation since spectrum and numbering will be dealt with separately from the application for the licences.

⁴ Pgs. 15-16, Document Titled ‘ Consultation on a (1) The Revised draft EC Bill (2)A New Network-Service Licence Template (3)A New Network-Service Licence Application Form For Implementation With the Electronic Communication Bill

2. Does it adequately provide for the application of multiple licences in one form?

Cable & Wireless Response

It appears so.

3. What changes, if any, would you suggest?

Cable & Wireless Response

None at this time.

10. ADDITIONAL ECTEL QUESTIONS FOR STAKEHOLDERS AND LICENCE OPERATORS?

ECTEL directs the following questions specifically to stakeholders and licensed operators:

a) Are there any questions or issues, which have not been addressed? Please give examples.

Cable & Wireless Response

Cable & Wireless has raised all its questions and issues in the foregoing sections of the Response. However, it reserves its rights to bring additional comments or suggestions to ECTEL should it deem it necessary.

b) Would you appreciate a person be designated to assist them with any concerns about the revised draft EC Bill, the proposed new network-service licence, and the proposed new network-service licence application form once a final decision has been made as to regime to be adopted?

Cable & Wireless Response

This most certainly would be useful.

11. CONCLUSION

11.1 Cable & Wireless thanks the Commission for providing an opportunity to participate in this consultation. While it recognizes that some changes are required to the current Telecommunications Act to ensure that the law is adequate for the times, and in particular the licensing system can be reformed, Cable & Wireless believes that the wholesale substitution of the current Bill for the existing Act is ill-advised and will lead to significant challenges for the regulatory system. As currently drafted, the Bill does not achieve an appropriate balance between making ECTEL states attractive for investment in the sector and protecting the public interest. It creates too many invasive and burdensome new obligations and expands the powers of the regulators in dangerous and alarming ways, into new and resource demanding areas. It will create an uncertain investor environment and ultimately lead to reduced competition, as new entrants are put off by the new regulatory environment. The Bill creates the basis for an aggressive, interventionist regulator which is completely inappropriate to the size and complexity of the market. The level of regulation should be market appropriate and LIME believes this Bill does not strike the right balance.

11.2 Cable & Wireless urges ECTEL and the NTRCs to take a cautious, evolutionary and incremental approach to telecoms reform rather than taking the current proposed approach of abandoning the current Act and substituting it with the current Bill. Unfortunately, while the Bill has been in development for some time, Cable & Wireless's view is that it is not an appropriate piece of legislation to replace the existing law.

END