

Draft Retail Pricing Regulations

Explanatory Memorandum – East Caribbean Telecommunications Authority (ECTEL)

This summary is intended to provide a brief, readable overview of the selected sections of this draft regulation and is not intended to be comprehensive or definitive. Readers are strongly advised to read the full regulation for a complete understanding of all its provisions. In this summary, Licensee means a person (generally a company) holding a license to provide electronic communications services; Commission means the National Telecommunications Regulatory Commission in each ECTEL country; “electronic communications” services include telecommunications services.

Part I: Interpretation and General Provisions

Scope of Regulation, and Powers of the Commission (See sections 3, 4)

This Regulation establishes terms and conditions under which the Commission may regulate tariffs of retail electronic communications services provided to end-user customers by Licensees.

In accordance with Sections 11 (1) (e) and 76 of the Act, this Regulation identifies the Powers of the NTRCs to regulate tariff prices/rates, terms and conditions of electronic communications services, including authority to, among other things:

- ▶ set, review and approve tariffs for any licensed electronic communications services;
- ▶ designate services as regulated or unregulated;
- ▶ impose price regulation regimes upon regulated services;
- ▶ substitute or amend tariffs;
- ▶ request information from Licensees relating to service costs;
- ▶ monitor tariffs.

Minimum conditions applicable to all tariffs (See section 5)

- ▶ All tariffs shall be fair and reasonable, non-discriminatory, not anti-competitive, clear and easily accessible, and based on actual usage or service provision.

Part II: Regulating Tariffs for Electronic Communications Services

Classification of and Rationale for Tariffs to be Regulated (See sections 6, 7, 8)

- ▶ The Commission may establish tariff regulation where electronic communication services:
 - are not subject to competition;
 - are eligible to receive compensation from the Universal Service and Access Fund;
 - are provided within a Basic Affordable Service package;
 - a Licensee has Significant Market Power (SMP);
 - there is evidence of anti-competitive conduct; or
 - such regulation is necessary in the public interest

- ▶ The Commission shall maintain a list of services that fall into the above categories, and may establish the appropriate price regulation regime or controls for each such service, according to the provisions of this Regulation.

Basic Affordable Service Package (See section 9)

- ▶ Operators must provide a free hotline (telephone service) so that consumers can submit complaints (section 8).
- ▶ When consumers call them, operators must provide full information about offers, services and products relevant to the consumer's questions (section 8)
- ▶ Operators must prohibit 900 type charges or allows consumers to disconnect from those calls. Operators cannot charge for calls to it (section 8).

Anti-Competitive Pricing (See section 10)

- ▶ The Commission may consider the following acts by a Licensee to be anti-competitive conduct (among others):
 - tying services together and requiring customers to purchase both;
 - colluding with other Licensees to distort competition;
 - imposing restrictions on other Licensees' prices where the first Licensee supplies the other with products or services;

- entering into exclusive agreements that lessen competition;
 - abusive differentiation between on-net and off-net tariffs, where the price difference is significant, correlates with market share, or traffic flows are imbalanced.
- ▶ The Commission may also consider the following acts by an SMP Licensee as anti-competitive, and may require cessation or modification of such practices:
- providing more favorable tariffs to one group of customers over others, which are not justified by cost differences;
 - attempting to leverage a dominant position in one market to gain market share in another;
 - where a Licensee supplies both wholesale and retail service, reducing its own retail prices while maintaining higher wholesale prices to competitors;
 - cross-subsidizing competitive services from SMP services;
 - predatory pricing.

Part 4: Obligations That May Be Imposed (note that there is no Part 3 in the draft)

Price Caps (See section 11)

- ▶ The Commission may establish a price cap plan to regulate basic service or non-competitive service tariffs. It shall designate which services will be subject to price caps, and the terms, conditions, cap levels, adjustment factors, and other features of the plans.

Restrictions on Price Squeeze (See section 12)

- ▶ The Commission shall determine whether SMP Licensees that are vertically integrated may be imposing a vertical price squeeze on competitors, whereby retail prices are lower than wholesale access prices plus additional costs, including where services are supplied as part of a bundle.
- ▶ Where evidence of a price squeeze is found, the Commission may order suspension or modification of the relevant tariffs.

Cost Orientation of Prices (See section 13)

- ▶ An SMP Licensee may be required to provide tariffs that are cost-oriented. Such Licensee must provide to the Commission relevant information which shows how tariffs comply with this obligation. The Commission may require modification or replacement of tariffs that it deems non-compliant.

Prohibition on Price Discrimination (See section 14)

- ▶ The Commission may require modification or suspension of tariffs found to impose undue price discrimination between similarly situated customers.
- ▶ In the case of mobile on-net and off-net call tariffs, the Commission may prohibit differentiation between prices for such calls, determine the maximum difference in prices, and/or determine the minimum difference between interconnection charges and retail on-net call prices.

Compliance with Relevant Benchmarks (See section 15)

- ▶ In situations where the Commission is not provided sufficient information to determine tariff compliance, it may require a Licensee to establish tariffs that are based on relevant benchmark prices in other international markets, whether within the Eastern Caribbean or elsewhere. Such benchmarks shall be based on verified prices for comparable services in similar markets.

Procedures for Discontinuance of Tariff Application (See section 16)

- ▶ Licensees must submit an application for proposed discontinuance of a service at least 60 days in advance, and such discontinuance shall be subject to Commission approval, which shall not be unreasonably withheld.

Part 5: Procedures for Implementing Price Regulation

Designation of Licensees and Regulated Services Subject to Price Regulation Regime (See section 17)

- ▶ The Commission shall publish before October 15 of each year the list of Licensees and regulated services, and the form of regulation, whether price caps or direct tariff control.

Procedures for Controlling Regulated Tariffs (See section 18)

- ▶ For existing services designated as subject to direct tariff control, Licensees shall provide all required information within 60 days. The Commission may request additional information within 15 days, and thereafter may approve or disapprove the tariffs within another 60 days.
- ▶ For new services, Licensees must submit the required information at least 10 days prior to introducing the service. Within 5 days, the Commission must approve, order modifications, or prohibit the tariff, or require a one month extension of time for further investigation. If the Commission takes no action within the required 5 days, the tariff shall be considered presumptively approved.

Promotions and Market Trials (See section 20)

- ▶ A Licensee may conduct short term promotions and market trials involving changes to regulated service tariffs without prior Commission approval for up to 30 days. It may not offer the same promotion again for at least another 60 days and not more than three times in a 12-month period, and it must notify the Commission of such promotions.
- ▶ The Commission may assess promotions and if it finds evidence of predatory pricing, may prohibit introduction of the tariff.
- ▶ Following a promotion, a Licensee may apply to make the new tariff permanent.
- ▶ The Commission may also prohibit any promotional tariff that it finds to be anti-competitive.