



SAINT LUCIA

NATIONAL TELECOMMUNICATIONS REGULATORY
COMMISSION

1ST & 2ND Floor, Rajana Group of Companies Bldg, P. O. Box GM 690, Bois D'Orange, G. I. , St. Lucia
(W.I.)

April 18, 2016

REF: 220-06.02/APR18.16/WBS.01

Mr. Embert Charles
Managing Director
Eastern Caribbean Telecommunications Authority
Vide Boutielle
P.O. Box 1886
CASTRIES

Dear Mr. Charles,

Re: Consultation on eCommunications Bill and Regulations

We write with reference to ECTEL's consultation on the suite of Regulations to be promulgated with the eCommunications Bill. These include:

- **Guidelines for Market Analysis;**
- **Access to Network Infrastructure and Wholesale Services;**
- **Infrastructure Sharing;**
- **Submarine Cable Access; and**
- **Retail Pricing and Consumer Protection Regulation (Specific Rules for Consumer Protection in the Electronic Communications Sector)**

In view of the Commission's involvement in ECTEL's recently conducted consultative fora/workshops for discussion on the subject Regulations, we wish to submit some brief additional comments at this juncture. Please find our comments below.

Further, the Commission take the opportunity to submit its Co-location and Infrastructure Guidelines, which provides the requisite direction on such matters. Please note that this document will be revised subsequent to the finalization of the consultative process.



SAINT LUCIA

NATIONAL TELECOMMUNICATIONS REGULATORY
COMMISSION

1ST & 2ND Floor, Rajana Group of Companies Bldg, P. O. Box GM 690, Bois D'Orange, G. I. , St. Lucia
(W.I.)

SPECIFIC COMMENTS

DRAFT CONSUMER PROTECTION REGULATION

Billing Notification – It is recommended that the form/definition of notification be specified.

Complaint Handling Process – Recognising the over-arching Objectives and Guiding Principles of the proposed Guidelines, which include transparency and to ensure such principles are upheld, it is recommended that the complaint handling process be published and displayed at all places of operation.

DRAFT RETAIL PRICING REGULATIONS

Classification of and Rationale for Tariffs to be Regulated- significant market power should be defined as well as anti-competitive conduct.

Cost orientation of prices- tariffs should be cost based and there should not be latitude to allow licensees to do otherwise as provided by the use of the word 'may'.

Procedures for controlling regulated tariffs – The proposed period of five (5) days for response is too brief; particularly, on the occasions the Commission has to consult or seek advice from ECTEL. Seven (7) working days may be more appropriate.

Promotions and market trials - It would be useful if 'same' in the proposed regulation is defined. The extent of deviations from a promotion to ensure that it is not the 'same' should be specified. A provider may use this provision to make slight alterations to a promotion and continue to run it without regulatory approval for another month. This provision may allow for abuse on the part of the providers.

DRAFT REGULATIONS ON GUIDELINES FOR MARKET ANALYSIS

Functions of NTRC/ECTEL - There is not enough clarity between the role of the NTRC and the role of ECTEL in the process.



SAINT LUCIA

NATIONAL TELECOMMUNICATIONS REGULATORY
COMMISSION

1ST & 2ND Floor, Rajana Group of Companies Bldg, P. O. Box GM 690, Bois D'Orange, G. I., St. Lucia
(W.I.)

Relevance of market likely to be regulated- It is recommended that “effective competition” be defined – whether a herfindahl index, measures of significant market power or otherwise. Consequently, the establishment of thresholds may be considered.

Yours Respectfully,



.....
Shana Willie-Matoorah
Director/Secretary

Attach:

NATIONAL TELECOMMUNICATIONS REGULATORY COMMISSION



***Colocation and
Infrastructure Sharing
Guidelines***

In view of the current Consultation and the resultant Regulations, this document will be revised.

