



**EASTERN CARIBBEAN TELECOMMUNICATIONS  
AUTHORITY**

**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 COMMUNICATIONS BILL**

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## List of Abbreviations

<b>EU</b>	European Union
<b>NGN</b>	Next Generation Networks
<b>ULR</b>	Unified Licensing Regime
<b>ICT</b>	Information and Communication Technology
<b>FBO</b>	Facilities-Based Operators
<b>SBO</b>	Service Based Operators
<b>NFPs</b>	Network Facility Providers
<b>NSPs</b>	Network Service Providers
<b>IP</b>	Internet Protocol
<b>NTRC</b>	National Telecommunications Regulatory Commission
<b>VoIP</b>	Voice over Internet Protocol
<b>ECTEL</b>	Eastern Caribbean Telecommunications Authority
<b>MLR</b>	Multi-service Network-Licencing Regime

## **1. INTRODUCTION**

### **1.1 Eastern Caribbean Telecommunications Authority**

The Eastern Caribbean Telecommunications Authority (ECTEL) was established by Treaty signed by five Eastern Caribbean States, the Commonwealth of Dominica, Grenada, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines on 4<sup>th</sup> May 2000. This Treaty established ECTEL as a regional body with legal personality to promote open entry market liberalization and competition in telecommunications of the Contracting States.

In furtherance of this objective and by virtue of the purposes of ECTEL under Article 4, the functions of ECTEL under Article 5 of the Treaty, section 40, and the Second Schedule, Parts 1 and Part 2 of the Telecommunications Act 2000, ECTEL has embarked upon a revision of the draft Electronic Communications Bill (“EC Bill), revision of its licencing regime as well as a revision of its licence application forms.

This review is also precipitated by the Council of Ministers at the 31<sup>st</sup> Council of Minister’s meeting, which was held in Saint Lucia on 13<sup>th</sup> May 2015 urging the Directorate to revise licences. ECTEL has also received the views of Telecommunications Providers who have raised concerns about the draft EC Bill, the Licencing regime and the current application process currently in use.

### **1.2 Draft EC Bill**

The draft EC Bill was consulted upon in May 2012. However a revised draft has now been completed intended to address the shortcoming of the previous draft. Further the revised Draft EC Bill deals with mergers, acquisitions, competition and dominance, significant market power, change of control. This has become of even greater significance with the delay in the implementation of the OECS Competition Commission. The impact of this decision is that competition provisions had to be imported into the draft EC Bill to address “significant market power” and the abuse of a dominant position.

Changes were also effected in the following areas: Powers of the National Telecommunications Regulatory Commissions, Licensing, possible rebranding of the directorate from Eastern Caribbean Telecommunications Authority (ECTEL) to Electronic Communications Authority (ECA); Access to other network elements, road works, submarine landing stations and dispute resolution. The revised draft EC Bill also seeks to address the rights of consumers, regulation of tariffs, harmful interference, terminal equipment, quality of service, roaming, billing, privacy and confidentiality. The aim is to harmonise the provisions in the substantive legislation and the regulations.

## **2. MULTI- SERVICE NETWORK- LICENCING REGIME (MLR)**

Technology in the sector has changed from fixed switched circuits to IP networks giving rise to new methods of communication over the same network, which had not previously been envisaged. In light of these technological changes the time has come to

review the licencing regime of the Contracting States. It is being proposed here, that a network-service licence be implemented, where a provider no longer needs to apply for a separate licence for each network-service licence it intends to supply; but simply utilize one form in relation to network licences. This it is hoped will facilitate the rollout of new services and the development of the ICT sector.

The licence categories have therefore been reclassified, into 'Network' and 'Service' licences. Network licences are those, which have traditionally been sent to ECTEL for approval as Individual Licences. They include all licences, which are reviewed by ECTEL, in compliance with the Mandate given to ECTEL in the Treaty. Currently, an applicant for an Individual Licence needs to apply separately for each type of service to be provided. Under this proposed regime, an operator intending to provide a network and services can apply for all the network-services it seeks to provide, by using one application form. Network-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.

