Response to ECTEL Consultation
On
The Draft Telecommunications Retail Tariff Regulations

Prepared by
Columbus Communications (Grenada) Limited

Contact Details
Columbus Communications (Grenada) Limited
Grenville Street
P.O. Box 725
St. George's, Grenada
Tel. (473) 232-3569
Fax (473) 232-6652
kuprescod@columbusgrenada.com

INTRODUCTON

Columbus Communications (Grenada) Limited (CCGL) welcomes the opportunity to participate in the process aimed at developing retail price regulations for the telecommunications sector.

RESPONSE

PART I INTERPRETATION

3. Definitions

The definition for 'emergency service' includes the phrase "….other organizations providing a vital service relating to the safety of life in an emergency". This is quite open- ended and could be subject to different value judgments by different individuals. To add clarity, this could be redrafted to include designation by the Commission as another criterion. This could read, *"...other organizations providing a vital service relating to the safety of life in an emergency that are designated emergency services by the National Telecommunications Regulatory Commission (NTRC)"*

PART VI RULES APPLICABLE TO ALL TARIFFS

6. Disclosure and Publication of Information

We believe that it is in the interest of all service providers to ensure that all customers are notified of all service tariffs. In general we believe this is a reasonable expectation that service providers should supply information on tariffs based on request from customers. Particularly given the other publication formats in sub sections (a), (b) and (d), we do not believe there is a need to enshrine in regulations a requirement for service providers to send copy of tariffs requested to any customer or customer group. We would suggest that copies be made available to customers at registered offices based on a request. As such we would suggest the Section 6(2) (c), be redrafted to read, *providing a copy on request by a customer at registered office or other place of business;*

Section 6(3) (b), suggests that the Commission could at any time, at its sole discretion, require a service provider to publish tariff in a newspaper with wide circulation. CCTL believes that this should be reserved for instances where there has been a change in tariff.

7. Tariffs to Meet Minimum Conditions

The current drafting in Section 7(1) is superfluous. It implies that in competitive market conditions, market forces of supply and demand needs to be aided by actions of the service provider in order for it to work efficiently. This seems contrary to the principles of supply and demand. We believe that the drafting of this section could be improved as follows. *Except where regulated by the Commission in accordance with these*

regulations, prices for telecommunications services will be determined by the market forces of supply and demand.

Section 7 (2) deals with the minimum conditions that tariffs should meet. Given the level of market development, and the trend towards market based tariffs (as indicated in the previous section), we believe that a number of the sub-sections are unnecessary. In this regard item (a) 'fair and reasonable' adds no further value to the section. Item (f) speaks more to how the tariff is communicated rather than a condition of the tariff. It therefore does not fit within this section. For instance, what would be the objective criteria to establish whether a tariff is up to date or not? We believe that this item should be removed. This could be more appropriately addressed in the section related to notification of customers.

Section 7(g) speaks to charges being based on actual usage. CCGL is seeking clarification on want is the intention here. Specifically CCGL seeks clarification as to whether this relates to the billing increments used for charging purposes. If this is the case, we do not believe that this tariff parameter should be regulated. Service providers should be allowed the flexibility to determine billing increments as part of their service packaging.

8. Unreasonable Tariffs

Outside of specifying the regulatory tariff regime as done in Section 22 of these regulations, CCGL does not believe that this section is necessary or indeed appropriate within the context of a competitive environment. As currently drafted this section leaves a lot of room for subjective judgments and is unnecessarily restrictive. For instance stipulating in regulations that a service may not be increased more than once in a twelve (12) months period is very restrictive. While this may be desirable for customer service perspective, there could arise circumstances (e.g. hyper inflationary situation) where this could become necessary.

We believe that as competition develops, consistent with good regulatory practice, market forces should dictate rate changes. In the interim a properly specified tariff regime such as the price cap regime is all that is needed to constrain prices. We propose that Section 8, be deleted from these regulations.

