

**RESPONSE TO MOBILE ELECTRONIC COMMUNICATIONS (ROAMING SERVICES) REGULATIONS**  
**COMMENTS**

NO.	CLAUSE	PROVISION	LICENSEE COMMENTS	RESPONSE
1	<b>3 Roaming Charges</b>	(1) Retail roaming charges referred to in section 5 of the Act shall be calculated by using the pricing model in Schedule 1.	<b>Flow-</b> Roaming charges should be based on all of the related costs and applied only after it is first determined there is a need for such regulatory intervention. In terms of need, it must first be determined in a transparent process with input from all stakeholders that there is a significant market failure in the roaming markets in the ECTEL Member States that regulation is capable of addressing and improving upon. Any process that decides to impose a regulatory solution before first determining whether such a solution is (1) needed and (2) capable of effectively addressing/improving the problem (e.g., will not make matters worse), is premature and out of process.	ECTEL to insert a pricing model in the appropriate Schedules in Regulations after a public consultation process.
		(2) Wholesale roaming charges referred to in section 8 of the Act shall be calculated by using the pricing model in Schedule 2.	With regard to the issue of costs, ECTEL has not provided sufficient information in schedule 2 to assess how it plans to develop and implement its wholesale roaming pricing model. It says only that <i>“the wholesale roaming prices be set</i>	ECTEL to insert a pricing model in the appropriate Schedules in Regulations after a public consultation process.

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			<p><i>using a price cap which reflects a multiplier of the national mobile termination rates of the ECTEL Contracting States.</i>” Effectively, it has not proposed a pricing model, but merely shared an idea. For instance, the service in question is an end-to- end service. Thus, a cap based only on the cost of termination is incomplete. Furthermore, the proposal appears to assume the roaming service will necessarily terminate to a mobile subscriber, which may be appropriate for some roaming services (such as those terminating to a mobile) but is not for all (such as data and those terminating to a fixed line).</p> <p>In the explanatory notes ECTEL states <i>“Price cap regulations typically entail adjusting the prices of an operator against a price cap index which represents the overall inflation rate, the production efficiencies of the operator relative to the average operator and the relative inflation on the operator’s input prices.”</i> Does ECTEL anticipate that the NTRCs will create and administer a price cap plan for each Licensee under its jurisdiction? What other wholesale services does it intend to include to derive</p>	

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			<p>a price cap index? Certainly based on the production efficiencies of each licensee are likely to be assigned different price caps. Will this help or harm competition? And what basis would ECTEL have to impose a price cap on a licensee(s)? ECTEL has not addressed these issue and these Regulations ought not to be progressed before it properly consults to the relevant issues.</p>	
2	<b>4 Wholesale roaming agreements</b>		<p><b>Digicel</b> believes that these provisions are entirely superfluous and fail to take account of the fact that wholesale roaming agreements are based on standard GSMA templates. The proposed provisions add a degree of complexity and regulatory burden which is not justified.</p>	<p>Proposed <i>Regulation 4</i> contains the standard contractual provisions that <b>must be</b> included in a wholesale agreement but it is <b>not limited</b> to those provisions.</p> <p>It unclear which provisions add a degree of complexity and regulatory burden which is not justified.</p> <p>However, the agreement should include provisions from the relevant GSMA template as the parties consider necessary.</p>

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			<p><b>Flow</b> - These Regulations should acknowledge that the Roaming Agreements that fall under the jurisdiction of ECTEL and are those entered into between licensees within the ECTEL Member States. Roaming agreements between an ECTEL Member State licensee and a non-ECTEL Member State licensee should be expressly exempt from these Regulations to remove all doubt.</p>	<p>The Bill (see <i>clause 8</i>) and the Regulations (see <i>Regulation 4</i>) will only apply to a licensee or provider licensed in an ECTEL Contracting State.</p> <p>The definition provided in <i>clause 2</i> of the Bill states that a “provider” is a person in another ECTEL Contracting State. Therefore, there is no need to expressly exempt non ECTEL Contracting States from these Regulations.</p>
			<p><b>FLOW</b> objects to the notion that wholesale roaming agreements must include “<i>requirements and conditions of access to network elements and associated facilities, relevant services, software and information systems, necessary for the provision of roaming services</i>”. As stated in our comments on the draft Bill such a requirement is over-reaching and not required. Instead this requirement need only specify that the wholesale service be comparable in quality to the service provider’s retail service and not of significant lesser quality.</p>	<p>Noted. <i>Regulation 4(1)(f)</i> has been deleted.</p>
3	5	5. A notification	<b>Digicel</b> - believes that requirements such	Noted. Earlier <i>Regulation 5(c)</i> has been deleted.