It has proven a challenge to reduce the provision of services generally to one licence due to the various annexes, which apply to the various categories of service licences. A separate application form will remain in place in relation to each category of Service Licences dealt with by the Commissions. One of the considerations for dealing with Service Licences is to grant a general authorization for the provision of services.

This discussion paper is designed to identify the issues to be addressed in the implementation of an MLR, seek feedback from the National Telecommunications Regulatory Commissions (NTRCs), Stakeholders and the Public.

The discussion will examine the current regime and proposed changes under the EC Bill and then examine the MLR and options available within that framework. It will consider the possible challenges in the implementation of an MLR, for example migration. It provides a sample Network-Service Licence and a sample Network-Service Licence application form to be used in an MLR framework for consideration.

Finally, a questionnaire seeks to elicit comments and suggestions from interested parties.

### **3. THE CURRENT REGIME AND PROPOSED CHANGES UNDER THE EC BILL**

The current licencing framework available in the ECTEL Member States is the traditional Individual and Class Licencing regime. The regime was designed when the technology based on circuit switched communications was not as advanced as it is today. In order to regulate these traditional technology based services, licences were divided into Class licences and Individual licences. Advances in technology have challenged this approach to licencing, which was heavily dependent on the existence of network infrastructure of a Service Provider. Technologies have now converged towards a common digital platform. These innovations in technology and ICT have resulted in Next Generation Networks (NGN) and have changed the parameters of the ICT sector. Several services can now be provided from the same digital platform such

as, data services, voice services, hosting and content to name a few. These services would have previously been licenced in different ways. A regulatory regime, which reflects these advances and is technologically neutral, is desirable. This is what ECTEL hopes to achieve and implement in the EC Bill.

Section 36 of the new EC Bill envisages a licencing regime relating to network, and service licences. Further, it provides that the licensee may provide more than one electronic communications service under the licence in accordance with the terms of the licence. This provision is clearly aimed at a multi-service regulatory regime. The matter for discussion is what form this multi-service licencing regime should take.

#### 4. TYPES OF UNIFIED LICENCING REGIMES

Several countries around the world have now introduced unified and multi-service licensing regimes. The structures, some of which will be examined here in an attempt to determine the one most suited to the circumstances of the ECTEL Contracting Member States. Unified licences can be divided into three (3) main authorisation structures:

1. ***Unified authorisations*** where all operators, regardless of infrastructure or services are treated in exactly the same way and receive virtually an identical authorisation.
2. ***Multiple category authorisations***, which are created to recognize that very small service providers are treated differently to very large operators.
3. ***Infrastructure and service authorisations***, issued separately to holders of the authorisation or operators may be allowed to hold both forms of authorisation.

The benefits of unified licences are that they are technology neutral and flexible, allowing the licensee to use any type of technology to provide the desired service and moves away from the service specific approach to authorisations, producing neutrality in licensing. It supports NGN in that it enables consumers to receive a wide range of services over a single Internet Protocol (IP) based network. It strengthens competition as the holder of such a licence can use any technology to deliver a service. Voice services for example can be provided under such a regime using Voice over Internet Protocol (VoIP), fixed lines or mobile. Service providers must no longer hold a full range of authorisations for each of these service categories to provide a full range of services. This flexibility is an important step in attracting investment in NGN.

As the EC Bill does not regulate content, the authorisation regime proposed by ECTEL is to provide two broad categories of authorisations:

- Network, also called facilities based licences; and
- Service or Service Based licences

#### 5. FACILITIES OR NETWORK BASED OPERATOR COVER

**5.1 Network Facility Providers (NFPs)**, which include owners of satellite earth stations, fibre optic cables, communications lines and exchanges, radio

communication and transmission equipment, mobile communication base stations and broadcasting towers and equipment.

**5.2 Network Service Providers (NSPs)** for entities that provide basic connectivity and bandwidth to support a variety of applications for licensees that provide particular functions such as voice services, data services, Internet access services, IP telephony and other transmission services<sup>1</sup>.

