

CONSULTATION DOCUMENT

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

- (1) Confidential Aspects of Approved
Interconnection Agreements; and**
- (2) LIME's Proposed Reference Interconnection
Offer (RIO).**

Consultation Document /NO.

June 2011

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendation on the aspects of Interconnection Agreements that should remain confidential.
2. A copy of the draft policy on the confidential aspects of Interconnection Agreements is attached to this Consultative Document.
3. The initial comments period will run from **Wednesday 22nd June 2011 - Wednesday 3rd August.**
4. The Comment on Comments period will run from **Monday 8th August - Friday 2nd September 2011.**
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the draft Policy document 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) Where specific recommendations require it, commenting parties should indicate clearly via a "Yes" or "No" response, whether they concur or disagree with the recommendation and provide explanations/reasons for each response.
- 4) Where parties have no view or interest in expressing a view on a specific recommendation, parties should indicate "no comment" and number appropriately.
- 5) 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.
- 6) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 7) Where possible, comment documents should be submitted in PDF format.
- 8) 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.

- 9) 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.
- 10) Comments may be submitted via letter, e-mail or fax, but should be submitted via one method only. Only comments submitted via e-mail may be acknowledged.
- 11) 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 CONFIDENTIAL ASPECTS OF
APPROVED INTERCONNECTION
AGREEMENTS**

22nd June 2011

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CONFIDENTIAL ASPECTS OF INTERCONNECTION AGREEMENTS

INTRODUCTION

The purpose of this consultation is to determine and establish the portions of currently approved interconnection agreements to be kept in the confidential portion of the Interconnection Register maintained by the National Telecommunications Regulatory Commissions (NTRC) of ECTEL states. In the course of the consultation, ECTEL will seek the views of interested parties on which parts, if any, of currently approved interconnection agreements should be kept confidential and which parts of the agreement should be published on the NTRC and ECTEL websites. It is the intention of the ECTEL Directorate to recommend that all currently approved interconnection agreements are made available for download by members of the public should they so desire.

Interested parties responding to the consultation should ensure that all responses are submitted by **3rd day of August 2011 at 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

CONTENT OF INTERCONNECTION AGREEMENTS

The basic framework of currently approved interconnection agreements within the ECTEL system usually involves a Legal Framework together with several schedules to the agreement. Typically, these schedules include a:

- (i) Definitions Schedule;
- (ii) Parameter Schedule;
- (iii) Service Description Schedule,
- (iv) Service Schedule;
- (v) Tariff Schedule; and
- (vi) Joint Working manual.

The Legal Framework contains the terms and conditions under which interconnection will be offered and as such contains clauses that speak to matters of, inter alia; duration, suspension, termination, dispute resolution, and force majeure. Service Description schedules usually contain precise definitions of the services that will be offered under the agreement and as such may speak to joining services, termination services and special access services. The joint working manual details the network specifics on how

interconnection will be achieved and makes provision for testing and maintenance. The parameter schedule speaks to the resolution of faults that may occur in the provision of different services.

Typically, the Tariff Schedule may contain information relating to the cost of “Joining Services” and termination and related rates, including transit charges if applicable.

Together, these documents constitute a complete interconnection agreement. Prior to making a recommendation for approval or acceptance of the same by the NTRC, ECTEL must be satisfied that the terms and conditions of the Agreement as a whole do not breach any of the terms of the Telecommunications Act and related Telecommunications Regulations.

PUBLICATION OF INTERCONNECTION AGREEMENTS UNDER THE ECTEL SYSTEM

In every ECTEL state, a relevant section of the Interconnection Regulations (“the Regulations”) requires the NTRC to maintain a register of all copies of interconnection agreements at the principal office of the Commission. The Regulations also dictate that the register must be maintained in three parts. Part I of the register is to contain a list of all interconnection agreements with the names of interconnection providers, service areas of operation and dates of the execution of the agreements. Part II of the register is to contain the portions of interconnection agreements, which the Commission has directed to be kept confidential. Part III is to contain the contents of the interconnection agreements excluding those directed by the Commission to be kept confidential and which shall be open for inspection by the public.

