

CONSULTATION DOCUMENT

Recommendation of the Eastern Caribbean Telecommunications Authority ("ECTEL") To the National Telecommunications Regulatory Commission to consult on

Consultation on New Licence Templates and Revised Fee Schedule in ECTEL States

Consultation Document NO.01/2012

November 28th 2011

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendation for New Licence Templates and Revised Fee Schedule in Member States.
2. A copy of the New Licence Templates and Revised Fee Schedule is attached to this Consultative Document.
3. The initial comments period will run from **Thursday 1st December 2011 to Wednesday January 12th 2012.**
4. The Comment on Comments period will run from **Monday 16th January 2012 to Monday February 6th 2012.**
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the draft Licences and Revised Fee Schedule to the ECTEL Council of Ministers for its recommendation for adoption in the ECTEL Member States.
6. All responses to this Consultative Document should be written and sent by post, fax or e-mail to: -
Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
CASTRIES
St. Lucia
Fax: 1-758-458-1698
Email: consultation@ectel.int

Disclaimer

This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.

SUGGESTED GUIDELINES FOR RESPONSES TO CONSULTATION

In order to reduce administrative lags in ECTEL's public consultation processes and to enable a reasonable degree of transparency by sharing of views submitted, ECTEL hereby recommends that parties desirous of making contributions to the attached consultation follow the procedures outlined below.

- 1) Responses to consultations should be clearly labeled as a response to the particular ECTEL consultation and correctly referenced by title.
- 2) Documents should contain; the Name of Party/Licensee/NTRC commenting, address and telephone, fax number and email contacts of commentary author or corporate officer(s) responsible for the document. This information will enable ECTEL to clarify any comments where necessary, or to facilitate follow-up dialog by ECTEL where required.
- 3) Responses/comments to specific recommendations should be double spaced and numbered in sequence with the recommendation. Where comments are extensive, paragraphs should be numbered. Pages should be numbered.
- 4) Where possible, parties should make explicit reference to academic articles, legislative provisions in other jurisdictions, or other sources relied on, and should provide copies of these together with comments. Accurate citations of resources relied on will suffice if copies cannot be provided.
- 5) If relevant, parties commenting on specific provisions of legal language should propose alternative language where possible. Such language should be appropriately highlighted and double spaced. Parties should avoid proposing alternative language in tracked changes to the consultation document.
- 6) Comments may be submitted via letter, fax or electronically in PDF format, but should be submitted via one method only. Only comments submitted via e-mail may be acknowledged.
- 7) Commenting parties should expressly indicate or highlight which parts of comment documents contain commercially sensitive or confidential information that should not be published.

ECTEL reserves the right to publish all the responses received to the consultation and provides no undertakings to refuse to publish such comments where requested, on its website or otherwise.

ECTEL is grateful to those parties adopting the recommended guidelines for submitting comments to this consultation.

**EASTERN CARIBBEAN TELECOMMUNICATIONS
AUTHORITY (ECTEL)**

Consultation on
New Licence Templates
and
Revised Fee Schedule
In ECTEL STATES

November 28, 2011

INTRODUCTION

The Eastern Caribbean Telecommunications Authority (“ECTEL”) is an international organization based in St. Lucia, established by treaty signed between five states in the Eastern Caribbean for the purposes of, inter alia; promoting open entry, liberalization and competition as well as harmonized policies for the telecommunications sectors of Contracting States. In pursuance of that objective, ECTEL routinely undertakes public consultations on various aspects of telecommunications regulation and policy.

The purpose of this consultation is to seek the views of interested parties on the proposed scope of several new telecommunications licences. In the course of the consultation, ECTEL will outline several new draft telecommunications licences which have been developed in recognition of the existence of several emerging services in ECTEL states which are currently not regulated or which are insufficiently regulated under existing regulatory arrangements. Consequent upon the introduction of these new licences, a number of related amendments are proposed to the current Schedules to the Telecommunications (Fees) Regulations (“the Fees Regulations”), currently in force in ECTEL states. It is the intention of ECTEL to recommend adoption of all of the proposed licences and to effect necessary amendments to the Fees Regulations in all ECTEL states. Upon conclusion of the consultation, ECTEL may amend the draft licences or proposed Fees Schedules and submit them on approval by its Board and Council for adoption in ECTEL states.