Contents

Part I: Introduction	2
Background	2
Status of the Guideline	2
Objectives of the Guidelines	2
Part II: Infrastructure Sharing	3
Types of Infrastructure Amenable to Sharing	3
Types of Infrastructure Not Amenable to Sharing	4
Procedure for Negotiating C/IS	4
Terms and Conditions for Infrastructure Sharing.....	5
Part III: Colocation	6
Colocation as an Element of Interconnection	6
Part IV: Site Sharing For Communication Facilities	7
Siting alternatives hierarchy	7
Part V: General Rules for Colocation/Infrastructure Sharing (C/IS)	10
Reference Offer and Standard Practice List	10
Allocation of Capacity	11
Refusal of Access to Colocate.....	11
Reservation of Capacity	12
Re-Development/Re-Location.....	12
Separation	13
Standardization	13
Part VI: The Role of the Commission	14
Dispute Resolution	14
Supportive Action	14
Definitions.....	16

Part I: Introduction

Background

- (1) The Commission has responsibility under the Act to:
 - (a) Promote fair competition in the telecommunications industry, and encourage and promote infrastructure sharing among its licencees.
 - (b) Develop guidelines for Colocation and Infrastructure Sharing (“C/IS”).

- (2) These Guidelines proceed from a premise that all Access Providers and Access Seekers have the liberty to negotiate C/IS arrangements in accordance with mutually agreed terms.

- (3) These Guidelines are designed and developed to encourage C/IS among telecommunications operators within a predetermined framework to remove uncertainty and create an environment for better co-operation.

- (4) Additionally, these Guidelines explain the Commission’s role in achieving the most efficient use of facilities amenable to sharing.

Status of the Guideline

These Guidelines are to be read subject to the Telecommunications Act, the Telecommunications Interconnection Regulations and other relevant laws, and in conjunction with the Licence Conditions.

Objectives of the Guidelines

- (1) The Primary object of these Guidelines is to establish a framework within which operators can negotiate C/IS arrangements, and for that purpose, specifically to:
 - (a) Ensure that the incidence of unnecessary duplication of infrastructure is minimized or completely avoided;
 - (b) Protect the environment by reducing the proliferation of infrastructure and facilities installations;

- (c) Promote fair competition through equal access being granted to the installations and facilities of operators on mutually agreed terms ;
- (d) Ensure that the economic advantages derivable from the sharing of facilities are harnessed for the overall benefit of all telecommunications stakeholders;
- (e) Minimize capital expenditure on supporting infrastructures and to free more funds for investment in core network equipment.
- (f) Encourage operators to pursue a cost-oriented policy with the added effect of a reduction in the tariffs chargeable to consumers.

Part II: Infrastructure Sharing

Types of Infrastructure Amenable to Sharing

- (1) Infrastructures amenable to sharing are those that can be shared without an attendant risk of lessening of competition.
- (2) The Commission shall encourage and promote the sharing of the following infrastructures (passive components)¹:
 - Rights of way.
 - Masts.
 - Poles.
 - Antenna mast and tower structures.
 - Ducts.
 - Trenches.
 - Space in buildings.
 - Electric power (public or private source).
- (3) Where the sharing of an infrastructure such as Rights of Way and Electric power is precedent upon securing the necessary approval of a granting authority, such approval should be obtained before the sharing arrangement can be finalized.
- (4) The Commission may from time to time either on its own initiative or upon the request of any interested person add to the list of infrastructure that can be shared.

¹ Passive Infrastructure sharing is sharing non-electronic infrastructure at sites.

Types of Infrastructure Not Amenable to Sharing

- (1) The Commission will not encourage and promote sharing of the following infrastructures (active components)²:
 - Complete network structures.
 - Switching centers.
 - Radio network controllers.
 - Base stations.
- (2) The Commission may from time to time add to the list of infrastructure in respect of which sharing is discouraged.
- (3) The Commission shall at all times reserve the right to examine incidence of infrastructure sharing to ensure consistency with the relevant Licence(s) and reduce the risk of a lessening of competition.
- (4) Where the Commission:
 - Determines that an infrastructure sharing arrangement is inconsistent with the relevant Licence(s) and/or
 - Identifies a risk of lessening of competition as a consequence of such infrastructure sharing,

It may require such an arrangement to be discontinued.

