

# **FLOW's** Response to the Eastern Caribbean Telecommunications Authority's (ECTEL)

- (i) Draft Mobile Electronic Communications (Roaming Services ) Bill
- (ii) Draft Mobile Electronic Communications (Roaming Services) Regulation
- (iii) Proposal for Roaming Pricing in the ECTEL Member States

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## 1. Executive Summary

- 1.1. FLOW appreciates the opportunity to respond to ECTEL's consultation on its;
  - (i) Draft Mobile Electronic Communications (Roaming Services ) Bill
  - (ii) Draft Mobile Electronic Communications (Roaming Services) Regulation
  - (iii) Proposal for Roaming Pricing in the ECTEL Contracting States
- 1.2. FLOW however believes that the time allowed to respond is unacceptably short, as the issues raised required more extensive deliberations and investigation. As such FLOW reserves all its Rights to make additional comments going forward.
- 1.3. FLOW has serious concerns about the process being followed to regulate roaming services within the ECTEL Contracting States. The process is not transparent. Assertions are made about the lack of competition in the relevant market(s) absent any robust evidence. We find it curious that without properly consulting on the market(s), ECTEL is proposing Regulations and Pricing Models. FLOW is also concerned about specific technical recommendations. As a result, FLOW disagrees with ECTEL's recommendations on the grounds that they are premature, due to lack of evidence and proper justification.
- 1.4. All responses to this document should be sent to Charles Douglas, Regional Regulatory Advisor at email, **charles.douglas@cwc.com**.

## 2. Background on Proposed Legislation and Regulations

- 2.1. Based on the reviewed draft Legislation and Regulations, ECTEL is
  - 2.1.1. proposing a set wholesale and retail price regulations applied to mobile roaming services offered by Public Mobile Telephone System (PMTS) Licensees in the ECTEL member states
  - 2.1.2. Such price regulations would apply only to operators with a PMTS License in an ECTEL state.
  - 2.1.3. Presumably, the retail roaming rates of non-licensed operators remain unregulated. Non-licensed operators include foreign operators, such as Verizon and Vodaphone, as well as regional (non-ECTEL) operators, such as Flow Barbados and Digicel Barbados
  - 2.1.4. ECTEL's proposed wholesale price regulations are to be based on yet-to-be determined Price Cap regulations. Whereas, retail price regulations are to be based on "home" prices (aka "Roam Like You Are Home" prices)

## 3. Regulations limited to Licensees

- 3.1. ECTEL's wholesale regulations would apply to all Public Mobile Telephone Systems (PMTS), since all PMTS roaming wholesalers hold a PMTS License in ECTEL states (e.g., FLOW St. Lucia and Digicel St. Lucia)
- 3.2. However, in effect, ECTEL's proposed retail regulations would be limited to only a subset of all PMTS operators, since most PMTS roaming retailers do not hold a PMTS License in ECTEL states (e.g., Verizon USA, Flow Barbados, Digicel Barbados, etc.)
- 3.3. If the above is an accurate interpretation of the scope of proposed roaming regulations, the efficacy, fairness and consumer benefit of these regulations are questionable and must be objectively examined. For instance, mandating reduced wholesale roaming rates could represent a windfall to unregulated retailers that choose not to pass on these savings to their customers.

## 4. Do Roaming Prices Require Regulation?

- 4.1. ECTEL's premise for these regulations is an unpublished investigation, which is said to demonstrate that "in some cases, large premiums were being paid by customers to access roaming services". However, the only evidence to substantiate this claim is the following ambiguous sentence on page 1 of the Consultation Document:  
***"In particular, the study noted that the premium charged ranged from 32% to over 200% of the cost of an in-country mobile-to-mobile (MTM) on-net call."***

4.2. From this comparison, we must infer it excludes all roaming services, except for voice calling, and we must further infer it excludes all types of voice calling, except for domestic “on-net calls”. However, a local roaming call is by definition an “off-net call.” Therefore, it is unclear which roaming service price(s) ECTEL is relying on to reach its conclusion. Absent the required clarity, one may assume that ECTEL used the price of a local roaming call. If so, ECTEL needs to explain why it used this single, apples-to-oranges comparison: the price of a *local “on-net call”*, compared to the price of a local roaming call, which is by definition an “off-net call”.

4.3. Understandably, the lack of robust argument undermines confidence in and calls into question, the reasonableness of ECTEL’s approach.

## 5. How Does Regulating Roaming Prices Promote Competition?

5.1. Based on its assertion that roaming prices are excessive, ECTEL concludes that this outcome is caused by market failure. It states, ***“The presence of the premium on roaming services in the Contracting States fails to promote fair pricing and competition in the ECTEL Contracting States.”***

5.2. ECTEL, however, fails to explain or even consider how exactly a premium on roaming services impedes or interferes with competition.

5.3. To the extent that a price premium does exist, all other things being equal, it acts as an incentive to encourage competition. Therefore, by removing this incentive by regulatory mandate, it is unclear how these regulations promote competition.

## 6. Conclusion

6.1. FLOW required more time to respond to these consultation documents. Notwithstanding, it will provide additional comments at a later date.

**End**