Interested parties responding to the consultation should ensure that all responses are submitted by 4:30 pm to:

Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
CASTRIES
St. Lucia
Fax: 1-758-458-1698
Email: consultation@ectel.int

BACKGROUND TO THE DEVELOPMENT OF NEW LICENCE TEMPLATES

Although the telecommunications markets of ECTEL states were formally liberalized in or around 2001, actual competition in ECTEL states did not commence until 2003 with the introduction of mobile competition, first in St. Lucia and then followed by other ECTEL states. Since the advent of liberalization some ten (10) years ago, a number of new telecommunications services have emerged as the telecommunications markets of ECTEL states have become more complex. New technologies have emerged and other developments in the market have led to a

proliferation of new telecommunications services being offered available to the public. Despite this, the number of telecommunications services subject to a requirement of a telecommunications licence in ECTEL states, has not grown or changed substantially since the advent of liberalization.

This emergence of several new types of telecommunications services and the increased complexity of the telecommunications markets in ECTEL states, compels regulatory authorities to constantly review currently available licences to ensure that existing licences remain relevant. In addition to the need to establish basic consumer protections and promoting increased quality of service, regulatory authorities are also routinely required to ensure the equitable application of rules between providers and to promote fair competition. These objectives demand a constant examination of existing regulatory rules and the necessary flexibility to make adjustments to the existing licensing regime where circumstances require.

In keeping with ECTEL's standing policy to consistently review the current and emerging trends in the markets of ECTEL states, ECTEL proposes to adopt a number of new licences to take account of the emergence of several services. In ECTEL's view, these new licences are required to take account of existing market realities and will serve two primary purposes. First, some of the new licences will enable the sound regulation of a wide variety of services currently being provided in ECTEL markets. Second, these licences may facilitate the introduction of some telecommunications services which would have the effect of substantially increasing the levels of competition in the major telecommunications markets of all ECTEL States.

In all cases, the licences will facilitate the provision of a variety of telecommunications services in accordance with the formal authority granted by the relevant Minister of Telecommunications. They will also enable the National Telecommunications Regulatory Commissions ("NTRCs") to exercise reasonable regulatory supervision over the provision of certain new services to the public. A principle benefit to recipients of the licences will be the ability to seek the intervention and protection of the NTRC, in cases where provision of their services is reliant on the cooperation, inputs, or services of other licensees.

The licences should also contribute to an increased level of regulatory certainty and promote a fairer playing field for all providers, by clearly establishing the rights, obligations and limitations placed on licence holders. The introduction of these new licences and the clarification of the specific rights of certain licence holders are regarded as preferable to the legal uncertainty inherent in a situation in which certain telecommunications services remain unregulated.

ECTEL hereby seeks the views of interested parties on the proposed scope of the following licences:

MOBILE VIRTUAL NETWORK OPERATIONS (MVNO) LICENCE

This licence is intended to enable a licensee to provide mobile call and subscription services to customers without an allocation of spectrum, using resources leased from a licenced public mobile telecommunications (PMT) provider assigned with spectrum. Applicants who are desirous of providing mobile subscription and call services to members of the public without any spectrum of their own may apply for this licence. The terms and conditions of the licence require the licensee to utilize part of the networks of a PMT licensee to originate and deliver its customers' calls. The Licensee will be required to pay the PMT licence holder for the use of the network and/or essential radio segment of the network(s) involved. Subject to the requirement that the licensee may be required to provide certain services at the direction of the NTRC, the licensee shall be entitled to provide all of the services normally provided by a holder of a PMT licence.

A copy of the draft new MVNO is hereto attached as Annex I to this consultation.