Procedure for Negotiating C/IS

- (1) Any operator who owns or has control of a facility amenable to sharing may enter into negotiations with another operator who submits a request to share in the use of that facility.
- (2) All negotiations for infrastructure sharing must be done with the utmost good faith. The owner of a facility must not;
 - Obstruct or delay negotiations or resolution of disputes;
 - Refuse to provide information relevant to an agreement including information necessary to identify the facility needed and cost data;
 - Refuse to designate a representative to make binding commitments.

² Active sharing is sharing electronic infrastructure.

- (3) A request for infrastructure sharing should be in writing. A party to whom such a request is made should within four weeks either accede to the request and grant access for sharing, or where access is denied, advance reasons in writing for the denial.
- (4) Except in emergency situations, the replacement of a shared facility, or its modification, may only be undertaken upon due service of an eight weeks notice on the other party.
- (5) A party on whom notice is served may file a petition against the removal or modification of a facility within 15 days of receiving such notice, and the notifying party may file a reply thereto within 7 days.

Terms and Conditions for Infrastructure Sharing

- (1) An operator shall provide capacity on its infrastructure to other operators on a “first-come, first served” basis, determined in accordance with the order in which it receives requests for infrastructure sharing.
- (2) An operator shall reserve the right to refuse an application for infrastructure sharing on grounds of;
 - Insufficient capacity
 - Safety, reliability, incompatibility of facilities and
 - General engineering considerations.
- (3) The decision to refuse an application for infrastructure sharing shall be communicated in writing to the requesting operator specifying the reasons for such refusal.
- (4) Every infrastructure sharing agreement, including any prior existing agreement, shall be in writing and shall specify the contractual terms and conditions agreed on by the parties. All such agreements shall be registered with the Commission.
- (5) The terms on which infrastructure sharing is offered should be in compliance with the principles of neutrality, transparency, non-discrimination and fair competition.
- (6) Prices for infrastructure sharing should be non-discriminatory, reasonable, and based on the actual costs incurred by the owner of the facility.
- (7) Determination of the costs underlying prices should be transparent and neutral.

Part III: Colocation

Colocation as an Element of Interconnection

- (1)** Colocation is an element of the interconnection of networks hence it is essential that operators agree on terms of its implementation towards ensuring seamless interconnection. Colocation shall constitute part of the negotiations for interconnection and be governed by provisions of the Telecommunications Interconnection Regulations.
- (2)** Every major operator, especially dominant operators as may be determined by the Commission should include in their Reference Interconnection Offer (RIO) an offer for the facilities available for colocation, including a price list for the different components of colocation.
- (3)** An operator desirous of interconnecting with another operator is at liberty to choose the type of colocation suitable for its operation.
- (4)** Where a request is made for physical colocation but such colocation is not deemed feasible, virtual colocation should be offered by the interconnection providing operator.
- (5)** Where virtual colocation is not feasible, remote colocation should be offered in its stead.
- (6)** A request for remote colocation shall not be rejected on any grounds. Once physical colocation has been granted.
- (7)** Specifically, remote colocation shall not be refused on grounds of insufficient capacity, safety considerations, reliability or other general engineering considerations.
- (8)** Save as may be specifically excluded, the terms and conditions of colocation are in general to be governed by the same rules as infrastructure sharing.

Part IV: Site Sharing For Communication Facilities

Siting Alternatives Hierarchy

- (1)** Development of a facility use shall be in accordance with the following siting alternatives hierarchy. The order of ranking from highest to lowest shall be (a), (b) and (c). Where a lower ranked alternative is proposed, the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible or available.
 - (a)** Co-location on existing communication tower
 - (b)** Co-location on existing building/other structure
 - (c)** Development of new communication tower
- (2)** Placement of antennas on existing towers or other structures shall be preferred as opposed to the construction of a new tower. An application for administrative review to co-locate on an existing wireless communication facility or other structure shall contain proof of the intent of the existing owner to permit the applicant's use.
- (3)** Certification from a licenced engineer that certifies that the structure can support the additional load due to the co-location of facilities.