In treating with the confidential portion of the register, the Regulations allow the Commission to direct, on the request of any party, that a particular portion of an interconnection agreement be kept confidential. Where the Commission determines that the interests of a telecommunications provider could be adversely affected if portions of an agreement were made public, it may direct that the relevant part be kept confidential and excluded from Part III of the register.

BALANCING THE REQUIREMENT FOR PUBLICATION WITH THE NEED FOR CONFIDENTIALITY

The publication of interconnection agreements allows for the maintenance of a competitive telecommunications market and represents a fundamental requirement of the legislative rules currently governing interconnection in ECTEL states. Making interconnection agreements public, increases the transparency of pricing and provides a basic benchmark for all providers. Publication shortens the commercial negotiation time between existing providers and new entrants, provides more certainty to new entrants and most importantly, prevents unfair discrimination by dominant providers.

Such discrimination may occur where two or more providers provide interconnection to each other on more favorable terms and conditions than are provided to new entrants or to third or fourth parties in the market. Publication of interconnection agreements therefore enables providers to better evaluate the level of treatment afforded to them by providers as compared to that provided to other companies. In this way, rules on transparency promote fair rules for all and an overall healthier market.

However, it has been posited that there are some areas of interconnection agreements, which could potentially contain commercially sensitive information. Such confidential information could theoretically include:

- (i) Research and development related to products;
- (ii) trade secrets, know how, or patents (intellectual property rights);
- (iii) business plans, operations or systems, financial and trading positions;
- (iv) details of customers, suppliers, debtors or creditors;
- (v) sensitive information relating to the officers, directors or employees of a provider and its related corporations;
- (vi) marketing information;
- (vii) highly specific details of a provider's telecommunications network.

Arguably, where commercially sensitive information is made public, it could adversely affect the commercial viability and interests of a company. Therefore, the requirement for transparency should be balanced by the need to protect information, which may adversely impact on the commercial interests of parties.

However, due to the fundamental requirement for transparency in interconnection, the NTRC is required to examine and determine whether every request for confidentiality is warranted or without merit. This is because only those sections of an agreement which contain genuinely confidential information should be kept confidential. Notwithstanding the rights of parties to an interconnection agreement to make a request for confidentiality therefore, the NTRC reserves the right to refuse a request where the information involved does not reasonably constitute commercially sensitive information and or where to release such information, would not give rise to potential commercial hardship for a provider.

STATUS OF PUBLICATION IN ECTEL MEMBER STATES

As of 2011, the content of interconnection agreements in ECTEL member states remains largely unavailable to the public. In St. Lucia, the NTRC has made available online Part I of the Interconnection Register that lists approved Interconnection Agreements but the content of the same is not available online. The Grenada Commission published what is described as an abridged version of a 2002 Interconnection Agreement between Cable and Wireless and Global Network Providers. No other interconnection agreements are listed or published on the website. The websites of the Commissions of St. Vincent and

the Grenadines and Dominica reveal that a register of approved interconnection agreements are not available online. In St. Kitts and Nevis the Commission has no online presence.

Although the lack of online information relating to the Registers does not preclude the provision of copies of relevant sections of approved agreements to members of the public upon request, there is a need to develop a clear standardized policy on which elements of such agreements should be kept confidential and which should be made available for download across all ECTEL states.

ECTEL's PROPOSALS ON PUBLICATION

ECTEL proposes to recommend that all currently approved interconnection agreements should be made available for download by interested parties on the NTRC and ECTEL websites. This recommendation is based on a recognition of the importance of the principle of transparency in interconnection agreements, imposed by the Act and related Regulations. Based on ECTEL's assessment, there are currently a number of agreements which have been approved in each ECTEL state which remain largely unavailable to the public. In keeping with the basic requirements of the legal rules governing the issue therefore, ECTEL proposes that these agreements should be widely published and easily accessible to members of the general public.

Recommendation

ECTEL proposes to recommend that all currently approved interconnection agreements should be published.

- 1) ECTEL invites views on its recommendation that all currently approved interconnection agreements should be made available for download on ECTEL and NTRC websites.**

ECTEL also proposes that all sections of currently approved interconnection agreements should be made available for download by interested parties. Based on ECTEL's assessment, the basic framework of all currently approved interconnection agreements are in keeping with regional and international standards and do not contain commercially sensitive or proprietary information that should not be disclosed.