RESALE OF LEASED CIRCUITS (“RLC”) SERVICES LICENCE

This licence will enable a licensee to resell leased circuit capacity to corporate customers for their own use or to other telecommunications licensees requiring that capacity as an input for their own services. A copy of the draft new Resale of Leased Circuits Services Licence is hereto attached as Annex II to this consultation.

INTERNET EXCHANGE POINT (“IXP”) SERVICES LICENCE

This class licence is intended to enable an individual to establish, install and maintain an Internet Exchange facility to facilitate the exchange of internet data between licensed Internet Service Providers (“ISPs”) in ECTEL states. The proposed licence authorizes the establishment of a physical interconnection site for licensed ISPs to exchange traffic between their networks and link to the global internet backbone that serves as a form of international transmission media. A copy of the proposed IXP Services Licence is hereto attached as Annex III to this consultation.

VALUE ADDED SERVICES (“VAS”) LICENCE

This licence is intended to enable the licensee to establish, install and operate a Value Added Network (“VAN”) to provide a wide range of telecommunications services, over and above services constituting basic telecommunications services such as basic voice or data services, over the existing network of another licensee. Although a VAS Licence is listed in the existing Fees Regulations of ECTEL States, an agreed template for this type of service has not been formally adopted and ECTEL proposes to address the situation by proposing a new and expanded scope of the licence. In view of the fact that there several services could conceivably be provided under this licence, the term “value added service” has been defined as a telecommunications service (other than a basic telecommunications service) provided over a value added network, for which

suppliers add value to the customer's information by enhancing its form or content or by providing for its storage and retrieval and which may consist of, inter alia –

(a) any kind of technological intervention that would act on the content, format or protocol or similar aspects of the signals transmitted or received by the customer in order to provide those customers with additional, different or restructured information;

(b) the provision of authorized access to, and interaction with, processes for storing and retrieval of text and data; or

(c) managed data network services.

Under this licence, a range of services included but not limited to: (i) audio text; (ii) call back/call origination services, (iii) international calling card services, and (iv) managed data network services, can be provided. The scope of the licence is intended to be deliberately wide in order to accommodate a wide range of services. However, an important limiting element is the definition of a VAS, which clearly indicates that such services are provided over or via the network of another licensee.

A copy of the proposed VAS Licence is hereto attached as Annex IV to this consultation.

INTERNET PROTOCOL (“IP”) TELEPHONY LICENCE

This licence has been previously approved and adopted by ECTEL but was previously known as the Voice over Internet Protocol (“VOIP”) licence. In 2009, ECTEL undertook a public consultation on a proposed VoIP licence. In that consultation, ECTEL proposed the introduction of a class licence to enable the provision of internet telephony services and this recommendation was subsequently adopted by ECTEL's Board of Directors and Council of Ministers. The licence enables a licensee to convey voice or data, with or without added value, using internet protocol technology via means of a leased circuit connected to a public switched telecommunications network at both ends. The Licensee's services to customers enable them to make and receive voice, data and/or video calls using telephone numbers assigned for such purposes. Given that licensees do not possess their own network and may rely on the traditional public switched telephone network to terminate calls, the licence obliges them to negotiate appropriate commercial arrangements with licensed providers to permit the provision of the service.

Although the terms and conditions of the licence have been formally adopted, ECTEL takes the opportunity afforded by the current consultation to formally give notice of its intention to change the name of the licence from “VoIP” to the “Internet Protocol Telephony Licence,” and to standardize the proposed fee structure with that of all the other proposed new licences forming the subject of the current consultation. With respect to the change in nomenclature, the licence has been changed from “VoIP” to “IP Telephony Licence” in recognition of the fact that the term

“IP Telephony Licence” was more descriptive and appropriate to the potential services covered by the licence.

The licence is applicable to providers based in ECTEL jurisdictions seeking to provide specified telecommunications services to members of the public. For the avoidance of doubt, ECTEL does not propose to regulate internet based social network type computer applications capable of enabling voice communication and or companies operating outside of ECTEL states’ legal jurisdiction.