**5.3 Network Based Operator Licences** apply to the operation of any form of telecommunications network, system or facilities that is used by any person to provide telecommunications and or broadcasting services to third parties. Third parties may be the general public, other telecommunications operators or business customers.

These Licences were previously dealt with as individual licences. What is significant here is that the revised draft EC Bill makes provision for persons to provide a network only, a network with a service, or just a service. Schedule 2 of the revised draft EC Bill gives a clear indication as to how the licences will be grouped.

In the revised draft EC Bill, Network licences relate to the following:

- Network
- Network and service,
- Internet Network and Service,
- Public Mobile Electronic Communications Network and Services,
- Public Radio Paging,
- Submarine Cable Landing,
- Subscriber Television

**5.4 Service Based Operator Licences (SBO)** are issued to operators who intend to lease telecommunications network elements such as transmission capacity and switching services or to resell services obtained from Facilities Based Operator (FBO) Licensees to any third party. SBO Licences are further subdivided into SBO (Individual) Licence categories and the SBO (Class) Licence category. This relates to the scope of the operators and the nature of the services being offered. The danger with this type of authorisation where a Service Provider's infrastructure and services are bundled in the same authorisation is an incentive to monopolize. This is contrary to the purposes of the Treaty establishing ECTEL, which promotes competition. The provisions of network and services have existed in ECTEL Member States since the inception of the Treaty. However it is the view of ECTEL that any dangers posed can be effectively addressed under the provisions of the revised draft EC Bill.

Under the regime of ECTEL the following licences would fall into the service licence category:

- Aeronautical Mobile Radio
- Aircraft Station

- Amateur Radio
- Audio Text/ Video Text
- Broadcast AM Radio Station
- Broadcast FM Radio Station
- Broadcast Television Station
- Community FM Radio Station
- Family Radio Service
- International Simple Voice Resale
- Internet Protocol Telephony Services
- Land Mobile Radio
- Maritime Mobile Radio
- Mobile Virtual Network Operator Services
- Private Network and Services
- Resale of Leased Circuits
- Value Added Services

Argentina introduced a Unified Licencing Regime in 2000, which permits licensees to provide any and all telecommunications services to the public. It does not distinguish between facilities-based service providers and resellers, nor does it distinguish between fixed and mobile services, wire line and wireless services or local national and international services.

The European Union (EU) has implemented a unified authorisation in the “electronic communications” authorisation issued under the EU Authorisation Directive. Electronic communications authorisations allow licensees to provide all forms of electronic communications networks and services, including voice data and even content-based services.

Singapore, although it is said to have a Unified Lisencing Regime, appears to have retained the need for separate licences based on the service being provided.

## **6. CHALLENGES OF MOVING TO A MULTI-SERVICE LICENCE REGIME**

The main challenges of moving to a multi-service licencing regime within the ECTEL states are related to identifying the procedures for issuing the new authorisations, the categories of authorisations in a multi-service authorisation regime, the terms and conditions attached to the new authorisations, and migration of old licences to the new regime.

### **6.1 The procedures for issuing the new licences:**

Under this heading ECTEL needs to consider what information needs to be provided to stakeholders, which makes it clear how to obtain the application form, what documents are to be provided and who they are to be submitted to. Part 3 of the revised draft EC Bill, in particular Sections 36 and 37, address the scope and procedure to be followed in making an application for a licence.

## 6.2 The categories of licences:

The categories of authorisation are addressed in Schedule 2 of the revised draft EC Bill.

### 6.2.1 Migration

The time frame for migration should be considered carefully. This may take place immediately if the legislation dictates or can be made mandatory after a certain period has elapsed or Licensee may be allowed to continue under their old licences until their terms expire.

What needs to be considered in determining migration is whether the terms and conditions of the old licence under which the Licensee currently operates are more favourable than the terms of authorisation under the multi-service licencing regime. Where the terms of the old licence are more favourable this may give operators a competitive advantage, which in turn will distort competition.