Site Colocation Guidelines

- (1)** Wherever feasible, the facility owner shall provide for future co-location on the facility by other service provider and for public purposes or demonstrate by substantial evidence that it is not feasible.
- (2)** Licencees developing any new mobile site shall develop that new mobile site in accordance with the joint specifications which are to be agreed between the licencees in order to ensure that the new mobile site is capable of accommodating the requirements of both licencees.
- (3)** These guidelines recommend the co-location of passive infrastructures since the NTRC will not encourage and promote sharing of active infrastructures.

Inventory of Towers and Location Specifications

- (1) Each applicant shall submit to the Commission a complete inventory of its own facilities and those of companies proposing to co-locate on the proposed communication facility, or tower, existing towers, and approved communication facilities.
 - Exact location (address and GPS co-ordinates)
 - Mechanical tower specifications (type, height, maximum load)
 - Site specification (size in square meters, characteristics such as fencing, gates, shelters or equipment room, ...)
 - Specification of electricity access (grid access, generator rating)
 - Current usage (tower load, number of antennas, square meters occupied by equipment, current electricity rating, ...)
 - Current spare capacity (tower load, number of antennas, square meters available for additional equipment, spare electricity, ...)
- (2) The NTRC will maintain a database with all tower locations and specifications. Upon written request, licenced operators can obtain a copy of this database.
- (3) Upon request by another licensee, each operator/service provider must provide complete information on tower locations and specifications within a maximum of 10 working days. Within another 10 working days, a licensee must grant escorted access to a potential sharing site upon request by other licensees, who seek to share passive infrastructure.
- (4) The operator/service provider will provide updates, from time to time, on additional facilities installed by other operators that opt to co-locate on the operator's facility after approval has been granted. No new tower shall be permitted or major communication facility approved unless the applicant demonstrates to the satisfaction of the Commission by substantial evidence that no existing facility (whether or not owned by applicant) can accommodate, as is or through modification, the proposed facility.
- (5) Substantial evidence to demonstrate that no existing facility is suitable shall consist of any of the following:
 - (a) An affidavit demonstrating that the applicant made diligent efforts to install or co-locate on existing towers and other existing structures within a 1km radius in rural area or 500 m in urban area of the proposed tower site, as determined by a qualified radio frequency engineer.
 - (b) An affidavit demonstrating that existing towers and structures located within a 1 km radius (rural area) or 500 m (urban area) of the proposed tower site don't have the capacity to provide reasonable technical service consistent with the applicant's technical system.

- (c) Written technical evidence from a qualified structural engineer that existing towers and structures within the area don't have sufficient structural strength to support the proposed facility.
- (d) A written statement from a qualified telecommunications engineer submitting technical evidence showing that the existing towers and structures within the geographic search area are incompatible due to electromagnetic /radiofrequency interference and that antenna on the existing tower or structure cannot be relocated on the existing structure to accommodate additional users.
- (e) An affidavit that the fees or costs required by the owner to share an existing tower or structure within geographic search area, or to adapt an existing tower or structure within the area are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- (f) The applicant demonstrates that there are other limiting factors that render existing towers and structures within a 1km radius (rural area) or 500m (urban area) of the proposed tower site unsuitable.

Co-location on Existing Infrastructures

- (1) The Commission also requires that existing mobile sites be made available for site sharing. Accordingly, a licensee may request to share an existing mobile site of another licensee. In this regard, the licensees shall endeavor to cooperate in order to facilitate the prompt and efficient completion of all tasks related to establishing a joint presence at the existing mobile site.
- (2) The cost of adapting an existing mobile site to accommodate another licensee's facilities shall be borne by the licensee which is requesting to share the existing mobile site save costs for depreciated materials.