PART V RULES RELATING TO THE TREATMENT OF CUSTOMERS

11. Billing

Section 11(2) (b), speaks to offering compensation to customers in the event of any incident of over billing. We believe that every effort should be made to ensure that customers are not over billed. Where it happens, customers should be reimbursed as quickly as is possible. We also believe that this goes to the issue of quality of service, and billing issues is just one matrix that customers will use to judge the quality of the service among various service providers in a competitive market. As such, while we believe that an offer of compensation in the event of an over billing is a good way to provide the

customer with some form of redress, we do not believe that this is a matter for regulations. As such, we would suggest this item be removed from the proposed pricing regulations.

13. Disconnection

In general CCGL is supportive of the spirit or intention of Section 13 which addresses disconnection for non payment of bills, to bring balance between the bargaining power of the customers and the service provider. However, at the same time, we believe that to ensure equity, the scale should not be unreasonably tipped against the service provider, such that a service provider cannot use reasonable measures to collect on a customer debt that is owed and on which there is no dispute. In such a case, CCGL strongly believes that consistent with reasonable business practice, the explicit terms and conditions for the provision of the service should be enforceable.

For instance, under the general terms and conditions for the provision of our services, customers would be advised of the payment terms. Such terms would stipulate that where a customer fails to settle an outstanding amount 30 days from the due date of the invoice, this could result in disconnection. CCGL believes this should satisfy the requirement for adequate notice. Where a customer fails to pay an outstanding amount on time, CCGL should not be required to provide any further notification. The notification in the terms and conditions of service should suffice. Any allowance over and above this should be at the company's discretion. Further, in cases where the service provider has exhausted all other reasonable measures to get a customer to settle a debt that is owed, and on which there is no dispute, the service provider could choose not to supply that customer with its services.

While we have specifically addressed the two above items in Part V of The Draft Retail Tariff Regulations, it is our considered view that Part V would be best placed within the framework of regulations on Customer Rights and Obligations. On this basis, the Commission should consider excluding this section from these regulations.

PART VI REGULATING TARIFS FOR TELECOMMUNICATIONS SERVICES

15. Dominance

In the assessment of dominance other factors that should be included are,

- Existence of barriers to market entry (e.g. legal requirements, significant sunk costs)
- Above normal profits
- Barriers to switching (e.g. unavailability of number portability)
- Vertical integration

16. Procedure for Declaration of Dominance

CCGL has several issues with the procedure for declaration of dominance. Firstly the document correctly speaks to a declaration of dominance in terms of a relevant market. In a dominance assessment, the definition of the relevant market is actually the first phase of the process to assessing whether a firm is dominant in a relevant market. However, the current draft provides no guidance as to how the process to define the relevant markets will be done. CCGL believes that the regulations should explicitly address the process of market definition. It is only after the relevant markets have been defined that one could reasonably proceed with an assessment of dominance in the relevant markets.

CCGL would refer the Commission to the process outlined in the European Union Framework where the markets to be regulated were identified in a recommendation of relevant markets[1]. In 2003 eighteen (18) markets were defined by the European Commission as markets that may be subjected to ex-ante regulations. This list was reduced significantly as a result of a market review in 2008. A similar approach was used in Trinidad and Tobago. We refer the Commission to the Draft Telecommunication Pricing Regulation, Telecommunications Authority of Trinidad and Tobago, (March 2009). Schedule A of the document gives a list of the markets defined for the purpose of the draft regulations. CCGL recommends that the regulations be adjusted to specifically address the issue of defining relevant markets.

Secondly, the current draft in 16 (2) (a) suggests that to initiate a public consultation on dominance a notice would be published in the Gazette and in a local newspaper. An allowance of 30 to 90 day would be given for affected parties to respond to the assessment. There is no reference to specifically notifying the party that is being considered for a declaration of dominance. CCGL proposes that a clause be inserted to make allowance for specific notification to the affected party.

Section 16(2) (c) speaks to ECTEL recommending to the Commission procedures and information required for the dominance assessment. It is however unclear as to the nature and extent of the assessment. We do not believe that it is adequate just to list a number of factors that would be considered in an assessment of dominance. Given that a dominance assessment is an involved, information intensive and analytic exercise, we believe that outside of a presumption of dominance based on sole provider status, ECTEL should publish a position paper on the issue of dominance. This would give operators an opportunity to see ECTEL's and the Commission's thinking on the issue of dominance. There is the precedent for this regionally and internationally. For example, in the Bahamas, the Utilities Regulation and Competition Authority (URCA) used this approach.