Although the scope of the licence has been approved and adopted by ECTEL and the NTRCs, parties to the consultation may submit any views they may have with respect to the detailed terms and conditions contained in the proposed template. The IP Telephony Licence is hereto attached as Annex V to this consultation.

CLASSIFICATION AND FEE STRUCTURE

ECTEL proposes to classify all of the new licences as “Class Licences” and to adopt a standard fee structure for the same. With respect to fees, ECTEL proposes an:

- (i) application fee of XCD500.00,
- (ii) initial fee of XCD 5000.00 and
- (iii) annual fee of 3%of gross revenue, except that the minimum fee shall not be less than XCD 5000.00.

DISCONTINUATION OF SELECTED EXISTING LICENCES

Simultaneously with the adoption of the proposed new class licences, ECTEL proposes that current licences and or charges for:

- (i) Customer Premises Wireman Certification;
- (ii) Customer Premises Installation and Repair;
- (iii) Citizen Band Radio;
- (iv) Family Radio; and
- (v) Internet Services Provision (Internet Cafes).

should be discontinued.

In keeping with a desire to ensure that the ECTEL licensing regime is relevant and effective, ECTEL has determined that the foregoing services should no longer be subject to the requirement of a licence from the Minister of Telecommunications or should no longer be subject to the payment of fees. This determination has been made on the basis that:

- (a) formal regulation of the services or activities concerned is no longer necessary or relevant or may be more efficiently achieved through an alternative system (e.g. Customer Premises Wireman Certification);

- (b) the administrative costs involved outweigh the potential or perceived risks or benefits of formal regulation (e.g. Citizen Band Radio, Family Radio); or
- (c) formal regulation is undesirable or at odds with wider policy objectives (Internet Cafes and Restaurants).

Notwithstanding the discontinuation of these licences, NTRCs retain jurisdiction under the Telecommunications Act to adopt an alternative system of supervision over the activities concerned. In the case of Internet Services Provision, which would normally be applicable to internet cafes or restaurants reselling internet services, pursuant to a service level agreement with a licenced Internet Networks/Services Provider, or in respect of Customer Premises Wireman Certification, ECTEL proposes to recommend a simple registration procedure for adoption by NTRCs.

AMENDMENTS TO SCHEDULES OF TELECOMMUNICATIONS (FEES) REGULATIONS

Consequent upon the proposed adoption of several new licences, ECTEL proposes to recommend a number of changes to the existing Fees Regulations, currently in force in ECTEL states. Some of these changes are required to reflect the adoption of the new licences and fees proposed that are outlined in this consultation.

Some additional amendments to the Schedules to the existing Fees Regulations are however proposed, in order to ensure that the Fees Regulations are consistent with a number of regulatory determinations which have been adopted by ECTEL's Board and Council in recent years. These additional proposed changes are as follows:

- (i) Fees for Individual Licences shall be maintained at the existing rate of 3% of Gross Annual Revenues;
- (ii) Minimum Licence Fees for Individual Licences will be adopted;
- (iii) Minimum Fees shall be equal to Initial Fees payable by licensees upon grant of a licence;
- (iv) Broadcast AM and FM Radio and TV services shall be re-categorized as subject to a "Class Licence;"
- (v) Subscriber Television Network/Services shall be categorized as subject to an "Individual Licence;" and
- (vi) Specific Fees shall be prescribed in respect of 700MHz Spectrum.

In respect of the payment of Individual Licence fees, parties to the consultation should note that in respect of these licences, existing and prospective licence holders shall be required to pay a minimum fee equal to the Initial Fee prescribed, where no revenues have been recorded by the licence holder in the relevant year.

A copy of the proposed model Schedule to the Telecommunications (Fees) Regulations is attached hereto as Annex VI to this consultation.

CONCLUSION

Based on the responses received to the current consultation, ECTEL will submit a final recommendation to its Board of Directors and Council of Ministers for approval before onward submission to NTRCs for adoption.