This assessment includes all standard sections of currently approved agreements, including the Legal Framework, Tariff and all other related schedules. In particular, ECTEL proposes to recommend that the Legal Framework and all sections of approved Tariff Schedules of existing agreements must be disclosed in order to meet the basic requirements contained in the Act and Regulations on non-discrimination and transparency in prices.

Notwithstanding these views, ECTEL seeks the views of providers and other interested parties as to whether any sections of the agreements should not be published, prior to publication. Where any currently approved agreements contain information of a genuinely sensitive or confidential nature, publication of all sections could lead to the unintended disclosure of commercially sensitive information which ideally should remain confidential.

ECTEL therefore seeks the views of interested parties on whether any aspects of existing agreements should be kept confidential.

However, commenting parties are specifically requested to bear in mind that the NTRC reserves the right to refuse to accede to a request where it has determined, in consultation with ECTEL, that the request:

- (a) does not relate to information of a commercially sensitive or proprietary nature;
- (b) is unlikely to result in any commercial hardship or injury if published, or
- (c) if granted, would constitute an unreasonable or unjustifiable breach of the fundamental requirement for transparency and fairness in interconnection pricing between providers.

Recommendation

ECTEL proposes to recommend that all parts of approved interconnection agreements should be published on the Commission's website and made available to the public for inspection at the Commission's offices.

- 2) ECTEL invites views on its recommendation that all parts of currently approved interconnection agreements should be published.**

CONCLUSION

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

**EASTERN CARIBBEAN TELECOMMUNICATIONS
AUTHORITY (ECTEL)**

**Consultation on
Cable and Wireless/LIME proposed
Reference Interconnection Offer
("RIO")**

22nd June 2011

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INTRODUCTON

The purpose of this consultation is to seek the views of interested parties on LIME's proposed Reference Interconnection Offer ("RIO,") prior to its approval and adoption in ECTEL states. If approved by the NTRC, the RIO is intended to promote an increased level of predictability and transparency in interconnection in ECTEL jurisdictions and thereby reduce delays and the potential for disputes between interconnecting providers when concluding agreements. In the course of the consultation, ECTEL will seek the views of interested parties on LIME's proposed RIO and some related issues prior to recommending its adoption by the NTRCs.

ECTEL hereby invites views and comments on the issues raised in this document to be submitted by **4:30 p.m. on the 3rd day of August, 2011** to the following address:

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REFERENCE INTERCONNECTION OFFERS IN THE ECTEL SYSTEM

The current Interconnection Regulations in effect in ECTEL states defines a RIO as:

“a document setting out the terms on which the dominant interconnection provider proposes to offer interconnection to a public network operator requesting interconnection.”

By virtue of the Regulations, RIOs are required to be submitted to the Commission for approval and to be published on the website of the dominant interconnection provider within seven (7) days of approval. The Regulations require that the RIO contain cost-oriented rates which are sufficiently unbundled such that a requesting provider is not required to pay for services unrelated to those requested.

The Interconnection Regulations prescribe the form and contents of all interconnection agreements, including the RIO, and imposes an obligation on the dominant interconnection provider to ensure that it provides to all other operators, terms and conditions of interconnection that are no less favorable than those it provides for itself, its affiliates or both. The Regulations also require that a RIO inter alia, contains a clear procedure for resolving disputes between interconnecting providers.

It is the responsibility of the Commission, acting in consultation with ECTEL, to determine that a proposed RIO is compliant with the Act and Interconnection Regulations and contains approved rates.

In response to a request from ECTEL, LIME has submitted its RIO for review and approval by the NTRC acting on a recommendation from ECTEL. ECTEL has reviewed the document submitted and has noted that the RIO is consistent with similar RIOs submitted by LIME in other Caribbean jurisdictions, as well other currently approved interconnection agreements in ECTEL states.

ECTEL has also determined that the rates contained in the proposed RIO comply with the Council of Ministers approved LRIC rates for interconnection services in ECTEL states.