Licences for operators within the ECTEL States are coming up for renewal as early as 2016. It is imperative that the preferred licensing regime is in place by or before October 2016 to avoid some of the complications associated with migration. However, if that target is not met allowances need to be made to handle issues relating to migration.

### 6.2.2 Forms of Migration:

- 6.2.2.1 Issuing MLR licences to new entrants or existing entrants whose licences expire and need replacement.
- 6.2.2.2 Asking existing holders to convert voluntarily to the MLR regime but granting a licence term same as the length of their existing licence term to its expiration date.
- 6.2.2.3 These provisions to be implemented independent of the length of any frequency authorisation, which the operator may hold.

Allowing a grace period for existing licence holders to migrate to the new MLR. A time-frame of 24 months was found to be reasonable in South Africa as it gave operators time to understand the new regime, however flexibility was still shown. Operators who failed to migrate after 24 months were deemed to operate under their old Licences.

### 6.2.3 Fees to be paid:

Under the current regime, an application fee is paid on application for each service being provided as well as an initial and annual fee. It is proposed that this regime remains in place in relation to each licence applied for by an operator or service provider.

## **7. TREATING WITH SPECTRUM RIGHTS AND NUMBERING SERVICES**

Under the MLR spectrum rights and numbering resources are allocated separately from the unified authorisation. This is maintained under section 39 and 66 of the draft EC Bill.

## **8. HOW ECTEL PROPOSES TO PROCEED**

- (a) In keeping with best practices ECTEL proposes to engage firstly with NTRCs for comments and contributions to this consultation.
- (b) Share changes on the revised draft EC Bill, the proposed new network-service licences and the network-service licence application form with interested parties, Operators and Stakeholders.
- (c) Hold public discussions to engage telecommunication providers, interested parties, and other stakeholders.
- (d) Once a decision has been made as to the type of licencing regime and the details finalized; ECTEL will conduct ongoing engagements with industry operators to discuss this new regime.
- (e) Provide opportunities and material to discuss the new regime with existing licensees to fully and carefully explain the new regime.
- (f) Encourage migration by existing holders to the MLR.

## **9. PROPOSED AMENDED LICENCING REGIME**

This new regime, gives ECTEL an opportunity to amend the current licences, which are being used to ensure that weaknesses currently experienced in our Licences are dealt with. It is hoped that this exercise will highlight inadequacies in the current application system. A proposed draft Licence is attached for consideration.

Service Providers and other Stakeholders are asked to comment on the proposed new network-service Licence, the proposed new network-service licence application form and identify any gaps contained therein, which need to be resolved.

### **9.1 THE REVISED NETWORK-SERVICE LICENSE APPLICATION FORM**

In an effort to better meet the needs of service providers and their desire to expand, ECTEL is currently exploring the use of a single application form, which can be used to apply for any type of License, which comes to ECTEL for consideration. Telecommunication Providers and interested parties have also expressed the desire to apply for a licence, which can be used in any Member State. Unfortunately, this proposal is not reflected in this consultation document,

but the prospect is under consideration. ECTEL is also in the process of making its applications electronic and would also at this time like to make provision for that possibility, with this new application.

A proposed new application form is attached with this consultation document. On this form, it is proposed that a provider will be able to apply for any service which can be applied for under the new category of a 'Network' licence. This includes: The provision of a network only, the provision of network and service, Internet Network and Service, Public Mobile Electronic Communications Network and Services, Public Radio Paging, Submarine Cable Landing, Subscriber Television and any other licence designated as a network.

The category of special licences has not been changed save to enhance the procedure for applications in the legislation. It is proposed that this category remains as is.

## **10. QUESTIONS AS TO STRUCTURE OF THE NEW UNIFIED LICENCING REGIME TO BE IMPLEMENTED IN ECTEL CONTRACTING MEMBER STATES.**

Below is a list of questions to be considered by the NTRCs, and stakeholders, which may assist ECTEL in implementing this new licencing regime. Interested parties are encouraged to make suggestions and to contribute to achieving the objective, of establishing a licencing regime, which provides more flexibility and is more responsive to changes in the telecommunications sector.

