

**ECTEL's FINAL DECISIONS ARISING OUT OF PUBLIC  
CONSULTATIONS ON (1) CONFIDENTIAL ASPECTS OF  
INTERCONNECTION AGREEMENTS AND (2)LIME'S  
REFERENCE INTERCONNECTION OFFER (RIO)**

**Consultation Summary**

Between the 22<sup>nd</sup> June 2011 and the 19<sup>th</sup> August 2011 the ECTEL Directorate conducted a public consultation on the Confidential Aspects of Interconnection agreements and the Reference Interconnection Offer (RIO) submitted by LIME. Comments on the former were received from Digicel, LIME, Karib Cable, NTRC St. Lucia and NTRC St. Vincent and the Grenadines. Comments on the RIO were received from Digicel, LIME, NTRC St. Vincent and the Grenadines and NTRC St. Lucia.

The consultation on the confidential aspects of interconnection agreements was aimed at determining 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. The consultation sought to elicit the views of stakeholders 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. The consultation recognized that there must be a balance between the requirement of transparency and the need for confidentiality in sensitive commercial matters. It looked at whether the Legal Framework, Parameter Schedule, Service Description Schedule, Tariff Schedule and the Joint Working Manual, contained information that was commercially sensitive and concluded that there was nothing in the currently approved

interconnection agreements that could not be published. It was therefore recommended that all parts of currently approved interconnection agreements should be made available for download by members of the public should they so desire.

A related consultation also required parties to submit comments on LIME's proposed RIO.

### **Summary of Comments**

Some commentators posited that only the interconnection agreements of dominant operators should be made public. They argued that regulatory policy worldwide focused on treating with the actions of dominant providers and as such it was inappropriate to require non-dominant providers to publish their interconnection agreements. The majority of commentators however, supported the proposal to publish interconnection agreements. The comments received, revealed a general consensus that commercially sensitive information should be excluded from publication. It was suggested that the charges for the "Joining Services" contained in the Tariff Schedule of the agreements should be excluded from publication. It was argued that charges for Joining Services would reveal technical and commercial information about a carrier and such information should remain confidential. Others proposed that approved interconnection agreements containing synthetic data only, should be published. In response to the concerns raised, some commentators concurred that charges for Joining Services that could indicate traffic levels flowing across the point of interconnection should be excluded from publication but suggested that other costs like ducting costs should be published.

With respect to the consultation on LIME's proposed RIO, one of the primary areas of concern raised was the probability of reopening negotiations on approved interconnection agreements where minor deviations from the RIO existed. Some parties argued that all deviations from the RIO should be made public in order to avoid discrimination.

Other participants in the consultation proposed a number of amendments to the Legal Framework of the RIO, including inter alia, the amendment of Clause 7.5 which allowed LIME, in the absence of international standards, to propose a standard to which the parties had the ability to agree or disagree. Participants proposed a revision of the indemnity to one million United States dollars (\$USD1, 000,000) and a modification of the provision which states that disputed amounts in excess of one percent (1%) of the total amount are not payable until the dispute is resolved to allow for sums to be paid into escrow. A commenting party submitted that the contents of the RIO conformed to Regulation 13 of the Interconnection Regulations of Saint Lucia and generally reflected the matters that were required to be addressed in interconnection agreements. Another party in reference to the issue of non-discrimination expressed the view that all charges, terms and conditions offered for interconnection services should be indistinguishable within all agreements and any variation should be justified.

Certain parties expressed the view that a RIO was not required at this time on the basis that, even if there was a need for a RIO, it could not be solely for LIME as it was no longer necessary for new entrants to enter into interconnection agreements with LIME as parties could obtain entry into markets through agreements with other providers.

Having reviewed at length, the comments of all participants to the Consultations, the ECTEL Council of Ministers have approved, at its meeting in St. Kitts and Nevis held on the 27<sup>th</sup> October 2011, the following recommendations:

## **Decisions**

- (1) The ECTEL Directorate disagrees with the position advanced by some parties that only the interconnection agreements of dominant providers should be published. The Interconnection Regulations in effect in ECTEL States require the publication of all agreements except where all or part of the agreement has been determined to contain confidential information. ECTEL shall therefore recommend that all Interconnection Agreements should be published.
  
- (2) The Directorate acknowledges that there is merit in the argument that the publication of Joining Services could potentially result in the disclosure of commercially sensitive information. However, it concurs with the position expressed by some commentators that the component costs of Joining Services, for example ducting costs, should be publicly available since such information is not commercially sensitive. Therefore, ECTEL shall recommend that arrangements be made for the creation and publication of an Interconnection Register containing all approved interconnection agreements in each of the Member States. The section on “Joining Services” in the Tariff Schedule of approved Interconnection Agreements will remain confidential and will form Part 2 of the Register and be excluded from Part 3 which contains the non-confidential content of interconnection agreements.

- (3) ECTEL proposes that component costs of Joining Services, for example ducting costs, shall be made public by LIME.
- (4) With respect to the LIME's RIO, it has been determined that, subject to an amendment to clause 7.5 of the Legal Framework to allow either party to propose standards, the RIO is approved. It must be emphasized at this point that the RIO illustrates the minimum terms and conditions that must be adhered to and providers are entitled to negotiate bilateral terms and conditions that are superior to those contained in the RIO. However, these terms must be disclosed and third parties will have a right to be offered those terms on request.
- (5) Further, in keeping with the suggestions made by stakeholders, the Directorate shall not require currently approved interconnection agreements to be amended so as to be identical to the RIO. Parties are entitled to request a review of existing interconnection agreements where they believe the terms contained in the RIO are better than their existing arrangements with LIME.
- (6) The Directorate makes no proposals with respect to, for example, Indemnity or Insurance levels or related matters as it regards those matters as falling purely with the realm of commercial arrangements between providers. Parties shall continue to be free to negotiate non-tariff matters in the course of their commercial negotiations, subject to the supervision of the NTRC. ECTEL does not make any recommendations for regulatory determinations with respect to these matters at this time.

- (7) Approval of the proposed RIO does not prejudice the rights of any parties to request a review of an existing agreement or terms and conditions of the RIO which they regard as inherently discriminatory, unfair or otherwise in breach of the Telecommunications Act and related Regulations. Interconnecting providers shall be free to make representations at any time with respect to their existing agreements or LIME's RIO.
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