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	<b>Notifications</b>	<p>referred to in sections 4, 5 and 6 of the Act, by a licensee to a customer, shall—</p> <p>(c) remain available by the licensee for the customer to review when required;</p> <p>(d) contain the time and date it is sent by the licensee</p>	<p>as 5(c) and 5(d) are unduly burdensome as the nature of SMS means that these requirements are met by the inherent functionality of SMS messages.</p> <p><b>Flow</b> - Section 5(c) proposes that notifications should <b><i>“remain available by the licensee for the customer to review when required”</i></b>. The full implications of this requirement needs to be thought through and customers should be required to shoulder some responsibility. Notifications will be sent by SMS, customers should be required to keep these records on their phone for their convenient reference. In the event that the message is lost for some reason, companies will be able and willing to retrieve messages sent to establish certain facts in the case of a dispute etc. This is normal. It seems however, unreasonable for the Regulations to seek to create and administrative burden to require service providers to make such notifications available for customers to <b><i>“review when required”</i></b>. The clause is sufficiently vague to be a source of dispute should it remain. FLOW proposes that it be reworded to read <b><i>“be made available by the licensee for the customer to review</i></b></p>	

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			<i>in the case of a dispute”.</i>	
4	<b>6 Billing Cycle Cap</b>		<b>Digicel</b> - believes that these provisions are not relevant to pre-paid subscriptions and the wording should reflect this.	The provision has been amended to apply only to postpaid subscriptions.
		<p>(1) A licensee and a postpaid subscriber may agree to a billing cap for —</p> <p>(a) voice and messaging services;</p> <p>(b) data services;</p> <p>(c) roaming voice and messaging services;</p> <p>(d) roaming data services; or</p> <p>(e) services referred to in sub paragraphs (a) and (b).</p>	<p><b>Flow</b> - The provisions at section 6(1) though well intended may cause a level of complexity and administrative bureaucracy that is unhelpful to customers. See our related comments in section 2.3. The section appears to be proposing that service providers facilitate a billing cycle cap per service. This is not typically done for roaming and is not required by customers. Customers care far more about capping their total bill amount than individual billing cycle intervals. A cap based on the total amount of charges the customer wishes to be incurred before the service is terminated is far more helpful. We recommend that these regulations should be less prescriptive regarding how the cap should be structured. It should be left to commercial initiative as presently exists.</p>	<p>The provision has been amended. Please see section 5(2) of the draft Roaming Bill</p> <p>Also see the changes from roaming cap to billing cap throughout the Regulations and the Bill and the definition for billing cap in <i>clause 2</i> of the Bill.</p>
		(4) A postpaid subscriber may make a request to a	<b>Digicel</b> - We believe that the provisions of paragraph 6(4) are unduly burdensome as they require that this facility be made	These are options that are normally made available to a customer.

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		<p>licensee under subregulation (3) —</p> <p>(a) in person at a customer service location of the licensee,</p> <p>(b) in writing or electronic form to the licensee; or</p> <p>(c) over the telephone with a customer service representative of the licensee.</p>	<p>available via multiple channels which may not currently provide customer support in respect of roaming services</p>	<p>Moreover, the provision states that a subscriber “may.”; therefore the provision does not obligate the licensee to provide all the channels for roaming services but rather guides the licensee to make one or more of these channels available to the customer.</p>
		<p>(5) A licensee shall send a notification to a customer at the following thresholds of the billing cap or prepaid balance—</p> <p>(a) seventy percent;</p> <p>(b) ninety percent; and</p> <p>(c) one hundred percent.</p>	<p><b>Digicel</b> - We believe that the provisions of paragraphs 6(5)(a),(b) and (c) are unduly burdensome as they require multiple tiers of notification. We believe that a two stage notification at 80% and 100% should be mandated. If operators wish to offer additional levels of notification then this will be a competitive differentiator.</p>	<p>The comment is accepted and the necessary change has been made to the provision.</p>
5	7 <b>Information to be made available to</b>		<p><b>Digicel</b> - Digicel notes that a number of the proposed channels through which the information should be made are incompatible with format specified in</p>	<p>Believes that Digicel meant Schedule 3. <i>Regulation 7(1)</i> provides that the information may be in a format similar to the Schedule. Please see suggested insertion of <i>Regulation</i></p>

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	<b>customers</b>		Schedule 1	7(4).
		<p>(2) A licensee shall make the information referred to in subregulation (1) available to a customer through —</p> <p>(a) a customer service location;</p> <p>(b) telephonic customer service;</p> <p>(c) the licensee’s website;</p> <p>(d) SMS service; and</p> <p>(e) the licensee’s social media sites.</p>	<p><b>Flow</b> - This provision appears to make it mandatory for a licensee to inform customers using ALL the means listed in (a) through (e). Such a requirement would be burdensome. It would be far more reasonable to require that any two (2) of the above channels be used.</p>	<p>The provision has been amended to include only three channels.</p>
6	<p><b>SCHEDULE 1</b></p> <p><b>Retail Roaming Pricing Model</b></p>		<p><b>Digicel</b> - Digicel notes that no specific proposal has been made in respect of the exact form of a Roam Like You Are Home model and believes that a further consultation is necessary on this aspect of the proposed Regulations.</p>	<p>Retail Roaming Pricing Model to be inserted after a public consultation process.</p>
7	<p><b>SCHEDULE 2</b></p> <p><b>Wholesale Roaming</b></p>		<p><b>Digicel</b> - notes that no specific proposal has been made in respect of any multiplier and believes that a further consultation is necessary on this aspect of the proposed</p>	<p>Wholesale Roaming Pricing Model to be inserted after a public consultation process.</p>

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	<b>Pricing Model</b>		Regulations.	
	<b>SCHEDULE 3 Roaming Services and Charges Information Key</b>		<b>Digicel</b> - believes that this format should be reviewed to ensure that it is not unnecessarily detailed.	The draft Regulations requires that the format of be <b>similar</b> as per <i>subregulation 7(1)</i> . The intension is that it provides useful information to customers.