[1] Article 15 and Appendix 1, Directive 2002/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, (March 2002)

CCGL is requesting clarification on the statement at sub section 16 (2) (d) which states that the Commission "shall be entitled to draw adverse inference from the failure of the provider to supply any requested information in respect of the application." Regarding a final declaration on dominance in sub section 16(4), we believe that the affected party should be notified in writing of the dominance declaration.

17. Sole Provider to be Deemed Dominant

In the specific context of the Grenada market where in the cable TV space for example, there are entities operating without a license, plus entities with a license not actively participating in the market, CCGL would want to ensure that theses are considerations in addressing the question of the existence of a sole provider. In other words, a licensed provider which faces competition from other unlicensed operators should not be considered a sole operator. Likewise, where many operators have been licensed, but only one is presently operating, that single operating operator should not be considered a sole operator. Further, the obligations that flow from a dominance determination should recognize that establishment of dominance is and of itself is not the issue. It is the abuse of this market position that needs to be addressed. What is critical is to be able to effectively address situations where market abuse is occurring, especially in the absence of comprehensive competition regulations. The pricing regulations should address specific processes and remedies to address competition issues.

18. Presumed Dominance

Given the current status of market development and outside of existing ex ante regulations, CCGL does not see the need for pricing regulations to be imposed solely on the basis of a presumption of dominance. An assessment of dominance is a fairly objective process. We refer the Commission to the points made in Section 16 on Procedure for Declaration of Dominance.

Further, sound and best practice regulatory governance dictates that an assessment of market share is a necessary but not a sufficient basis for the establishment of dominance in a defined market. While market share is the main criteria, there are many other conditions (e.g. economies of scale and scope, level of distribution network development) that are relevant to the establishment of dominance. Also, outside the case where some markets in which LIME operates are subject to ex ante regulations based on historical incumbency, any further declaration of a dominant position should be objectively determined. The burden should not be placed on the service provider to establish non dominance, based on a presumption of dominance using market share alone.

Again, CCGL wishes to point out that the fact of dominance is not the problem. It is the abuse of dominance that needs to be addressed. Given the status of the development of the telecommunication markets in Grenada, we believe that pricing regulations should promote the further development of the market, rather than retard the development of the market. Again, we would urge the Commission to move towards more competition rules in order to more effectively address competition issues.

19. Provider to Apply for Tariff Approval Pending Final Declaration of Dominance

As indicated in our response to section 16 (2) (a) any notice under this section of the regulations should be sent in writing to the affected party.

21. Power of Minister to Amend a License after Declaration by Commission

CCGL views this proposed section as very unnecessary and draconian. It is not clear what special condition or obligations would be or could be included in an operator's license without any negotiation or agreement with the licensee.

In economic regulations there are specific remedies that flow from a declaration of dominance in a relevant market, whether ex-ante price regulations or the application of ex-post remedies such as directives to cease behavior or fines etc. As such, a regulatory tool designed to deal with market imperfections, should not be used to impose 'unspecified' special conditions or restrictions on licensees. CCGL proposes that this section should be excluded from the regulations.

23. Procedure for Adoption of Price Regulation Regime

For Section (5)(a), in addition to the general notification in the Gazette and via the local paper, a copy of the draft price regulations regime should be sent directly to all other concessionaires, in particular those who operate in the markets that will be impacted by the proposed price regulations. This is important to ensure that other parties that may be impacted by the draft regulations are specifically notified. This notice should allow the party at least thirty (30) days to respond to the notification.

For Section (6)(a), in addition to the general notification in the Gazette and via the local paper, copies of the draft price regulations regime should be sent directly to all concessionaires, in particular those who operate in the markets that will be impacted by the proposed price regulations. This is important to ensure that other parties that may be impacted by the draft regulations should be specifically notified. This notice should allow the parties at least thirty (30) days to respond to the notification.

In Section (7), allowance should be made for a copy of the finalized price regulations to be sent to all the service providers who participate in the market(s) for the services that will be subject to the regulations.

