

Comments from NTRC St. Lucia on the Revised Draft Retail Tariff Regulations

Definition Section

“regulated service” means a telecommunications service that is designated by the Commission as a regulated service under these regulations.

Comment [AA1]: It is understood that this definition is carried over from the current RTR, however as a general rule when providing a definition of a term, it is recommended that the same term not be used in the definition.

Section 4 – Scope

1. (1) These regulations apply to telecommunications services that a telecommunications provider provides or offers to provide to one or more customers that are members of the general public.
- (2) Unless the contrary intention appears, these regulations do not apply to interconnection services or wholesale telecommunications services that a telecommunications provider provides or offers to provide to another telecommunications provider as contemplated by the Telecommunications (Interconnection) Regulations, 200x, or by any amendments or revisions of the same.

Comment [AA2]: It is noted that consumer and customer are interchanged through the draft RTR, for consistency it is suggested that consumer be used throughout the RTR or why it applies.

Comment [AA3]: We suggest that reference also be made to the promulgated Wholesale Regulations [No. 168 of 2007]

Comment [AA4]: Insert “Telecommunications”

Comment [AA5]: We do not agree with this section, if ECTEL is making a recommendation to the Commission, it is just that “a recommendation”. It should be within the Commission’s rights whether to accept or not accept such a recommendation, since the Commission is the body vested with the power to regulate. It is suggested that this section be rewritten to reflect that “In the exercise of the powers of the Commission under... the Commission shall consult with ECTEL.”

Section 5 – Commission to have power to regulate

- (2) (d) designate services as regulated or unregulated;
- (3) In the exercise of the powers of the Commissions under sub-regulation (2), the Commission shall act in accordance with a recommendation from ECTEL.

Comment [AA6]: We are of the view that this provision goes against the general principles of fair competition and the principles of the Act. We also believe that such a provision may put in jeopardy the efforts to further liberalise the market. If there are any reasonable grounds to cross-subsidize one service with another what are those grounds?

Section 7 – Tariffs to meet minimum conditions

- (2) (e) except with the written authorization of the Commission, utilize revenues or the allocation of costs from one telecommunications service to cross-subsidize another telecommunications service;

Comment [AA7]: Is it understood that the “not” applies to both fair and reasonable? We are of the view that it does not! And would suggest that the sentence be reconstructed to reflect “not fair and unreasonable”

Section 8 – Unreasonable tariff

- (1) Without prejudice to the right of the Commission to determine that a tariff for a telecommunications service is not fair and reasonable for any reason, the Commission may determine that a tariff is not fair and reasonable where a telecommunications provider proposes any or all of the following:
 - (c) more than one increase of a rate for the same service within a 12 month period;

Comment [AA8]: A tariff is deemed unreasonable if it is increased more than once in a year. We believe that this conflicts with the regulation 7 (1), because if we accept that rates should be determined by market forces why are we then limiting rate increases to one increase every 12 months. Also what provisions are made if the market becomes volatile and the costs of associated with producing or supplying the service the market deviates beyond the norm, an example of such anomalies would be the energy price spikes observed in 2008/2009.

Section 9 – Anti-competitive conduct

(i)

Comment [AA9]: INSERT : Supplying services at prices below long run average incremental costs

Section 10 - Contracts to Contain Minimum Terms

(1) (a) the identity and address of the telecommunications provider;

Comment [AA10]: Or its subsidiaries

Section 15 – Dominance

(1) Acting on a recommendation of ECTEL, the Commission may declare that a telecommunications provider is dominant with respect to a telecommunications network or a telecommunications service where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and consumers.

Comment [AA11]: We would suggest that this section be amended to reflect, “Acting on a recommendation of ECTEL or own its motion...”

(2) In making a determination as to dominance, the Commission shall take account of the following:

(a) the relevant market;

Comment [AA12]: It is observed that the criteria for Assessing the dominance of a provider is being applied ex-ante, where normally the practice is to apply the label of dominance ex-post usually after some anti-competitive behaviour in a market has been observed. When the criteria of dominance is applied ex-ante there is usually a straight-forward criteria for assessing dominance, which we observe is true in this case. Also dominance is usually applied in reference to a market rather than a network or service or are we using market and network or service interchangeably? It may be confusing if we interchange network with market. It is suggested that for consistency we use one term.

Section 16 – Procedure for Declaration of Dominance

(2) Where ECTEL recommends a declaration of dominance:

(a) The Commission shall initiate a public consultation by publishing a notice in the Gazette, a local newspaper of wide circulation in [Member State], and on the Commission’s website, declaring the provider to be dominant and setting out the reasons for making the declaration, and allow a period of not less than 30 but not more than 90 days for the submission of comments by interested persons.

Comment [AA13]: This goes back to our comment #13 (previous comment) Are we interchanging the meaning of network or service with market? Also if we are going to take into account the market, there should be some guidelines to identify or define these markets?