Part V: General Rules for Colocation/Infrastructure Sharing (C/IS)

Reference Offer and Standard Practice List

- (1)** The Commission recognizes the right of operators to negotiate and agree on terms and conditions of colocation and Infrastructure sharing (C/IS). The Commission however requires that such negotiation must be within the limits of an existing reference offer developed by each operator.
- (2)** Every operator shall ensure that its reference offer is readily available to other operators with a view to promoting fairness in the negotiation process.
- (3)** Operators should in the process of developing the reference offer be responsive and work in close association with other operators, that is, prospective access seekers.
- (4)** Notwithstanding the provisions of sub-paragraph (1) above, parties involved in any negotiation for C/IS arrangement are at liberty to negotiate outside the reference offer provided howsoever that such negotiations are voluntary and non-discriminatory.
- (5)** The reference offer should contain sufficient information on issues relevant to the access seeker for negotiation purposes as itemized in the First Schedule to these Guidelines.
- (6)** Parties may request for other information which may be required in the process of negotiating for C/IS. Such information should be treated as confidential by the requesting party at all times.
- (7)** The quality and nature of any information requested for will depend on what stage the negotiation process has reached. Response on any such request should be prompt to avoid delay.
- (8)** A party may request for a site inspection if it is deemed necessary for the purpose of aiding that party to reach an informed decision.
- (9)** Every operator should develop a standard price list which shall provide guidance for determining the price for all C/IS arrangements with other Access Seekers.
- (10)** Any standard price list developed should be reasonable, nondiscriminatory and cost-oriented.

Allocation of Capacity

- (1) There shall be no obligation on an operator to develop new infrastructure whenever its capacity has reached saturation level. However, operators are expected to reasonably take into consideration the demand for C/IS when expanding their facilities.
- (2) Where there is no available capacity at the existing facilities to meet the needs of additional requests for capacity, the operator should consider redevelopment as a means of increasing capacity at existing facilities.
- (3) The Commission will consider that capacity is available where the specific resource is not occupied nor reserved by the operator.
- (4) In every situation where a colocation request is granted, the grantor should have the reserved right in the event of scarcity to demand that any allocated capacity be relinquished if such capacity has not been utilized within a maximum of three (3) months of delivery of access. This right should be reserved with the intent to avoid the pre-emption of future capacity needs on the part of a requesting operator which would stifle the present needs of other operators.
- (5) At the expiration of the period for which access was granted to a party, an application for a further extension of the period will be in accordance with the procedure used for the initial application. The application will be considered on the merit by the access provider.
- (6) In every case, applications for colocation should be considered and granted by an operator on a “first come – first served” basis.

Refusal of Access to Colocate

- (1) An operator reserves the right to refuse an application for access in any of the following circumstance:
 - (a) Where the operator does not have available capacity (i.e. either that all capacity is occupied or reserved).
 - (b) Where the grant of access is technically unfeasible
 - (c) Where the request, if granted, will breach safety and reliability standards. In all cases, the operator should provide the requesting operator with reason for refusal in writing.
- (2) An operator who is refused colocation may refer such refusal to the Commission and the Commission shall be at liberty to inquire into the decision refusing access.

- (3) The Commission may upon due consideration;
- Up hold a decision refusing access
 - Request that a decision refusing access should be reconsidered
 - Impose an infrastructure sharing arrangement on the parties.
- (4) Infrastructure sharing arrangements imposed by the Commission may include rules for apportioning the costs of facility sharing.

Reservation of Capacity

- (1) The right of an operator to reserve capacity for which it has made long term investments will at all times be recognized but balanced against the need not to hamper the network roll -out or expansion plans of new market entrants or other operators.
- (2) Where capacity is limited, the right to reserve capacity should not be exercised by an operator.
- (3) Where however an operator with significant investments exercises the option to reserve some rights in circumstances of limited capacity;
- The reserve period shall not exceed two (2) years after which the right will cease from being operational.
 - Not more than 20% of capacity shall be reserved.
- (4) Information and documentary evidence of the reservation and extent thereof should be held by the operator and made available to other operators on reasonable demand.

Re-Development/Re-Location

- (1) To ensure that capacity is increased and made available to others, operators are encouraged to constantly pursue a policy of re -development and re-location of facilities.
- (2) Where for optimal utilization of facilities an operator undertakes redevelopment or re-location (i.e. reconfiguration of network as a result of technological or business reasons), the cost of the re -development or re-location may be jointly assessed by

the parties and shared with access seekers at a percentage mutually agreed by parties.