25. Provider to be bound by Price Regulation Regime

As currently drafted sub-section (2) indicates that a breach of the terms of the price regulations is deemed a breach of the provider's license. We agree that the provider should be bound by the price regulations regime established. However CCGL considers this penalty to be very harsh. As such we do agree that any breach should automatically be a license breach. A review of existing or proposed price regulations in other markets

supports our position. Examples of remedies from other jurisdictions include imposition of fines, as in the case of Trinidad and Tobago. Rebate to customers impacted by non compliance, for instance, in the case of Jamaica. In the more developed markets such as Europe and the United States, the regulatory trend is away from specific ex ante industry regulations to ex post competition rules. Therefore such harsh penalties would not be a consideration. CCGL would strongly urge the Commission to revisit this clause.

27. Special Services

CCGL agrees that where tariffs are applicable for special services, these should be regulated to ensure a level playing field for all participating providers.

28. Services to be Deemed Regulated

On the issue of services provided by a sole telecommunications provider, we refer the Commission to points made in Section 17 above regarding sole provider status.

29. Commission to Publish and Maintain Lists

Regarding the list of markets mentioned in sub-section (2), CCGL is seeking clarification as to what is meant by markets here and specifically whether this is related to the specification of relevant markets for dominance assessments. If this is the case we would seek further clarification as to the basis of the classification of these markets.

30. Commission to Have Power to Regulate Where it Appears Just and Reasonable

Regulations, such as pricing regulations are not an end within themselves. Pricing regulations should be targeted at simulating or stimulating competition in the case of ex-ante regulations and correcting identified market abuses or distortions in the case of ex-post regulations. While we understand the role of the regulator in ensuring desired market outcomes, we question the intention for including this section. It seems to operate as a 'catch all' clause. CCGL is not aware of any precedent for this in any other jurisdiction.

Equally, as it relates to regulatory forbearance, which as we understand it, is the measured removal of ex ante regulations in favour of ex post competition regulation. Therefore, the rationale for forbearance should not be based on a value judgment 'appearing just and reasonable'. To be clear, CCGL is in support of regulatory forbearance. However this has to be done based on the appropriate market assessment. CCGL would recommend that this section be redrafted to set out a process for regulatory forbearance.

PART VII TARIFF APPLICATIONS

32. Procedures for Approval of Tariff Application

In terms of sub section (1), CCGL believes that the requirement for a service provider to file an application for a discontinuation of a service 60 days before the planned discontinuation date is reasonable. However, we believe that a lead time of 60 days for filing an application of a tariff change is too long. As such we would propose 60 days for service discontinuations and 30 days for tariff changes.

CCGL questions the rationale of the requirement to publicly publish a notice of the application seven days after filing, while at the same time the Commission has thirty (30) days to approve or disapprove the application. We certainly believe that competing operators should be made aware of the application, but would be concerned that a public notice could cause confusion to the final customer if the rate is published and then later not allowed by the Commission.

33. Provider to Give Notice to Commission of Proposed Changes for Unregulated Services

We believe that in order to ensure the orderly development and management of the market for telecommunications services, that service providers should give the Commission advanced notification of planned tariff changes. We also believe that timeframes stipulated for such notifications should not unduly restrict the dynamics of the market. As such we would propose that there should be a difference in the timeframe allowed for the notification of price increases and price decreases. The thirty (30) days notification for price increases is acceptable, however for price reductions, we would propose seven (7) days. We believe that once the price decrease is submitted with the appropriate information to establish that it is not anti-competitive, that seven days would be adequate for the Commission and ECTEL to review the revised rate and satisfy themselves as to the of the rate. Importantly, this would also ensure that the benefits of price reductions are passed on the customers expeditiously and that the dynamics of the markets are not unduly disrupted.

35. Market Trials

The thirty (30) days filing period is too long. We would propose seven (7) days.

37. Tariff Reviews

Where the Commission decides to conduct a tariff review, in addition to the publication of a notice in the various media, the service provider in question should be specifically notified as well. As such sub section (2) should be amended to include this specific notification

PART VIII COMPLIANCE

42. Orders

A telecommunications service provider should have the right to appeal an order issued by the Commission.

44. Breach of Regulations to be Deemed Breach of License

CCGL refers the Commission to our response to Section 25, above.

PART IX ADMINISTRATION

52. Service Under Pervious Price Regulation Regime Deemed Approved

Line two (2) of sub-section (1) should refer to regulation 51 and not 52.