(b) Any person likely to be affected by a designation of dominance shall be entitled to make representations to the Commission on any matter relevant to the assessment.

Comment [AA14]: We would suggest that the public notice be published in a newspaper of wide circulation and on the website as experience has taught us that publication in the St. Lucia Gazette has some inherent delays. It is suggested that “where feasible” is inserted.

(c) ECTEL may recommend the adoption of procedures by the Commission for assessing dominance, including but not limited to identifying information to be requested from the provider and the timeframes for the receipt of submissions, relevant to the determination of dominance, by interested persons.

Comment [AA15]: We believe since we are outlining a public consultation everybody has the right to comment whether they are likely to be affected or not. In particular we welcome comments from persons outside our shores who may not be likely to be affected but who possess the experience and expertise to contribute to the consultation.

(d) The Commission and ECTEL shall be entitled to draw adverse inferences from the failure of the provider to supply any requested information in respect of an application.

Comment [AA16]: ???

Section 18 - Presumed Dominance

- (1) For the purposes of these regulations, a telecommunications provider with [X]% of market share in a relevant market is presumed to be a dominant provider for providing services in that market.

Comment [AA17]: Should there not be a required, minimum time period for holding unto this [X]% of market share, e.g. 12 months. Also here it is referring to 'relevant market' when earlier we were using network/service, there should be consistency.

Section 19 - Provider to apply for tariff approval pending final declaration of dominance

Notwithstanding regulation 32, the Commission may direct a telecommunications provider to apply for approval of a proposed change to an existing tariff, where a notice under regulation 17(2)(a) has been published by the Commission.

Comment [AA18]: There is no 17 (2) (a).

Section 21 - Power of the Minister to amend a licence after declaration by Commission

- (1) For the purpose of imposing any special restrictions or obligations on a dominant provider, ECTEL may, after a declaration of dominance or non-dominance, or a consent to designation of dominance as the case may be, recommend to the Minister responsible for telecommunications, that a dominant telecommunications provider's licence be amended to reflect its status as a dominant or non-dominant provider in a relevant market, and where the Minister accepts the recommendation, the Minister may amend the licence as if the provider had consented to the modification of the licence under section [provision in the Act relating to modification to be inserted] of the Act.

Comment [AA19]: What is the relevance of this section?

Comment [AA20]: We suggest that the following be amended to reflect "ECTEL and or the Commission". Likewise in subsection 21 (2).

Section 23 - Procedures for Adoption of Price Regulation Regime

- (5) Where ECTEL and the dominant telecommunications provider are able to agree on the terms of the draft price regulation regime:
- (a) The Commission shall, within 14 days of receipt of a recommendation from ECTEL for adoption of the price regulation regime, initiate a public consultation by publishing a notice in the Gazette, at least one local newspaper of wide circulation in [Member State] and on its website, setting out the details of the price regulation regime, and allow not more than 30 days for the submission of comments by interested persons;
 - (b) The Commission shall adopt any recommendations by ECTEL for the procedures to be followed in the conduct of the consultations;
 - (c) Any person likely to be affected by the price regulation regime shall be entitled to make representations to the Commission on any matters relevant to ECTEL's and the Commission's determinations.

Comment [AA21]: This should be left to the determination of the Commission.

Comment [AA22]: We do not agree with this, as the Commission should have the right to accept or not to accept a recommendation from ECTEL.

(d) Upon expiration of the 30 day period referred to in sub-regulation 5(a), ECTEL may revise the price regulation regime, taking account of any relevant representations made under sub-regulation 5(c), and submit a final price regulation regime for adoption by the Commission, provided that, at any time after the conclusion of the 30 day period, ECTEL may recommend the adoption of the price regulation regime, with or without amendment, and the Commission shall approve it, without modification, within 14 days of receipt of such recommendation.

Comment [AA23]: We do not agree with this, as the Commission should have the right to accept or not to accept a recommendation from ECTEL

(6) Where ECTEL and the dominant telecommunications provider are unable to agree on the terms of the draft price regulation regime:

(a) The Commission shall, within 14 days of receipt of such recommendation, initiate a public consultation by publishing a notice in the Gazette, at least one local newspaper of wide circulation in [Member State] and on its website, setting out the details of the price regulation regime, and allow not more than 60 days for comments by interested persons;

(b) The Commission shall adopt any recommendations by ECTEL for the procedures to be followed in the conduct of the consultations;

Comment [AA24]: We do not agree with this, as the Commission should have the right to accept or not to accept a recommendation from ECTEL

(c) Any person likely to be affected by the price regulation regime shall be entitled to make representations to the Commission on any matters relevant to the Commission's determination.

Comment [AA25]: This is a public consultation all persons have the right to comment whether to be likely affected or not.

(d) Upon completion of the 60 day period referred to in sub-regulation 6(a), ECTEL may revise the price regulation regime, taking account of any relevant representations made under sub-regulation 6(c), and submit a final price regulation regime for adoption by the Commission.