This consultation puts forward ECTEL's suggestions and seeks feedback or contributions. Contributors may suggest a different approach from the one suggested. Whatever is recommended ECTEL would appreciate the justification in support of the approach taken.

**10.1 Who are you?** (Please identify yourself. Are you regulator, a Stakeholder, interested party or other operator?)

**10.2 Questions relating to the revised draft EC Bill.**

The following changes have been made to this revised draft.

- 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?
- 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.
- y) Having reviewed the draft EC Bill, what concerns if any would you like to express?
- z) 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.
- aa) 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

### **10.3 Questions related to the New Licencing Regime**

- a) Would you agree that a licencing regime, which requires a provider to apply only once to provide a number of services, is desirable?
- 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?
- c) Would it be beneficial to be able to complete an electronic communications application online?
- d) Are you familiar with the various licencing regimes, which have been presented here?
- 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?

### **10.4 Views on a Multi-service Network-Licensing Regime**

- a) What are your views on the adoption of a Multi-Service Network-Licensing Regime for implementation in the ECTEL Member States?
- b) Do you favour the use of only one licence, which gives you permission to carry out more than one service?
- c) Why do you favour this regime?
- d) Should this regime be extended to include service licences as well? Give reasons for your answer.
- e) What alternative suggestions if any do you have?

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

#### **10.5 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?
- c) Do you think they can be addressed and in light of the current changes being made?
- 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?
- e) What problems do you foresee in adopting the changes suggested in this consultation document?
- f) Is there any category of licence, which you envisage will not fit into the current changes?
- g) Should special licences continue to be a special category under the revised EC Bill?
- h) Is there any other way of dealing with special licences? Can you make any suggestions?

#### **10.6 Concerns about the consequences of adopting Multi-Service Licensing Regime**

- a) Do you have any concerns about this new regime recreating the monopolies of the past?
- b) If yes, how do you envisage monopolies being recreated based on this new regime?
- c) Having reviewed the draft EC Bill, will the new competition provisions address your concerns?
- d) Is there a need for a licence to provide a network without a service?
- e) Do you have any additional suggestions? If any, do you wish to put them forward for consideration?

#### **10.7 Spectrum and Numbering**

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

- b) If not, why?
- c) If you agree, why?

#### **10.8 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 Multi-service Network Licences? Please provide examples and possible resolutions or suggestions.
- b) Should adherence to net neutrality and technology neutrality be included in the licence?

#### **10.9 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.

#### **10.10 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?
- b) Should old licences simply be extended for a period of 12 or 24 months to allow effective migration to the new regime?
- c) Should stakeholders holding licences migrate onto the new regime automatically?
- d) What do you consider to be a reasonable period for migration once the new system is in place?
- e) Should current licenced Stakeholders be required to provide all documentation previously provided on first application upon migration?
- 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?

#### **10.11 Questions related to the network-service application form**

1. What are your views on the proposed revised application form?
2. Does it adequately provide for the application of multiple licences in one form?

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

#### 10.12 Questions for Stakeholders and Licence Operators?

- a) Are there any questions or issues, which have not been addressed? Please give examples.
- 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 license, and the proposed new network-service licence application form once a final decision has been made as to regime to be adopted?

## 11. List of References

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<sup>i</sup> [http://www.itu.int/ITU-D/tech/NGN/CaseStudies/NGN\\_CaseStudy\\_IND\\_PHIL\\_SLKA\\_V2.pdf#search=sample%20consultation%20paper%20on%20moving%20to%20a%20unified%20licencing%20regime](http://www.itu.int/ITU-D/tech/NGN/CaseStudies/NGN_CaseStudy_IND_PHIL_SLKA_V2.pdf#search=sample%20consultation%20paper%20on%20moving%20to%20a%20unified%20licencing%20regime)