THE REQUIREMENT FOR NON-DISCRIMINATION

The Basic Legislative Rules

One of the most important obligations imposed on interconnection providers in ECTEL jurisdictions is the obligation of non-discrimination. This requirement takes several forms.

As already noted, a dominant provider is required to provide interconnection to others on terms that are not less favorable than those it provides for itself and its affiliates. This means that LIME is required by the Regulations to provide a RIO which provides the same quality and conditions of interconnection as LIME currently provides for itself.

This is a legal obligation designed to prohibit or prevent a provider from discriminating in favor of itself. It is a fundamental requirement that every proposed RIO must meet.

However, two important additional requirements of non-discrimination are that providers who conclude an interconnection agreement are required to:

- (a) offer its terms and conditions to any other provider requesting interconnection; and
- (b) offer its terms and conditions to any other provider with whom there is an existing agreement.

The effect of these obligations are that when a provider in an ECTEL jurisdiction concludes an agreement with one party, it must make the terms and conditions of that agreement available to any new party entering the market, as well as to any other parties with whom the first provider already has interconnection arrangements. These requirements are designed to prevent a provider from discriminating between third parties.

The Rule against Non-Discrimination and the RIO

Once a RIO is adopted, it is intended to become the basic agreement against which all other agreements will be measured. The RIO is not intended to fix the negotiations

between parties, so that providers are not prevented from negotiating terms and conditions that are more favorable than those contained in the document.

However, where a provider is able to negotiate more favorable terms and conditions of interconnection with LIME than are contained in the RIO, including but not limited to lower rates for interconnection services, those improved rates, terms and conditions in the agreement will have to be shared with any new provider entering the market, as well as with any providers with whom the parties have existing agreements.

Providers are and will be entitled to conclude agreements containing rates, terms and conditions that are better or more favorable than those contained in the RIO. Providers will not be entitled to conclude rates, terms and conditions of interconnection that are more onerous or less favorable than those contained in the RIO.

THE RELATIONSHIP BETWEEN THE RIO AND EXISTING AGREEMENTS

In conjunction with the current consultation on LIME's RIO, ECTEL is undertaking a consultation aimed at identifying which sections of currently approved interconnection agreements, if any, should remain confidential and which sections should be published. It is ECTEL's intention to recommend that all currently approved interconnection agreements in ECTEL jurisdictions, should be published and made available for download on the websites of both ECTEL and the NTRC, at the close of the consultation.

Once published, parties to existing interconnection agreements will have the option to review their rates, terms and conditions and make a determination as to whether these are more or less favorable than those proposed in the final RIO. Where they are less favorable, a party to such an agreement will be entitled to request interconnection on the basis of the terms of the RIO, should it so desire.

The publication of existing agreements will permit parties to currently approved interconnection agreements to assess their agreements against the terms of the official RIO should they choose.

In general however, ECTEL has determined that LIME's proposed RIO is largely consistent with the majority of the terms and conditions contained in existing interconnection agreements.

THE ROLE OF THE RIO IN DISPUTES

Parties to the consultation should note that, in appropriate cases, the NTRC has the authority, acting on a recommendation from ECTEL, to direct a dominant interconnection provider to commence providing interconnection on the basis of the terms of a RIO when a new entrant applies for interconnection and or to direct parties to a dispute to provide interconnection on the basis of the RIO pending resolution of the dispute.

Recommendation

ECTEL hereby submits the attached RIO for consultation and seeks the views of interested parties on the contents of the proposed agreement, prior to making a recommendation for adoption or approval by the NTRC.

- 1) ECTEL invites views on whether the RIO submitted by LIME is consistent with the requirements of the Telecommunications (Interconnection) Regulations currently in effect in ECTEL states.**
- 2) ECTEL invites views on whether the RIO contains all of the contents specified in the Regulations as being required for an interconnection agreement.**
- 3) ECTEL invites views on ensuring compliance with the rule against non-discrimination contained in the Act and Interconnection Regulations.**
- 4) ECTEL invites views on the relationship between the RIO once adopted and existing interconnection agreements.**
- 5) ECTEL invites views on whether the proposed RIO should be approved and if not, what changes, if any, should be required in order to enable the RIO to be approved.**

CONCLUSION

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