(e) Within 14 days of receipt of a final recommendation from ECTEL, the Commission shall either approve or disapprove of the price regulation regime as submitted.

(7) Where approved, the final price regulation regime shall be published by the Commission in the Gazette, a local newspaper of wide circulation in [Member State], and on the website of the Commission, and:

Comment [AA26]: We would suggest that this be amended to reflect, "Where approved, NOTICE of approval of the final price regulation regime...". Reason being that the cost involved in printing a large document such as a price cap plan in the gazette or newspaper is astronomical.

Section 27 - Special Services

(5) Acting on a recommendation of ECTEL, the Commission may adopt special rules in respect of the provision of special services, by providing at least 30 days notice to providers and consumers by publication of such rules on its website, and a telecommunications provider shall comply with such rules, once adopted.

Comment [AA27]: Insert "or its own motion..."

Section 29 - Commission to publish and maintain lists

- (2) The Commission may publish a list of markets for services on its website

Comment [AA28]: We are interchanging network/service with markets.

Section 30 - Commission to have power to regulate where it appears just and reasonable

Comment [AA29]: Does not section 5 give the Commission the power to regulate retail tariffs?

Section 32 - Procedures for approval of tariff application

- (1) Except that sub-regulations (1)(c) and 2-3 shall not apply in respect of an application under 32(2)(a), and at least 60 days prior to the date the tariff or the proposed discontinuation of service is to take effect, a provider applying for approval under regulation 32, shall –

Comment [AA30]: It is suggested that this section be re-constructed more clearly as there are too many different sub-sections being referenced and this may pose difficulty for some readers to follow and to avoid doubt the guidelines should be clear and direct.

- (8) The Commission shall not approve an application under sub-regulation (1), unless –

- (a) it has received ECTEL’s recommendation;
- (b) the tariff complies with regulations 8 - 11;

Comment [AA31]: What happens after the 60 days limit and the applicant receives no notice of whether the application is approved or not approved? Does the application come into force?

Comment [AA32]: We believe that the sections to be referenced should be 7-10.

Section 34 - New telecommunications services

- (5) Where the Commission has determined the designation of the service as regulated or unregulated, the Commission and ECTEL shall review the tariff for the service in accordance with regulation 29.

Comment [AA33]: We believe this is the incorrect section being referenced.

Section 37 - Tariff Reviews

- (1) Without prejudice to the Commission’s powers to impose a price regulation regime in respect of any telecommunications service, the Commission may undertake a tariff review of an unregulated service, in any case where –

- (a) a consumer or a telecommunications provider requests it in writing;
- (b) the Commission reasonably suspects that a tariff does not comply with regulations 8-11;

Comment [AA34]: We believe these regulations are not the correct regulations being referenced. We believe this should reflect “regulations 7-10”

- (4) Within 30 days of publication of the notice in sub-regulation (2), a telecommunications provider shall file the information required under regulation 33(1)(a)-(b), but shall not be required to publish a notice in accordance with regulation 33(1)(c).

Comment [AA35]: There is no section 33(1) (c)

Section 39 - Disapproval of application

- (c) publish the order and reasons for the same in the Gazette, a local newspaper of wide circulation in [Member State] and on the Commission’s website.

Section 47 - ECTEL to publish recommendations

In any case where ECTEL is required, pursuant to these regulations, to make a recommendation to the Commission, ECTEL shall ensure that, within 7 days of making the recommendation to the Commission, it publishes in a local newspaper of wide circulation in [Member State] and on its website, a notice to that effect.

Section 50 - Issuance of Guidelines

The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.

Comment [AA36]: The Commission should have the flexibility to choose one or all of these mediums to publish its order, there may be instances where the order may be a vast document and by obligating the Commission to publish the document may not be economical feasible.

Comment [AA37]: Why is it necessary for ECTEL to publish a recommendation it makes to the Commission especially within 7 days of providing the Commission with such recommendation? In light of it being a recommendation which the Commission may either accept or not accept. Also in terms of ECTEL’s obligations to publish its recommendation within seven (7) days of providing it to the Commission, there appears to be some disconnect with some of the time lines established in the draft RTR, especially on a procedure for tariff application, regulation 32. In general terms a tariff application can expect a response in not more than 60 days before the intended implementation date of tariff or discontinuation of service, and corresponding to 32 (7) ECTEL has thirty days to make a recommendation to the Commission on the application, which would leave a max. of 30 days for the Commission to issue its decision to the applicant. However after ECTEL’s max. allotted 30 days, within seven days of sending its recommendation to the Commission it must publish its recommendation, however this may place the Commission in an unendurable position to deliberate and make a decision on the application. We strongly disagree with the provisions of regulation 47 and do not believe that ECTEL should publish a recommendation in the public domain before the Commission can issue its decision, there are number of reasons for example the Commission may have divergent views from ECTEL’s recommendation and may seek to engage ECTEL on those views; this provision may also place undue strain on relations between the two agencies.

Comment [AA38]: spelling