- (3) The re-development or re-location cost borne by a colocator shall form part of the price paid for the C/IS arrangement.
- (4) A party to a C/IS arrangement should not undertake modifications with the sole aim of demanding the cost of such modification from colocators.
- (5) As a condition precedent for an operator to commence any redevelopment or re - location at any facility, notice thereof should first be given to all operators sharing the facility with the operator. The notice period should be:
 - 6 months in the case of re-development
 - 12 months in the case of re-location

Separation

- (1) The Commission expects that parties involved in all C/IS arrangements, will make efficient use of scarce space.
- (2) Parties negotiating for colocation will be at liberty to request for separation of equipment to increase internal and external security, reduce interference problems and limit damage to each other's' equipment.
- (3) The degree to which separation of equipment will be granted to an operator will be determined, among other things, by:
 - Prevailing local circumstance
 - Available space
 - Special requirements of access seekers
 - Level of standardization
 - Risk of damage

Standardization

- (1) To facilitate improved co-ordination and compatibility of equipment, parties to a C/IS arrangement should endeavor to develop and employ standard procedures for provision and operations under the arrangement.
- (2) The standard procedures to be developed by parties under the arrangement will be in the areas of:

- Maintenance
 - Fault clearance
 - Access at the facility
 - Emergency
 - Cleaning
 - Safety
 - Security
- (3) Parties are also to ensure that standardized equipment and unified techniques/technical interfaces are used for the C/IS.
- (4) The liberty to use assigned space for its own purpose notwithstanding, parties should not install incompatible equipment which may cause interference to other parties' equipment or impede usage of space allocated to them.

Part VI: The Role of the Commission

Dispute Resolution

- (1) The Commission has the power to intervene to resolve dispute at the request of either party and to impose facility sharing or colocation arrangements between operators after consultation with the parties.
- (2) The power of the Commission to intervene in disputes shall include the right to request for and receive all such necessary information as may be required to reach a decision.
- (3) The decision of the Commission which shall be final, save for the right of appeal to a court of competent jurisdiction will be notified to the parties and published.
- (4) In resolving disputes, the Commission will rely on its Dispute Resolution Guidelines.

Supportive Action

- (1) The Commission will from time to time arrange for the dissemination of pertinent information on the subject of infrastructure sharing and colocation.
- (2) The Commission will use its mandate under Section 47 of the Act to further the opportunities for colocation and infrastructure sharing, provided there is no risk of the lessening of competition. In particular, the Commission will take action to

- Encourage redevelopment of existing facilities amenable to infrastructure sharing to increase their capacity.
- Advise local and regional authorities on the adoption of schemes which would encourage the sharing of infrastructure.
- Support the development of the capability among operators to deal with the issues of infrastructure sharing in a competent way.

Definitions

In these Guidelines –

- **Act** – Means the Telecommunications Act No.27 of 2000
- **Colocation** – Means the placement of transmission equipment owned by the interconnection demanding operator in the premises of the interconnection providing operator for interconnection to that operator's network;
- **Commission** – Means the National Telecommunications Regulatory Commission (NTRC);
- **Facility, Facilities** – Mean the same thing as, and are interchangeably used with the term “infrastructure”;
- **Infrastructure Sharing** - Means the joint use of network facilities by two or more operators subject to agreement specifying relevant technical and commercial conditions. The term “infrastructure sharing” is more general than the term “colocation” and unless explicitly stated otherwise, infrastructure sharing refers for the purposes of these Guidelines to the sharing of facilities that are not feasible for colocation;
- **Operator** - Means an undertaking holding a licence granted under the Act to operate a telecommunications system or facility and to provide telecommunications services;
- **Physical Colocation** – Means colocation where equipment is placed in a separate room within the premises of the interconnection providing operator and remains under the control of the interconnecting demanding operator;
- **Remote Colocation** – Means colocation where the equipment of the interconnection demanding operator is installed in a location near the premises of the interconnection providing operator and a transmission medium is used to realize the physical interconnection;
- **Virtual Colocation** – Means colocation where equipment is placed in the equipment line-up of the interconnection providing operator and is maintained by that operator.